SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

8/16/07 CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR. L. NEVENHOVEN
Deputy

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

Contested Case No. W1-207

FILED: **August 20, 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

MINUTE ENTRY

The Court has considered the memoranda filed in support of, and in opposition to the Motion for Determination of Legal Issues filed by various parties, including the Gila River Indian Community, as well as the case law applicable to the requested relief.

The motion seeks a ruling that effluent, agricultural return flows and surface drainage water shall not be counted as waters of the Gila River System and Source when the Court resumes its consideration as to whether those seeking approval of the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement ("Settlement Agreement") have satisfied the requisites set forth in the Arizona Supreme Court's 1991 Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes (May 16, 1991).

The Court reads the motion as seeking an order that relief is required under the facts and circumstances of this case, as opposed to alleging that Arizona law would never characterize the enumerated sources as appropriable water subject to this Court's jurisdiction.

In light of applicable Arizona case law,

IT IS ORDERED:

1. Effluent referred to in the Settlement Agreement as "Chandler Contributed Reclaimed Water", "Mesa Reclaimed Water Exchange Premium" and "Chandler Reclaimed Water Exchange", and that developed and used by Gila River Indian Community on its reservation (or the other parties listed in subparagraph 4.4.4 of the Settlement Agreement) shall not be considered as appropriable water subject to this Court's jurisdiction unless reliable evidence establishes that the effluent has been discharged so as rejoin the Gila River system and source in accordance with the principles announced in *Ariz. Pub. Serv. Co. v. Long*, 160 Ariz. 429, 773 P.2d 988 (1989).

2. In this special proceeding, the "agricultural return flows" referred to in subparagraph 4.4.4 of the Settlement Agreement will not be deemed to be appropriable water subject to the Court's jurisdiction unless evidence establishes that these waters are comprised of something other than, "water running off from ground which has been irrigated; water not consumed by the process of irrigation; water that the land being irrigated will not take up… waste water". *Wedgworth v. Wedgworth*, 20 Ariz. 518, 181 P. 952 (1919).

3. The "surface drainage water" mentioned Settlement Agreement subparagraph 4.4.4 shall not be considered appropriable water subject to this Court's jurisdiction unless evidence establishes this water is not comprised of short-lived flows that are "spread over the ground and not concentrated or confined in bodies of water conforming to the definition of lakes or ponds". *Espil Sheep Co. v. Black Bill & Doney Parks Water Users Ass'n*, 16 Ariz. App. 201, 492 P.2d 450 (1972) (citing *Doney v. Beatty, 124 Mont. 41, 200 P.2d 77 (Mont. 1950)*).

IT IS FURTHER ORDERED signing this minute entry as an order of the Court.

/s/ Eddward 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 July 26, 2007.