

**IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE
(Order as modified March 7, 2002)**

On February 20, 2002, Judge Ballinger issued a ruling on the objections to former Special Master Thorson's reports dated June 30, 2000, and December 28, 2000. The full 43-page order is available at the [Gila River Adjudication page](#). Both reports addressed the preclusive effect that certain prior judicial decrees and judgments and agreements may have on water claims being asserted by the Gila River Indian Community (GRIC) and the United States on behalf of the reservation.

The reports resulted from motions for summary judgment filed by several parties and hearings held by Special Master Thorson, who submitted two reports to the Court. On November 27 and 28, 2001, Judge Ballinger heard oral arguments on the objections to Mr. Thorson's reports. The motions were described in the September-December 2001 issue of the *Bulletin*.

At the outset, Judge Ballinger, who is a state judge, held that the Superior Court has jurisdiction to consider the extent of issue and claim preclusion that accompanies a federal judgment. The Court has jurisdiction to consider the preclusive effect, if any, of the federal district court's 1935 Globe Equity No. 59 Decree, on water right claims being asserted in the Gila River Adjudication, a state judicial proceeding.

Judge Ballinger discussed at length issues relating to issue and claim preclusion doctrines, effect of consent judgments, and collateral and judicial estoppel. A short summary of each ruling is reported here; readers are pointed to the complete order found in the Special Master's Web pages.

The following motions were addressed in Special Master Thorson's June 30, 2000 Report.

A. Motions regarding the preclusive effect of the Globe Equity No. 59 Decree - GRANTED. "In this adjudication, neither GRIC nor the United States on behalf of GRIC shall be entitled to claim water rights relating to the mainstem of the Gila River, including flow from the San Carlos River, except to the extent such rights were granted to them by the Globe Equity Decree." The Court discussed the similarities between the case that led to the Globe Equity No. 59 Decree and the case that resulted in the U.S. Supreme Court's decision in *Nevada v. United States* (the Orr Ditch case).

B. Motion regarding the preclusive effect of the Florence-Casa Grande Landowners' Agreement, San Carlos Irrigation Project Landowners' Agreement, and the Project Repayment Contract - DENIED. This motion is moot as a result of a February 9, 2000, decision of the federal district court in ongoing proceedings in Globe Equity.

C. Motion regarding the preclusive effect of a Water Rights Settlement and Exchange Agreement and Consent to Assignment entered into between GRIC and ASARCO's predecessor in interest - DENIED. The Court agreed with Special Master Thorson that the issue presented in the motion, pursuant to the terms of the agreement, is not for the adjudication court to decide.

The following motions were addressed in Special Master Thorson's December 28, 2000, Report.

D. Motion regarding the preclusive effect of a judgment of the U.S. Claims Court entered in Docket No. 236D of Gila River Indian Community v. U.S. - GRANTED. "Both GRIC and the United States shall be prohibited from asserting any claim in this adjudication that is inconsistent with the judgment of the Claims Court ..."

E. Motion regarding the preclusive effect of a judgment of the U.S. Claims Court entered in Docket No. 228 of Gila River Indian Community v. U.S. - DENIED. The moving parties have not shown that the issues considered in that case are sufficiently identical to issues in this adjudication, and the record reflects genuine disputes as to material facts thereby precluding summary judgment as a matter of law.

F. Motion regarding the preclusive effect of the 1903 Haggard Decree and the 1936 Maricopa Contract - DENIED. The U.S. Supreme Court's "recognition of the federal reserved water rights doctrine ... provides a 'rare' but sufficiently changed circumstance to provide an exception under the federal claims preclusion doctrine."

G. Motion regarding the preclusive effect of the 1907 Sacaton Agreement between SRP and the U.S. - GRANTED. "Neither GRIC nor the United States on behalf of GRIC shall be permitted to assert, in this adjudication, a claim that GRIC possesses any interest, ownership, or right to use, the dams, reservoirs, canals or other works owned by SRP that are related to the Sacaton Agreement."

H. Motion regarding the preclusive effect of the 1945 Buckeye-Arlington Agreements with the U.S. - DENIED. Judicial estoppel does not apply, and there are genuine disputes as to material facts thereby precluding summary judgment as a matter of law.

The Court approved both of Special Master Thorson's reports to the extent consistent with the Court's order, and the Court directed the Arizona Department of Water Resources to prepare future hydrographic survey reports in accordance with these determinations.

[In re the General Adjudication of All Rights to Use Water in the Gila River System and Source](#) (November 26, 2001) - The court held that the purpose of a federal Indian reservation is to serve as a "permanent home and abiding place" to the people living there; the primary-secondary purpose test for quantifying a federal reserved right does not apply to Indian reservations; the practicably irrigable acreage

standard is not the exclusive measure to quantify water rights on Indian lands; and, quantifying an Indian reserved right is a fact-intensive, reservation-specific inquiry that must address numerous factors, such as a tribe's master land use plans, history, culture, geography, topography, natural resources, economic base, past water use, present and projected future population, and any others deemed relevant, but proposed uses must be reasonably feasible, and the amount of water adjudicated must be tailored to the reservation's minimal need.

The opinion is reported in 201 Ariz. 307, 35 P.3d 68 (2001). The decision was reviewed in the September-December 2001 *Bulletin*.