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10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF APACHE**

13 **IN THE GENERAL ADJUDICATION**
14 **OF ALL RIGHTS TO USE WATER IN**
15 **THE GILA RIVER SYSTEM AND**
16 **SOURCE**

CV 6417

(The Honorable Eddward P.
Ballinger, Jr.)

ARIZONA DEPARTMENT OF WATER
RESOURCES' REPORT
CONCERNING ADJUDICATION
RESOURCES

17 **CONTESTED CASE:** None.

18 **HSR INVOLVED:** None.

19 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources hereby files
20 a report concerning ADWR's adjudication resources.

21 **NUMBER OF PAGES:** Eight.

22 **DATE OF FILING:** January 31, 2007.

23 Pursuant to court order filed December 8, 2006, the Arizona Department of Water
24 Resources ("ADWR") hereby files a report concerning resources that ADWR currently
25 has available for adjudication-related matters, and resources that ADWR anticipates
26 having available in the future. In its order, the court expresses concern regarding the

1 availability of ADWR staff to meet the needs of the adjudication process, and requests
2 information on five topics related to that concern. This report addresses each of the five
3 topics described in the court's December 8, 2006 Order.

4 **1. Steps Underway to Add Adjudication Staff**

5 In January 2006, ADWR reported that the number of ADWR staff dedicated to
6 providing technical assistance to the adjudication process consisted of three and one-half
7 (3½) people. In addition, ADWR used personnel in areas outside of the adjudication
8 program in order to respond to adjudication needs.

9 Currently, ADWR has 10½ people dedicated to the adjudication program including
10 a section manager, hydrologists, water resource specialists, legal counsel, administrative
11 assistants and interns. ADWR added four (4) of these people in FY 2007 using a one-time
12 special appropriation of \$500,000. These people consist of two water resource specialists,
13 one administrative assistant, and two college interns who work part-time. Recruiting
14 qualified people has been difficult given the uncertainty of whether necessary funds will
15 be available in the future. As a result, ADWR also plans to use the FY 2007 appropriation
16 for aerial imagery, adjudication database upgrades and subflow zone mapping activities,
17 which are described further below.

18 **2. Steps Undertaken to Create an Adjudication Unit Within ADWR.**

19 ADWR already has a separate section dedicated to adjudication activities. This
20 section is headed by Richard Burtell, who provides technical support with seven (7)
21 people. The Legal Division provides legal and administrative support with the remaining
22 three and one-half (3½) people.

23 **3. Additional Funding Required.**

24 In order to maintain the status quo, ADWR requires another \$500,000 for FY 2008.
25 This amount was included in the Governor's budget request, but was eliminated from the
26

1 Joint Legislative Budget Committee proposal. By the end of the legislative session,
2 ADWR hopes to have these or additional funds included in its budget, and is working
3 toward that end.

4 Although \$500,000 is a beginning, it is not a long-term solution. In order to
5 rebuild and maintain its adjudication program, ADWR believes that a phased increase in
6 staffing and resources will be required so that by 2011, ADWR's adjudication program
7 will be funded at a level of \$5 million. With this level of funding, ADWR believes that it
8 will be able to provide the court with the assistance necessary for both the Gila River and
9 the LCR adjudications.

10 ADWR anticipates that additional work will be required on several matters in the
11 future. For example, hydrographic survey reports (HSRs) will be required for the Verde
12 River Watershed, the Navajo Nation, and the San Carlos Apache Tribe. Also, the existing
13 preliminary HSR for the Upper Salt River Watershed, and final HSRs for the San Pedro
14 River Watershed and the Silver Creek Watershed will need to be updated. In addition,
15 there are other federal Indian claims and federal non-Indian claims that will require
16 investigation and analysis. And, once the subflow determinations for the San Pedro River
17 Watershed are concluded, ADWR expects that subflow analyses will then be required for
18 the other watersheds. By obtaining additional funding over the next several years, ADWR
19 believes that it will be in a better position to provide more timely assistance to the court
20 on these adjudication matters and others.

21 **4. Allocation of ADWR Resources for the Adjudication Program.**

22 The Gila River and LCR adjudications involve inherently complicated technical,
23 legal, and procedural issues, the resolution of which requires resources from ADWR, the
24 court and the parties. ADWR believes that having sufficient resources dedicated to the
25 adjudication process is an important factor in moving the Gila River and LCR
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1 adjudications forward. As indicated above, ADWR has already established a separate
2 section which is staffed by personnel dedicated either full or part time to the adjudication
3 program, and ADWR has plans to increase that level of staffing even further.

4 In spite of limited resources, ADWR believes that it has provided assistance to the
5 adjudication process on a variety of significant technical and administrative matters since
6 the mid-1990s, albeit with sacrifices to ADWR's other program responsibilities and
7 extraordinary efforts by key personnel. In the last year alone, ADWR issued technical
8 reports for three Indian water rights settlements involving the claims of the Zuni Tribe, the
9 Gila River Indian Community (GRIC) and the Tohono O'Odham. Prior to that, ADWR
10 filed reports concerning federal claims to springs in the San Pedro River Watershed,
11 Phelps Dodge's claim to Show Low Lake (which Phelps Dodge subsequently withdrew),
12 development and implementation of subflow criteria within the Upper San Pedro River
13 Watershed (which is the subject of petitions for review before the Arizona Supreme
14 Court), several technical reports concerning the settlement of claims of the San Carlos
15 Apache Tribe, and preliminary HSRs for the Gila River Indian Community claims.
16 Currently, ADWR is working on the HSR for the Hopi Reservation, and the Upper Gila
17 Maintenance Area Mapping associated with the GRIC settlement, together with other
18 matters.

19 Administratively, ADWR also made certain strides with limited resources. In
20 2001, ADWR reinitiated and brought current the new use summons process, and by the
21 end of calendar year 2005, ADWR had served over 27,000 new use summons. As
22 thousands of new Statements of Claimant (SOCs) were filed, ADWR updated the SOC
23 databases and processed the resulting filing fees. Between 2004 and 2006, ADWR also
24 researched and updated over 40,000 addresses in both the LCR and Gila River
25 adjudications to facilitate the mailing of required notices. On an ongoing basis, ADWR
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1 maintains a central information repository and adjudication dockets, and responds to
2 inquiries from the parties and the public for copies of documents and information.

3 Although ADWR has had significant accomplishments over the last few years,
4 those accomplishments have placed a considerable burden on ADWR's overall resources.
5 ADWR believes that maintaining at least 10½ positions dedicated to adjudication matters
6 will alleviate this burden in the short run, but even more adjudication resources must be
7 added to meet the needs of the foreseeable future.

8 **5. Completion of Current and Anticipated Projects.**

9 The court requests information from ADWR regarding completion of work for the
10 Hopi Reservation HSR, the San Pedro River Watershed subflow zone map, and technical
11 work associated with the PWR 107, Fort Huachuca, and the San Pedro Riparian National
12 Conservation Area (SPRNCA) contested cases. Each of these is discussed below.

13 Hopi HSR. The Hopi Reservation covers 2,500 square miles with claims to over
14 500 stockpounds and reservoirs, 300 springs, 200 wells and 40,000 acres of croplands.
15 Since the summer of 2005, ADWR has conducted selected field inspections related to
16 these claims. Most of the field work has been completed, and ADWR is currently
17 analyzing the collected data. Some of the claims have been difficult to verify, and in
18 2007, ADWR will determine the extent to which additional field work may be necessary.
19 ADWR expects to begin writing the preliminary Hopi HSR this spring, with a draft report
20 available by the fall of 2008.

21 San Pedro River Watershed Subflow Zone Map.

22 Although the Arizona Supreme Court has not yet determined whether it will accept
23 review of the court's September 2005 decision regarding subflow issues, ADWR has
24 undertaken preliminary work related to the mapping of the subflow zone for the San Pedro
25 River Watershed. ADWR is currently researching historic streamflow conditions and
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1 waters uses, and is exploring whether the Arizona Geological Survey or the U.S. Geologic
2 Survey could be of assistance in mapping the Holocene alluvium. Before the subflow
3 mapping can be completed, ADWR will require further direction from the Arizona
4 Supreme Court and the trial court.

5 PWR 107 contested case.

6 With the exception of the San Carlos Apache Tribe, the parties to the PWR 107
7 contested case entered into stipulations with the United States concerning its water right
8 claims for several springs located on Bureau of Land Management land south of the San
9 Carlos Apache Reservation. Recently, the SCAT also entered into a stipulation with the
10 United States for 14 of these springs. Pursuant to Order of the Special Master dated
11 January 24, 2007, ADWR was provided with copies of the associated water right abstracts
12 for review on January 26, 2007. On or before March 27, 2007, ADWR will review the
13 proposed stipulation and abstracts and file recommendations with the Special Master.

14 Fort Huachuca and SPRNCA contested cases.

15 At a January 18, 2007 status conference before the Special Master, the parties to
16 the Fort Huachuca and SPRNCA contested cases reported that settlement discussions had
17 begun, and that state legislation is expected to be introduced soon relating to water
18 management issues in the San Pedro River Watershed, which could have an affect on
19 those discussions. As a result, the Special Master vacated the briefing schedule in the Fort
20 Huachuca contested case, and set another status conference for March 20, 2007.

21 The Special Master has not yet requested technical assistance from ADWR for
22 either the Fort Huachuca contested case or the SPRNCA contested case, and as a result
23 timelines have not yet been established for future work by ADWR. To date, pursuant to
24 the Special Master's scheduling order of May 5, 2005, ADWR has facilitated the
25 disclosure process for the Fort Huachuca contested case. On its web site, ADWR
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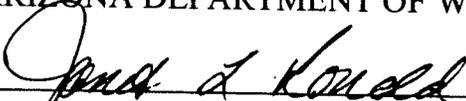
1 maintains an electronic index of disclosed documents, and posts the electronic images.

2 **Conclusion.**

3 Technical and administrative support for the Gila River and LCR adjudications is a
4 high priority within ADWR. In FY 2007, ADWR requested and received sufficient funds
5 to increase resources dedicated to the adjudication process, which level of funding ADWR
6 also hopes to obtain as part of its FY 2008 budget, at a minimum. In the following fiscal
7 years, ADWR intends to request increased levels of funding so that ADWR will be able to
8 dedicate resources that are commensurate with adjudication requirements for the future.

9 **DATED** this 31st day of January 2007.

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11 ARIZONA DEPARTMENT OF WATER RESOURCES

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18 ORIGINAL of the foregoing
19 sent by first-class mail on the 31st day of
20 January 2007 to:

21 Clerk of the Superior Court
22 Apache County
23 Attention: Water Case
24 701 W. 3rd South
25 St. Johns, AZ 85936
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COPIES of the foregoing
sent by first class mail the
31st day of January 2007, to:

Honorable Eddward Ballinger, Jr.
Judge of the Superior Court
Northeast Regional Court Center
18380 N. 40th Street, Suite 120
Phoenix, AZ 85032

Honorable George A. Schade, Jr.
Maricopa County Superior Court
Central Court Building, Suite 5B
201 West Jefferson
Phoenix, Arizona 85003-2205

All parties on the court-approved mailing list
for CV 6417

