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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 \$110,010.42 is the balance as of June 30, 2009, of the fund of
15 filing fees paid by claimants in this adjudication pursuant to A.R.S. § 45-254(H).

16 2. The Clerk of the Apache County Superior Court administers the fund which the Apache
17 County Treasurer has managed since December 2002. The fund accrued interest of \$3,708.18 in fiscal
18 year 2009 that began on July 1, 2008, and closed on June 30, 2009.

19 3. During fiscal year 2009, the Clerk of the Apache County Superior Court received \$5,559.67
20 in filing fees.

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

23 5. On May 8, 1990, pursuant to A.R.S. § 45-255(A), the Arizona Supreme Court appointed a
24 Special Master for both this adjudication and the Gila River Adjudication. The first Special Master

1 began his employment and began incurring expenses on May 1, 1990.

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

7 7. The sum of \$361,541.11 has previously been disbursed from the fund, of which
8 \$355,152.11 was disbursed to the AOC, which acts as the fiscal agent for the payment of the
9 compensation and expenses of the Special Master, and \$6,389.00 was disbursed to the Clerk of the
10 Apache County Superior Court. The last payment of funds to the Clerk of the Apache County
11 Superior Court was made on June 6, 1994.

12 8. The AOC has requested a transfer of monies from the fund of filing fees to pay for the
13 compensation and expenses of the Special Master incurred in fiscal year 2009. Since October 23,
14 2004, the office has consisted of the Special Master and one part-time secretary (previously full time).

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

17 10. No expenses paid in fiscal year 2009 were incurred solely for the benefit of the Little
18 Colorado River Adjudication.

19 11. On August 20, 2008, the Court found that “on an interim basis, allocation of the
20 compensation and expenses of the Special Master based on the proportion of claims filed in both
21 adjudications is reasonable” and set the allocation. For fiscal year 2009, the allocation was 15 percent
22 of the compensation and expenses of the Special Master was to be paid from the fund of filing fees in
23 this adjudication, and 85 percent from the Gila River Adjudication fund. These expenses are
24 considered common to both adjudications.

1 12. The common expenses incurred in this adjudication during fiscal year 2009 based on the
2 approved percentage allocation of expenses for fiscal year 2009, were \$25,325.22.

3 13. The legislature appropriated \$20,000.00 for expenses incurred in this adjudication during
4 fiscal year 2009. Pursuant to the Special Master's instructions to the AOC, these funds, held by the
5 AOC, are exhausted prior to disbursements from the fund of filing fees.

6 14. The balance of common expenses for fiscal year 2009 that should be paid from the fund of
7 filing fees and transferred to the AOC is \$5,325.22.

8 15. The transfer of \$5,325.22 from the fund of filing fees to the AOC for payment of fiscal
9 year 2009 expenses is timely and in accordance with law.

10 16. Because the legislature has appropriated \$20,000.00 for fiscal year 2010 at this time it is
11 not necessary to transfer monies from the fund of filing fees for estimated expenses for fiscal year
12 2010.

13 17. As of June 30, 2009, the number of statements of claimant filed in the Little Colorado
14 River Adjudication was 14,158, and the number of statements of claimant filed in the Gila River
15 Adjudication was 81,014. These totals represent a count of the files with a unique numerical prefix.
16 The number of statements of claimant filed in this adjudication is approximately 15 percent of the
17 95,172 statements of claimant filed in both proceedings. The Court finds that, on an interim basis,
18 allocation of the compensation and expenses of the Special Master based on the proportion of claims
19 filed in both adjudications is reasonable, and the allocation for the Little Colorado River Adjudication
20 for fiscal year 2010 shall be 15 percent.

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

23 **IT IS ORDERED:**

24 1. The Clerk of the Apache County Superior Court shall immediately obtain the transfer of

1 \$5,325.22 from the account maintained for the filing fees in this proceeding to the AOC, Attn: Ms.
2 Candy Frazier.

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

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

10 DATED: August 24, 2009.

11
12 /s/ Eddward P. Ballinger, Jr.
13 EDDWARD P. BALLINGER, JR.
14 Judge of the Superior Court

15 The original order was mailed to the Clerk
16 of the Apache County Superior Court for
17 filing and distributing to those parties who
18 appear on the Court-approved mailing list
19 for Case No. CV 6417 dated July 27, 2009.
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