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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

**IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS TO
USE WATER IN THE GILA RIVER
SYSTEM AND SOURCE.**

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

**ORDER FOR SPECIAL PROCEEDINGS
FOR CONSIDERATION OF THE TOHONO
O'ODHAM NATION WATER RIGHTS
SETTLEMENT**

Contested Case Name: *In re Proposed Tohono O'odham Nation Water Rights Settlement.*

HSR Involved: None.

Descriptive Summary: Order of Judge Eddward P. Ballinger, Jr., approving application by Applicants filed July 11, 2006, to commence special proceedings to consider the Settlement of the claim for water rights within the Tucson Management Area of the Tohono O'odham Nation and individual Indian trust allotment landowners ("Allottees") and of the United States acting on behalf of the Nation and the Allottees. The Tucson Management Area is (A) that area designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 and subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area and (B) the portion of the Upper Santa Cruz Basin that is not located within the area described in (A) above.

1 **Date of Filing:** July 11, 2006.

2 **Number of Pages:** 8 without attachments.

3 This matter came before the Court on July 11, 2006, upon the application of the
4 United States of America, the City of Tucson and Farmers Investment Co. ("Applicants")
5 (Applicants and the State of Arizona, ASARCO, the Nation and the Allottees are
6 hereinafter referred to as the "Settling Parties") for an order for special proceedings,
7 pursuant to the Special Procedural Order Providing for the Approval of Federal Water
8 Rights Settlements, Including Those of Indian Tribes issued by the Arizona Supreme Court
9 on May 16, 1991. The application shall be referred to hereinafter as the "Application for
10 Special Proceedings." The Supreme Court's May 16, 1991 Order shall be referred to
11 hereinafter as the "Special Procedural Order."

12 Entry of an order for special proceedings is requested for the Court to consider a
13 stipulation filed on July 11, 2006 (the "Stipulation"), which sets forth the terms of the
14 Settlement Agreement, and incorporates and attaches as exhibits thereto copies of: (1) an
15 agreement settling all claims for water rights of the Nation, the Allottees and United States
16 on behalf of the Nation and the Allottees within the area defined as the Tucson
17 Management Area (the "Settlement Agreement") and (2) a proposed judgment and decree
18 ("Proposed Judgment") adjudicating the water rights of the Nation, the Allottees and the
19 United States on behalf of the Nation and the Allottees within the Tucson Management
20 Area, as established in the Settlement Agreement. The Court, having considered the
21 Application for Special Proceedings ex parte, as is authorized by paragraph B(1) of the
22 Special Procedural Order, finds the following:

23 1. The Settling Parties have reached a proposed settlement ("Settlement") of all
24 claims of the Nation, the Allottees and the United States on behalf of the Nation and the
25 Allottees for water rights within the Tucson Management Area, whose claimed water rights
26 are subject to determination in this proceeding (the "Gila River Adjudication"). Congress
27 ratified the Settlement in passing the Southern Arizona Water Rights Settlement
28 Amendments Act of 2004, Title III of Public Law.108-451 ("Settlement Act"). The U.S.

1 District Court for the District of Arizona found the Settlement, in all respects, to be fair,
2 reasonable adequate and in the best interests of the Allottees. *United States v. City of*
3 *Tucson*, Case No. CV-75-39 TUC FRZ, Final Judgment/Partial Judgment, June 14, 2006 is
4 attached as Exhibit 1 to the Application.

5 2. The Application for Special Proceedings satisfies the requirements of
6 paragraph B(1) of the Special Procedural Order issued by the Arizona Supreme Court as it
7 contains: (1) the Stipulation of the Applicants, which sets forth the terms of the Settlement
8 Agreement and incorporates and attaches as exhibits thereto copies of the Settlement
9 Agreement and the Proposed Judgment; (2) a request that the Court enter an order
10 approving the Stipulation and the Proposed Judgment; (3) a description of the special
11 circumstances that prevent the consideration of the Settlement in the normal course of the
12 Gila River Adjudication; (4) a proposed order to commence the special proceedings, (5) a
13 proposed notice of Settlement; and (6) information indicating the location of copies of the
14 Settlement Agreement and supporting documents available for review.

15 3. The Settling Parties have satisfied paragraph A of the Supreme Court's
16 Special Procedural Order which specifies the conditions warranting special procedures to
17 consider the proposed settlement:

18 a. The Settlement involves the claimed water rights within the Tucson
19 Management Area of the United States acting on behalf of the Nation and the Allottees,
20 which are the subject of statement of claimant numbers 39-74333, 39-74335 and 39-74336.
21 The claims of the United States acting on behalf of the Nation and the Allottees are within
22 the jurisdiction of the Court under the principles of *Arizona v. San Carlos Apache Tribe of*
23 *Arizona*, 463 U.S. 545 (1983) and *United States v. Superior Court et al.*, 144 Ariz. 265, 697
24 P.2d 658 (1985).

25 b. The claimed water rights of Settling Parties Tucson, FICO and Asarco are
26 adverse to those of the Nation.

27 c. The Settlement Agreement establishes the water rights of the Nation, the
28 Allottees and the United States acting on behalf of the Nation and the Allottees. A

1 description of the water rights of the Nation, the Allottees and the United States acting on
2 behalf of the Nation and the Allottees as established in Paragraph 4 of the Settlement
3 Agreement, is set forth in Attachment A to this Order, which description is incorporated
4 herein.

5 d. The Settlement has been confirmed by Congress in the Settlement Act,
6 but the confirmation by Congress is conditioned upon approval of the Settlement by this
7 Court.

8 e. There are special circumstances preventing the consideration of the
9 Settlement Agreement in the normal course of the Gila River Adjudication. Those special
10 circumstances are that the enforceability of the Settlement Act is conditioned upon the
11 entry of an order by this Court approving the Proposed Judgment, sufficiently prior to
12 December 31, 2007 to permit the Secretary of the Interior to publish findings in the Federal
13 Register that this requirement, among others, has been met. In the normal course of the
14 Gila River Adjudication, the claims for water rights of the Nation and the Allottees would
15 not be considered by the Court prior to December 31, 2007.

16 4. The claimed water rights of Tucson, FICO and Asarco will not be adjudicated
17 in this special proceeding, but will instead be adjudicated in the normal course of the Gila
18 River Adjudication.

19 5. The proposed settlement of all of the claims for water rights of the Tohono
20 O'odham Nation, the Allottees, and of the United States on behalf of the Tohono O'odham
21 Nation and Allottees is a lengthy agreement involving several parties. The Hydrographic
22 Survey Report (HSR) concerning present and potential water uses of the Tohono O'odham
23 Nation and Allottees, which would be prepared by the Arizona Department of Water
24 Resources ("ADWR") in the normal course of the Gila River Adjudication to assist the
25 Court and parties, has not been completed and is not even scheduled to be completed. As a
26 consequence, it is appropriate for the Court to order ADWR to prepare a factual analysis
27 and technical assessment of the proposed settlement as is authorized by paragraph B(3)(f)
28 of the Supreme Court's Special Procedural Order.

1 NOW, THEREFORE, IT IS ORDERED:

2 1. The Application for Special Proceedings to consider the Settlement of the claims
3 for water rights within the Tucson Management Area of the Nation, the Allottees and the
4 United States acting on behalf of the Nation and the Allottees is granted. The conditions
5 warranting special procedures have been satisfied. The Settling Parties shall serve by mail
6 copies of their Application for Special Proceedings and this Order upon all persons listed in
7 the Court-approved mailing list for the Gila River Adjudication.

8 2. The special proceedings shall be conducted in accordance with the Special
9 Procedural Order Providing for the Approval of Federal Water Rights Settlements,
10 Including Those of Indian Tribes, issued by the Arizona Supreme Court on May 16, 1991.

11 3. The Court will consider the Settlement under the criteria enumerated by the
12 Arizona Supreme Court in paragraph D (6) of its Special Procedural Order. Except as
13 otherwise provided in the Stipulation and Settlement Agreement, if this Court approves the
14 Stipulation regarding the Settlement and enters the Proposed Judgment adjudicating the
15 water rights of the Nation, the Allottees and the United States acting on behalf of the
16 Nation and the Allottees, the Proposed Judgment will be binding upon all parties to the Gila
17 River Adjudication.

18 4. ADWR, shall file with the Court no later than October 24, 2006, a factual
19 analysis and technical assessment of the proposed settlement. ADWR's report shall
20 including the following: (1) a review of the terms of the settlement; (2) a summary of the
21 statements of claimant filed by or on behalf of the Tohono O'odham Nation and the
22 Allottees within the Tucson Management Area; (3) a brief description of the history,
23 physical characteristics, and natural resources (including an estimate of the arable acreage)
24 of that portion of the Tohono O'odham Nation within the Tucson Management Area,
25 emphasizing those facts, events, and plans which may be important in ascertaining the
26 water rights of the reservation within the Tucson Management Area; (4) a determination of
27 whether there is a reasonable basis for this Court to conclude that the water rights of the
28 Tohono O'odham Nation, the Allottees and the United States on behalf of the Tohono

1 O'odham Nation and the Allottees as established in the Settlement Agreement and the
2 Proposed Final Judgment and Decree, are no more extensive than the Tohono O'odham
3 Nation, the Allottees, and the United States on behalf of the Tohono O'odham Nation and
4 the Allottees, would be able to prove to a degree of reasonable probability at the trial of
5 these claimed rights in the due course of the Gila River Adjudication; (5) the probable
6 depletion of water resources in the Gila River system and source as a result of the proposed
7 settlement; (6) the probable impact of the proposed settlement upon categories of other
8 claimants in the adjudication; (7) the probable impact of the proposed settlement upon the
9 groundwater uses on or in the vicinity of the reservation and upon the groundwater
10 regulatory program administered by ADWR; and (8) other important impacts or
11 consequences that might result from the proposed settlement. The Settling Parties are
12 ordered to meet with ADWR and to provide ADWR with information and documents
13 necessary for ADWR to complete its factual analysis and technical assessment (including
14 information comparing the proposed settlement to the amount of water the Tohono
15 O'odham Nation the Allottees, and the United States on behalf of the Tohono O'odham
16 Nation and the Allottees could reasonably prove at a trial of its claimed water rights).
17 Upon filing the report with the Court, ADWR is ordered to serve a copy of the report upon
18 each of the Settling Parties and each person appearing on the Court-approved mailing list
19 for the Gila River Adjudication.

20 5. The Settling Parties shall provide interested parties in the Gila River
21 Adjudication and the public with information about the Settlement at a public meeting. The
22 meeting will include a statement that the meeting has been ordered by the Court, a
23 disclaimer indicating that the interests of the parties to the Settlement ("Settling Parties")
24 may be adverse to the interests of other parties in the Gila River Adjudication, a description
25 of the terms and conditions of the Settlement, and an announcement of the date objections
26 to the Settlement must be filed. At the meeting, the Settling Parties shall make copies of
27 this Order (including attachments) available to those persons who are present. The meeting
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1 will be held at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street,
2 Tucson, Arizona 85701, at 7:00 p.m. on November 13, 2006.

3 6. The Settling Parties shall serve by first-class mail a notice upon all claimants
4 (and all assignees and transferees of claimants, to the extent they appear in ADWR's
5 records) in the Gila River Adjudication, notifying them of the application to approve the
6 Settlement involving the water rights within the Tucson Management Area of the Nation,
7 the Allottees and the United States acting on behalf of the Nation and the Allottees; the
8 pendency of this special proceeding; the time, date, and location of the informational
9 meeting described in the preceding paragraph; and advising them where complete copies of
10 the application for special proceedings and this Order may be found. The Court approves
11 the use of the Notice of Settlement attached hereto as Attachment B. The Settling Parties
12 shall publish a copy of the Notice of Settlement in two newspapers of general circulation
13 within the geographical area encompassed by the Gila River Adjudication.

14 7. Objections to the application to approve the Settlement shall be filed with the
15 Clerk of the Court in and for Maricopa County no later than December 13, 2006.

16 8. Any Settling Party may file a response to an objection no later than twenty (20)
17 days after the time for filing objections has expired.

18 9. The Settling Parties shall promptly provide ADWR with a complete copy of the
19 Settlement Agreement including copies of all attachments and documents referred to or
20 incorporated therein, a copy of the Settlement Act, and a copy of any printed congressional
21 reports concerning the Settlement Act. ADWR shall make its set of these documents
22 available for public inspection and copying at its headquarters and at the Tucson AMA
23 office during its normal business hours. The Settling Parties shall also provide a complete
24 copy of the Settlement Agreement, including copies of all attachments, and a copy of the
25 Settlement Act, to the offices of the Clerks of the Superior Court in every Arizona county.

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1 10. The pretrial orders of this Court apply to these special proceedings to the
2 extent that they are consistent with the Supreme Court's Special Procedural Order attached
3 hereto as Attachment C.

4 DATED this 17th day of July, 2006.

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8 Judge of the Superior Court
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ATTACHMENT A

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Attachment A

**Description of the Proposed Water Rights
as Agreed upon in the Tohono O’odham Settlement Agreement
and Set Forth in the Stipulation**

1. The Tohono O’odham Settlement Agreement (“Settlement Agreement”) resolves the claims for water rights of the Tohono O’odham Nation (“Nation”), individual Indian trust allotment landowners located with the San Xavier Indian Reservation (“Allottees”), and the United States acting on behalf of the Nation and the Allottees. The rights of the Nation, the Allottees, and the United States on behalf of the Nation and the Allottees as specified in Sections 304(a), 306(a) and 308(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2004, Public Law 108-451 (“Settlement Act”), as agreed upon in the Settlement Agreement and set forth in the proposed stipulation (“Stipulation”) and proposed judgment and decree (“Proposed Judgment”) are summarized in this Description.¹

2. The capitalized terms used in this Description have the definitions provided in the Settlement Agreement.

3. Water Rights. As described in paragraph 4.1 of the Settlement Agreement, the Nation shall have the rights to water in the Tucson Management Area as follows: Sixty-six thousand (66,000) acre-feet per Year of CAP water of which fifty thousand (50,000) acre-feet per Year are deliverable to the San Xavier Indian Reservation and sixteen thousand (16,000) acre-feet per Year are deliverable to the eastern Schuk Toak District. In addition, ten thousand (10,000) acre-feet per Year of groundwater may be pumped within the San Xavier Indian Reservation and three thousand two hundred (3,200)

¹ The description of water rights set forth in this Attachment A is not intended to supersede the terms of the agreement among the Settling Parties. In the event any aspect of the description contained herein varies from or conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement are controlling and should be consulted.

1 acre-feet per Year of groundwater may be pumped within the eastern Schuk Toak District.
2 The availability of groundwater is not guaranteed by the Settlement Agreement. The
3 Settlement Act and the Settlement Agreement provide that the Nation shall have the right,
4 subject to applicable Federal law, to allocate water to all users on the Reservation pursuant
5 to the Water Code to be enacted by the Nation and manage, regulate and control the water
6 resources of the Nation and the water resources granted or confirmed by the Settlement
7 Act. The Settlement Act and the Settlement Agreement provide the means and manner for
8 the consideration and determination by the Nation of any request by any water users on the
9 Reservation (including any water users on allotted land), for an allocation of water,
10 including a process for appeal and adjudication of denied or disputed distributions of water
11 and for resolution of contested administrative decisions.

12 4. CAP Water. CAP water delivered to the Nation shall be comprised of:

13 (a) thirty-seven thousand eight hundred (37,800) acre-feet per Year of Indian Priority
14 Water of which twenty-seven thousand (27,000) acre-feet per Year are deliverable to the
15 San Xavier Indian Reservation and ten thousand eight hundred (10,800) acre-feet per Year
16 are deliverable to the eastern Schuk Toak District; and (b) twenty-eight thousand two
17 hundred (28,200) acre-feet per Year of NIA Priority Water of which twenty-three thousand
18 (23,000) acre-feet per Year are deliverable to the San Xavier Indian Reservation and five
19 thousand two hundred (5,200) acre-feet per Year are deliverable to the eastern Schuk Toak
20 District. The United States has an obligation to firm the twenty-eight thousand two
21 hundred (28,200) acre-feet of NIA Priority Water for a 100-year period to same priority as
22 water with municipal and industrial delivery priority. The State of Arizona will contribute
23 three thousand dollars (\$3,000) in cash or in-kind services to the firming effort.

24 5. Water Use. The Nation may use the water for any use and at any location
25 within the Nation's Reservation. The Nation may use its water outside the Nation's
26 Reservation and within the State as follows: groundwater supplies pursuant to the terms of
27 the Asarco Agreement, CAP water within the CAP service area, and water derived from
28 marketable storage credits in accordance with state law. No CAP Water may be leased or

1 otherwise transferred by the Nation for use outside the State of Arizona.

2 6. Leasing of CAP Water. The Nation may lease CAP Water for use within the
3 CAP service area for a term not to exceed one hundred (100) years. For leases with terms
4 in excess of twenty-five (25) years, the Nation shall offer the lease to users within the
5 Tucson Management Area. If the Nation receives no proposals from users within the
6 Tucson Management Area, the Nation may offer the lease to users outside the Tucson
7 Management but within the CAP service area, subject to a right by users within the Tucson
8 Management Area of making counteroffers. A counteroffer matches or is superior to a
9 proposal from an entity outside the Tucson Management Area if it matches the price and
10 other substantive terms of the proposed transaction.

11 7. The Asarco Agreement. The Asarco Agreement provides for the Nation to
12 deliver up to ten thousand (10,000) acre-feet per Year of CAP Water to Asarco to replace
13 groundwater pumping by Asarco on or near the San Xavier Indian Reservation. The
14 replacement of groundwater pumping by CAP water will generate marketable credits for
15 the Nation pursuant to State law.

16 8. Storage and Recovery Projects. The Nation may establish and maintain one
17 or more Storage and Recovery Projects.

18 9. Deferred Pumping. The Nation may defer groundwater pumping.
19 Groundwater not pumped in any Year may be accounted for as Deferred Pumping Storage
20 Credits and pumped in a subsequent Year. Within the San Xavier Indian Reservation
21 pumping of Deferred Pumping Storage Credits shall not exceed fifty thousand (50,000)
22 acre-feet for any ten-Year period or ten thousand (10,000) acre-feet in any one Year.
23 Within eastern Schuk Toak District pumping of Deferred Pumping Storage Credits shall
24 not exceed sixteen thousand (16,000) acre-feet for any ten-Year period or three thousand
25 two hundred (3,200) acre feet per year.

26 10. Allottee Water Rights. The Nation shall allocate as a first right of beneficial
27 use to the Allottees, the San Xavier District and other persons within the San Xavier
28 District, thirty-five thousand (35,000) acre-feet per Year of CAP water, ten thousand

1 (10,000) acre-feet per Year of groundwater, groundwater withdrawn from exempt wells,
2 deferred pumping storage credits and storage credits that cannot be lawfully recovered
3 outside the Nation's Reservation.

4 11. In exchange for the benefits realized under the Settlement Agreement and as
5 authorized by the Act, the parties have executed Waivers and Releases of Claims as
6 provided in subparagraphs 15.1 through 15.4 of the Settlement Agreement.

7 12. The claims of the Nation, the Allottees and the United States on behalf of the
8 Nation and the Allottees to water within the Tucson Management Area from the Gila River
9 System and Source are fully, finally and permanently adjudicated by the Final Judgment
10 and Decree.

11 13. Nothing in the final Judgment and Decree the form of which is attached as
12 Exhibit 17.1-4 to the Settlement Agreement, or the Settlement Agreement shall be
13 construed to quantify or otherwise affect the water rights or entitlements to water of any
14 Arizona Indian tribe, band or community, or the United States on their behalf, other than
15 the Nation, the Allottees and the United States acting on behalf of the Nation and the
16 Allottees.

17 14. Nothing in the Settlement Agreement shall affect the right of any party, other
18 than the Nation, the Allottees and the United States on behalf of the Nation and the
19 Allottees, to assert any priority date or quantity of water for water rights claimed by such
20 party in the Gila River Adjudication or other court of competent jurisdiction.

21 15. The Adjudication Court shall retain jurisdiction over this matter for
22 enforcement of the Judgment and Decree and the Settlement Agreement, including the
23 entry of injunctions, restraining orders or other remedies under law or equity.

24 16. In the absence of a settlement, the United States on behalf of the Nation and
25 the Allottees would assert the maximum claims permissible under the reserved water rights
26 doctrine and claims for damage for past interference with water rights.

ATTACHMENT B

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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

**IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS TO
USE WATER IN THE GILA RIVER
SYSTEM AND SOURCE.**

**No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)**

CONTESTED CASE NO. W1-208

NOTICE OF PROPOSED SETTLEMENT

In re Proposed Tohono O'odham Nation Water Rights Settlement.

IMPORTANT NOTICE FOR CLAIMANTS IN THE GILA RIVER ADJUDICATION

Several parties to the Gila River general stream adjudication ("Gila River Adjudication") have asked the Superior Court to approve a proposed settlement of all claims within the Tucson Active Management Area, the Santa Cruz Active Management Area and that part of the Upper Santa Cruz Basin not within either of the Active Management Areas ("Tucson Management Area") for water rights of the Tohono O'odham Nation (the "Nation"), individual Indian trust allotment landowners ("Allottees"), and the United States acting on behalf of the Nation and the Allottees. The claimed water rights of the Nation, the Allottees, and the United States on behalf of the Nation and the Allottees, for the San Xavier Reservation and the eastern portion of the Schuk Toak District (as shown on the map, Attachment A), are subject to adjudication by this Court.

The parties to this proposed settlement (the "Settling Parties") include: the Tohono O'odham Nation, the Allottees, the United States of America, the State of Arizona, the City of Tucson, Farmers Investment Co. and Asarco Incorporated.

YOU ARE HEREBY NOTIFIED that the Court is conducting special proceedings to determine whether this proposed settlement should be approved. If the Court approves the proposed settlement and enters a final judgment adjudicating the water rights claims within the Tucson Management Area of the Nation, the Allottees, and the United States on behalf of the Nation and Allottees, as set forth in a stipulation reflecting the principal terms of the settlement, the judgment will be binding upon all claimants in the Gila River Adjudication.

The Court has ordered the Arizona Department of Water Resources ("ADWR") to prepare a factual analysis or technical assessment of the proposed settlement. ADWR's report must be completed by October 24, 2006.

The Court has ordered the Settling Parties to provide interested parties in the Gila River Adjudication and the public with information about the proposed settlement. A meeting will be held at 7:00 p.m. on November 13, 2006, at the City of Tucson Mayor and Council Chambers, 255 West Alameda Street, Tucson, Arizona 85701.

Claimants in the Gila River Adjudication will have until December 13, 2006 to file any objections they might have to the proposed settlement. The Court will thereafter schedule hearings on the proposed settlement and any objections to the proposed settlement.

1 You or your predecessor has filed a statement of claimant for water uses in the Gila River system and source.
2 Your claimed water rights may be affected by the proposed settlement. To help you determine whether you should file
3 an objection to the proposed settlement, you should review the application filed by the parties to the proposed
4 settlement; the Court's Order of July 11, 2006, authorizing these special proceedings; and the settlement documents.
5 All these materials may be examined during business hours at the Arizona Department of Water Resources, 3550 N.
6 Central Avenue, Phoenix, Arizona 85012, the Tucson Active Management Area, 400 W. Congress, Suite 518, Tucson,
7 Arizona 85701, or at Arizona Department of Water Resource's website (www.azwater.gov). Also, copies of the
8 proposed settlement may be examined at the office of the Superior Court Clerk in each Arizona county.

9 If you decide to file an objection to the proposed settlement, you must do so on or before December 13, 2006.
10 Any claimant in the Gila River Adjudication may file an objection with the Adjudication Court asserting that:

11 a. The approval of the stipulation setting forth the terms of the settlement, and the proposed final
12 judgment and decree adjudicating the water rights claims of the Nation, the Allottees, and the United States on behalf
13 of the Nation and the Allottees, as set forth in the settlement agreement, would cause material injury to the objector's
14 claimed water right;

15 b. The conditions described in the Arizona Supreme Court's Special Procedural Order Providing for the
16 Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991, which warrant
17 this special proceeding have not been satisfied; or

18 c. The water rights established in the settlement agreement, set forth in the stipulation and adjudicated
19 in the proposed final judgment and decree, are more extensive than the Indian tribe or federal agency would have been
20 able to establish at trial.

21 Objections must also include:

- 22 a. The name, address, and signature of the objector;
- 23 b. A description of the water rights asserted in the objector's claim;
- 24 c. A statement of the legal basis for the objection, and the specific factual grounds upon which the
25 objection is based;
- 26 d. A list of any witnesses and exhibits that the objector intends to present at any hearing on the
27 objection;
- 28 e. Any request for discovery relating to the objection and a statement as to the need for such discovery;
and
- f. Any other information the Adjudication Court may require in the order for summary proceedings.

Objections must be filed with the Clerk of the Superior Court, Maricopa County, Attention: Water Case No. W1-208, 601 W. Jackson, Phoenix, Arizona 85003.

If you have any questions concerning the proposed settlement and these special proceedings to consider the proposed settlement, you may wish to contact an attorney of your choice.

This Notice was approved on _____, and mailed pursuant to the order of the Court.

DATED this ___ day of _____, 2006.

Judge of the Superior Court

ATTACHMENT C

FILED
MAY 16 1991
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE THE GENERAL ADJUDICATION
THE RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND SOURCE

) Supreme Court Nos. WC-79-0001 OF
) through WC-79-0004 (consolidated)
) [WC-1, WC-2, WC-3 and WC-4
) (consolidated)]
)
) Maricopa County Superior Court
) Nos. W-1, W-2, W-3 and W-4
) (consolidated)
)
) SPECIAL PROCEDURAL ORDER
) PROVIDING FOR THE APPROVAL
) OF FEDERAL WATER RIGHTS
) SETTLEMENTS, INCLUDING THOSE
) OF INDIAN TRIBES
)

Pursuant to Article 6, § 5 of the Arizona Constitution, and A.R.S. §§ 45-259 the following procedure is adopted for the approval of settlements of Indian water rights or water rights for other federal reservations arising in this adjudication:

A. Conditions Warranting Special Proceedings

Indian water rights or water rights for other federal reservations may be established in special proceedings in this general adjudication action which is subject to Article 9, Chapter 1 of Title 45, Arizona Revised Statutes, under the following conditions;

1. The Indian water rights or water rights for other federal reservation are the subject of a claim in the general adjudication action that is within the jurisdiction of the court;

2. The Indian water rights or water rights for other federal reservation have been determined in a settlement agreement among the Indian tribe (in the case of a settlement of Indian water rights), the United States, and a group of claimants in the general adjudication action whose claims

are adverse to the claim of the United States or the Indian tribe (in the case of a settlement of Indian water rights);

3. The settlement agreement which determines the Indian water rights or water rights for other federal reservation has been confirmed by an act of Congress or the appropriate federal agency;

4. The terms of the settlement agreement, or the act of Congress or the appropriate federal agency that confirms it require that the settlement agreement be approved by the general adjudication court or are conditioned upon such approval; and

5. There are special circumstances preventing the consideration of the settlement agreement settlement agreement in the normal course of the adjudication.

B. Application and Order for Special Proceedings.

1. Special proceedings under this order shall be conducted pursuant to an order for special proceedings issued in the general adjudication action upon the application of any one or more of the parties to the settlement agreement. The application may be filed ex parte by the parties to the settlement agreement and shall include:

a. a stipulation of the parties to the settlement agreement setting forth the terms of the settlement agreement;

b. a request that the general adjudication court enter an order approving the stipulation and a final judgment adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation;

c. the special circumstances that prevent the consideration of the settlement agreement in the normal course of the adjudica-

tion;

d. a proposed form of order directing that special proceedings be conducted to approve the stipulation and adjudicate the Indian water rights or water rights for other federal reservation as set forth in the stipulation; and

e. information indicating the location of copies of the settlement agreement and supporting documents, which must be made available for review.

2. Upon the filing of the application, the general adjudication court shall grant the application and enter the order for special proceedings, if the court determines that the application satisfies the conditions specified in part A. and the requirements of part B.1.

3. The order for special proceedings shall contain the following statements and directions:

a. a statement of the general adjudication court's findings, which may be based upon representations made in the application, that the conditions enumerated in part A. are satisfied and that special proceedings are thus warranted;

b. a description of the Indian water rights or water rights for other federal reservation as agreed upon in the settlement agreement and set forth in the stipulation;

c. a statement that special proceedings with respect to the settlement agreement shall be conducted in accordance with this order, a copy of which shall be attached to the order for special proceedings, and a direction that the application and order for special proceedings shall be served forthwith in accordance with

part E. of this order;

d. a statement of the terms of other general procedural orders, if any, established by the general adjudication court, which are applicable to such special proceedings and which are not inconsistent with this order;

e. a statement that if the general adjudication court approves the stipulation between the parties to the settlement agreement and enters a final judgment adjudicating the Indian water rights or water rights for other federal reservation, the judgment will be binding upon all parties to the general adjudication; and

f. at the discretion of the general adjudication court, a direction to the Arizona Department of Water Resources to prepare a factual analysis and/or technical assessment of the Indian water rights or water rights for other federal reservation affected by the settlement and report to the adjudication court within 45 days.

C. Objections and Responses.

1. Any claimant in the general adjudication may file an objection with the general adjudication court asserting that:

a. approval of the stipulation and adjudication of the Indian water rights or water rights for other federal reservation as set forth in the stipulation would cause material injury to the objector's claimed water right;

b. the conditions enumerated in part A. of this order have not been satisfied; or

c. the water rights established in the settlement agreement and

set forth in the stipulation are more extensive than the Indian tribe or federal agency would have been able to establish at trial.

2. Objections shall include:

- a. the name and address of the objector;
- b. a description of the water rights asserted in the objector's claim;
- c. a statement of the legal basis for the objection, and the specific factual grounds upon which the objection is based;
- d. a list of any witnesses and exhibits that the objector intends to present at any hearing on the objection;
- e. any request for discovery relating to the objection and a statement as to the need for such discovery;
- f. and any other information as may be required in the order for summary proceedings.

3. Objections shall be filed within 45 days after the date of service of the order for special proceedings, or if a DWR report was requested by the adjudication court, within 45 days of the service of DWR's report.

4. Any party to the settlement agreement may file a response to each objection within 20 days after the time for filing objections has expired. The response shall include;

- a. any motion for summary disposition of the objection;
- b. a list of any witnesses and exhibits that the parties to the

settlement agreement intend to present at any hearing on the objection;

c. any request for discovery and a statement as to the need for such discovery;

d. any objections to a request for discovery made by the objector;

e. a statement that the response is being concurrently served upon parties entitled to service in accordance with this order; and

f. such other information as may be required in the order for special proceedings.

D. Resolution of Objections

1. The general adjudication court shall conduct hearings to resolve motions for summary disposition of objections, to grant or deny requests for discovery, and to set for hearing objections that are not resolved by motion for summary disposition. Requests for discovery shall be granted for good cause shown, but the court shall establish a schedule within which any permitted discovery shall be completed.

2. Motions for summary disposition of objections shall be granted where an objector lacks standing to assert an objection, has no valid legal basis for an objection, where an objection raises no genuine issues of material fact regarding the alleged injury of an objector's claim of water rights or where the adjudication court, applying the standards for deciding motions for summary judgment under Ariz. R. Civ. P. 56, finds that summary disposition should be granted.

3. Where an objection is not resolved by motion for summary disposi-

tion, or where an objection is not the subject of a motion for summary disposition, the general adjudication court shall conduct expedited hearings on such objections.

4. The general adjudication court, in its discretion, may refer all or part of the summary proceedings provided by this order to the special master appointed under the provisions of A.R.S. § 45-255. The general adjudication court may request the master's recommendation on the issue of approval, but shall not delegate to the special master the court's power to approve or decline to approve the stipulation or to enter a judgment accordingly.

5. Upon completion of all hearings on objections, and upon the receipt of the report of the master, if matters have been referred to the master, the general adjudication court shall enter a judgment either approving the stipulation and adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation or declining to do so.

6. The court shall approve the stipulation and adjudicate the Indian water rights or water rights for other federal reservation as set forth in the stipulation if, after hearing the evidence, it determines that the parties to the settlement have established by a preponderance of the evidence that:

a. there is a reasonable basis to conclude that the water rights of the Indian tribe or federal agency established in the settlement agreement and set forth in the stipulation are no more extensive than the Indian tribe or federal agency would have been able to prove at trial. In making this determination, the court

may consider in addition to other evidence offered, the statement of claimant filed by the Indian tribe or federal agency and all supporting documentation;

b. the water rights of the objector could not be established at a trial on the objector's water rights; the water rights of the objector, if established at a trial on the objector's water rights, would not be materially injured by the water rights of the Indian tribe or federal agency established in the settlement agreement and set forth in the stipulation; the objector is bound by the settlement agreement because his interests were adequately represented by a party to the settlement agreement by virtue of the objector's relationship to such party; or under the express terms of the settlement agreement and the stipulation, the objector is not bound and, therefore, both the objector and the Indian tribe or federal agency may pursue their remedies against each other in the adjudication; and

c. the settlement agreement has been reached in good faith.

7. The general adjudication court's judgment approving the stipulation and adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation, or its order declining to do so, shall be reviewable by the Arizona Supreme Court pursuant to the Court's Special Procedural Order Providing for Interlocutory Appeals and Certification.

E. Service and Notice.

1. Parties to the settlement agreement shall serve a copy of the application for special proceedings together with a copy of the order for

special proceedings in the manner provided in the adjudication court's Pre-Trial Order No. 1.

2. The parties to the settlement agreement shall provide notice by mail to all claimants in the general adjudication, in a form approved by the adjudication court, notifying them of the pendency of the special proceeding, advising them as to where complete copies of the application for special proceedings and order may be found, and including whatever other information the adjudication court may require.

3. The adjudication court shall serve a copy of DWR's report, if one was requested, as provided in the adjudication court's Pre-Trial Order No. 1.

4. A claimant filing an objection shall serve it, and all subsequent filings relating to the objection upon the parties to the settlement agreement. The parties to the settlement agreement shall serve their response to an objection, and all subsequent filings relating to that objection, upon all the objecting parties. Service under this part shall be made in accordance with Ariz R. Civ. P. 5(c)(1).

5. The adjudication court may in its discretion, require additional service of the application, objection, response, and other pleadings as deemed necessary in a given application, except that the final order of the court entered pursuant to part D.5. of this order shall be served pursuant to the adjudication court's Pre-Trial Order No. 1.

6. The adjudication court may, for good cause, extend the time limits established in parts B.3.f., C.3., and C.4. of this order.

7. The Clerk of the Superior Court for Maricopa County shall maintain a docket sheet on which all documents filed in the action shall be

entered. Docket sheet entries shall identify each filed document by title of the document and a brief description of its contents. The clerk shall update the docket sheet at least biweekly and furnish copies of it on a monthly basis to the Clerks of the Superior Court for all other counties. All clerks shall post in a prominent place a notice of the availability of the docket sheet in a form approved by the general adjudication court.

8. The Clerk of the Superior Court for Maricopa County shall maintain a separate special proceedings file which shall include copies of all documents filed in special proceedings conducted under this order.

DATED this _____ day of May, 1991.

STANLEY G. FELDMAN
Vice-Chief Justice