

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**EXHIBIT "A"**

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTIES OF MARICOPA AND APACHE**

IN RE: THE GENERAL  
ADJUDICATION OF ALL RIGHTS  
TO USE WATER IN THE GILA  
RIVER SYSTEM AND SOURCE

No. W-1 (Salt), No. W-2 (Verde)  
No. W-3 (Upper Gila), No. W-4 (San  
Pedro)

Case No. 6417 (LCR)

IN RE: THE GENERAL  
ADJUDICATION OF ALL RIGHTS  
TO USE WATER IN THE LITTLE  
COLORADO RIVER SYSTEM AND  
SOURCE

**(PROPOSED) SPECIAL  
PROCEDURAL ORDER FOR  
REVIEW AND APPROVAL OF  
WATER RIGHTS SETTLEMENTS  
NOT INVOLVING INDIAN AND  
CERTAIN NON-INDIAN FEDERAL  
WATER RIGHTS CLAIMS**

(Assigned to the Hon. Eddward P.  
Ballinger, Jr.)

The Special Procedural Order for Review and Approval of Non-Indian Water Rights Settlements (“this Order”) adopts the following procedures for the approval of settlements of water rights, arising in these general stream adjudications (“Adjudications”). These procedures apply to all settlements of non-Indian water rights claims, including those of the United States, but excluding settlements of the United States’ claims covered by the Arizona Supreme Court’s Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, filed May 16, 1991 (the “Gila SPO”), and the Arizona Supreme Court’s Administrative Order filed September 27, 2000 (the “LCR SPO”). This Order does not apply to settlements of claims by or for Indian reservations or other federal lands covered by either the Gila SPO or the LCR SPO.

1           **1. Conditions Warranting Special Proceedings.** Water rights may be  
2 established in special proceedings in these Adjudications, under the following conditions:

- 3           a. The water rights are the subject of a claim in an Adjudication.  
4           b. The water rights have been determined in a settlement agreement among  
5 one or more claimants whose rights are being determined and a group of claimants in that  
6 Adjudication whose claims are adverse to those claims.  
7           c. The Court determines that immediate consideration of the settlement  
8 would be appropriate within the context of an adjudication.

9           **2. Application and Order for Special Proceedings.**

10           a. Proceedings under this order shall be conducted pursuant to an order for  
11 special proceedings issued by this Court upon the application of one or more of the parties to  
12 the settlement agreement. The application may be filed ex parte and shall include:

- 13                       (1) A settlement agreement setting forth the terms of the settlement  
14 among the parties.  
15                       (2) A listing of the Statement of Claimant (“SOC”) numbers of all  
16 claims to be settled pursuant to the agreement, including attached copies of all such SOC  
17 forms and any amendments or assignments of those forms.  
18                       (3) A request that this Court enter an order approving the settlement  
19 and a final judgment adjudicating the water rights as set forth in the settlement agreement.  
20                       (4) A proposed form of order directing that special proceedings be  
21 conducted to approve the settlement and adjudicate the water rights as set forth in the  
22 settlement agreement.  
23                       (5) Information indicating the location of copies of the settlement  
24 agreement and supporting documents, which must be made available for review.

25           b. Upon the filing of the application, this Court will grant the application  
26 and enter the order for special proceedings, if the Court determines that the application  
27 satisfies the conditions specified in Sections 1 and 2(a) of this Order.

1 c. The order for special proceedings will contain the following statements  
2 and directions:

3 (1) A statement of this Court's findings, which may be based upon  
4 representations made in the application, that the conditions enumerated in Section 1 of this  
5 Order are satisfied and that special proceedings are thus warranted.

6 (2) A description of the water rights as agreed upon in the settlement  
7 agreement.

8 (3) A statement that special proceedings with respect to the settlement  
9 agreement shall be conducted in accordance with this Order, and a direction that the  
10 application and order for special proceedings shall be served forthwith in accordance with  
11 Section 5 of this Order.

12 (4) A statement of the terms of other general procedural orders, if  
13 any, established by this Court, that are applicable to such special proceedings and are not  
14 inconsistent with this Order.

15 (5) A statement that, if this Court approves the settlement agreement  
16 between the parties and enters a final judgment adjudicating the water rights at issue, the  
17 judgment will not be binding upon non-signatory parties to the Adjudication unless the Court  
18 orders otherwise.

19 (6) At the discretion of this Court, a direction to the Arizona  
20 Department of Water Resources to prepare a factual analysis or technical assessment of the  
21 water rights affected by the settlement and report to this Court within sixty (60) days.

22 **3. Objections and Responses.**

23 a. Any claimant in the Adjudication may file an objection with this Court  
24 asserting that:

25 (1) Approval of the settlement agreement and adjudication of the  
26 water rights as set forth in the agreement would cause material injury to the objector's  
27 claimed water right;

1 (2) The conditions enumerated in Section 1 of this Order have not  
2 been satisfied; or,

3 (3) The water rights established in the settlement agreement are more  
4 extensive than the claimants whose rights are being determined in the settlement would have  
5 been able to establish at trial.

6 b. Objections shall include:

7 (1) The name and address of the objector.

8 (2) A description of the water rights asserted in the objector's claim.

9 (3) A statement of the legal basis for the objection, and the specific  
10 factual grounds upon which the objection is based.

11 (4) Any other information this Court may require in the order for  
12 special proceedings.

13 c. Objections shall be filed within forty-five (45) days after the date of  
14 service of the order for special proceedings, or if a report was requested pursuant to Section  
15 2(c)(6) of this Order, within forty-five (45) days after the service of that report, whichever is  
16 later.

17 d. The parties to the settlement agreement shall file a response to each  
18 objection within thirty (30) days after the time for filing objections has expired.

19 **4. Resolution of Objections.**

20 a. Within thirty (30) days after the filing of responses to objections, any  
21 party filing an objection shall file a list of any witnesses and exhibits that the objector intends  
22 to present at the hearing on the objection.

23 b. Within thirty (30) days after the filing of the objector's list of witnesses  
24 and exhibits pursuant to Section 4(a) of this Order, the parties to the settlement agreement  
25 shall file a list of any witnesses and exhibits that those parties intend to present at the hearing  
26 on the objection.

27

1           c.       Within twenty (20) days after the filing of a list of witnesses and exhibits  
2 by one or more parties to the settlement agreement, any objector or party to the settlement  
3 agreement shall file any request for discovery and a statement as to the need for such  
4 discovery. Requests for discovery shall be granted for good cause shown, but the Court will  
5 establish a schedule within which any permitted discovery shall be completed.

6           d.       At any time more than thirty (30) days after the filing of a list of  
7 witnesses by one or more parties to the settlement agreement, any party to the settlement  
8 agreement or objector may file a motion for summary judgment pursuant to Rule 56.

9           e.       This Court will conduct hearings to resolve motions for summary  
10 judgment on objections, to grant or deny requests for discovery, and to set for hearing  
11 objections that are not resolved by motion for summary judgment.

12           f.       Motions for summary judgment on objections will be granted where an  
13 objector is not a claimant or otherwise lacks standing to assert an objection, has no valid legal  
14 basis for an objection, where an objection raises no genuine issues of material fact regarding  
15 the alleged injury to an objector's claim of water rights, or where this Court, applying the  
16 standards for deciding motions for summary judgment under Rule 56, finds that summary  
17 judgment should be granted.

18           g.       Where an objection is not resolved by motion for summary judgment, or  
19 where an objection is not the subject of a motion for summary judgment, this Court will  
20 conduct hearings on the objection.

21           h.       This Court, in its discretion, may refer all or part of the special  
22 proceedings provided by this Order to the special master appointed under the provisions of  
23 Section 45-255 of the Arizona Revised Statutes. This Court may request the special master's  
24 recommendation on the issue of approval, but will not delegate to the special master the  
25 Court's power to approve or decline to approve the settlement or to enter a judgment  
26 accordingly.

27

1 i. Any party to the settlement agreement or any objector may file  
2 objections to the special master's report in the manner provided in Rule 53(h) of the Arizona  
3 Rules of Civil Procedure.

4 j. Upon completion of all hearings on objections, and upon the receipt of  
5 the report of the special master and any objections thereto, if matters have been referred to the  
6 special master, this Court will enter a judgment either approving the settlement and  
7 adjudicating the water rights as set forth in the settlement agreement or declining to do so.

8 k. The court will approve the settlement agreement and adjudicate the water  
9 rights as set forth in the agreement if, after hearing the evidence, it determines that the parties  
10 to the settlement have established by a preponderance of the evidence that:

11 (1) The water rights of the claimants established in the settlement  
12 agreement are no more extensive than the claimants would have been able to prove at trial. In  
13 making this determination, the Court may consider, in addition to other evidence offered, the  
14 statement of claimant filed by the claimants and all supporting documentation.

15 (2) Any of the following circumstances exist:

16 (i) The water rights of the objector could not be established at  
17 a trial on the objector's water rights;

18 (ii) The water rights of the objector, if established at trial  
19 would not be materially injured by the water rights of the claimants established in the  
20 settlement agreement;

21 (iii) The objector is bound by the settlement agreement because  
22 the objector's interests were adequately represented by a party to the settlement agreement by  
23 virtue of the objector's relationship to such party; or,

24 (iv) Under the express terms of the settlement agreement or  
25 applicable law, the objector is not bound.

26 (3) The settlement agreement has been reached in good faith.

27 (4) Approval of the settlement is consistent with the goals of

1 the adjudication.

2           1.       This Court’s judgment approving the settlement agreement and  
3 adjudicating the water rights as set forth in the settlement agreement, or its order declining to  
4 do so, shall be reviewable by the Arizona Supreme Court by interlocutory appeal if allowed  
5 pursuant to applicable rules established by that court.

6           **5.     Service and Notice.**

7           a.       Parties to the settlement agreement shall serve a copy of the application  
8 for special proceedings together with a copy of the order for special proceedings on all parties  
9 appearing on any mailing list for the Adjudication approved by this Court, or as otherwise  
10 provided in any applicable court orders relating to the Adjudication.

11           b.       The parties to the settlement agreement shall provide notice by mail to all  
12 claimants in the Adjudication, in a form approved by this Court, notifying them of the  
13 pendency of the special proceeding, advising them as to where complete copies of the  
14 application for special proceedings and order may be found, and including whatever other  
15 information this Court may require.

16           c.       This Court will serve a copy of any report requested pursuant to Section  
17 2(c)(6) of this Order as provided in any applicable orders entered by this Court.

18           d.       A claimant filing an objection shall serve it, and all subsequent filings  
19 relating to the objection, upon the parties to the settlement agreement. The parties to the  
20 settlement agreement shall serve their response to an objection, and all subsequent filings  
21 relating to that objection, upon all the objecting parties. Service under this part shall be made  
22 in accordance with Rule 5(c) (1) of the Arizona Rules of Civil Procedure or as otherwise  
23 provided in any applicable orders of this Court relating to the Adjudication.

24           e.       This Court may, in its discretion, require additional service of the  
25 application, objection, response, and other pleadings as deemed necessary in a given  
26 application.

27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

f. This Court may, for good cause, extend the time limits established in this Order.

g. The Clerk of the Superior Court in which the Adjudication is pending shall maintain a separate special proceedings file which shall include copies of all documents filed in special proceedings conducted under this Order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

...  
...  
...

\_\_\_\_\_  
Eddward P. Ballinger, Jr.  
JUDGE OF THE SUPERIOR COURT

ORIGINAL of this order hand-delivered for filing to the Clerk of the Court this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

AND COPIES mailed to all parties on the Court-approved mailing list for the Gila River Adjudication dated \_\_\_\_\_, 2012, and for the Little Colorado River Adjudication dated \_\_\_\_\_, 2012.

\_\_\_\_\_