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For questions concerning scheduling or procedure, contact Kathy Dolge at the Office of the Special Master, Arizona State Courts Building, 1501 W. Washington, Suite 228, Phoenix, AZ 85007; phone (602) 542-9600; TDD (602) 542-9545.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

HON. SUSAN R. BOLTON

December 8, 1997

P. Woods  
Deputy

No W-1, W-2, W-3, W-4 (Consolidated)

In re the General Adjudication of all Rights to Use Water in the Gila River System and Source

On November 6, 1997, this Court conducted a hearing to discuss the method of proceeding with the determination of issues in the Gila River Indian Community's reserved water rights claim and to discuss the Arizona Department of Water Resources (ADWR) plan for finalizing the hydrologic survey report (HSR) for the Gila River Indian Community.

On October 22, 1997, ADWR filed a plan for finalizing the HSR which recognized that the existing preliminary HSR did not cover certain subjects that are required both by statute and for a complete adjudication of the claim. ADWR proposes to publish three additional volumes of the preliminary HSR to address those subjects. One volume will assess available water supply including an analysis of available and appropriated waters of the Gila River on the dates of the original creation of the reservation and its additions. Another volume will assess water duty for crop production on the Gila River Indian Reservation. The final volume will summarize and tabulate the claims made by the Gila River Indian Community and the United States for reserved water rights based on practicably irrigable acreage (PIA) and on other than the PIA standard.

In responding to ADWR's plan for publication of additional volumes of the preliminary HSR, concern was raised as to whether these volumes would be published at different times or simultaneously and whether the first volume which has already been published in preliminary form would be issued in final form prior to the issuance of volumes 2, 3 and 4.

IT IS ORDERED that the remaining preliminary HSR volumes be published simultaneously so that there is only one additional comment period.

IT IS FURTHER ORDERED that the final HSR, including the volume on arable lands, will be published as one document, and not serially.

Additional comments were made at the oral argument with regard to alleged deficiencies in ADWR's analysis of arable land in the volume already published. Mr. Wilmoth, representing ADWR, stated at the hearing that there would be additional revisions to the arable land volume before any final publication of the HSR. Because no order for final publication will be made at this time and because it is not likely that the remaining volumes of the preliminary HSR will be published for approximately one year, the Court will refrain from making any orders to ADWR at this time concerning necessary revisions to the existing preliminary HSR. After the comment period has expired for the additional volumes to be published and before the final HSR is prepared for the Gila River Indian Reservation, the Court will require some specificity from ADWR as to its intentions in addressing the comments prior to finalizing the HSR.

The Court had previously requested that the Steering Committee meet with the Special Master and attempt to develop a case management plan for the adjudication of the Gila River Indian Community reserved water rights claims. Those meetings have resulted in the proposal for several different case management plans. The Court rejects the proposals that would await any further action until after the final HSR is published. To adopt this proposal the Court would be agreeing to wait two years or more before any further action was taken to attempt to resolve important issues relating to the claims of the Gila River Indian Community and the United States which are not part of the technical assistance provided by ADWR through the HSR.

This Court remains of the opinion that issues concerning the purposes of the reservation and the effect of prior decrees and agreements should be resolved separate and apart from the issues being addressed by ADWR in the HSR. This Court remains of the opinion that these issues are not ones about which ADWR has technical expertise. These are issues of law or mixed questions of fact and law. They are not issues within the technical expertise of ADWR and in the Court's view should proceed at this time.

It is the Court's intention to order disclosure and discovery on these issues at this time.

IT IS THEREFORE ORDERED as follows:

The Gila River Indian Community and/or the United States shall file its disclosure statement no later than **March 31, 1998**. This disclosure statement shall set forth a factual summary of the Gila River Indian Community's position regarding the purposes of the reservation. This disclosure shall also list the relevant documents and names and addresses of any witnesses (if necessary), including expert witnesses, which the Community and/or the United States believe will be called to substantiate the claims. If witnesses are listed, the disclosure shall contain a fair description of the substance of expected testimony. For any expert witnesses, the disclosure shall include a copy of the expert's curriculum vitae

and a list of case names and dates of all prior testimony in water rights cases. If any of the listed documents have not yet been produced to the Special Master in this case, (as described in the Inventory of Documents Possibly Related to Gila River Indian Community Claims (Fourth Draft June 30, 1997)) they shall be sent to him at the time of the service of the disclosure statement. No copies of the listed documents shall be attached to the disclosure statement served on the parties. The disclosure statement shall also contain a statement as to whether the Community and/or the United States believe that an evidentiary hearing will be necessary on any of their theories or whether and which matters can be resolved by summary judgement and reliance upon documents only. The disclosure shall also state the time the Community and/or the United States will require to prepare such motions or for any evidentiary hearings.

IT IS FURTHER ORDERED that any party who believes that prior agreements or decrees have adjudicated or settled any part of the Gila River Indian Community's reserved water rights claim shall file a disclosure no later than **March 31, 1998**, which sets forth each agreement or decree which that party believes affects the Gila River Indian Community's reserved water rights claim and a brief factual summary of the way in which each decree or agreement affects the right. The disclosure shall also list the relevant documents and the names and addresses of any witnesses, including expert witnesses, which the party believes will be called to substantiate the claim. The disclosure shall contain a fair description of the substance of expected testimony. For any expert witnesses, the disclosure shall include a copy of the expert's curriculum vitae and a list of case names and dates of all prior testimony in water right cases. If any of the listed documents have not yet been produced to the Special Master, they shall be sent to him at the time of the service of the disclosure statement. No copies of the listed documents shall be attached to the disclosure statement served on the parties. The disclosure shall also contain a statement as to whether or not that party believes any issue can be resolved by summary judgment based on the existing documents or whether an evidentiary hearing will be needed. The disclosure shall also state the time required to prepare such motions or for any evidentiary hearing.

IT IS FURTHER ORDERED that any party who intends to dispute the disclosure filed by the Gila Indian River Community and/or the United States may file a response to the disclosure by **June 1, 1998**, setting forth those aspects of the purposes that they intend to dispute, any additional documents or witnesses who have information that would bear on the issue, whether or not experts will be required to dispute these claims, a fair description of the substance of expected testimony, and the amount of time that will be required in order to prepare for a hearing on the claims if an evidentiary hearing is necessary. A curriculum vitae and list of prior testimony shall also be included for each expert witness. All additional documents shall be produced to the Special Master.

IT IS FURTHER ORDERED that the Gila River Indian Community and the United States respond to the disclosures regarding decrees and agreements not later than **June 1, 1998**, setting forth what aspects of the allegedly binding decrees or agreements it intends to dispute, any additional documents or witnesses who have information that would bear on the dispute whether or not experts will be required to dispute these claims, a fair description of the substance of expected testimony and the time within which it will take the Community and the United States to prepare for any necessary hearing on the dispute. A curriculum vitae and list of prior testimony shall also be included for each expert witness. All

additional documents shall be produced to the Special Master.

Upon receipt of the disclosures, the Court will set a comprehensive pretrial conference to set a briefing schedule or trial schedule to resolve these issues.

Production of documents to the Special Master is being ordered so that the Special Master can organize the documents, eliminate duplicates and arrange for the purchase of full sets of copies by any party. The Special Master will then transfer the documents to ADWR where they will be available for inspection and copying in the same manner as all other documents in ADWR's document repository.

IT IS FURTHER ORDERED that all filings on the Gila River Indian Community contested case be filed under Contested Case No. W1-203, In Re the Water Rights of the Gila River Indian Community.

Also before the Court on November 6, 1997, was Bella Vista Water Company, Inc., Cortaro Marana Irrigation District and Cortaro Water Users Association and the Town of Gilbert's Motion to Suspend HSR Process and for Comprehensive Pretrial Conference.

IT IS ORDERED denying this motion. The Court finds that the proposal of these parties is contrary to the requirements of A.R.S. § 45-256 which mandates the preparation of an HSR, followed by an objection period.

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A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3, W-4 mailing list dated 11-6-97.