

**RULES FOR  
PROCEEDINGS BEFORE THE SPECIAL MASTER**

**Arizona General Stream Adjudication**

**Gila River System and Source  
Little Colorado River System and Source**

The Rules for Proceedings Before the Special Master are being made available online for the benefit and use of claimants, parties, attorneys, and interested persons.

The Maricopa County Superior Court approved the Rules for Proceedings Before the Special Master for the Gila River Adjudication on October 30, 1991, and the Apache County Superior Court approved the rules for the Little Colorado River Adjudication on October 28, 1991, effective November 1, 1991.

The Maricopa County Superior Court amended and added to the rules for the Gila River Adjudication on April 24, 1992, with effective dates of May 1, 1992, and July 1, 1992. The Apache County Superior Court approved the same amendments and additions to the rules for the Little Colorado River Adjudication on July 2, 1992, effective July 6, 1992.

This edition presents the rules that the Superior Court approved. When necessary, statutory and rule citations were updated or amplified, and when appropriate, minor clerical corrections were made to show changes that have occurred since 1992. An editorial note describes the updates and changes found in this edition of the rules.

Because some forms have changed, other forms are available from the Arizona Department of Water Resources, or the use of some of the forms was permissive, this edition of the rules, intended for online availability, does not contain copies of the forms listed in the appendices. The omitted appendices are:

1. Watershed File Report (Sample)
2. Litigation Management Chart
3. Original Summons (Sample)
4. Statement of Claimant Forms
5. Assignment of Statement of Claimant Forms
6. Amendment of Statement of Claimant Forms
7. Mandatory Objection Form
8. Caption for Pleadings Filed in Contested Cases
9. Case Management Order
10. Abbreviated Prehearing Order
11. Prehearing Order.

Claimants are invited to suggest amendments or modifications to the rules.

## PREFACE

Arizona, like other western states, is conducting general stream adjudications of most of the state's water. One adjudication involves water uses in the Gila River system and source. The other adjudication involves the Little Colorado River system and source. These proceedings, which are complex and lengthy legal actions, are being conducted for several reasons. First, these adjudications are an effort to recognize, quantify, and prioritize water rights that, in some cases, extend back into the 1800s. Second, these adjudications will result in a centralized record of the water rights that are recognized. Third, many of the earliest water rights on Arizona's rivers and streams are claimed by Indian tribes and federal agencies. While these federal and tribal water rights may be senior to other water rights established under the prior appropriation doctrine, the nature and extent of these federal and Indian claims have never been comprehensively adjudicated in Arizona state courts. These legal proceedings are the opportunity to recognize, quantify, and prioritize these federal and Indian water rights. Finally, the general stream adjudication will lead to better management of Arizona's water.

The Special Master, who has been appointed by the Arizona Supreme Court, has developed these Rules to assist the litigants in understanding and participating in the contested case phase of the adjudications. These Rules are founded in the general stream adjudication statute, the prior rulings and pretrial orders of the Superior Courts, the Arizona Rules of Civil Procedure (which have been made applicable to proceedings before the Special Master under the Orders of Reference), and the Orders of Reference to the Special Master. These Rules are more detailed than any of the above-mentioned authorities. When adopted by the Superior Courts, these Rules will supersede the inconsistent provisions in earlier prehearing orders. An effort has been made to note these changes in footnotes to the text. The Master believes that these rather detailed rules are necessary to guide the litigants through the proceedings. These procedures are authorized under Rule 53(c), Arizona Rules of Civil Procedure, pertaining to the powers of court Masters, and Rule 16(e), Arizona Rules of Civil Procedure, pertaining to pretrial orders.<sup>1</sup>

Since these Rules have been issued at the beginning of the contested case phase of the adjudications, their strengths and weaknesses will become apparent in the months to come. After working with the Rules for a reasonable time, the Master may propose amendments and allow parties and their counsel to propose changes as well.

Date: November 1, 1991

/s/ John E. Thorson

JOHN E. THORSON

*Special Master*

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<sup>1</sup>"Subject to the specifications and limitations stated in the order [of reference], the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order." ARIZ. R. CIV. PROC. 53(c).

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**RULES FOR  
PROCEEDINGS BEFORE THE SPECIAL MASTER**

**Arizona General Stream Adjudication**

**§ 1.00 DEFINITIONS**

**§ 1.01 "Abstract of a Potential Water Right" or "abstract"** means that document issued by the Special Master setting forth his proposed determination of the characteristics of a water right.

**§ 1.02 "Adjudication" or "general stream adjudication"** means that comprehensive judicial determination of water rights on major river systems in the State of Arizona being conducted under the authority of Arizona Revised Statutes Annotated Sections 45-251 to -264 (2005). By statute, a "general adjudication" is defined as "an action for the judicial determination or establishment of the extent and priority of the rights of all persons to use water in any river system and source."<sup>2</sup>

**§ 1.03 "Catalog of Proposed Water Rights"** means that book containing abstracts of all individual water rights that are proposed to be recognized and quantified in a watershed. The Catalog is issued by the Special Master after resolving objections to the Hydrographic Survey Report for the watershed.

**§ 1.04 "Claimant"** means a person who filed a Statement of Claimant form in a river system adjudication pursuant to Section 45-254, Arizona Revised Statutes Annotated; the successor-in-interest of a person who filed a Statement of Claimant; or a person who was allowed to intervene, by Court order, in a river system adjudication.

**§ 1.05 "Clerk of the Court," "Clerk," or "Superior Court Clerk"** means the Clerk of the Superior Court, Apache County Courthouse, St. Johns, Arizona, for all references in these Rules to the Little Colorado River adjudication. These terms mean the Clerk of the Superior Court, Maricopa County Courthouse, Phoenix, Arizona, for all references in these Rules to the Gila River adjudication.

**§ 1.06 "Contested case"** means (a) an individual case involving unresolved issues of law, fact, or both resulting from an objection filed to a Hydrographic Survey Report for a watershed; (b) an individual case involving unresolved issues of law, fact, or both resulting from an objection filed to a catalog of proposed water rights prepared by the Master for a watershed or a river system; or (c) a special proceeding for the consideration of federal water rights settlements, including those of Indian tribes, commenced under and governed by the provisions of the Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes issued by the Arizona Supreme Court on May 16, 1991. The Clerk of the

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<sup>2</sup>ARIZ. REV. STAT. ANN. § 45-251(2) (2005).

Court, on the instructions of the Master, prepares contested case files as subdivisions of the general stream adjudication of a river system.

§ 1.07 "**Court**" means the Superior Court of the State of Arizona, in and for Maricopa County, for all references in these Rules to the Gila River adjudication. "Court" means the Superior Court of the State of Arizona, in and for Apache County, for all references in these Rules to the Little Colorado River adjudication.

§ 1.08 "**Court-approved mailing list**," established by a pretrial order, means that list of persons who, upon request, have been designated by the Court to receive all pleadings pertaining to the general conduct of the adjudications. Persons on the Court-approved mailing list do not receive pleadings filed in an individual contested case unless they are litigants in that individual contested case or unless they have requested pleadings pursuant to Section 18.02.

§ 1.09 "**DWR**" means the Arizona Department of Water Resources, an executive agency of the State of Arizona, established by Arizona Revised Statutes Annotated Section 45-102.

§ 1.10 "**Filing**," "**file**," or "**to file**" means, in the case of pleadings, orders, or minute entries, to present the paper to the Clerk of the Court for that adjudication. In the case of discovery requests and answers or responses to discovery requests, the terms mean to deposit the document or information with the Litigation Support Section, Adjudications Division, Arizona Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012.

§ 1.11 "**Gila River adjudication**" means that general stream adjudication of the Gila River system and source pending before the Superior Court of Arizona, Maricopa County, as case Nos. W-1, W-2, W-3, and W-4 (Consolidated).

§ 1.12 "**Hydrographic Survey Report**" or "**HSR**" means that report prepared by DWR pursuant to Arizona Revised Statutes Annotated Section 45-256 and pretrial orders in both adjudications. The report is an examination of water rights claims filed in a watershed or in behalf of a reservation, water uses in the watershed or reservation, and the hydrographic features of the watershed or reservation.

§ 1.13 "**Little Colorado River adjudication**" means that general stream adjudication of the Little Colorado River system and source pending before the Superior Court of Arizona, Apache County, as case No. 6417.

§ 1.14 "**Litigants**" means those persons who are involved in a specific contested case. They typically include the landowner upon whose land a water use has been found, the claimant who filed a Statement of Claimant form asserting the water use, other claimants who have filed objections to all or portions of a Hydrographic Survey Report or to a catalog of proposed water rights, and other claimants who have successfully intervened in the contested case. A litigant who is not a natural person may

appear in contested case proceedings through its counsel or another agent having authority to act for the litigant.

§ 1.15 "**Objector**" or "**objectors**" means those claimants who have filed objections to all or portions of a Hydrographic Survey Report or to a catalog of proposed water rights.

§ 1.16 "**Parties**" means those persons or the successors-in-interest of such persons who were served, whether by mail or publication, pursuant to Arizona Revised Statutes Annotated Section 45-253, with the original or subsequent summons notifying them of the general stream adjudication and requiring them to file a Statement of Claimant form if they claimed a water use in the river system under adjudication. Parties who filed a Statement of Claimant form are "claimants" (*see* Section 1.04, *supra*).

§ 1.17 "**Person**" means an individual, a partnership, a corporation, a municipal corporation, the State of Arizona or any political subdivision, the United States of America, an Indian tribe or community, or any other legal entity, public or private.<sup>3</sup>

§ 1.18 "**River system**" means the Gila River system and source for all references in these Rules to the Gila River adjudication. "River system" means the Little Colorado River system and source for all references in these Rules to the Little Colorado River adjudication.

§ 1.19 "**Special Master**" or "**Master**" means that person appointed by the Arizona Supreme Court (note: after 1995, the Arizona Superior Court), under the provisions of Arizona Revised Statutes Annotated Section 45-255, who is the principal hearing officer of contested cases in a river system adjudication.

§ 1.20 "**Steering Committee**" means that group of parties and attorneys appointed by the Superior Court in the Gila River adjudication under the provisions of Pretrial Order No. 1 ¶ 9 (May 30, 1986). The Steering Committee assists the Court and the Special Master in the management of the adjudication.

§ 1.21 "**Watershed**" means that hydrographic subdivision of a river system for which DWR is preparing a separate Hydrographic Survey Report. There are potentially seven (7) watersheds in the Gila River adjudication and three (3) watersheds in the Little Colorado River adjudication.

§ 1.22 "**Watershed File Report**" or "**WFR**" means that portion of a Hydrographic Survey Report that sets forth DWR's examination of water uses on an individual piece of property within a watershed.

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<sup>3</sup>*Id.* at § 45-251(3).

## § 2.00 NATURE OF THE PROCEEDINGS<sup>4</sup>

### § 2.01 History

The Gila River and Little Colorado River adjudications trace their origins to proceedings initiated in the 1970s under the then-existing general adjudication procedures set forth at Section 45-231 to 245, Arizona Revised Statutes Annotated (1956). On April 26, 1974, the Salt River Valley Water Users' Association filed a petition with the Arizona Land Department to determine the water rights in the Salt River above Granite Reef Dam (but excluding the Verde River). On February 24, 1976, the Association filed a similar petition for the Verde River and its tributaries. On February 17 and April 19, 1978, utilizing these same statutes, the Phelps Dodge Corporation filed petitions with the State Land Department to determine the water rights of the Gila River system and source and the Little Colorado River system and source. These petitions sought adjudication of the Upper Gila River watershed and of portions of the Lower Gila River watershed. On April 3, 1978, ASARCO, Inc. filed a petition with the State Land Department for the adjudication of the San Pedro River and its tributaries.

On December 24, 1980, the Buckeye Irrigation Company filed a motion to intervene and a petition to enlarge the scope of the adjudication with respect to areas of the Gila River watershed not included in the previously filed petitions. This motion and petition were granted on March 17, 1981, and included the Agua Fria River watershed and portions of the Lower Gila River watershed. At the time, there was litigation pending in federal court which sought an adjudication of the Santa Cruz River watershed in Pima and Santa Cruz counties. Because of this litigation, the Maricopa County Superior Court, by granting the Buckeye Irrigation Company petition for adjudication of additional rights, did not include that portion of the Santa Cruz River watershed located in Pima and Santa Cruz counties. Following the conclusion of that litigation, on October 30, 1985, the Buckeye Irrigation Company filed a petition, granted by the Superior Court, for the inclusion of those portions of the Santa Cruz River watershed.

In April 1979, the Arizona legislature modified the general adjudication procedures. Under these amendments, set forth at Arizona Revised Statutes Annotated Sections 45-251 to -260 (Supp. 1984-85), the Salt River, Verde River, and Gila River adjudications were transferred from the State Land Department to the Maricopa County Superior Court. The San Pedro River adjudication was transferred to the Cochise County Superior Court. In November 1981, the Arizona Supreme Court consolidated these adjudications into one proceeding assigned to the Maricopa County Superior Court under the caption *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Nos. W-1, W-2, W-3 & W-4 (Consolidated).

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<sup>4</sup>Section 2 of these Rules is provided for informational and descriptive purposes. This section is not an enforceable part of these Rules.

Under the amended statutes, the Little Colorado River adjudication was transferred to the Apache County Superior Court where it is litigated under the caption *In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, No. 6417.

These cases were assigned to the Maricopa and Apache County Superior Courts because these are the counties where the largest number of potential claimants reside. Pursuant to the new statutes, summons were issued in both adjudications and served on potential claimants in each watershed. Copies of the summons were served upon all persons listed in the property tax assessments in each watershed and on all persons in the watershed who had, at the time, any kind of water rights filing on record with the DWR. In July 1984, a special notification was made to owners of registered wells in the Upper Salt River and San Pedro River watersheds. The summons required the filing of a Statement of Claimant with the DWR if the person claimed a water use in the watershed.

Each watershed in the Gila River system was individually noticed. Filing deadlines were as follows:

Gila River Adjudication:

Upper Salt	June 30, 1980 January 4, 1985 (groundwater claims)
San Pedro	July 11, 1980 January 4, 1985 (groundwater claims)
Agua Fria	November 1, 1985
Upper Gila	November 1, 1985
Verde	November 29, 1985
Lower Gila	January 20, 1987
Upper Santa Cruz	August 3, 1987

Little Colorado Adjudication: December 23, 1985

As of [May 31, 2005], nearly 87,000 Statements of Claimant have been filed by over 25,000 parties in the Gila River adjudication. Over 3,500 parties have filed nearly 13,000 claims in the Little Colorado River adjudication.

## **§ 2.02 Stages of the Proceedings**

The 1979 legislative changes resulted in a significant revision of the manner in which general stream adjudications are being conducted in Arizona. This section discusses the four broad phases of activity that now characterize the adjudications. The third of the four stages, contested case proceedings, is just commencing; and these Rules have been written to provide guidance for those proceedings. In several years, the watersheds in each river system are likely to be in different stages of the proceedings; e.g., while hearings are being conducted on the proposed final decrees in some

watersheds, HSRs may just be completed for other watersheds. These four stages are described in more detail in these Rules.

### **[1] Summons and Filing of Statements of Claimant**

The first stage commenced with the service of summons upon all potential claimants. Between 1979 and 1986, the DWR (or its predecessor agencies) served approximately 960,000 summonses in both adjudications. In the Little Colorado River adjudication, potential claimants were notified in 1981 and renotified in 1984. A renotification was necessary because in March 1982, the Apache County Superior Court had stayed the adjudication proceeding pending an issue being litigated in federal court. The Gila River adjudication was also stayed.

The issue concerned the jurisdiction of state courts and was finally resolved by the United States Supreme Court in July 1983 in a ruling that affirmed the Arizona Superior Court's jurisdiction to proceed with the adjudication pursuant to the McCarran Amendment.<sup>5</sup> After potential claimants in the Upper Salt and San Pedro Rivers were served in 1979 and 1980, no other notifications were made until 1984. The technical and administrative procedures implemented by the DWR to accomplish this service of process have been described in reports filed with the Superior Courts.

### **[2] Preparation of HSRs**

The second stage in the general stream adjudication involves the examination of claims and water uses by DWR. As authorized by the statute, the Superior Courts in both river systems have requested that the DWR prepare reports (known as Hydrographic Survey Reports or HSRs) which, among other things, include an investigation or examination of "the facts pertaining to the claim or claims asserted by each claimant."<sup>6</sup> The preparation of these HSRs is a massive undertaking extending for several years in each of the watersheds subject to adjudication. The contents of these HSRs, which are described in more detail in Section 5.00, *infra*, typically include a general description of the hydrology of a watershed, a description of identified water uses in the watershed, and a set of maps setting forth the identified water uses. DWR attempts to match claimed water uses with known water uses in the watershed. By statute, DWR is required to prepare a preliminary Hydrographic Survey Report. Notice of the preliminary report is given to each water claimant in the watershed, and water claimants are invited to provide DWR with their comments.<sup>7</sup>

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<sup>5</sup> Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); *see also* United States v. Superior Court, 144 Ariz. 265, 697 P.2d 658 (1985).

<sup>6</sup> ARIZ. REV. STAT. ANN. § 45-256(A)(4).

<sup>7</sup> *Id.* at § 45-256(H).

### [3] Contested Cases

The third phase of the adjudication is the contested case phase of the proceedings. When DWR completes its HSR for a watershed and files the report with the Court or Master,<sup>8</sup> that filing commences a 180-day statutory objection period. During this period, any claimant may file with the Court or Master written objections to the HSR or any part thereof. Thus, water claimants can file objections to Watershed File Reports that describe their own water uses. Water claimants can file objections to the description of the water uses of other claimants. Water claimants can also object to other parts of the HSR.

One Special Master has been appointed by the Arizona Supreme Court under the provisions of the general adjudication statute to hear objections filed to the watershed HSRs.<sup>9</sup> Upon the filing of the objections, the Court Clerk's office, under the direction of the Special Master, prepares contested case files for the objections that have been filed. Objections may be consolidated if they involve the same water use or if they involve common issues of fact or law. Objections that are not addressed or fully disposed of in consolidated cases will be resolved in the individual contested cases.

These contested case files become individual cases ("mini-lawsuits") under the umbrella of the river system-wide proceeding, and they each have a unique docket number. The parties to an individual contested case include the landowner whose water use is being contested; the objectors; persons who have been allowed to intervene pursuant to Rule 24, Arizona Rules of Civil Procedure; and other claimants who have been allowed by the Court or Special Master to participate in proceedings raising issues of broad legal importance.<sup>10</sup> Discovery may proceed in these individual contested cases subject to the discovery procedures discussed in these Rules.<sup>11</sup> Each individual case will be managed according to the prehearing procedures set forth in these Rules and, unless otherwise disposed, the case will be set for a hearing before the Special Master.

After hearing the initial contested cases in a watershed, the Special Master prepares and files a catalog of proposed water rights for the watershed. The catalog sets forth the proposed legal characteristics of those water rights found in the watershed. The filing of the catalog of proposed water rights commences a sixty (60) day objection period, established by these Rules, to allow claimants another opportunity to object to the legal characteristics of the water rights in the watershed. Objections filed to the catalog of proposed water rights are resolved as additional contested cases in that watershed.

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<sup>8</sup>The HSR is actually filed with the Clerk of the Court. Under these Rules, the filing with the Clerk is deemed to be a filing with the Master.

<sup>9</sup>ARIZ. REV. STAT. ANN. § 45-255(A). Note: This section was amended in 1995 to provide that the Superior Court may appoint a master or masters.

<sup>10</sup>See Section 12 of these Rules, *infra*.

<sup>11</sup>See Section 9 of these Rules, *infra*.

#### [4] Final Decree

The final phase of the adjudication involves proceedings before the Superior Court. After the conclusion of contested case hearings in a watershed, the Special Master prepares a watershed report and proposed decree for submission to the Superior Court Judge. The Master's report includes, among other things, recommended decisions in the individual contested cases he has heard.

By statute, each claimant has the right to file with the Superior Court his or her written objections to the Master's report within 180 days of the filing of the report with the Court.<sup>12</sup> After reviewing the Special Master's report and resolving the objections that have been filed, the Superior Court issues a final decree for the watershed. By the end of the adjudication of a river system, one or more comprehensive final decrees, incorporating the individual watershed decrees, are expected to be entered.<sup>13</sup>

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<sup>12</sup>ARIZ. REV. STAT. ANN. § 45-257(A)(2). Note: This section was amended in 1995 to provide in relevant part as follows:

Each claimant may file written objections with the court to any rule 53(g) report within the later of sixty days after the report is filed with the court or within sixty days after the effective date of this amendment to this section. If the report covers an entire subwatershed or federal reservation, each claimant may file with the court written objections to the report within one hundred eighty days of the date on which the report was filed with the court.

<sup>13</sup>Additions to or modifications of these Rules may be necessary at the time comprehensive decrees are developed for an entire river system.

## § 3.00 SUMMONS

### § 3.01 Original Summons

Both Superior Courts caused summons to be issued and served upon potential claimants in the adjudications. The Clerk of each Court delivered the summons to the Director of the Department of Water Resources. The DWR then served the summons "on all known potential claimants by mailing a copy of the summons by registered or certified mail, return receipt requested, to such known potential claimants."<sup>14</sup>

In addition, the DWR published the summons "at least once a week for four consecutive weeks in a newspaper published in each of the counties within which interest in and to the use of water may be affected by the general adjudication."<sup>15</sup>

The summons directed potential claimants to request forms and file the required claims originally with the Arizona State Land Department (for the Salt and San Pedro River watersheds) and later with DWR. The Court allowed modification of the basic forms so that Indian and federal agency claims could be properly filed. There are four Court-approved Statement of Claimant forms, namely: domestic, irrigation, stockpond, and other uses. There are assignment and amendment forms for these claims.

### § 3.02 New Use Summons

In the Gila River adjudication, the Superior Court adopted a procedure requiring the DWR to serve new use summons upon those persons who have established new uses of water within the Gila River system and source. The DWR compiles the notification mailing list from the applicants for groundwater and surface water rights during the prior fiscal year. New use summons are mailed annually in the fall. The new use summons, similar to the original summons, requires the potential claimant to file his or her Statement of Claimant with DWR "within ninety days of service of this summons but in no event later than ninety days prior to the publication of the final Hydrographic Survey Report (for that watershed)." DWR has served [over 26,000] new use summons.

No new use summons procedure has been adopted by the Superior Court in the Little Colorado River adjudication, but such a procedure may be adopted by the Court. (Note: The Court adopted a procedure in Pretrial Order No. 5 Re: New Use Summonses, July 26, 2000).

Neither Superior Court nor these Rules has addressed the question of how, if at all, rights to water appropriated after the adjudication of a watershed will be incorporated into the decree for that watershed.<sup>16</sup>

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<sup>14</sup>ARIZ. REV. STAT. ANN. § 45-253(A)(2).

<sup>15</sup>*Id.* at § 45-253(B).

<sup>16</sup>This question may be appropriately addressed by the issue resolution processes previously adopted by both Superior Courts.

## § 4.00 STATEMENT OF CLAIMANT

### § 4.01 General

As of January 1, 1991, 65,764 Statements of Claimant had been filed in the Gila River adjudication, and 10,927 Statements of Claimant in the Little Colorado River adjudication. The DWR estimates that there are 24,000 claimants in the Gila River adjudication, and 3,100 claimants in the Little Colorado River adjudication.<sup>17</sup> On January 1, 1991, the number of Statements of Claimant by watershed was as follows:

#### Gila River Adjudication:

Verde	16,002
Lower Gila	14,046
Upper Santa Cruz	9,249
Upper Gila	8,629
San Pedro	8,090
Upper Salt	5,976
Agua Fria	<u>3,772</u>
	65,764

Little Colorado River Adjudication: 10,927

STATEWIDE TOTAL 76,691

### § 4.02 Content

Section 45-254(C), Arizona Revised Statutes Annotated, sets forth the required content of a Statement of Claimant form:

1. The name and mailing address of the potential claimant.
2. The name of the specific river, stream, tributary, wash or other source from which the right to divert or make use of water is claimed.
3. The quantities of water and the periods of time during the year for which use is claimed.
4. If distributing works are used or required, the date of beginning and completion of construction or of enlargements and the dimensions of the ditch as originally constructed and as enlarged.

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<sup>17</sup>Note: As of May 31, 2005, nearly 87,000 Statements of Claimant have been filed by over 25,000 parties in the Gila River adjudication, and over 3,500 parties have filed nearly 13,000 claims in the Little Colorado River adjudication.

5. If the use is for irrigation, the amount of land reclaimed the first year and in subsequent years, and the amount and general location of the land, the character of the soil and the kind of crops cultivated.
6. The legal description of the point or points of diversion and place of use of the waters to the nearest forty-acre tract or by other appropriate description and such map or plat showing the relative points of diversion and place of use as may be required.
7. The purpose and extent of use.
8. The time of the initiation of the right and the date when water was first used for beneficial purposes for the various amounts and times claimed in paragraph 3 of this subsection.
9. The legal basis for the claim.

The statute also requires that the Statement of Claimant form be verified by the claimant or authorized person.<sup>18</sup>

#### **§ 4.03 Assignments and Amendments to Statements of Claimants**

Frequently, the ownership of property changes and the ownership of the water rights appurtenant to the land are transferred with the land. Both Superior Courts have adopted Assignment of Statement of Claimant forms to effectuate an assignment of any previously filed Statements of Claimant from the assignor to the assignee. When a completed form has been filed with DWR, the assignor is no longer a party to the adjudication with respect to the claimed water rights transferred. The assignee is thereafter a party to the adjudication. In cases where the assignor has assigned only a portion of the real property to which the water right asserted in the Statement of Claimant is appurtenant, both the assignor and the assignee are parties to the adjudication.

Both Superior Courts have adopted a procedure specifying the circumstances under which amendments can be automatically filed with the Court. In its order of November 12, 1987, the Superior Court for the Gila River adjudication approved the filing of all amendments to Statements of Claimant submitted prior to the date of the order. Likewise, the Superior Court for the Little Colorado River adjudication approved the filing of all amendments to Statements of Claimant submitted prior to August 15, 1988.<sup>19</sup> In addition, both Courts have indicated that

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<sup>18</sup>*Id.* at § 45-254(D).

<sup>19</sup>Order at 2 (Gila River Adjudication, Nov. 12, 1987); Pretrial Order No. 2 Re: Content of HSRs at 4 (Little Colorado River Adjudication, Aug. 15, 1988).

any claimant who: (1) Filed a statement of claimant which does not contain all the information requested on the court-approved form or which contains information the claimant believes to be incorrect; and (2) Wishes to amend the filed statement of claimant to adopt wholly or partially the findings contained in a Preliminary Hydrographic Survey Report or Final Hydrographic Survey Report, as the case may be, may file a statement to that effect which will constitute an amendment to the statement of claimant.<sup>20</sup>

Both Superior Courts have adopted forms that can be used for filing other amendments to Statements of Claimant previously filed in the adjudication, and the amendments must be verified. All amendments, however, must be made no later than ninety (90) days prior to the filing of the final HSR for a watershed.<sup>21</sup> In the Gila River adjudication, an amendment must be filed if a change of use of the water has been initiated after the applicable filing deadline for Statements of Claimant.<sup>22</sup>

#### **§ 4.04 Filing Fees**

The Statement of Claimant was to be accompanied by the requisite filing fee. The filing fee for an individual was twenty dollars. The filing fee for a corporation, municipal corporation, the state or any political subdivision, or an association or partnership was two cents for each acre-foot of water claimed, or twenty dollars, whichever was greater. By statute, filing fees were not imposed on any Indian tribe, community, or allottee personally appearing in the adjudication.<sup>23</sup> Pretrial orders in both cases provide additional guidance concerning the payment of filing fees.<sup>24</sup> Filing fees are paid to DWR.

The general adjudication statute requires that "[a] claim shall not be considered by the court or the master unless all fees with respect to such claim have been fully paid."<sup>25</sup>

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<sup>20</sup>Order at 2-3 (Gila River Adjudication, Nov. 12, 1987).

<sup>21</sup>Pretrial Order No. 2 Re: Content of HSRs at 5 (Little Colorado River Adjudication, Aug. 15, 1988). Both adjudication courts allow an amendment to be filed less than 90 days before the issuance of a final HSR if specific court approval is obtained. Note: ARIZ. REV. STAT. ANN. § 45-254(E), added in 1995, provides specific opportunities to file an amendment to a Statement of Claimant depending on the date of filing of the director's report and thereafter on the conclusion of hearings held by the Special Master.

<sup>22</sup>Order Regarding First & Second Set of Issues for Decision ¶ 10, at 4-5 (Gila River Adjudication, Aug. 11, 1987).

<sup>23</sup>ARIZ. REV. STAT. § 45-254(H).

<sup>24</sup>See Order Regarding First & Second Sets of Issues for Decision ¶¶ 2-6, at 2-3 (Gila River Adjudication, Aug. 11, 1987); Pretrial Order No. 2 Re: Content of HSRs ¶ 3, at 6 (Little Colorado River Adjudication, Aug. 15, 1988).

<sup>25</sup>ARIZ. REV. STAT. ANN. § 45-254(H).

#### **§ 4.05 Determination of Adequacy of Filing Fees**

Many claimants did not submit the appropriate filing fees for the water rights they claimed. As required by Section 45-254(H), DWR must report to the Master on the sufficiency of the fees paid with respect to each Statement of Claimant.<sup>26</sup> The Master will specify the date for the report to be submitted by DWR. In his catalog of proposed water rights, the Master will specify any additional fees that must be paid by each claimant; and the filing fees must be paid to DWR no later than the date set by the Master for the filing of objections to the catalog of proposed water rights for the watershed.

The Master will strike any Statement of Claimant if the appropriate filing fee has not been paid by the date set for the filing of objections to the catalog of proposed water rights, and the water rights claimed in the Statement of Claimant will be barred.<sup>27</sup>

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<sup>26</sup>DWR indicates that the calculation of filing fees for Statements of Claimant will require additional guidance from the Court or Master. A commentor on the draft of these Rules indicated there are numerous problems related to determining the sufficiency of filing fees. This may be a question appropriately addressed by the issue resolution processes previously adopted by both Superior Courts. If not, the Master will hold hearings on the methodology for calculating these fees prior to the completion of the catalog of proposed water rights for the first watershed to be adjudicated.

<sup>27</sup>See Order Regarding First & Second Sets of Issues for Decision ¶ 6, at 3 (Gila River Adjudication, Aug. 11, 1987) ("The claimant shall be notified a reasonable time prior to the yet undetermined date prior to entry of the final judgment of adjudication of the balance of the filing fee remaining due"). A commentor on the draft of these Rules indicated there are numerous problems related to determining the sufficiency of filing fees. This may be a question appropriately addressed by the issue resolution processes previously adopted by both Superior Courts.

## **§ 5.00 HYDROGRAPHIC SURVEY REPORTS (HSRs)**

### **§ 5.01 Format and Content**

#### **[1] General**

The Hydrographic Survey Report, or HSR, is the technical report prepared by DWR to examine the water uses in a particular watershed or upon an Indian reservation or lands. The HSR is required by Section 45-256, Arizona Revised Statutes Annotated. Both Courts have specified the general format now being used by DWR to prepare HSRs for a watershed and for Indian lands.<sup>28</sup> Neither Court has specified a format for HSRs concerning other federal lands. Watershed File Reports which describe water uses on individual parcels of land are the major component of an HSR.

#### **[2] Transbasin Diversions and Exchanges**

If a water use investigated by DWR results in the diversion of water from the watershed under study into another watershed or another river system (including diversions that are part of an exchange of water between watersheds), DWR will report the water use in the HSR for the watershed in which the point of diversion is located but will provide sufficient information about the exchange (if any) and the water use in the other watershed so that the legal characteristics of the water rights may be determined.<sup>29</sup> The legal characteristics of any such water use, including the beneficial use or the number of acres irrigated at the place of use, will be determined in the adjudication of the watershed in which the point of diversion is located.

### **§ 5.02 Preliminary HSRs**

Section 45-256(H), Arizona Statutes Annotated, requires that DWR prepare a preliminary version of a watershed or reservation HSR. The Department must notify each claimant in a watershed that the preliminary report is available for inspection and comment.

Any person who has filed a claim in the general stream adjudication for a river system may comment upon any portion of a preliminary HSR. Such comments may refer or respond to comments previously filed by other claimants, but all comments must be filed with DWR prior to the expiration of the comment deadline. Once received by DWR, these comments are available for public inspection.

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<sup>28</sup>See Pretrial Order No. 1 Re: Conduct of Adjudication ¶ 12(B)(1), at 27-29 (Gila River Adjudication, May 30, 1986); Pretrial Order No. 1 Re: Conduct of Adjudication ¶ 12(B), at 22-24 (Little Colorado River Adjudication, Apr. 24, 1986); Pretrial Order No. 2 Re: Content of HSRs ¶¶ 1-4, at 1-3 (Little Colorado River Adjudication, Aug. 15, 1988).

<sup>29</sup>DWR indicates that this is its present practice.

### **§ 5.03 Final HSRs**

After receiving comments on the preliminary HSR, DWR evaluates the comments; prepares a response to the comments; and, if necessary, revises the report. The revised HSR is filed with the Clerk of the Court.<sup>30</sup>

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<sup>30</sup>Under these Rules, the filing of the HSR with the Clerk is deemed to be a filing with the Master.

## § 6.00 OBJECTIONS

### § 6.01 Objection Period

The filing of the HSR for a particular watershed or reservation with the Clerk of the Court commences a 180-day objection period allowing any claimant to file written objections to the report or to any part of the report.<sup>31</sup>

Coincident with the filing of an HSR, the Special Master and DWR shall mail objection booklets to all water users identified in that watershed and to all other claimants in that river system. The booklets provide detailed information on the filing of objections.

### § 6.02 Nature of Objections

The Special Master will use the Hydrographic Survey Report and other admissible evidence to determine the relative water rights of each claimant, but those parts of the HSR which have received objections cannot be admitted into evidence before the Master until the objector has had "a fair and reasonable opportunity to contest the validity or admissibility of those parts of the report" to which the objections were addressed.<sup>32</sup>

Claimants should file objections to an HSR if they disagree with information contained in one or more Watershed File Reports (pertaining to their own water uses or to the water uses of other persons) or if they disagree with information contained in the remainder of the HSR (e.g., the narrative information contained in Volume 1). In

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<sup>31</sup>ARIZ. REV. STAT. ANN. § 45-256(B).

<sup>32</sup>*Id.* at § 45-256(B). Note: ARIZ. REV. STAT. ANN. § 45-256(B) was amended in 1995 to provide as follows:

The technical assistance rendered by the director shall be set forth in summary form on a claim by claim basis in a report prepared by the director and filed with the court or the master, which shall then be available for inspection by any claimant. The report shall list all information that is obtained by the director and that reasonably relates to the water right claim or use investigated. The report shall also include the director's proposed water right attributes for each individual water right claim or use investigated as prescribed by this article. If no water right is proposed in connection with an individual water right claim or use, the director's recommendations shall so indicate. Any claimant may file with the court or the master written objections to the report or any part of the report within one hundred eighty days of the date on which the report was filed. An objection shall specifically address the director's recommendations regarding the particular water right claim or use investigated. The court or master shall summarily dismiss with prejudice objections that do not comply with this subsection. Each claimant who has filed timely written objections that comply with this subsection shall have a fair and reasonable opportunity to present evidence in support of or in opposition to those recommendations of the director. Any claimant may present evidence in support of the claimant's claim.

objecting to a Watershed File Report, claimants should give particular attention to information relating to the legal characteristics of potential water rights.<sup>33</sup>

For information concerning objections based on issues that are on appeal to the Arizona Supreme Court, see Section 6.08, *infra*.

### **§ 6.03 Content and Form of Objections**

The Superior Court has specified the standard for making an objection to a Watershed File Report in the Gila River adjudication: "An objection can be made to the legal or factual basis of the determination made in the HSR regarding the individual claim . . . [and must] state in clear and concise language the particular factual and/or legal reasons for the objection and describe the evidence to support those reasons."<sup>34</sup> Similar language has been adopted by the Superior Court for the Little Colorado River adjudication.<sup>35</sup> This standard will be applied to objections filed in either adjudication and to objections to those portions of the HSR other than the Watershed File Reports. Objections to the HSR, or any portion of the HSR, should be verified.<sup>36</sup>

Motions may be brought under Rule 12, Arizona Rules of Civil Procedure, to test the sufficiency of objections and pleadings filed in the contested cases. For Track 2 cases (*see* Section 8.03), however, such motions generally should be filed after the first Prehearing Conference (Scheduling) has been held and a Case Management Order issued.

### **§ 6.04 Filing of Objections**

Written objections to the Hydrographic Survey Report for a particular watershed or reservation must be filed during the 180-day statutory objection period. Because this filing period is specified by Arizona Revised Statutes Annotated Section 45-256(B), Rule 6(e) of the Arizona Rules of Civil Procedure, pertaining to the calculation of time

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<sup>33</sup>*See* § 15.03, *infra*. The scope of a contested case to resolve an objection to a Watershed File Report generally will be limited to the determination of those legal characteristics of a potential water right. Note: ARIZ. REV. STAT. ANN. § 45-256(C), added in 1995, states as follows:

Those portions of the report that do not contain the director's recommendations for the water rights claims and uses investigated shall not be summarily admitted into evidence but may be offered into evidence for any purpose relevant to the determination of a water right claim or use that is subject to adjudication. The appropriator and any other claimant who has filed an objection to the water right as prescribed by subsection B of this section shall have a fair and reasonable opportunity to present evidence in support of or in opposition to those portions of the director's report before the conclusion of hearings on the water right. If admitted into evidence over an objection, those portions of the report shall not be given any presumption of correctness.

<sup>34</sup>Pretrial Order No. 1 ¶ 12(D)(3)(b) and (c) (Gila River Adjudication, May 30, 1986).

<sup>35</sup>Pretrial Order No. 1 Re: Conduct of Adjudication ¶ 12(C)(3)(c), at 25 (Little Colorado River Adjudication, Apr. 24, 1987).

<sup>36</sup>ARIZ. R. CIV. PROC. 11(c).

for pleadings served by mail, does not apply to or extend this filing deadline.<sup>37</sup> Thus, objections must be received by the Clerk of the Superior Court on or before the 180th day. For example, the Silver Creek HSR was filed in the Little Colorado River adjudication on November 30, 1990; the deadline for objections to that HSR was 5:00 p.m. (MST), May 29, 1991.

Objections to HSRs for any watershed in the Little Colorado River adjudication must be filed with the Clerk of the Superior Court in and for Apache County, P.O. Box 365, St. Johns, Arizona 85936. Objections to HSRs for any watershed in the Gila River adjudication must be filed with the Clerk of the Superior Court in and for Maricopa County. Gila River objections should be filed at the Court Clerk's Customer Services Center, Attn: Water Case, 601 W. Jackson Street, Phoenix, AZ 85003.

Objections filed with the Clerk of the Superior Court are deemed to be filed with the Special Master. Except for objections to the Silver Creek HSR, objectors must file the original and two copies (including all attachments) of each objection.

Also, except for objections to the Silver Creek HSR, objectors must use the Court-approved objection form for filing objections even though attachments may be necessary to state fully the objection. A separate objection form must be filed for each Watershed File Report to which an objection is made. Objections to other portions of the HSR (anything other than the Watershed File Reports) may be stated on one objection form. All objections must be stated specifically and completely. All objections should be verified (sworn to under oath). The following is an appropriate form of verification:

I declare under penalty of perjury that the information contained in the foregoing objection is true and correct, except for those portions of the objection based on information and belief which, after reasonable inquiry, I also believe to be true and correct.

#### **§ 6.05 Service of Objections**

If the objector files an objection to another person's Watershed File Report, the objector must serve, in accordance with Rule 5(c) of the Arizona Rules of Civil Procedure,<sup>38</sup> a copy of the objection (including all attachments) on the person or entity

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<sup>37</sup>In the event the 180-day statutory period ends on a Saturday, Sunday, or holiday, Rule 6(a), ARIZ. R. CIV. PROC., would apply and objections would be due on the next business day. HSRs, however, will be filed on an appropriate day so that the 180th day does not fall on a weekend or legal holiday.

<sup>38</sup>Rule 5(c), ARIZ. R. CIV. PROC., reads, in part:

Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office,

listed as the landowner in that Watershed File Report. The address for the landowner and any claimant may be obtained from DWR. The objector must file a certificate of service with the Clerk of the Court indicating the service of the objection by mail or other acceptable means to the person or entity listed as the landowner in that Watershed File Report. The mandatory objection form contains a certificate of mailing that can be used.

In many cases, a water provider (*e.g.*, irrigation district, municipal water company, or other entity) or other agent has filed Statements of Claimant in behalf of its members or users.<sup>39</sup> In such cases, an objector to a Watershed File Report may serve the objection upon the water provider or other agent, rather than upon the landowner identified in the Watershed File Report, so long as the existence of the principal-agent relationship appears in the Statement of Claimant or other pleading. Any uncertainties about the existence of an agency relationship should result in the service of the objection on the landowner, as principal, as well as on the water provider or other agent. The objection shall be served on the landowner if he or she has indicated in the Statement of Claimant or in a subsequent pleading that the landowner desires to receive a copy of any objection. Objections shall be served on the landowner if the objection relates to a use of water not provided by the water provider.<sup>40</sup>

If the objector files an objection to a portion of the HSR other than a Watershed File Report, the objector must serve by mail all persons appearing on the Court-approved mailing list for that adjudication and a certificate of mailing must be filed.

An objection to a map contained in the final volume of an HSR should be limited to those circumstances where the objectionable features are not described in a Watershed File Report for one or more of the water uses described on the map. Thus, in cases where an objection pertains to the legal description for the point of diversion or place of use of a water use, the objection should be made to the Watershed File Report describing that water use. In cases where the objection pertains to features not described in a Watershed File Report (*e.g.*, political boundaries, geologic features), the objection should be made to the map.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **§ 6.06 Joinder in Objections**

Claimants may join in objections filed by other claimants to individual Watershed File Reports or to other portions of an HSR by either of the following methods:

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leaving it at the person's dwelling-house or usual place of abode with some person of suitable age and discretion then residing therein. . . . Service by mail is complete upon mailing.

<sup>39</sup>ARIZ. REV. STAT. ANN. § 45-254(B).

<sup>40</sup>Order re Service of Objections (Little Colorado River Adjudication, May 31, 1991).

## **[1] Joinder on Single Form**

Multiple claimants may join in a single objection to individual Watershed File Reports or to other portions of an HSR if the name, address, and Statement of Claimant number or Watershed File Report number is provided for each claimant and each claimant signs a single objection form. Objections filed by multiple claimants will be filed and served in the same manner as objections filed by a single claimant.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

## **[2] Joinder by Reference**

Claimants may join in objections filed by other claimants to individual Watershed File Reports or other portions of an HSR. In doing so, however, the joining claimants must file the mandatory objection form indicating their joinder before the filing deadline for objections. The joining claimants must also identify both (a) the portion of the HSR and the Watershed File Report, if any, to which the objection is addressed; and (b) sufficient information (including the name and address of the claimant whose objection is being adopted) to identify the objection that is being adopted. Under this subsection, a separate joinder must be filed for each Watershed File Report objected to. The joining claimant must verify the assertions contained in the objection which is being adopted. Rule 11, Arizona Rules of Civil Procedure, pertaining to the signing of pleadings, applies to such adopted objections as well as to original objections.<sup>41</sup>

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

## **§ 6.07 Amendment of Objections**

An objection is a pleading to which no responsive pleading is permitted (except for motions brought under Rule 12, Arizona Rules of Civil Procedure, pursuant to Section 6.03 of these Rules). With this clarification, Rule 15(a) of the Arizona Rules of Civil Procedure specifies the circumstances for amending an objection:

[If] the action has not been placed upon the trial calendar, the party may so amend it [the objection] at any time within twenty days after it is served. Otherwise a party may amend the party's pleading only by leave

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<sup>41</sup>Rule 11(a), ARIZ. R. CIV. PROC., specifies, in relevant part, as follows:

The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

of court [in contested case adjudications, by leave of the Master] or by written consent of the adverse party. Leave to amend shall be freely given when justice requires.

In the adjudications, "placement on the trial calendar" means the issuance of a Case Management Order that specifies a final hearing date. After the issuance of a Case Management Order, leave to amend will generally be given by the Master until the date of the Readiness Conference (*see* Sections 8.02[3] and 8.03[5] of these Rules).

#### **§ 6.08 Special Procedures for Issues on Interlocutory Appeal**

Six issues are on interlocutory appeal before the Arizona Supreme Court which, when resolved, may affect the content of the HSR and the Watershed File Reports. Pending resolution of these issues by the Arizona Supreme Court, it will be sufficient for any party wishing to preserve the issues to file a single objection to the HSR. The single objection may list one or more of the issues to be preserved and need not identify those specific Watershed File Reports or similar reports that raise the preserved issues. Following resolution of each of these issues by the Supreme Court, [note: Gila River Adjudication only: "after consideration of recommendations from the Gila River Adjudication Steering Committee and interested parties"], the Court or the Master will issue an order which addresses the need to file supplemental or additional objections and establish procedures for filing and serving such objections, if necessary. The order may also address procedures for identifying Statements of Claimant to which the Supreme Court ruling applies and for allowing the joinder in objections by additional claimants.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

#### **§ 6.09 Special Procedures for Objectors Filing Numerous Objections**

The Special Master, if he anticipates the filing of many objections to the Hydrographic Survey Report for a watershed or reservation, may require objectors who file numerous objections to the HSR to follow special filing procedures in order to assist the Master, the Clerk of the Court, and DWR in the processing of those objections. These procedures may require the use of uniform objection terms and codes and the submission of objection information to the Clerk or DWR in standardized form on computer media. An exemption will be provided for persons who do not have the computer resources or financial means to comply with the special procedures.

The Special Master, if he orders such special procedures, shall include notice of the procedures in the notice that is sent to all water users identified in the watershed and to all other claimants in the river system notifying them of the availability of the HSR and the commencement of the objection period. Copies of such special procedures shall be available from the Clerk, DWR, or the Office of the Special Master.

## § 7.00 CONTESTED CASES

### § 7.01 Case Designation

The Clerk's office shall prepare "contested case files" for the objections filed to the HSR. The content of the files will vary depending on the part of the HSR to which the objection is made. A contested case file shall be prepared for each Watershed File Report that is objected to and all objections to the same Watershed File Report will be filed in one contested case file. The Master will provide the Clerk with instructions for the preparation of contested case files for objections to other parts of the HSR.

#### [1] Case Numbering

Contested case files in the Little Colorado River adjudication will be numbered consecutively as follows: "6417 (the master case number) + DWR's identification number for the watershed under adjudication + unique number." Thus, the first contested case file concerning the Silver Creek HSR will be numbered: 6417-033-0001.

Contested case files in the Gila River adjudication will be numbered consecutively as follows: "W1 (the master case number) + DWR's identification number for the watershed under adjudication + unique number." Thus, the first contested case file concerning the San Pedro HSR will be numbered: W1-11-0001.

Contested case files involving proposed settlements of water rights claimed by Indian tribes and federal agencies will be numbered with the master case number for the adjudication in which the proposed settlement occurs and a unique number provided by DWR for the particular Indian or federal agency reservation. Thus, the contested case file for the proposed Salt River Pima-Maricopa Indian Community Water Rights Settlement is numbered: W1-200.

#### [2] Objections to Watershed File Reports (WFRs)

If an objection is made to a Watershed File Report, the Clerk's office shall prepare a contested case file for each Watershed File Report to which an objection is made. This means that several objections to the same Watershed File Report, even if they are received at different times, will be identified by the same case number and will be placed together in the same file. Each contested case file will be entitled "*In re [Landowner]*" using the landowner name appearing at the top of the Watershed File Report to which the objection is directed.

Each contested case file shall contain a certified copy of the Watershed File Report (the Clerk shall make the copy from the HSR on file with the Clerk),<sup>42</sup> the original objection(s) filed against the Watershed File Report, and the original or certified

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<sup>42</sup>A stamp on the Watershed File Report, indicating "This Watershed File Report is a true and correct copy of the original, which is part of the Silver Creek HSR, on file with the Clerk's Office" is sufficient certification. This certification will be at the expense of the Clerk.

copies of any Statements of Claimant for water rights described in the Watershed File Report. All subsequent pleadings pertaining to a particular contested case will be filed in that contested case file.

DWR's file used in preparation of the Watershed File Report will not normally be made part of the contested case file by the Clerk's office. If a litigant desires to make all or a portion of the DWR file part of the record of the case, or to offer it as evidence at a hearing, the burden is on the litigant to obtain and offer these materials as an authenticated exhibit.

### **[3] Objections to Other Parts of the HSR**

All objections to other parts of an HSR (including objections to features of maps not described in one or more Watershed File Reports) should be stamped with the same case number (*e.g.*, 6417-033-0001) and filed in the same contested case file. The Master, either on his own motion or upon the motion of a litigant, may classify these objections and designate them as separate contested case files. Each separate contested case file will contain a certified copy of that portion of the HSR objected to<sup>43</sup> and the original of the objection(s).

### **[4] Objections to Settlements Involving Indian Water Rights**

The Arizona Supreme Court has issued a Special Rule specifying the procedure to be followed by the Court to consider proposed settlements involving Indian water rights in the Gila River adjudication.<sup>44</sup> The rule provides a procedure for notifying other claimants of a proposed settlement; a method for asserting objections to the proposed settlement; and, in the discretion of the Superior Court, a referral of the consideration of the proposed settlement to the Special Master. If the consideration of such a settlement is referred to the Master, the proposed settlement and any objections to the settlement will be considered by the Master as a contested case.

### **[5] Captions and Numbering of Pleadings**

The pleadings filed in a contested case shall be captioned using the title of the river system proceeding, the title of the contested case, the contested case number, and the title of the pleading. In addition, each pleading shall begin with the contested case name, the HSR involved, a short descriptive summary, the date the pleading is filed, and the number of pages in the pleading and any attachment. This information assists the Clerk in docketing the pleadings.

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<sup>43</sup>Certified at the expense of the Clerk.

<sup>44</sup>Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes (Ariz. Sup. Ct. May 16, 1991). Note: A similar order was adopted for the approval of settlements of Indian water rights or water rights for other federal reservation(s) or federal lands arising in the Little Colorado River Adjudication (Ariz. Sup. Ct. Sept. 27, 2000).

## **[6] Persons Who Can Participate in Contested Cases**

Only the following persons may participate in proceedings in a contested case involving an objection to an HSR: (1) the claimant or the transferee of the claimant who filed a timely Statement of Claimant which has been identified in the Watershed File Report subject to objection; (2) the person or the transferee of the person who has been identified as the landowner in the Watershed File Report subject to objection, regardless of whether the person filed a Statement of Claimant in the adjudication (the participation of this person may be questioned by other litigants in a preliminary motion); (3) any objectors to the Watershed File Report; (4) the litigants in other contested cases that have been consolidated with the instant contested case; (5) parties in either adjudication who participate pursuant to an order of the Master issued in an effort to resolve similar issues of law or fact, typical claims or defenses, or objections raising issues of broad legal importance (*see* Section 12.00); and (6) counsel for any of the foregoing persons.

Upon the request of the Master and subject to qualification, a representative of DWR may testify in a contested case as a court-appointed expert witness under the provisions of Rule 706, Arizona Rules of Evidence. A representative of DWR may also be called as a witness by the litigants in a contested case.

Participation in a contested case involving the consideration of a proposed settlement involving Indian water rights is governed by the Special Procedural Order of the Arizona Supreme Court supplemented, if necessary, by the orders of the Superior Court and the Master.<sup>45</sup>

### **§ 7.02 Dockets**

The Clerk's office, with the assistance of DWR, shall maintain two dockets to record the filing of objections and subsequent pleadings.

#### **[1] Master or General Adjudication Docket**

The Clerk's office shall continue to maintain the docket, known as the Master Docket in the Little Colorado River adjudication and the General Adjudication Docket in the Gila River adjudication, established by Pretrial Order No. 1 in both cases. The Master Docket will be a chronological listing of all pleadings, including objections, filed in the Little Colorado River adjudication in Case No. 6417 (including any of the contested case files established under No. 6417). The General Adjudication Docket will be a chronological listing of all pleadings, including objections, filed in the Gila River adjudication in Case No. W-1, W-2, W-3, and W-4 (Consolidated) (including any of the contested case files established under this case). The Clerks' offices should continue to distribute the Master Docket and the General Adjudication Docket on the monthly basis already established by Pretrial Order No. 1 in each of the adjudications.

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<sup>45</sup>*Id.*

## **[2] Contested Case Dockets**

The Clerk's office shall maintain a separate docket for each contested case file. The docket shall begin with the Watershed File Report or the portion of the HSR objected to and any objection that has been filed. Additional docket entries shall be made for all other pleadings and papers filed in the contested case. When making docket entries, the Clerk's office shall report at least one identifying number (*i.e.*, Statement of Claimant number, Watershed File Report number) for each party filing the pleading or document so long as that information is provided on the pleading or document.

## **[3] Objection Lists**

The Clerk's office shall maintain on a continuing basis an Objection List for each HSR. The Objection List shall contain, and allow retrieval by, the following information:

- Objector's name and address;
- Objector's Watershed File Report number or Statement of Claimant number;
- Number of Watershed File Report objected to (or page(s) of other parts of the HSR objected to);
- Name of the landowner listed in Watershed File Report objected to;
- Date objection was filed; and
- The contested case number assigned to the objection.<sup>46</sup>

## **[4] Public Access**

While each of the Clerks' offices will maintain the official, hard-copy version of the dockets and Objection List, DWR shall also maintain a duplicate record of the dockets and Objection Lists. DWR's duplicate set of the dockets and Objection Lists will be the primary public access source for persons desiring information about the adjudications.<sup>47</sup>

The Clerks' offices and DWR are undertaking several efforts to computerize these records and to allow public utilization of the computerized records at DWR and from remote terminals. Several data bases, including the Adjudication Information System, can already be accessed by computer. Persons interested in establishing such computer access should contact DWR's Adjudications Division.

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<sup>46</sup>The implementation of the Master's proposed "electronic docket" system and the uniform objection coding system will allow parties to obtain information about how objections have been classified and, perhaps, to identify objections by legal description.

<sup>47</sup>It is unclear to what extent the monthly docket for each adjudication, which is circulated to subscribers, can provide even abbreviated information on individual objections or on pleadings in individual contested cases. The objection list in the Silver Creek watershed alone is approximately 200 pages long. This matter is under study.

## **§ 8.00 PREHEARING AND SETTLEMENT PROCEDURES**

### **§ 8.01 Prehearing Procedures**

After the conclusion of the objection period for a watershed, the Master will review the contested cases (prepared from the objections that have been filed) and will assign the contested cases to one of two procedural tracks. Track 1 will consist of relatively simple proceedings, usually involving the objections of an individual landowner to his or her own Watershed File Report or the objections of another claimant where neither the landowner nor the objecting claimant is represented by counsel. Track 2 will consist of more complex objections, usually involving the objections of one or more claimants to the Watershed File Report of another landowner, with most if not all litigants represented by counsel. Other factors to be considered by the Master in assigning a case to Track 1 or Track 2 include the amount of water involved, whether a water provider such as an irrigation district or municipality is involved, whether a transbasin diversion is involved, and whether significant or complex issues are raised. At any time, a litigant may file a motion requesting that a contested case be reassigned from one track to another. Case Management Orders will be used by the Master to guide cases on both tracks.

Unless other considerations are present (such as the need to resolve issues of broad legal importance or to consolidate cases), contested cases generally will be processed based on the date of apparent first water use identified in the Watershed File Report. Thus, contested cases based on Watershed File Reports reporting apparent early priority dates will be taken up first in that watershed.

### **§ 8.02 Track 1 Procedures**

The Master will notify those litigants involved in a contested case (*see* Section 7.01[6]) that the case has been assigned to Track 1 for prehearing preparation and hearing. The Master will also serve the litigants with one or more Case Management Orders that specify the date for a meeting with DWR, the date for the completion of discovery, the date for a readiness conference with the Master or his designee, and the date for a hearing on the merits of the objection.

#### **[1] Meetings with DWR**

##### **[a] Purpose and Format of Meetings**

Upon the Master's order, the litigants will meet with DWR's designated representative in order to clarify the objection and to determine whether the objection can be resolved by amendment to the Statement of Claimant, by an agreement between the litigants, or by an amendment to the Hydrographic Survey Report. The meeting will be attended by the litigants and their attorneys, if any. The meeting will be conducted informally and will not be recorded. Unless the litigants agree otherwise, the meeting will not be open to the public and the conduct or statements of the litigants made in an

effort to compromise or settle an objection will not be admissible into evidence in any subsequent proceedings.<sup>48</sup>

In cases where the objector is a claimant who has objected to his own Watershed File Report, DWR will explain the basis of its findings and will explain that the claimant may modify his or her Statement of Claimant to conform with the Watershed File Report or may contest the Watershed File Report in a hearing before the Master. The objector will be afforded an opportunity to present to DWR any information pertaining to his or her objection that has not previously been considered by DWR. DWR will explain to the objector that he or she may contest that portion of the HSR in a hearing before the Master.

In cases where the objector is a claimant who has filed an objection to parts of the HSR other than the Watershed File Reports, DWR will explain the basis of its findings and will afford the objector an opportunity to present DWR with information pertaining to the objection that has not previously been considered by DWR. DWR will explain to the objector that he or she may contest that portion of the HSR in a hearing before the Master.

In cases where one or more objectors have filed an objection to the claimant's Watershed File Report, DWR will convene the meeting and will explain the basis of its findings. DWR will thereafter facilitate the discussions between the litigants and inform the litigants that, unless an agreement on the objection is reached, the matter will be heard by the Master.

#### **[b] Meeting Outcomes**

Meetings involving claimants, objectors, and DWR may result in various outcomes. In cases where the objector has objected to his or her own Watershed File Report, the meeting may conclude as follows: (1) the objector may agree to amend his or her Statement of Claimant form to conform with the Watershed File Report; (2) DWR may, on the basis of the new information or the reexamination of information previously available, agree that information contained in the HSR is incorrect and specify the correct information; (3) the objector may request a hearing before the Master; or (4) the objector may dismiss the objection.

In cases where the objector has objected to portions of the HSR other than the Watershed File Reports, the meeting may conclude as follows: (1) DWR may agree, based upon the new information presented to it, to notify the Master of the correct information; (2) the objector may request a hearing before the Master; or (3) the objector may dismiss the objection.

In cases where one or more objectors have filed an objection to a claimant's Watershed File Report, the meeting may conclude as follows: (1) the claimant and the

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<sup>48</sup>See ARIZ. R. EVID. 408.

objectors may agree to a settlement of the objection that does not involve modification of information contained in the HSR; (2) the claimant and the objectors may agree to a settlement of the objection involving modification of information contained in the HSR and DWR, based on new information presented to it, agrees to notify the Master of the correct information; (3) one or more of the litigants may request a hearing before the Master; or (4) the objectors may dismiss their objections.

**[c] Meeting Report**

Within five (5) days of a meeting with a claimant and any objectors in a contested case, DWR's designated representative shall file a meeting report with the Clerk of the Court and shall serve copies of the meeting report on those persons entitled to notice pursuant to Section 18.02. The meeting report will indicate the date of the meeting; the attendance at the meeting; the date for any subsequent meeting; whether an agreement has been reached; the person responsible for preparing the documents necessary to complete the agreement; and, in cases where agreement has not been reached, a recommendation to the Master that (1) the case be referred for settlement efforts under Section 8.04, or (2) that the contested case immediately proceed to a Readiness Conference and a hearing.

**[d] Submission of Settlement to Master for Approval**

Within thirty (30) days of a meeting with DWR or any other meeting that results in a settlement of an objection, the claimant, objector, or DWR shall submit to the Master, for his review and conditional approval, all documents necessary to effectuate the settlement. The Master may require a hearing on the proposed settlement and order the litigants to attend.<sup>49</sup>

Settlements, if conditionally approved by the Master, are binding upon the litigants. Such settlements and decisions shall be incorporated into the catalog of proposed water rights prepared by the Master for each watershed to the extent necessary to define legally the proposed water rights affected by the settlement (*see* Section 15.00). During the objection period on the catalog of proposed water rights, other claimants in the adjudication may object to a settlement and decision, to the extent that it is incorporated in the catalog of proposed water rights, unless the claimant could have asserted the objection during the statutory objection period and did not do so. An objector to the catalog of proposed water rights has the burden of proving that his or her objection could not have been asserted during the statutory objection period.

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<sup>49</sup>In comments on the proposed Rules, several questions were raised about notice of proposed settlements. The only persons who will receive notice of a settlement hearing are the litigants in the contested case; other claimants will have the opportunity to challenge the settlement during the objection period on the catalog of proposed water rights that includes terms of the settlement unless they are precluded by the conditions described in the main text. Persons such as lessees who desire notice of procedures in any contested case may file a request as provided in Section 18.02, *infra*. The extent of their participation, if any, in a contested case has not been determined.

**[2] Discovery**

The Case Management Order for cases assigned to Track 1 will specify the date upon which all discovery will be completed. Discovery must be conducted according to Section 9.00.

**[3] Readiness Conference**

The initial or a supplemental Case Management Order will specify the date and location for a Readiness Conference. The Readiness Conference will normally be held no earlier than seven (7) days in advance of the hearing in the contested case. The Readiness Conference will be conducted by the Master or his designee and will be attended by the claimant, his or her attorney, or both, and by the objector, his or her attorney, or both. The Readiness Conference will be open to the public and will be conducted informally. The Readiness Conference will not be recorded.

At the Readiness Conference, the litigants will specify the witnesses they will call and the exhibits they will offer at the hearing. The litigants will also specify any stipulations they have reached as to facts or rules of law. The litigants will mark their exhibits according to Section 19.03. At the conclusion of the Readiness Conference, the Master or his designee will prepare an Abbreviated Prehearing Order or will instruct one of the parties or attorneys to prepare the Order. Once signed by the Master, the Abbreviated Prehearing Order will be served upon those persons entitled to notice pursuant to Section 18.02. The Abbreviated Prehearing Order will specify the litigants and their attorneys, a statement of the issues of fact and issues of law in dispute, the witnesses to be called, a list of exhibits to be proposed, the total time allotted for the hearing, and the time allotted to each litigant.

The Readiness Conference may be conducted by phone. The Master may waive the Readiness Conference if the litigants so request and the Abbreviated Prehearing Order has been submitted to and signed by the Master.

**§ 8.03 Track 2 Procedures**

The Master will notify the litigants and their attorneys, if any, in a contested case that the case has been assigned to Track 2 for prehearing preparation and hearing. The Master will also serve the litigants and their attorneys with notice of the date and location for a Scheduling Conference with the Master or his designee.

**[1] Scheduling Conference**

In advance of the Scheduling Conference with the Master, counsel for the litigants and any unrepresented parties shall meet to: (a) exchange all documents and all other evidence then available and not previously exchanged informally (*see* Section 9.04, *infra*); and (b) prepare for the discussion of the topics to be discussed at the Scheduling Conference. The litigants shall prepare a written Case Information Report of

their meeting to be filed with the Clerk of the Court<sup>50</sup> no later than seven (7) days before the Scheduling Conference (if possible, the report should also be submitted on computer disk in addition to any other filing requirements that apply; *see* Section 19.04, *infra*). The report will contain the following information:

1. Discovery Plan. The report should discuss the discovery that has or can be accomplished informally by a mutual exchange of documents and other information. The report should also identify potential deponents by name or category and indicate the dates by which the litigants intend to complete each phase of the discovery process (*e.g.*, "interrogatories to be served by [date] and to be answered by [date];" "requests to produce to be served by [date] and to be responded to by [date]"). A statement such as "the parties will take depositions, file a set of interrogatories, request production of documents, and conduct other discovery as appropriate" does not satisfy this rule.
2. Settlement Plan. The report should evaluate whether settlement is possible and, if so, what settlement process (*see* Section 8.04) may be useful to the resolution of the case and has been agreed upon by the parties.
3. Identification of Issues. The report should identify those contested issues of fact or of law that are expected to be important to or dispositive of the case. The report should summarize each litigant's position on these contested issues of fact or law.
4. Anticipated Motions. The report should identify the prehearing motions that are likely to be filed. The report should propose dates for the scheduling and completion of those motions.
5. Written Presentation of Testimony. The report should identify those witnesses whose testimony will be presented at the hearing in written form pursuant to an agreement among the litigants.<sup>51</sup>
6. Other Matters. The report should also identify any special needs or problems that counsel or the litigants anticipate. Examples include: the need or desirability of consolidating a contested case with other contested cases; the need for any specialized court services, *e.g.*, translation of proceedings from a foreign language, special audio or visual equipment for presentation of evidence or for the communication of a party or witness.

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<sup>50</sup>The Case Information Report need not be served separately on the Master. *See* § 18.02, *infra*.

<sup>51</sup>*See, e.g.*, Rule 13.02, *infra*.

## **[2] Case Management Order**

At the conclusion of the Scheduling Conference, the Master will prepare or direct the preparation of a Case Management Order setting forth a schedule for the progress of the case (including dates for the completion of discovery requests and responses, the completion of prehearing motions, scheduled efforts for settlement, subsequent Prehearing and Readiness Conferences, and a hearing on the merits). Once the order has been signed by the Master, filed, and served upon those persons entitled to notice pursuant to Section 18.02, it shall be adhered to by the litigants in the preparation of the contested case.

## **[3] Prehearing Conferences**

Other Prehearing Conferences may be scheduled and held by the Master in accordance with Rule 16, Arizona Rules of Civil Procedure. A detailed Prehearing Order shall be entered by the Master after the final Prehearing Conference to guide the conduct of the final hearing in the contested case.

## **[4] Motions *in Limine***

Certain evidentiary matters are appropriate for preliminary rulings upon motions *in limine* that must be made, at the earliest opportunity, at or before a prehearing conference. Evidentiary matters that are appropriate for *in limine* treatment include evidence of prior or subsequent acts; expert qualifications and assumptions; authenticity, foundation, privilege, and hearsay; and prejudicial testimony or documents.

## **[5] Readiness Conference**

A Readiness Conference will be conducted by the Master or his designee no earlier than seven (7) days before the scheduled hearing on the merits. At the Readiness Conference, the Master or his designee will determine whether the requirements of the Prehearing Order have been satisfied including, but not limited to, the marking and submission of exhibits (*see* Section 19.03), the submission of proposed findings of fact and conclusions of law (if they are to be submitted in advance of the hearing), and the submission of memoranda on any issue scheduled to be ruled upon at the time of hearing. If, at the time of the Readiness Conference, a litigant has not completed his or her obligations under the prehearing order, the Master may vacate the hearing date and impose sanctions against the litigant or counsel responsible for the delay.

## **§ 8.04 Settlement Procedures**

Because of the potentially large number of contested cases in the adjudications, the Special Master encourages the settlement of these cases by the voluntary use of alternative dispute resolution (ADR) techniques or other methods. In addition to the meeting with DWR, if required under Track 1, litigants are invited to suggest to the Master other possible methods for attempting settlement of their contested case.

## **[1] Settlement Conferences with Master**

Upon the stipulation of the litigants in a contested case, the Master is available to participate in a Settlement Conference. The litigants must be aware, however, that the Master will hear the case if it is not settled as there is no opportunity to remove the Master as the hearing officer except for cause.

## **[2] Effect of Settlements**

Litigants settling a contested case shall promptly notify the Master and shall prepare and file the documents necessary to effectuate the settlement. The Master may require a hearing on the proposed settlement and order the litigants to attend.

Settlements (including those resulting from meetings with DWR) and decisions that result from arbitration voluntarily agreed to, if conditionally approved by the Master, are binding upon the litigants who are parties to the settlement. Such settlements and decisions shall be incorporated into the catalog of proposed water rights prepared by the Master for each watershed to the extent necessary to define legally the proposed water rights affected by the settlement (*see* Section 15.00). Other claimants in the adjudication may object to a settlement and decision, to the extent that it is incorporated in the catalog of proposed water rights, unless the claimant could have asserted the objection during the statutory objection period and did not do so. An objector to the catalog of proposed water rights has the burden of proving that its objection could not have been asserted during the statutory objection period.

## **§ 8.05 Notice of Conferences and Hearings**

Written notice of a Prehearing, Settlement, or Readiness Conference in a contested case will be given to the litigants by the Special Master or the Clerk's office no less than fifteen (15) days prior to the date scheduled for the conference unless otherwise agreed to by the litigants or upon the order of the Special Master. Whenever possible, dates and locations for these conferences will be set forth in the first Case Management Order issued by the Master for the contested case.

Written notice of the hearing on the merits in a contested case will be given to the litigants by the Master or the Clerk's office no less than thirty (30) days prior to the date scheduled for the hearing unless the litigants agree to shorter notice.

The Clerk in each adjudication shall prepare a monthly calendar of upcoming conferences and hearings that will be posted in prominent public locations by the Master, the Clerk, and DWR. The monthly calendar will also be sent to the Clerks of the Superior Court for each county affected by the adjudication. Notice of upcoming conferences and hearings will also be included in the monthly docket published and distributed by the Clerk's office (although conferences or hearings noticed less than thirty (30) days in advance may actually be concluded before the monthly docket is distributed).

The Master may also direct the Clerk's office to send a monthly or bimonthly calendar of upcoming conferences and hearings to all litigants in the watershed then under adjudication and all persons on the Court-approved mailing list for the adjudication.

## **§ 9.00 DISCOVERY**

### **§ 9.01 Classification of Litigants**

Both adjudication courts have adopted a similar classification system specifying the discovery procedures that will be allowed of claimants in contested cases. While earlier pretrial orders in both cases identified three classifications for discovery purposes, these Rules, which establish only two classifications, supersede and refine those earlier provisions.

#### **[1] Group 1 Litigants**

Group 1 litigants consists of those claimants and landowners whose water right or water use described in a Watershed File Report has been objected to, where the amount of water claimed or used is less than fifty (50) acre-feet per year and the sole use claimed is for stockwatering purposes (including an incidental use for wildlife) or for domestic use.

#### **[2] Group 2 Litigants**

Group 2 litigants consists of (1) those claimants and landowners whose water right or water use described in a Watershed File Report has been objected to, where the amount of water claimed or used is fifty (50) acre-feet or more per year;<sup>52</sup> and (2) those claimants and landowners whose water right or water use described in a Watershed File Report has been objected to, where the amount of water claimed or used is less than 50 acre-feet per year, where the water is claimed or used for purposes other than stockwatering (including an incidental use for wildlife) or domestic use.

If multiple objections to a single Watershed File Report result in objections being made to water rights or uses totaling fifty (50) acre-feet or more per year or to uses other than stockwatering (including an incidental use for wildlife) or domestic use, then the claimant or landowner will be considered a Group 2 litigant.

#### **[3] Uncertainties About Classification**

In the first Case Management Order in a contested case, the Master will specify the discovery classification for the claimant or landowner in that contested case. At that time, any uncertainty about the proper classification of a claimant or landowner will be resolved.

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<sup>52</sup>Because of the way volume is reported in a Watershed File Report, the 50 acre-foot threshold is sometimes difficult to ascertain. For purposes of these Rules, the threshold is passed if either the volume claimed by the claimant or any one of the several volume estimates reported by DWR equals or exceeds 50 acre-feet per year.

## **§ 9.02 Discovery Available**

### **[1] Discovery of Group 1 Litigants**

Unless the permission of the Special Master has been obtained, no formal discovery will be allowed of Group 1 litigants. Parties interested in these claims may make informal inquiry of the litigant and his or her counsel; and, upon written request or a request made in person, DWR will make available its records to provide the needed information. If necessary, an objector may, by motion, request the Master for permission to complete additional discovery, but the request must specify in detail the need for additional discovery.

If, however, a Group 1 litigant utilizes the formal discovery provisions of the Arizona Rules of Civil Procedures to obtain discovery from a Group 2 litigant, the Group 1 litigant has waived the protection of this section and must respond to those formal discovery requests made by the Group 2 litigant reasonably calculated to lead to the discovery of evidence admissible in that contested case.

### **[2] Discovery of Group 2 Litigants**

Subject to the limitations imposed by these Rules, an objector to a water right claimed by a Group 2 litigant may obtain discovery from the Group 2 litigant under any of the discovery provisions of the Arizona Rules of Civil Procedure.

### **[3] Discovery of Objectors**

In each contested case, the claimant or water user whose rights or uses have been objected to may obtain discovery from the objector. Such discovery shall be conducted according to these Rules and Rule 26, Arizona Rules of Civil Procedure. In particular, the discovery must be reasonably calculated to lead to the discovery of evidence admissible in that contested case. This scope will usually not allow detailed discovery of the objector's claimed water rights.

### **[4] Discovery of DWR**

Except as otherwise provided in these rules, a litigant may utilize the discovery provisions of the Arizona Rules of Civil Procedure to obtain discovery from DWR concerning a contested case. DWR, however, will not be required to answer interrogatories, respond to requests for admission, or respond to requests for production of documents or things without the prior approval of the Master.<sup>53</sup>

DWR personnel may be deposed on matters concerning a contested case. The notice of deposition will designate with reasonable particularity the matters upon which

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<sup>53</sup>In a watershed where DWR has completed the HSR, most adjudication information is available to the public, can be viewed at DWR, and can be copied for a reasonable fee.

examination is requested. DWR shall, within thirty (30) days of the service of the notice upon it, file a notice designating the name or names of the DWR personnel who will testify on behalf of DWR at the time of the deposition and, in the case of more than one individual, specifying the matters on which each person will testify.

### **§ 9.03 Commencement of Discovery**

After the issuance of the preliminary HSR for a watershed, a party may request, on an informal basis, discovery from a landowner or claimant in that watershed. Formal discovery may begin after the statutory deadline for filing objections to the HSR. For hearings on objections to the catalog of proposed water rights (*see* Section 15.00), discovery may commence after the deadline for filing objections to the catalog. The date for initially disclosing information in a contested case or information concerning an objection to the catalog of proposed water rights, when that information is of a type identified in Rule 26.1(a), Arizona Rules of Civil Procedure, will be set forth in a case management or scheduling order issued by the Master for that contested case or objection.

In all cases, litigants shall not schedule or take depositions until a Scheduling Conference has been held with the Master or his designee.

(Amended effective July 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **§ 9.04 Prerequisites to Formal Discovery**

The informal exchange of properly discoverable information, undertaken in good faith, is the prerequisite to any formal discovery under the Arizona Rules of Civil Procedure.

#### **[1] Prompt Disclosure of Information**

A Group 2 litigant has an initial and continuing obligation to promptly disclose certain information pursuant to Rule 26.1, Arizona Rules of Civil Procedure. If a Group 1 litigant utilizes the formal discovery provisions of the Arizona Rules of Civil Procedure to obtain discovery from a Group 2 litigant, the Group 1 litigant must disclose information pursuant to Rule 26.1, Arizona Rules of Civil Procedure.

(Amended effective July 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

## **[2] Obligations of Litigant Seeking Formal Discovery**

Before any formal discovery is requested, the proponent of the discovery must certify that:

1. The litigant has searched the DWR's Central Information Repository, other publicly available adjudication information, publicly available documents, and publicly available listings of water rights applications, permits and certificates, and the information sought is not found in the records;
2. The litigant has attempted to obtain the requested information through informal means; and
3. The litigant has conducted a search of pending uniform and nonuniform interrogatories and requests for admission previously propounded and on file in DWR's Central Information Repository, and the interrogatories or requests sought to be served do not duplicate or repeat interrogatories or requests already served and answered or presently pending.

(Amended effective July 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **§ 9.05 Notices of Formal Discovery**

Unless the Master orders otherwise, every paper pertaining to formal discovery in a contested case shall be served upon every litigant in a contested case in accordance with Rule 5(a) of the Arizona Rules of Civil Procedure.

The original of any notices of taking deposition, notices of service of interrogatories, notices of service of requests for admission, notices of service of requests for production of documents and things, and notices of service of requests for entry upon land for inspection or other purposes will be filed with the Clerk of the Superior Court; and a copy will be served upon DWR.

The Clerk of the Superior Court and DWR shall record the filing of these notices in the master docket and the contested case docket, file these notices in the appropriate contested case file, and list these notices on the monthly docket that is sent to subscribers.

### **§ 9.06 Interrogatories**

Without the consent of the Master, a litigant shall not ask another litigant to answer more than a total of forty (40) interrogatories (whether they be uniform interrogatories, nonuniform interrogatories, or a combination of both) in a single

contested case. Each question constitutes one interrogatory, whether it is denominated as an interrogatory, part of an interrogatory, or a subpart.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **[1] Uniform Interrogatories**

The Steering Committee in the Gila River adjudication and any claimant in the Little Colorado River adjudication are invited to recommend to the Master a set of uniform interrogatories that may be used for discovery in contested cases involving Group 2 litigants. Different sets of uniform interrogatories may be developed for different categories of claimants such as private water companies, municipalities, irrigation districts, and Indian tribes. Uniform interrogatories should include a request for a list of witnesses and exhibits a litigant intends to use at a hearing on the merits.

### **[2] Nonuniform Interrogatories**

If uniform interrogatories are adopted by the Master, they must be asked and answered by a litigant before nonuniform interrogatories may be asked of the litigant.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **[3] When Deemed a Request for Production**

An interrogatory may request that a litigant identify a particular document or thing and such an inquiry will be deemed to be a request for the production of that document or thing, pursuant to Rule 34 of the Arizona Rules of Civil Procedure, without service of a separate request for production.

## **§ 9.07 Requests for Admission**

### **[1] Limitation on Numbers**

Each request for admission will contain only one factual matter or request for genuineness of all documents or categories of documents. Each litigant without leave of the Master shall be entitled to submit no more than twenty-five (25) requests in any contested case except upon: (1) agreement of all the litigants in that contested case; (2) an order of the Master following a motion demonstrating good cause; or (3) an order of the Master following a comprehensive Pretrial Conference pursuant to Rule 16(c), Arizona Rules of Civil Procedure. Any interrogatories accompanying requests for admission will be deemed interrogatories under Rule 33.1, Arizona Rules of Civil Procedure.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

**[2] Reasonable Inquiry**

In order to make reasonable inquiry under Rule 11, Arizona Rules of Civil Procedure, a litigant responding to a request for admission must review the document specified or identified in the request.

**§ 9.08 Depositions**

**[1] Scheduling of Depositions**

The time and location of depositions shall be arranged by the litigants and the deponent and shall appear in the notice of deposition. A copy of each notice of deposition shall be served by mail upon DWR. No depositions will be scheduled on Saturday or Sunday or legal holiday (unless by stipulation and with the consent of the deponent) unless previously ordered by the Master upon good cause shown by the noticing litigant. Once started, a deposition may be continued by stipulation of the litigants.

**[2] Notice of Depositions**

Notices of deposition, along with any subpoena, must be filed and served no later than thirty (30) days before the scheduled deposition unless time is shortened by the Master for good cause; and, once scheduled and noticed, depositions will be cancelled only for good cause. If it becomes necessary to cancel or change the time, date, or location of a deposition, cancellation will be by a notice of cancellation that will be served, filed, and docketed in the same manner as notices of deposition. In addition, notice of cancellation will be given by telephone to DWR. Any claimant desiring to know the status of a noticed deposition may contact DWR the day prior to the scheduled deposition to determine whether the deposition will proceed as scheduled.

Only litigants in a contested case may ask questions of the deponent at a deposition being conducted in that contested case.

**[3] Videotaping of Depositions**

If a litigant desires to have a deposition videotaped, it is the litigant's responsibility to make the physical and financial arrangements for the videotaping of the deposition on VHS format and for obtaining the transcription of the deposition. The litigant noticing the deposition shall arrange for the reporting of the videotaped deposition by a certified court reporter. The videotape and the court reporter's transcript of the deposition, or a copy thereof, will be filed with DWR as soon as possible after the completion of the deposition.

**[4] Waiver of Signature of Deponent**

The witness' signature on the deposition will be deemed to have been waived unless the deposition is changed and signed by the witness and the changes and signature are filed with DWR within thirty (30) days after the original transcript of the deposition is filed with DWR.

**[5] Filing of Depositions**

All original transcripts of depositions and deposition videotapes will be filed with DWR by the litigant taking the deposition within thirty (30) days of the deposition and DWR will maintain a repository for that purpose. Filing with DWR, however, does not make the transcript or videotape a part of the record of the contested case. DWR shall index all depositions and deposition videotapes by contested case name and docket number, the name of the deponent, the name of the litigant noticing the deposition, and the date the deposition commenced.

For information concerning copies of depositions, see Section 10.03, *infra*.

**[6] Discovery Disputes at Depositions**

A deposition will not be adjourned by reason of a discovery dispute without first attempting to resolve the dispute through negotiation among the disputing parties. To the extent possible, all discovery disputes at any deposition must be handled by telephonic or personal communication with the Master.

**[7] Perpetuation of Testimony**

**[a] Watersheds Where HSR Has Been Filed**

In a watershed where the HSR has been filed, a litigant may move the Master for an order allowing the perpetuation by deposition of the testimony of a witness for potential use in a contested case even though a scheduling conference in that contested case has not been held. Notice of the deposition shall be given to the litigants in that contested case, if known, or to the Court-approved mailing list for that adjudication, if the litigants are not known.

**[b] Watersheds Where HSR Has Not Been Filed**

If a party desires to perpetuate the testimony of a person for use in a future contested case in a watershed where the HSR has not yet been filed, the party shall petition the Judge of the Superior Court to whom the adjudication of that watershed is

assigned, under the provisions of Rule 27(a), Arizona Rules of Civil Procedure, for an order allowing such a deposition.<sup>54</sup>

### **[8] Allocation of Deposition Costs**

Either before or after a deposition is taken, a litigant may move the Master for an order allocating the costs of a deposition among the litigants who participate in the deposition.

## **§ 9.09 Depositions of Expert Witnesses**

### **[1] Expert Witness Reports**

Each person who may testify as an expert witness in a contested case is required to prepare a report containing final opinions and conclusions and setting forth all information supporting those opinions and conclusions. The Case Management Order will specify the date for completing and filing the report.

When an expert witness report has been finalized, the report must be filed with DWR and copies of the report must be served upon the other litigants in the contested case. A copy of the report or a notice of filing of the report with DWR must be served upon those persons entitled to notice pursuant to Section 18.02. If a notice of filing is used, the notice will set forth a general description of the subject matter contained in the report.

DWR shall file the expert witness report in the file of the contested case for which the report was prepared.<sup>55</sup> The report, however, does not become part of the record of the case until it is admitted into evidence after cross-examination as allowed by Rule 706, Arizona Rules of Evidence.

DWR shall index all expert witness reports by the name of the expert witness, the name and number of the contested case for which the report was prepared, the litigant for whom the report was prepared, the date of the report, and the general subject matter of the report. Expert witness reports must be made available by DWR for inspection and copying during the Department's regular business hours, and any person may obtain copies from DWR at a reasonable copying charge.

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<sup>54</sup>The procedure provided by Rule 27(a) may not be entirely adequate in the general stream adjudication setting. A recommended procedure may be suggested under the issue resolution process. Note: In the Gila River Adjudication, a procedure for the perpetuation of testimony was adopted in Pretrial Order No. 2 Re: Perpetuation of Testimony (Nov. 26, 1986).

<sup>55</sup>If the deposition relates to more than one unconsolidated contested case, DWR shall file the deposition in the file of one of the contested cases and shall file notices in the other contested case files indicating where the deposition may be found.

## **[2] Notice of Deposition of Expert Witnesses**

A notice of deposition of an expert witness, whom a litigant expects to testify at the hearing in a contested case, must not be served until the expert's report required by Section 9.09[1] is filed. The notice of deposition of an expert witness must identify the report or reports that have been filed pursuant to Section 9.09[1] and that will be the subject of the deposition.

### **§ 9.10 Requests for Production of Documents and Things**

A request for production of documents or things will be in accordance with Rule 34, Arizona Rules of Civil Procedure, and will specify documents and things to be produced and the time at which and the place where the documents or things will be made available for inspection and copying. Any litigant interested in inspecting and copying any documents or things to be produced may participate fully at the time and place specified so long as the provisions of Section 9.12 of these Rules have been satisfied. The litigant requesting the production of documents shall provide DWR (for filing in its Central Information Repository), within thirty (30) days of the production, a copy of each document that was copied at the time of production and a copy of each photograph taken by the litigant at the time of production.

Except for good cause shown, a litigant may not be required to produce the same document or things more than once, whether the subsequent request for production is made by the same litigant that made the original request or by another claimant in the adjudication. If a litigant has previously produced the documents or things requested, the litigant may respond by directing the requesting litigant to the location of the documents or things.

No direct access to computerized information generated by or for a litigant may be obtained by DWR or by another litigant without the consent of the party from whom the information is sought or, absent consent, by an order of the Master obtained after a motion for direct access to computerized information generated by or for a litigant. When computerized information is provided to DWR, it shall be provided in hard copy or in a computer format readily usable by DWR.

### **§ 9.11 Entry Upon Land for Inspection or Other Purposes**

Except for inspections conducted by DWR pursuant to Section 45-256, Arizona Revised Statutes Annotated, entry upon land for inspection or other purposes will be in accordance with Rule 34, Arizona Rules of Civil Procedure, except that service and filing of the request shall be in accordance with the provisions of Section 9.05, *supra*, and a formal response to the request shall be served and filed in accordance with Section 9.05, *supra*.

In the event that informal arrangements are made between parties for entry upon land for inspection or other purposes, a notice will be filed and served by the party

making the entry and docketed in accordance with Section 9.05, *supra*, which notice shall set forth when and where the entry will take place and the purpose of the entry. The notice must be filed at least forty-five (45) days before the entry is to take place.

Other informal entries may be conducted by a litigant pursuant to the agreement of the landowner but without providing notice in accordance with Section 9.05, *supra*, but the landowner will not be protected from subsequent entries under this Section. In advance of such entry, the litigant shall advise the landowner of the possibility of additional entries if notice is not given.

Within sixty (60) days of an entry pursuant to notice, the litigant requesting the entry shall file with DWR a compilation of the results of or a compilation of the raw data obtained from the inspection or other purpose for which entry was made. This information will be maintained in DWR's Central Information Repository as provided for in Section 10.00, *infra*. The litigant supplying the compilation shall file a notice that it has supplied the information to DWR. The notice must be filed, served, and docketed in accordance with Section 9.05.

Except for good cause shown, only one entry upon land<sup>56</sup> of a litigant for inspection or other purposes may be made for a particular inspection or a particular purpose during the adjudication of a river system, whether the additional entry is sought by the litigant making the original entry or by any other claimant in the adjudication.

All litigants have a strong interest in minimizing intrusions to their real property created by requests for entry upon land by litigants and claimants. Any litigant, including the United States, State of Arizona, municipalities, and Indian tribes, who believes that an entry requested will be unreasonably disruptive may petition the Master to determine reasonable periods for such entry and any conditions of entry that are necessary to protect the health and safety of the litigants, but only after the litigants certify that they have cooperated to work out their differences and have been unable to do so.

### **§ 9.12 Attendance at Inspections of Land or of Documents**

When a request has been properly made by a litigant to inspect land, other claimants in that river system adjudication may participate in the inspection of the land if they give the litigant upon whom the request has been made fourteen (14) days advance written notice of their attendance. Copies of the notice must be filed with DWR.

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<sup>56</sup>The phrase "entry upon land" means a series of physical intrusions upon the land where necessary to complete the purpose for the entry. For example, in conducting a soils study, it may be necessary to physically intrude upon the land on more than one occasion in order to complete the study. In that event, "one" entry upon land means the number of physical intrusions reasonably necessary to complete the study being conducted.

When a request has been properly made by a litigant to inspect and copy documents, other claimants in that river system adjudication may participate in the inspection and copying of the documents if they give the person upon whom the request has been made seven (7) days advance written notice of their attendance. Copies of the notice must be filed with DWR.

### **§ 9.13 Filing of Discovery Other Than Depositions**

When interrogatories or requests for production or admission are answered, the answering litigant shall file the original of the answer with DWR and serve copies of the answer on the litigant propounding the discovery; on all other litigants in that contested case; and on any claimant entitled to notice under the provisions of Section 18.02, so long as the claimant has provided a self-addressed, stamped envelope. In cases of many litigants, the Master may limit the service of discovery and require litigants to obtain copies from DWR for a reasonable charge.

DWR shall maintain a repository for the answers to such discovery that will be indexed by the name of the contested case in which the discovery occurred, the contested case number, the name of the litigant propounding the interrogatories or request, the name of the litigant or person answering, and the date of the answer. Filing with DWR, however, does not make the answer, document, or information evidence in the contested case or a part of the record of the contested case.

### **§ 9.14 Duty to Supplement Responses to Discovery**

All litigants are required, pursuant to Rule 26(e), Arizona Rules of Civil Procedure, to supplement their responses to discovery no later than thirty (30) days prior to the date set for the commencement of the hearing on the merits in a contested case. Unless otherwise ordered, all litigants are required, pursuant to Rule 26.1, Arizona Rules of Civil Procedure, to supplement their disclosure of certain information no later than thirty (30) days after the information is revealed to or discovered by the disclosing litigant and no later than sixty (60) days prior to the date set for the commencement of the hearing on the merits in a contested case.

(Amended effective July 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **§ 9.15 Resolution of Discovery Disputes**

*See* Section 11.02, *infra*, for procedures for resolving discovery disputes.

## **§ 10.00 CENTRAL INFORMATION REPOSITORY**

DWR will maintain a Central Information Repository for the collection and storage of data and information relevant to these adjudications, including discovery information.<sup>57</sup>

### **§ 10.01 Location and Content**

DWR will collect and deposit data and information in the Central Information Repository such as, but not limited to, the following:

1. DWR surface and groundwater hydrology reports or studies and field work data specific to any watershed that is subject to adjudication.
2. State-wide or river system-wide data and information used by DWR in connection with the adjudications such as maps, hydrology reports, soils reports, crop reports, economic reports, demographic reports, population projections, water use information, and water supply projections.
3. Copies of claimants' files, including copies of each Statement of Claimant and copies of any amendments and assignments with supporting documentation.
4. Discovery information including the certifications, notices, interrogatories, depositions, subpoenas, requests, responses and answers referred to in Sections 9.05 to 9.08.
5. Expert witness reports provided for in Section 9.09[1].
6. Compilations of information obtained from entry on land as provided for in Section 9.11.
7. Available copies of prior court decrees that purport to adjudicate water rights on any stream or stream segment subject to this adjudication.
8. Copies of pleadings and objections in the Gila River adjudication and the Little Colorado River adjudication and in contested cases arising in those adjudications.
9. Minutes, reports, and other documents prepared for dissemination by Court-appointed committees in either adjudication.

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<sup>57</sup>The Special Master, DWR, the Clerks of the Court, and the State Archivist have finalized an archival or records retention plan for adjudication-related materials. Other DWR documents, such as permit and certificate records, are permanent records of the department.

## **§ 10.02 Abstracting and Indexing**

The litigant submitting a document to DWR for placement in the Central Information Repository shall abstract the document providing sufficient information about the document or data to allow for an efficient search for relevant and helpful documents and records, and DWR may require a litigant to correct or supplement a deficient abstract. Documents and data placed in the Central Information Repository will be uniquely numbered and will be indexed by DWR by contested case name (if any), contested case docket number (if any), the litigant or person who has deposited the document, the date of the deposit, and the abstract of the document or key words from the abstract. DWR shall maintain a document control system in order to provide for current and up-to-date information on the exact location of each document contained in the Central Information Repository.

## **§ 10.03 Access**

The Central Information Repository will remain open during the regular business hours of DWR for use by the public. DWR shall provide copying services for the reproduction of documents, at a reasonable fee, for the litigants, their representatives, or the public. DWR shall not make entire copies of a deposition transcript for any person unless that person has been unable to obtain a copy from the court reporter who transcribed the deposition.

If it becomes necessary to remove a document from the Central Information Repository for purposes of reproduction, the document will remain in the custody of DWR and any removal and redeposit will be done by DWR under the direct supervision of the DWR Deputy Director, or the designee of the Deputy Director.

## **§ 10.04 Access to Computerized Information**

In addition to making data or information available by hard copy in the Central Information Repository, DWR may, where feasible and appropriate, make information available by computerized methods. DWR shall provide the public with reasonable access at its offices to computerized information.

Any person, upon request and the payment of a reasonable fee, will be given direct access to DWR's computerized information that is generated by or for DWR and that may be utilized by DWR or a litigant for purposes of the adjudication. Any information collected by DWR associated with the investigation of a particular claim will not be made available to any litigant or to the public until the preliminary HSR which includes that claim is published.

### **§ 10.05 Use of Information in Repository**

Information or data placed in the Central Information Repository may be used by DWR in developing an HSR.<sup>58</sup> The placement or filing of documents or information in the Central Information Repository, or the use of such documents or information in the preparation of an HSR, however, does not make the documents or information part of the record in the general stream adjudication or any contested case thereof nor do the documents or information become admissible in evidence over the objection of a litigant unless the Master overrules the objection. The admissibility of documents or information placed in the Central Information Repository will be determined pursuant to the Arizona Rules of Evidence on the same basis as any other document or data compilation sought to be relied upon or admitted in evidence by DWR or a litigant.

### **§ 10.06 Withdrawal or Modification of Materials**

Information placed in the Central Information Repository may not be withdrawn, changed, altered, or amended by DWR or any litigant without an order of the Master obtained after a motion to withdraw, change, alter, or amend a specified document or set of information.

### **§ 10.07 Accuracy of Materials**

Except as provided in the Arizona Rules of Civil Procedure pertaining to the verification of discovery, neither DWR nor any litigant warrants the accuracy of any document or information simply because it has been placed in the Central Information Repository. A litigant does not waive any evidentiary objections to any document or information that it has placed in the Central Information Repository including, but not limited to, objections on the basis of lack of foundation, hearsay, relevancy, or materiality.

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<sup>58</sup>For an HSR to be admissible, the information or data must be "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . ." ARIZ. R. EVID. 703.

## **§ 11.00 MOTIONS**

The Superior Court, in its capacity as the general adjudication court, has adopted procedures governing the filing of motions involving substantive or procedural issues.<sup>59</sup> These procedures were adopted in anticipation of the early resolution of issues of broad significance to many litigants in the cases. As indicated in Section 12.00, *infra*, these procedures will remain applicable to motions brought before the Master that involve substantive or procedural issues of broad significance to other litigants in the general stream adjudication.<sup>60</sup>

These procedures, however, are inapplicable to contested case proceedings before the Master involving issues of interest only to the litigants who are involved in an individual contested case. For motions limited to such issues, the procedures set forth in Sections 11.01 to 11.04 are applicable.

### **§ 11.01 Motions Involving Issues Specific to a Contested Case**

Motions involving issues limited to an individual contested case shall be filed and considered under the general provisions of the Arizona Rules of Civil Procedure, including Rule 6 pertaining to "Time"; Rule IV of the Uniform Rules of Practice pertaining to "Civil Motions" (with the exception of Rule IV(c) pertaining to the duties of the court administrator); and Rule 3.2 of the Maricopa County Superior Court Local Rules also pertaining to "Civil Motions." (Note: Effective December 1, 2000, the Arizona Supreme Court abrogated in their entirety the Uniform Rules of Practice of the Superior Court and transferred certain of the provisions of the rules to the Arizona Rules of Civil Procedure and/or the Rules of the Arizona Supreme Court. Ariz. Sup. Ct. Oct. 10, 2000.)

### **§ 11.02 Discovery Motions**

#### **[1] Motions to Prevent Discovery**

Motions for protective orders will be governed in all respects by Arizona Revised Statutes Annotated, "Arizona Rules of Civil Procedure."

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

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<sup>59</sup>Pretrial Order No. 1 ¶ 8(A)-(G) (Gila River Adjudication, May 30, 1986); Pretrial Order No. 1 ¶ 10(C), at 16 (Little Colorado River Adjudication, Apr. 24, 1987).

<sup>60</sup>Important issues not at issue in contested cases before the Master may continue to be resolved in proceedings before the Judges of the Superior Court.

## **[2] Motions to Compel Discovery**

Pretrial orders in both the Gila River adjudication and the Little Colorado River adjudication adopt the same language governing motions to compel discovery:

Any party filing a Motion for Sanctions or a Motion to Compel Discovery pursuant to Rule 37 of the Arizona Rules of Civil Procedure shall file an additional certification as part of the Motion. This certification shall include:

1. A statement of the efforts made by the party or their counsel to resolve the discovery problem.
2. That the discovery sought is in compliance with the Court's limitations on discovery such as form, timing, scope, etc.

All parties are advised that any Motions not complying with these prerequisites will be summarily denied.<sup>61</sup>

Any motion for sanctions for failure to respond to discovery must be made within thirty (30) days after the date discovery is due or shall be deemed to have been waived by the litigant making the discovery request. Sanctions may be assessed under Rule 37, Arizona Rules of Civil Procedure.

### **§ 11.03 Hearing of Motions**

The Master will hear oral argument on motions filed in the Gila River adjudication in Phoenix commencing at 9:00 a.m. on the second Friday of each month. Motions will be heard in an assigned courtroom at the Arizona State Courts Building, 1501 West Washington, Phoenix.

The Master will also hear motions filed in the Little Colorado River adjudication on a monthly basis at a time and date to be set. Motions will be heard at the Apache County Courthouse in St. Johns or at another location to be determined by the Master. Motions in the Little Colorado River adjudication may also be heard, upon the agreement of all the litigants in a contested case, in Phoenix commencing at 9:00 a.m. on the second Friday of each month or at any other time agreed to by the Master.

As needed, additional hearing days will be scheduled. So long as the time and notice requirements of the Rules of Civil Procedure and these Rules are satisfied, litigants and counsel may schedule motions at a location agreeable to all the litigants in a contested case and the Master by contacting the Office of the Special Master at (602) 542-9600.

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<sup>61</sup>Pretrial Order No. 1 ¶ 8(B) (Gila River Adjudication, May 30, 1986); Pretrial Order No. 1 ¶ 9(B) (Little Colorado River Adjudication, Apr. 24, 1987).

#### **§ 11.04 Telephone Argument**

The Special Master may, in his discretion, order or allow oral argument on any motion or other proceeding by speaker conference call or regular telephone conference call where all participants can hear one another. Such telephone oral argument shall be governed by the procedures of Rule 3.2(e), Maricopa County Superior Court Local Rules. In addition, such motions must be scheduled by contacting the Office of the Special Master at (602) 542-9600.

## **§ 12.00 MOTIONS OR OBJECTIONS RAISING ISSUES OF BROAD LEGAL IMPORTANCE**

### **§ 12.01 Definition**

A motion or objection raises an issue of broad legal importance if the issue is one of procedural or substantive significance that is similar to issues in other contested cases and that, if decided in the instant contested case, may establish a precedent for other contested cases in that river system adjudication and, possibly, in another river system adjudication.

The following procedures have been adopted to allow participation by other claimants in the resolution of issues of broad legal importance arising in one contested case. Since the participation of these claimants will be limited to the resolution of the issues of broad legal importance, they need not have filed an objection to the HSR for that watershed so long as the remainder of this Section 12.00 is satisfied.<sup>62</sup>

### **§ 12.02 Identification of Issues by Litigants**

A litigant in a contested case may request the Master, by motion, to consider the objection or another motion made in the contested case as raising an issue of broad legal significance. The procedure for filing motions, specified in Section 11.01, will be followed except that notice of the motion to consider the objection or other motion as raising an issue of broad legal importance must be given to the litigants who are parties to the contested case, to the Court-approved mailing list for that river system,<sup>63</sup> and to DWR. The notice of the motion also must clearly specify in the descriptive summary that the motion proposes the consideration of an issue of broad legal importance. Any claimant in the river system may file a response to the motion and may be heard at oral argument on the motion.

A claimant in the same river system adjudication may, by a motion, and pursuant to a special appearance, request the Master to consider an objection or motion in a contested case, in which the moving claimant is not a litigant, as raising an issue of broad legal significance. The procedure for filing motions, specified in Section 11.01, will be followed except that notice of the motion to so consider the objection or other motion must be given to the litigants in the contested case, to the Court-approved mailing list for that river system, and to DWR. Any claimant in the river system may file a response to the motion and may be heard at oral argument on the motion.

A claimant in another river system adjudication may, by a motion, and pursuant to a special appearance, request the Master to consider an objection or motion in a contested case (in which the moving claimant is not a litigant) as raising an issue of

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<sup>62</sup>The indexed binders of these and other rulings, required by Section 14.03, should also assist in providing notice of these important issues and decisions.

<sup>63</sup>The Master may order notice to persons appearing on Court-approved mailing lists in other adjudications. See § 12.03, *infra*.

broad legal significance. The procedure for filing motions, specified in Section 11.01, will be followed except that notice of the motion to consider the objection or other motion as raising an issue of broad legal significance must be given to the litigants in the contested case, to the Court-approved mailing list for all river systems being adjudicated under the provisions of sections 45-251 *et seq.*, Arizona Revised Statutes Annotated, and to DWR. Any claimant in a river system being adjudicated may file a response to the motion and may be heard at oral argument on the motion.

### **§ 12.03 Designation by Master**

On his own motion, the Master may identify objections, issues raised by objections, issues raised by Watershed File Reports, or motions that raise issues of broad legal significance to claimants throughout the river system being adjudicated or to litigants in other river system adjudications in Arizona. In that event, the Master will order the moving litigant or the Clerk of the Court to provide notice of the motion, the issue raised by objection, or the issue raised by a Watershed File Report, to the Court-approved mailing list in one or more river system adjudications. If the Master believes that pending motions, objections, or Watershed File Reports in two or more individual contested cases involve issues of broad significance, he may consolidate the cases for purposes of considering the motions, objections, or Watershed File Reports and will order the moving litigant or the Clerk's office to provide notice thereof to the Court-approved mailing list in one or more river systems. Whenever a Watershed File Report or a contested case is identified as raising an issue of broad legal significance, the Master will order that notice be given to the landowner listed in the Watershed File Report and all litigants in the contested case.

The Master will attempt to identify and schedule for early hearing those issues of broad legal significance, the resolution of which is necessary for the expeditious progress of the adjudications.<sup>64</sup>

The Gila River Steering Committee or any claimants in the Gila River and Little Colorado River adjudications may submit recommendations to the Master concerning those objections or motions that may raise issues of broad legal significance. Copies of such recommendations must be served by mail on those persons appearing on the Court-approved mailing list for both river system adjudications; and any claimant may file a response within fifteen (15) days.

(Amended effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

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<sup>64</sup>In most cases, the participation of claimants from the same or another river system, who have entered a special appearance in a specific contested case to participate in the resolution of an issue of broad legal importance, will be limited to the resolution of that issue of broad legal importance.

## § 12.04 Procedure

In his order designating an objection or motion as raising an issue of broad legal significance, the Master will specify the procedure for a hearing on the issue of broad legal significance. The order will include a schedule of the proceedings for resolving the issue of broad legal significance and the requirements for the service of pleadings concerning the issue of broad legal significance. The Master will attempt to separate the issue of broad legal significance from other issues in the contested case.

The Special Master may order the service of the motion and all accompanying and responding pleadings or the service of the notice specifying the issues of broad legal significance upon the Court-approved mailing list in another river system adjudication if he determines that the motion or issue raises an issue of broad legal significance for that adjudication as well.

The Master's determination of an issue of broad legal significance will be filed with the Clerk of the Court and filed in the contested case in which the issue arose.<sup>65</sup> The Clerk will serve copies of the determination to the Court-approved mailing lists in both adjudications. Copies of the determination will be available pursuant to the procedure set forth in Section 14.03.

Any claimant may request the Master to report his determination of an issue of broad legal significance to the Superior Court under Rule 53, Arizona Rules of Civil Procedure, prior to the completion of the Master's report of the proposed water rights in a watershed. Otherwise, the Master's determination of an issue of broad legal significance may be objected to by a claimant when the Master's watershed report is submitted to the Superior Court.

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<sup>65</sup>One comment on the proposed Rules raised several questions about the implementation of a ruling on an issue of broad legal importance. While significant, these questions are complex and are probably best answered in an actual situation.

## **§ 13.00 HEARING PROCEDURES**

### **§ 13.01 Preliminary Matters**

Hearings will begin promptly at the time scheduled. Counsel and all litigants are requested to be present fifteen (15) minutes early so that preliminary matters can be attended to and hearings can commence on time.

### **§ 13.02 Informal Procedures**

With the Master's consent, litigants may stipulate to informal procedures for the conduct of a hearing including the relaxation of the Rules of Evidence.

### **§ 13.03 Subpoenas**

Litigants may procure the attendance of witnesses in contested case proceedings before the Master by the issuance and service of subpoenas as provided in Rule 45, Arizona Rules of Civil Procedure. Subpoenas for contested cases in the Little Colorado River adjudication must be issued by the Clerk of the Superior Court, Apache County. Subpoenas for contested cases in the Gila River adjudication must be issued by the Clerk of the Superior Court, Maricopa County, 201 West Jefferson (First Floor, Filing Counter), Phoenix, Arizona.

If without adequate excuse a witness fails to appear or give evidence, the witness may be punished for contempt and may be subject to the consequences, penalties, and remedies provided in Rules 37 and 45, Arizona Rules of Civil Procedure.<sup>66</sup>

### **§ 13.04 Witness Fees**

Statutory provisions concerning the payment of fees and mileage when a witness has been subpoenaed apply to contested case proceedings before the Master.<sup>67</sup> A material witness attending a hearing will be paid by the litigant calling the witness the sum of \$12 for each day's attendance to and including the time it was necessary for the witness to leave his or her residence and go to the place of the hearing and his or her discharge as a witness. The witness will also be paid mileage at the rate of \$0.20 for each mile actually and necessarily traveled from his or her place of residence in the State of Arizona to the place of hearing, to be computed one-way only.

Witness fees and mileage will not be paid to an employee of DWR's Adjudications Division who has been called as a witness based on knowledge or information obtained by him or her as the result of that employment.

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<sup>66</sup>ARIZ. R. CIV. PROC. 53(e).

<sup>67</sup>See ARIZ. REV. STAT. ANN. § 12-303.

### **§ 13.05 Burden of Proof**

The burden of proof as used in these Rules is the burden of producing evidence, satisfactory to the Master, of a particular fact at issue.<sup>68</sup> The burden of proof is established by a preponderance of the evidence. In proceedings conducted according to these Rules, the burden of proof obligation arises on at least five occasions: (1) when there has been no objection to a Watershed File Report; (2) when the landowner has objected to his or her own Watershed File Report; (3) when a claimant has objected to the Watershed File Report of another person; (4) when a claimant has objected to portions of an HSR other than the Watershed File Reports; and (5) when a landowner or claimant has objected to the catalog of proposed water rights.<sup>69</sup> The following discusses the burden of proof in these circumstances.

#### **[1] No Objection to Watershed File Report**

In cases where there has been no objection to a Watershed File Report, the contents of the report may be summarily admitted into evidence<sup>70</sup> if the Master determines that the contents are otherwise admissible under the Arizona Rules of Evidence.<sup>71</sup> The Master may require the landowner or DWR to offer additional evidence if the contents of the Watershed File Report are insufficient to determine the legal characteristics of any water right described in the Watershed File Report.

#### **[2] Objection to Own Watershed File Report**

In cases where the only objector to a Watershed File Report is the landowner identified in the report, the portions of the report not objected to may be summarily admitted into evidence if the Master determines they are otherwise admissible under the Arizona Rules of Evidence.

The objectionable portions of the Watershed File Report will not be admitted into evidence until the landowner has had a fair and reasonable opportunity to contest the validity or admissibility of those portions.<sup>72</sup> If the objectionable portions of the report relate to the legal characteristics of a water right, the landowner has the burden of producing admissible evidence sufficient for the Master to determine the disputed legal characteristics of the water right.

#### **[3] Objection to Watershed File Report of Another**

In cases where a claimant has objected to the Watershed File Report of another person, the unobjectionable portions of the report may be summarily admitted into

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<sup>68</sup>See E. CLEARY, MCCORMICK ON EVIDENCE § 336, at 947 (3d ed. 1984).

<sup>69</sup>Presumptions under Arizona law may affect the burden of proof in an individual contested case.

<sup>70</sup>ARIZ. REV. STAT. ANN. § 45-256(D).

<sup>71</sup>See, e.g., ARIZ. R. EVID. 702 (regarding the qualification of an expert).

<sup>72</sup>ARIZ. REV. STAT. ANN. § 45-256(B).

evidence if the Master determines they are otherwise admissible under the Arizona Rules of Evidence.

The objectionable portions of the Watershed File Report will not be admitted into evidence until the objector has had a fair and reasonable opportunity to contest the validity or admissibility of those portions. The objector must establish a prima facie case<sup>73</sup> that the objectionable portions of the report are invalid or inadmissible. If a prima facie case is made, the burden then shifts to the landowner to produce admissible evidence sufficient for the Master to determine the disputed legal characteristics of a water right.

#### **[4] Objection to Other Portions of the HSR**

In cases where a claimant has objected to portions of the HSR other than the Watershed File Report volumes, the unobjectionable portions of the report may be summarily admitted into evidence if the Master determines they are otherwise admissible under the Arizona Rules of Evidence.

The objectionable portions of the HSR will not be admitted into evidence until the objector has had a fair and reasonable opportunity to contest the validity or admissibility of those portions. The objector has the burden of producing admissible evidence sufficient for the Master to determine that those portions of the HSR are inadmissible or invalid.

#### **[5] Objection to the Catalog of Proposed Water Rights**

If, during the objection period on the catalog of proposed water rights, a claimant objects to an abstract of a potential water right claimed by that claimant, the claimant has the burden of producing admissible evidence sufficient for the Master to determine (1) that the objection could not have been reasonably asserted during the original objection period for the HSR; and (2) the correct legal characteristics of the water right.

If a claimant objects to an abstract of a potential water right claimed by another claimant or landowner, the objector must establish a prima facie case (1) that the objection reasonably could not have been asserted during the original objection period for the HSR; and (2) that the objectionable portions of the abstract are invalid. If a prima facie case is made, the burden then shifts to the landowner or claimant claiming the potential water right to produce admissible evidence sufficient for the Master to determine (1) that the objection could have been reasonably brought during the original objection period; or (2) the disputed legal characteristics of the water right.

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<sup>73</sup>A prima facie case consists of evidence sufficient to allow the Master to reach a reasonable decision in favor of the objector unless the landowner offers evidence in rebuttal. *See* BLACK'S LAW DICTIONARY 1189-90 (6th ed. 1991).

### **§ 13.06 Order of Proof**

Based on the foregoing discussion of the burden of proof, the order of proof at hearings on objections filed by a claimant or landowner to his or her own Watershed File Report, his or her own abstract of potential water right, or to portions of an HSR other than the Watershed File Report volumes is as follows:

1. Opening statement of claimant or landowner;
2. Testimony of DWR (in Master's discretion);
3. Introduction of evidence by claimant or landowner; and
4. Closing statement of claimant or landowner.

The order of proof at hearings on objections filed by a claimant to a Watershed File Report or to an abstract of potential water right of another claimant or landowner is as follows:

1. Opening statement of objector;
2. Opening statement of claimant or landowner (which may be deferred until after close of evidence by the objector);
3. Testimony of DWR (in Master's discretion);
4. Introduction of evidence by objector;
5. Introduction of evidence by claimant or landowner;
6. Introduction of rebutting evidence by objector;
7. Closing statement of objector; and
8. Closing statement of claimant or landowner.

Depending on the issues in individual contested cases, the order of proof may vary. The order of proof in these cases will be specified in a Prehearing Order.

### **§ 13.07 Allocation of Time**

The final prehearing order will specify the amount of time allocated for the hearing on the merits and how the time will be divided between the litigants. Unless good cause is shown, this time allocation will be enforced at the hearing on the merits and no additional time will be provided.

## **§ 14.00 POST-HEARING PROCEDURES**

### **§ 14.01 Findings of Fact and Conclusions of Law**

For each contested case submitted for his decision after a hearing, the Master will prepare findings of fact and conclusions of law which constitute the grounds for his decision in the contested case and which will be filed with the Master's report.<sup>74</sup> The Master may require the litigants in the case to submit proposed findings of fact and conclusions of law after the conclusion of the hearing. A litigant may voluntarily submit proposed findings of fact and conclusions of law prior to or during the hearing or within thirty (30) days of the conclusion of the hearing if the litigant notifies the Master, prior to the conclusion of the hearing, that proposed findings of fact and conclusions of law will be filed.

### **§ 14.02 Decisions in Contested Cases**

The Master will prepare a written decision for each contested case submitted for his decision after a hearing. The Master's decision will be filed with the Clerk of the Court, docketed, and placed in the contested case file. The decision will be served upon the litigants in the contested case, upon DWR, and upon any other persons who have requested pleadings under the provisions of Section 18.02.

The Master's decision in a contested case will be reflected, to the extent necessary to identify and legally define the water rights for the watershed, in his report and proposed decree submitted to the Superior Court.

### **§ 14.03 Availability of Precedential Decisions in Contested Cases**

If the Master believes that any ruling, order, opinion, or decision in one contested case may be of special interest to litigants in other contested cases, he will as a matter of convenience<sup>75</sup> place the text of the document in a special indexed binder available for public inspection at his office; at the State Law Library; at the Maricopa County Law Library; at the office of the Clerk of the Court, Apache County; and at other locations he may designate. The Master also plans to make these decisions available by modem connection to his computer system or to DWR's computer system.

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<sup>74</sup>See ARIZ. REV. STAT. ANN. § 45-257(A)(2); ARIZ. R. CIV. PROC. 52(a).

<sup>75</sup>Other prior decisions of the Master, even if not appearing in the special indexed binder, may still be cited for their precedential value in proceedings before the Master.

## **§ 15.00 CATALOG OF PROPOSED WATER RIGHTS**

### **§ 15.01 General**

After all contested cases in a watershed have been resolved by stipulation or by decision of the Special Master, the Special Master will prepare a catalog of proposed water rights for the watershed.<sup>76</sup> This catalog will contain abstracts of all individual water rights that are proposed to be recognized and quantified in the watershed under adjudication. The catalog will also contain those portions of the HSR that are required to complete the adjudication of the watershed. The catalog will be based on those Watershed File Reports that were not objected to (so long as a Statement of Claimant was properly filed), stipulations between the litigants in contested cases, and the Special Master's decisions in all other contested cases in the watershed.

The catalog will also specify any additional filing fees that must be paid by each claimant as required by Section 45-254(H), Arizona Revised Statutes Annotated. The catalog will indicate that any additional filing fees must be paid to DWR no later than the date set for the filing of objections to the catalog of proposed water rights.<sup>77</sup>

### **§ 15.02 Additional Information for Preparing Catalog of Proposed Water Rights**

In order to provide information for preparing the catalog of proposed water rights, the Master may issue a case management order directing a claimant to appear before the Master at a hearing to present testimony and evidence to resolve ambiguities or inconsistencies in the claimant's Watershed File Report--even when the Watershed File Report or that portion of the Watershed File Report have not received an objection. The case management order or notice or specimen thereof will be served on those persons appearing on the Court-approved mailing list for that adjudication and the hearing will not be held any earlier than 30 days following the service of the order, notice or specimen.

(Added and sections 15.03 through 15.06 renumbered effective May 1, 1992, Gila River Adjudication, July 6, 1992, Little Colorado River Adjudication.)

### **§ 15.03 Abstracts of Potential Water Rights**

The catalog will contain an abstract for each water right proposed to be recognized and quantified in the watershed under adjudication. The abstract will contain all those characteristics of the water right that are important for legal definition of the

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<sup>76</sup>In resolving objections to the first few HSRs, the Master believes a catalog of proposed water rights is necessary to provide sufficient notice to claimants. The catalog will contain findings of fact and conclusions of law on matters resolved at that time; it may be similar to a draft report submitted under Rule 53(j), ARIZ. R. CIV. PROC. Future revisions in the HSR format may allow suspension of the catalog procedure.

<sup>77</sup>See § 4.05, *supra*.

water right. Depending on the type of water use, the abstract may include some or all of the following characteristics:

- Priority date (date, month, year)
- Beneficial use (type of use)
- Source of water
- Location of the place of diversion
- Location of the place of use
- Number of acres irrigated (in the case of irrigation rights)
- Flow rate (in cubic feet per second)
- Volume (in acre-feet per annum)
- Period of use
- Owners

Claimants or litigants may request the Special Master to include additional characteristics for individual water rights so long as information to determine the additional characteristics appears in the HSR for the watershed or in the record of the proceeding.

#### **§ 15.04 Service of Catalog of Proposed Water Rights**

The Master will file the catalog of proposed water rights, and the certificate of service thereof, with the Clerk of the Court. The Master will serve the catalog or notice of the availability of the catalog on those persons who were originally served with notice of the availability of the HSR for that watershed or reservation (updated by DWR for changes of address and ownership that have since occurred) and on all other persons who are identified in the catalog as owners of proposed water rights.

#### **§ 15.05 Objections and Objection Period**

The filing of the catalog of proposed water rights will commence a sixty (60) day objection period.<sup>78</sup> A claimant in the watershed for which the catalog has been issued may object on the basis that the claimant's claimed water right has not been recognized, that the abstract of the claimant's claimed water rights is incorrect, or that the abstract of the water right of another claimant is incorrect. A claimant of a water right outside the watershed may object for the reason that the abstract of the water right of another claimant is incorrect. If the claimant, whether within or outside the watershed, fails to object at this time, he or she will be barred from objecting to the water right at a later time.

In order to preserve the right to file an exception to the Master's final report, a claimant need not object to that portion of the catalog which represents the result of adverse ruling made by the Master in a contested case proceeding.

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<sup>78</sup>A longer objection period is not being specified since claimants will have the opportunity to monitor, over a period of many months, the resolution of the original objections to an HSR.

Objectors to the catalog of proposed water rights must not assert objections that reasonably could have been asserted during the original 180-day objection period for that watershed or reservation HSR. The Master will consider motions to dismiss objections for this reason and may dismiss objections on his own motion.

### **§ 15.06 Filing of Objections**

Objections to the catalog of proposed water rights must be filed with the Clerk of the Court on the Court-approved objection form (to be provided in the future) but may be supplemented by other attachments as necessary. A separate objection must be filed for each abstract describing a water right to which an objection is made. Objectors shall file the original and two copies of each objection, and the objection must be accompanied by a certificate of service indicating the service of the objection (including all attachments) upon the person listed in the catalog as the owner of the proposed water right. Where a water provider or other agent has filed Statements of Claimant in behalf of its members or users, the objection may be served on the water provider or agent.<sup>79</sup> Service by first-class mail is sufficient if in conformance with Rule 5(c) of the Arizona Rules of Civil Procedure. A certificate of service is not required if the claimant files an objection to the abstract describing the claimant's own claimed water right (unless the water right is also claimed by another person).

Objections are filed with the Clerk of the Superior Court. Objections must be filed within sixty (60) days following the commencement of the objection period. This means that they must be received by the Clerk of the Superior Court on or before the 60th day. Rule 6(e), Arizona Rules of Civil Procedure, which normally extends by five days the time for filing pleadings sent by mail, does not extend this objection period.

The Master and the Clerk of the Court will organize the objections into contested case files with unique captions and docket numbers utilizing the numbering system described in Section 7.01[1]. The Master may order the consolidation of contested cases raising common issues of fact or law, and litigants may move the Special Master for such consolidation where appropriate.

### **§ 15.07 Hearings on Objections to Catalog of Proposed Water Rights**

The Master will schedule prehearing conferences and hearings on objections to abstracts contained in the catalog of proposed water rights. These prehearing conferences and hearings will be governed by the procedures set forth in Sections 8.00 and 13.00 of these Rules.

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<sup>79</sup>See § 6.05, *supra*.

## **§ 16.00 MASTER'S REPORT AND PROPOSED DECREE**

### **§ 16.01 General**

After all objections to the catalog of proposed water rights for a watershed or reservation have been resolved either by stipulation or decision of the Master, the Master will prepare, file, and submit to the Superior Court his report and proposed final decree for the watershed or reservation. A copy of the proposed report and proposed final decree, or a notice of the availability of the same, will be served by mail upon all claimants in the watershed or on the reservation under adjudication, all other claimants in the remainder of the river system, and all other persons identified in the report as owning proposed water rights. The Master will file a certificate of service by mail indicating such service.

The Master may, pursuant to Rule 53(j), Arizona Rules of Civil Procedure, issue a draft report and draft proposed final decree for the watershed or reservation.

### **§ 16.02 Content of Report and Proposed Final Decree**

The detailed content of the Master's report for a watershed or reservation and the proposed final decree is not specified by the general adjudication statute, the Arizona Rules of Civil Procedure,<sup>80</sup> or the Orders of Reference to the Master. While progress in the adjudications will help define the necessary content of the Master's report and proposed final decree, the Master's report will probably include the following components:

1. Narrative concerning the geology, hydrology, history, and general water use history of a watershed (based upon the unobjected portions of the HSR and upon proposed decisions in contested cases).
  - a. Proposed decisions, proposed findings of fact and conclusions of law, transcripts, and exhibits resulting from proceedings on contested portions of the HSR that are utilized in the narrative.
2. Proposed decisions, proposed findings of fact and conclusions of law, transcripts, and exhibits resulting from proceedings on contested portions of the HSR that have raised issues of broad legal significance in the adjudication.

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<sup>80</sup>ARIZ. R. CIV. PROC. 53(g) provides that:

The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

3. Proposed decisions, proposed findings of fact and conclusions of law, transcripts, and exhibits resulting from contested case proceedings involving Watershed File Reports (but not involving issues of broad legal significance).
4. Catalog of proposed water rights.
  - a. Abstracts for proposed water rights based on Watershed File Reports for which objections were not received.
  - b. Abstracts for proposed water rights based on the proposed decisions in contested cases.
5. Watershed maps indicating the location of proposed water rights.

The Master may schedule hearings on the content of his report and proposed final decree.

### **§ 16.03 Objections to Master's Report and Proposed Decree**

The general adjudication statute provides that "[e]ach claimant shall have the right to file with the court written objections to the master's report within one hundred eighty days of the date on which the master's report was filed with the court."<sup>81</sup>

The Court shall hold such hearings as it deems necessary and may adopt, modify, or reject the Master's reports in whole or in part, all in accordance with Rule 53, Arizona Rules of Civil Procedure, compiling all the reports into a single comprehensive judgment as to the whole river system.

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<sup>81</sup>ARIZ. REV. STAT. ANN. § 45-257(A)(2). Note: This section was amended in 1995 to provide in relevant part as follows:

Each claimant may file written objections with the court to any rule 53(g) report within the later of sixty days after the report is filed with the court or within sixty days after the effective date of this amendment to this section. If the report covers an entire subwatershed or federal reservation, each claimant may file with the court written objections to the report within one hundred eighty days of the date on which the report was filed with the court.

## § 17.00 FINAL DECREE

The general adjudication statute requires that the Court, in its final decree or judgment, shall:

1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source, provided that when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court, the court shall accept the determination of such rights and dates of appropriation as found in the prior decree unless such rights have been abandoned. Except if otherwise provided in an applicable prior filing, certificate of water right or prior decree, the decreed capacity of a reservoir includes the right to continuous filling and refilling in priority throughout the year.
2. Establish, in whatever form determined to be most appropriate by the court, one or more tabulations or lists of all water rights and their relative priorities on the river system and source.
3. Identify all claims and uses determined to be de minimis uses within the river system and source.
4. Refer the final judgment or decree to the director [of the Department of Water Resources] for administration and enforcement under the continuing jurisdiction of the court.
5. Make appropriate orders to ensure that the entire record of the general adjudication is preserved in an accessible and usable form.
6. Record a certified copy of the final judgment or decree in each county within the geographical scope of the general adjudication which shall constitute constructive notice of the contents of the judgment or decree.<sup>82</sup>

The Gila River Adjudication Court has made a prehearing ruling<sup>83</sup> that requires the preparation by DWR of a comprehensive report integrating all of the HSRs for a river system, an objection period on the comprehensive report, hearings on objections before the special master, and the submission of a final comprehensive report to the Court. At the appropriate time, additions to these Rules will be proposed to implement or modify this comprehensive process.

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<sup>82</sup>*Id.* at § 45-257(B)(1) - (6). Note: Subsection B(1) was amended, and subsection B(3) was added in 1995.

<sup>83</sup>Pretrial Order No. 1 ¶ 12(C) - (I) (Gila River Adjudication, May 30, 1986).

## **§ 18.00 FILING AND SERVICE OF PLEADINGS AND PAPERS**

### **§ 18.01 Filing of Pleadings and Papers**

The original of a pleading or paper filed in the Gila River adjudication (including any contested cases in that adjudication), plus any required copies, must be filed with the Clerk of the Court at the following address:

Clerk of the Superior Court  
Maricopa County  
Attn: Water Case  
601 W. Jackson Street  
Phoenix, AZ 85003

The original of a pleading or paper filed in the Little Colorado River adjudication (including any contested cases in that adjudication), plus any required copies, must be filed with the Clerk of the Court at the following address:

Clerk of the Superior Court  
Apache County Courthouse  
P.O. Box 365  
St. Johns, AZ 85936

### **§ 18.02 Service of Pleadings and Papers**

In these Rules, "service" or "serve" refers to that type of service described in Rule 5(c), Arizona Rules of Civil Procedure, specifying how pleadings and other papers are served after an appearance has been made in an action. Generally, "service" means, at a minimum, to send a document, properly addressed and affixed with sufficient postage, by first-class mail to a person at his or her last-known address.

Unless otherwise provided by these Rules, a copy of all pleadings and papers filed in a contested case, as well as notices of and responses and answers to discovery requests filed with DWR, will be served upon all litigants in that contested case (with the exception of deposition transcripts). In addition, a copy of all pleadings and papers, as well as notices of discovery requests and notices of responses and answers to discovery requests (with the exception of deposition transcripts), will be served upon any other claimant (including a lessee who asserts an interest in or the use of a water right) who has filed with the Clerk of the Court a written request in the contested case to receive copies of pleadings and papers. The certificate of service filed with the pleading or paper must indicate such service. In cases of many litigants or other claimants requesting copies, the Master may limit the service of discovery and require litigants or other claimants to obtain copies from DWR for a reasonable charge.

Pleadings or other documents filed in individual contested cases need not be served on the Master unless required by the Case Management Order entered in that

contested case. Pleadings or other documents served on all persons appearing on the Court-approved mailing list for an adjudication, however, shall be served on the Master.

**§ 18.03 Service of Additional Copies of Pleadings and Papers**

A copy of all pleadings and papers filed in a contested case (including all pleadings and papers pertaining to an HSR or to an objection that have been filed before a contested case has been designated), as well as notices of discovery requests and notices of responses and answers to discovery requests, shall be served upon both the Master and DWR at the following addresses:

Special Master  
Arizona General Stream Adjudication  
Arizona State Courts Building, Suite 228  
1501 W. Washington  
Phoenix, AZ 85007

Litigation Support Section  
Adjudications Division  
Arizona Department of Water Resources  
3550 N. Central Avenue  
Phoenix, AZ 85012

In addition, answers and responses to discovery requests must be filed with DWR as required in Section 9.08[5], *supra* and Section 9.13, *supra*.

The certificate of service filed with the pleading or paper must indicate the completion of service according to this section.

## **§ 19.00 OTHER PREHEARING AND HEARING PROCEDURES**

### **§ 19.01 General**

The following describes several general procedural requirements that will be applied in contested case proceedings before the Master including prehearing conferences, hearings on motions, and hearings on the merits of an objection.

### **§ 19.02 Recording of Prehearing Conferences and Hearings**

While certain prehearing conferences (such as scheduling or readiness conferences) are held "off the record," other prehearing conferences, hearings on motions, and hearings on the merits in contested cases are held on the record. The normal method of recording these hearings is on audio tape (cassettes) unless the Master orders, or a litigant requests, recording of the proceeding by a court reporter.<sup>84</sup> Audio tapes of hearings will not normally be transcribed unless a litigant or other person requests a written transcript. Persons desiring such a written transcript of a proceeding should order the transcript through the Office of the Special Master. The first person requesting a transcript will be charged the full cost of the transcription. Other persons requesting a transcript will be charged the full cost of copying the transcript unless other financial arrangements are made with the person originally ordering the transcript. Copies of the audio tapes of a hearing may also be ordered through the Office of the Special Master for a fee.

When a litigant requests that a prehearing conference or hearing be recorded by a court reporter, the litigant should make arrangements for the attendance of a court reporter through the Office of the Special Master.

### **§ 19.03 Exhibits**

#### **[1] Marking of Exhibits**

All exhibits in a contested case (including exhibits attached to objections, exhibits attached to answers to interrogatories and other discovery, exhibits attached to motions, and exhibits offered at a hearing) will be marked using the contested case number followed by a unique number. Numbers will not be repeated. This consecutive numbering system is being utilized to avoid a document being numbered differently many times during the contested case proceedings.

The landowner whose Watershed File Report has been objected to shall mark his or her exhibits from 0001 through 0999. The first objector (including a landowner who is objecting to his or her own Watershed File Report) shall mark his or her exhibits from 1000 to 1999. The second objector shall mark his or her exhibits from 2000 to 2999, and so forth for each additional objector.

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<sup>84</sup>See ARIZ. REV. STAT. ANN. § 38-424.

Thus, the landowner's first exhibit in contested case no. 64 in the Silver Creek watershed would be numbered:

Exhibit No. 6417-033-064-0001

The first objector's first exhibit in contested case no. 545 in the San Pedro watershed would be numbered:

Exhibit No. W1-11-545-1000

The Master will specify the exhibit numbering system to be used in contested cases involving portions of an HSR other than the Watershed File Reports.

## **[2] Copies of Exhibits for Master and for Litigants**

To the extent possible, a litigant shall make sufficient copies of all offered exhibits available to the Special Master and all other litigants in a contested case. In a contested case involving many exhibits to which witnesses are asked to refer, the Special Master may require the litigants to prepare one or more exhibit books (to be located near the witness stand for easy reference by witnesses) and may require intervenors or persons making special appearances to obtain copies of exhibits from DWR for a reasonable copying charge.

## **[3] Provision of Copies to DWR**

To the extent possible, a litigant who offers an exhibit at any time during a contested case shall insure that a legible copy of the exhibit is deposited with DWR. DWR shall index and maintain such exhibits in its Central Information Repository. In the cases of exhibits attached to answers to interrogatories or to a motion, this requirement will be satisfied by the service of the pleading upon DWR as required by Section 18.03. At evidentiary hearings, the litigant should offer both the exhibit for the court file and a copy of the exhibit for deposit with DWR in addition to the other copies required by Section 19.03[2], *supra*. This requirement will ensure that DWR maintains a complete, centralized collection of exhibits for the adjudication.

## **§ 19.04 Electronic Submission of Pleadings**

Litigants may occasionally submit pleadings to the Master, such as case information reports, proposed findings of fact and conclusions of law, or proposed orders, that will be modified by the Master prior to his issuing them in final form. In these circumstances, the preparation of the final documents will be facilitated if litigants having computer capacity voluntarily submit their pleadings to the Master on computer disk or by modem (in addition to any other filing requirements that apply, such as the filing of the original with the Clerk and service of copies on other litigants). If documents are to be submitted on a computer disk, they should be submitted on a 3.5 inch floppy disk and should be prepared using WordPerfect or Microsoft Word word

processing software. Please contact the Office of the Special Master for more specific information pertaining to the submission of documents or data bases by modem, on disks other than 3.5 inch floppy disks, or using other computer programs.

#### **§ 19.05 Attendance at Hearings**

Unless the Master otherwise orders, litigants shall attend, either in person or through their counsel, the hearing on the merits in a contested case and those prehearing conferences identified in these Rules as requiring the personal attendance of the litigants. Sanctions will be imposed when the failure of a litigant or counsel to attend a prehearing conference or a hearing has delayed the disposition of a contested case.

#### **§ 19.06 Continuances**

The Case Management Order in a contested case provides firm dates for prehearing conferences, for the completion of discovery, for the completion of certain motions, and for the hearing on the merits. A prehearing conference or a hearing on a motion specified in the Case Management Order may only be continued if all litigants in the contested case agree or for good cause shown, so long as the Master is provided with five (5) days advance notice of the continuance and the continuance does not delay the hearing on the merits. No continuance in the completion of all discovery and no continuance of a hearing on the merits will be granted, except for sufficient cause supported by an affidavit, or by operation of law.

## **§ 20.00 MISCELLANEOUS PROVISIONS**

### **§ 20.01 Standard Measurements of Water**

In contested case proceedings before the Master, the following water measurements and conversions will be used:

1. One (1) miner's inch equals 11.22 gallons per minute (gpm);<sup>85</sup>
2. Forty (40) miner's inches equals one (1) cubic foot per second (cfs);
3. One (1) cubic foot per second (cfs) equals 448.8 gallons per minute (gpm); and
4. One (1) acre-foot equals 325,851 gallons.

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<sup>85</sup>The definition of "miner's inch," while applicable in most cases, does not preclude testimony in an individual contested case that, by custom or practice in a particular region or location, a different definition was historically used.