

SUPREME COURT OF ARIZONA

IN THE MATTER OF THE GENERAL) Arizona Supreme Court
ADJUDICATION OF ALL RIGHTS TO) No. WC-02-0003-IR
USE WATER IN THE GILA RIVER)
SYSTEM AND SOURCE) Maricopa County
) Superior Court
) Nos. W-1, W-2, W-3, W4
) (Consolidated)
)
) [Contested Case No. W1-206]
)
) O R D E R
)
_____)

Upon consideration following a conference by the Court,

IT IS ORDERED that the oral argument set for December 2, 2004 in this case is VACATED;

IT IS FURTHER ORDERED that interlocutory review of "The San Carlos Apache Tribe's Petition for Interlocutory Review of the Grant of Partial Summary Judgment by the Superior Court in W1-206" is GRANTED on the following issues:

1. Where the San Carlos Apache Reservation was established pursuant to the Apache Treaty of 1852 as a permanent Tribal homeland of nearly 2 million acres, with nearly 1,500,000 acres on the Gila River, did the Superior Court err when it denied the Apache Tribe a trial on the merits of its claims by granting a motion for partial summary judgment holding that the doctrine of *res judicata* precluded the Tribe from claiming water for its Tribal homeland in excess of the 1,000 acres under the Globe Equity Decree?

2. Did the Superior Court err in ruling that the statement of facts in its Amended Order in W1-

203 involving GRIC also applies to the Apache Tribe in W1-206?

3. Did the Trial Court err when it denied the Apache Tribe's request for an evidentiary hearing on the adequacy of the representation of the United States as its Trustee under § 42(1)(e) of the *Restatement (Second) of Judgments*; and ruled that *res judicata* applies to the Apache Tribe under the Decree?

4. Did the Superior Court err where it failed to conclude that the United States lacked any authority from Congress to represent the Apache Tribe in Globe Equity or to dispose of Tribal property which would preclude the application of *res judicata*; or alternatively, where it failed to conclude that the issue of lack of authority is a disputed genuine issue of material fact?

5. Did the Superior Court err in failing to determine that the *Landowners' Agreement of 1924* or the Decree, specifically preclude GRIC, and the United States on behalf of GRIC, from claiming any water rights to the San Carlos River in the Gila River stream adjudication?

6. Did the Superior Court err when it ruled that the "mutuality exception" under *Nevada v. United States*, 463 U.S. 110 (1983), does not apply to bar any claims that the parties to the Decree may have to any of the tributaries of the Gila River in the Gila River Stream Adjudication?

IT IS FURTHER ORDERED that interlocutory review of the issue presented in "Phelps Dodge Corporation's Cross-Petition for Interlocutory Review of the Denial of Partial Summary Judgment by the Superior Court in Contested Case No. W1-206" is GRANTED on the following issue:

Did the Superior Court err when it found that the claims of the parties in the Globe Equity 59 proceedings to waters of the Gila

River's tributaries had been "split" from those same parties' claims to the main stem waters of the Gila River, and therefore that such tributary claims had not been part of the GE 59 Decree and were not affected by the same preclusive, *res judicata* effects that the GE 59 Decree had on the parties' claims to the river's main stem?

IT IS FURTHER ORDERED that oral argument will be held on the issues presented by the petition and cross-petition for interlocutory review at a date and time to be set in the future;

IT IS FURTHER ORDERED that, pursuant to paragraphs H.3 and I of the "Special Procedural Order Providing for Interlocutory Appeals and Certification," the Supreme Court will hold a telephonic pre-submittal conference on Wednesday, February 2, 2005, at 1:00 p.m.

IT IS FURTHER ORDERED that, pursuant to paragraph I of the "Special Procedural Order Providing for Interlocutory Appeals and Certification," each party desiring to participate in the interlocutory appeal shall file a notice of appearance in the Supreme Court by January 13, 2005.

DATED this 29th day of November, 2004

/s/ Ruth V. McGregor

Ruth V. McGregor, Vice-Chief Justice

A copy of the foregoing mailed this 30th day of November, 2004 to those parties who appear on the Court-Approved mailing list for the Gila River Water case.