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## San Carlos Apache Tribe v. Maricopa Superior Court, (No. CV-95-0161-SA) 1999 WL 4128 (Ariz. Jan. 7, 1999)

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have contributed to the PCBs."

Finally, the court stated that "KRSG [had] utterly failed to come forward with any evidence that would tend to show that water did in fact flow down the ditch in sufficient quantity to carry PCBs from the northern part of the ditch to Morrow Lake." The court reasoned that KRSG "did not connect the dots" to show a flow of PCBs from the Benteler facility.

*Matt Dillman*

## STATE COURTS

### ARIZONA

**San Carlos Apache Tribe v. Maricopa Superior Court**, (No. CV-95-0161-SA) 1999 WL 4128 (Ariz. Jan. 7, 1999) (holding most of the statutory changes at issue unconstitutional because they applied retroactively to affect vested property rights, thus violating the due process and separation of powers clauses of the Arizona Constitution).

The perpetual puzzle in water law: the demand for water constantly surpasses the available supply. Priority and quantification determinations attempt to alleviate this problem. In 1974, the Salt River Valley Water Users' Association filed its petition for adjudication of its water rights under A.R.S. §§ 45-231 to 45-245. (Later changed to A.R.S. §§ 45-251 to 45-260). In 1995, the Arizona Legislature enacted House Bills 2276 and 2193 which revised many statutes dealing with surface water rights and the adjudication process. The San Carlos Apache Tribe filed this special action challenging the constitutionality of these two enactments and the Arizona Supreme Court sitting *en banc* accepted jurisdiction. The court then remanded the matter to the trial court for briefing and oral argument.

The court first analyzed House Bill 2276. The primary issue dealt with the retroactivity of the statutory changes. All parties agreed on the basic rule that procedural, not substantive, changes may apply retroactively. The federal parties argued the enactments were unconstitutional because they consisted of substantive retroactive laws that impaired vested property rights thereby violating substantive due process. The state argued that all substantive changes are only prospective and that some of those appearing retroactive were actually clarifications of previously ambiguous law. The trial court stated, and the Arizona Supreme Court agreed, that the statement of the Legislature's intent in amending the adjudication process unequivocally showed that retroactivity would apply to both substantive and procedural changes. The court emphasized, however, that

legislation might not disturb any vested substantive rights by retroactively changing the law that applies to already completed events.

Since Arizona follows the prior appropriation doctrine, it is impermissible for subsequent legislation to change the legal effect of acts that resulted in acquisition and priority of water rights. Thus, any implementation of the retroactive intent to affect vested substantive rights to water creates a due process violation. The court listed the specific statutes in question and declared them invalid due to their potential alteration of past events.

The second issue pertaining to House Bill 2276 was whether these provisions also violated the separation of powers doctrine. This issue addressed the invalidation of statutes pertaining to *de minimis* use, on-farm water duties, maximum capacity rules, settlement agreements, prior filing presumptions, the role of the Arizona Department of Water Resources, changes regarding the special master, and public trust. The court held some of the provisions violative of separation of powers. An equal protection question also arose within this analysis; however, the court held that none of the statutes in question violated equal protection principles.

The court then analyzed House Bill 2193. It recognized that the previous analyses applied to many of these statutes, thereby invalidating them. The court then decided to strike down the statutes in their entirety, and let the Legislature decide whether to reenact the provisions that satisfied constitutional requirements.

*Melinda B. Barton*

## COLORADO

**Farmers High Line Canal & Reservoir Co. v. City of Golden**, No. 97SA343, slip op. at 1 (Colo. Mar. 29, 1999) (holding that volumetric limitations will not be implied as a matter of law upon an earlier change in use decree, fully litigated as to its terms and conditions).

The City of Golden ("Golden") applied for a change in use of its decreed Priority 12 water rights in Clear Creek to use the water for municipal purposes. In September 1995, several junior appropriators in Clear Creek filed objections to the application, asserting injury to their vested rights because Golden had expanded its water use beyond the scope decreed.

The Clear Creek Priority 12 water right, initially decreed in October 1884, carried an appropriation date of May 1861. The City of Golden, appellee, and Consolidated Mutual Ditch Company ("Consolidated Mutual") are the majority holders of Priority 12 rights.