JUN 8 2006
LEGAL
OF WATER RESOURCES

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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. W1-207 **ORDER FOR SPECIAL PROCEEDINGS FOR CONSIDERATION OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT**

Contested Case Name: *In re Proposed Gila River Indian Community Water Rights Settlement.*

HSR Involved: None.

Descriptive Summary: Order of Judge Eddward P. Ballinger, Jr., approving application of Settling Parties, filed May23, 2006, to commence special proceedings to consider the proposed settlement of the claim for water rights of the Gila River Indian Community, its members and allottees and of the United States acting on behalf of the Gila River Indian Community, its members and allottees.

Date of Filing: .

Number of Pages: without attachments 8; Attachment A 8; Attachment B 10; Attachment C 4.

This matter came before the Court on May 23, 2006, upon the application of the Gila River Indian Community; the United States of America; the Salt River Valley Water Users' Association; the Salt River Project Agricultural Improvement and Power District; the Roosevelt Irrigation District; the Roosevelt Water Conversation District; Arizona Water Company; the Arizona Cities of Casa Grande, Chandler, Coolidge, Glendale, Goodyear, Mesa, Peoria, Phoenix, Safford, Scottsdale and Tempe; the Arizona Towns of Florence, Mammoth, Kearney, Duncan and Gilbert; the Maricopa-Stanfield Irrigation & Drainage District; the Central Arizona Irrigation and Drainage District; Franklin Irrigation District; Gila Valley Irrigation District; the San Carlos Irrigation and Drainage District; the

Hohokam Irrigation and Drainage District; the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; the Central Arizona Water Conservation District; Phelps Dodge Corporation; and the Arizona Game and Fish Commission (these parties hereinafter referred to as the "Settling Parties") for an order for special proceedings, pursuant to the Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes issued by the Arizona Supreme Court on May 16, 1991.[1]

Entry of an order for special proceedings is requested for the Court to consider a stipulation among the Settling Parties,[2] which sets forth the terms of the Settlement Agreement, and incorporates and attaches as exhibits thereto copies of: (1) a proposed agreement settling all claims for water rights of the Gila River Indian Community, its Members and Allottees, and the United States on behalf of the Gila River Indian Community, its Members and Allotees;[3] and (2) a proposed final judgment and decree adjudicating the water rights of the Gila River Indian Community, and the United States on behalf of the Gila River Indian Community and Allottees, as established in the Settlement Agreement.[4] The Court, having considered the Application for Special Proceedings *ex parte*, as is authorized by paragraph B (1) of the Special Procedural Order, finds the following:

1. The Settling Parties, who are parties to this adjudication (the "Gila River Adjudication"), have reached a proposed settlement of all claims for water rights of the Gila River Indian Community, its Members and Allottees, and the United States on behalf of the Gila River Indian Community, its Members and Allottees, whose claimed water rights are subject to determination in this adjudication. Congress ratified the proposed settlement in passing the Arizona Water Settlements Act of 2004, Public Law 108-451 ("Settlements Act").

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[1] The application shall be referred to hereinafter as the "Application for Special Proceedings." The Supreme Court's May 16, 1991 Order shall be referred to hereinafter as the "Special Procedural Order."

[2] The stipulation, attached as Exhibit A to the Application for Special Proceedings, shall be referred to hereinafter as the "Stipulation."

[3] The proposed agreement, attached as Exhibit 1 to the Stipulation, shall be referred to hereinafter as the "Settlement Agreement."

[4] The proposed final judgment and decree shall be referred to hereinafter as the "Proposed Final Judgment and Decree."

2. The Application for Special Proceedings satisfies the requirements of paragraph B (1) of the Special Procedural Order issued by the Arizona Supreme Court as it contains: (1) the Stipulation of the Settling Parties, which sets forth the terms of the Settlement Agreement and incorporates and attaches as exhibits thereto copies of the Settlement Agreement and the Proposed Final Judgment and Decree adjudicating the water rights of the Gila River Indian Community, its Members and Allottees, and the United States on behalf of the Gila River Indian Community, its Members and Allottees, as established in the Settlement Agreement; (2) a request that the Court enter an order approving the Stipulation and the Proposed Final Judgment and Decree; (3) a description of the special circumstances that prevent the consideration of the proposed settlement in the normal course of the Gila River Adjudication; (4) a proposed order to commence the special proceedings, attaching a description of the terms of the Settlement Agreement, a copy of the Special Procedural Order and a proposed Notice of Settlement; and (5) information indicating the location of copies of the Settlement Agreement and supporting documents available for review.

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

a. The proposed settlement involves the claimed water rights of the Gila River Indian Community, its Members and Allottees, which are the subject of statement of claimant number 39-35092 filed by the United States for the benefit of the Gila River Pima-Maricopa Indian Community and allotted lands within the Gila River Indian Reservation ("Reservation") and statement of claimant numbers 39-11-5478, 39-05-41142, 39-07-12652, 39-U8-60083, 39-L8-36340, and 39-L8-37360 filed by the Gila River Indian Community on behalf of itself, its Members, and Allottees in this action. The claims of the United States on behalf of the Gila River Pima-Maricopa Indian Community and allotted lands within the Reservation and of the Gila River Indian Community on behalf of itself, its Members and Allottees, are within the jurisdiction of the Court under the principles of Arizona v. San Carlos Apache Tribe of Arizona, 463 U.S. 545 (1983) and United States v. Superior Court et al., 144 Ariz. 265, 697 P.2d 658 (1985).

b. The Settling Parties include the Gila River Indian Community, the United States, and other claimants in the Gila River Adjudication whose claimed water rights are adverse to those of the Gila River Indian Community.

c. The proposed Settlement Agreement settles the claims for water rights of the Gila River Indian Community, an Indian tribe, its Members and Allottees and the United States on behalf of the Gila River Indian Community, its Members and Allottees. A description of the water rights of the Gila River Indian Community, and the United States on behalf of the Gila River Indian Community and the United States on behalf of Allottees as specified in Section 204 of the Settlements Act, as established in the Settlement Agreement, is set forth in Attachment A to this Order, which description is incorporated at this point.

d. The proposed settlement has been confirmed by Congress in the Settlements Act, but Congress' confirmation is conditioned upon approval of the proposed settlement by the Court.

e. There are special circumstances preventing the consideration of the Settlement Agreement in the normal course of the Gila River Adjudication. Those special circumstances are that the enforceability of the Gila River Indian Community Water Rights Settlement, approved by Congress in the Water Settlements Act, is conditioned upon the entry of an order by the Court, no later than December 31, 2007, approving the Proposed Final Judgment and Decree. Under the normal course of the Gila River Adjudication, the claims for water rights of the Gila River Indian Community, its Members and Allottees would not be considered by the Court prior to December 31, 2007.

4. The claimed rights of the Settling Parties to the water they have contributed to the Gila River Indian Community under the terms of the proposed settlement will not be adjudicated in the special proceedings requested by the Settling Parties; rather, these claimed water rights will be adjudicated in the due course of the Gila River Adjudication.

5. The proposed settlement of all of the claims for water rights of the Gila River Indian Community, its Members and Allottees, and of the United States on behalf of the Community, Members and Allottees is a lengthy and complex agreement involving many parties, many separate

documents and attachments, exchanges of water, and both monetary and nonmonetary consideration. The Hydrographic Survey Report (HSR) concerning present and potential water uses of the Gila River Indian Community, its Members and Allottees, which would be prepared by the Arizona Department of Water Resources ("ADWR") in the normal course of the Gila River Adjudication to assist the Court and parties, has not been completed and is not even scheduled to be completed. Without the expert assistance of ADWR, it will be difficult for the Court and other parties to the Gila River Adjudication to understand and evaluate the proposed settlement. As a consequence, it is appropriate for the Court to order ADWR to prepare a factual analysis and technical assessment of the proposed settlement as is authorized by paragraph B(3)(f) of the Supreme Court's Special Procedural Order.

NOW, THEREFORE, IT IS ORDERED as follows:

1. The Application for Special Proceedings to consider the proposed settlement of all of the claims for water rights of the Gila River Indian Community, its Members and Allottees, and the United States on behalf of the Community, Members and Allottees, is granted. The conditions warranting special procedures have been satisfied. The Settling Parties shall serve by mail copies of their Application for Special Proceedings and this Order upon all persons listed in the Court-approved mailing list for the Gila River Adjudication.

2. The special proceedings with respect to the proposed settlement shall be conducted in accordance with the Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, issued by the Arizona Supreme Court on May 16, 1991, which is attached to this Order as Attachment B.

3. The Court will consider the proposed settlement under the criteria enumerated by the Arizona Supreme Court in paragraph D (6) of its Special Procedural Order. Except as otherwise provided in the Stipulation and Settlement Agreement, if the Court approves the Stipulation regarding the proposed settlement and enters the Proposed Final Judgment and Decree adjudicating the water rights of the Gila River Indian Community, its Members and Allottees and the United States on behalf

of the Gila River Indian Community, its Members and Allottees, the Proposed Final Judgment and Decree will be binding upon all parties to the Gila River general stream adjudication.

4. ADWR shall file with the Court no later than August 23, 2006, a factual analysis and technical assessment of the proposed settlement. ADWR's report shall including the following: (1) a review of the terms of the settlement; (2) a summary of the statements of claimant filed by or on behalf of the Gila River Indian Community, its Members and Allottees; (3) a brief description of the history, physical characteristics, and natural resources (including an estimate of the arable acreage) of the Gila River Indian Community and its reservation, emphasizing those facts, events, and plans which may be important in ascertaining the water rights of the reservation; (4) a determination of whether there is a reasonable basis for this Court to conclude that the water rights of the Gila River Indian Community, its Members and Allottees, and the United States acting on behalf of the Gila River Indian Community, its Members and Allottees, as established in the Settlement Agreement and the Proposed Final Judgment and Decree, are no more extensive than the water rights that the Gila River Indian Community acting on behalf of itself, its Members, and Allottees, and the United States acting on behalf of the Gila River Pima-Maricopa Indian Community, would be able to prove to a degree of reasonable probability at the trial of these claimed rights in the due course of the Gila River Adjudication; (5) a determination of whether there is a reasonable basis to conclude that the water rights of the Gila River Indian Community, its Members and Allottees, and the United States acting on behalf of the Gila River Indian Community, its Members and Allottees, as established in the Settlement Agreement and the Proposed Final Judgment and Decree, from sources subject to the jurisdiction of the Court, are no more extensive than the water rights that the Gila River Indian Community acting on behalf of itself, its Members and Allottees and the United States acting on behalf of the Gila River Pima-Maricopa Indian Community would be able to prove to a degree of reasonable probability at the trial of these claimed rights in the due course of the Gila River Adjudication; (6) the likely changes in the total amount of water resources in the Gila River system and source as a result of the proposed settlement; (7) a determination of whether the proposed settlement causes material injury to the water rights of categories of other claimants in the

adjudication; (8) the likely impact of the proposed settlement upon the rights to use groundwater underlying or in the vicinity of the reservation and upon the groundwater regulatory program administered by ADWR; and (9) other important impacts or consequences that might result from the proposed settlement. The Settling Parties are ordered to meet with ADWR and to provide ADWR with information and documents necessary for ADWR to complete its factual analysis and technical assessment (including information comparing the proposed settlement to the amount of water the Gila River Indian Community on behalf of itself, Members and Allottees, and the United States on behalf of the Gila River Pima Maricopa Indian Community could reasonably prove at a trial of its claimed water rights). Upon filing the report with the Court, ADWR is ordered to serve a copy of the report upon each person appearing on the Court-approved mailing list for the Gila River Adjudication.

5. After the filing of the ADWR report, the Settling Parties shall present a program in three separate meetings to provide interested parties in the Gila River Adjudication and the public with information about the proposed settlement. The program will include a statement that the program has been ordered by the Court, a disclaimer indicating that the Settling Parties' interests in the proposed settlement may be adverse to the interests of other parties in the Gila River Adjudication, a description of the terms and conditions of the proposed settlement, an announcement of the availability of the ADWR factual analysis and technical assessment, and an announcement of the date objections to the proposed settlement must be filed. At the program, the Settling Parties shall make copies of this Order (including attachments) available to those persons who are present. The first meeting will be held at the City of Phoenix City Hall, Assembly Rooms A and B, 200 West Washington Street, Phoenix at 7:00 p.m. on September 12, 2006; the second meeting will be held at City Council Chambers for the City of Casa Grande, 510 E. Florence Blvd., Casa Grande at 7:00 p.m. on September 13, 2006; and the third meeting will be held at the Assembly Room, Board of Supervisors, 921 Thatcher Blvd (at Hwy 70) Safford at 7:00 p.m. on September 14, 2006.

6. The Settling Parties shall serve by first-class mail a notice upon all claimants (and all assignees and transferees of claimants, to the extent they appear in ADWR's records) in the Gila River general stream adjudication, notifying them of the application to approve the proposed

settlement involving the water rights of the Gila River Indian Community; the pendency of this special proceeding; the time, date, and location of the informational meeting described in the preceding paragraph; and advising them where complete copies of the application for special proceedings and this Order may be found. The Court approves the use of the Notice of Settlement attached hereto as Attachment C. The Settling Parties shall publish a copy of the Notice of Settlement in three newspapers of general circulation within the geographical area encompassed by the Gila River Adjudication at least once a week for three consecutive weeks, beginning no later than fourteen (14) days after the date of entry of this Order.

7. Objections to the application to approve the proposed settlement shall be filed with the Clerk of the Court in and for Maricopa County no later than October 9, 2006.

8. Any Settling Party may file a response to an objection no later than November 19, 2006.

9. The Settling Parties shall promptly provide both ADWR and the Special Master with complete copies of the proposed settlement including copies of all attachments and documents referred to or incorporated therein, a copy of the Settlement Act, and a copy of any printed congressional report concerning that federal legislation. ADWR shall make its set of these documents available for public inspection and copying at its headquarters during its normal business hours and shall post a copy of these documents on its web site. The Settling Parties shall also provide a complete copy of the Settlement Agreement, including copies of all attachments, and a copy of the Settlements Act, to the offices of the Clerks of the Superior Court in every Arizona county.

10. The pretrial orders of the Court and the Rules for Proceedings Before the Special Master apply to these special proceedings to the extent that they are consistent with the Supreme Court's Special Procedural Order.

DATED this _____ day of _____, 2006.

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Judge of the Superior Court

ATTACHMENT A

TO

ORDER FOR SPECIAL PROCEEDINGS FOR CONSIDERATION OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

DESCRIPTION OF THE PROPOSED WATER RIGHTS AND OTHER TERMS OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AS REPRESENTED TO THE COURT BY THE SETTLING PARTIES

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Attachment A

Description of the Proposed Water Rights and Other Terms of the Gila River Indian Community Water Rights Settlement As Represented to the Court by the Settling Parties

1. The Amended and Restated Gila River Indian Community Water Rights Settlement Agreement ("Settlement Agreement") resolves the claims for Water Rights of the Gila River Indian Community ("Community"), on behalf of itself, its Members and Allottees, and of the United States in its capacity as trustee for the Community, its Members and Allottees. The rights of the Community, the United States on behalf of the Community and the United States and on behalf of the Allottees as specified in Section 204 of the Gila River Indian Community Water Rights Settlement Act, Public Law 108-451 (2004) ("Settlements Act"), as agreed upon in the Settlement Agreement and set forth in the proposed stipulation and proposed judgment and decree, are summarized in this Description.[1]

2. The capitalized terms used in this Description of the proposed settlement shall be defined as stated in the Settlement Agreement.

3. Subject to the terms of Paragraph 4.0 of the Settlement Agreement, the Community, the United States on behalf of the Community and the United States on behalf of the Allottees, as specified in Section 204 of the Act, collectively, shall have the right to six hundred fifty-three thousand five hundred (653,500) acre-feet of Water annually ("AFY") from any combination of the

[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 agreement, the terms of the Settlement Agreement are controlling and should be consulted.

sources set forth in paragraph 5, hereof. Such Water Rights may be used for any purpose on the Reservation. The Community, Allottees and Members and the United States on behalf of the Community, Members and Allottees, collectively, shall not Divert for use on the Reservation more than an average of six hundred fifty-three thousand five hundred (653,500) acre-feet of Water in any Year, calculated as provided in Subparagraphs 4.2 through 4.5 of the Settlement Agreement.

4. For purposes of determining compliance with the limitation on total Diversions of paragraph 5 hereof, the Community, Members and Allottees and the United States on behalf of the Community, Members and Allottees, collectively, may Divert more than six hundred fifty-three thousand five hundred (653,500) acre-feet of Water in any Year or Years, provided that such Diversions, as calculated pursuant to Subparagraphs 4.2 through 4.5 of the Settlement Agreement, shall not exceed in the aggregate six million five hundred thirty-five thousand (6,535,000) acre-feet of Water for any period of ten (10) consecutive Years, reckoned in continuing progressive series, beginning on January 1 of the Year immediately succeeding the Year in which the Enforceability Date occurs. In no Year may the Community, Members and Allottees, and the United States on behalf of the Community, Members and Allottees, collectively, Divert an amount of water that would cause the aggregate Diversions for any period of ten (10) consecutive Years to exceed six million five hundred thirty-five thousand (6,535,000) acre-feet.

5. The Water to be used in satisfaction of this entitlement described in paragraph 3 is as follows:

A. Underground Water. As a component of the Water Right provided for in paragraph 3 hereof, the Community, the United States on behalf of the Community, and the United States on behalf of the Allottees as specified in Section 204 of the Act, shall have the right to Divert

Underground Water from points located within the Reservation as provided in Paragraph 4.0 and Subparagraph 5.1 of the Settlement Agreement.

B. Globe Equity Decree Water. As a component of the Water Right provided for in paragraph 3 hereof, the Community, Members and Allottees, and the United States on behalf of the Community, Members and Allottees, shall have the right to Divert water pursuant to the rights described in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe Equity Decree). The one hundred twenty-five thousand (125,000) AFY of Globe Equity Decree Water set forth in Subparagraph 4.1 neither guarantees, nor does it in any way limit, the decreed amount of water to which the Community, Members and Allottees, and the United States on behalf of the Community, Members and Allottees, are entitled.

C. Haggard Decree and Maricopa Contract Water. As a component of the Water Right provided for in paragraph 3 hereof, the Community, the United States on behalf of the Community, and the United States on behalf of the Allottees as specified in Section 204 of the Act, collectively, shall have the rights to 540 miners inches of water from the Salt River, as set forth in the Haggard Decree, as modified by the Benson-Allison Decree. Such rights shall be fully satisfied as provided in the Contract between the United States and the Salt River Valley Water Users' Association dated May 5, 1936, as amended on June 12, 1968, which Contract is amended and restated as Exhibit 7.2 to the Settlement Agreement.

D. CAP Water. As a component of the Water Right provided for in paragraph 3 hereof, the Community, and the United States on behalf of the Community, collectively, shall be entitled to and the Secretary shall deliver to the Community, upon the terms and conditions set forth in the Community Water Delivery Contract the following:

(i) 173,100 AFY of CAP Indian Priority Water that was allocated to the

Community in accordance with the Secretarial notice published in the Federal Register on March 24, 1983, and subsequently contracted to the Community for delivery by contract dated October 22, 1992.

(ii) 102,000 AFY of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities and reallocated by the Secretary to the Community.

(iii) The 18,600 AFY of RWCD CAP Water reallocated by the Secretary to the Community.

(iv) Up to 17,000 AFY of CAP M&I Priority Water allocated and contracted to Asarco if subsequently relinquished by that entity and reallocated by the Secretary to the Community.

(v) 18,100 AFY of HVID CAP Water reallocated by the Secretary to the Community.

E. SRP Stored Water. As a component of the Water Right provided for in paragraph 3 hereof, the Community shall be entitled to 20,000 or 20,500 AFY, provided as follows:

(i) Except as provided in Subparagraph 12.2 of the Settlement Agreement,[1] SRP shall credit the Community annually with an entitlement to SRP Stored Water ranging from two thousand (2,000) to thirty-five thousand (35,000) acre-feet when Net SRP Reservoir Storage levels on May 1 of each year exceed one hundred thousand (100,000) acre-feet in accordance with Exhibit 12.1 of the Settlement Agreement. At Net SRP Reservoir Storage levels on May 1 of less than or equal to

[1] Subparagraph 12.2 provides: "The Community's entitlement to SRP Stored Water under Subparagraph 12.1 shall phase in over five (5) years as provided in this Subparagraph 12.2. The Community shall be entitled to twenty percent (20%) of the SRP Stored Water entitlement under Subparagraph 12.1 in the year in which the Enforceability Date occurs, and the percentage shall increase by twenty percent (20%) each year thereafter over the subsequent four (4) years on a

one hundred thousand (100,000) acre-feet, no SRP Stored Water shall be credited to the Community for that year. A year for purposes of this paragraph shall be from May 1 through the following April 30.

(ii) In addition to the SRP Stored Water described in (i), SRP has conditionally agreed an annual entitlement to Blue Ridge Stored Water ranging from zero (0) to eight hundred thirty six (836) acre-feet pursuant to Subparagraph 12.13 of the Settlement Agreement.

F. Mesa Reclaimed Water Exchange Premium. As a component of the Water Right provided for in paragraph 3 hereof, the Community, and the United States on behalf of the Community, shall be entitled to 5,870 AFY through the exchange of twenty-three thousand five hundred thirty (23,530) AFY of Community CAP Exchange Water for twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water.

G. Chandler Reclaimed Water Exchange Premium. As a component of the Water Right provided for in paragraph 3 hereof, the Community, and the United States on behalf of the Community, shall be entitled to 2,230 AFY through the exchange of eight thousand nine hundred seventy (8,970) AFY of Community CAP Exchange Water for eleven thousand two hundred (11,200) AFY of Chandler Exchange Reclaimed Water.

H. Chandler Contributed Reclaimed Water. As a component of the Water Right provided for in paragraph 3 hereof, the Community, and the United States on behalf of the Community, shall be entitled to 4,500 AFY of Chandler Contributed Reclaimed Water.

6. Pursuant to Subparagraph 6.3 of the Settlement Agreement, and subject to paragraph 14 hereof, the rights described in articles V and VI of the Globe Equity Decree (but not those

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straight-line basis, rising to one hundred percent (100%) of the Community's entitlement under

described in article VI(2) of the Globe Equity Decree) shall be binding upon all parties to these Gila River Adjudication Proceedings. Enforcement of the rights described in articles V and VI of the Globe Equity Decree (but not those described in article VI(2) of the Globe Equity Decree) shall be subject to Paragraph 26.0 of the Settlement Agreement. The Globe Equity Decree court shall continue to have jurisdiction over disputes among parties to the Globe Equity Decree regarding its enforcement. Disputes involving nonparties to the Globe Equity Decree regarding its enforcement shall be subject to the jurisdiction of the Gila River Adjudication Court.

7. Subject to Subparagraphs 4.4 and 4.5 of the Settlement Agreement, any Diversion of Water for use on the Reservation by the Community, Members or Allottees, or by the United States on behalf of the Community, Members or Allottees, shall be included in the calculation of the total Diversions for use on the Reservation for purposes of paragraphs 3 and 4 hereof. All accounting for such Diversions shall be in accordance with the provisions of Paragraph 4.0 of the Settlement Agreement.

8. Nothing in the Final Judgment and Decree, the form of which is attached to the Settlement Agreement as Exhibit 25.18.A.2, or the Act will have the effect of recognizing or establishing any right of a Member or Allottee to Water on the Reservation. Any entitlement to Water for use on lands within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land shall be satisfied by the Community out of the Water resources described in paragraph 5 hereof.

9. Except as provided in Subparagraph 4.7 of the Settlement Agreement, none of the Water that is the subject of the Settlement Agreement may be sold, leased, transferred or in any way

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Subparagraph 12.1."

used off the Reservation.

10. In exchange for the benefits realized under the Settlement Agreement and as authorized by the Act, the Parties have executed Waivers and Releases of Claims, attached as Exhibits 25.1 through 25.11 to the Settlement Agreement. These Waivers and Releases of Claims are attached thereto as Exhibits A.1—11 to the Stipulation.

11. The benefits realized by the Community, Members and Allottees under the Settlement Agreement and the Settlements Act shall be in complete replacement of and substitution for, and in full satisfaction of, all claims the Community, Members and Allottees for Water Rights, Injury to Water Rights, Injury to Water Quality, and Subsidence Damage, except as set forth in the Settlement Agreement, under federal, State or other law with respect to land within the exterior boundaries of the Reservation, Off-Reservation Trust Land, and Fee Land.

12. Any entitlement to Water of the Community, Members, any Allottee or any Successor in Interest to an Allottee, or the United States on behalf of the Community, Members or Allottees for lands within the exterior boundaries of the Reservation, Off-Reservation Trust Land and Fee Land shall be satisfied out of the Water resources and other benefits granted, confirmed or recognized to or for the Community, Members, Allottees and the United States on behalf of the Community, Members, or Allottees by the Settlement Agreement and in the Act.

13. The claims of the Community Members and Allottees (including but not limited to Silas Kisto), and the United States on behalf of the Community, Members, and Allottees, to water from the Gila River System and Source are fully, finally and permanently adjudicated by the Final Judgment and Decree.

14. Nothing in the Final Judgment and Decree the form of which is attached as Exhibit 28.18.A.2 to the Settlement Agreement, or the Settlement Agreement shall be construed to quantify or otherwise affect the Water Rights or entitlements to water of any Arizona Indian tribe, band or community, or the United States on their behalf, other than the Community and the United States acting on behalf of the Community, its Members and Allottees.

15. Nothing in the Settlement Agreement shall affect the right of any Party, other than the Community and the United States, on behalf of the Community, Members and Allottees, to assert any priority date or quantity of water for Water Rights claimed by such Party in the Gila River Adjudication or other court of competent jurisdiction.

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

17. In the absence of a settlement, the Community and the United States, acting in its capacity as trustee for the Community, Members and Allottees, would assert the maximum claims permissible under the reserved water rights doctrine and claims for damage for past interference with water rights.

18. In the absence of a settlement, the water rights that might be awarded to the Community and the United States, acting in its capacity as trustee for the Community, Members and Allottees for the Gila River Indian Reservation would possess multiple priority dates ranging from time immemorial through 1915.

ATTACHMENT B

TO

ORDER FOR SPECIAL PROCEEDINGS FOR CONSIDERATION OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SPECIAL PROCEDURAL ORDER PROVIDING FOR THE APPROVAL OF FEDERAL WATER RIGHTS SETTLEMENTS, INCLUDING THOSE OF INDIAN TRIBES

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JUN 8 2006
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Attachment B

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 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 that 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 that prevent the consideration of the 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 one or more of the parties to the settlement agreement. The application may be filed ex parte 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 adjudication;

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, that are applicable to such special proceedings and 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 ("DWR") 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; and

f. any other information the 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 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. any other information the adjudication court may require 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 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 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 trial, 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 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 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 Certifications.

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 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.

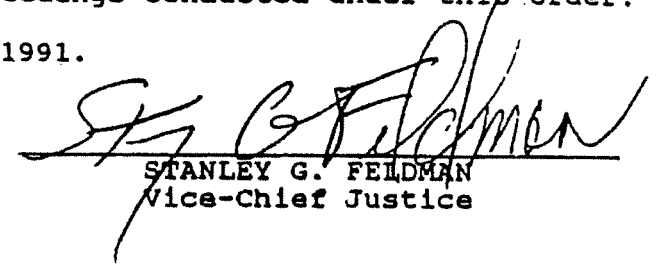
6. The adjudication court may, for good cause, extend the time limits established in parts B.3.f., C.3., and C.4. of this order.

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 16th day of May, 1991.



STANLEY G. FELDMAN
Vice-Chief Justice

ATTACHMENT C

TO

ORDER FOR SPECIAL PROCEEDINGS FOR CONSIDERATION OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

NOTICE OF SETTLEMENT