

FILED
 DEC 11 1990
 NOEL K. DESSAULT
 CLERK SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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

) Supreme Court
) Nos. WC-90-0001-IR
) [Includes WC-90-0001-IR
) through WC-90-0007-IR (Con-
) solidated) & WC-79-0001 (WC-1
) through WC-4 Consolidated)]
)
)
) ORDERS CONCERNING PETITIONS
) FOR INTERLOCUTORY REVIEW
)
)
)

Following the adoption of a Special Procedural Order Providing for Interlocutory Appeals and Certifications, petitions for review were filed in Maricopa County Superior Court Nos. W-1, W-2, W-3, and W-4 (consolidated). On June, 27, 1990, this Court consolidated the petitions. Thereafter, numerous cross-petitions, responses and an amicus brief were filed.

Having considered the many petitions, cross-petitions, responses and the amici briefs, the Court has determined to grant review on six issues. These issues were raised, in some form or another, in many of the filings, but have been reformulated by the Court. Thus, the individual questions presented in the petitions and cross-petitions will be ordered granted "to the extent they address the issues" the Court has decided to review and "denied in all other respects." As set forth in part H.1 of the Special Procedural Order Providing for Interlocutory Appeals and Certifications, the Court's decision to deny review of any question has no precedential value.

Moreover, the Court intends to address these six issues separately. Thus, this order establishes a date for a pre-submittal conference at which matters relating to Issue Number 1 will be determined. Any party wishing

to participate in the resolution of Issue Number 1 must file a notice of appearance no later than twenty days before that pre-submittal conference. At some later time, the Court will issue an order setting the date for the pre-submittal conference regarding the next issue. Parties wishing to participate in the resolution of that issue will file notices of appearance, and that issue will be briefed, argued and submitted. The process will proceed in this manner until all issues have been submitted and decided.

It is, therefore,

ORDERED: Granting review by way of interlocutory appeal of the following issues:

1. Do the procedures for filing and service of pleadings adopted by the trial court in its Pre-trial Order Number 1 comport with due process under the United States and Arizona Constitutions?
2. Did the trial court err in adopting its 50%/90 day test for determining whether underground water is "appropriable" under A.R.S. § 45-141?
3. What is the appropriate standard to be applied in determining the amount of water reserved for federal lands?
4. Is non-appropriable groundwater subject to federal reserved rights?
5. Do federal reserved rights holders enjoy greater protection from groundwater pumping than holders of state law rights?
6. Must claims of conflicting water use or interference with water rights be resolved as part of the general adjudication?

FURTHER ORDERED: Scheduling a pre-submittal conference regarding Issue Number 1 for Tuesday, February 12, 1991 at 10:00 a.m., as required by part H.3 of the Special Procedural Order for Interlocutory Appeals and Certifications.

FURTHER ORDERED: Any party to the adjudication desiring to participate in the interlocutory appeal of Issue Number 1 shall file a notice of appearance in this Court no later than twenty days prior to February 12, 1991, the date set for the pre-submittal conference, as required by part I of the Special Procedural Order for Interlocutory Appeals

and Certifications. The notice of appearance shall indicate the party's position on the issue.

With respect to the individual petitions and cross-petitions for review:

WC-90-0001-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs. SALT RIVER PROJECT/SALT RIVER VALLEY WATER USERS' ASS'N**

ORDERED: Petition for Interlocutory Review [Petitioner Salt River Project:

Issue Number 1 = Review is granted to the extent it addresses the Court's Issues Numbers 2 & 5; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issues Numbers 4 & 5; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 5 = Review is denied.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioner Church of Jesus Christ of Latter Day Saints]:

Review is granted and denied to the same extent that the petitions of City of Glendale, Roosevelt Water Conservation District, Arizona Public Service Company, Magma Copper Company, Farmers Investment Company, Cyprus Minerals Company, Apache Powder Company, City of Phoenix, Salt River Project Agricultural Improvement and Power District and the Salt River Valley Users' Association are granted and denied.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Vanosdell Farms]:

Review is granted and denied to the same extent that the petition of the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association is granted and denied.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Gila Valley Irrigation District and Franklin Irrigation District]:

With respect to the issues in which it expressed "particular interest":

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is denied.

FURTHER ORDERED: Joinder in APS' Response to Petitions for an Order Allowing an Interlocutory Appeal and Cross-Petition [Joint Respondent Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation District and New Magma Irrigation & Drainage District]:

Review is granted and denied to the same extent as the petitions of Arizona Public Service Co., Magma Copper Co., Farmers Investment Co., Roosevelt Water Conservation District and the City of Glendale are granted and denied.

FURTHER ORDERED: Cross-Petition and Response to Petitions for Interlocutory Review [Respondent Claimants Town of Wickenburg, Town of Gilbert, Cortaro-Marana Irrigation District, Cortaro Water Users' Association, Valencia Water Company, Bella Vista Water Company, Inc., and Bella Vista Ranches Limited Partnership]:

Issue A = Review is granted to the extent it addresses the Court's Issues Numbers 2, 3 & 4; review is denied in all

other respects;

Issue B = Review is granted to the extent it addresses the Court's Issue Number 1; review is denied in all other respects.

WC-90-0002-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs. BUCKEYE IRRIGATION CO. & BUCKEYE WTR CONSERVATION & DRAIN.**

ORDERED: Petition of Buckeye Irrigation Company and Buckeye Water Conservation & Drainage District to Review Portions of Superior Court Order of September 9, 1988:

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 4; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 5; review is denied in all other respects;

Issue Number 4 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 5 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 6 = Review is denied.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

WC-90-0003-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs. CITY OF PHOENIX**

ORDERED: Petition for Interlocutory Review [Petitioner City of Phoenix]:

Issue Number 1 = Review is granted to the extent it addresses

ses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is denied;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioner Church of Jesus Christ of Latter Day Saints]:

Review is granted and denied to the same extent that the petitions of City of Glendale, Roosevelt Water Conservation District, Arizona Public Service Company, Magma Copper Company, Farmers Investment Company, Cyprus Minerals Company, Apache Powder Company, City of Phoenix, Salt River Project Agricultural Improvement and Power District and the Salt River Valley Users' Association are granted and denied.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Gila Valley Irrigation District and Franklin Irrigation District]:

With respect to the issues in which it expressed "particular interest":

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is denied.

WC-90-0004-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs.
ARIZONA PUBLIC SVC/MAGMA COPPER CO/FARMERS INVESTMENT CO**

ORDERED: Petition for an Order Allowing an Interlocutory Appeal and Request for a Briefing Schedule [Petitioners Arizona Public Service Co/Magma Copper Company/Farmers Investment Company]:

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 4; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects.

FURTHER ORDERED: Joinder in APS Petition for Review and Notice of Intent to File Response to Petitions for Interlocutory Review [Joint Petitioner Cyprus Minerals Company and Apache Powder Company]:

Review is granted and denied to the same extent as the petition of Arizona Public Service Company, Magma Copper Company, and Farmers Investment Company is granted and denied.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioner Church of Jesus Christ of Latter Day Saints]:

Review is granted and denied to the same extent that the petitions of City of Glendale, Roosevelt Water Conservation District, Arizona Public Service Company, Magma Copper Company, Farmers Investment Company, Cyprus Minerals Company, Apache Powder Company, City of Phoenix, Salt River Project Agricultural Improvement and Power District and the Salt River Valley Users' Association are granted and denied.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation & Drainage District and New Magma Irrigation & Drainage District]:

Review is granted and denied to the same extent as the petitions of Arizona Public Service Co., Magma Copper Co., Farmers Investment Co., Roosevelt Water Conservation District and the City of Glendale are granted and denied.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Gila Valley Irrigation District and Franklin Irrigation District]:

With respect to the issues in which it expressed "particular interest":

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is denied.

WC-90-0005-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs. ROOSEVELT WATER CONSERVATION DISTRICT**

ORDERED: Roosevelt Water Conservation District's Petition for Interlocutory Review of Portions of Order of September 9, 1988:

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 4 & 5; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 5; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioner Church of Jesus Christ of Latter Day Saints]:

Review is granted and denied to the same extent that the petitions of City of Glendale, Roosevelt Water Conservation District, Arizona Public Service Company, Magma Copper Company, Farmers Investment Company, Cyprus Minerals Company, Apache Powder Company, City of Phoenix, Salt River Project Agricultural Improvement and Power District and the Salt River Valley Users' Association are granted and denied.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation & Drainage District and New Magma Irrigation & Drainage District]:

Review is granted and denied to the same extent as the petitions of Arizona Public Service Co., Magma Copper Co., Farmers Investment Co., Roosevelt Water Conservation District and the City of Glendale are granted and denied.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Gila Valley Irrigation District and Franklin Irrigation District]:

With respect to the issues in which it expressed "particular interest":

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is denied.

WC-90-0006-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs. CITIES OF MESA, TEMPE, CHANDLER, AVONDALE AND CASA GRANDE**

ORDERED: Petition for Interlocutory Review [Petitioner Cities of Mesa, Tempe, Chandler, Avondale & Casa Grande]:

Issue Number 1 = Review is denied;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 6; review is denied in all other respects.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Gila Valley Irrigation District and Franklin Irrigation District]:

With respect to the issues in which it expressed "particular interest":

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is denied.

WC-90-0007-IR **IN THE MATTER OF THE RIGHTS TO THE USE OF THE GILA RIVER vs. CITY OF GLENDALE**

ORDERED: City of Glendale's Petition for Review by Interlocutory Appeal of the Trial Court's September 9, 1988 Order [Petitioner City of Glendale]:

Issue Number 1 = Review is granted to the extent it addresses

ses the Court's Issue Number 4; review is denied in all other respects;

Issue Number 2 = Review is denied;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioner Church of Jesus Christ of Latter Day Saints]:

Review is granted and denied to the same extent that the petitions of City of Glendale, Roosevelt Water Conservation District, Arizona Public Service Company, Magma Copper Company, Farmers Investment Company, Cyprus Minerals Company, Apache Powder Company, City of Phoenix, Salt River Project Agricultural Improvement and Power District and the Salt River Valley Users' Association are granted and denied.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation & Drainage District and New Magma Irrigation & Drainage District]:

Review is granted and denied to the same extent as the petitions of Arizona Public Service Co., Magma Copper Co., Farmers Investment Co., Roosevelt Water Conservation District and the City of Glendale are granted and denied.

FURTHER ORDERED: Cross-Petition of United States for Interlocutory Review [Cross-Petitioner Department of Justice]:

Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects.

FURTHER ORDERED: Petition for Interlocutory Review [Joinder] [Petitioners Gila Valley Irrigation District and Franklin Irrigation District]:

With respect to the issues in which it expressed "particular interest":

Issue Number 1 = Review is granted to the extent it addresses the Court's Issue Number 2; review is denied in all other respects;

Issue Number 2 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 3 = Review is granted to the extent it addresses the Court's Issue Number 3; review is denied in all other respects;

Issue Number 4 = Review is denied.

DATED this 11th day of December, 1990.


STANLEY G. FELDMAN, VICE CHIEF JUSTICE