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NOEL K. DESSAINT
CLERK SUPREME COURT
BY

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE.	)	Supreme Court No. WC-79-0006 [WC-6] Apache County No. 6417 ADMINISTRATIVE ORDER

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 reservation(s) or federal lands arising in this adjudication:

A. Conditions Warranting Special Proceeding

Settlements of Indian water rights claims or water rights claims for other federal reservations or federal lands may be reviewed and, if appropriate, approved 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. There are special circumstances that prevent the consideration of the settlement agreement in the normal course of the adjudication.

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

3. The Indian water rights claims or water rights claims for other federal reservation(s) or federal lands are the subject of a settlement agreement among one or more Indian tribes (in the case of a

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settlement of Indian water rights), the United States, and a group of claimants in the general adjudication action whose claims are adverse to the claims of the United States or the Indian tribe(s) (in the case of a settlement of Indian water rights);

4. The settlement agreement resolving the Indian water rights claims or water rights claims for other federal reservation(s) or federal lands has been confirmed by an act of Congress or the appropriate federal agency; and

5. 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.

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 one or more of the parties to the settlement agreement. The application may be filed ex parte and shall include:

a. the special circumstances that prevent the consideration of the settlement agreement in the normal course of the adjudication;

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

c. a request that the general adjudication court enter an order approving the stipulation and the settlement agreement

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and approving a final judgment adjudicating the Indian water rights or water rights for other federal reservation(s) or federal lands as set forth in the stipulation;

d. a proposed form of order directing that special proceedings be conducted to review the stipulation and settlement agreement, and to adjudicate the Indian water rights or water rights for other federal reservation(s) or federal lands as set forth in the stipulation; and

e. information indicating the location of copies of the settlement agreement and supporting documents for review by the public.

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 of this order.

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(s) or federal lands 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, that are applicable to such special proceedings and consistent with this order;

e. a statement that if the general adjudication court approves the stipulation and settlement agreement and enters a final judgment adjudicating the Indian water rights or water rights for other federal reservation(s) or federal lands, the judgment will be binding upon all parties to the general adjudication except to the extent that the express terms of the stipulation and settlement agreement provide that non-signing parties will not be bound by the stipulation and settlement agreement; and

f. at the discretion of the general adjudication court, a direction to the Arizona Department of Water Resources ("DWR") to prepare a factual analysis and/or technical assessment of the Indian water rights or water rights for other federal reservation(s) or federal lands subject to the settlement agreement and report to the general adjudication court within such time as may be specified by the court.

C. Objections and Responses

1. Any claimant in the general adjudication may file thereafter 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(s) or federal lands as set forth in the stipulation would cause material injury to the objector's water rights;

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

c. the water rights established in the settlement agreement and set forth in the stipulation are not fair, adequate, reasonable, and consistent with applicable law, considering all of the circumstances surrounding the settlement and all of the consideration provided under the settlement; or

d. the statutes authorizing and implementing the settlement are unconstitutional or the manner in which they are being applied to implement the settlement is unconstitutional.

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;

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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 general adjudication court may require 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 general 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 40 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 responding party to the settlement agreement intends 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. any other information the general adjudication court may require in the order for special proceedings.

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D. Resolution of Objections

1. The general adjudication court may conduct hearings to resolve motions for summary disposition of objections or requests for discovery. Requests for discovery shall be granted for good cause shown and, if granted, 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 or has asserted no valid legal basis for an objection, where an objection raises no genuine issues of material fact and fails to establish material injury to the objector's water rights, or where the general 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 disposition, or where an objection is not the subject of a motion for summary disposition, the general adjudication court shall conduct expedited hearings on the objection.

4. The general adjudication court, in its discretion, may refer all or part of the special proceedings provided for 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 and settlement agreement or to enter a judgment accordingly.

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5. Upon completion of all hearings, if any, 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 or disapproving the stipulation and settlement agreement and adjudicating the Indian water rights or water rights for other federal reservation(s) or federal lands as set forth in the stipulation.

6. The court shall approve the stipulation and settlement agreement and adjudicate the Indian water rights or water rights for other federal reservation(s) or federal lands as set forth in the stipulation if, after considering any admissible evidence presented, it determines that the parties to the settlement have established by a preponderance of the evidence that:

a. the settlement is fair, adequate, reasonable and consistent with applicable law, considering all of the circumstances surrounding the settlement and all of the consideration provided under the settlement. In making this determination, the court may consider in addition to other evidence offered, the statement of claimant filed by the Indian tribe(s) or federal agency and all supporting documentation;

b. the water rights claimed by the objector could not be established at a trial on the objector's water rights; the water rights of the objector, if established at trial, would not be materially injured either by the water rights of the Indian tribe(s) or federal agency established in the

settlement agreement and set forth in the stipulation, or by the terms of the stipulation and settlement agreement; the objector is bound by the settlement agreement because the objector's 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(s) or federal agency may pursue their remedies against each other in the adjudication;

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

d. the statutes authorizing and implementing the settlement are constitutional on their face and as applied to the objector.

7. The general adjudication court's judgment approving **or** disapproving the stipulation and settlement agreement and adjudicating the Indian water rights or water rights for other federal reservation(s) or federal lands as set forth in the stipulation is subject to review by the Arizona Supreme Court pursuant to the Court's Special Procedural Order Providing for Interlocutory Appeals and Certifications adopted June 1, 1994 in this adjudication.

E. <u>Service and Notice</u>

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, on all parties on the Court's approved mailing list.

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 general adjudication court, notifying them of the pendency of the special proceeding, advising them where complete copies of the application for special proceedings and the stipulation and settlement agreement will be available for review by the public, and including whatever other information the general adjudication court may require.

3. The general adjudication court shall cause a copy of any DWR report to be served as provided in the general 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 and all parties on the court-approved mailing list. The parties to the settlement agreement shall serve any response to an objection, and all subsequent filings relating to that objection, upon all the objecting parties and all parties on the court-approved mailing list. Service under this part shall be made in accordance with Ariz. R. Civ. P. 5(c)(1).

5. The general 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 on all parties on the Court's approved mailing list and any other party requesting notice of the Court's final action.

6. The general 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 Apache 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 the name of the party filing the document and the title of the document. 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 Apache County shall maintain a separate special proceedings file which shall include copies of all documents filed in special proceedings conducted under this order.

F. Effect on Claims Excluded from Scope of a Settlement

Judicial approval of a settlement will not prejudice any claim to the right to use water expressly excluded from the scope of the settlement agreement.

DATED this 27th day of September, 2000.

Thomas A. Zlaket
Chief Justice