



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**In re: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE
WATER IN THE GILA RIVER SYSTEM AND SOURCE,
Nos. WC-07-0001-IR and WC-07-0003-IR**

PARTIES:

Petitioners: The three petitioners in the two related cases are the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Nation (“Apache Tribes”); Lower Gila Water Users and various individuals (“LGWU”); and ASARCO, LLC.

Respondents: Respondents in the two related cases are the United States; Gila River Indian Community (“GRIC”), Salt River Project/Salt River Water Users’ Association (“SRP”), and Cities (Chandler, Glendale, Goodyear, Mesa, Peoria, Scottsdale); Freeport McMoRan Copper & Gold, Inc.; and Gila Valley Irrigation District and Franklin Irrigation District.

Counsel: The attorneys arguing on behalf of the parties will identify themselves to the Court.

FACTS: In 2004, Congress passed the Arizona Water Settlements Act (AWSA), which contains a section authorizing settlement of GRIC’s claims to water rights in the Gila River. The parties to the settlement filed an application with the special general adjudication court in Maricopa County for approval of the settlement. A Special Procedural Order (SPO) was entered by the Arizona Supreme Court in 1991 to govern approval of settlements of federal water rights claims in the Gila River Adjudication, including those made by and on behalf of Indian tribes. A different SPO applies to the adjudication of claims to water in the Little Colorado River.

Certain parties lodged objections to the GRIC Settlement. The general adjudication court held hearings and summarily resolved all the objections raised by the Apache Tribes, LGWU and ASARCO, except one. After a hearing, the court concluded that the settlement gave GRIC water rights no more extensive than it and the United States on its behalf would have been able to prove at trial. It approved the settlement and entered a Judgment and Decree, from which the petitioners in these two cases sought interlocutory review/appeal.

ISSUES: The issues presented in the three petitions are too lengthy to set out verbatim in this Case Summary. In brief, the petitioners all argue in some manner that the general adjudication court erroneously interpreted its duty under the SPO narrowly, and that it instead must consider the constitutionality, legality, and fairness of the GRIC Settlement as it affects non-settling parties with claims to water in the Gila River, not just the matters listed in the SPO. Besides that, each petitioner argues different ways in which the GRIC Settlement allegedly injures its rights and should not have been approved.

Definitions: Provisions in the 1991 Special Procedural Order that may be helpful to understanding the parties' argument are:

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.

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6. The court shall approve the stipulation and adjudicate the Indian water rights . . . 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 a trial on the objector's water rights, 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 his 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.

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