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3
4 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

5 IN AND FOR THE COUNTY OF APACHE

6
7 IN RE THE GENERAL ADJUDICATION OF
8 ALL RIGHTS TO USE WATER IN THE
9 LITTLE COLORADO RIVER SYSTEM AND
SOURCE

No. CV 6417

ORDER TRANSFERRING FUNDS FOR
PAYMENT OF THE SPECIAL MASTER'S
EXPENSES

10 This matter coming before the Court on its own motion to transfer funds from the Clerk of the
11 Apache County Superior Court to the Administrative Office of the Courts ("AOC") for the purpose of
12 compensating and paying the expenses of the Special Master appointed in this proceeding;

13 The Court finds that:

14 1. The approximate sum of \$100,583.21 is the balance as of June 30, 2012, of the fund of
15 filing fees paid by claimants in this adjudication pursuant to A.R.S. § 45-254(H). During the past
16 fiscal year, global accounting issues arose in the office of the Apache County Treasurer. The issues
17 were not limited to this account. The accrued interest payments for the second, third, and fourth
18 quarters were delayed until after June 30, 2012. The State of Arizona Office of the Auditor General,
19 who was asked to assist to resolve the issues, determined that the fund of filing fees would be reduced
20 by a negative cash receipt of \$4,233.16, and \$656.01 would be transferred to an account designated as
21 the Lehman Brothers Set Aside. The Special Master will consider the balance of the fund of filing fees
22 to have been reduced by \$4,889.17 due to office-wide accounting revisions implemented by the
23 Treasurer.

24 2. The Clerk of the Apache County Superior Court administers the fund that the Apache

1 County Treasurer has managed since December 2002. The fund accrued interest of \$663.50 in fiscal
2 year 2012 that began on July 1, 2011, and closed on June 30, 2012.

3 3. During fiscal year 2012, the Clerk of the Apache County Superior Court received \$3,230.00
4 in filing fees.

5 4. Pursuant to A.R.S. § 45-255(B), the Superior Court shall fix the compensation and expenses
6 of a master who is appointed to report on legal and factual issues in this adjudication.

7 5. On May 8, 1990, pursuant to A.R.S. § 45-255(A), the Arizona Supreme Court appointed a
8 Special Master for both this adjudication and the Gila River Adjudication. The first Special Master
9 began his employment and began incurring expenses on May 1, 1990.

10 6. In 1995, A.R.S. § 45-255(A) was amended to provide that “[t]he superior court judge
11 assigned to the adjudication may appoint a master or masters under Rule 53 of the Arizona rules of
12 civil procedure to report on legal and factual issues designated under a specific order of reference.”
13 This Court entered such an order on August 23, 1990, confirmed that order on March 27, 1995, and
14 entered an order of appointment and reference on March 1, 2001.

15 7. The sum of \$379,561.43 has previously been disbursed from the fund, of which
16 \$373,172.43 was disbursed to the AOC, which acts as the fiscal agent for the payment of the
17 compensation and expenses of the Special Master, and \$6,389.00 was disbursed to the Clerk of the
18 Apache County Superior Court. The last payment of funds to the Clerk of the Apache County
19 Superior Court was made on June 6, 1994.

20 8. The AOC has requested a transfer of monies from the fund of filing fees to pay for the
21 compensation and expenses of the Special Master incurred in fiscal year 2012. Since October 23,
22 2004, the office has consisted of the Special Master and one part-time secretary (previously full time).

23 9. The expenditure of this money for the compensation and expenses of the Special Master
24 remains appropriate under A.R.S. § 45-255(B).

1 10. No expenses paid in fiscal year 2012 were incurred solely for the benefit of the Little
2 Colorado River Adjudication.

3 11. On August 24, 2011, the Court found that “on an interim basis, allocation of the
4 compensation and expenses of the Special Master based on the proportion of claims filed in both
5 adjudications is reasonable” and set the allocation. For fiscal year 2012 the allocation was 15 percent
6 of the compensation and expenses of the Special Master was to be paid from the fund of filing fees in
7 this adjudication, and 85 percent from the Gila River Adjudication fund. These expenses are
8 considered common to both adjudications.

9 12. The common expenses incurred in this adjudication during fiscal year 2012 based on the
10 approved percentage allocation of expenses for fiscal year 2012 were \$28,402.33.

11 13. The legislature appropriated \$20,000.00 for expenses incurred in this adjudication during
12 fiscal year 2012. Pursuant to the Special Master’s instructions to the AOC, these funds, held by the
13 AOC, are exhausted prior to disbursements from the fund of filing fees.

14 14. The balance of common expenses for fiscal year 2012 that should be paid from the fund of
15 filing fees and transferred to the AOC is \$8,402.33.

16 15. The transfer of \$8,402.33 from the fund of filing fees to the AOC for payment of past
17 fiscal year expenses is timely and in accordance with law.

18 16. Because the legislature has appropriated \$20,000.00 for fiscal year 2013 it is not necessary
19 to transfer monies from the fund of filing fees for estimated expenses for fiscal year 2013.

20 17. As of June 30, 2012, the number of statements of claimant filed in the Little Colorado
21 River Adjudication was 14,472 and the number of statements of claimant filed in the Gila River
22 Adjudication was 82,775. These totals represent a count of the files with a unique numerical prefix.
23 The number of statements of claimant filed in this adjudication is approximately 15 percent of the
24 97,247 statements of claimant filed in both proceedings. The Court finds that, on an interim basis,

1 allocation of the compensation and expenses of the Special Master based on the proportion of claims
2 filed in both adjudications is reasonable, and the allocation for the Little Colorado River Adjudication
3 for fiscal year 2013 shall be 15 percent.

4 18. Final determination of the basis for allocating the Special Master's compensation and
5 expenses between the two adjudications should be made at a later date.

6 IT IS ORDERED:

7 1. The Clerk of the Apache County Superior Court shall immediately obtain the transfer of
8 \$8,402.33 from the account maintained for the filing fees in this proceeding to the AOC, Attn: Ms.
9 Candy Frazier.

10 2. The AOC shall establish adequate and necessary procedures to account for these funds and
11 to ensure that the funds are used only for the compensation and expenses of the Special Master and
12 other expenses related to the conduct of this adjudication as fixed by this Court.

13 3. This transfer is not a final determination of the question of what proportion of the Special
14 Master's compensation and expenses should be paid from the filing fees collected in this adjudication.
15 The Court specifically reserves final determination of the basis for allocating the Special Master's
16 compensation and expenses between the two adjudications.

17 DATED: August 22, 2012.

18
19 /s/ Eddward P. Ballinger, Jr.
20 EDDWARD P. BALLINGER, JR.
21 Judge of the Superior Court

22 The original order was mailed to the Clerk
23 of the Apache County Superior Court for
24 filing and distributing to those parties who
appear on the Court-approved mailing list
for Case No. CV 6417 dated July 17, 2012.