

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/25/2002

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

W-1, W-2, W-3, W-4(Consolidated)
W1-203

FILED: July 26, 2002

In Re the General Adjudication
of All Rights to Use Water in
The Gila River System and Source

The court has reviewed the Motion for Reconsideration of Order, Motion for Clarification, and Motion for Expedited Ruling filed by the United States. The court has also reviewed the Gila River Indian Community's ("GRIC") Partial Joinder in the United States' Motion for Clarification and the Salt River Project's response to that motion. Review of these materials suggests that some of the parties misunderstand certain aspects of this adjudication.

The United States is correct in its view of applicable Arizona statutes, which govern the process by which claimants assert their water claims and protect their interests in connection with technical advice provided to the court by the Arizona Department of Water Resources ("ADWR"). However, its view as to how the Arizona Rules of Civil Procedure apply to this proceeding is inaccurate.

The United States, while urging the court to issue orders consistent with the procedural and substantive protections supplied to civil litigants, ignores the applicability and

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disclosure requirements found in Ariz. R. Civ. P. 26.1. While the scope and complexity of this proceeding dictate that compliance with certain of the rule's requirements be achieved in an atypical fashion, the court expects the parties to adhere to the underlying concepts upon which Rule 26.1 is based.¹

For example, the United States argues that it is "unfair for this Court to require the United States to produce evidence before the publication of [ADWR's HSR] Report" because this may require the Government to supply "information and supporting documents that may be subject to claim of privilege or that is prejudicial to our claim." The applicable provisions of Rule 26.1 answer these concerns and make clear that privileged material need not be disclosed. Ariz. R. Civ. P. 26.1(f). The court is a bit dismayed that its memorandum suggests that the United States is unfamiliar with the requirement of the Arizona rule that even relevant material a party may believe is "prejudicial" to its position must be voluntarily disclosed.

Applying the principles of Rule 26.1 to this adjudication, both generally and with respect to the undertaking to which the United States' motion is directed, assists in expediting resolution of important issues and is consistent with the edict of the Arizona Supreme Court in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001) ("*Gila V*"). The *Gila V* opinion makes clear this court is to consider water right claims relating to a potentially wide variety of proposed tribal uses unbridled by the "practical irrigable acreage" limitation. The court has directed ADWR to prepare a final hydrographic survey report for the Gila River Indian Reservation ("*GRIR HSR*") that will permit fair consideration of these claims. It is not unfair to require

¹ For example, the court does not intend to require each claimant to comply automatically with the requirements of subsection (b)(1) of the rule.

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those who hold the claims being evaluated to comply with applicable disclosure rules in connection with this undertaking.

When this proceeding focuses its attention on resolving issues relating to water right claims, the court expects each affected claimant, objector, or other party participating in claim or issue resolution, to abide by the disclosure requirements set forth in Rule 26.1. Compliance with this state's civil disclosure rules is without prejudice to any party amending its claims or otherwise making use of any of the amendment, objection or other rights set forth in Arizona Revised Statutes sections 45-251 through 45-264. The United States and GRIC are not precluded from amending their statements of claimant in accordance with A.R.S. section 45-254(E), but the court expects that the GRIR HSR will present the necessary information available to determine GRIC's water right claims.

Previously, the court extended the time for the United States and GRIC to provide information to ADWR to November 1, 2002. To the extent the United States' motion is inconsistent with the foregoing,

IT IS ORDERED DENYING the United States' Motion for Reconsideration of Order and Motion for Clarification.

* * * *

A copy of this order is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated July 16, 2002. This is also the Court-approved mailing list for W1-203.