

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

IN RE THE GENERAL ADJUDICATION )  
OF ALL RIGHTS TO USE WATER IN )  
THE LITTLE COLORADO RIVER SYSTEM ) NO. 6417  
AND SOURCE )  
 )  
 ) PRE-TRIAL ORDER NO. 1  
 ) RE: CONDUCT OF ADJUDICATION  
 )  
 ) (Judge Minker)  
 )

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1 Pursuant to the authority vested in this Court by A.R.S.  
2 § 45-259 and Rule 16(b) of the Arizona Rules of Civil Procedure,  
3 the Court hereby enters the following Order providing guidelines  
4 for the further conduct of this litigation.

5 In entering this Order the Court is guided by concerns of  
6 judicial economy, efficiency, and resolution of this adjudication  
7 in as short a time as the complexities of this case and its scope  
8 allow.

9 This Order is a substantial modification of the Court's  
10 Tentative Pre-Trial Order distributed prior to the hearing on  
11 January 16, 1987.

12 Changes to the Tentative Pre-Trial Order appear at:

13	Page of Tentative Pre-Trial Order	Line
14	1	9
14	3	10-11
15	4	7
15	8	12-17, 21-23
16	9	21, 27 (new para. 8.A)
16	10	27
17	11	11, 13, 21
17	12	26
18	17	to p. 13, line 12.
18	18	17
19	19	6, 9-12, 14-20
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20	22	22, 25-28
21	23-32	8-17
21	33	1, 11-15

22  
23 In addition, Paragraph 8 (Settlement Conference) is added.

24 1. PURPOSE OF THIS ORDER

25 The purpose of this Order is to set a general framework within  
26 which the adjudication of water rights in the Little Colorado River  
27 System and Source may be determined. The Court anticipates that  
28 further and additional Pre-Trial Orders will be required in order

1 to efficiently manage a case so large and complex. Accordingly,  
2 this Order may be amended or clarified in later Orders entered by  
3 the Court.

4 2. NATURE OF PROCEEDINGS

5 This proceeding is a general stream adjudication authorized  
6 pursuant to A.R.S. § 45-251 through A.R.S. § 45-260 and any other  
7 applicable provisions of Arizona law.

8 The purpose of this adjudication is to determine all rights to  
9 the use of water obtained from the Little Colorado River Basin  
10 System in the State of Arizona.

11 Parties desiring further information concerning the background  
12 and nature of these proceedings are referred to decisions rendered  
13 by the Supreme Court of the United States and the Arizona Supreme  
14 Court. These decisions are, respectively, Arizona et al. v. San  
15 Carlos Apache Tribe of Arizona, et al., 463 U.S. 545, 103 S.Ct.  
16 3201, 77 L.Ed.2d 837 (1983) and United States of America v.  
17 Superior Court of the State of Arizona, 144 Ariz. 265, 697 P.2d 658  
18 (1985).

19 Additional information concerning these proceedings is avail-  
20 able from the Arizona Department of Water Resources, the state  
21 agency mandated by A.R.S. § 45-256 to provide technical and admini-  
22 strative assistance in this general adjudication. The address and  
23 telephone number of this agency is as follows:  
24

25 Arizona Department of Water Resources  
26 99 East Virginia Avenue  
Phoenix, Arizona 85004  
27 Tele. No. (in Arizona): 1-800-352-8488  
(Outside Arizona): 1-602-255-1520

28 A non-legal but comprehensive discussion of this adjudication

1 process may also be found in the booklet prepared by the Arizona  
2 Water Information Center, University of Arizona, Tucson, Arizona  
3 85721, entitled "Protect Your Water Rights." While intended for  
4 lay potential claimants it provides worthwhile information in a  
5 clear and concise manner.

6 3. OVERVIEW OF PROCEEDINGS

7 The general procedure established by the State of Arizona  
8 concerning this adjudication is set forth in A.R.S. § 45-256 and  
9 § 45-257.

10 Other portions of this Order provide greater detail on the  
11 procedures to be followed in these adjudications. These procedures  
12 provide a method for determining and quantifying existing rights  
13 based on state law; determining and quantifying existing rights to  
14 use and reserved rights to use of water arising under federal law,  
15 including all federally held real property including but not  
16 limited to Indian reservations, and a method for integrating all  
17 such rights, including rights determined under prior Court decrees,  
18 in a single integrated decree for the Little Colorado River System  
19 and Source, in the State of Arizona.

20 Given the size of these proceedings, the complexity of the  
21 issues to be determined and the importance of the adjudication, the  
22 proceedings before a final decree can be entered will be lengthy.

23 4. MAINTENANCE OF COURT RECORDS

24 The Clerk of the Apache County Superior Court is hereby  
25 directed to review the current procedure for receiving, filing and  
26 storing the record in these proceedings. Given the anticipated  
27 large number of pleadings and other materials which will be filed  
28 in these proceedings through the years, the Clerk is directed to:

1       A.    Make suitable arrangements for adequate storage space for  
2 hard copy of all pleadings and all other papers filed and any such  
3 microfilm or microfiche records as may hereafter be utilized;

4       B.    Coordinate with the Department of Water Resources  
5 concerning all aspects of record maintenance.

6   5.   FILINGS WITH CLERK OF COURT

7       A.    Definitions

8           (1)   "Descriptive summary" means a one-sentence statement  
9 in a document filed in this action that states the nature of the  
10 document, its relationship to any other document (e.g., Response to  
11 X's Motion for Summary Judgment) the action or relief requested,  
12 the Statement of Claimant number of the party filing the document,  
13 the number of pages and date of filing.

14           (2)   "Party" means a person or entity who files a timely  
15 Statement of Claimant or for whom a Statement of Claimant is filed,  
16 whether or not the Statement of Claimant complies with the require-  
17 ments prescribed in A.R.S. § 45-254 or with the orders of this  
18 Court, and successors in interest to these individuals, who shall  
19 automatically be substituted as parties pursuant to Rule 25(d),  
20 Arizona Rules of Civil Procedure, except that party does not  
21 include a person or entity whom the Court has determined is not a  
22 party to this action.

23           (3)   "Statement of Claimant Number" means a number and/or  
24 letters assigned by DWR identifying each claimant's claim in these  
25 proceedings.

26       B.    Special Procedure for Filing

27           The Court notes that strict compliance with the provision  
28

1 of Rule 5(a) of the Arizona Rules of Civil Procedure, requiring  
2 that nearly all papers filed with the Court subsequent to the  
3 original complaint be served upon each of the parties, would work a  
4 severe financial hardship on many parties, and might discourage or  
5 even prevent them from actively participating in this action. In  
6 light of the mandate of Rule 1 of the Arizona Rules of Civil  
7 Procedure that the Rules be construed "to secure the just, speedy,  
8 and inexpensive determination of every action," for the purpose of  
9 this action compliance with the procedures set forth below shall  
10 constitute full compliance with Rule 5(a). Unless otherwise  
11 ordered by the Court, the following procedures shall apply to all  
12 documents filed in this action, except Statements of Claimant.

13 (1) Clerk of the Superior Court for Apache County

14 The Clerk of the Superior Court for Apache County  
15 shall:

16 a. Assign a number to each document, other than  
17 Statements of Claimant, filed in this action.

18 b. Maintain a docket sheet for all documents  
19 identified in paragraph 5.B.(1)a above. The docket sheet shall be  
20 updated bi-weekly and shall include the number or letter assigned  
21 to the party and document, the complete title of the document and  
22 any descriptive summary contained in the document.

23 c. Within thirty (30) days after the effective  
24 date of this Order, provide to the DWR and the Clerks of the  
25 Superior Court of Arizona in Coconino, Greenlee, Maricopa and  
26 Navajo Counties, a copy of the docket sheet for this action  
27 identifying all documents filed in this action prior to the  
28 effective date of this Order.

1           d.    On the first day of each month that falls after  
2 the date the Clerk of the Superior Court for Apache County provides  
3 the docket sheet required by paragraph 5.B.(1)c above, provide to  
4 the DWR and the Clerks of the Superior Court of Arizona in  
5 Coconino, Greenlee, Maricopa and Navajo Counties, a copy of the  
6 docket sheet for this action identifying all documents filed in  
7 this action during the preceding month.

8           e.    Any documents presented for filing, other than  
9 a Statement of Claimant, shall not be accepted by the Clerk unless  
10 it is accompanied by a Certificate of Mailing which states that  
11 copies of the document presented have, in fact, been mailed or  
12 delivered to all those designated in paragraph 5.B.(4) hereafter  
13 listed and all those designated on the Court's approved mailing  
14 list. The Clerk shall have available copies of the mailing list  
15 and shall provide a copy to any party upon request and payment of a  
16 fee set by the Clerk to defray the cost of providing such copies.

17           (2) Clerks of the Superior Court for Coconino,  
18               Greenlee, Maricopa and Navajo Counties

19           The Clerk of the Superior Court for Coconino,  
20 Greenlee, Maricopa and Navajo Counties, shall post in a conspicuous  
21 location in the Clerk's office the complete docket sheet for this  
22 action or a notice indicating where in the Clerk's office the  
23 complete docket sheet is available for inspection.

24           (3) Department of Water Resources (DWR)

25           The DWR shall:

26           a.    Post in a conspicuous location in the Phoenix  
27 office of the DWR the complete docket sheet for this action or a  
28 notice indicating where in the office the complete docket sheet is

1 available for inspection.

2                   b. Within forty-five (45) days after the effective  
3 date of this Order, send by the first class mail a notice to each  
4 party to this action. The notice shall state:

5                               (1) Where the complete docket sheet for this  
6 action is available for inspection.

7                               (2) That copies of documents filed in this  
8 action are available from the DWR for the DWR's normal copying  
9 charge plus any applicable mailing fee.

10                              (3) That the Court has entered a Pre-Trial  
11 Order regarding procedures to be followed in this adjudication.

12                              (4) That the DWR will mail a copy of each  
13 month's docket sheet and the Pre-Trial Order(s) to a party upon  
14 payment of a fee to be established by the DWR to cover actual  
15 expenses.  
16

17                   c. Within forty-five (45) days after the effective  
18 date of this Order, publish or cause to be published in newspapers  
19 of general circulation serving all areas covered by this adjudi-  
20 cation a copy of the notice described in paragraph 5.B.(3)b above.

21                   d. Upon receipt of a Statement of Claimant filed  
22 by a person who was not previously a party to this action, send to  
23 each such additional party by first class mail a notice containing  
24 information required by paragraph 5.B.(3) above.

25                   e. Provide to any person a copy of a document  
26 filed in this action upon the payment of the DWR's normal copying  
27 charge plus any applicable mailing fee.

28                   f. Mail a copy of each month's docket sheet to a

1 party who pays a fee established by the DWR to cover actual  
2 expenses.

3 g. Mail a copy of any document or paper filed by  
4 it in these proceedings to all addressees on the Court mailing  
5 list.

6 h. File with the Clerks of the Court in Apache,  
7 Coconino, Greenlee, Maricopa and Navajo Counties, on behalf of all  
8 parties in a form to be approved by the Court a Notice of Lis  
9 Pendens which shall describe the property encompassed, the nature  
10 of these proceedings, and the effect thereof as to any water rights  
11 the property may have or may claim to have. The DWR shall also  
12 cause the Notice of Lis Pendens to be recorded in the office of the  
13 County Recorder of Apache, Coconino and Navajo Counties.

14 (4) Parties

15 a. A party to this action shall:

16 (1) File the original of a document permitted  
17 or required to be filed in this action with the Clerk of the  
18 Superior Court for Apache County, provide one copy of the document  
19 to the Court, one copy to the DWR and one copy to each party on the  
20 Court's approved mailing list.

21 (2) Mail a copy to any party not on the  
22 Court's approved mailing list against whom the matter is addressed  
23 or from whom relief is sought.

24 (3) For each document filed in this action,  
25 set forth immediately after the caption a descriptive summary of  
26 the document.  
27  
28

1 6. SERVICE OF PLEADINGS AND OTHER PAPERS FILED

2 Each party shall mail a copy of any document other than a  
3 Statement of Claimant Form to all parties listed on the Court's  
4 approved mailing list. Each party who is currently on the Court's  
5 mailing list in this action shall serve a copy of any pleading or  
6 paper filed with the Clerk or the Court upon all other parties  
7 currently on the mailing list.

8 All parties desiring to remain on or be placed on the Court's  
9 approved mailing list may do so by filing a written request with  
10 the Court, within 30 days of the effective date of this Order.  
11 Copies of the request shall be mailed to all persons then on the  
12 mailing list. Any person making such a request shall thereafter be  
13 obligated to provide copies of any document or pleading it files in  
14 this action to all other persons on the mailing list.

15 7. APPROVAL BY SUPREME COURT

16 Because A.R.S. § 45-259 mandates the application of the Rules  
17 of Civil Procedure to this proceeding, and literal compliance with  
18 those rules is virtually impossible especially as to the rules on  
19 service of documents, this Pre-Trial Order shall be submitted to  
20 the Arizona Supreme Court pursuant to Article 6, Section 5 of the  
21 Arizona Constitution, A.R.S. § 12-109 and Rule 83 of the Rules of  
22 Civil Procedure for waiver of the service of documents rule and for  
23 ratification and approval of such parts thereof as the Arizona  
24 Supreme Court deems appropriate.

25 Any claimant wishing to make objections regarding this Pre-  
26 Trial Order to the Arizona Supreme Court shall file such objections  
27 in writing with the Clerk of the Arizona Supreme Court within 60  
28 days of the date of this Order.

1 8. SETTLEMENT COMMITTEE

2 Because the possibility of resolution of claims by settlement  
3 has been raised by more than one of the claimants, the Court  
4 appoints a Settlement Committee to meet and explore the settlement  
5 potential of this litigation. The Committee shall consist of the  
6 attorneys for the State of Arizona, Hopi Tribe, Navajo Nation,  
7 United States of America, Phelps Dodge Corporation, Salt River  
8 Project, Seven Springs Ranch (and other claimants), Aztec Land and  
9 Cattle Company, Bar-T-Bar Ranch (and other claimants) and Depart-  
10 ment of Water Resources. The Chairman of the Committee shall be  
11 Harry R. Sachse. Any claimant wishing to be added to or deleted  
12 from the Committee shall make request of the Court. The Committee  
13 shall meet at least once within 120 days of this Order, as coordi-  
14 nated by the Chairman. The Chairman shall report to the court in  
15 writing within nine months of this Order as to prospects of settle-  
16 ment. The Committee may at any time propose to the Court an order  
17 regarding confidentiality of settlement discussions.

18 9. MOTIONS

19 A. Priority of Certain Substantive and Procedural Motions

20 The Court is confronted with the need to prioritize the  
21 substantive and procedural issues in order to direct this litiga-  
22 tion toward its goal. The Court will begin prioritization  
23 according to the plan set forth in Paragraph 10.B.

24 B. Discovery Motions

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

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

4 All parties are advised that any Motions not complying with these  
5 prerequisites will be summarily denied.

6           C.    Time Periods

7               Any party filing a Response to a Motion in this  
8 proceeding shall do so within thirty-five (35) days of the date of  
9 service of the Motion or publication by docket sheet, whichever is  
10 first. Any party filing a Reply to any Response shall do so within  
11 twenty (20) days of the date of service or publication by docket  
12 sheet, whichever is first. The time periods set forth herein are  
13 in addition to the five (5) day period for service by mail speci-  
14 fied pursuant to Rule 6(e) of the Arizona Rules of Civil Procedure.  
15 The time periods set forth herein shall not apply to any issue  
16 scheduled for determination by the Court to which an established  
17 briefing schedule applies.

18           D.    Consideration of Motions

19               Except for good cause shown a Motion filed in this action  
20 shall be heard by the Court no earlier than forty-five (45) days  
21 after the Motion has been filed, which period of time shall begin  
22 when the docket sheet on which the Motion appears shall be  
23 available from the DWR.

24           E.    Oral Argument

25               Only those parties having filed a written Motion or  
26 Response will be heard at oral argument on that particular Motion.  
27 No later than thirty (30) days prior to the date set for oral  
28

1 argument, the parties having filed or joined in the Motion and  
2 parties having filed any Responses shall determine the amount of  
3 time to be sought for oral argument and shall obtain prior  
4 permission for any oral argument extending more than twenty (20)  
5 minutes per party, as specified in Local Rule 2 of the Local Rules  
6 of Apache County Superior Court. The foregoing requirements  
7 concerning oral argument of Motions shall not be applicable to  
8 argument upon issues specified in the Court's Briefing Schedule.

9 F. Motion Hearing Schedule

10 Except as specifically ordered to the contrary, the Court  
11 will attempt to hear all pending Motions and matters requiring oral  
12 argument on the second Friday in May and the second Friday in  
13 October at 9:00 a.m. in the Apache County Courthouse.

14 10. ISSUE IDENTIFICATION AND RESOLUTION

15 A. Introduction

16 This general adjudication encompasses a myriad of  
17 procedural, technical and legal issues. The prompt, orderly and  
18 consistent resolution of these issues is critical to achieving a  
19 meaningful, comprehensive decree. The following mechanism is  
20 established to identify the issues in this action and to provide a  
21 method for their resolution.

22 B. Issues

23 The procedural, technical and legal issues in this action  
24 shall be considered in three clusters:

25 (1) Those questions that must necessarily be decided in  
26 order for DWR to complete its HSRs.

27 (2) Those legal issues which can be briefed and decided  
28

1 without the context of a factual dispute.

2 (3) Those procedural, technical and/or legal issues  
3 which should not be decided outside the context of a factual  
4 dispute.

5 The Court will schedule for hearing and decision  
6 issues in cluster one first, to the exclusion of other issues,  
7 unless a specific motion is made and good cause shown. In submit-  
8 ting to the Court a list of those issues believed to properly  
9 belong in cluster one, all claimants are referred to Paragraph 12.B  
10 of this Order, and to the first HSR completed by DWR in the Gila  
11 River Adjudication as a primary illustration of what an HSR in this  
12 case may contain and how it may be organized. All claimants may  
13 submit a list of issues to the Court within 60 days of the date of  
14 this Order. The Court will then compile a list of issues to be  
15 decided and circulate a briefing and hearing schedule.

16 Following the resolution of issues in cluster one,  
17 the Court will proceed to consider which issues may belong to  
18 cluster two and proceed with them.

19 Examples of issues which may be considered during  
20 the length of this adjudication are:

21 (1) Procedures

22 a. Amendments to Statements of Claimant.

23 b. Disposition of Statements of Claimant filed  
24 after the filing deadline.

25 c. Base years for determination of water uses and  
26 rights.  
27  
28

1                   (2) HSR Investigations of Rights Based Upon State Law

2                   a.    Required scope of DWR investigations.

3                   b.    Standards to be used by DWR for field measure-  
4 ments, matching water rights filings with existing uses and making  
5 conclusions regarding water uses.

6                   (3) Rights Based Upon State Law

7                   a.    Legal effect of claims made on the Statement of  
8 Claimant Form.

9                   b.    Legal effect of pending applications and non-  
10 perfected permits granted under the Arizona Water Code of 1919, as  
11 amended, A.R.S. §§ 45-141 to -156.

12                   c.    Legal effect of claims made under the Water  
13 Rights Registration Act, as amended, A.R.S. §§ 45-180 to -192.

14                   d.    Legal effect of claims made under the Stockpond  
15 Registration Act, as amended, A.R.S. §§ 45-271 to -276.

16                   e.    Criteria for abandonments.

17                   f.    Relationship between state groundwater law and  
18 state surface water law on matters of potential conflict.

19                   (4) HSR Investigations of Rights Based Upon Federal  
20 Law

21                   a.    Required scope of DWR investigations.

22                   b.    Standards for reporting practicably irrigable  
23 acres and other relevant information.

24                   (5) Prior Decrees

25                   a.    Comprehensiveness of decree.

26                   (1) Sources of water encompassed.

- 1 (2) Extent of water users affected by the  
2 decree.
- 3 b. Administration
- 4 (1) Abandonments and forfeitures.
- 5 (2) Transfers.
- 6 c. Provisions of decree subject to modification by  
7 the Court.
- 8 d. Extent to which decree is binding on the Court.
- 9 e. Effect of decree on claim based on federal law.
- 10
- 11 (6) Defining the River System and Source
- 12 a. Sources of supply originating in the State of  
13 New Mexico.
- 14 b. Sources of supply originating outside the  
15 watershed or from effluent, groundwater transportation or augmen-  
16 tation.
- 17 c. Groundwater subject to jurisdiction based upon  
18 state law.
- 19 d. Groundwater subject to jurisdiction based upon  
20 federal law.
- 21 (7) Rights Based Upon Federal Law
- 22 a. Basis of right for existing water uses on  
23 federal reservations.
- 24 b. Legal theories for determining the extent and  
25 priority of federal law rights.
- 26 c. Relationship between federal and state law on  
27 matters of potential conflict.
- 28

1 d. Factors to be considered in determining extent  
2 of rights under doctrine of equitable apportionment.

3 e. Factors to be considered in determining extent  
4 of rights under doctrine of practicably irrigable acres.

5 f. Factors to be considered in determining extent  
6 of rights under other doctrines.

7 g. Primary purposes and secondary uses for which  
8 federal reservation were reserved.

9 h. Application of reserved rights doctrine to  
10 purchased Indian lands.

11 C. Issue Resolution

12  
13 After all parties to the adjudication have been joined,  
14 the Court shall set a briefing schedule for the issues in each  
15 Segment. The briefing schedule will order briefs from all  
16 interested parties and allow responses to initial briefs.

17 11. DISCOVERY

18 A. Introduction

19 The vast number of claimants implies the possibility for  
20 endless and costly discovery. Further, because of the number of  
21 claimants, duplicative discovery is certain if a preventative  
22 procedure is not developed. The Court is concerned about the cost  
23 of obtaining technical evidence. If each party attempts to acquire  
24 the same technical evidence, there will be a great waste of  
25 resources and the likelihood of discovery abuse increases, without  
26 benefit to the process. The Court therefore sets the following  
27 goals.

28 (1) Within reasonable limits relating to the amount and

1 nature of the claimed use, to allow each claimant to obtain such  
2 information as necessary to permit evaluation and possible objec-  
3 tion to any other claim;

4 (2) To provide uniform methods of obtaining information  
5 from claimants and to prefer such uniform methods over individual  
6 discovery requests;

7 (3) To integrate the timing of discovery procedures,  
8 with the sequence of adjudications as determined by the Court;

9 (4) To minimize the time and expense of discovery upon  
10 claimants having claims of an amount or of a priority date which  
11 may warrant less comprehensive discovery procedures;

12 (5) To avoid duplication of effort and needless expense  
13 to parties by encouraging the use of shared expertise by multiple  
14 claimants;

15 (6) To simplify discovery by the establishment of  
16 realistic time periods given the complexity of the adjudication,  
17 its scope and the resources of the parties;

18 (7) To utilize, wherever possible, the technical  
19 expertise, administrative resources and public records of the DWR  
20 in order to reduce the expense, time, and complexity of traditional  
21 discovery procedures.

22  
23 B. Prerequisites to Formal Discovery

24 The Court mandates that the informal exchange of properly  
25 discoverable information is a prerequisite to any formal discovery.  
26 Before any formal discovery is taken, a party must certify that it  
27 has reviewed the DWR's records and the information sought is not  
28 available from the DWR.

1           C.    Discovery of Small Claimants of 50 Acre-Feet or Less

2           No formal discovery, without leave of Court, shall be  
3 allowed of claimants with total claims for less than fifty (50)  
4 acre-feet of water per year, where the sole use claimed is for  
5 stockwatering purposes or for domestic use. Parties interested in  
6 these claims will be allowed to make informal inquiry of the  
7 claimant and his counsel and the DWR shall make available all of  
8 its records upon request to secure the needed information. If  
9 deemed necessary, a formal request to the Court for further  
10 discovery can be made, but the request must specify in detail the  
11 need for such discovery. If, however, any of such designated small  
12 claimants makes discovery of other claimants, then they shall be  
13 subject to discovery consistent with the Arizona Rules of Civil  
14 Procedure and the procedures for discovery designated by this  
15 Court. Claimants in this category are designate Group 1 claimants.

16           D.    Discovery of Other Small Claimants

17           Claimants of more than 50 acre-feet but less than 100  
18 acre-feet or claimants of less than 50 acre-feet used for other  
19 than stock watering purposes or domestic use may be required to  
20 answer and verify its answers to a short questionnaire submitted to  
21 them through the DWR and to support their responses with such  
22 corroborative documentary evidence as available. The DWR may, at  
23 its option, serve the questionnaire on all such claimants or only  
24 upon selected claimants. The DWR may also, at its option, refrain  
25 from serving the questionnaire on any claimants. Claimants of  
26 greater than 50 acre-feet but less than 100 acre-feet shall be  
27 designated Group 2 claimants.

28           No formal discovery on a Group 2 claimant would be permitted

1 except upon good cause shown through application to the Court. Any  
2 Group 2 claimant who wished to actively participate in the adjudi-  
3 cation through the filing of objections to claims, would be  
4 required to meet all discovery, pretrial, and trial procedures the  
5 same as a Group 3 claimant.

6 E. Discovery for Larger Claimants

7 Group 3 would be comprised of those claimants having the  
8 largest claims and as to which extensive discovery would be most  
9 appropriate and beneficial. These claimants, e.g., utilities,  
10 irrigation districts, cities, the United States and Indian tribes,  
11 would be subject to more comprehensive discovery procedures, but  
12 care shall be taken that the same shall not be duplicitous, onerous  
13 or burdensome.

14 F. DWR as a Central Respository of Information

15 The DWR, in its capacity as a collector and respository  
16 of data and information, can do much to relieve the burden of  
17 discovery. The DWR shall collect and make basic, basin-wide or  
18 state-wide data available to the parties. Further, the parties may  
19 be ordered to make documents of general interest which they  
20 discover available to the DWR. The DWR will, in turn, make these  
21 documents generally available. The DWR should create an index of  
22 the documents available to interested parties. The index should  
23 contain an abstract of each document, listing sufficient detail to  
24 allow the efficient search for relevant and helpful documents and  
25 records.

26 The DWR shall also make its field work data available to all  
27 parties at a central location. Claimants' files should be main-  
28 tained and made available to interested parties. In addition to

1 being consistent with the DWR's statutory role, the DWR's efficient  
2 record-keeping and practice of making common records available will  
3 greatly ease the discovery burden.

4 G. Exchange of Expert Reports

5 Expert discovery is likely to be an expensive and time-  
6 consuming element of the discovery required to prepare the adjudi-  
7 cation for hearing. In order to ease this burden, each expert that  
8 will testify at trial will be required to prepare a report con-  
9 taining final opinions and a summary of the data supporting those  
10 opinions. These reports will be available to all interested  
11 parties and must be prepared at least 60 days before each expert's  
12 deposition.

13 H. Depositions

14 Deposition discovery can be coordinated so that only one  
15 deposition per witness is necessary. At the one deposition in of  
16 each witness, each party will have an opportunity to examine the  
17 witness. In order to make expert witness depositions meaningful  
18 under this system, it will be necessary for the Court to set a date  
19 when the final opinions of experts must be ready. Depositions of  
20 experts taken before the preparation of final opinions and reports  
21 would be wasteful, and therefore will not be allowed except with  
22 prior Court order.

23 I. Uniform Location for Depositions

24 To the extent possible, a uniform location at the Apache  
25 County Courthouse shall be established for the taking of  
26 depositions.

27 Any deposition of an expert shall be continued with the final  
28 part of a deposition to be postponed for a period of not less than

1 sixty (60) days from the date of delivery of the transcript to the  
2 parties. This will enable any party not in attendance at the  
3 original earlier portion of the deposition to make an assessment of  
4 the testimony obtained from the deponent and determine whether or  
5 not additional questions are required at the continued deposi-  
6 tion. This delay procedure is specifically recommended in the  
7 Manual for Complex Litigation.

8 J. Stipulation on Basic Matters and Technical  
9 Considerations

10 The parties and their experts are encouraged to work  
11 together to achieve stipulations on basic definitions and facts.  
12 For instance, stipulations should be achieved regarding a common  
13 map scale, the consumptive use of crops, water duties for irri-  
14 gation systems, Indian Reservation boundaries, points of diversion  
15 and basin-wide hydrologic or geologic data. Reducing disagreement  
16 about basic facts will focus the discovery and the Court's or  
17 Master's inquiry. A failure to stipulate where there are no  
18 meaningful differences will lead the Court to consider sanctions  
19 and the award of attorneys fees against the offending party and/or  
20 its attorney.

21 12. DWR REPORTS AND THE HEARING PROCESS

22 A. Introduction

23 The Court recognizes that it is appropriate for the DWR  
24 to exercise its discretion, subject to any applicable statutory  
25 requirements and orders of this Court, in determining the format of  
26 and to some extent the schedule for preparing the report required  
27 by A.R.S. § 45-256.B. The Court also recognizes that at this time  
28 the schedule for preparing the report or any component of the

1 report cannot be predicted with certainty. Nonetheless, a summary  
2 of the DWR's current plans is necessary to provide a context for  
3 this section and other sections of this Order. In light of these  
4 considerations, subsections A and B, below, are a summary of the  
5 DWR's plans for producing the required report. The DWR's schedule  
6 for the production of the required report is attached hereto as  
7 Exhibit A. Subject to any applicable statutory requirements, any  
8 provisions of this Order other than subsections A and B, below, and  
9 any subsequent Orders of this Court, may only be modified by Court  
10 Order for good cause shown. The DWR shall produce the required  
11 reports in accordance with the attached Exhibit A.

12 B. Hydrographic Survey Reports

13 The DWR shall produce one or more Hydrographic Survey  
14 Report ("HSR") for the Little Colorado River System. The precise  
15 scope and contents of the HSRs will be determined by the Court  
16 following briefing and hearing of the material issues.

17 At the present time DWR stands ready to produce one or  
18 more non-Indian lands HSR containing the following:

19 I. Introduction

20 A. DWR Reports

21 B. Purpose of the Adjudication

22 C. History of Proceeding

23 D. Types of Water Rights and Claims

24 E. Geography

25 II. Water Uses, Water Resources, and Their Interrelationship

26 A. Water Uses

27 B. Water Resources

C. Interrelationship Between Supplies and Uses

III. Investigation Criteria, Report Format, and Assumptions

A. Investigation Criteria

B. Reporting Format

C. General Assumptions

D. Reporting Irrigation Uses

E. Reporting Stockwatering Uses

F. Reporting Domestic Uses

G. Reporting Mining, Industrial and Other Water Uses

H. Reporting Non-Indian Federal Law Claims

IV. Major User Reports

A. Municipal Water Providers

B. Irrigation Water Providers

C. Mining/Industrial User Reports

D. Non-Indian Federal Law Claims

V. Unusual Circumstances Reports

VI. Subwatershed Reports

A. Listing of all water uses, including location of diversions, type of use, source of supply.

B. Analysis of all water rights filings pertaining to water uses.

VII. Maps of Individual Water Uses.

DWR stands ready to prepare an Indian lands HSR containing the following:

I. Land Resources

1 II. Water Resources

2 III. History

3 IV. Economy

4 V. Present Water Uses

5 A. General Description of the Reservations

6 B. Compilation of Legal Record Applicable to Establish-  
7 ment of Federal Water Rights, Federal Water  
8 Projects, Federal Decrees and Contracts

9 C. History of Water Resources

10 D. Current Location, Type and Quantity of Water Use

11 E. Maps of Current Water Uses

12 VI. Claimed Unexercised Federal Rights

13 A. Hydrologic Assessment of the Availability of Land  
14 and Water Resources to Satisfy the Claimed Unexer-  
15 cised Rights

16 B. Engineering Assessment of the Feasibility, Safety,  
17 and Cost of Constructing the Facilities Associated  
18 with the Plan for Exercising the Total Extend of  
19 Claimed Federal Rights

20 C. Economic Assessment of the Financial Return and  
21 Overall Contribution to the Total Tribal Economy  
22 From Implementation of the Plan for Exercising the  
23 Total Extent of Claimed Federal Rights

24 D. Maps of Contemplated Water Uses

25 The proposed timing for completion of HSRs is not  
26 capable of specific definition. With the goal of completing the  
27 HSR process by 1993, the Court proposes the following time schedule  
28 for HSR completion.

	<u>HSR</u>	<u>Date</u>
1.	Snowflake Subwatershed	Spring 1988
2.	St. Johns Subwatershed	Spring 1990

3. Winslow Subwatershed

Spring 1991

4. Indian Lands

Summer 1990

HSRs: Notice and Comment

(1) Pursuant to A.R.S. § 45-256.C, the DWR shall adopt such rules as may be necessary to ensure that adequate notice is given to each party that a preliminary HSR is available for inspection and comment and that the parties have reasonable opportunity to inspect and comment on the preliminary HSR.

(2) After expiration of the period for filing comments on the preliminary HSR, the DWR shall revise the preliminary HSR as may be appropriate and shall file the HSR with the Court and the Master.

(3) An HSR filed with the Court and the Master shall be made available for inspection by any party.

a. A party may file a written objection to an HSR or any part of an HSR within 180 days after the date the HSR is filed with the Court and the Master. A written objection shall be filed with the Court and the Master.

b. An objection can be made to the legal or factual basis of the determination made in the HSR regarding the individual claim.

c. An objection must be timely filed and state in clear and concise language the particular factual and/or legal reasons for the objection and describe the evidence to support those reasons.

D. Re-Opening HSRs

(1) If, after the Master has held an evidentiary hearing

1 or hearings on an HSR and filed a report on the HSR with the Court,  
2 a decision or order of the Court makes it necessary to include  
3 information in an HSR that was not included in the HSR as filed  
4 with the Court and the Master or changes the criteria used by the  
5 DWR to determine one or more facts contained in an HSR, the Court  
6 or Master hearing the matter may require the DWR to prepare a  
7 supplemental HSR containing any necessary additional information.

8 (2) The Court may determine that additional evidentiary  
9 hearings are necessary on a supplemental HSR. The hearing if  
10 ordered shall be held at such a time as to promote the just, speedy  
11 and inexpensive determination of the facts contained in the supple-  
12 mental HSR. The procedures set forth in subsections C and D,  
13 above, shall apply to supplemental HSRs.

### 14 13. TECHNICAL MEETINGS

15 A. The DWR may call meetings to be attended by any or all of  
16 the parties at their discretion for the purpose of discussing  
17 technical issues relating to the DWR's technical assistance to the  
18 Court.

19 B. The DWR shall file a notice of each technical meeting  
20 with the Court. Notice of the technical meetings shall be given to  
21 all parties in the same manner as notice must be given of other  
22 documents filed in this action.

23 C. All technical meetings shall be open to the parties and  
24 to the public. Participation in the meetings by persons other than  
25 the parties specifically invited by the DWR to attend the meeting  
26 shall be at the discretion of those parties specifically invited by  
27 the DWR.  
28

14. RELATE HERETO TO GILA RIVER ADJUDICATION

To the extent possible all proceedings herein, discovery, and meetings, shall be carried out in a manner consistent with the proceedings conducted as part of In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Dec. W-1, W-2, W-3, W-4 (consolidated) (Maricopa County).

15. PROJECTION OF SCHEDULE

Attached hereto is Exhibit A which is a graphic projection of the schedule and process of this adjudication as this Court envisions the same.

DATED this 24th day of April, 1987.


  
\_\_\_\_\_  
Judge

Exhibit A

# Reporting Scheme and Schedule For Little Colorado River Adjudication

