



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE  
WATER IN THE GILA RIVER SYSTEM AND SOURCE**

Maricopa County Superior Court No. W-1 (Salt), W-2 (Verde),  
W-3 (Upper Gila), and W-4 (San Pedro), Contested Case No. W-1-104  
and

**IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE  
WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE,**

Apache County Superior Court No. 6417,  
Contested Case No. 6417-100, No. WC-11-0001-IR

**PARTIES:**

*Petitioner:* State of Arizona, on behalf of the Arizona State Land Department.

*Respondents presenting argument:*

ASARCO, LLC and Catalyst Paper (Snowflake), Inc.; United States of America;  
and Joint Respondents (Salt River Project Agricultural Improvement and Power  
District, Salt River Valley Water Users' Association, and 22 others).

**FACTS:**

When the Territory of New Mexico (which also included most of present-day Arizona) was created by the Act of September 9, 1850 ("Organic Act"), the federal government set aside sections 16 and 36 in each township as land to be placed into trust for future state(s) created from the territory. The designated lands were to be managed for the maintenance of common schools. When Arizona received separate territorial status through the Act of February 24, 1893, it became the intended grantee (recipient) of the trust lands. Arizona and New Mexico sought statehood pursuant to the Arizona-New Mexico Enabling Act of June 10, 1910 ("Enabling Act"). The Enabling Act not only confirmed the designation of sections 16 and 36 in each township as state trust lands, but also designated sections 2 and 32 in each township as state trust lands. The lands are to be managed according to detailed requirements of the trust, which continue to exist and can be enforced by either the federal government or the state. The people of Arizona in our Constitution expressly consented to the provisions of the Enabling Act. Ariz. Const. articles 20, § 10, and 10, § 1.

However, the federal government recognized early on that once the territories were mapped and surveyed as states, those particular numbered sections of land might not be available for transfer into the trusts for various reasons, such as prior settlement, designation as federal mineral lands, or inclusion in an Indian reservation or other federal military or civilian enclave. So the U.S. government in 1859 and 1891 provided for certain new western states to select other

open lands “in-lieu” of the designated sections to include in their school trust. Complete transfer of school trust lands to the State of Arizona spanned many decades following selection, approval, and survey of the lands. Congress also enacted the Desert Land Act of 1877 that allowed settlers to enter the desert lands of the West and reclaim parcels through irrigation supplied by “bona fide prior appropriation” under state law. The U.S. Supreme Court has found that by this Act Congress severed water rights from the public domain and established a rule that acquisition of title to land from the federal government does not carry with it a water right. (*Ickes v. Fox*, 300 U.S. 82 (1937)).

The federal government, as original owner of the lands that became territories and then states, also has the power under the Commerce Clause and Property Clause of the U.S. Constitution to reserve rights to use water on its lands. It may expressly state its intention to reserve water rights, or its intent may be implied when the government enacts legislation to withdraw its land from the public domain and reserve it for a public purpose. The doctrine of implied reserved water rights was first articulated in a case called *Winters*, where the Court found the government had impliedly reserved water for use on Indian reservation lands. (*Winters v. United States*, 207 U.S. 564 (1908)). Since then, the Court has found similar implied reserved water rights for national monuments (*Cappaert v. United States*, 426 U.S. 128 (1976)), national forests (*United States v. New Mexico*, 438 U.S. 696 (1978)), and other non-Indian federal enclaves (*Arizona v. California*, 373 U.S. 546, 601 (1963)).

In 1912, Arizona created the State Land Commission, the predecessor to the Arizona State Land Department, which was created in 1915. The Department is authorized to manage state trust lands and acquire water through various means for use on the lands. By statute, the State of Arizona, like any other person or entity, may appropriate unappropriated water according to state law.

The State of Arizona on behalf of the Department filed motions for partial summary judgment in the pending general stream adjudications for the Little Colorado River and the Gila River. The general stream adjudications are judicial proceedings to determine the extent and priority of all surface water rights in an entire river system. Claimants in the adjudications have made water rights claims based on the state law of prior appropriation, or on federal law. Federal water rights have a priority as of the date a federal reservation is established, and they are not lost through non-use.

In its motions, the State asserted that the Enabling Act granted it an implied reserved water right for the state trust lands. Its claims are based on the history and language of the acts relevant to the grant of lands; the designation of an express trust placing restrictions on the use of such lands; federal enforcement authority over the trust; and the circumstances surrounding the grant of lands. Many respondents opposed the motions or filed cross-motions. The superior court referred the matter to a special master, who wrote a detailed report and recommendation. After considering the parties’ briefs and oral arguments on objections to the special master’s report, the court ruled that the State does not have a federal reserved water right for state trust lands. The New Mexico Court of Appeals has held that the State of New Mexico also does not have a federal reserved water right for its state trust lands. *State of New Mexico ex rel. State Engineer v. Commissioner of Public Lands*, 200 P.3d 86 (N.M. App.), cert. denied (N.M. 2008), and cert. denied, 129 S.Ct. 2075 (2009).

**ISSUES GRANTED:**

1. Whether the Arizona Enabling Act requires that sufficient water be reserved for state trust lands to assure that those lands produce the full benefit for the trust purposes.
2. Whether, and to what extent, the United States withdrew land from the public domain and reserved that property as state trust land.

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*