

**Arizona General Stream Adjudication Bulletin
September 1997**

**Office of the Special Master
Arizona State Courts Building
1501 W. Washington, Suite 228, Phoenix, AZ 85007
(602) 542-9600; fax (602) 542-9602**

Arizona General Stream Adjudication Bulletin is published 10 times a year by the Office of the Special Master. Subscriptions are available for \$12 annually and may be ordered or renewed by calling Kathy Dolge at the office of the Special Master.

The information contained in this Bulletin is provided for informational and scheduling purposes only, and does not constitute a legal opinion by the Special Master on matters contained herein.

**John E. Thorson, Special Master
Kathy Dolge, Assistant to Special Master
Volume 5, Number 6**

Contents:

Steering Committee Continues to Develop Case Management Plan

Little Colorado River Proceedings

Definitions

Calendar

Sources for Help

Steering Committee Continues to Develop Case Management Plan

The Gila River Steering Committee held its third recent meeting on August 25 concerning a proposed case management plan for litigating the water right claims of the Gila River Indian Community. This series of meetings has been facilitated by Special Master John Thorson.

During the summer, members of the Steering Committee cooperated in compiling a 2,100-page inventory of legal documents possibly pertaining to the water uses of the Indian Community. Copies were purchased by many parties, and a set of the documents may be borrowed from the Special Master's office for review or copying. A 13-page list of the documents (table of contents) is also available from

the office of the Special Master at no charge.

More recently, Steering Committee members have been debating the merits of litigating some issues in advance of the filing of the final hydrographic survey report (HSR) concerning the claims and uses of the Indian Community. The HSR filing begins a 180-day period during which other parties to the Gila River adjudication may object to the content of the report.

Some Steering Committee members argue that some questions, such as the effect of prior judicial decrees on portions of the Gila River system, could be efficiently addressed over the next few years while the final HSR is being prepared. These parties also maintain that a court's decision on these issues may be necessary before DWR can complete the final HSR.

Other members of the Steering Committee believe that all issues pertaining to the Indian Community's water rights should be decided in the context provided by the statutes -- that is, after the final HSR is published. These parties also suggest that much discovery needs to be done before any major issues can be decided.

The resolution of this debate may depend on when DWR plans to complete the final HSR for the Indian Community. The preliminary HSR was filed on January 30, 1997, and parties were able to submit comments until June 30 (see Aug. 1997 *Bulletin* for summary of comments). At the August 25 meeting, Tom Wilmoth, an attorney for DWR, reported that the parties' comments will be reviewed by the department's hydrologists over the next six weeks but that a date for the final HSR cannot be determined until Judge Susan Bolton provides additional guidance. Wilmoth also indicated that DWR never intended to prepare a complete practicably irrigable acreage (PIA) study of the reservation, but will report on certain "building blocks," such as arable lands, that are important to the PIA standard. Wilmoth indicated that the department will probably report on Gila River flows prior to development ("virgin flow" analysis).

In response to DWR's report, the Steering Committee agreed to file a letter with the court suggesting that DWR submit a firm proposal on how the department intends to finalize the HSR. The Committee suggested that this proposal be filed by Sept. 15 so that interested parties may comment in advance of an anticipated October court hearing.

Three proposed litigation timetables are now before the Steering Committee. The original Salt River Project proposal calls for preliminary questions to be framed and decided in a rolling sequence between now and June 2002. The Gila River Indian Community has proposed that discovery begin now leading to the filing of motions for summary judgment by July 1999 with these issues begin decided that fall. The third timetable is simply to wait until the final HSR is filed and then decide all necessary issues in the normal course of litigating the objections filed by parties.

The next Steering Committee meeting will be held on Monday, September 22, at 1:30 p.m. The meeting will take place in Conference Room B on the third floor of the Department of Water Resources.

Little Colorado River Proceedings

The major parties attempting to settle most of the Little Colorado River adjudication are rushing to complete their work in time for the next hearing before Judge Allen Minker. The hearing is scheduled for 9:30 a.m. on Friday, September 26, in St. Johns. The parties must submit an advance written report to the judge on September 19.

Judge Minker has indicated that he will consider returning to litigation of the issues that have not been settled by the parties. The negotiating parties, however, have met often throughout the summer attempting to solve as many issues as possible before the hearing. Many of these meetings have been facilitated by Michael Nelson, the settlement judge.

Numerous meetings have been scheduled for September, leading up to the September 26 hearing. During the week of September 2, Judge Nelson was scheduled to meet with the Little Colorado River area tribes. How the proposed settlement will handle existing water rights based on state law will be discussed by the major parties during the week of September 8, followed by a general meeting of the negotiating parties during the week of September 15. The next issue of *Bulletin* will provide full coverage of the September 26 hearing.

Definitions

Aquifer:

A water bearing stratum of permeable rock, sand or gravel.

Flood:

A flood is an overflow or inundation that comes from a river or other body of water and causes or threatens damage. It can be any relatively high streamflow overtopping the natural or artificial banks in any reach of a stream. A flood is also a relatively high flow as measured by either gage height or discharge quantity.

Playas:

The flat-floored bottom of an undrained desert basin which may become a shallow lake.

Runoff:

The portion of rainfall, melted snow, or irrigation water that flows across the land surfaces and eventually runs into streams.

Tributary:

A stream or other body of water, surface or underground, which contributes its water, even though intermittently and in small quantities, to another and larger stream or body of water.

Stream gaging:

A process of determining the rate of flow, or the discharge, of streams.

Calendar

Gila River Adjudication Steering Committee Meeting with Special Master

Sept. 22, 1997 -- 1:30 p.m.

Dept. of Water Resources Conference Room B.

500 N. Third Street, Phoenix, AZ 85004

(*see* minute entry Aug. 25, 1997)

Little Colorado River Adjudication Status Conference before Judge Minker

Sept. 26, 1997 -- 9:30 a.m.

Apache County Courthouse, St. Johns

(*see* minute entry May 2, 1997)

Special Action CV-95-0161-SA

Opening briefs due

Oct. 20, 1997

(*see* order Aug. 1, 1997)

NARF/WSWC Fifth Symposium on the Settlement of Indian Reserved Water Rights Claims

Oct. 8-10, 1997

Crowne Plaza Hotel, Phoenix

(*see* article in July Bulletin for further information)

Sources for Help

If you have questions in a particular area, here are the proper people to contact.

Adjudications, HSRs, WFRs, Discovery

Lisa Jannusch, Adjudications Division

AZ Dept. of Water Resources

500 N. 3rd Street, Phoenix, AZ 85004

(602) 417-2442 or (Toll free in AZ) 1-800-352-8488

Scheduling, Procedure

Kathy Dolge, Office of the Special Master

Arizona State Courts Building

1501 W. Washington, Ste. 228, Phoenix, AZ 85007

(602) 542-9600

TDD (602) 542-9545

Pleadings

Gila River

Oscar Garcia, Clerk's Office

Maricopa County Superior Court, Records Management Center

3345 W. Durango St., Phoenix, AZ 85009

(602) 506-4139

(602) 506-4516 fax

Little Colorado River

Clerk's Office

Apache County Superior Court

Apache County Courthouse

P.O. Box 365, St. Johns, AZ 85936

(520) 337-4364

© ARIZONA SUPREME COURT, 1998
