

SUPERIOR COURT OF ARIZONA
APACHE COUNTY AND MARICOPA COUNTY

9/27/2011

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R.Tomlinson
Deputy

COPY

FILED: 10/06/2011

In Re the General Adjudication of All Rights to Use Water in The Little Colorado River System and Source CV-6417

In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source W-1, W-2, W-3, W-4 (Consolidated)

In re Comments and Hearing

In re Request to Set Gila Steering Committee and Little Colorado River Settlement Committee Meeting to Discuss and Consider Possible Adoption of Special Procedural Order for Review and Approval of Non-Indian Water Rights Settlements

MINUTE ENTRY

After review of the requests to set a meeting of the Little Colorado River Adjudication Settlement Committee and the Gila River Adjudication Steering Committee, the drafts of a proposed special procedural order, and the comments submitted to date, the Court finds that the revised draft order attached to the June 6, 2011, report of the Settlement Committee serves as a starting point for further discussion. The revised draft order contains many, but not all, of the modifications suggested in the comments. Attached to this minute entry is a copy of the Settlement Committee's revised draft special procedural order.

The efforts of both committees to reach consensus on a special procedural order applicable in both adjudications are appreciated. Several suggested modifications raise legal issues that require further consideration. The Court has considered the comments of both committees on how to proceed and orders as follows.

IT IS ORDERED:

1. Allowing any party until **December 16, 2011**, to submit *additional* comments concerning the attached revised draft special procedural order (previously filed materials remain under consideration). The Court invites new comments concerning the binding effect of an approved settlement on non-signatory claimants, the contents of a technical report prepared by the Arizona Department of Water Resources, and the administration of an approved settlement.

2. If deemed helpful, the Settlement and Steering Committees may continue to meet, and if they are able to reach consensus, the committees may jointly submit a draft proposed special procedural order no later than **December 16, 2011**.

3. Signing this entry as an order of the Court.

/s/ Eddward P. Ballinger, Jr.

JUDICIAL OFFICER OF THE SUPERIOR COURT

A copy of this order is mailed to all parties on the Court approved mailing lists for the Little Colorado River Adjudication, Civil No. 6417, and the Gila River Adjudication, W-1, W-2, W-3, W-4 (Consolidated), both dated July 25, 2011.

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

3
4 IN RE: THE GENERAL
5 ADJUDICATION OF ALL RIGHTS
6 TO USE WATER IN THE GILA
7 RIVER SYSTEM AND SOURCE

8 IN RE: THE GENERAL
9 ADJUDICATION OF ALL RIGHTS
10 TO USE WATER IN THE LITTLE
11 COLORADO RIVER SYSTEM AND
12 SOURCE

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

Case No. 6417 (LCR)

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

(Assigned to the Hon. Eddward P.
Ballinger)

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16 The Special Procedural Order for Review and Approval of Non-Indian Water Rights
17 Settlements (“this Order”) adopts the following procedures for the approval of settlements of
18 water rights, arising in these general stream adjudications (“Adjudications”). These
19 procedures apply to all settlements of non-Indian water rights claims, including those of the
20 United States, but excluding settlements of the United States’ claims covered by the Arizona
21 Supreme Court’s Special Procedural Order Providing for the Approval of Federal Water
22 Rights Settlements, Including Those of Indian Tribes, filed May 16, 1991 (the “Gila SPO”),
23 and the Arizona Supreme Court’s Administrative Order filed September 27, 2000 (the “LCR
24 SPO”). This Order does not apply to settlements of claims by or for Indian reservations or
25 other federal lands covered by either the Gila SPO or the LCR SPO.—Procedures for review
26
27

1 and approval of settlements of claims by or for Indian reservations are set forth in the prior
2 orders of the Arizona Supreme Court.

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

5 a. The water rights are the subject of a claim in an Adjudication.

6 b. The water rights have been determined in a settlement agreement among
7 one or more claimants whose rights are being determined and a group of claimants in that
8 Adjudication whose claims are adverse to those claims.

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

10 a. Special proceedings under this order shall be conducted pursuant to an
11 order for special proceedings issued in this Court upon the application of one or more of the
12 parties to 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 and
2 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 be binding upon all parties to the Adjudication unless the settlement agreement
18 provides 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 forty-five (45) 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~~ twenty (~~30~~) days after the filing of responses to objections,
21 any party filing an objection shall file a list of any witnesses and exhibits that the objector
22 intends to present at the hearing on the objection.

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

27

1 c. Within ~~twentyten~~ (+20) days after the filing of a list of witnesses and
2 exhibits by one or more parties to the settlement agreement, any objector or party to the
3 settlement agreement shall file any request for discovery and a statement as to the need for
4 such discovery. Requests for discovery shall be granted for good cause shown, but the Court
5 will 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~~affected impermissibly~~ by exercise of the water rights of the
20 claimants established in the 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, the
25 objector is not bound.

26 (3) The settlement agreement has been reached in good faith.
27

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

5 **5. Service and Notice.**

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

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

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

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

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

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

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

4 DATED this ____ day of _____, 2011.

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6
7 _____
8 Eddward P. Ballinger, Jr.
9 JUDGE OF THE SUPERIOR COURT

10 ORIGINAL of this order hand-delivered
11 for filing to the Clerk of the Court this
12 ____ day of _____, 2011.

13 AND COPIES mailed to all parties on the
14 Court-approved mailing list for the Gila River
15 Adjudication dated _____, 201__ and for
16 the Little Colorado River Adjudication dated
17 _____, 201__.