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

IN CHAMBERS (X)

IN OPEN COURT ( )

SPECIAL MASTER JOHN E. THORSON  
Presiding

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

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

**Contested Case No. W1-203**

Date: January 30, 1998

CONTESTED CASE NAME: *In re the Water Rights of the Gila River Indian Community.*

DESCRIPTIVE SUMMARY: The Special Master conducted an informal pretrial conference by telephone conference call concerning disclosure statements. This minute entry provides more detailed information about disclosure statements and submitted documents.

NUMBER OF PAGES - 8; Attachment A - 1 pg.; Attachment B - 4 pgs.; Attachment C - 5 pgs.: Total - 18 pgs.

DATE OF FILING: Original delivered to the Clerk of the Court on Feb. 3, 1998

**Minute Entry**

January 30, 1998; 9:00 a.m. This is the date and time set for an informal pretrial conference by telephone conference call, set pursuant to the minute entry of January 14, 1998. During the telephone conference,

all participants could hear and be heard by one another. The conference call was recorded by audio tape (G-16). The participants are listed on Attachment A.

The pretrial conference was limited to the administrative and logistic procedures associated with the Court's minute entry of December 8, 1997, ordering the submission of disclosure statements and documents in this case. After hearing from and considering the views of pretrial conference participants, the following procedures are ORDERED:

### 1. Overview of Procedure

The following are the major steps anticipated in compiling, numbering, copying, and distributing documents submitted as part of the disclosure process:

<b>After March 31, 1998, disclosure</b>	
Almost immediately	<ul style="list-style-type: none"> <li>● Office of the Special Master (OSM) copies and sends all submitted indices (<i>see</i> below) to the Court-approved mailing list (CAML).</li> <li>● This step allows responding parties to begin comparing their documents with the indices of documents already submitted</li> </ul>
April 3	<ul style="list-style-type: none"> <li>● OSM provides cost estimate and an order form for purchasing the documents submitted on March 31. This will be by a minute entry faxed to the parties on Attachment A and mailed to all others on the CAML.</li> <li>● Orders accepted from April 3-April 10.</li> </ul>
April 10	<ul style="list-style-type: none"> <li>● Last day for ordering copies of documents submitted on March 31.</li> </ul>

<p>April 27</p>	<ul style="list-style-type: none"> <li>● OSM sends comprehensive index of documents received to date to the Court-approved mailing list. OSM document numbers are assigned to all documents.</li> <li>● Tentative date for one set of documents to be available for public inspection at OSM or other announced location.</li> <li>● Tentative date for purchased sets of documents to be available.</li> <li>● Documents may be available earlier or later depending on the volume of materials received on March 31.</li> </ul>
<p><b>After June 1, 1998, disclosure:</b></p>	
<p>Almost immediately</p>	<ul style="list-style-type: none"> <li>● Office of the Special Master (OSM) copies and sends all indices (<i>see</i> below) to the Court-approved mailing list (CAML).</li> <li>● This provides all parties with information about what materials were submitted on June 1.</li> </ul>
<p>June 5</p>	<ul style="list-style-type: none"> <li>● OSM provides cost estimate and order form for purchasing documents submitted on June 1 or for purchasing both sets (March 31 and June 1). This will be by a minute entry faxed to the parties on Attachment A and mailed to all others on the CAML.</li> <li>● Orders accepted June 5-June 19.</li> </ul>
<p>June 19</p>	<ul style="list-style-type: none"> <li>● Last day for ordering copies of documents submitted on June 1.</li> </ul>

July 1

- OSM sends final, comprehensive index of all documents received to date to the Court-approved mailing list. OSM document numbers are assigned to all documents.
- Tentative date for all documents to be available for public inspection at OSM or other announced location.
- Tentative date for purchased sets of documents to be available.
- Documents may be available earlier or later depending on the volume of materials received on June 1.

## **2. Form of Disclosure Statements**

To the extent possible, the parties should organize their disclosure statements in the manner set forth in Attachment B. A party may deviate from this format if necessary to make the disclosure meaningful. The disclosure statement must include a an index (prepared as set forth below) of all documents being submitted to the Special Master.

## **3. Distribution of Disclosure Statements**

As indicated in the Court's December 8, 1997, minute entry, each party submitting a disclosure statement must serve a copy on the Court-approved mailing list (CAML) for this contested case. Pursuant to minute entry of June 6, 1996, it is the same CAML as for case number W-1, W-2, W-3, W-4, which list includes the Special Master and the Clerk of the Court. The most recent version of the Court-approved mailing list is dated January 15, 1998, and contains 67 names (including the Special Master and the Clerk of the Court). The list may be updated from time to time; please call the office of the Special Master if you need the most recent mailing list, or compare your list to the current list posted on our website ([www.state.az.us/sp/stream2.htm](http://www.state.az.us/sp/stream2.htm)).

Each party who submits a disclosure statement also must serve a computer disk containing the disclosure statement and an index of any documents submitted with the statement. Computer disks need only be served on those other parties likely to be filing disclosure statements (see Attachment A) and on the Special Master. The disclosure statement must be saved to the disk in a commonly used word processing program, such as WordPerfect or Microsoft Word, or translated into an ASCII ("text-only") format. The document index must be saved to the disk as described in the next section.

## **4. Document Indices**

The documents submitted to the Special Master by each party must be accompanied by an index that contains a description of each document. Each document should be described as follows:

Description or title of document (including the page range for materials excerpted from larger documents)

Date document prepared

Author of document

Recipient of document, if any

Original source of document (*e.g.*, National Archives)

Number of pages in document

Party submitting document

Submitting party's document identification number (if any)

Any additional comments (please keep short)

If the document index has been prepared in a data base application, the submitting party shall also submit a computer disk containing the descriptive information, arranged if possible by the field names listed above. The data should be organized in comma-delineated or tab-delineated fields.

Parties preparing their document index in a word processing application need only submit a computer disk containing the index in a commonly used word processing format. The computer version of the document index prepared in a word processing format should also contain the information listed above.

Parties preparing their document index in a data base program shall submit a sample disk to the office of the Special Master by March 2, 1998. The disk should contain approximately ten records containing hypothetical (non-confidential) information organized in the fields described above. This will help us identify in advance any problems about importing your final data into our data base program. A sample disk need not be submitted if a party anticipates submitting fewer than 20 documents.

## **5. Document Preparation**

The Court's minute entry of December 8, 1997, mentioned three categories (decrees, agreements, purposes of the reservations) of documents. It is not necessary to segregate the documents by those three categories. Documents may be produced by March 31, 1998, even though they might otherwise be required on June 1, 1998.

To the extent possible, parties should submit their documents in the following format:

- Single-sided
- 8.5" x 11" size
- No punched holes
- No permanent binding (*e.g.*, spiral); staples excepted
- Sheets of paper or tabs between documents

Where possible, oversized documents should be reduced to 8.5" x 11" but copies of the full-sized documents should also be submitted.

## **6. Submission of Documents**

Parties may submit their documents to the Special Master by mail, package express, or in person. If you plan to submit your documents in person, please call us in advance [(602) 542-9600]. If you plan to submit your documents in person on the due date, please call us in advance for an appointment. An appointment provides us with an uninterrupted opportunity to inventory what you have provided and learn how you have arranged your submission.

## **7. Preliminary Elimination of Duplicate Documents**

Anthony Fines has offered to make a copy of his extensive collection of documents available in advance for other parties to review in order to reduce submission of duplicate documents by other parties. Mr. Fines seeks to share the cost of copying his documents for this purpose. Other parties interested in cooperating in this manner should contact Mr. Fines or Eileen Smith, his paralegal, no later than 5:00 p. m. on Friday, February 13, 1998, as follows:

Fines & Oden

Attn: L. Anthony Fines *or* Eileen Smith

335 N. Wilmot Road, #210, Tucson, AZ 85711-2635

phone (520) 747-3240

fax (520) 748-2381

Mr. Fines will then deposit a copy of those documents with the Special Master by March 2, 1998. He will also mail a copy of the list of the disclosed documents to all parties who have requested to participate with him. All those parties, including those represented by Mr. Fines, on or before March 31, 1998, can join in whole or in part with the submission by Mr. Fines and may also disclose additional documents.

## **8. Deviations from Document Requirements**

The goal of this minute entry is to establish a uniform procedure and format for submitting documents. Individual circumstances may arise which warrant deviations from these requirements, for instance, when a party has a large, preexisting data base that does not have all the fields described above. The parties are only required to undertake a good faith effort to meet these requirements.

## **9. Response to Questions Raised at Pretrial Conference**

The participants of the conference call asked four questions of the Master during the call and he indicated he would discuss the inquiries with Judge Susan Bolton before responding. The questions and responses are as follows:

**A.** Does a party need to file a disclosure statement in order to participate in the briefing or evidentiary hearings on the two preliminary issues (purposes of reservation and preclusive effect of prior decrees and agreements)?

Answer: Yes. Since the disclosure statement process is designed to help focus the issues and avoid surprise (among other purposes), the proceedings in this case will be advanced by identifying the parties seeking to participate and learning more about their positions and potential evidence. A party may join in the disclosure statement of another party. Also, a disclosure statement may be relatively brief if the party intends to rely solely on the witnesses identified and documents submitted by another party.

**B.** Does the Court, by its minute entry of December 8, 1997, anticipate the supplemental disclosure of information and documents after the March 31, 1998, and June 1, 1998, deadlines?

Answer: The Court's minute entry is not meant to supplant Rule 26.1, Ariz. R. Civ. Proc., but to tailor the requirements of that rule to this proceeding. The parties and their counsel should be guided by Rule 26.1, both in preparing their origin original disclosure and in determining the need for additional disclosures.

**C.** Does the Court's minute entry of December 8, 1997, require that a party disclose information and documents upon which the party does not intend to rely -- even if the information or documents may have some relevance to the proceeding?

Answer: The Court's minute entry is not meant to supplant Rule 26.1, Ariz. R. Civ. Proc., but to tailor the requirements of that rule to this proceeding. Except when specifically addressed by the minute entry, the parties and their counsel should be guided by the requirements of Rule 26.1 in deciding what information and documents need to be disclosed.

**D.** When the Court in its minute entry of December 8, 1997, requires disclosure concerning "prior agreements or decrees [that may] have adjudicated or settled any part of the Gila River Indian Community's reserved water rights claim" (*see* minute entry at 4), does the Court mean to limit the disclosure to water right claims based solely on the federal reserved water rights doctrine?

Answer: No. Disclosure should be made concerning prior agreements or decrees that may have adjudicated or settled any part of the Gila River Indian Community's water right claims in this adjudication (or claims asserted by the United States as trustee) based on the reserved water rights doctrine or other legal basis or doctrines.

## 10. Other

The written communications to the office of the Special Master, as requested in the minute entry of January 14, 1998, are attached as Attachment C.

JOHN E. THORSON

Special Master

The original of the foregoing delivered this 3rd day of February 1998 to the Distribution Center, Maricopa County Superior Court Clerk's Office, for copying and mailing to those parties who appear on the Court-approved mailing list for Case No. W-1, W-2, W-3, W-4 (Consolidated) dated Jan. 15, 1998.

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### Attachment A

#### **Parties Participating in January 30, 1998, Pretrial Conference and Anticipating Submitting/ Receiving Disclosure Statements**

	<i>Representing</i>
• William Anger	Cities of Chandler, Glendale, Mesa, & Scottsdale
• Patrick Barry	United States
• Charlotte Benson	Arizona as a claimant
• Marilyn Cage	City of Goodyear
• James Callahan	City of Phoenix
• Read Carlock & Barry Sanders	Arizona Public Service Co. and Roosevelt Water Conservation District

<ul style="list-style-type: none"> <li>• Alfred Cox</li> </ul>	Gila River Indian Community & Silas Kisto
<ul style="list-style-type: none"> <li>• L. Anthony Fines &amp; David A. Brown<sup>1</sup></li> </ul>	Gila Valley Irrigation District & Franklin Irrigation District
<ul style="list-style-type: none"> <li>• Robert Hoffman</li> </ul>	BHP Copper Inc.
<ul style="list-style-type: none"> <li>• Dawn Meidinger</li> </ul>	Phelps Dodge
<ul style="list-style-type: none"> <li>• Riney Salmon</li> </ul>	Maricopa County Municipal Water Conservation District No. 1 and San Carlos Irrigation & Drainage District
<ul style="list-style-type: none"> <li>• Joe Sparks, Kevin Tehan, &amp; John Ryley</li> </ul>	San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Nation
<ul style="list-style-type: none"> <li>• Lee Storey<sup>2</sup></li> </ul>	City of Safford
<ul style="list-style-type: none"> <li>• John Weldon &amp; Lisa McKnight</li> </ul>	SRP & City of Tempe
<ul style="list-style-type: none"> <li>• Tom Wilmoth</li> </ul>	DWR <sup>3</sup>

Footnotes

<sup>1</sup>Send disclosure (hard copy and disk) to Mr. Fines' address only.

<sup>2</sup>Lee Storey requested to, but did not participate in, the telephone conference call.

<sup>3</sup>DWR is not a party, will not submit a disclosure statement, but must receive others' disclosure statements.

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Attachment B

**General Format for Disclosure Statements**

**I. Purposes of Reservation** (Opening Submissions; due March 31, 1998)

A. Factual summary of position

B. List of relevant documents

1. For documents contained in the Inventory of Documents Possibly Related to Gila River Indian Community Claims (Fourth Draft June 30, 1997), identify by the name and tab number used in that Inventory; these documents do not have to be submitted

2. For other documents, submit as set forth in this minute entry

C. Witnesses

1. Names and addresses

2. Fair description of substance of expected testimony

3. Expert witnesses

o a. Curriculum vitae

o b. prior testimony in water rights cases (case names and dates of testimony)

D. Statement as to whether party believes purposes issue can be resolved by summary judgment or whether an evidentiary hearing will be necessary

1. Time necessary to prepare such motions or for any evidentiary hearing

**II. Purposes of Reservation** (Responding Submissions; due June 1, 1998)

A. Identification of those aspects of the claimed purposes that the party intends to dispute

B. Factual summary of position

C. List of any additional, relevant documents

1. For documents contained in the Inventory of Documents Possibly Related to Gila River Indian Community Claims (Fourth Draft June 30, 1997), identify by the name and tab number used in that Inventory; these documents do not have to be submitted

2. For other documents, submit as set forth in this minute entry

D. Witnesses

1. Names and addresses

2. Fair description of substance of expected testimony
3. Expert witnesses
  1. a. Curriculum vitae
  2. b. Prior testimony in water rights cases (case names and dates of testimony)

E. Time necessary to respond to any summary judgment motion or to prepare for any evidentiary hearing

### **III. Possible Preclusive Effect of Prior Agreements or Decrees (Opening Submissions; due March 31, 1998)**

A. Identification of each agreement or decree that a party believes may affect GRIC/US claimed water rights

B. Factual summary of the way each agreement or decree is believed to affect GRIC/US claimed water rights

C. List of relevant documents (probably more detailed than IIA)

1. For documents contained in the Inventory of Documents Possibly Related to Gila River Indian Community Claims (Fourth Draft June 30, 1997), identify by the name and tab number used in that Inventory; these documents do not have to be submitted
2. For other documents, submit as set forth in this minute entry

D. Witnesses

1. Names and addresses
2. Fair description of substance of expected testimony
3. Expert witnesses
  - o a. Curriculum vitae
  - o b. Prior testimony in water rights cases (case names and dates of testimony)

E. Statement as to whether party believes purposes issue can be resolved by summary judgment or whether an evidentiary hearing will be necessary

1. Time necessary to prepare such motions or for any evidentiary hearing

### **IV. Possible Preclusive Effect of Prior Agreements or Decrees (Responding Submissions; due June 1, 1998)**

A. Identification of what aspects of the allegedly binding decrees or agreements the party

intends to dispute

B. Factual summary of position

C. List of additional, relevant documents

1. For documents contained in the Inventory of Documents Possibly Related to Gila River Indian Community Claims (Fourth Draft June 30, 1997), identify by the name and tab number used in that Inventory; these documents do not have to be submitted
2. For other documents, submit as set forth in this minute entry

D. Witnesses

1. Names and addresses
2. Fair description of substance of expected testimony
3. Expert witnesses
  - o a. Curriculum vitae
  - o b. Prior testimony in water rights cases (case names and dates of testimony)

E. Time necessary to respond to any summary judgment motion or to prepare for any evidentiary hearing

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Attachment C

Written communications to the office of the Special Master, as requested in the minute entry of January 14, 1998, were faxed by the following. The faxes are attached copy as noted [attached to the filed and served copy; not included with the Web version].

Attachment C-1: James Callahan for City of Phoenix

Attachment C-2: Alfred Cox for Gila River Indian Community & Silas Kisto

Attachment C-3: L. Anthony Fines for Gila Valley Irrigation District & Franklin Irrigation District

Attachment C-4: John Weldon & Lisa McKnight for SRP & City of Tempe & Franklin Irrigation District