

Maricopa Lawyer
Clerk's Corner
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The Water Case Turns 30

The Gila River General Stream Adjudication (commonly known as the Water Case) reaches a milestone 30th anniversary on April 24, 2009. Special Master George A. Schade, Jr. was kind enough to contribute his insight and historical perspective into the case's development and accomplishments for this month's article.

Starting as petitions filed with the Arizona State Land Department in 1974 and 1978 to determine conflicting water rights to the Salt, Verde, Gila and San Pedro Rivers, the cases were transferred in April 1979, to the superior court in the counties where the original petitions were filed.

In 1981, the Arizona Supreme Court consolidated the adjudications of the Salt, Verde, Gila, and San Pedro Rivers and ordered the case conducted in the Superior Court in the county having "the greatest number of potential claimants." The consolidated adjudication was transferred to the Superior Court in Maricopa County and assigned case number W-1, W-2, W-3, and W-4 (Consolidated), *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*.

Nearly one million summonses were thereafter served on water users and potential claimants. Summonses are served on new water users. The summons requires the filing of a statement of claimant with the Clerk of the Superior Court in Maricopa County if one wants a water use adjudicated.

The objective is the judicial determination or establishment of the extent and priority of the water rights of all persons to use a river system. Over 26,000 water users, in 14 of Arizona's 15 counties, have filed nearly 82,000 water right claims. Claimants are the State of Arizona, United States, Indian tribes, cities, towns, mines, farmers, cattle growers, water providers, and domestic well users.

Rights to surface water - streams, lakes, canyons, springs, and subflow - are being adjudicated. Subflow are those waters which find their way through the sand and gravel of a streambed, or lands under or immediately adjacent to the stream, and are themselves a part of the surface stream. Subflow issues have been litigated for over 20 years. Neither groundwater nor Central Arizona Project water is subject to the Water Case.

The Hon. Eddward P. Ballinger, Jr., appointed water judge by the Arizona Supreme Court in 2000, presides over both the Gila River and Little Colorado River Adjudications. The latter case proceeds in the Superior Court in Apache County.

The Arizona Department of Water Resources is the Court's technical adviser. The department investigates all claims, prepares technical reports, maintains a central information repository, and conducts service of summonses.

The department's hydrographic survey reports contain findings and recommendations to which all claimants may object. Special Master Schade organizes the objections and issues of broad legal significance into contested cases, hears evidence, and submits a report and recommended final decree to the Court. After hearing and resolving any objections to the Special Master's report, the Court will issue a final decree for each watershed. The final decrees will establish the existence and ownership of claimed water rights as well as attributes of the water rights including location of diversions, water uses, quantities of water used, and date of priority of water rights.

Evaluating the Water Case by the years that have passed since it began overlooks significant accomplishments. The United States and Arizona Supreme Courts have answered complex legal and procedural issues, some of first impression, and efforts to settle substantial federal reserved water rights claims have succeeded.

The Court approves all water rights settlements. Arizona has approved more Indian water rights settlements than any other Western state. The water rights of the Salt River Pima-Maricopa Indian Community, Fort McDowell Yavapai Nation, Yavapai-Prescott Indian Tribe, San Carlos Apache Tribe (Salt River), Tohono O'odham Nation, and the Gila River Indian Community have been resolved.

The Court has issued partial decrees for certain federal reserved water rights of the Saguaro National Monument, Coronado National Memorial, and Bureau of Land Management. The Special Master has issued reports concerning the federal reserved water rights claimed for Arizona State Trust Lands and Fort Huachuca. Work is ongoing on the reserved water claims of the San Pedro Riparian National Conservation Area, Powers Garden, and Aravaipa Canyon Wilderness Area.

Early in the adjudication process, the Court established a procedure whereby the Clerk of Superior Court was to prepare a monthly docket containing specific information to be provided to parties. The procedure was outlined in Pre-Trial Order No. 1 (May 30, 1986). The Clerk's website allows customers to view the dockets prepared by the Clerk's office. Dockets available on-line begin with the year 2001 and are located at <http://clerkofcourt.maricopa.gov/watercase.asp>. For access to dockets before 2001, please contact the Clerk of the Superior Court in Maricopa County.

The Special Master maintains a website dedicated to the Water Case, including links to minute entries and orders, some dating to 1986. The website provides a calendar of events, overview of the case, an online newsletter, and rules of procedures. Visit <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/Index.asp>.