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

5/30/86
VIVIAN KRINGLE, Clerk
By *D. Lab* Deputy

IN RE THE GENERAL ADJUDICATION) W-1 (Salt)
OF ALL RIGHTS TO USE WATER IN) W-2 (Verde)
THE GILA RIVER SYSTEM AND) W-3 (Upper Gila)
SOURCE) W-4 (San Pedro)
)
) PRE-TRIAL ORDER NO. 1
) RE: CONDUCT OF ADJUDICATION
)
) (Judge Goodfarb, Div. 11)

INDEX

SUBJECT	¶ NO.	PAGE NO.
PURPOSE OF THIS ORDER	1	1
NATURE OF PROCEEDINGS	2	1
OVERVIEW OF PROCEEDINGS	3	2
MAINTENANCE OF COURT RECORDS	4	3
FILINGS WITH CLERK OF COURT	5	4
Definitions	5.A	4
Special Procedure for Filing	5.B	5
Clerk of the Superior Court for Maricopa County	5.B(1)	5
Clerk of the Superior Court for Each County Except Mohave County	5.B(2)	7
Department of Water Resources (DWR)	5.B(3)	7
Parties	5.B(4)	9
SERVICE OF PLEADINGS AND OTHER PAPERS FILED	6	9
APPROVAL BY SUPREME COURT	7	10

DOCKETED

471

1	MOTIONS	8	10
2	Certain Motions Precluded	8.A	10
3	Discovery Motions	8.B	11
4	Time Periods	8.C	12
5	Consideration of Motions	8.D	12
6	Oral Argument	8.E	12
7	Length of Motions and Memoranda	8.F	13
8	Monthly Motion Hearing Schedule	8.G	13
9	STEERING COMMITTEES	9	13
10	Membership	9.A	14
11	DWR Participation	9.B	14
12	Establishment of Committees	9.C	15
13	ISSUE IDENTIFICATION AND RESOLUTION	10	15
14	Introduction	10.A	15
15	Issues	10.B	16
16	Procedures	10.B(1)	16
17	HSR Investigations of Rights		
18	Based Upon State Law	10.B(2)	16
19	Rights Based Upon State Law	10.B(3)	17
20	HSR Investigations of Rights		
	Based Upon Federal Law	10.B(4)	17
21	Prior Decrees	10.B(5)	17
22	Defining the River System		
23	and Source	10.B(6)	18
24	Rights Based Upon Federal Law	10.B(7)	18
25	Issue Resolution	10.C	19
26	DISCOVERY	11	19
27	Introduction	11.A	19
28	Steering Committee Recommendations	11.B	20

1	Prerequisites to Formal Discovery	11.C	21
2	Discovery of Small Claimants of 50 Acre-Feet or Less	11.D	21
3	Discovery of Other Small Claimants	11.E	21
4	Discovery for Larger Claimants	11.F	22
5	DWR as a Central Repository of Information	11.G	23
6	Exchange of Expert Reports	11.H	23
7	Depositions	11.I	24
8	Uniform Location for Depositions	11.J	24
9	Stipulations on Basic Matters and Technical Considerations	11.K	25
10			
11	DWR REPORTS AND THE HEARING PROCESS	12	25
12	Introduction	12.A	25
13	Hydrographic Survey Reports	12.B	27
14	Comprehensive Reports	12.C	31
15	HSRs: Notice and Comment	12.D	31
16	HSRs: Evidentiary Hearing	12.E	32
17	Re-Opening HSRs	12.F	35
18	Comprehensive Report: Incorpora- tion of Factual Determinations	12.G	35
19	Comprehensive Report: Notice and Comment	12.H	36
20	Comprehensive Report: Hearing	12.I	36
21	Court's Acceptance of Master's Reports	12.J	38
22	Appointment of Master or Masters	12.K	39
23			
24	TECHNICAL MEETINGS	13	39
25			
26	RELATIONSHIP TO LITTLE COLORADO ADJUDICATION	14	40
27			
28			

1	MATTERS TO BE CONSIDERED FOR EXPEDITED PROCESSING	15	40
2	PROJECTION OF SCHEDULES	16	41

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1 Pursuant to the authority vested in this Court by A.R.S.
2 § 45-259 and Rule 16(b) of the Arizona Rules of Civil Procedure,
3 the Court hereby enters the following Order providing guidelines
4 for the further conduct of this litigation.

5 In entering this Order the Court is guided by concerns
6 of judicial economy, efficiency, and resolution of this adjudi-
7 cation in as short a time as the complexities of this case and
8 its scope allow.

9
10 1. PURPOSE OF THIS ORDER

11 The purpose of this Order is to set a general framework
12 within which the adjudication of water rights in the Gila River
13 System and Source may be determined. The Court anticipates that
14 further and additional Pre-Trial Orders will be required in
15 order to efficiently manage a case so large and complex. Accord-
16 ingly, this Order may be amended or clarified in later Orders
17 entered by the Court.

18
19 2. NATURE OF PROCEEDINGS

20 This proceeding is a general stream adjudication authorized
21 pursuant to A.R.S. § 45-251 through A.R.S. § 45-260 and any
22 other applicable provisions of Arizona law.

23 The purpose of this adjudication is to determine all rights
24 to the use of water obtained from the Gila River Basin System
25 in the State of Arizona.

26 Parties desiring further information concerning the back-
27 ground and nature of these proceedings are referred to decisions
28 rendered by the Supreme Court of the United States and the

1 Arizona Supreme Court. These decisions are, respectively,
2 Arizona, et al. v. San Carlos Apache Tribe of Arizona, et al.,
3 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983) and United
4 States of America v. Superior Court of the State of Arizona,
5 144 Ariz. 265, 697 P.2d 658 (1985).

6 Additional information concerning these proceedings is
7 available from the Arizona Department of Water Resources, the
8 state agency mandated by A.R.S. § 45-256 to provide technical
9 and administrative assistance in this general adjudication.

10 The address and telephone number of this agency is as follows:

11 Arizona Department of Water Resources
12 99 East Virginia Avenue
13 Phoenix, Arizona 85004
14 Tele. No. (in Arizona): 1-800-352-8488
(Outside Arizona): 1-800-255-1520

15 A non-legal but comprehensive discussion of this adjudica-
16 tion process may also be found in the booklet prepared by the
17 Arizona Water Information Center, University of Arizona, Tucson,
18 Arizona 85721, entitled "Protect Your Water Rights". While
19 intended for lay potential claimants it provides worthwhile
20 information in a clear and concise manner.

21 3. OVERVIEW OF PROCEEDINGS

22 The general procedure established by the State of Arizona
23 concerning this adjudication is set forth in A.R.S. § 45-256
24 and § 45-257.

25 By Order of the Arizona Supreme Court on November 25, 1981,
26 several sub-basins of the Gila River System were consolidated
27 into a single proceeding. The basins included in this proceeding
28 are:

	<u>Sub-Basin</u>	<u>Case No.</u>
1		
2	Salt	W-1
3	Verde River	W-2
4	Upper Gila	W-3
5	San Pedro	W-4

6 Other sub-basins have since been added and include the Lower
7 Gila and the Upper Santa Cruz.

8 Other portions of this Order provide greater detail on
9 the procedures to be followed in these adjudications. These
10 procedures provide a method for determining and quantifying
11 existing rights based on state law; determining and quantifying
12 existing rights to use and reserved rights to use of water aris-
13 ing under federal law, including all federally held real proper-
14 ty including but not limited to Indian reservations, and a method
15 for integrating all such rights, including rights determined
16 under prior Court decrees, in a single integrated decree for
17 the Gila River System and Source, in the State of Arizona.

18 Given the size of these proceedings, the complexity of
19 the issues to be determined and the importance of the adjudica-
20 tion, these proceedings will probably last many years before
21 a final decree can be entered.

22 4. MAINTENANCE OF COURT RECORDS

23 The Clerk of the Maricopa County Superior Court is hereby
24 directed to review the current procedure for receiving, filing
25 and storing the record in these proceedings. Given the antici-
26 pated large number of pleadings and other materials which will
27 be filed in these proceedings through the years, the Clerk is
28 directed to:

1 A. Make suitable arrangements for adequate storage space
2 for hard copy of all pleadings and all other papers filed;

3 B. Develop a procedure for separate off-site storage
4 of a duplicate microfiche⁵²⁶ record of all material filed in these
5 proceedings, and means by which copies of microfiche⁵²⁶ may be
6 reasonably and promptly acquired;

7 C. Conduct a feasibility study on the extent to which
8 all pleadings or other papers once filed with the Court may
9 be transferred onto magnetic media storage or other suitable
10 storage such as laser disc through the use of Optical Character
11 Readers or other appropriate technology, and report to the Court
12 in writing no later than the 1st day of November, 1986;

13 D. Coordinate with the Department of Water Resources
14 concerning all aspects of record maintenance.

15
16 5. FILINGS WITH CLERK OF COURT

17 A. Definitions

18 (1) "Descriptive summary" means a one-sentence state-
19 ment in a document filed in this action that states the nature
20 of the document, its relationship to any other document: (e.g.,
21 Response to X's Motion for Summary Judgment) the action or relief
22 requested, the Statement of Claimant number of the party filing
23 the document, the number of pages and date of filing.

24 (2) "Party" means a person or entity who files a
25 Statement of Claimant or for whom a Statement of Claimant is
26 filed, whether or not the Statement of Claimant complies with
27 the requirements prescribed in A.R.S. § 45-254 or with the orders
28 of this Court, and successors in interest to these individuals,

1 who shall automatically be substituted as parties pursuant to
2 Rule 25(d), Arizona Rules of Civil Procedure, except that party
3 does not include a person or entity whom the Court has determined
4 is not a party to this action.

5 (3) "Statement of Claimant Number" means a number
6 and/or letters assigned by DWR identifying each claimant's claim
7 in these proceedings.

8 B. Special Procedure for Filing

9 The Court notes that Strict Compliance with the provi-
10 sion of Rule 5(a) of the Arizona Rules of Civil Procedure,
11 requiring that nearly all papers filed with the Court subsequent
12 to the original complaint be served upon each of the parties,
13 would work a severe financial hardship on many parties, and
14 might discourage, or even prevent them from actively participat-
15 ing in this action. In light of the mandate of Rule 1 of the
16 Arizona Rules of Civil Procedure that the Rules be construed
17 "to secure the just, speedy, and inexpensive determination of
18 "every action," for the purpose of this action compliance with
19 the procedures set forth below shall constitute full compliance
20 with Rule 5(a). Unless otherwise ordered by the Court, the fol-
21 lowing procedures shall apply to all documents filed in this
22 action, except Statements of Claimant.

23 (1) Clerk of the Superior Court for Maricopa County

24 The Clerk of the Superior Court for Maricopa
25 County shall:

26 a. Assign a number to each document, other
27 than Statements of Claimant, filed in this action prior to and
28 subsequent to the consolidation.

1 b. Maintain a docket sheet for all documents
2 identified in paragraph 5.B.1.(a) above. The docket sheet shall
3 be updated bi-weekly and shall include the number or letter
4 assigned to the party and document, the complete title of the
5 document and any descriptive summary contained in the document.

6 c. Within thirty (30) days after the effective
7 date of this Order, provide to the DWR and the Clerk of the
8 Superior Court of Arizona in each county, except Mohave County,
9 a copy of the docket sheet for this action identifying all docu-
10 ments filed in this action prior to the effective date of this
11 Order.

12 d. On the first day of each month that falls
13 after the date the Clerk of the Superior Court for Maricopa
14 County provides the docket sheet required by paragraph 5.B.1.(c)
15 above, provide to the DWR and the Clerk of the Superior Court
16 of Arizona in each county, except Mohave County, a copy of the
17 docket sheet for this action identifying all documents filed
18 in this action during the preceding month.

19 e. Any document presented for filing, other
20 than a Statement of Claimant, shall not be accepted by the Clerk
21 unless it is accompanied by a Certificate of Mailing which states
22 that copies of the document presented have, in fact, been mailed
23 or delivered to all those designated in paragraph 5.B.(4) here-
24 after listed and all those designated on the Court's approved
25 mailing list. The Clerk shall have available copies of the mail-
26 ing list and shall provide a copy to any party upon request
27 and payment of a fee set by the Clerk to defray the cost of
28 providing such copies.

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(2) Clerk of the Superior Court for Each County
Except Mohave County

The Clerk of the Superior Court for each county, except Mohave County, shall post in a conspicuous location in the Clerk's office the complete docket sheet for this action or a notice indicating where in the Clerk's office the complete docket sheet is available for inspection.

(3) Department of Water Resources (DWR)

The DWR shall:

a. Post in a conspicuous location in the Phoenix office of the DWR and in the Pinal, Prescott and Tucson Active Management Area offices the complete docket sheet for this action or a notice indicating where in the office the complete docket sheet is available for inspection.

b. Within forty-five (45) days after the effective date of this Order, send by first class mail a notice to each party to this action. The notice shall also be mailed together with Statement of Claimant forms to each person who requests such forms from the DWR after the date of this Order. The notice shall state:

(1) Where the complete docket sheet for this action is available for inspection.

(2) That copies of documents filed in this action are available from the DWR for the DWR's normal copying charge plus any applicable mailing fee.

(3) That the Court has entered a Pre-Trial Order regarding procedures to be followed in this adjudication.

(4) That the DWR will mail a copy of each

1 month's docket sheet and the Pre-Trial Order(s) to a party upon
2 payment of a fee to be established by the DWR to cover actual
3 expenses.

4 c. Within forty-five (45) days after the effec-
5 tive date of this Order, publish or cause to be published in
6 newspapers of general circulation serving all areas covered
7 by this adjudication a copy of the notice described in paragraph
8 5.B.3.b above.

9 d. Upon receipt of a Statement of Claimant
10 filed by a person who was not previously a party to this action,
11 send to each such additional party by first class mail a notice
12 containing information required by paragraph 5.B.(3).b above.

13 e. Provide to any person a copy of a document
14 filed in this action upon the payment of DWR's normal copying
15 charge plus any applicable mailing fee.

16 f. Mail a copy of each month's docket sheet
17 to a party who pays a fee established by the DWR to cover actual
18 expenses.

19 g. Mail a copy of any document or paper filed
20 by it in these proceedings to all addressees on the Court mail-
21 ing list.

22 h. File with the Clerk of the Court in each
23 county, except Mohave County, on behalf of all parties in a
24 form to be approved by the Court a Notice of Lis Pendens which
25 shall describe the property encompassed, the nature of these
26 proceedings, and the effect thereof as to any water rights the
27 property may have or may claim to have. The DWR shall also cause
28 the Notice of Lis Pendens to be recorded in the office of the

1 County Recorder of each county in which any part of any "River
2 System and Source" included in these proceedings is located.

3 (4) Parties

4 a. A party to this action shall:

5 (1) File the original of a document permit-
6 ted or required to be filed in this action with the Clerk of
7 the Superior Court for Maricopa County, provide one copy of
8 the document to the Court, two (2) copies to the DWR and one
9 copy to each party against whom the matter is addressed or from
10 whom relief is sought.

11 (2) Mail a copy to each party on the Court's
12 approved mailing list of each document other than the Statement
13 of Claimant Form.

14 (3) For each document filed in this action,
15 set forth immediately after the caption a descriptive summary
16 of the document.

17 (4) For each document filed set forth,
18 immediately below the descriptive summary, the parties identify-
19 ing Statement of Claimant number.

20
21 6. SERVICE OF PLEADINGS AND OTHER PAPERS FILED

22 Each party shall mail a copy of any document other than
23 a Statement of Claimant Form to all parties listed on the Court's
24 approved mailing list. Each party who is currently on the Court's
25 mailing list in this action shall serve a copy of any pleading
26 or paper filed with the Clerk or the Court upon all other parties
27 currently on the mailing list.

28 All parties desiring to remain on or be placed on the

1 Court's approved mailing list may do so by filing a written
2 request with the Court, within 30 days of the effective date
3 of this Order. Copies of the request shall be mailed to all
4 persons then on the mailing list, stating the intention to take
5 an active part in the litigation, its need to be on the approved
6 mailing list and to receive all copies, and an agreement to
7 serve on such steering committees as shall hereafter be formed.
8 Any person making such a request shall thereafter be obligated
9 to provide copies of any document or pleading it files in this
10 action to all other persons on the mailing list.

11
12 7. APPROVAL BY SUPREME COURT

13 Because A.R.S. § 45-259 mandates the application of the
14 Rules of Civil Procedure to this proceeding, and literal com-
15 pliance with those rules is virtually impossible especially
16 as to the rules on service of documents, this Pre-Trial Order
17 shall be submitted to the Arizona Supreme Court under Rule 83
18 of the Rules of Civil Procedure for waiver of the service of
19 documents rule and for ratification and approval of such parts
20 thereof as the Arizona Supreme Court deems appropriate.

21
22 8. MOTIONS

23 A. Certain Motions Precluded

24 The Court is confronted with the need to resolve a
25 myriad number of substantive and procedural issues in order
26 to complete this adjudication as quickly as possible. A priori-
27 tized list of issues and a briefing schedule will be established
28 in the near future. No Motion raising an issue already scheduled

1 on the Court's agenda of issues will be considered until after
2 the scheduled issue has been decided. Until such time as the
3 prioritized list of issues and briefing schedule is determined,
4 the Court will defer consideration on any Motion raising a sub-
5 stantive issue of law.

6 After completion of issue identification, publication of
7 an agenda of issues and establishment of a briefing schedule,
8 any party filing a Motion with the Court must file a certifica-
9 tion which attests that either:

- 10 1. The issue or issues raised in the
11 motion are not issues already identi-
fied as scheduled for briefing, or
- 12 2. That if the motion raises such
13 issues, that such issues have already
14 been resolved by prior determination
15 of the Court, giving the date of the
determination, and a quotation of
the Court Order or Opinion resolving
such issue.

16 Any Motion unaccompanied by such a certification will be
17 deferred by the Court pending outcome of issues relevant to
18 the Motion as already identified and scheduled for briefing
19 by the Court.

20 B. Discovery Motions

21 Any party filing a Motion for Sanctions or a Motion
22 to Compel Discovery pursuant to Rule 37 of the Arizona Rules
23 of Civil Procedure shall file an additional certification as
24 part of the Motion. This certification shall include:

- 25 1. A statement of the efforts made by
26 the party or their counsel to resolve
the discovery problem;
- 27 2. That the discovery sought is in com-
28 pliance with the Court's limitations
on discovery such as form, timing,
scope, etc.

1 All parties are advised that any Motions not complying with
2 these prerequisites will be summarily denied.

3 C. Time Periods

4 Any party filing a response to a Motion in this pro-
5 ceeding shall do so within thirty-five (35) days of the date
6 of service of the Motion. Any party filing a Reply to any Re-
7 sponse shall do so within twenty (20) days of the date of ser-
8 vice. The time periods set forth herein are in addition to the
9 five (5) day period for service by mail specified pursuant to
10 Rule 6(e) of the Arizona Rules of Civil Procedure. The time
11 period set forth herein shall not apply to any issue scheduled
12 for determination by the Court to which an established briefing
13 schedule applies.

14 D. Consideration of Motions

15 Except for good cause shown a Motion filed in this
16 action shall be heard by the Court no earlier than ninety (90)
17 days after the Motion has been filed, which period of time shall
18 begin when the docket sheet on which the Motion appears shall
19 be available from the DWR.

20 E. Oral Argument

21 Only those parties having filed a written Motion or
22 Response will be heard at oral argument on that particular
23 Motion. No later than thirty (30) days prior to the date set
24 for oral argument, the parties having filed or joined in the
25 Motion and parties having filed any Responses shall determine
26 the amount of time to be sought for oral argument and shall
27 obtain prior permission for any oral argument extending more
28 than five (5) minutes per party, as specified in Local Rule

1 3.2.d of the Local Rules of Maricopa County Superior Court.
2 Depending upon the schedule of the Court, telephone argument
3 in compliance with Local Rule 3.2.e of the Maricopa County
4 Superior Court may be available if requested. The foregoing
5 requirements concerning oral argument of Motions shall not be
6 applicable to argument upon issues specified in the Court's
7 Briefing Schedule.

8 F. Length of Motions and Memoranda

9 The Court will follow the page limitations set forth
10 in Maricopa County Superior Court Local Rule 3.2.f. This require-
11 ment shall not apply to Memoranda filed on issues specified
12 in the Court Briefing Schedule. Page limitations as to such
13 matters will be set specifically.

14 G. Monthly Motion Hearing Schedule

15 Except as specifically ordered to the contrary, the
16 Court will attempt to hear all pending Motions and matters re-
17 quiring oral argument on the last Friday of each month at 1:30
18 P.M. in its courtroom.

19
20 9. STEERING COMMITTEES

21 Due to the large number of parties in this litigation and
22 their diversity, the Court considers the establishment of steer-
23 ing committees as a necessity in this litigation all as set
24 forth in the Federal Courts' Manual for Complex Litigation.

25 The Court therefore encourages the parties to meet among
26 themselves or through counsel with the view towards establishing
27 consensus on such committees, the interests to be represented
28 and the claimants representative of such interests.

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A. Membership

Each committee shall include a representative of Salt River Project, the mining industry, the municipalities, intervening Indian Tribes, the State of Arizona, the United States of America and private non-Indian claimants. Such committee shall make recommendations to the Court in matters concerning procedures for simplifying the adjudications process to be accomplished here.

B. DWR Participation

The DWR shall act as moderator of each steering committee, provide meeting space if requested, provide technical and administrative support to the committee, act as reporter for the committee for the purpose of preparing reports and other documents produced by the committee. The DWR shall have no voting power in the committee, nor shall the DWR assert any position regarding the recommended resolution of any issue raised within the committee, except as to how any proposed committee recommendation would affect its responsibilities and duties in this case.

All committee meetings shall be open to the parties and to the public. Participation in the meetings by persons other than committee members shall be at the discretion of the committee.

The DWR shall file a notice of each steering committee meeting with the Court and shall mail a copy of the notice to each member of the committee. Notice of the committee meetings shall be given to all parties in the same manner as notice must

1 be given of other documents filed in this action pursuant to
2 section 5, above.

3 C. Establishment of Committees

4 For the reasons set forth herein the Court therefore
5 directs the parties to consider the utilization of steering
6 committees in this litigation and any party having an interest
7 in establishing such committees submit its proposal for the
8 formation of such committees by July 15, 1986. If no acceptable
9 proposal is submitted to the Court, the Court then will desig-
10 nate counsel and outline their duties. At a minimum the Court
11 envisions a committee on issue resolution and a committee on
12 discovery. A hearing on the establishment of such committees
13 is set for Friday, July 25, 1986 at 1:30 P.M. in the courtroom
14 of this division.

15
16 10. ISSUE IDENTIFICATION AND RESOLUTION

17 A. Introduction

18 This general adjudication encompasses a myriad of
19 procedural, technical and legal issues. The prompt, orderly
20 and consistent resolution of these issues is critical to achiev-
21 ing a meaningful, comprehensive decree. In light of the possible
22 need for the use of many masters in the various sub-basins it
23 is necessary to achieve consistency so that all major issues ⁵²⁰ ~~are~~
24 to be determined by the Court and the masters follow those deter-
25 minations. The following mechanism is established to identify
26 the issues in this action and to provide a method for their
27 resolution.

28 . . .

1 B. Issues

2 The procedural, technical and legal issues in this
3 action shall be identified and considered in categories, or
4 "Segments," and the Segments shall be considered sequentially.
5 The steering committee on issue resolution shall be requested,
6 and all other interested parties shall be given an opportunity,
7 pursuant to order of this Court, to 1) file lists of prioritized
8 issues within each Segment; and 2) suggest the priority in which
9 the Court should consider the Segments. After considering the
10 lists and suggestions, the Court shall issue a Final Segment
11 Order. Issues properly contained in one Segment shall be con-
12 sidered only in that Segment, except upon order of the Court.
13 The Court hereby designates the following Segments as examples
14 of some of the issues which the Court believes need to be con-
15 sidered in each Segment. It is permissible to begin consider-
16 ation of a Segment prior to termination of the consideration
17 of a previous Segment or Segments.

18 (1) Procedures

- 19 a. Amendments to Statements of Claimant.
- 20 b. Disposition of Statements of Claimant filed
21 after the filing deadline.
- 22 c. Base years for determination of water uses
23 and rights.

24 (2) HSR Investigations of Rights Based Upon State Law

- 25 a. Required scope of DWR investigations.
- 26 b. Standards to be used by DWR for field mea-
27 surements, matching water rights filings with existing uses
28 and making conclusions regarding water uses.

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(3) Rights Based Upon State Law

- a. Legal effect of claims made on the Statement of Claimant Form.
- b. Legal effect of pending applications and nonperfected permits granted under the Arizona Water Code of 1919, as amended, A.R.S. §§ 45-141 to -156.
- c. Legal effect of claims made under the Water Rights Registration Act, as amended, A.R.S. §§ 45-180 to -192.
- d. Legal effect of claims made under the Stock-pond Registration Act, as amended, A.R.S. §§ 45-271 to -276.
- e. Criteria for abandonments.
- f. Relationship between state groundwater law and state surface water law on matters of potential conflict.

(4) HSR Investigations of Rights Based Upon Federal Law

- a. Required scope of DWR investigations.
- b. Standards for reporting practicably irrigable acres and other relevant information.

(5) Prior Decrees

- a. Comprehensiveness of decree.
 - (1) Sources of water encompassed.
 - (2) Extent of water users affected by the decree.
- b. Administration
 - (1) Abandonments and forfeitures.
 - (2) Transfers.
- c. Provisions of decree subject to modification by the Court.

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d. Extent to which decree is binding on the Court.

e. Effect of decree on claim based on federal law.

(6) Defining the River System and Source

a. Sources of supply originating in the State of New Mexico and the Republic of Mexico.

b. Sources of supply originating outside the watershed or from effluent, groundwater transportation or augmentation.

c. Groundwater subject to jurisdiction based upon state law.

d. Groundwater subject to jurisdiction based upon federal law.

(7) Rights Based Upon Federal Law

a. Basis of right for existing water uses on federal reservations.

b. Legal theories for determining the extent and priority of federal law rights.

c. Relationship between federal and state law on matters of potential conflict.

d. Factors to be considered in determining extent of rights under doctrine of equitable apportionment.

e. Factors to be considered in determining extent of rights under doctrine of practicably irrigable acres.

f. Factors to be considered in determining extent of rights under other doctrines.

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1 g. Primary purposes and secondary uses for
2 which federal reservation were reserved.

3 h. Application of reserved rights doctrine
4 to purchased Indian lands.

5 C. Issue Resolution

6 After all parties to the adjudication have been join-
7 ed, the Court shall set a briefing schedule for the issues in
8 each Segment. The briefing schedule will order briefs from all
9 interested parties and allow responses to initial briefs.

10
11 11. DISCOVERY

12 A. Introduction

13 The vast number of claimants implies the possibility
14 for endless and costly discovery. Further, because of the number
15 of claimants, duplicative discovery is certain if a preventative
16 procedure is not developed. The Court is concerned about the
17 cost of obtaining technical evidence. If each party attempts
18 to acquire the same technical evidence, there will be a great
19 waste of resources and the likelihood of discovery abuse increas-
20 es, without benefit to the process. The Court therefore sets
21 the following goals.

22 (1) Within reasonable limits relating to the amount
23 and nature of the claimed use, to allow each claimant to obtain
24 such information as necessary to permit evaluation and possible
25 objection to any other claim;

26 (2) To provide uniform methods of obtaining informa-
27 tion from claimants and to prefer such uniform methods over
28 individual discovery requests;

1 (3) To integrate the timing of discovery procedures,
2 with the sequence of adjudications as determined by the Court;

3 (4) To minimize the time and expense of discovery
4 upon claimants having claims of an amount or of a priority date
5 which may warrant less comprehensive discovery procedures;

6 (5) To avoid duplication of effort and needless ex-
7 pense to parties by encouraging the use of shared expertise
8 by multiple claimants;

9 (6) To simplify discovery by the establishment of
10 realistic time periods given the complexity of the adjudication,
11 its scope and the resources of the parties;

12 (7) To utilize, wherever possible, the technical
13 expertise, administrative resources and public records of the
14 DWR in order to reduce the expense, time, and complexity of
15 traditional discovery procedures.

16 B. Steering Committee Recommendations

17 The steering committee on discovery will be charged
18 with the responsibility of developing a discovery plan which
19 will ultimately result in a Court ordered discovery procedure.
20 The committee's plan will address the process and timing of
21 discovery. The plan shall incorporate all methods of making
22 discovery more efficient and cost-effective, and in particular
23 address the issue of whether or not there are certain classes
24 of claimants, the size of those individual claims and the num-
25 bers of the total of such claims which make it impractical and
26 unnecessary for discovery to be requested of such claimants.

27 All parties shall be given an opportunity to comment on
28 any draft discovery plan before the Court finalizes the plan.

1 C. Prerequisites to Formal Discovery

2 The Court mandates that the informal exchange of pro-
3 perly discoverable information is a prerequisite to any formal
4 discovery. Before any formal discovery is taken, a party must
5 certify that it has reviewed the DWR's records and the informa-
6 tion sought is not available from the DWR.

7 D. Discovery of Small Claimants of 50 Acre-Feet or Less

8 No formal discovery, without leave of Court, shall
9 be allowed of claimants with a claim for less than fifty (50)
10 acre-feet of water per year, ⁵⁷⁶ ~~where~~ the sole use claimed is
11 for stockwatering purposes or for domestic use. Parties interest-
12 ed in these claims will be allowed to make informal inquiry
13 of the claimant and his counsel and the DWR shall make available
14 all of its records upon request to secure the needed informa-
15 tion. If deemed necessary, a formal request to the Court for
16 further discovery can be made, but the request must specify
17 in detail the need for such discovery. If, however, any of such
18 designated small claimants makes discovery of other claimants,
19 then they shall be subject to discovery consistent with the
20 Arizona Rules of Civil Procedure and the procedures for discov-
21 ery designated by this Court. Claimants in this category are
22 designated Group 1 claimants.

23 E. Discovery of Other Small Claimants

24 Claimants of more than 50 acre-feet but less than
25 100 acre-feet or claimants of less than 50 acre-feet used for
26 other than stock watering purposes or domestic use could be
27 required to answer and verify its answers to a short question-
28 naire submitted to them through the DWR and to support their

1 responses with such corroborative documentary evidence as avail-
2 able. The questionnaire should be designed by the steering com-
3 mittee with the aid and assistance of DWR, providing input to
4 avoid duplication of information already available or to become
5 available through DWR. These claimants shall be designated Group
6 2 claimants.

7 This questionnaire shall seek information to support the
8 claim and would cover additional areas such as issues of abandon-
9 ment, change of use, crops, types of water delivery and appli-
10 cation systems as well as questions related to water conserva-
11 tion. By completing, verifying, and returning the questionnaire,
12 all Group 2 claimants would be considered to have discharged
13 their obligation to respond to discovery. No further discovery
14 on a Group 2 claimant would be permitted except upon good cause
15 shown through application to the Court. Any Group 2 claimant
16 who wished to actively participate in the adjudication through
17 the filing of objections to claims, would be required to meet
18 all discovery, pretrial, and trial procedures the same as a
19 Group 3 claimant.

20 F. Discovery for Larger Claimants

21 Group 3 would be comprised of those claimants having
22 the largest claims and as to which extensive discovery would
23 be most appropriate and beneficial. These claimants, e.g., utili-
24 ties, irrigation districts, cities, the United States and Indian
25 tribes, would be subject to more comprehensive discovery pro-
26 cedures, but care shall be taken that the same shall not be
27 duplications, onerous or burdensome. It is as to this group

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1 of claimants that the steering committee on discovery's recom-
2 mended plan should have the greatest emphasis.

3 G. DWR as a Central Respository of Information

4 DWR, in its capacity as a collector and respository
5 of data and information can do much to relieve the burden of
6 discovery. The DWR shall collect and make basic, basin-wide
7 or state-wide data available to the parties. Further, the par-
8 ties will be ordered to make documents of general interest which
9 they discover available to DWR. DWR will, in turn, make these
10 documents generally available. DWR should create an index of
11 the documents available to interested parties. The index should
12 contain an abstract of each document, listing sufficient detail
13 to allow the efficient search for relevant and helpful documents
14 and records.

15 DWR shall also make its field work data available to all
16 parties at a central location. Claimants' files should be main-
17 tained and made available to interested parties. In addition
18 to being consistent with the DWR's statutory role, DWR's effi-
19 cient record-keeping and practice of making common records avail-
20 able will greatly ease the discovery burden.

21 H. Exchange of Expert Reports

22 Expert discovery is likely to be an expensive and
23 time-consuming element of the discovery required to prepare
24 the adjudication for hearing. In order to ease this burden,
25 each expert that will testify at trial will be required to pre-
26 pare a report containing final opinions and all information
27 supporting those opinions. These reports will be available to

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1 all interested parties and must be prepared at least 60 days
2 before each expert's deposition.

3 I. Depositions

4 Deposition discovery can be coordinated so that only
5 one deposition per witness is necessary. At the one deposition
6 of each witness, each party will have an opportunity to examine
7 the witness. In order to make expert witness depositions meaning-
8 ful under this system, it will be necessary for the steering
9 committee and the Court to set a date when the final opinions
10 of experts must be ready. Depositions of experts taken before
11 the preparation of final opinions and reports would be wasteful,
12 and therefore will not be allowed except with prior Court order.

13 J. Uniform Location for Depositions

14 To the extent possible, a uniform location either
15 at the Maricopa County Superior Court Complex, or the offices
16 of the DWR shall be established for the taking of depositions.
17 The discovery steering committee shall investigate a standard-
18 ized procedure for video taping of depositions with the tapes
19 to be available for viewing by the parties at a document deposi-
20 tory or for use at the hearings.

21 Any deposition of an expert shall be continued with the
22 final part of a deposition to be postponed for a period of not
23 less than sixty (60) days from the date of delivery of the tran-
24 script to the parties. This will enable any party not in atten-
25 dance at the original earlier portion of the deposition to make
26 an assessment of the testimony obtained from the deponent and
27 determine whether or not additional questions are required at

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1 the continued deposition. This delay procedure is specifically
2 recommended in the Manual for Complex Litigation.

3 K. Stipulations on Basic Matters and Technical
4 Considerations

5 The discovery steering committee shall attempt to
6 work with the parties and their experts to encourage and achieve
7 stipulations on basic definitions and facts. For instance, stipu-
8 lations should be achieved regarding a common map scale, the
9 consumptive use of crops, water duties for irrigation systems,
10 Indian Reservation boundaries, points of diversion and basin
11 wide hydrologic or geologic data. Reducing disagreement about
12 basic facts will focus the discovery and the Court's or Master's
13 inquiry. A failure to stipulate where there are no meaningful
14 differences will lead the Court to consider sanctions and the
15 award of attorneys fees against the offending party and/or its
16 attorney.

17
18 12. DWR REPORTS AND THE HEARING PROCESS

19 A. Introduction

20 The Court recognizes that it is appropriate for the
21 DWR to exercise its discretion, subject to any applicable sta-
22 tutory requirements and orders of this Court, in determining
23 the format of and to some extent the schedule for preparing
24 the report required by A.R.S. § 45-256.B. The Court also recog-
25 nizes that at this time the schedule for preparing the report
26 or any component of the report cannot be predicted with any
27 degree of certainty. Nonetheless, a summary of the DWR's current
28 plans is necessary to provide a context for this section and

1 other sections of this Order. In light of these considerations,
2 the Court offers subsections A and B, below, as a summary of
3 the DWR's plans for producing and required report. The DWR set
4 forth its plans in a Memorandum to the Court dated April 11,
5 1984, and at the Adjudication Conference held June 12, 1985.
6 The DWR's schedule for the production of the required report
7 is attached hereto as Exhibit A. Subject to any applicable statu-
8 tory requirements, any provisions of this Order other than sub-
9 sections A and B, below, and any subsequent Orders of this
10 Court, may only be modified by Court Order for good cause shown.
11 DWR shall produce the required reports in accordance with the
12 attached Exhibit A.

13 The hearing process outlined below is a two-stage process,
14 consisting of hearings on both the Hydrographic Survey Reports
15 and the Comprehensive Report prepared by the DWR. This process
16 is meant to proceed on a parallel track with the issue identifi-
17 cation and resolution procedure described at Section 9, above.
18 The need to begin addressing all the issues, both legal and
19 factual, makes it imperative that these two processes begin
20 as soon as possible and proceed simultaneously. However, the
21 unique nature of the Indian reservations and the claims filed
22 by and on behalf of the various Tribes requires that hearings
23 on the Hydrographic Survey Reports for the reservations not
24 be held until the issue identification and resolution process
25 is completed. Therefore the Court proposes to proceed with
26 Masters' hearings on the completion of the final HSR in each
27 sub-basin, even though it may occur before the reservation HSR's
28 are completed. Also at that time the Court may not have completed

1 the issue resolution process. To allow a two-track approach,
2 the Masters will hold the hearing on the finalized sub-basin
3 HSR to the extent possible with a final hearing to be held there-
4 after after the hearings on all reservations claiming in that
5 basin and after the resolution of all issues by the Court which
6 could affect that basin. This hearing will be the hearing on
7 the comprehensive report. All of this is as shown in Exhibit
8 B attached. It must be clearly understood, however, that issues
9 determined at the hearing on the HSR will not be reheard or
10 relitigated at the sub-basin comprehensive hearing. At that
11 hearing only the issues raised by the reservation HSR and the
12 issue resolution process, not previously heard, will then be
13 heard and decided, all thereafter to be made a part of the basin
14 determination by the Court.

15 B. Hydrographic Survey Reports

16 (1) The DWR plans to produce a Hydrographic Survey
17 Report ("HSR") for each major tributary watershed in the Gila
18 River system. The HSRs will be produced on a staggered schedule.
19 See Exhibit A, attached. These HSR's will address rights based
20 upon state law and will include the following subjects:

21 I. Introduction

22 A. Location - Relative to sub-basin and streams.

23 B. General history - Sub-basin-wide or
24 reservation-wide land and water use patterns.

25 II. Water Resources -- This portion of the HSR should
26 include information concerning the items listed below.
27 This information should be derived from data and re-
28 ports that are available in the public domain. For
instance, such information may be available from the
United States Geological Survey, Forest Service and/or
the University of Arizona, among others.

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- A. General hydrology
 - 1. Surface water hydrology
 - 2. Groundwater hydrology

- B. Climate
 - 1. Precipitation
 - 2. Temperature
 - 3. Evaporation
 - 4. Growing season

- III. Land Resources -- The information included in this section of the HSR will be data and reports that are available in the public domain plus the results of DWR's field work.
 - A. Topography
 - B. Geology
 - C. Soils

- IV. Other Resources -- This section of the HSR should include reports, projections and other information available in the public domain related to items such as those listed below.
 - A. Population and demographics
 - B. Transportation
 - C. Adapted crops
 - D. Range
 - E. Timber
 - F. Minerals
 - G. Fishery
 - H. Recreation

- V. Water Uses -- This section of the reservation or sub-basin HSR will include factual information collected from historical records and/or field observation. The historic records might appear in the form of so-called "snapshots" in time based on aerial photography and other data.
 - A. Historic
 - 1. Type - this includes the means of diversion, type of use (agricultural, mining, etc.), and date of use.
 - 2. Location - Location of diversion and use.
 - 3. Amount - Amount diverted and used, including transportation losses and return flows to the extent known or capable of being documented.

 - B. Existing
 - 1. Type - This includes the means of diversion, type of use (agricultural, mining, etc.) and date of use.

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2. Amount - Amount diverted and used, including transportation losses and return flows to the extent known or capable of being documented.

VI. Claims -- This section of the HSR should be compiled in a form that will allow comparison of claims with historic and existing water uses. The claims should be related to existing Decrees, adjudications and historic right registrations. this comparison will allow parties to evaluate which claims, if any, are suspect or properly a matter for contest.

- A. Type - Means of diversion; type of use (agricultural, mining, etc.), date of use.
- B. Location - Location of diversion and use.
- C. Amount - Amount diverted and used to the extent known or capable of being documented.

These HSRs will also address all rights claimed by, through, or on behalf of the United States, whether based on state or federal law, other than those rights claimed by or on behalf of any Indian or Indian tribe.

(2) The DWR will also produce an HSR for each Indian reservation within the geographic scope of the adjudication. These HSRs will address rights based upon federal law and will include the following subjects: legal history; land resources; water resources; history; economy; maps of water uses and will specifically include in its discussion of present usage a general description of reservation; compilation of legal record applicable to: establishment of federal water rights, federal water projects, federal decrees, and contracts; available water resources; history of water uses; current location, type and quantity of water use; maps of current water uses.

(3) The report shall also discuss the feasible use of unexercised rights, including but not limited to, hydrologic assessment of the availability of land and water resources to

1 satisfy the extent of claimed unexercised federal rights; engine-
 2 ering assessment of the feasibility, safety, and cost of con-
 3 structing the facilities associated with the plan for exercising
 4 the total extent of claimed federal rights; and an economic
 5 assessment of the financial return and overall contribution
 6 to the total tribal economy from implementation of the plan
 7 for exercising the total extent of claimed federal rights; maps
 8 of contemplated water uses.

9 (4) The proposed timing for completion of HSRs is
 10 not capable of specific definition. With the goal of completing
 11 the HSR process by 1993, the Court proposes the following time
 12 schedule for HSR completion.

13	<u>HSR</u>	<u>Date</u>
14	1. San Pedro Sub-Watershed	January, 1987
15	2. Upper Salt Sub-Watershed	July, 1987
16	3. White Mountain Apache Reservation	January, 1991
17	4. Verde Sub-Watershed	July, 1989
18	5. Tonto Apache Reservation	1990 - 1991
19	6. Camp Verde Reservation	1990 - 1991
20	7. Prescott Yavapai-Apache Reservation	1990 - 1991
21	8. Ft. McDowell Indian Reservation	1990 - 1991
22	9. Upper Gila Sub-Watershed	July, 1990
23	10. San Carlos Apache Indian Reservation	January, 1990
24	11. Agua Fria Sub-Watershed	January, 1991
25	12. Lower Gila Sub-Watershed	July, 1991
26	13. Salt River Pima Maricopa Indian Reservation	July, 1991
27	14. Salt River Project; Buckeye Irrigation District; Roosevelt Water Conservation District	July, 1991

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|---|---|---------------|
| 1 | 15. Salt River Valley Municipalities | July, 1991 |
| 2 | 16. Gila River Indian Reservation | January, 1989 |
| 3 | 17. Gila Bend Papago Indian Reservation | 1990 - 1991 |
| 4 | 18. Santa Cruz Sub-Watershed and Tucson Metropolitan Area | July, 1991 |
| 5 | 19. Other Papago Reservation | 1990 - 1991 |
| 6 | 20. Yaqui Reservation | 1990 - 1991 |

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8 C. Comprehensive Reports

9 After each sub-basin hearing, DWR will prepare and

10 file a Comprehensive Report with the Court and the Master pur-

11 suant to A.R.S. § 45-256.B. The Comprehensive Report will con-

12 tain each of the HSRs and such other information learned there-

13 after as may be necessary or desirable for a proper determina-

14 tion of the relative rights of the parties.

15 D. HSRs: Notice and Comment

16 (1) Pursuant to A.R.S. § 45-256.C, the DWR shall

17 adopt such rules as may be necessary to ensure that adequate

18 notice is given to each party that a preliminary HSR is avail-

19 able for inspection and comment and that the parties have a

20 reasonable opportunity to inspect and comment on the preliminary

21 HSR.

22 (2) After expiration of the period for filing com-

23 ments on the preliminary HSR, the DWR shall revise the prelim-

24 inary HSR as may be appropriate and shall file the HSR with

25 the Court and the master.

26 (3) An HSR filed with the Court and the master shall

27 be made available for inspection by any party.

28 . . .

1 a. A party may file a written objection to
2 an HSR or any part of an HSR within 180 days after the date
3 the HSR is filed with the Court and the master. A written objec-
4 tion shall be filed with the Court and the master.

5 b. An objection can be made to the legal or
6 factual basis of the determination made in the HSR regarding
7 the individual claim.

8 c. An objection must be timely filed and state
9 in clear and concise language the particular factual and/or
10 legal reasons for the objection and describe the evidence to
11 support those reasons.

12 E. HSRs: Evidentiary Hearing

13 (1) After expiration of the period for filing written
14 objections to an HSR, the master shall hold an evidentiary hear-
15 ing or hearings on the HSR. No evidentiary hearing shall be
16 held on an HSR for an Indian reservation until the issue identi-
17 fication and resolution process described at section IV, below,
18 has been completed, or until such other time as the Court
19 directs.

20 (2) The master shall ensure that adequate notice
21 is given to each party of the date, time and place for the evi-
22 dentiary hearing.

23 (3) The purpose of the evidentiary hearing shall
24 be to receive evidence on issues on which written objections
25 were filed.

26 (4) The parties who may present evidence at the evi-
27 dentiary hearing and the scope of the evidence that may be pre-
28 sented by a party shall be limited to the following:

1 a. A party who filed a written objection in
2 a timely manner shall have a fair and reasonable opportunity
3 to contest the validity or admissibility of those parts of the
4 HSR to which that party's objection was directed, to present
5 evidence in support of or in opposition to those parts of the
6 HSR to which the party's objection was directed, to present
7 evidence in support of the party's claim and to make objections
8 to any other claim.

9 b. If written objection to a party's claim
10 has been filed by another party, the party against whom the
11 objection has been filed shall have a fair and reasonable oppor-
12 tunity to present evidence in support of the party's claim.

13 (5) No later than ninety (90) days prior to the date
14 set for the evidentiary hearing, a party against whose claim
15 an objection has been filed shall file with the Court and the
16 master a list of witnesses and exhibits intended to be used
17 at the hearing in support of the claim, other than those to
18 be used solely for impeachment. The list of witnesses and exhi-
19 bits shall identify with particularity the claim or claims to
20 which each witness and exhibit relates. No exhibits or witnesses
21 shall be used at the hearing in support of the claim other than
22 those listed in accordance with this paragraph or the paragraph
23 below, except for good cause shown.

24 (6) No later than forty-five (45) days prior to the
25 date set for the evidentiary hearing, a party who filed a writ-
26 ten objection in a timely manner shall file with the Court and
27 the master a list of witnesses and exhibits intended to be used
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1 at the hearing other than those to be used solely for impeach-
2 ment. The list of witnesses and exhibits shall identify with
3 particularity the claim or claims to which each witness and
4 exhibit relates. No exhibits or witnesses shall be used at the
5 hearing other than those listed in accordance with this paragraph
6 or paragraph 5 above, except for good cause shown.

7 (7) Those parts of the HSR to which objections may
8 be made pursuant to subparagraph III.C.3.b, above, and to which
9 no written objections have been timely filed shall be summarily
10 admitted into evidence and deemed conclusive.

11 (8) After the master has held an evidentiary hearing
12 or hearings on an HSR, the master shall prepare and file with
13 the Court a report on the HSR in accordance with Rule 53(g)
14 of the Arizona Rules of Civil Procedure. The report shall con-
15 tain the following:

16 a. Findings of fact on all factual determina-
17 tions made in the HSR regarding individual claims.

18 b. Findings of fact on all other factual issues
19 which are the subject of written objections made in accordance
20 with paragraph III.C.3, above, which pertain solely to the water-
21 shed or reservation which is the subject of the HSR, which may
22 be determined solely on the basis of evidence pertaining to
23 that watershed and the claims filed therein.

24 c. Conclusions of law which are supported by
25 the findings of fact made in accordance with this paragraph.

26 d. A list of those factual issues which are
27 the subject of written objections made in accordance with
28 . . .

1 paragraph 12.C.3, above, and for which findings cannot be made
2 in accordance with this paragraph.

3 e. A list of those legal issues which in order
4 to be resolved require factual determinations other than those
5 made in accordance with this paragraph or which require comple-
6 tion of the issue resolution process.

7 F. Re-Opening HSRs

8 (1) If, after the master has held an evidentiary
9 hearing or hearings on an HSR and filed a report on the HSR
10 with the Court in accordance with paragraph 12.D.8, above, a
11 decision or order of the Court makes it necessary to include
12 information in an HSR that was not included in the HSR as filed
13 with the Court and the master or changes the criteria used by
14 the DWR to determine one or more facts contained in an HSR,
15 the Court or master hearing the matter may require DWR to pre-
16 pare a supplemental HSR containing any necessary additional
17 information.

18 (2) The Court may determine that additional eviden-
19 tiary hearings are necessary on a supplemental HSR. The hearing
20 if ordered shall be held at such a time as to promote the just,
21 speedy and inexpensive determination of the facts contained
22 in the supplemental HSR. The procedures set forth in subsections
23 C and D, above, shall apply to supplemental HSRs.

24 G. Comprehensive Report: Incorporation of Factual
25 Determinations

26 The DWR shall incorporate into its Comprehensive Report
27 all factual and legal determinations made by the Court or the
28 master as of the date the final Comprehensive Report is filed.

1 H. Comprehensive Report: Notice and Comment

2 (1) Pursuant to A.R.S. § 45-256.C, the DWR shall
3 adopt such rules as may be necessary to ensure that adequate
4 notice is given to each party that the preliminary Comprehensive
5 Report is available for inspection and comment and that the
6 parties have a reasonable opportunity to inspect and comment
7 on the preliminary Comprehensive Report.

8 (2) After expiration of the period for filing com-
9 ments on the preliminary Comprehensive Report, the DWR shall
10 revise the preliminary Comprehensive Report as may be appropri-
11 ate and shall file the Comprehensive Report with the Court and
12 the master.

13 (3) The Comprehensive Report filed with the Court
14 and the master shall be made available for inspection by any
15 party.

16 a. Within 180 days after the date the Compre-
17 hensive Report is filed with the Court and the master, any party
18 may file a written objection to the Comprehensive Report or
19 any part of the Comprehensive Report, except for those parts
20 of the Comprehensive Report for which a factual finding was
21 made by the Court or the master. A written objection shall be
22 filed with the Court and the master.

23 b. An objection must be timely filed and state
24 in clear and concise language the particular factual reasons
25 for the objection and set forth credible evidence to support
26 those reasons.

27 I. Comprehensive Report: Hearing

28 (1) After expiration of the period for filing written

1 objections to the Comprehensive Report, the master shall hold
2 a hearing or hearings on the Comprehensive Report.

3 (2) The master shall ensure that adequate notice
4 is given to each party of the date, time and place for the
5 hearing.

6 (3) The purpose of the hearing shall be to receive
7 such evidence and take such testimony as shall be necessary
8 to determine the relative water rights of each party.

9 (4) The parties who may present evidence at the hear-
10 ing, and the scope of the evidence that may be presented by
11 a party, shall be limited to the following:

12 a. A party who filed a written objection in
13 a timely manner shall have a fair and reasonable opportunity
14 to contest the validity or admissibility of those parts of the
15 Comprehensive Report to which that party's objection was direct-
16 ed, to present evidence in support of or in opposition to those
17 parts of the report to which the party's objection was directed,
18 to present evidence in support of the party's claim and to make
19 objections to any other claim.

20 b. If a written objection to a party's claim
21 has been filed by another party, the party against whom the
22 objection has been filed shall have a fair and reasonable oppor-
23 tunity to present evidence in support of the party's claim.

24 (5) No later than ninety (90) days prior to the date
25 set for the evidentiary hearing, a party against whose claim
26 an objection has been filed shall file with the Court and the
27 master a list of witnesses and exhibits intended to be used
28 at the hearing in support of the claim, other than those to

1 be used solely for impeachment. The list of witnesses and exhi-
2 bits shall identify with particularity the claim or claims to
3 which each witness and exhibit relates. No exhibits or witnesses
4 shall be used at the hearing other than those listed in accor-
5 dance with this paragraph or paragraph III.H.5, above, except
6 for good cause shown.

7 (6) Those parts of the Comprehensive Report for which
8 no written objection have been timely filed shall be summarily
9 admitted into evidence and deemed conclusive.

10 (7) After the master has held the hearings required
11 by this Order and A.R.S. 6 45-257.A.1, the master shall prepare
12 and file with the Court a final Final Report in accordance with
13 Rule 53(g) of the Arizona Rules of Civil Procedure and A.R.S.
14 § 45-257.A.2.

15 J. Court's Acceptance of Master's Final Reports

16 (1) Once the Master's Reports have been filed with
17 the Court pursuant to Rule 53, Arizona Rules of Civil Procedure,
18 the DWR shall compile the individual Final HSR reports, the
19 individual Final Comprehensive Reports and any objections to
20 the report and these shall be submitted to the Court in addi-
21 tion to the Master's Reports.

22 (2) The Court shall hold such hearings as it deems
23 necessary and may adopt, modify or reject the Master's Reports
24 in whole or in part, all in accordance with Rule 53, Arizona
25 Rules of Civil Procedure, compiling all the reports into a
26 single Comprehensive Judgment as to the whole basin.

27 (3) Pursuant to A.R.S. § 45-257.B, and Rule 53(h),
28 . . .

1 Arizona Rules of Civil Procedure, the Court shall accept the
2 Master's findings of fact unless clearly erroneous.

3 K. Appointment of Master or Masters

4 The Court may request comments and suggestions from
5 the parties concerning the number and identity of possible mas-
6 ters. After receiving such comments, the Court may make recom-
7 mendations to the Supreme Court concerning the appointment of
8 a master or masters pursuant to A.R.S. § 45-255.A, and Rule
9 53, Arizona Rules of Civil Procedure.

10

11 13. TECHNICAL MEETINGS

12 A. The DWR may call meetings to be attended by any or
13 all of the parties at their discretion for the purpose of discus-
14 sing technical issues relating to the DWR's technical assistance
15 to the Court.

16 B. The DWR shall file a notice of each technical meeting
17 with the Court. Notice of the technical meetings shall be given
18 to all parties in the same manner as notice must be given of
19 other documents filed in this action. See section II, above.
20 When such notice is insufficient to give the parties advance
21 notice of a meeting, notice of the meeting shall also be given
22 pursuant to Arizona's Open Meeting Law, A.R.S. §§ 38-431 to
23 -431.09.

24 C. All technical meetings shall be open to the parties
25 and to the public. Participation in the meetings by persons
26 other than the parties specifically invited by the DWR to attend
27 the meeting shall be at the discretion of those parties specifi-
28 cally invited by the DWR.

1 14. RELATIONSHIP TO LITTLE COLORADO ADJUDICATION

2 To the extent possible all proceedings herein, discovery,
3 meetings, shall be carried out in a manner consistent with the
4 proceedings conducted as part of In Re the General Adjudication
5 of All Rights to Use Water in the Little Colorado River System
6 and Source, No. 6417 (Apache County).

7
8 15. MATTERS TO BE CONSIDERED FOR EXPEDITED PROCESSING

9 In a matter of this magnitude and complexity, the
10 Court believes that a limitation of the conflicts to only
11 those matters of substantial nature may be warranted. This way
12 the Court and parties need not become bogged down in matters
13 of insignificance or insubstantiality, ~~that they do not have~~ 526
14 ~~the time or strength necessary to put in on those matters of~~
15 ~~substance whose complexity warrants it.~~

16 For example, the State of Arizona through the Attorney
17 General has filed a proposal for the acceptance of all stockpond
18 applications based upon the DWR's HSR determinations because
19 of the small amount of water usage per claim and the vast number
20 of such individual claims. It is the position of the State that
21 the time and effort to litigate each stockpond application is
22 not worth the total effort it will take. It reasons that the
23 total of the water used for stockponds is less than 2% of the
24 water available in each watershed whereas nearly 50% of all
25 claims filed are stockpond applications. The percentage of
26 claims is substantially higher in some areas. Another factor
27 is that while total water usage for stockponds is 2% of avail-
28 able water at most, the percentage of error and variation for

1 most watershed water production is between 6% to 10%, plus or
2 minus. All this would seem to indicate that a substantial effort
3 to accurately plot, investigate and determine all stockpond
4 claims may not be worth the effort, and the time better spent
5 on other issues of significance. The same may be equally true
6 of claims which relate only to domestic well usage.

7 The Court will therefore request its steering committee
8 to investigate those areas of this adjudication where all par-
9 ties would be better to just accept DWR determinations, subject
10 to the objection of the claimant itself, and spend the available
11 time on other, more worthwhile matters. After a steering com-
12 mittee report, the Court, if requested, will hold an evidentiary
13 hearing on the matters and determine what if any order is appro-
14 priate.

15
16 16. PROJECTION OF SCHEDULES

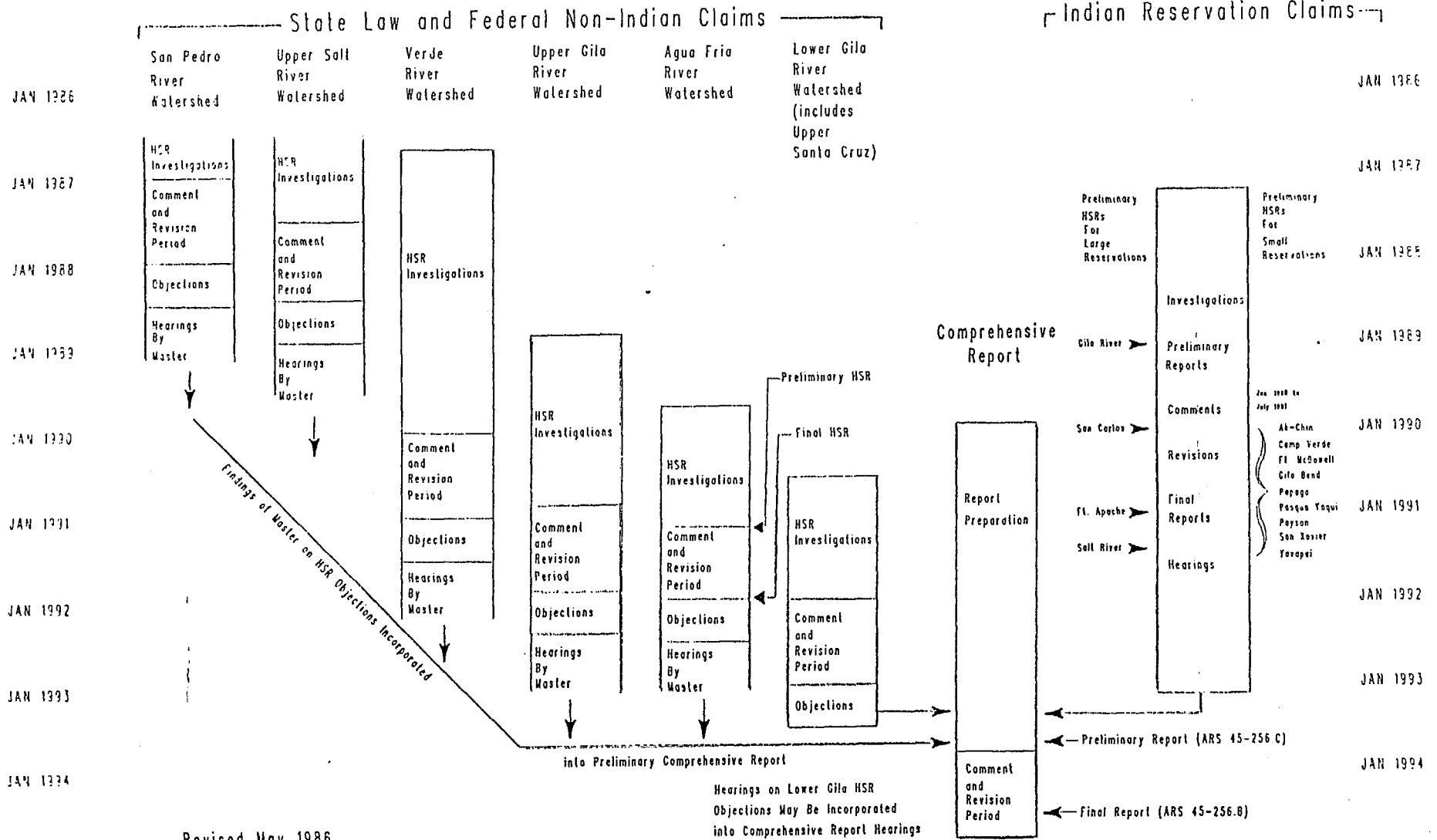
17 Attached hereto are Exhibits A and B which are graphic
18 projections of the schedule and process of this adjudication
19 as this Court envisions the same. Exhibit A is an update of
20 a schedule previously shown for the HSR, hearing and reporting
21 process. Exhibit B is a projection of the interrelationship
22 of the parallel tracks to be followed by DWR, the Courts and
23 the Master's hearings in carrying out the adjudication.

24 DATED this 29 day of May, 1986.

25 Stanley J. Bradford
26 Judge
27
28

Exhibit A

Reporting Scheme And Schedule For Gila River Adjudication



INFORMATION GATHERED BY DWR

PROCEEDINGS CONDUCTED BY COURT OR MASTER

PROCEEDINGS CONDUCTED BY COURT

INFORMATION RELEVANT TO INDIVIDUAL RIGHTS

- | | |
|---|---|
| <p>STATE RIGHTS HSRs</p> <ol style="list-style-type: none"> Actual Water Uses Compared to Rights & Claims of Records Ownership Locations of Diversions & Uses Filings / Rights of Record Accretions and Capacities Apparent Priority Dates Maps of Water Uses | <p>FEDERAL RIGHTS HSRs</p> <ol style="list-style-type: none"> Actual Water Uses Compared to Rights & Claims of Records Locations of Diversions & Uses Historic Water Availability & Uses History of Establishment of Federal Lands Accretions & Capacities Apparent Priority Dates Maps of Water Uses Potential Water Uses Compared to Claimed Reserved Rights Hydrologic Assessment Engineering Assessment Economic Assessment Maps of Potential Uses |
|---|---|

On-Going decisions may affect DWR HSRs

DWR needs decisions from Segments A,B,C,D to provide effective technical assistance

Final HSRs Filed with Master

HSR HEARINGS

- Introduction of Evidence
 - Uncontroverted Contents of HSRs
 - Documentary Evidence from Parties
 - Testimony of Witnesses
- Findings of Fact

Master needs decisions from Segments C, A, G to determine individual rights

Master's Findings Incorporated into Comprehensive Report

DWR needs decisions from Segments C,E,F,G to define extent of the water resource and apparent priorities from Master's findings

INFORMATION RELEVANT TO RELATIVE RIGHTS

- COMPREHENSIVE REPORT**
- Integrated Watershed-Wide Quantifications
 - Water Supply
 - Surface Water Availability & Characteristics
 - Groundwater Availability & Characteristics
 - CAP Allocations & Availability
 - Effluent Availability
 - Water Use
 - Normal Conditions Total Use by Type of Beneficial Use
 - Wet cycle - Dry cycle Variation in Use by Type of Beneficial Use
 - Water Deline for Specifications of Extent of Rights by Type of Beneficial Use and Location

On-Going Decisions may affect DWR Comprehensive Report

STRUCTURED PROCEEDINGS

Process for Issue Resolution

- Issue Identification and Prioritization
- DWR Provides Technical Information Relevant to Resolution of Issue
- Evidentiary Hearings if Necessary
- Comments and Arguments of Parties
- Determination by Court

Possible Issue Segments

- Procedures
- State Law HSR
- State Law Rights
- Federal Law HSR
- Prior Decree
- River System and Source
- Federal Law Rights

ISSUES DETERMINED

ISSUES UNDETERMINED

ON-GOING PROCEEDINGS

Identification and Resolution of Issues not Encompassed by Structured Proceedings. Through Use of Motion Procedures set out in Pre-Trial Order No. 1.

Determined Issues
In On-Going Proceedings

k. Groundwater Availability & Characteristics

c. CAP Allocations & Availability

d. Effluent Availability

2. Water Use

a. Normal Conditions Total Use by Type of Beneficial Use

b. Wet cycle - Dry cycle Variation in Use by Type of Beneficial Use

c. Water Duties for Specifications of Extent of Rights by Type of Beneficial Use and Location

B. Integrated Watershed-Wide Impacts

1. Natural Vegetation Depletion of Available Water Supply

2. Cultural Depletions of Available Water Supply by Type of Beneficial Use

3. Cultural Depletions of Available Water Supply by Type of Source

4. Effect of Streamflow Channel Losses on Downstream Availability

5. Identification of Uses Resulting in Negligible Downstream Diminishment

C. Specifications of Rights Based upon Masters Findings of Facts on Individual Rights

1. Apparent Extent and Priority Date of All Individual Rights

2. Apparent Relative Priority

All previous findings incorporated into Masters report to the court.

Final Comprehensive Report Filed with Master

Masters Findings Incorporated into further Technical Assistance

ADDITIONAL ASSISTANCE REQUESTED BY COURT OR MASTER

A. Technical Evaluations

1. Identification of Which Rights are Conflicting Resulting from Relative Rights Scheme Specified by Court or Master

2. Identifications of Impacts Resulting from Alternative Arguments of Parties on Legal Issues

3. Identification of Impacts from Alternative Conclusions of Law as Requested by Court or Master

B. Possible Solutions Simulation

Masters Request

DRR Assistance

COMPREHENSIVE REPORT HEARINGS

A. Introduction of Evidence

1. Uncollected Contents of Comprehensive Report

2. Documentary Evidence from Parties

3. Testimony of Witnesses

B. Findings of Fact on Technical Facts Relevant to Determination of Relative Rights

Further Determinations on Legal Issues

FORMULATION OF REPORT TO COURT

A. Establishment of Relative Rights

1. Small Use Exemptions

2. Tullie Calls

3. Comparative Priorities Between Groundwater and Surface Water

4. Federal Rights Relative to Groundwater Uses

5. Conflicts Between Groundwater and Surface Water Law Objectives

B. Determination of Conflicting Rights

1. Junior Users having Immaterial Effect on Senior Users

2. Satisfaction of Rights from CAP, Effluent and Non-tributary CW

3. Junior Users Impairment to Senior Rights

C. Possible Solutions

D. Introduction of Evidence and Arguments of Parties

Masters Report to Court