

Online ARIZONA GENERAL STREAM ADJUDICATION BULLETIN
Office of the Special Master • September - December 2001



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JUDGE EDWARD L. DAWSON RETIRES

Judge Dawson, who has presided in the Little Colorado River Adjudication since January 1999, retired effective January 4, 2002. Judge Dawson served on the Gila County Superior Court for nearly 22 years, where he was both Presiding Judge and Presiding Juvenile Court Judge. Prior to becoming a Superior Court Judge, he was the Gila County Attorney.

Judge Dawson is very proud of his work in the adjudication. He shifted the focus of the adjudication back to an active litigation track. He directed the Arizona Department of Water Resources to begin preparing a hydrographic survey report for the Hopi Tribal lands, the first reservation specific HSR in the Little Colorado River Adjudication. He encouraged continuing settlement efforts on Indian and federal claims. The Arizona Supreme Court will appoint a new judge for the Little Colorado River Adjudication. The selection process has been underway.

The office of the Special Master wishes Judge Dawson and his lovely wife Shirley many fruitful and happy years. They will move to Lima, Peru, for a mission with their church. At a farewell reception held in Globe, the Special Master presented Judge Dawson a framed photograph of the headwaters of the Little Colorado River taken by well-known Arizona photographer Jerry Jacka.

Selection of a New Judge

The Arizona Supreme Court is in the process of selecting a new judge for the Little Colorado River Adjudication. The Court is considering appointing Judge Eddward P. Ballinger, Jr., currently assigned to the Gila River Adjudication, to act as the judge in the Little Colorado River Adjudication. The proposal is unique, as previously different judges have been assigned to the two adjudications.

The Court invited comments on the proposed appointment. Abitibi Consolidated Sales Corporation, Arizona Public Service, Aztec Land and Cattle Company, Navajo Nation, City of Phoenix, and Salt River Project filed comments. The comments were not contrary to the appointment of Judge Ballinger, but cautioned against consolidating the adjudications and establishing a precedent for future appointments. A decision is expected soon. ❧

ARIZONA SUPREME COURT ANSWERS INTERLOCUTORY ISSUE NO. 3

In 1988, then Gila River Adjudication Judge Stanley Z. Goodfarb (retired) ruled that Indian reserved rights would be quantified using the practicably irrigable acreage standard (PIA). In an opinion issued on November 26, 2001, the Arizona Supreme Court, on interlocutory review of this ruling, vacated in part and affirmed in part Judge Goodfarb's decision.

The Court held that "the purpose of a federal Indian reservation is to serve as a 'permanent home and abiding place' to the Native American people living there." Chief Justice Zlaket, who authored the unanimous opinion, stated that "the utility" of determining the purpose of an Indian reservation by reviewing "historical documents" is "highly questionable" due to a variety of reasons he explained. Chief Justice Zlaket wrote that "it seems clear to us that each of the Indian reservations...was created as a 'permanent home and abiding place' for the Indian people, as stated in" *Winters*¹, the landmark case of Indian implied reserved water rights.

The Court affirmed Judge Goodfarb's ruling that the primary-secondary purpose test for quantifying a reserved right does not apply to Indian reserved rights. This test, formulated by the U.S. Supreme Court,² distinguishes between the primary purpose for which a reservation was established and secondary purposes. The test is that where water is valuable for a secondary use of the reservation, the right to the water must be acquired according to state law. For a primary purpose, it is implied that water was reserved to fulfill that purpose.

The Court rejected "exclusive" reliance on PIA as a quantification measurement, describing its deficiencies. Chief Justice Zlaket stated that quantification has to be based on the "minimal need" of the reservation, but minimal need "must satisfy both present and future needs of the reservation as a livable homeland."

¹ *Winters v. United States*, 207 U.S. 564 (1908).

² *United States v. New Mexico*, 438 U.S. 696 (1978).

The Court identified some of the factors to be considered in a "fact-intensive inquiry" for quantifying the reserved rights of a specific reservation: the tribe's master land use plans, history, culture, geography, topography, natural resources, economic base and current economic station, past water use, present and projected future population, and any others deemed relevant.

If farming irrigation were proposed for tribal lands, PIA would be an appropriate measurement standard for those lands. For quantification inquiries, the trial court must determine that a proposed development is "achievable from a practical standpoint" and "must be economically sound."

Proposed uses must be reasonably feasible in terms of practical achievement and economic soundness, and the amount of water adjudicated must be tailored to the reservation's minimal need. The Court stated that "such a minimalist approach demonstrates appropriate sensitivity and consideration of existing users' water rights, and at the same time provides a realistic basis for measuring tribal entitlements."

Remaining to be addressed by the Supreme Court is the last interlocutory appeal of the initial group of appeals, or issue number 6. That issue is "Must claims of conflicting water use or interference with water rights be resolved as part of the general adjudication?" ❄

LITTLE COLORADO RIVER ADJUDICATION

STATUS CONFERENCE

On August 30, 2001, Judge Edward L. Dawson held his last status conference as presiding judge of the Little Colorado River Adjudication.

A. Settlement Negotiations

Northern Parties

On August 16, 2001, the Hopi Tribe, Navajo Nation, Peabody Western Coal Company, Salt River Project, and Southern California Edison Company (Northern Parties) filed a Joint Statement asking the Court "to facilitate continued settlement discussions among all parties." Counsel stated that "completion of a Little Colorado River Settlement by the end of 2002 has become a high priority

matter” for these participants due to the status of the Mohave Generating Station. The parties want Apache County Superior Court Judge Michael C. Nelson to continue assisting them with settlement efforts.

National Park Service Agreements

On August 16, 2001, the United States filed a status report advising that the National Park Service had reached agreements with the Forest Service, City of Flagstaff, Salt River Project, Arizona Public Service, Tucson Electric Power Company, and Abitibi Consolidated Sales Corporation. The agreements are between these parties and do not bind other claimants in the adjudication. After the agreements are finalized, the parties will ask the Court to approve them.

Bureau of Land Management and Forest Service Agreements

The United States is working “towards a general settlement that would address many of its surface and underground water rights, mostly for stockwater, claimed on behalf of the U.S. Forest Service and Bureau of Land Management, as well as many non-federal water rights.” The involved parties met on August 29, 2001, and continue negotiations.

Judge Dawson thanked counsel for their efforts to resolve complex issues and encouraged all to continue their discussions.

B. Special Master Thorson’s Report on the Procedures for Adjudicating Stockponds, Stockwatering Uses, and Wildlife Uses in the Silver Creek Watershed

This report came before the Court in 1994. The report of former Special Master Thorson recommends procedures for summarily adjudicating stockponds, stockwatering, and wildlife uses in the Silver Creek watershed, as well as in the other watersheds of the Little Colorado River adjudication. Domestic uses are not addressed. A similar report, but not with the same scope, is before Judge Ballinger in the Gila River Adjudication. That report and the proceeding before Judge Ballinger are described on pages 7 through 10.

Mr. Thorson’s report contains determinations on substantive legal issues concerning ownership of water rights on public lands, but ownership issues are not addressed in the report Judge Ballinger is considering. Due to the focus on

settlement and on Indian and federal water rights, the Little Colorado River Adjudication court has not considered the report since it was submitted in 1994.

Counsel who addressed this issue asked the Court to defer action on the report at this time, as parties are working on other more pressing issues.

C. The Recommendations Contained in the Joint Report and Recommendations Regarding Phasing and Scheduling of Pretrial Proceedings Re: Tribal Lands HSR and the Navajo Nation's Supplemental Comments to the Joint Report

The Joint Report and the Navajo Nation's Supplemental Comments are efforts by the parties of the Settlement Committee to draft procedures for "the pretrial proceedings leading to the litigation of Tribal water rights claims." These parties, however, do not want the pretrial procedures to "significantly impair the continued negotiation" of Indian water rights settlements.

The specific administrative and procedural recommendations contained in the report were not discussed at the status conference. Counsel addressed the preparation of the most practical and useful Hydrographic Survey Reports (HSR) for this adjudication. The merits of preparing an HSR specific to an Indian reservation as opposed to an HSR on the hydrology of the Little Colorado River system and source were addressed.

The Court directed the Arizona Department of Water Resources (ADWR) to begin not later than May 1, 2002, preparing an HSR for the Hopi Tribal Lands. This HSR will be the first reservation specific HSR in the Little Colorado River Adjudication.

Because some parties might wish the Court to consider issues that should be considered in conjunction with the preparation of the Hopi HSR, Judge Dawson gave parties until December 31, 2001, to file motions identifying those issues. The Navajo Nation filed a Motion for the Court to Direct the Special Master to Report on ADWR's Procedures to Provide Technical Assistance to the Court and Special Master and a Motion to Set a Trial Date and Discovery Schedule for Show Low Lake, Show Low Lake Irrigation Company, and Lakeside Irrigation Company.

D. Navajo Nation's Motion for Protective Order

The Navajo Nation filed a motion for protective order seeking to prevent disclosure or use of the Hopi/Western Navajo Water Supply Study (the Study) in any administrative or judicial proceeding, and to prohibit the use of the Study "as the basis or partial basis for any expert testimony or report by an expert witness in any" administrative or judicial proceeding.

The Navajo Nation argued that the Study should be used for settlement purposes only because (1) it is being prepared to settle claims in the Little Colorado River Adjudication, (2) the Study would not exist "but for" the ongoing negotiations, and (3) the public policy purpose of Rule 408, *Arizona Rules of Evidence*, is "to foster frank discussions" by making deliberations related to settlement inadmissible. Secondly, as the report is inadmissible, any expert testimony based on the report is inadmissible under Rule 703.

The Salt River Project, Arizona Public Service, Phelps Dodge Corporation, and Aztec Land and Cattle Company objected to the motion. The Navajo Nation replied to the objections.

On August 23, 2001, the Navajo Nation submitted a proposed protective order agreed upon by the Navajo Nation and the objectors. The proposed order addresses the objections.

The Court granted other parties until November 1, 2001, to submit comments to the proposed order approving a protective order. No comments were filed.

Judge Dawson's minute entry for August 30, 2001, is available at www.supreme.state.az.us/wm on the Little Colorado River Adjudication page.✿

GILA RIVER ADJUDICATION

ORAL ARGUMENTS ON *DE MINIMIS* REPORT

On September 27, 2001, Judge Edward P. Ballinger, Jr. heard oral argument on former Special Master John Thorson's Memorandum Decision and Modifying Memorandum, relating to a contested case in the San Pedro River watershed, involving stockwatering, stockponds, and domestic uses. The

memorandum decisions are commonly referred to as the *de minimis* report because the report addressed whether these uses are *de minimis*,³ and if they should be summarily adjudicated.

The Special Master, after conducting a seven-day evidentiary hearing, found that in the San Pedro River watershed:

1. Stockwatering uses are *de minimis* and should be summarily adjudicated as “reasonable use.”

2. Individual stockponds are *de minimis*, but when considered cumulatively, they are not *de minimis*.

3. Self-supplied domestic uses for single residences and outdoor activities on adjoining land not exceeding 0.2 acres of land are *de minimis*, but when considered cumulatively, they are not *de minimis*.

Although as a group the San Pedro stockpond and domestic uses are not *de minimis*, the Special Master concluded that these uses should be summarily adjudicated “when the costs and benefits of a detailed adjudication of stockpond and domestic uses are considered.”⁴ Stockponds would be adjudicated their storage capacities with continuous fill, and the domestic uses would be adjudicated the quantity of “not to exceed 1.0 acre-foot of water per year.” The Master found that these San Pedro stockwatering, stockpond, and domestic uses “cannot be eliminated from the adjudication,” but “summary adjudication of all three types of uses is justified.”⁵ Lastly, the Special Master specified certain procedures to implement the summary adjudication.

Mr. Thorson’s report is available at www.supreme.state.az.us/wm on the Gila River Adjudication page. The memorandum decisions were filed with the Superior Court on November 14, 1994, and on February 23, 1995. Parties had opportunities to file objections to the Special Master’s report after it was issued and again in 1999.

³ The Special Master defined the term “*de minimis*” to mean “a water use found to be sufficiently small so that the costs of a detailed adjudication of the use outweigh the benefits that would result.” *Memorandum Decision*, p. 5 (November 14, 1994).

⁴ *Id.* at 30.

⁵ *Id.*

The Superior Court will consider the report in accordance with Rule 53(h), *Arizona Rules of Civil Procedure*, which states that the Court “may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it [to the Special Master] with instructions.”

These parties participated in the oral arguments:

1. ASARCO Incorporated
2. Apache Tribes
3. Bella Vista Water Company and Bella Vista Ranches, L.L.L.P.
4. Gila River Indian Community
5. Group of seven claimants who are local ranchers
6. Salt River Project
7. Sands Investment Company
8. State of Arizona Agency Claimants
9. United States.

These parties filed objections or related pleadings:

1. Church of Jesus Christ of Latter-Day Saints
2. Cities of Sierra Vista, Benson, and Globe; Towns of Mammoth and Patagonia; Gila Valley and Franklin Irrigation Districts; Lone Mountain Ranch, Inc.
3. Phelps Dodge Corporation
4. City of Phoenix.

Principal objections included the following:

1. Groundwater is not subject to adjudication. The Superior Court must consider the opinions of the Arizona Supreme Court in Interlocutory Appeals No. 2, 4, and 5, which came down after the issuance of the Special Master’s reports.

2. The Special Master’s quantification of 1,570 AFA as groundwater outflow cannot be accepted as the amount of appropriable subflow because the criteria for determining subflow, pursuant to the Arizona Supreme Court’s opinion in Interlocutory Appeal No. 2, have not been finalized.

3. The preferable statistical technique for estimating water supply and outflow from a watershed is the use of mean (average) values and not median values because median values exclude flood flows.

4. The Special Master erroneously excluded flood flows when he adopted the use of median daily flows to estimate the outflow of the San Pedro River watershed.

5. An application for the severance and transfer of a water right does not require the approval of the adjudication court, but only compliance with the administrative procedures of the Arizona Department of Water Resources. Holders of water rights should not be required to seek court approval for the severance and transfer of their rights.

6. Summary adjudication of stockpond and domestic uses will preclude effective administration and enforcement of these rights to the detriment of junior users. The Master's report is not clear and is ambiguous regarding the manner in which senior rights holders can enforce their rights as against the summarily adjudicated rights of junior users.

7. The issue of ownership of water rights on state or federal lands was not within the scope of the hearing held by the Master.

8. The proper inquiry is whether stockwatering, stockpond and domestic uses have a *de minimis* effect in the San Pedro River watershed and not in the Gila River System.

9. Whether wildlife-watering uses are *de minimis*, and if they should be summarily adjudicated were not within the scope of the hearing held by the Master.

10. The report should apply to both Indian and non-Indian claimants.

It is not known when Judge Ballinger, who took the matter under advisement, will issue a ruling.✱

**IN RE THE WATER RIGHTS OF THE
GILA RIVER INDIAN COMMUNITY
CONTESTED CASE NO. W1-203**

On November 27, 2001, Judge Ballinger heard oral arguments on the objections to former Special Master Thorson's reports dated June 30, 2000, and December 28, 2000.

Both reports addressed the preclusive effect that certain prior judicial decrees, judgments, and agreements may have on water claims being adjudicated in the Gila River Adjudication primarily by the Gila River Indian Community (GRIC) and the United States on behalf of the community. The reports were based on eight motions for summary judgment filed by several parties and hearings conducted by Special Master Thorson. Both reports are available at www.supreme.state.az.us/wm on the Gila River Adjudication page.

The June 30, 2000, report addressed four motions for summary judgment relating to the following issues:

1. The preclusive effect of the Globe Equity No. 59 Decree on the water right claims of GRIC and those claimed on its behalf by the United States. This 1935 federal District Court decree established water rights in the Gila River for the San Carlos Irrigation Project.
2. The preclusive effect of the Globe Equity No. 59 Decree on the water right claims of GRIC and the United States to the San Carlos River.
3. The preclusive effect of three landowner and repayment agreements on pooling of water rights associated with the San Carlos Irrigation Project.
4. The preclusive effect of a 1977 water rights settlement and exchange agreement and 1993 consent to assignment executed by GRIC and ASARCO Incorporated's predecessor in interest.

The December 28, 2000, report addressed four motions for summary judgment relating to the following:

1. The preclusive effect of proceeding number 228 before the Indian Claims Commission on GRIC's water right claims. Beginning in the early 1950s, the Indian Claims Commission considered monetary claims by Indian tribes filed against the United States.
2. The preclusive effect of the Haggard Decree, Indian Claims Commission Docket No. 236-D, and the 1936 Maricopa Contract on GRIC's water right claims in the Salt River. The 1903 Haggard Decree was a decree of

the federal District Court for the Arizona Territory. The 1936 Maricopa Contract was executed between the Salt River Project and the United States.

3. The preclusive effect of the 1907 Sacaton Agreement on GRIC's water right claims to the Salt River. The Sacaton Agreement was executed between the Salt River Project and the United States.

4. The preclusive effect of both the 1945 Buckeye-Arlington Agreements with the United States and Indian Claims Commission Docket No. 236-F on GRIC's water rights claims. Two separate agreements were executed between the Buckeye Irrigation Company and the Arlington Canal Company with the United States.

The reports and the objections covered a myriad of legal issues associated with the principles of *res judicata* and estoppel and their application, if any, to the prior decrees, judgments, and agreements. The holdings of several opinions of the U.S. Supreme Court will be important for the determination of the objections.

ASARCO, the Apache Tribes, Arlington Canal Company, Buckeye Irrigation Company, Franklin Irrigation District, GRIC, Gila Valley Irrigation District, City of Safford, Salt River Project, San Carlos Irrigation and Drainage District, State of Arizona Agency Claimants, City of Tempe, and the United States participated in the oral arguments.

It is not known when Judge Ballinger, who took the matters under advisement, will issue rulings.✠

**IN RE THE PRECLUSIVE EFFECT OF THE GLOBE
EQUITY DECREE ON SPECIFIED PARTIES
CONTESTED CASE NO. W1-206**

Judge Ballinger has set oral arguments on seven pending motions for summary judgment on **Tuesday, April 23, 2002, at 10:00 a.m.**

This contested case is an effort to examine the possible preclusive effect of *Globe Equity No. 59 Decree* on other parties in the Gila River Adjudication. The *Globe Equity Decree* is a 1935 federal court decree adjudicating water rights along the Upper Gila River. Contested Case No. W1-206 seeks to conclude the

examination of the impact of the *Globe Equity Decree* on the Gila River Adjudication.

ASARCO Incorporated, Gila River Indian Community (GRIC), Gila Valley Irrigation District, Franklin Irrigation District, Phelps Dodge Corporation, City of Safford, San Carlos Apache Tribe, and San Carlos Irrigation and Drainage District filed motions for summary judgment. The motions addressed the various claims asserted by the other parties in this contested case. The moving parties, Salt River Project, and the United States filed responses and replies. Phelps Dodge filed a reply.

These parties have disclosed documents associated with this case. Parties may obtain copies of disclosed documents by calling the office of the Special Master at 602-542-9600, which then forwards the requested materials to a local copy service. The copies are picked up from and payment is made directly to the copy service.

**IN RE FORT HUACHUCA
CONTESTED CASE NO. W1-11-605**

The United States on behalf of Fort Huachuca, a military installation in southern Arizona, requested and was granted an extension of time to file amended statements of claimant for the fort's water right claims. The United States required "additional time to determine how and whether the fort's claims should be revised in light of recent national and international events and the fort's evolving mission."

The Special Master granted the request but with a provision that no further continuances shall be granted except for extraordinary circumstances. The amended statements were due on November 30, 2001, and now will be due on January 14, 2002.

The Special Master moved the date for ADWR to submit a status report on its progress on finalizing the Gila River Indian Community's Final Hydrographic Survey Report and the anticipated start and completion dates for updating the

fort's watershed file reports from January 31, 2002, to March 18, 2002. Parties may then file comments to ADWR's report by May 2, 2002.*

**IN RE CORONADO NATIONAL MEMORIAL
CONTESTED CASE NO. W1-11-556**

On December 21, 2001, the United States and the objectors in this contested case filed a report on the status of discussions regarding a full or partial settlement or further litigation of certain claims of the National Park Service for the Coronado National Memorial (which is located in southeastern Arizona).

On June 3, 1996, former Special Master John Thorson stayed "all further proceedings in regard to the definition of the attributes of [ten] wells" for which the National Park Service, Coronado National Memorial, filed statements of claimant. The stay was issued after the United States filed, on April 5, 1996, an unopposed Motion to Stay Further Proceedings. Earlier, on March 19, 1996, the United States and seven objectors had filed a stipulation that stated in pertinent part, "The objectors agreed to the United States filing a motion to stay all proceedings in regard to the definition of the attributes of the [ten] wells...until after the appellate court resolution of Interlocutory Review Issue Nos. 2, 4 and 5."

In its response filed on July 17, 2000, to the Superior Court's request for comments regarding the litigation of issues in the San Pedro River watershed, the United States stated:

The United States is currently attempting to obtain a stipulation defining the attributes of its claims for federal reserved water rights to groundwater. In the event that these efforts are unsuccessful, [t]he United States believes the Memorial's federal reserved claims are now appropriate for litigation.

The Court considered the response, and in its minute entry dated September 28, 2000, the Court determined that "in light of the United States' comments with regard to the Coronado National Memorial," "no specific scheduling of these claims will be undertaken at this time."

Prior to the stay issued in June 1996, the United States and the seven objectors agreed on abstracts containing water rights attributes for three springs. As the Arizona Supreme Court has issued opinions on interlocutory appeals numbers 2, 4, and 5, and the parties have continued discussions, the Special Master wanted to learn the prospects for either settlement or further litigation of these well and spring claims.✱

ADWR'S PROPOSALS FOR DETERMINING THE SUBFLOW CRITERIA

On December 18, 2001, the Arizona Department of Water Resources (ADWR) submitted a report containing ADWR's proposals for how it plans to determine the subflow criteria in accordance with the interlocutory appeal decision of the Arizona Supreme Court. Judge Ballinger will hold a hearing on the report on **Tuesday, January 8, 2002, at 2:00 p.m.**

At a hearing held on September 27, 2001, Judge Ballinger asked ADWR to submit a report on its proposals for determining the subflow criteria, and allowed filing of responses until December 28, 2001. The Apache Tribes, Arizona Public Service, ASARCO Incorporated, BHP Copper, Inc., Cities of Chandler, Glendale, Mesa, and Scottsdale, Gila River Indian Community, Gila Valley and Franklin Irrigation Districts, Phelps Dodge Corporation, Phoenix, Salt River Project, State of Arizona Agency Claimants, and the United States filed comments.

In its opinion issued in September 2000, regarding Interlocutory Appeal No. 2, the Arizona Supreme Court stated:

The subflow zone is defined as the saturated floodplain Holocene alluvium. [ADWR], in turn, will determine the specific parameters of that zone in a particular area by evaluating all of the applicable and measurable criteria set forth in the trial court's order and any other relevant factors. [citation omitted.] All wells located within the lateral limits of the subflow zone are subject to this adjudication. In addition, all wells located outside the subflow zone that are pumping water from a stream or its subflow, as determined by [ADWR's] analysis of the well's cone of depression, are included in this adjudication. Finally, wells that, though pumping subflow, have a *de minimis* effect on the river system may be excluded from the

adjudication based on rational guidelines for such an exclusion, as proposed by [ADWR] and adopted by the trial court.⁶

ADWR's report is a first step toward finalizing the subflow criteria.

MAILING OF NEW USE SUMMONS BEGINS

Since September, the Arizona Department of Water Resources (ADWR) has been mailing New Use Summons to all persons who initiated a new use of water between July 1, 1991, and December 31, 2000. Persons who drilled or registered a well or filed an application for a surface water right during that time frame should receive a new use summons. The summons is delivered by certified mail.

The Superior Court approved this process to serve all users of water who began their use after the expiration of the original deadlines for filing statements of claimant in the 1980s.

Claims are asserted by filing the appropriate Court-approved statement of claimant form and submitting the required filing fee. There are four statements of claimant forms: Irrigation, Stockpond, Domestic, and Other water rights. The forms may be obtained from ADWR.

The filing fee for an individual is \$20.00. The filing fee for a corporation, municipal corporation, the State or any political subdivision, or an association or partnership, is two cents for every acre-foot of water claimed, or \$20.00, whichever is greater. The filing fee should be paid by check or money order made payable to the order of ADWR. ADWR will forward all fees to the Clerk of the Superior Court. A claim will not be considered unless the filing fees for the claim have been paid.

All statements of claimant must be filed with ADWR at 500 North Third Street, Phoenix, Arizona, within ninety (90) days of the service of the summons unless the Superior Court, upon written motion, grants an extension of time.

⁶ *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 198 Ariz. 330, 344, 9 P.3d 1069, 1083 (2000), cert. denied sub nom. *Phelps Dodge Corp. v. U.S.*, 2001 WL 290213 (June 25, 2001).

Arizona Revised Statutes section 45-254(E) describes under what circumstances statements of claimant may be filed after this ninety-day period.

According to section 45-254(F), “[A]ny potential claimant who is properly served and who failed to file a statement of claimant as prescribed by this article for any water right...is barred and estopped from subsequently asserting any right that was previously acquired on the river system and source...and forfeits any rights to the use of water in the river system and source that were not included in a properly filed statement of claimant.” The summons cautions that “you may lose the right to use the water of the...river system and source if you fail to file a statement of claimant...This may happen even though you have received a permit, certificate or other approval from” ADWR.

But a statement of claimant is not permission to use water. A person does not obtain a right to use water by filing a statement of claimant form. Rights to use water must be acquired in accordance with state or federal law.

If you have questions regarding a new use summons, you may call ADWR at 1-866-246-1414, or you may write a letter to:

Arizona Department of Water Resources
Water Rights and Adjudications Section
500 North Third Street
Phoenix, Arizona 85004

If you need to file a statement of claimant for a new use, it is highly recommended that you do so at the earliest time.✉

UPDATING MAILING ADDRESSES AND STATEMENTS OF CLAIMANT

Judges Ballinger and Dawson issued pre-trial orders directing all claimants in the Gila and Little Colorado Adjudications to update their statements of claimant to show (1) a change of mailing address, (2) an assignment of a statement of claimant to another person, or (3) a transfer to another person of the property or water right associated with a statement of claimant.

Many claimants have sold their properties or water rights, but have not transferred their statements of claimant for claimed water rights or maintained

current mailing addresses. Without updated addresses and statements of claimant, current owners and their successors in interest will not receive notices of legal proceedings and of their possible need to participate in the adjudications.

Any person who has filed a statement of claimant in the Gila River or the Little Colorado River Adjudications must notify the Arizona Department of Water Resources (ADWR) of any of the following changes concerning that person's statement of claimant:

1. A change of address.
2. An assignment of a statement of claimant to another person.
3. A transfer to another person of all or part of the land for which a water right has been claimed.
4. A transfer to another person of all or part of the water right claimed, if the claimed water right has been severed and transferred to another parcel of land.

Notification of any of these changes must be filed with ADWR within thirty (30) days of the change. The Superior Court has approved an easy to complete Assignment form, with instructions, to report a change. There is no charge or fee to submit an Assignment form.

The form and instructions are available at:

Arizona Department of Water Resources
Water Rights and Adjudications Section
500 North Third Street
Phoenix, Arizona 85004

Claimants with questions about how to report a change can call ADWR at 1-800-352-8488 and 1-866-246-1414.

Realtors, title agents, and attorneys should make sure that all real estate transfers include proper assignment of statements of claimant from sellers to buyers. ❧

ADWR WATER WELL REGISTRATION RECORDS NOW ONLINE

The Arizona Department of Water Resources (ADWR) continues its project of providing online access to water rights records. ADWR has completed

scanning well registrations and putting them online at www.water.az.gov/bookstore/powerweb. Because well registrations use the numeric prefix "55," they are commonly referred to as "55s."

ADWR plans to provide online access to other water records and technical information. "We want to make obtaining water-related records convenient to all Arizonans," Director Joseph C. Smith has stated. Among future records to be made available will be the adjudication statements of claimant, known as "39s."⁷

UPDATE ON *WEST MARICOPA COMBINE, INC. v. ADWR*

This decision of the Arizona Court of Appeals was reviewed in the June-August 2001 issue of the *Bulletin*.⁷ Both the Arizona Department of Water Resources and 10K, L.L.C., the objector to the issuance of a permit, filed petitions for review with the Arizona Supreme Court (Docket No. CV-01-0263-PR). The applicant West Maricopa Combine filed a combined response to the petitions. The Arizona Rock Products Association filed an amicus curiae brief in support of the petitions, while the Central Arizona Water Conservation District, Salt River Project, City of Peoria, and the City of Tucson filed a joint amicus curiae brief in opposition to the petitions.⁸

INVITATION FOR SUBMISSIONS

We wish to post on our Web site articles or presentations relating to water law or adjudication issues that our readers would find informative and useful. To accomplish this purpose, we made the following invitation to Professor Robert J. Glennon, Jr., of the University of Arizona College of Law, and to Mr. Mark A. McGinnis, Esq., who teaches Water Law at the Arizona State University College of Law:

We would be glad to receive submissions of top tier law student papers dealing with water law or adjudication issues. Submissions are not limited to law review articles or notes. Papers from your students or independent study projects would be welcomed. I do

⁷ The decision is reported in 200 Ariz. 400, 26 P.3d 1171, and 349 Ariz. Adv. Rep. 17 (2001).

not anticipate any editing of submissions. The submissions would be published as presented, but we expect correct grammar, good writing, and neatness. No particular point of view is desired or expected. A posted submission would be identified as a legal article of interest to the readers of the Web site. I expect that postings would remain online for a few months. We cannot, unfortunately, offer an honorarium or other monetary compensation, but we offer a form of publication and exposure that your students might appreciate.

Submissions from others will be considered and appreciated. ❄️

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