

The Network Note **March 2021**

Focus on Arizona

Race, Federal Indian Policy, and Access to Water Parts II – The Upper Klamath River

Dividing the Waters convened its 2nd webinar on racial justice and water, on the Upper Klamath River conflict, focusing on the Klamath Tribes' interests and history of protecting the River's fishery resources. Tribal Chairman Don Gentry shared its history, dating to an 1864 reservation treaty.

Despite the Federal Government's 1954 termination of the Tribes' reservation, federal courts held that the Tribes retained treaty rights to hunt and fish on the former reservation, and its water right to protect fish had a "time immemorial" priority date. (Congress restored the Tribes' recognition in 1986.) The State of Oregon adjudicated the River's water rights. Although a February Klamath County court decision mostly affirmed the Tribe's rights, some quantification issues still remain to be resolved. You may view the webinar [here](#).

AZ Adjudication Courts Started in 1979

AZ water adjudications started with filings in the 1970s under the general adjudication statute. In 1979, the AZ Legislature amended the statute to transfer water adjudications from the AZ Land Department to the Maricopa, Apache and Cochise county courts. The AZ Supreme Court consolidated the southern AZ cases into Maricopa County (Phoenix).

After water users filed claims in the 1980's, AZ Department of Water Resources investigated/reported on 2 watersheds, and investigations continue today. The reports' publication led to filing of objections and contested cases. AZ DWR continues to play a critical role as technical expert for the court, creating water models and tracking changes in claimants over the decades. The court's adjudication continues today.

AZ DWR: Adjudication Court Technical Expert ++

In addition to its role as technical expert to the adjudication court, AZ DWR plays a significant role in the state's water management. Created in 1980 in conjunction with the Groundwater Management Act, AZ DWR has regulatory authority over "active management areas" (AMAs) for groundwater, and issues new surface water right permits. It also approves water transfers and enforces against illegal use of groundwater. While AZ DWR advises the Secretary of the Interior on water use in areas served by Central AZ Project, Interior retains final decision authority.

Race, Federal Indian Policy, and Access to Water Parts III – The Lower Klamath River

The next webinar on racial justice and water will focus on the tribes of the Lower Klamath River and the recent agreement to remove old dams that generate power. It will include speakers from the Yurok Tribe and CA Fish & Wildlife. Stay tuned!!

AZ: San Pedro River Subflow Debate Continues

In 1931, the AZ Supreme Court held that underground "subflow" in a riverbed remained subject to surface water rights. Subflows in "the bed of the stream, or the lands under or immediately adjacent to the stream, and are themselves a part of the surface stream." That decision created a debate as to groundwater subflow that continues today.

1980: AZ enacts its **Groundwater Management Act**, as part of a deal with the Federal Government to complete the Central AZ Project bringing Colorado River water to southern AZ. The Act created "Active Management Areas" (AMAs) and "Irrigation Non-expansion Areas," but did not require groundwater management throughout the state.

1994/2007: AZ enacts/amends law allowing AZ DWR discretion to "designate cities, towns and private water companies as having an adequate water supply," and allowing counties to require such a determination before approving new developments. Requires AZ DWR approval in AMAs.

2017: AZ Judge Mark Brain (General Adjudication Court) approves revised Subflow Zone Delineation Maps prepared by AZ DWR that identify the boundaries of the subflow zones in San Pedro River watershed, next step in rights adjudication.

2018: AZ Supreme Court holds, in *Silver v. Pueblo Del Sol Water Co*, that AZ DWR is not required to consider unquantified federal reserve surface water rights for a national conservation area in determining that a proposed development on the San Pedro River would have an adequate groundwater supply. (See full summary in August 2018 *Network Note*.)

2021: Special Master holds trial on "Subflow Technical Report, San Pedro Watershed," and adjudication continues.

This Arizona edition owes its creation to assistance from AZ Special Master Susan Harris (Maricopa Superior Court).

Can YOU Help on the Focus Edition for Your State? Contact ALFIII@sbcglobal.net