

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

1/26/07

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

L. NEVENHOVEN
Deputy

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

Contested Case No. W1-207

FILED: February 7, 2007

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

In re Proposed Gila River Indian
Community Settlement Proceedings

In Re Oral Argument

MINUTE ENTRY

Northeast Courtroom 112

10:06 a.m. This is the time set for an Oral Argument on Motions for Summary Disposition on the objections filed by: L.P. Fulton and Odette Fulton, Paul E. Price and Bridget A. Price, Gay Riba, Earl Zarbin and Dorothy Zarbin, Jack D. Campbell, and Cindy J. Ramey. Present are: Gay Riba; Earl Zarbin; Susan B. Montgomery on behalf of San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe (collectively "the Apache Tribes"); John C. Lemaster on behalf of Phelps Dodge Corporation and Roosevelt Water Conservation District; Douglas C. Nelson on behalf of several claimants who have designated themselves the Lower Gila Water Users; Donald R. Pongrace (telephonically), John T. Hestand, Ann Marie Chischilly, Timothy L. Pierson, and Rodney B. Lewis on behalf of the Gila River Indian Community; F. Patrick Barry on behalf of the United States (telephonically); Janet L. Ronald on behalf of the Arizona Department of Water Resources; Marilyn D. Cage on behalf of the City of Goodyear; M. James Callahan on behalf of the City of Phoenix; William Anger on behalf of the

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Cities of Avondale, Glendale, Mesa, Chandler, and Scottsdale; John B. Weldon, Jr. and Lisa M. McKnight on behalf of Salt River Project; Charlotte Benson on behalf of the City of Tempe; David A. Brown on behalf of Gila Valley Irrigation District and Franklin Irrigation District; Mark A. McGinnis on behalf of LAWCO, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District. Special Master George A. Schade, Jr. is present.

Court Reporter, Patty Connolly, is present.

The Court hears from Gay Riba.

Respondent's exhibit 1 is marked for identification and received in evidence.

The Court hears from Earl Zarbin.

Discussion ensues concerning the objections filed by several claimants and the motions for their summary disposition.

IT IS ORDERED taking this matter under advisement. The matter will be deemed submitted, and the Court will rule by minute entry within 60 days.

LATER:

On January 26, 2007 the Court heard argument on various motions for summary disposition of objections to approval of the proposed settlement agreement of the Gila River Indian Community's claimed water rights in this adjudication. Set forth below are the findings of facts, conclusions of law and rulings resulting from the requests for relief with respect to objections or memoranda filed by the following parties:

1. L.P. and Odette Fulton
2. Paul and Bridget A. Price
3. Gay Riba
4. Jack D. Campbell
5. Cindy Ramey
6. Earl A. and Dorothy L. Zarbin

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A. L.P. & Odette Fulton and Paul E. and Bridget A. Price

The movants seek relief against the Prices and the Fultons on both procedural and substantive grounds. Procedurally, they claim that these objectors have failed to supply an adequate description of their claimed water rights or the alleged material harm that approval of the settlement agreement would visit upon them. More important is the assertion that the agreement cannot adversely affect any rights the Fultons or the Prices possess because if they have valid rights, those rights exist upstream of the Gila River Indian Community. These objectors have not challenged this assertion, which the Court finds determinative.

IT IS ORDERED granting summary disposition in favor of movants on the objections filed by L.P. and Odette Fulton and Paul E. and Bridget A. Price.

B. Gay Riba

Ms. Riba's situation deserves special attention in light of the fact she appeared at the hearing and provided an articulate explanation of her concerns. After conferring regarding the matter in open court and learning that the proposed settlement treats with water rights downstream from her use, the issues identified by Ms. Riba were resolved. The Court appreciates Ms. Riba taking the time to attend the hearing and to provide the Court with an explanation of her position. In light of the foregoing, the Court finds that the proposed settlement will not affect Ms. Riba's alleged water rights.

IT IS FURTHER ORDERED deeming the objection of Ms. Riba moot.

C. Jack D. Campbell

IT IS FURTHER ORDERED that the Gila River Indian Community and any other parties supporting approval of the pending settlement agreement shall file their requests for summary disposition of Mr. Campbell's objection on or before January 30, 2007. Mr. Campbell may respond on or before February 28, 2007. The matter will be submitted on the papers after February 28, 2007 absent a specific, written, timely request for oral argument. If oral argument is requested and held, Mr. Campbell may appear by telephone.

D. Cindy J. Ramey

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Ms. Ramey's missive regarding the proposed settlement does not constitute an objection. She simply seeks "more information and clarification" as her August 28, 2006 letter states. The Court will take no action as a result of her letter, but notes that Ms. Ramey may wish to contact the Arizona Department of Water Resources at 1-866-246-1414, or review the monthly docket sheets to obtain materials that explain the relief requested by those seeking approval of the settlement.

E. Earl A. and Dorothy L. Zarbin

The moving parties also request that the Court not consider the request to reject the settlement agreement that is discussed in the memorandum filed by Earl A. and Dorothy L. Zarbin. The Court finds that the Zarbins do not have standing to object to the proposed settlement because they have not filed a statement of claimant in this adjudication. Mr. Zarbin appeared at the hearing and provided a detailed, lucid and interesting presentation that supplemented the issues discussed in his memorandum. The Court finds that its consideration of the proposed settlement, consistent with the mandates of the 1991 Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, will address the relevant issues raised by Mr. and Mrs. Zarbin. The Court expresses no opinion as to the merits of the concerns raised by Mr. and Mr. Zarbin that do not fit within the approval process framework outlined by the Special Procedural Order, except to state that those concerns are properly considered in another forum.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court.

/s/ Edward P. Ballinger, Jr.
JUDICIAL OFFICER OF THE SUPERIOR COURT

A copy of this order is mailed to all parties on the Court-approved mailing list for Contested Case No. W1-207 dated October 12, 2006.