

March 22,
1988

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN RE: THE GENERAL)	W-1 (SALT), W-2 (VERDE),
ADJUDICATION OF ALL RIGHTS)	W-3 (UPPER GILA),
TO USE WATER IN THE GILA)	W-4 (SAN PEDRO)
RIVER SYSTEM AND SOURCE)	
)	PRE-TRIAL ORDER NO. <u>3</u>
)	RE: DISCOVERY PROCEDURES

Pursuant to the authority vested in this Court by A.R.S. § 45-259 and Rule 16 of the Arizona Rules of Civil Procedure, the Court hereby enters the following Order governing Discovery Procedures for this General Stream Adjudication:

I. PURPOSE OF THIS ORDER

A. The purpose of this Order is to set forth various discovery procedures in order to meet the following goals:

1. Within reasonable limits relating to the amount and nature of the claimed use, to allow each claimant to obtain such information as necessary to permit evaluation and possible objection to any other claim.

2. To provide uniform methods of obtaining information from claimants and to prefer such uniform methods over individual discovery requests.

3. To integrate the timing of discovery procedures with the sequence of adjudications as determined by the Court.

1 4. To minimize the time and expense of discovery upon
2 claimants having claims of an amount or of a priority date
3 which may warrant less comprehensive discovery procedures.

4 5. To avoid duplication of effort and needless
5 expense to parties by encouraging the use of shared expertise
6 by multiple claimants.

7 6. To simplify discovery by the establishment of
8 realistic time periods given the complexity of the
9 Adjudication, its scope and the resources of the parties.

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

15 B. To accomplish these goals, it is ORDERED that
16 collection and dissemination of documentary information and the
17 conduct of discovery in this Adjudication shall be in
18 accordance with the Arizona Rules of Civil Procedure, as
19 modified by this Order.

20 II. DISCOVERY IN GENERAL

21 A. Informal exchange of properly discoverable
22 information is a prerequisite to any formal discovery. Before
23 any formal discovery is taken, a party must file and serve, in
24 the manner specified for service of discovery notices, a
25 certification that it has reviewed the indices and abstracts
26 maintained by the DWR and, based upon the review, the

1 information does not appear to be available from the DWR
2 repositories or that the information at DWR is inadequate for
3 the purpose of the requesting party and a specific statement is
4 filed as to why the information is inadequate. If the parties
5 from whom discovery is sought contest the specifics of the
6 inadequacy, then the issue shall be referred to the Court for
7 determination.

8 B. The original of any Notices of Taking Deposition,
9 Notices of Service of Interrogatories, Notices of Service of
10 Requests for Admissions, Notices of Service of Requests for
11 Production of Documents and Things and Notices of Service of
12 Requests for Entry Upon Land for Inspection or Other Purposes
13 shall be filed with the Clerk of the Maricopa County Superior
14 Court in separate discovery files to be maintained by the Clerk
15 and shall be listed by the Clerk on the docket sheet. When
16 listing Deposition Notices on the docket sheet, the Clerk shall
17 set forth the name of the deponent, the name of the party
18 noticing the deposition, the date and time of the deposition
19 and the location of the deposition if the location is other
20 than at the DWR. When listing Notices of Service of
21 Interrogatories, Requests for Admissions, Requests for
22 Production of Documents and Things or Requests for Entry Upon
23 Land for Inspection or Other purposes on the docket sheet, the
24 Clerk shall set forth the name of the party serving the Notice
25 and the name of the party upon whom the Notice was served.
26

1 C. All depositions shall be taken at the DWR or at a
2 location designated by the DWR unless other arrangements are
3 made between the deponent and the party noticing the
4 deposition. If arrangements are made between the deponent and
5 the party noticing the deposition for the deposition to be
6 taken at a location other than the DWR, then the Notice of
7 Deposition shall so specify. Notices of Deposition, along with
8 a copy of the Subpoena, if any, must be filed and served no
9 later than 60 days before the scheduled deposition and, once
10 scheduled and noticed, depositions shall be cancelled only for
11 good cause. If it becomes necessary to cancel a deposition,
12 cancellation shall be by Notice of Cancellation which shall be
13 served, filed and docketed in the same manner as Notices of
14 Deposition. In addition, telephonic notice of cancellation
15 shall be made to the office of the Adjudications Division of
16 the DWR. Any party desiring to know the status of a noticed
17 deposition may contact the DWR the day prior to the scheduled
18 deposition to determine whether the deposition will proceed as
19 scheduled.

20 D. When noticing and serving Interrogatories,
21 Requests for Admissions, Requests for Production of Documents
22 and Things or Requests for Entry Upon Land for Inspection or
23 Other Purposes, a copy of the Notice, the Subpoena when
24 necessary, and the Interrogatories or Requests shall be served
25 upon all parties on the Court's approved mailing list and the
26 DWR. The DWR shall maintain a repository for Interrogatories,

1 Requests for Admissions, Requests for Production of Documents
2 and Things and Requests for Entry Upon Land, indexed by the
3 name of the party serving the Interrogatories or Requests, the
4 name of the party upon whom served and the date of service.
5 When the Interrogatories or Requests are answered, the
6 answering party shall serve and file a Notice of Answering the
7 Interrogatories or Requests in the same manner as the original
8 Notice of Service of Interrogatories or Requests. The Notice
9 of Answering shall be docketed by name of the party answering,
10 name of the party who served the Interrogatories or Requests
11 and the date of answering. The answering party shall serve a
12 copy of the Answers on the propounding party and on any party
13 on the Court's approved mailing list who serves a written
14 request and provides the answering party with a stamped
15 self-addressed envelope. The answering party shall file the
16 original with the DWR. The DWR shall maintain a repository for
17 the Answers which shall be indexed by the name of the party
18 answering, the name of the party propounding the
19 Interrogatories or Requests and the date of the Answers. The
20 actual production of documents pursuant to a Request for
21 Production of Documents shall be as specified in paragraph XI,
22 infra. The repository for Interrogatories, Requests and
23 Answers shall be open to the public during regular business
24 hours of the DWR. Copies may be obtained by any person at the
25 DWR's reproduction cost.
26

1 E. All original transcripts of depositions and
2 deposition video tapes shall be filed with the DWR by the party
3 taking the deposition and the DWR shall maintain a repository
4 for that purpose. The DWR shall index all depositions and
5 deposition video tapes by name of deponent, name of party
6 noticing the deposition and the date the deposition commenced.

7 III. TIMING AND SEQUENCE OF DISCOVERY

8 The timing and sequence of discovery shall be
9 coordinated with the preparation of the HSR and shall be
10 conducted in the following sequence:

- 11 1. DWR shall serve such questionnaires as approved by
12 the Court upon Group 1 and Group 2 claimants.
- 13 2. DWR shall publish a preliminary HSR.
- 14 3. Uniform and Nonuniform Interrogatories, Requests
15 for Admissions, Requests for Production of Documents and other
16 appropriate discovery, including entries upon land for
17 inspection purposes, may be sent pursuant to this Order but
18 only to Group 3 claimants.
- 19 4. Expiration of comment period on preliminary HSR.
- 20 5. DWR shall publish final HSR.
- 21 6. Depositions may commence 30 days after publication
22 of final HSR for each watershed, but the deposition shall only
23 relate to the watershed or reservation which is the subject of
24 the HSR.

1 7. All discovery shall be completed 60 days prior to
2 the date set for commencement of evidentiary hearings on the
3 HSR.

4 IV. DWR CENTRAL REPOSITORY

5 A. The DWR shall maintain a Central Repository for
6 the collection and storage of data and information.

7 B. The DWR shall collect and deposit data and
8 information in the Central Repository such as, but not limited
9 to, the following:

10 1. DWR surface and groundwater hydrology reports or
11 studies and field work data specific to any stream or stream
12 segment which is subject to this Adjudication.

13 2. State-wide or basin-wide data and information used
14 by the DWR in connection with this Adjudication such as maps,
15 hydrology reports, soils reports, crop reports, economic
16 reports, demographic reports, population projections, water use
17 information, water supply projections, etc.

18 3. Copies of claimants' files, including copies of
19 each Statement of Claimant and copies of any amendments and
20 assignments with supporting documentation.

21 4. The Certifications, Notices, Interrogatories,
22 depositions, Subpoenas, Requests and Answers referred to in
23 paragraph II, supra.

24 5. Expert witness reports provided for in paragraph
25 VIII, infra.

26

1 6. Compilations of information obtained from entry on
2 land as provided for in paragraph XII, infra, and

3 7. Available copies of Court Decrees which purport to
4 adjudicate water rights on any stream segment subject to this
5 Adjudication.

6 C. Parties shall also make available to the DWR for
7 deposit in the Central Repository data or information of a
8 general nature which is relevant to the Adjudication. The
9 Court may order a party to deliver a document or data
10 compilation to the DWR to be placed in the Central Repository
11 but, in so doing, shall give due regard to the nature of the
12 document, including its physical condition and value to the
13 owner, and shall refuse to order the original of any document
14 to be placed in the Central Repository over the objection of
15 the owner if placing the original in the Central Repository
16 could jeopardize the physical integrity of the document or
17 otherwise subject a valuable document to the possibility of
18 theft or other loss.

19 D. Documents and data placed in the Central
20 Repository shall be indexed and, except for those discovery
21 documents referred to in paragraph II, supra, abstracted by the
22 party submitting the document to the DWR. The abstract shall
23 list sufficient detail about the document or data to allow for
24 an efficient search for relevant and helpful documents and
25 records.
26

1 E. The Central Repository shall remain open during
2 the regular business hours of the DWR for use by members of the
3 public.

4 F. The DWR shall maintain a document control system
5 in order to provide for current and up-to-date information on
6 the exact location of each document contained in the Central
7 Repository.

8 G. The DWR shall provide copying services for the
9 reproduction of documents, at its cost, for the parties or
10 their representatives. If it becomes necessary to remove a
11 document from the Central Repository for purposes of
12 reproduction, the document shall remain in the custody of the
13 DWR and any such removal and redeposit shall be done by the DWR
14 under the direct supervision of the DWR Deputy Director in
15 charge of Adjudications, or the designate of the Deputy
16 Director.

17 H. Information or data placed in the Central
18 Repository may be used by the DWR in developing an HSR.
19 However, use of the information or data by the DWR in
20 developing an HSR does not make the information or data part of
21 the record nor does it become admissible in evidence over
22 objection by a party unless the Court overrules the objection.

23 I. The admissibility of documents or data placed in
24 the Central Repository shall be determined pursuant to the
25 Arizona Rules of Evidence on the same basis as any other
26

1 document or data compilation sought to be relied upon or
2 admitted in evidence by the DWR or a party.

3 J. Documents or data placed in the Central
4 Repository, except for those discovery documents referred to in
5 paragraph II, supra, may not be withdrawn, changed, altered or
6 amended by the DWR or any party without an Order of the Court
7 obtained after Motion to Withdraw, Change, Alter or Amend a
8 specified document or data compilation.

9 K. Except as provided in the Rules of Civil
10 Procedure, neither the DWR nor any party warrants the accuracy
11 of any document or data placed in the Central Repository by the
12 DWR or a party, nor does a party waive any evidentiary
13 objections to any document or data compilation that it places
14 in the Central Repository, including but not limited to
15 objections on the basis of lack of foundation, hearsay,
16 relevancy or materiality.

17 V. ACCESS TO COMPUTERIZED INFORMATION

18 A. In addition to making data or information
19 available by hard copy in the Central Repository, the DWR may,
20 where feasible and appropriate, make information available by
21 computerized methods.

22 B. Any party, upon request and upon appropriate
23 arrangements for reimbursement for costs, shall be given direct
24 access to DWR computerized information which is generated by or
25 for the DWR and which may be utilized by the DWR or a party for
26 purposes of the Adjudication. However, any information

1 collected by the DWR associated with the investigation of a
2 particular claim shall not be made available to any party until
3 the Preliminary HSR for that claim is published.

4 C. No direct access to computerized information
5 generated by or for a party may be obtained by the DWR or
6 another party without the consent of the party from whom
7 information is sought or, absent consent, by Court Order
8 obtained after a Motion for Direct Access to Computerized
9 Information Generated by or for a Party.

10 VI. DISCOVERY BY CATEGORY OF CLAIMANT

11 A. Claimants in each subwatershed shall be divided
12 into the following three categories for purposes of discovery:

13 1. Group 1 claimants - claimants having a claim for
14 less than 50 acre feet of water per year where the sole use
15 claimed is for stock watering purposes, for domestic use, or
16 for the irrigation of two acres or less of land.

17 2. Group 2 claimants - claimants having a claim for
18 less than 100 acre feet per year that are not Group 1 claimants.

19 3. Group 3 claimants - all claimants who do not fit
20 the specifications of Group 1 or Group 2 claimants set forth
21 above.

22 B. Group 1 and 2 claimants.

23 1. No formal discovery, without leave of Court, shall
24 be allowed from Group 1 and Group 2 claimants.

25 2. Parties interested in these claims shall be
26 allowed to make informal inquiry of the claimant or his

1 counsel, and the DWR shall make available all of its records,
2 upon request, to secure the needed information.

3 3. All Group 1 and 2 claimants may be required to
4 supply verified Answers to short uniform questionnaires, to be
5 prepared for submittal to them for the purpose of supplying
6 information not completely set forth in the Statement of
7 Claimant and/or necessary for DWR use to prepare the final HSR
8 for the particular watershed or reservation where the claim is
9 located.

10 The questionnaires are to be prepared by DWR after
11 consultation with the Steering Committee and be subject to
12 Court approval. DWR and the Steering Committee shall also
13 prepare a set of rules for when and to whom these
14 questionnaires shall be submitted and which of the questions on
15 the questionnaire will need to be answered. To the extent
16 possible, this determination shall be based on the completeness
17 and documentation contained in the Statement of Claim. These
18 rules shall also be subject to Court approval.

19 4. Any request to the Court for formal discovery from
20 a Group 1 or Group 2 claimant must specify, in detail, the need
21 for such formal discovery.

22 5. If a Group 1 or Group 2 claimant makes discovery
23 of any other claimant, then that Group 1 or Group 2 claimant
24 shall be subject to discovery consistent with the Arizona Rules
25 of Civil Procedure, as modified by this Order, unless this
26 Court allows that claimant to make discovery as to specific and

1 narrow issues, in which case the claimant shall not be subject
2 to open-ended discovery, as provided herein.

3 6. Any Group 1 or Group 2 claimant who wishes to
4 actively participate in the Adjudication through the filing of
5 objections to claims is required to meet all the discovery,
6 pretrial and trial procedures the same as a Group 3 claimant.

7 7. Discovery may be made from Group 1 or Group 2
8 claimants of facts relating to claims of Group 3 claimants.

9 VII. DISCOVERY FROM DWR

10 A. After the DWR has finalized an HSR for a
11 particular subwatershed, Indian Reservation or water user, then
12 discovery may be obtained by a party from the DWR, relating to
13 the subwatershed, Indian Reservation or water user, in the same
14 manner as discovery may be obtained from any Group 3 claimant
15 subject, however, to the following limitations:

16 1. The DWR shall not be required to answer
17 Interrogatories, except upon Court approval.

18 2. The DWR shall not be required to respond to
19 Requests for Admissions, except upon Court approval.

20 3. The DWR shall not be required to respond to a
21 Request for Production of Documents or Things, except upon
22 Court approval.

23 4. Depositions shall be permitted subject to the
24 requirements of paragraph B below.

25 B. When noticing a deposition for DWR personnel, the
26 deposition notice may either designate the name of a person to

1 be deposed or may designate the subject matter upon which
2 discovery is sought to be obtained. If the notice designates
3 only the subject matter upon which discovery is sought to be
4 obtained, then the DWR shall, within 30 days of service of the
5 Notice upon it, file a Notice setting forth the name or names
6 of the DWR personnel who will be available to testify on behalf
7 of the DWR at the time of the deposition.

8 VIII. EXPERT WITNESS REPORTS

9 A. Each person who may testify as an expert witness
10 is required to prepare a report containing final opinions and
11 conclusions and setting forth all information supporting those
12 opinions and conclusions.

13 B. When an expert witness report has been finalized,
14 a copy shall be filed with the DWR and a Notice of Filing shall
15 be served and filed in the same manner as specified in
16 paragraph II, supra. In addition to the Notice of Filing, the
17 party filing the same shall set forth a general description of
18 the subject matter contained in the report. The DWR shall
19 index all expert witness reports by name of expert, general
20 subject matter of the report, date of the report and the party
21 for whom the report was prepared.

22 C. Expert witness reports shall be made available by
23 the DWR for inspection and copying during the regular business
24 hours of the DWR, and any party may obtain copies from the DWR
25 at the DWR's copying cost.
26

1 D. Expert witness reports shall be filed with the DWR
2 relating to a particular subwatershed, Indian Reservation or
3 water user as directed by the Court or Master.

4 IX. INTERROGATORIES AND REQUESTS FOR ADMISSIONS

5 A. Without leave of Court, no party shall propound to
6 any other party more than 80 Nonuniform Interrogatories. Each
7 question shall constitute one Interrogatory, whether
8 denominated an Interrogatory, part of an Interrogatory or
9 subpart.

10 B. Without leave of Court, no party shall propound to
11 any other party more than 80 Requests for Admissions.

12 C. On or before June 1, 1988, the Steering Committee
13 shall make a recommendation to the Court as to whether use of a
14 uniform set of Interrogatories is feasible and, if so, also
15 provide the Court with a proposed uniform set of
16 Interrogatories.

17 D. If deemed appropriate by the Court, a uniform set
18 of Interrogatories may be utilized to question Group 2
19 claimants rather than a questionnaire.

20 E. Uniform Interrogatories may be developed for
21 different categories of Group 3 claimants, such as private
22 water companies, municipalities, irrigation districts, Indian
23 Tribes, etc. All Interrogatories for Group 3 claimants shall
24 include a request for a list of witnesses and exhibits the
25 claimant intends to use at the evidentiary hearing.

26

1 F. Nonuniform Interrogatories and Requests for
2 Admissions may be propounded by parties after completion of
3 uniform discovery.

4 G. The Nonuniform Interrogatories and Requests for
5 Admissions shall include a certification from the party or the
6 attorney representing the party as to the following:

7 1. The party has searched the records of the DWR and
8 the information sought is not found in the records;

9 2. The party has attempted to obtain the information
10 requested through informal means; and

11 3. The party has conducted a search of pending
12 Uniform and Nonuniform Interrogatories and Requests for
13 Admissions previously propounded and the Interrogatories or
14 Requests sought to be served do not duplicate or repeat
15 Interrogatories or Requests already served and answered or
16 presently pending.

17 H. An Interrogatory may request that the responding
18 party identify a particular document or thing and such a
19 request shall be deemed a request for production of that
20 document pursuant to Rule 34 of the Arizona Rules of Civil
21 Procedure without service of a separate Request for Production
22 of Documents.

23 I. Any Requests for Admissions that relate to
24 statements or opinions of fact, or of the application of law to
25 fact to any claim other than the claim made by the party upon
26 whom the Requests for Admissions are served shall include a

1 specific reference to a document or other filing in the
2 Document Repository of the DWR upon which any such Request for
3 Admissions is made.

4 J. Any party responding to such a Request for
5 Admissions shall be required to review the document specified
6 or identified in the Request to discharge the obligation to
7 make reasonable inquiry prior to responding to the Request.

8 X. DEPOSITIONS

9 A. Except for the purpose of perpetuating testimony
10 pursuant to Rule 27 of the Rules of Civil Procedure, no Notice
11 of Deposition shall be filed prior to the time that a final HSR
12 has been filed for a particular subwatershed, Indian
13 Reservation or water user. Depositions shall then be limited
14 to matters related to that particular subwatershed, Indian
15 Reservation or water user. No Notice of Deposition of an
16 expert witness shall be served until after the report required
17 by paragraph VIII is filed. The Notice of Deposition of an
18 expert witness shall identify the report or reports which have
19 been filed pursuant to paragraph VIII and which will be the
20 subject of the deposition.

21 B. If any party desires to have a deposition
22 videotaped, then it shall be the responsibility of that party
23 to physically and financially arrange for video taping of the
24 deposition on VHS format. The DWR shall provide video taping
25 equipment for all depositions taken at DWR facilities upon
26 notice that a party desires to video tape the deposition. The

1 DWR may make a reasonable charge for the use of its equipment
2 and tape. The party noticing the deposition shall arrange for
3 the reporting of the deposition by a certified court reporter.
4 The video tape and court reporter's transcript of the
5 deposition or copy thereof shall be filed with DWR as soon as
6 possible after the taking of the deposition.

7 C. Each deposition shall be taken in two stages, with
8 the first stage consisting of the examination and
9 cross-examination of the witness by parties in attendance at
10 the deposition. The second stage will consist of a reconvening
11 of the deposition by Notice of Deposition served by any party.
12 Said Notice shall not be filed until after the transcript of
13 the first stage of the deposition is filed with DWR. Except on
14 Motion and for good cause shown, the second stage Notice shall
15 schedule the second stage of the deposition no sooner than 60
16 days after service of the notice and not later than 90 days
17 after filing of the transcript. All Notices of Deposition
18 shall contain a designation indicating which stage of the
19 deposition is being noticed. Copies of the second stage Notice
20 shall be mailed to the parties on the mailing list and the DWR.

21 D. The unavailability of a witness for the second
22 stage of his deposition shall not affect the usability of the
23 testimony given at the first stage of the deposition.

24 E. No later than 30 days prior to the deposition, the
25 party noticing the deposition shall file with DWR copies of all
26 documents in his possession or accessible at DWR as to which he

1 will examine the witness at the deposition. DWR shall index
2 the documents under the name of the deponent and shall make the
3 documents available for review by any party.

4 F. Any party intending to attend a deposition shall
5 file and serve a notice of intent to attend the deposition no
6 later than 15 days prior to the scheduled deposition.

7 G. To the extent possible, all discovery disputes at
8 any deposition shall be handled by telephonic communication
9 with the trial Judge or Master. No deposition shall be
10 adjourned by reason of a discovery dispute without first
11 attempting to resolve the dispute through negotiation among the
12 disputing parties and, failing that, attempting to submit the
13 issue to the Judge or Master by telephonic communication.

14 H. The witness' signature on the deposition shall be
15 deemed to have been waived unless the deposition is changed and
16 signed by the witness and the changes and signature filed with
17 DWR within 30 days after the transcript of the deposition is
18 filed with DWR.

19 I. Depositions shall be usable against persons who
20 become parties to the litigation after the deposition has been
21 taken unless within 120 days after said person becomes a party
22 he shows cause why this should not occur.

23 J. Except on Motion and for good cause shown, or by
24 stipulation of the deponent and the party noticing the
25 deposition, no witness shall be subject to more than one
26 two-stage deposition, except that an expert witness who files

1 more than one report pursuant to paragraph VIII shall be
2 subject to as many two-stage depositions as the number of
3 reports filed.

4 The scheduling of depositions shall be arranged
5 through DWR and all depositions shall take place at the
6 location specified in paragraph II C, supra.

7 Any party wishing to notice a deposition shall first
8 contact DWR to determine availability of the proposed time of
9 taking the deposition prior to serving the Notice of
10 Deposition. At the time of this contact, the party shall
11 advise DWR of the estimated time for completion of the
12 deposition. No simultaneous depositions shall be permitted
13 except on a prior showing of good cause made by written
14 application to the Court at least 30 days prior to the taking
15 of the deposition.

16 No depositions shall be scheduled on Saturday or
17 Sunday unless previously ordered by the Court upon good cause
18 shown by the noticing party.

19 XI. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

20 A. A Response to a Request for Production of
21 Documents and Things shall be in accordance with the Arizona
22 Rules of Civil Procedure and shall specify the time at which
23 and the place where the documents or things shall be made
24 available for inspection and copying. Any party interested in
25 inspecting and copying any documents or things to be produced
26 may participate fully at the time and place specified.

1 B. Except for good cause shown, a party shall not be
2 required to produce the same documents or things more than
3 once, whether the subsequent Request for Production is made by
4 the same party that made the original Request or by another
5 party to the proceeding. If a party has previously produced
6 the documents or things requested, the party may respond by
7 directing the requesting party to the location of the documents
8 or things.

9 XII. ENTRY UPON LAND FOR INSPECTION OR OTHER PURPOSES

10 A. Except for inspections conducted by DWR pursuant
11 to A.R.S. § 45-256, entry upon land for inspection or other
12 purposes shall be in accordance with the Arizona Rules of Civil
13 Procedure except that service and filing of the Request shall
14 be in accordance with the provisions of paragraph IIB, supra,
15 and a formal Response to the Request shall be served and filed
16 in accordance with paragraph IID, supra.

17 B. In the event that informal arrangements are made
18 between parties for entry upon land for inspection or other
19 purposes, a Notice shall be filed and served by the party
20 making the entry and docketed in accordance with paragraph IIB,
21 supra, which Notice shall set forth when and where the entry
22 will take place and the purpose of the entry. The Notice shall
23 be filed at least 45 days before the entry is to take place.

24 C. A compilation of the results of or a compilation
25 of the raw data obtained from the inspection or other purpose
26 for which entry was made shall be filed with the DWR and shall

1 be maintained in the DWR Central Repository as provided for in
2 paragraph IV, supra. The party supplying the compilation shall
3 file a Notice that it has supplied the information to the DWR.
4 The Notice shall be filed, served and docketed in accordance
5 with paragraph IIB, supra.

6 D. Except for good cause shown, only one entry upon
7 land^s of a party for inspection or other purposes may be
8 made for a particular inspection or for a particular purpose,
9 whether the additional entry is sought by the party making the
10 original entry or by any other party to the Adjudication.

11 E. All parties to the litigation have a strong
12 interest in minimizing disruption to their respective real
13 property created by Requests for Entry Upon Land by parties.
14 Any party, including the United States, State of Arizona,
15 Municipalities, Indian Tribes or any other litigant who
16 believes that an entry requested will be unreasonably
17 disruptive may petition the Court to determine reasonable
18 periods for such entries, but only after the parties certify
19 that they have cooperated to work out their differences and
20 have been unable to do so.

21
22
23 ^{1/}The phrase "entry upon land," shall be interpreted to
24 mean a series of physical intrusions upon the land where
25 necessary to complete the purpose for the entry. For example,
26 in conducting a soils study, it may be necessary to physically
intrude upon the land on more than one occasion in order to
complete the study. In that event, "one" entry upon land shall
be interpreted to mean the number of physical intrusions
necessary to complete the study being conducted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XIII. DUTY TO SUPPLEMENT RESPONSES TO DISCOVERY

All parties to the litigation shall have the duty, pursuant to Rule 26(e), Arizona Rules of Civil Procedure, to supplement their responses to discovery no later than 60 days prior to the date set for commencement of an evidentiary hearing on the HSR.

XIV. RESOLUTION OF DISCOVERY DISPUTES

A. Any party seeking to resist any type of formal request for discovery shall file a Motion for Protective Order pursuant to Rule 26(c), Arizona Rules of Civil Procedure, prior to the date upon which the requested discovery is due. Any party failing to file such a Motion shall be deemed to have waived any objection to a Motion to Compel Discovery except upon good cause shown for failure to timely object.

B. Any party filing a Motion to Compel, a Motion for Protective Order or a Motion for Sanctions shall attach to the Motion a certification by counsel attesting that counsel has personally contacted opposing counsel and has attempted to resolve the discovery dispute or, if no such contact was made, a recitation of the attempts made to contact counsel.

Any Motions for Sanctions for failure to respond to discovery shall be made within 30 days of the date discovery is due or shall be deemed to have been waived by the party making the discovery request.

C. As set forth previously in this Order, DWR shall be submitting to the parties questionnaires and/or Uniform

1 Interrogatories to be answered under oath concerning the nature
2 and extent of a party's claims. Within 60 days of the due date
3 for responses to the uniform Interrogatories, DWR shall compile
4 a list of those parties who failed to file Responses within the
5 time specified. DWR shall notify the parties failing to
6 respond by letter (hereafter the "Notice of Deficiency") and
7 request that the discovery be returned or be revised in not
8 less than 60 days.

9
10 XV. SCOPE OF ORDER

11 A. Any inconsistencies between this Order and
12 Pre-trial Order No. 1 shall be resolved in favor of this Order.

13 B. This Order is intended to control discovery
14 proceedings before the Master or Masters as well as matters
15 brought before the Court. Therefore, the word "Master" may be
16 substituted in place of "Court" as the term "Court" is used in
17 this Order.

18 XVI. SUSPENSION OR MODIFICATION OF ORDER

19 Upon application of a party and upon good cause shown,
20 the Court may suspend or modify the requirements of this Order
21 with respect to any particular discovery proceeding.

22 The foregoing provisions are so ordered this 29 day
23 of March, 1988.

24 5/520
25 STANLEY Z. GOODFARB, JUDGE
26