

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

May 25,  
1989

IN AND FOR THE COUNTY OF APACHE

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

NO. ~~6417~~  
Pre-Trial Order No. 3  
("Entitlements")

The Court, having reviewed the Department of Water Resources' September 1988 "Water Right Entitlements Report," and the comments filed by claimants, now ORDERS as follows:

1) DWR shall include such factual data in its HSR's as indicated below. In doing so, DWR acts as a provider of information only. DWR does not adjudicate any "entitlements," a term that should not have been used in its Report. Pursuant to the statutes and the case law, determinations of water rights will be made by the Court. Claimants will have, pursuant to the statutes and this Court's Pre-Trial Order No. 1, the opportunity to contest any data appearing in the HSR's before a master and/or judge.

2) In order for the HSR's to provide adequate technical information to the claimants and the Court, the HSR's will include:

a. The amount of water claimed to be used by each claimant.

b. The maximum annual amount of use shown by DWR investigations.

c. Information relative to any claim of judicial decree, certificate or other legal basis for claim.

d. For irrigation uses:

1) an average efficient use of water, based on similar land use of the area (in addition to maximum annual use).

2) a water duty figure, derived by the FAO version of the Blaney-Criddle formula for both the maximum annual use and the average efficient use of the land.

3) Excessively inefficient or wasteful practices. The Court does not at this time decide what legal effect, if any, the information derived in paragraphs (d)2) and 3) shall have.

e. For domestic uses:

1) all surface water used outside the residence on areas exceeding one-tenth of an acre.

2) no estimated figure shall be shown for groundwater use on areas of less than 2 acres; actual use will be shown if known.

f. For stockwatering ponds and reservoirs: for surface areas of 2 acres or less, a maximum capacity may be reported as less than or equal to 15 acre feet unless known to be greater.

g. Other: DWR will also report water use by

1) Industry

2) Mining

3) Municipalities (The HSR may include a gallons-per-capita per day average for the area

and may also include future population estimates, identifying both as such.)

4) Large stockponds and reservoirs

5) Stockwatering and wildlife

all in accordance with Pre-Trial Order No. 2.

h. The capacities and other relevant factors for surface water diversions shall also be reported.

In completing the HSR's, DWR shall report water uses and water duty figures independent of water uses and duties determined under the Arizona Groundwater Code. The purpose of this Order is to obtain the most factual report possible by DWR's investigation, with the least reliance on assumed, estimated or borrowed figures. Data in the HSR's based on assumed, estimated or borrowed figures will be identified as such.

The Court specifically disapproves the section on page 23 of DWR's September 1988 report, captioned "Individual Irrigation Right Entitlements" insofar as it suggests that HSR's determine the validity and scope of prior decrees, and insofar as it suggests that quantities determined for AMA's under the Groundwater Code be borrowed and applied to the Little Colorado.

The Court also specifically disapproves objectives #2 and #3 on page 21 of DWR's September 1988 report, for the reasons stated above.

Based on the ORDERS above, the Court denies SRP's Motion for Summary Judgment and Motion to Reject, although several of its arguments have been adopted in this ORDER.

3) It is further ORDERED that the DWR staff schedule a meeting for all claimants between 30 and 90 days from the date of this ORDER, to further demonstrate and explain the format for reporting the various water uses discussed, and the details and methodology contained in the Hydrographic Survey Reports.

It is further the desire of the Court that DWR begin to collect data for the formulation of a report of all water use issues under the Norviel decree.

Any claimant wishing to object, comment, etc., on the role of DWR in providing information to the Court on the history, extent, and utilization of water under the Norviel decree may do so within 60 days.

MAY 25, 1989