

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

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

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No.
W1-11-1174
(Consolidated)

Order

The Court has reviewed the Special Master's Report on Issues of Broad Legal Importance Regarding Supplemental Contested Case Hydrographic Survey Reports Filed in the San Pedro River Watershed ("Special Master's Report"). The Court has also considered the comments, objections, and requests for clarification of the report filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and the Yavapai-Apache Nation (collectively, the "Apache Tribes"); the Arizona Water Company ("AWC"); the Arizona Department of Water Resources ("ADWR"); Mr. Wayne D. Klump; and the United States.

The Court finds that notice of the Special Master's Report was given as required by law, prior orders of this Court, and the Rules for Proceedings Before the Special Master.

Comments, Objections, and Clarification Requests

The United States requests various clarifications to the Special Master's recommendations. One request is that the Court clarify that recommended notice and service procedures will apply to all claims in the San Pedro River Watershed and that all claimants will have renewed opportunity to object to all water claims for the subwatershed when ADWR issues new recommendations in supplemental contested case hydrographic survey reports ("HSR's").

Since the Final San Pedro River Watershed HSR was filed in 1991, there have been a number of new claim filings, water uses, and assignments. There have also been transfers of land and/or water rights. It is likely that many of the water uses

reported in that HSR have been expanded, reduced, or terminated. All of these changes will have to be investigated and reported. A number of additional contested cases will undoubtedly be commenced. Any identified water use change and all new uses reported in a supplemental contested case HSR will be subject to objection pursuant to A.R.S. § 45-256(B).

With respect to another of the United States' requests, the Court agrees that subflow zone determinations are a requisite to issuance of supplemental contested case HSR's relating to the San Pedro River Watershed, but does not agree that the Court should, as part of its review of the Special Master's Report, specifically delineate each issue to be addressed by ADWR in supplemental contested case HSR's. The report did not treat with this issue, and the affected parties should have the opportunity to comment on the question before the Court provides direction to ADWR. In this regard, the Court agrees with ADWR that the department should be permitted to submit a draft of the first supplemental contested case HSR, which conforms to the requirements of A.R.S. § 45-256(B), for comment by the parties.

AWC's comments suggest that, with respect to the 120-day notice, the Court expand the provisions currently in effect under Pretrial Order No. 5 Re: Notice of Hydrographic Survey Reports. The Court believes that Pretrial Order No. 5, as clarified by this order, provides adequate notice to parties interested in, or potentially affected by, the supplemental reports described in the Special Master's Report.

As mentioned above, the Court will adopt ADWR's suggestion to file and disseminate a draft of the first supplemental contested case HSR to permit the parties to comment on content and formatting issues. The Court also approves of ADWR's recommendations that the Special Master's notice contain information regarding a claimant's responsibility to notify ADWR of changes of address or ownership as required by Pretrial Order No. 4 Re: Notification and Correction of Address Changes and that it be sent together with ADWR's notice of filing of the first supplemental contested case HSR.*

* ADWR has concerns regarding the accuracy of its databases. The Court encourages ADWR to continue its efforts to update its databases using all means available and to seek the necessary funding to permit it to fulfill its notification responsibilities.

The Apache Tribes suggest that the protections of due process for all parties will be enhanced if recipients of the notice of the first supplemental contested case HSR are made aware that they may elect to receive notice of subsequent supplemental contested case HSR's by requesting to be placed on a mailing list maintained by ADWR. The Court agrees that this procedure will assist in assuring that due process requirements are fulfilled.

The notice of objection filed by Mr. Wayne D. Klump does not relate to any of the matters in the Special Master's Report, and will be dismissed.

IT IS ORDERED:

1. The Special Master is to submit a form of order approving the findings of fact and conclusions of law as set forth in the Special Master's Report as modified by this order.

2. The proposed order should make clear that when the first San Pedro River Watershed supplemental contested case HSR is filed, ADWR shall send the persons included on the mailing list for a contested case, persons appearing on the Gila River Adjudication Court-approved mailing list, each claimant and nonclaimant water user in the San Pedro River Watershed, all persons who filed objections to the Final San Pedro River Watershed HSR (1991), and every other claimant in the Gila River Adjudication a written notice providing a mechanism that permits a claimant or person to request to be placed on a mailing list, maintained by ADWR, to be notified whenever a supplemental contested case HSR is filed.

The notice shall state that a claimant or person can elect, at any time, not to receive any further notice of the filing of a supplemental contested case HSR by advising ADWR in writing, and that a claimant or person requesting to be placed on this mailing list shall notify ADWR, within thirty (30) days of the change, of any of the following changes regarding that person or concerning that person's statement of claimant form: (1) a change in that person's address; (2) an assignment of the statement of claimant form to another person; (3) a transfer to another person of all or part of the

land for which a water right has been claimed; and, (4) a transfer to another person of all or part of the water right claimed, if the claimed water right has been severed and transferred to another parcel of land. ADWR may provide any other information that would benefit claimants or help ADWR in subsequent notifications.

3. The form of order shall direct ADWR to provide a draft of the first supplemental contested case HSR for review by the parties on the Court-approved mailing list, with an opportunity for comment, so that content and formatting issues may be addressed, but should make clear that this process should not delay the finalization of the first supplemental contested case HSR.

4. The Special Master's form of order shall incorporate the notice procedures described in Recommendation 5 of the Special Master's Report together with ADWR's notice of filing of the first supplemental contested case HSR, and shall reflect claimants' responsibility to notify ADWR of changes of address or ownership changes as required under Pretrial Order No. 4 and shall provide that this latter obligation shall be publicized frequently.

5. A copy of this order shall be served on all persons appearing on the Court-approved mailing lists for both the Gila River Adjudication and the Little Colorado River Adjudication.

Dated this 21st day of October, 2003.

/s/ Eddward P. Ballinger, Jr.
The Honorable Eddward P. Ballinger, Jr.
Judge of the Superior Court

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A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated October 6, 2003 and the Court-approved 6417 mailing list dated October 6, 2003.