

Nos.  
14-16942, 14-16943, 14-16944, 14-17047, 14-17048, 14-17185

District Court Nos.  
4:31-cv-0059-SRB, 4:31-cv-0061-SRB

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,

*Plaintiff,*

SAN CARLOS APACHE TRIBE OF ARIZONA,

*Intervenor/Plaintiff,*

GILA RIVER INDIAN COMMUNITY

*Intervenor/Plaintiff/Appellant*

v.

GILA VALLEY IRRIGATION DISTRICT, *et al.*

*Defendants/Appellees,*

FREEMPORT MINERALS CORPORATION

*Defendant/Appellee.*

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**DEFENDANTS-APPELLEES GILA VALLEY IRRIGATION  
DISTRICT; FRANKLIN IRRIGATION DISTRICT; LARRY W.  
BARNEY; VIRI VIVA LUNT REVOCABLE TRUST; TRP FAMILY  
TRUST; RONALD HOWARD; JANICE HOWARD; MYRNA  
CURTIS; JOE B. TATUM; JUDY L. TATUM; HARRINGTON  
RANCH AND FARM; S&R DALEY, LP, and STEVE DALEY, Its  
Partner; ROSS AND FAWN BRYCE FAMILY TRUST;  
HOUSEHOLDER FAMILY LIMITED PARTNERSHIP; and  
KENNETH CLARIDGE SUPPLEMENTAL BRIEF**

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## **INTRODUCTION**

Pursuant to this Court's Order of January 26, 2017, Defendants-Appellees Gila Valley Irrigation District ("GVID"), Franklin Irrigation District ("FID") and farmers Larry W. Barney; Viri Viva Lunt Revocable Trust; TRP Family Trust; Ronald Howard; Janice Howard; Myrna Curtis; Joe B. Tatum; Judy L. Tatum; Harrington Ranch and Farm; S&R Daley, LP, and Steve Daley, Its Partner; Ross and Fawn Bryce Family Trust; Householder Family Limited Partnership; and Kenneth Claridge file this Supplemental Brief identifying specific Severance and Transfer Applications now on file with the Gila Water Commissioner that have not been voluntarily withdrawn as well as the reasons why other Severance and Transfer Applications have not been filed.

As appears more fully below, there are two Severance and Transfer Applications currently pending, but by Stipulation and Order both have been stayed to give the District Court the opportunity to consider and rule on mapping issues being worked on by the Globe Equity Technical Committee ("the GETC"). After the District Court issues its ruling with respect to maps submitted by the GETC and after this Court issues its ruling in the pending appeal, it is highly likely that many additional Severance and Transfer Applications will be filed.

### **I. THERE ARE TWO PENDING APPLICATIONS FOR SEVERANCE AND TRANSFER**

On February 5, 2014, exactly seven months before the judgment below was entered, Change of Use Applications, otherwise known as Severance and Transfer Applications, were filed by (1) Ronald G. and Janice A. Howard, and (2) S&R Daley, LP. See Applications attached to Motion for Judicial Notice and Leave to File Supplemental Information [RJN0001-0029]. Objections to those applications were due on September 17, 2014, but on September 10, 2014, counsel for the

applicants, the United States of America, the Gila River Indian Community, and the San Carlos-Apache Tribe of Arizona filed an application for stay of consideration of those applications on the grounds that the District Court had previously ordered the GETC—a committee directed by the District Court<sup>1</sup>—to attempt to resolve differences between maps that had been used by farmers for both farming and severance and transfer applications and maps in a database created by the Gila River Indian Community, known as the “Community Database.” *See* Joint Motion to Stay Deadline for Objections to Change in Use Applications 2014-01 and 2014-02 [SER1166-78], which Joint Motion was granted by the District Court in an Order entered on September 11, 2014 [SER1-2]. The Joint Motion for Stay also noted that the GETC had been ordered to “report a list of issues concerning the use of the Community’s database” to the District Court no later than October 29, 2014, and stated that it would set a hearing upon receipt of the report. A report was timely submitted [Dkt. 7848-1, AER1-22], but as explained in that report, the GETC’s work on reconciling the Community Database is on-going. *See* Submission by Gila Water Commissioner as Chairperson of the Globe Equity Technical Committee of the Committee’s Report on the Implementation and Use of the Community Database dated October 29, 2014 [Dkt.

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<sup>1</sup> The GETC has been in existence since at least April 11, 1995 when District Court Judge John C. Coughenour issued his Phase IV Memorandum and Order in the Globe Equity No. 59 case. *See* Dkt. 4054, ER374-75. It is composed of the Gila Water Commissioner and technical representatives of some of the major parties. On July 31, 2014 District Court Judge Susan R. Bolton issued an order in the Globe Equity No. 59 case ordering the GETC: “. . . to meet as soon as possible and provide the Court with a list of issues that the parties agree on and those which they would like to discuss with the Court within ninety days of the date of this Order. Upon receipt of the Globe Equity Technical Committee, the Court will set a hearing.” *See* Dkt. 7821, SER5-12, p. 7. [Report to Court on Implementation of Database, October 29, 2014 [AER1-22].

7848, SER180-81]. A hearing has not yet been held because the GETC has not completed its work. *See* the Declaration from Herb Dishlip, attached to the Motion for Judicial Notice and Leave to File Supplemental Information [RJN0030-0035], describing, among other things, the on-going work of the GETC. When the GETC does complete its work, it is expected that it will submit a final report to the District Court for approval, and that the District Court will hold a hearing to resolve any disputes and, if needed, allow individual farmers (who have not directly participated in the GETC's meetings) to be heard on the report. It is expected that the stay entered by the District Court will remain in effect until the District Court rules on the issues presented by the GETC report.

**II. IT IS ANTICIPATED THAT AFTER THE DISTRICT COURT RULES ON THE ISSUES PRESENTED BY THE GETC REPORT AND THIS COURT ISSUES ITS RULING IN THE PENDING APPEAL, MANY ADDITIONAL APPLICATIONS FOR SEVERANCE AND TRANSFER WILL BE FILED**

For the same reasons that the parties stipulated to a stay consideration by the District Court of the two pending Severance and Transfer Applications and the District Court ordered the stay, other water rights holders within the GVID and the FID have considered it premature to file Severance and Transfer Applications. Until the District Court, through the process it has established, approves the GETC maps showing the locations of water rights and resolves any contested issues relating thereto, no water-rights holders within the two irrigation districts will know whether it is feasible or desirable to attempt to transfer water rights from one location to another.

In addition to considering the final rulings on the GETC maps, the water-rights holders also will undoubtedly take into consideration the decision of this

Court in this appeal to determine whether Severance and Transfer Applications might help them to effectively carry on their farming operations.

### **CONCLUSION**

While there are only two pending Severance and Transfer Applications below that have not been ruled on or withdrawn, once the work of the GETC is completed, its maps showing the precise locations of water rights are approved or modified by the District Court, and this Court issues its opinion, it is likely that many more Severance and Transfer Applications will be filed by the water rights holders in the Upper Gila Valley.

Respectfully submitted on February 9, 2017.

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). The brief contains 1,056 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), according to the word processing program used to prepare it.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point type.

Dated: February 9, 2017

s/ Paul F. Eckstein

Paul F. Eckstein

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing

Defendants-Appellees Gila Valley Irrigation District; Franklin Irrigation District; Larry W. Barney; Viri Viva Lunt Revocable Trust; TRP Family Trust; Ronald Howard; Janice Howard; Myrna Curtis; Joe B. Tatum; Judy L. Tatum; Harrington Ranch and Farm; S&R Daley, LP, and Steve Daley, Its Partner; Ross and Fawn Bryce Family Trust; Householder Family Limited Partnership; and Kenneth Claridge Supplemental Brief

with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 9, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Clair H. Wendt