

By Michael K. Jeanes, Clerk of the Superior Court

The 'Water Case' turns 35

We reviewed the Gila River General Stream Adjudication (shorthand - the Water Case) when it reached its 30th anniversary. Special Master George A. Schade, Jr. brings us up to date.

On October 17, 2012, the Arizona Supreme Court appointed the Hon. Mark H. Brain as the Superior Court judge to preside over both the Gila River and Little Colorado River Adjudications. Judge Brain replaces Judge Eddward P. Ballinger, Jr. who was appointed to the federal bankruptcy court.

As of June 30, 2014, 83,402 statements of claimant from over 22,000 water users had been filed in the Gila River Adjudication. The Arizona Department of Water Resources (ADWR), which provides technical advice and administrative assistance to the Court, serves summonses on persons who initiate new water uses. 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 Arizona Supreme Court has resolved an issue of significant interest to Western states that hold large tracts of trust lands. The Court affirmed the Water Court's ruling that there are no implied federal reserved water rights for State Trust Lands. The State of Arizona manages more than 9.2 million acres of trust lands, of which approximately 5.1 million acres are located within the Gila River Basin.

The Supreme Court reviewed the history of public lands granted by the United States to new states to be used for educational purposes, Arizona's enabling legislation, and the law of reserved water rights. The Court held that State Trust Lands given to the State of Arizona were neither withdrawn nor reserved for a federal purpose, and Congress did not intend to reserve water rights on those lands. The opinion is reported at 231 Ariz. 8, 289 P.3d 936 (2012).

The Water Court has approved more Indian water rights settlements than any other Western state as Arizona has engaged in a concerted effort to resolve Indian rights. In 2010, the Arizona Supreme Court affirmed the Water Court's judgment and decree that approved the Gila River Indian Community's water rights settlement, acclaimed to be the Nation's largest Indian water rights agreement. See 223 Ariz. 362, 224 P.3d 178 (2010).

Judge Brain is considering the White Mountain Apache Tribe's Quantification Agreement that resolves the Tribe's water rights. ADWR has prepared a factual analysis and technical assessment of the agreement. Public presentations have been held, and the Court will soon take up the agreement.

The Court continues to address subflow, which Arizona includes in surface water; only surface waters are being adjudicated. Subflow are the waters which find their way through the sand and gravel of a streambed, or lands under or immediately adjacent to a stream, and are themselves a part of the surface stream. The Court is considering the approval of a map prepared by ADWR that delineates the subflow zone in the San Pedro River Watershed. Hearings have been held concerning the initial delineation map, and hearings on a revised map will begin this year.

The Special Master has issued orders concerning the federal reserved water rights claimed for the San Pedro Riparian National Conservation Area, Aravaipa Canyon Wilderness Area, and Redfield Canyon Wilderness Area. The orders have determined core attributes of the reserved water rights on these large federal enclaves.

Concerning Fort Huachuca, a military installation in Sierra Vista, the Special Master has entered several orders to guide an extensive and complex discovery process involving electronically stored information.

In the matter of the Powers Garden Administrative Site near Tucson, parties executed a stipulated agreement and proposed abstracts of federal reserved water rights. The Water Court approved the agreement and decreed the rights.

The Court is expected to assume the San Pedro River Watershed contested matters when they proceed to evidentiary hearings on quantification of water rights. Following his appointment, Judge Brain considered ways to expedite the Water Case in light of ADWR's funding situation. The Court saw merit in proceeding in this manner in these cases.

The Clerk of the Superior Court prepares a monthly docket that describes pleadings filed by parties and the Court's orders. Dockets available online begin with the year 2001 and are located at <http://clerkofcourt.maricopa.gov/watercase.asp>. For access to dockets before 2001, contact the Clerk of the Superior Court in Maricopa County.

Always review the Special Master's website for a calendar of events, orders and decisions, procedural rules, and a newsletter. Visit <http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/Index.asp>.