



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MARICOPA-STANFIELD IRRIGATION & DRAINAGE  
DISTRICT, et al. v. THE HONORABLE KELLY MARIE  
ROBERTSON (JOHN E. SMITH, et al., Real Parties in Interest),  
No. CV-04-0385-SA**

**PARTIES AND COUNSEL:**

*Petitioners:* Maricopa-Stanfield Irrigation & Drainage District (“MSIDD,” represented by Donald M. Peters and Susan A. Cannata of Miller LaSota & Peters, PLC), Central Arizona Irrigation and Drainage District (“CAIDD,” represented by Richard N. Morrison, M. Byron Lewis and Mark A. McGinnis of Salmon, Lewis & Weldon, PLC), and approximately two hundred landowners (represented by Marvin S. Cohen of Sacks Tierney, PA). These parties are collectively called “Districts” in this summary.

*Respondent:* Real parties in interest John E. Smith, and certain other landowners with agricultural lands situated within the territorial boundaries served by the Districts, represented by J. Gordon Cook, Ronald I. Rubin and Denise J. Henslee of Renauld Cook Drury & Mesaros, PA.

*Amicus Curiae:* Arizona Department of Water Resources (“ADWR,” represented by W. Patrick Schiffer, Ryan A. Smith and Maxine M. Becker); Cities of Chandler, Glendale, Goodyear, Mesa Peoria and Scottsdale (“Cities,” represented by William H. Anger of Engelman Berger PC); Central Arizona Water Conservation District (“CAWCD,” represented by Stuart Somach and Robert B. Hoffman of Somach, Simmons & Dunn of Sacramento, CA); Hohokam Irrigation & Drainage District and San Carlos Irrigation & Drainage District (“HIDD/SCIDD,” represented by Larry K. Udall of Martinez & Curtis); Salt River Valley Water Users’ Association and Salt River Project Agricultural Improvement and Power District (“SRP,” represented by Jane D. Alfano and Frederic L. Beeson); and Gila River Indian Community (“GRIC,” represented by Rodney B. Lewis, General Counsel).

**FACTS:** In 1972, the United States government (by the Secretary of Interior) negotiated a “Master Repayment Contract” with the Central Arizona Water Conservation District (CAWCD), which provided for the government’s delivery of water to Arizona through the Central Arizona Project (CAP) system and for CAWCD’s repayment of certain construction costs of the project.

In 1983, the CAWCD entered into subcontracts with the Secretary of Interior and the water Districts in this case, MSIDD and CAIDD. The subcontracts were ratified through landowner elections and validated in state court legal proceedings. The landowners in this case are not parties to the Master Repayment Agreement or the subcontracts, but they executed “Memoranda of Understanding” and “service contracts” directly with the Districts for obtaining water for irrigation. The arrangements also called for the landowners to lease their groundwater wells to the Districts as a condition for water service. The Districts agreed to provide water from CAP and/or groundwater wells to the landowners for irrigation of their agricultural lands, with an emphasis on reducing or eliminating the landowners’ total reliance on groundwater for agricultural irrigation. The subcontracts contained a formula for pricing CAP “priority” water sent to the Districts, however, in 1993 the Districts notified CAWCD that they could not afford to purchase that water. In fact, the landowners have not received CAP priority water allocations because of the expense. CAWCD and the Districts solved the expense problem by entering into ten-year letter agreements that allowed the Districts to purchase “excess” CAP water at affordable rates instead. The landowners were not parties to these letter agreements, either. The letter agreements expired in 2003, but the Districts have continued to provide excess CAP water to landowners.

On December 10, 2004, President Bush signed the “2004 Arizona Water Rights Settlement Act,” S.B. 437. This Act is the product of many long years of negotiation. Its terms include: (1) a requirement that these Districts give certain subcontract rights back to the United States (which would use those rights to settle Indian water rights claims), (2) a plan to relieve the Districts of the obligation to repay \$130 million in CAP construction costs, (3) a provision for new contracts between the Districts and CAWCD for continued purchase of low-cost excess CAP water through 2030, and (4) settlement of existing and potential claims by Indian tribes against the Districts for groundwater depletion. The Districts held landowner elections to ratify the relinquishment of subcontract allocations. A majority approved the relinquishment, and the District Boards approved the proposed relinquishment agreements. Some landowners objected.

Anticipating the Settlement Act, the real parties in interest Smith landowners sued the Districts in 2001 to prevent the relinquishment of contract CAP rights. They alleged that relinquishment of the subcontract CAP water rights infringed their individual water rights, which are “appurtenant” (or necessarily connected) to their lands. The suit was stayed because of uncertainty surrounding settlement of GRIC claims until early 2003, when Senator John Kyl reintroduced the settlement as part of S.B. 437. A few landowners in each District opposed the relinquishments provided in the Settlement Act. With consent by the United States and CAWCD, the Districts gave each of them an opportunity to acquire the individual right to purchase water according to the terms of the subcontracts that required them to pay full price for their CAP water. None of the Smith landowners in this case took that offer.

The Smith landowners then sued CAWCD in March of 2003. CAWCD removed that case to Arizona’s federal district court, which has the power to decide matters relating to federal contracts to which the United States is a party. U.S. District Court Judge Earl H. Carroll dismissed the action in September 2003 for failure to state a claim. He ruled that the landowners could not block CAWCD’s modification of the subcontracts because they were not parties to the subcontracts and they were not “intended third-party beneficiaries” of the agreements. The

Smith landowners appealed to the Ninth Circuit Court of Appeal, which affirmed Judge Carroll's ruling on August 10, 2005. The appellate court agreed that the Smith landowners were not intended third party beneficiaries of the federal contracts. It denied a request for rehearing on September 21, 2005.

In December 2003, the Smith landowners filed a motion in this case for partial summary judgment against the Districts. They sought a declaration by the Pinal Superior Court that they each own a vested right to receive priority CAP water from their respective District through October 2043 (and longer when extensions may be exercised), and that their right to receive priority water is "appurtenant" to their lands. The Districts also filed for summary judgment. On November 11, 2004, the Honorable Kelly Marie Robertson of the Pinal Superior Court granted the motion filed by the real parties in interest Smith landowners.

The Districts filed a petition for special action directly with the Arizona Supreme Court. They alleged (1) that the superior court's ruling is erroneous and should be reversed, and (2) that special action jurisdiction in the Arizona Supreme Court is warranted, that is, the issue is deserving of extraordinary relief, and without an adequate remedy by appeal, because delay in correcting the ruling in this case jeopardizes the entire Arizona Water Rights Settlement, for which extensive and specific governmental and legal approvals must be obtained in full no later than December 31, 2007.

**ISSUE:**

"The central issue in this case is whether the irrigation districts must obtain the express individual consent of each landowner in the district to modify agreements that specify the terms by which the districts receive water from the Central Arizona Project. The resolution of that issue turns on two subsidiary issues: (1) whether individual landowners are intended third-party beneficiaries of the Subcontracts pursuant to which irrigation districts receive water from the Central Arizona Project; and (2) whether, by virtue of applicable water law, individual landowners have acquired vested rights, appurtenant to the land, to receive water pursuant to those Subcontracts."

In addition, two of the amici curiae discuss whether the real parties in interest have grounds to negate the majority vote by landowners in their respective Districts for acceptance of the Gila River Adjudication Agreement.

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