

Court of Appeals, Division One

Civil Appeal

1 CA-CV 14-0811

SILVER et al. v. PUEBLO et al.

Appellate Case Information

Case Filed: 17-Dec-2014

Case Closed:

Dept/Composition

Department C

Hon. Jon W Thompson

Hon. Maurice Portley

Hon. Patricia K Norris

Side 1. ROBIN SILVER, M.D.; UNITED STATES OF AMERICA, U.S. DEPARTMENT OF INERIOR, BUREAU OF LAND MANAGEMENT; and PATRICIA GERRODETTE, Plaintiff/Appellee

(Litigant Group) ROBIN SILVER MD

- Robin Silver

Co-Counsel for: Plaintiff/Appellee Silver

Cynthia Christine Tuell, Esq. (AZ Bar No. 25301)

Heidi J McIntosh, Esq. (CO Bar No. HeidiJMcIntosh)

(Litigant Group) UNITED STATES OF AMERICA et al.

- United States of America
- US Dept of Interior Bureau of Land Management

Attorneys for: Plaintiff/Appellee US

R Lee Leininger, Esq. (CO Bar No. RLeeLeininger)

Katherine J Barton, Esq. (DC Bar No. KatherineBarton)

(Litigant Group) PATRICIA GERRODETTE

- Patricia Gerrodette

Attorneys for: Plaintiff/Appellee Gerrodette

Joy Herr-Cardillo, Esq. (AZ Bar No. 9718)

Timothy M Hogan, Esq. (AZ Bar No. 4567)

Side 2. PUEBLO DEL SOL WATER COMPANY, an Arizona corporation; SANDRA A. FABRITZ-WHITNEY, in her official capacity as Director of the Arizona Department of Water Resources; ARIZONA DEPARTMENT OF WATER RESOURCES, an agency of the State of Arizona, Defendant/Appellant

(Litigant Group) PUEBLO DEL SOL WATER CO

- Pueblo Del Sol Water Co

Attorneys for: Defendant/Appellant Pueblo

William P Sullivan, Esq. (AZ Bar No. 5956)

(Litigant Group) ADWR ET AL.

- Arizona Department of Water Resources
- Thomas Buschatzke

Attorneys for: Defendants/Appellants ADWR

Kenneth C Slowinski, Esq. (AZ Bar No. 12357)

Janet L Miller, Esq. (AZ Bar No. 11963)

Nicole D Klobas, Esq. (AZ Bar No. 21350)

Side 3. WATER SYSTEMS COUNCIL, Amicus Curiae

(Litigant Group) WATER SYSTEMS COUNCIL

- Water Systems Council

Attorneys for: Amicus Curiae Water Systems Council

L William Staudenmaier, III, Esq. (AZ Bar No. 12365)

Jesse J Richardson, Jr., Esq. (VA Bar No. 27404)

Side 4. FREEPORT MINERALS, Amicus Curiae

(Litigant Group) FREEPORT MINERALS

- Freeport Minerals Corporation

Attorneys for: Amicus Curiae Freeport

Sean T Hood, Esq. (AZ Bar No. 22789)

Rhett A Billingsley, Esq. (AZ Bar No. 23890)

Side 5. LESHY AND GLENNON, Amicus Curiae

(Litigant Group) LESHY AND GLENNON

- John Leshy
- Robert Glennon

Attorneys for: Amicus Curiae

Bruce A Burke, Esq. (AZ Bar No. 4316)

CASE STATUS

Nov 8, 2016.....Decision Rendered

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR LC2013-000264-001	Judicial Review of Administrative Decision		Crane McClennen, Authoring Judge of Order		

Court of Appeals, Division One

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1 CA-CV 14-0811

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PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR LC2013-000271-001					
MAR LC2013-000272-001					

DESCENDENT CASE(S)

ASC CV-16-0294-PR

OPEN DUE DATE

Petition for Review to ASC due

Due By:

Monday, January 23, 2017

[1 extension]

Re: OPINION (Vacated, Agency Action Remanded) Hon Jon W Thompson - Author; Hon Maurice Portley - Concur; Hon Patricia K Norris - Concur

CASE DECISION

08-Nov-2016 OPINION

Jon Thompson.....Author
Maurice Portley.....Concur
Patricia Norris.....Concur

Filed: **08-Nov-2016**

Mandate:

Decision Disposition

Vacated
Remanded

89 PROCEEDING ENTRIES

1. 17-Dec-2014 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 11/10/14 (Pueblo); Notice of Appeal from Maricopa County Superior Court filed 11/10/14 (ADWR)
Bond filed in Superior Court: 11/10/14 (Pueblo)
Docketing Statement filed in Superior Court: 11/19/14 (ADWR); 11/29/14 (Pueblo)
2. 17-Dec-2014 FILED: e-Record on Appeal (LC2013-000264-001):
Instruments/Minute Entries
Exhibits - not sent at this time
3. 17-Dec-2014 FILED: e-Record on Appeal (LC2013-000271-001):
Instruments/Minute Entries
4. 17-Dec-2014 FILED: e-Record on Appeal (LC2013-000272-001):
Instruments/Minute Entries
5. 2-Jan-2015 FILED: Notice to Parties re: Appellant's Fee/Briefs Due
6. 14-Jan-2015 FILED: Appellant Pueblo Del Sol Water Company's Notice Payment of Filing Fee; Certificate of Service
7. 16-Jan-2015 RECEIPT No.: 2015-00057 ; \$280.00, Authorization: #15011238145, Applied to: PUEBLO DEL SOL WATER CO - Class A Filing Fee (\$280.00) Paid for: Curtis Goodwin Sullivan Udall & Schwab PLC - By Integrated Resource Systems IN
8. 26-Jan-2015 FILED: Reporter's Transcript of Proceedings 4/7/14 (Sally Stearman)
9. 26-Jan-2015 FILED: Appellee's Notice re: Appellee's Fee/Appellant's Brief Due
10. 29-Jan-2015 RECEIPT No.: 2015-00120 ; \$140.00, Check Number: #4206, Applied to: PATRICIA GERRODETTE - Class B Filing Fee (\$140.00) Paid for: Patricia Gerrodette - By Arizona Center for Law in the Public Interest
11. 5-Feb-2015 RECEIPT No.: 2015-00156 ; \$140.00, Check Number: 023163, Applied to: ROBIN SILVER MD - Class B Filing Fee (\$140.00) Paid for: Earthjustice - By Earthjustice (Memo: 1 CA-CV 14-011)
12. 6-Feb-2015 RECEIPT No.: 2015-00160 ; \$140.00, Check Number: #638, Applied to: UNITED STATES OF AMERICA et al. - Class B Filing Fee (\$140.00) Paid for: - By Katherine J Barton
13. 18-Feb-2015 FILED: Defendant Arizona Department of Water Resources' Motion to Extend Time for Filing Opening Briefs; Certificate of Service (Appellant ADWR)

Court of Appeals, Division One**Civil Appeal****1 CA-CV 14-0811****SILVER et al. v. PUEBLO et al.****89 PROCEEDING ENTRIES**

14. 23-Feb-2015 ORDERED: Defendant Arizona Department of Water Resources' Motion to Extend Time for Filing Opening Briefs (Appellant ADWR) = GRANTED. Due date EXTENDED from Tuesday, 03-03-2015 to Thursday, 04-02-2015. Melina Brill ProTem Judge - Author
15. 2-Mar-2015 FILED: Letter, 2/25/15, from Counsel to COA1 re: Appellee Robin Silver's Payment of Filing Fees
16. 3-Mar-2015 FILED: Notice of Change of Address; Certificate of Service of Notice of Change of Address (Appellee Gerrodette)
17. 12-Mar-2015 FILED: Arizona Department of Water Resources' Motion to Substitute Party; Arizona Department of Water Resources Certificate of Service (Appellant)
18. 27-Mar-2015 FILED: Motion to Associate Counsel Pro Hac Vice; Certificate of Service; (Proposed) Order Approving Motion to Associate Pro Hac Vice (Amicus Curiae Water Systems Council)
19. 27-Mar-2015 FILED: Notice of Receipt of Complete Application; Certificates of Good Standing; Verified Application for Appearance Pro Hac Vice (Amicus Curiae Water Systems Council)
20. 31-Mar-2015 ORDERED: Arizona Department of Water Resources' Motion to Substitute Party (Appellant) = GRANTED/amending caption in this appeal by substituting Thomas Buschatzke, in his official capacity as Director of Arizona Department of Water Resources, in place of Sandra A Fabritz-Whitney. Melina Brill ProTem Judge - Author
21. 2-Apr-2015 FILED: Pueblo Del Sol Water Company's Opening Brief; Certificate of Compliance; Certificate of Service (Appellant)
22. 2-Apr-2015 FILED: Pueblo Del Sol Water Company's Appendix (Part 1) to its Opening Brief (Appellant)
23. 2-Apr-2015 FILED: Pueblo Del Sol Water Company's Appendix (Part 2) to its Opening Brief (Appellant)
24. 2-Apr-2015 FILED: Opening Brief of Defendants/Appellants Thomas Buschatzke and Arizona Department of Water Resources; Certificate of Compliance; Certificate of Service of Opening Brief
25. 10-Apr-2015 FILED: Plaintiff-Appellee United States of America's Motion to Extend Time for Filing Answering Briefs; Certificate of Service (Appellee)
26. 13-Apr-2015 ORDERED: Plaintiff-Appellee United States of America's Motion to Extend Time for Filing Answering Briefs (Appellee) = GRANTED. Due date EXTENDED from Monday, 05-18-2015 to Thursday, 06-18-2015. Melina Brill ProTem Judge - Author
27. 23-Apr-2015 ORDERED: granting motion/permitting attorney Jesse J. Richardson, Jr., to appear pro hac vice as co-counsel for Water systems Council, w/ L. William Staudemaier of Snell & Wilmer, LLP, as local counsel. Melina Brill ProTem Judge - Author
28. 12-May-2015 FILED: Motion of Withdrawal of Counsel Jessica F. Townsend; Certificate of Service Re Motion of Withdrawal of Jessica F. Townsend (Appellee Robin Silver, M.D.)
29. 12-May-2015 FILED: Notice of Receipt of Complete Application; Certificate of Good Standing; Application for Appearance Pro Hac Vice (Appellee Robin Silver, M.D.)
30. 18-May-2015 FILED: Motion for Withdrawal and Substitution of Local Counsel; Certificate of Service Re Motion of Substitution of Local Counsel (Appellee Silver)
31. 19-May-2015 ORDERED: Motion of Withdrawal of Counsel Jessica F. Townsend (Appellee Robin Silver, M.D.) = GRANTED. Melina Brill ProTem Judge - Author
32. 4-Jun-2015 FILED: Pueblo Del Sol Water Company's Motion to File Substitute Opening Brief; Certificate of Service (Appellant)
33. 4-Jun-2015 FILED: Pueblo Del Sol Water Company's Motion for Procedural Order to Expedite Ruling on its Motion to File Substitute Brief; Certificate of Service (Appellant)
34. 9-Jun-2015 ORDERED: vacating 6/18/15 due date for answering briefs. Order ruling on pending motion to file substitute opening brief will set a due date for filing answering briefs. FURTHER ORDERED: Denying motion to expedite ruling. FURTHER ORDERED: granting motion/substituting Cynthia C Tuell as attorney for appellee Robin Silver M.D. in place of Eric B Ryberg. Melina Brill ProTem Judge - Author
35. 12-Jun-2015 FILED: Joint Notice re Motion to File Substitute Brief and Due Date for Filing Answering Briefs; Certificate of Service - Joint Notice (Appellant)

Court of Appeals, Division One**Civil Appeal****1 CA-CV 14-0811****SILVER et al. v. PUEBLO et al.****89 PROCEEDING ENTRIES**

36. 15-Jun-2015 ORDERED: Pueblo Del Sol Water Company's Motion to File Substitute Opening Brief (Appellant) = GRANTED. FURTHER ORDERED: Appellant Pueblo Del Sol Water company shall file substitute opening brief on/before 6/18/15. FURTHER ORDERED: All Answering briefs shall be filed on/before 6/25/15. Melina Brill ProTem Judge - Author
37. 16-Jun-2015 FILED: Pueblo Del Sol Water Company's Opening Brief (Substituted); Certificate of Compliance; Certificate of Service (Appellant)
38. 25-Jun-2015 FILED: Answering Brief of Plaintiffs/Appellees United States of America and US Department of Interior, Bureau Land Management; Certificate of Compliance; Certificate of Service of Answering Brief and Appendix
39. 25-Jun-2015 FILED: Plaintiff/Appellees Silver and Gerrodette's Joint Answering Brief; Certificate of Compliance for Plaintiff/Appellees Joint Answering Brief; Certificate of Service for Plaintiff/Appellees Joint Answering Brief
40. 26-Jun-2015 FILED: Motion to Associate Counsel Pro Hac Vice for Katie Dittelberger; Certificate of Service Re Motion to Associate Counsel Pro Hac Vice for Katie Dittelberger (Appellee)
41. 2-Jul-2015 FILED: Defendant Arizona Department of Water Resources' Motion to Extend Time for Filing Reply Brief; Certificate of Service (Appellant)
42. 6-Jul-2015 ORDERED: Defendant Arizona Department of Water Resources' Motion to Extend Time for Filing Reply Brief (Appellant) = GRANTED. Due date EXTENDED from Monday, 07-20-2015 to Monday, 08-10-2015. Melina Brill ProTem Judge - Author
43. 27-Jul-2015 ORDERED: Motion to Associate Counsel Pro Hac Vice for Katie Dittelberger (Appellee) = GRANTED/Katie Dittelberger to appear pro hac vice as co-counsel for appellee Robin Silver, M.D. with Cynthia C. Tuell as local counsel. Melina Brill ProTem Judge - Author
44. 10-Aug-2015 FILED: Amicus Curiae Brief of Freeport Minerals Corporation; Certificate of Compliance to Amicus Curiae Brief of Freeport Minerals Corporation; Certificate of Service to Amicus Curiae Brief of Freeport Minerals Corporation (Amicus Curiae)
45. 10-Aug-2015 FILED: Reply Brief Of Defendants/Appellants Thomas Buschatzke And Arizona Department Of Water Resources; Certificate of Compliance; Certificate of Service of Reply Brief (Appellant)
46. 10-Aug-2015 FILED: Pueblo Del Sol Water Company's Reply Brief; Certificate of Compliance; Certificate of Service (Appellant)
47. 11-Aug-2015 FILED: Appellants Thomas Buschatzke and Arizona Department of Water Resources' Notice of Errata for Opening Brief; Certificate of Service (Appellant)
48. 20-Aug-2015 FILED: Request for Oral Argument (Silver); Certificate of Service (Appellee)
49. 20-Aug-2015 FILED: Request for Oral Argument (USA); Certificate of Service of Request for Oral Argument (Appellee)
50. 20-Aug-2015 FILED: Notice of Receipt of Complete Application (Pro Hac Vice); Certificate of Good Standing; Verified Application to the State Bar of Arizona (Pro Hac Vice) (Appellee)
51. 24-Aug-2015 FILED: Defendants/Appellants Joint Request for Oral Argument (Del Sol/ADWR); Certificate of Service (Appellant)
52. 31-Aug-2015 FILED: Motion of Amici Leshy and Glennon for Leave to File Amicus Curiae Brief; Certificate of Service of Motion for Leave to File Amicus Brief (Amicus Curiae)
53. 31-Aug-2015 FILED: Amicus Curiae Brief of John Leshy and Robert Glennon; Certificate of Compliance; Certificate of Service (Amicus Curiae)
54. 31-Aug-2015 FILED: Amicus Curiae Brief of Water Systems Council; Certificate of Compliance to Amicus Curiae Brief of Water Systems Council; Certificate of Service to Amicus Curiae Brief of Water Systems Council
55. 1-Sep-2015 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
56. 4-Sep-2015 FILED: Response of Plaintiffs/Appellees United States of America and U.S. Department of the Interior, Bureau of Land Management to Amicus Brief of Freeport Minerals Corporation; Certificate of Compliance; Certificate of Service of Response to Amicus Curiae Brief of Freeport Minerals Corporation
57. 4-Sep-2015 FILED: Joint Response Brief of Plaintiffs/Appellees Robin Silver M.D. and Patricia Gerrodette to Amicus Curiae Brief of Freeport Minerals Corp.; Certificate of Compliance for Joint Response Brief of Plaintiffs/Appellees Robin Silver M.D. and Patricia Gerrodette to Amicus Curiae Brief of Freeport Minerals Corp.; Certificate of Service for Joint Response Brief of Plaintiffs/Appellees Robin Silver M.D. and Patricia Gerrodette to Amicus Curiae Brief of Freeport Minerals Corp.

Court of Appeals, Division One**Civil Appeal****1 CA-CV 14-0811****SILVER et al. v. PUEBLO et al.****89 PROCEEDING ENTRIES**

58. 4-Sep-2015 FILED: Notice of Receipt of Complete Application (Pro Hac Vice); Certificate of Good Standing (Pro Hac Vice); Verified Application to the State Bar of Arizona (Pro Hac Vice) (Appellee)
59. 11-Sep-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record
60. 21-Sep-2015 ORDERED: granting requests for oral argument. Hon Michael J Brown - Author
61. 24-Sep-2015 FILED: Joint Response Brief of Plaintiffs/Appellees Silver & Gerrodette to Amicus Brief File by Water Systems Council; Certificate of Compliance for Joint Response Brief of Plaintiffs/Appellees Silver & Gerrodette to Amicus Brief File by Water Systems Council; Certificate of Service for Joint Response Brief of Plaintiffs/Appellees Silver & Gerrodette to Amicus Brief File by Water Systems Council (Appellee)
62. 24-Sep-2015 FILED: Notice of Receipt of Complete Application (Pro Hac Vice); Certificate of Good Standing (Pro Hac Vice); Verified Application to the State Bar of Arizona (Pro Hac Vice) (Appellee)
63. 9-Oct-2015 ORDERED: granting the motion and accepting for filing the Amicus Curiae Brief of John Leshy and Robert Glennon lodged on 8/31/15. FURTHER ORDERED: any party may file a response to the brief within 20 days of the date of this order. Hon Michael J Brown - Author
64. 29-Oct-2015 FILED: Pueblo Del Sol Water Company's Response to Amicus Brief of Leshy and Glennon; Certificate of Compliance; Certificate of Service (Appellant)
65. 29-Oct-2015 FILED: Response of Defendants/Appellants Thomas Buschatzke and Arizona Department of Water Resources to Amicus Curiae Brief of John Leshy and Robert Glennon; Certificate of Compliance for ADWR's Response to Amicus Brief of Leshy and Glennon; Certificate of Compliance for ADWR's Response to Amicus Brief of Leshy and Glennon
66. 1-Feb-2016 FILED: William P Sullivan's Notice of Changes in Firm Affiliation and Email Address and Withdrawal of Trish Stuhan; Certificate of Service for William P Sullivan's Notice of Changes in Firm Affiliation and Email Address and Withdrawal of Trish Stuhan (Appellant)
67. 2-Mar-2016 CLNDR: MONTHLY COURT CASE CALENDAR, Department C, 4-28-16, 11:00 am, COURTROOM 2.
68. 7-Mar-2016 FILED: Notice of Oral Argument
69. 8-Mar-2016 FILED: Return Receipt for Notice of Oral Argument signed by Heidi J McIntosh on 3/7/16; Certificate of Service Re Return Receipt for Notice of Oral Argument (Appellee)
70. 8-Mar-2016 FILED: Notice of Receipt of Complete Application; Certificates of Good Standing; Verified Application to the State Bar of Arizona (Pro Hac Vice) (Appellee)
71. 24-Mar-2016 FILED: Return Receipt Re Oral Argument, signed by William P. Sullivan on 3/7/16; Certificate of Service (Appellant)
72. 25-Mar-2016 FILED: Return Receipt for Notice of Oral Argument signed by Janet L Miller on 3/7/16 (Appellant ADWR)
73. 25-Mar-2016 FILED: Return Receipt for Notice of Oral Argument signed by Joy E Herr-Cardillo on 3/7/16; Certificate of Service of Oral Argument Return Receipt (Appellee Gerrodette)
74. 6-Apr-2016 FILED: Motion to Associate Counsel Pro Hac Vice - Katherine J. Barton; Certificate of Service Re Motion to Associate Counsel Pro Hac Vice; Order Re: Motion to Associate Counsel Pro Hac Vice (Appellee United States)
75. 12-Apr-2016 ORDERED: Request to Broadcast, Record or Photograph Oral Argument from Capitol Media Services = GRANTED request to audiotape oral argument for later broadcast. Hon Jon W Thompson - Author
76. 12-Apr-2016 ORDERED: Motion to Associate Counsel Pro Hac Vice - Katherine J. Barton (Appellee United States) = GRANTED. Hon Jon W Thompson - Author
77. 20-Apr-2016 FILED: Supplemental Citation of Legal Authority; Certificate of Service; Exhibit (submitted with Supplemental Citation of Legal Authority) (Appellant Pueblo Del Sol Water Company)
78. 21-Apr-2016 FILED: Return Receipt for Notice of Oral Argument signed by Katherine J Barton on 3/7/16; Certificate of Service of Oral Argument Return Receipt (Appellee USA)
79. 21-Apr-2016 FILED: Notice of Receipt of Complete Application (Pro Hac Vice); Certificate of Good Standing (Pro Hac Vice); Verified Application to the State Bar of Arizona (Pro Hac Vice) (Appellee)

Court of Appeals, Division One

Civil Appeal

1 CA-CV 14-0811

SILVER et al. v. PUEBLO et al.

89 PROCEEDING ENTRIES

80. 27-Apr-2016 ORDERED: Request to Broadcast, Record or Photograph Oral Argument from George L Paul, on behalf of George Paul Media = GRANTED request to videotape for later broadcast oral argument. Hon Jon W Thompson - Author
81. 28-Apr-2016 FILED: Sign-in Sheet/Case is Under Advisement (Dept C)
82. 21-Jun-2016 FILED: Arizona Department of Water Resources' Notice of Change of Address; Certificate of Service (Appellants ADWR)
83. 27-Jun-2016 FILED: Notice of Withdrawal of Counsel of Katie Dittelberger; Certificate of Service Re Notice of Withdrawal of Counsel of Katie Dittelberger (Appellee)
84. 27-Jun-2016 FILED: Notice of Receipt of Complete Application (Pro Hac Vice); Certificate of Good Standing (Pro Hac Vice); Verified Application to the State Bar of Arizona (Pro Hac Vice) (Appellee)
85. 8-Nov-2016 OPINION (Vacated, Agency Action Remanded) Hon Jon W Thompson - Author; Hon Maurice Portley - Concur; Hon Patricia K Norris - Concur
86. 8-Nov-2016 FILED: Opinion Distribution List
87. 23-Nov-2016 FILED: Joint Motion for Precedural (sic) Order for Extension of Time to File Motion for Reconsideration; Certificate of Service for Stipulated Motion to Extend Time to File Motion for Reconsideration (Appellee)
88. 25-Nov-2016 ORDERED: Joint Motion for Precedural (sic) Order for Extension of Time to File Motion for Reconsideration (Appellee) = GRANTED. Due date EXTENDED from Wednesday, 11-23-2016 to Friday, 12-23-2016. Hon Jon W Thompson - Author
89. 1-Dec-2016 FILED: ASC Order filed 12/01/2016 re: Joint Motion for Extension of Time for filing Petition for Review to 01/23/2017