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

IN RE THE GENERAL ADJUDICATION) No. W-1 (Salt)
OF ALL RIGHTS TO USE WATER IN THE) No. W-2 (Verde)
GILA RIVER SYSTEM AND SOURCE.) No. W-3 (Upper Gila)
) No. W-4 (San Pedro)
)
) CONTESTED CASE NO. W1-208
)
) ORDER
)
)
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)

On April 27, 2007, this matter came on for hearing on the motions for summary disposition and for the approval of the Tohono O’odham Water Rights Agreement (“Settlement Agreement”), Stipulation of the Settling Parties (“Stipulation”), and proposed Judgment and Decree. Objections were filed by the following individuals: Marshall S. Marinakis, J. J. and Judy Cocke, Cindy J. Ramey, Nancy Pearce, Eva J. Young, Ph.D., Kenneth and Carrie Power, Sharlene Sammeli, Gay Riba, and Harry W. Hagen (collectively “the Individual Objectors”). None of the Individual Objectors filed a response to the Settling Parties’ motions for summary disposition. Other than Marshall S. Marinakis, who appeared telephonically, none of the Individual Objectors appeared at the hearing. During the hearing Mr. Marinakis acknowledged, and the Court found, that Mr. Marinakis would not be injured by approval of the proposed settlement. The Court subsequently granted the Settling Parties’ request for summary disposition in their favor with respect to the issues raised by the Individual Objectors.

The Pascua Yaqui Tribe filed an objection to the settlement, responses to the Settling Parties’ motion for summary disposition and a related cross motion for summary

1 disposition. The Court granted relief in favor of the Settling Parties and the City of Tucson
2 with respect to the Pascua Yaqui Tribe’s objections and request for summary relief.

3 The Pascua Yaqui Tribe also filed an objection to the form of order and judgment
4 and decree submitted on behalf of the Settling Parties. This objection has been granted in
5 part as evidenced by the provisions of this Order.

6 IT IS ORDERED denying the objections to the form of order lodged by the Settling
7 Parties other than as provided below.*

8 In accordance with the Special Procedural Order, the Court finds and concludes as
9 follows:

- 10 1. Paragraph 18.13 of the Settlement Agreement and paragraph 9 of
11 the proposed Judgment and Decree as revised specifically provide
12 that nothing in the Settlement Agreement or in the Judgment and
13 Decree shall be construed to quantify or otherwise affect the water
14 rights, claims, or entitlements to water of any Arizona Indian tribe,
15 band or community, or the United States on their behalf, other than
16 the Tohono O’odham Nation and the United States acting on behalf
17 of the Nation. The Court finds that so long as these controlling
18 provisions are upheld, the Pascua Yaqui Tribe’s water rights,
19 claims, or entitlements to water are not injured or affected by
20 approval of the Settlement Agreement.
- 21 2. The absence of a viable objection to the Settlement Agreement and
22 the uncontroverted evidence, which consists of the Technical
23

24 * There is a legitimate question as to whether the Pascua Yaqui Tribe lacked
25 standing to object to the proposed settlement because it has not filed a statement of
26 claimant, and therefore may not qualify as a “claimant in the general adjudication” as
27 required by Paragraph C.1 of the Special Procedural Order Providing for the Approval of
28 Federal Water Rights Settlements, Including Those of Indian Tribes (“Special Procedural
Order”). The Court notes this issue, but makes no finding with respect to it.

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Assessment of the Tohono O’odham Nation Water Rights Settlement prepared by the Arizona Department of Water Resources (Southern Arizona Water Rights Settlement), dated October 24, 2006 (“ADWR Report”), and the United States statement of claimant numbers 39-74335 and 39-74336, establish a reasonable basis to conclude, and the Court does find and conclude, that the water rights of the Tohono O’odham Nation established in the Settlement Agreement and the Stipulation are no more extensive than the Tohono O’odham Nation would have been able to prove at trial.

3. Based upon the Stipulation of the parties, the ADWR Report and lack of any allegation of bad faith, the Court finds and concludes that the Settlement Agreement has been reached in good faith.

4. All requisites set forth in the Special Procedural Order for approval of the Settlement Agreement have been satisfied.

IT IS THEREFORE HEREBY ORDERED approving the Tohono O’odham Water Rights Settlement and adjudicating the Tohono O’odham water rights as set forth in the Stipulation and as provided in the Judgment and Decree executed on even date herewith.

DATED this 9th day of July, 2007.

/s/ Eddward P. Ballinger, Jr.
JUDICIAL OFFICER OF THE SUPERIOR COURT

A copy of this minute entry is sent to all persons on the Court approved mailing list for Contested Case No. W1-208 dated January 26, 2007 (revised June 12, 2007).