

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

IN RE THE GENERAL ADJUDICATION W-1 (Salt)
OF ALL RIGHTS TO USE WATER IN W-2 (Verde)
THE GILA RIVER SYSTEM AND SOURCE W-3 (Upper Gila)
 W-4 (San Pedro)
 Consolidated

IN RE THE PRECLUSIVE EFFECT OF Contested Case
THE *GLOBE EQUITY NO. 59 DECREE* No. W1-206
ON SPECIFIED PARTIES

ORDER

Hearings were held on April 23, 2002, on the requests for summary disposition and related motions pending in the above-referenced docket. Motions for summary judgment were filed by the Gila River Indian Community ("GRIC"); San Carlos Apache Tribe ("SCAT"); City of Safford ("Safford"); Gila Valley Irrigation District ("GVID") and Franklin Irrigation District ("FID") jointly; San Carlos Irrigation and Drainage District ("SCIDD"); Phelps Dodge Corporation ("Phelps Dodge"); and ASARCO Incorporated ("ASARCO").

GRIC filed a motion to withdraw its summary judgment request with respect to Phelps Dodge. GRIC and Safford filed motions related to the scope of this contested case in terms of parties. SCAT and both the Buckeye Irrigation Company and the Buckeye Water Conservation and Drainage District ("the Buckeye organizations") filed a stipulation regarding the preclusive effect of a prior settlement agreement among these parties and a subsequent judgment and decree.

At the hearing, GVID and FID filed a Motion to Strike SCAT's Notice of Errata and "Corrected" Statement of Facts.

The court has considered all filed memoranda and arguments of counsel and has otherwise become fully advised as to the issues presented.

IT IS ORDERED:

1. Granting GRIC's Motion to Remove Phelps Dodge as a Named Party from GRIC's Motion for Partial Summary Judgment.
2. Directing SCAT and the Buckeye organizations to submit a joint form of order memorializing the terms of their stipulation filed in this matter on June 20, 2001.
3. Rescinding this court's order dated June 27, 2001, denying Safford's Motion to Strike GRIC's Motion for Partial Summary Judgment. The court has now considered the merits of the legal issues raised by Safford's motion.
4. Granting Safford's Motion to Strike GRIC's Motion for Partial Summary Judgment to the extent that GRIC's motion seeks relief as to claimants who are not parties in this contested case. Special Master Thorson specified the affected parties at the commencement of Contested Case No. W1-206, and the other claimants named in GRIC's motion did not have an opportunity to participate in the matter. Accordingly, due process concerns dictate that the court grant the Motion to Strike.
5. Denying GRIC's alternative motion to include in this contested case other parties, in addition to SCAT, GVID, and FID, who are in privity with owners or are claimants of water rights decreed in *United States v. Gila Valley Irr. Dist., Globe Equity No. 59* (D. Ariz. 1935) (the "*Globe Equity Decree*").
6. Granting the motions for summary judgment filed by GRIC, SCAT, Safford, GVID and FID jointly, SCIDD, Phelps Dodge, and ASARCO to the extent that these motions seek a determination that preclusive effect of the *Globe Equity Decree* is applicable to the parties consistent with the findings and conclusions set forth in this court's Amended Order dated February 20, 2002, that was entered in Contested Case No. W1-203.

7. Denying ASARCO's Motion for Summary Judgment on the issue of whether ASARCO's water right relating to the San Carlos River, decreed to ASARCO's predecessor in interest in the *Globe Equity Decree*, precludes SCAT from claiming a water right to the San Carlos River in the Gila River Adjudication. Genuine disputes regarding material facts preclude granting summary judgment on the claims to the San Carlos River asserted in the Gila River Adjudication by ASARCO and SCAT.
8. Denying the Motion for GVID and FID to Strike SCAT's Notice of Errata and "Corrected" Statement of Facts.

IT IS FURTHER ORDERED the Arizona Department of Water Resources shall prepare subsequent hydrographic survey reports in accordance with the determinations made in this Order.

Dated: May 17, 2002

/s/ Eddward P. Ballinger, Jr.

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

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A copy of this order is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 (Consolidated) mailing list dated February 7, 2002. This is also the Court-approved mailing list for W1-206.