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3 Legal Division  
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5  
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
7 IN AND FOR THE COUNTY OF APACHE

8 IN RE THE GENERAL )  
ADJUDICATION OF ALL )  
9 RIGHTS TO USE WATER IN )  
THE LITTLE COLORADO RIVER )  
SYSTEM AND SOURCE )

**Contested Case No.  
6417-033-0060**

(Special Master George A.  
Schade, Jr.)

11 **ARIZONA DEPARTMENT OF**  
**WATER RESOURCES'**  
12 **120-DAY NOTICE**  
13 **REGARDING THE FILING OF**  
**THE FINAL SUPPLEMENTAL**  
14 **CONTESTED CASE**  
15 **HYDROGRAPHIC SURVEY**  
**REPORT FOR THE CLAIMS OF**  
16 **PHELPS DODGE TO SHOW**  
**LOW LAKE**

17 **CONTESTED CASE NAME:** *In re Phelps Dodge Corporation (Show Low Lake).*

18 **HSR INVOLVED:** Silver Creek Watershed Hydrographic Survey Report.

19 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources hereby  
20 provides a 120-day notice regarding the filing of the final supplemental contested case  
hydrographic survey report for the claims of Phelps Dodge to Show Low Lake.

21 **NUMBER OF PAGES:** Seven.

22 **DATE OF FILING:** October 1, 2004.

23 **ALL WATER USERS RECEIVING THIS NOTICE ARE ENCOURAGED TO**

24 **READ IT CAREFULLY.**

1 This notice contains information relating to two matters in the general  
2 adjudication for the Little Colorado River System and Source (LCR adjudication): (1) a  
3 report that the Arizona Department of Water Resources (Department) will file on  
4 January 31, 2005, and (2) the requirements and deadlines for filing a water rights claim  
5 (statement of claimant) or amending an existing statement of claimant. As directed by  
6 the Special Master for the LCR adjudication, the Department is sending this notice to all  
7 water users within the Silver Creek Watershed, regardless of whether or not they have  
8 already filed a statement of claimant in the LCR adjudication. A map depicting the  
9 geographic extent of the Silver Creek Watershed is enclosed. The Department is also  
10 sending this notice to parties in the LCR adjudication who are included on mailing lists  
11 established by the adjudication court.  
12  
13

14 **I. FILING DATE FOR PHELPS DODGE REPORT (January 31, 2005)**

15 In approximately 120 days from the date of this notice, the Department will file a  
16 supplemental report on January 31, 2005, concerning amended water rights claims filed  
17 in the LCR adjudication by Phelps Dodge Morenci, Inc, a subsidiary of Phelps Dodge  
18 Corporation (Phelps Dodge). Phelps Dodge claims it has water rights that entitle it to  
19 divert water from Show Low Lake, deliver it into Forestdale Creek, and in exchange,  
20 divert water from the Black River for use at the Morenci Copper Mine, which is owned  
21 and operated by Phelps Dodge. The nature, extent and relative priority of the Phelps  
22 Dodge Show Low Lake claims will be determined as part of the LCR adjudication.  
23

24 On May 21, 1985, Phelps Dodge filed its original Show Low Lake claims in the  
25 LCR adjudication. In November 1990, the Department issued a report that analyzed the

1 Phelps Dodge Show Low Lake claims, together with other water uses within the Silver  
2 Creek Watershed. This report is entitled “Hydrographic Survey Report for the Silver  
3 Creek Watershed,” and is referred to as the Silver Creek HSR. After this report was  
4 filed, proceedings in the LCR adjudication were delayed for several years.  
5

6 On July 30, 2003, Phelps Dodge amended its Show Low Lake claims as required  
7 by the Special Master. At the Special Master’s direction, the Department is in the  
8 process of preparing a supplemental report that analyzes Phelps Dodge’s amended  
9 claims, and updates the 1990 Silver Creek HSR relating to those claims.  
10

11 On January 31, 2005, the Department will file a supplemental report entitled  
12 “Supplemental Contested Case Hydrographic Survey Report In Re Phelps Dodge  
13 Corporation (Show Low Lake).” At the time that the supplemental report is filed, the  
14 Department will mail another notice to those persons who were sent this 120-day notice,  
15 as well as to the claimants who previously objected to the 1990 Silver Creek HSR, and  
16 all other claimants in the LCR adjudication. The January 31, 2005 notice of filing will  
17 include instructions for filing objections, and for inspecting and obtaining copies of the  
18 report. **Only those persons who have filed a statement of claimant in the LCR**  
19 **adjudication will be able to file an objection to the supplemental report.** See A.R.S.  
20 § 45-256.B. Any person may inspect and obtain a copy of the supplemental report.  
21

## 22 **II. STATEMENT OF CLAIMANT INFORMATION**

23 **Any water user who has not yet filed, or needs to amend, a statement of**  
24 **claimant should do so at this time.** Failure to file the appropriate statement of  
25 claimant form may result in forfeiture of water rights, even though the Department may

1 have previously issued a permit, certificate, or other form of approval for the water use.  
2 Failure to file a statement of claimant may also result in being prevented from asserting  
3 a water right in the LCR adjudication, or from filing objections to other water rights  
4 claims such as those filed by Phelps Dodge. See A.R.S. §§ 45-254 and 256.  
5

6 Any water user who has not yet filed a statement of claimant may do so by filing  
7 the appropriate court-approved statement of claimant forms with the Department. There  
8 are four court-approved statement of claimant forms, one for each type of water use  
9 being claimed: Irrigation, Stockpond, Domestic, and Other Uses. The water uses may  
10 involve surface water as well as water withdrawn from a well.  
11

12 Generally, a filing fee is required to be submitted with each statement of claimant  
13 form. For individuals, the filing fee is \$20. Different fees apply for corporations,  
14 municipal corporations, the state and its political subdivisions, associations and  
15 partnerships. Filing fees may be paid in cash (in person only), by credit card, or by  
16 check or money order payable to the “Arizona Department of Water Resources.” The  
17 Department forwards all filing fees to the court. In order for a water right claim to be  
18 considered in the adjudication, the filing fees must be paid in full.  
19

20 **A. Opportunities to File or Amend Statements of Claimant**

21 There are four different deadlines or opportunities to file a statement of claimant.  
22 See A.R.S. § 45-254.A and E. The court will consider a statement of claimant as long  
23 as it is properly filed within one of the statutory deadlines with the appropriate filing  
24 fee.  
25

1           The first two deadlines are no longer available for most water users in the Silver  
2 Creek Watershed. These deadlines are based on when a water user receives a summons,  
3 and when the HSR is published for the watershed in which the use is located. Because  
4 the Department sent out summonses in the LCR adjudication more than 90 days ago,  
5 and published the Silver Creek HSR approximately 14 years ago, the first two filing  
6 opportunities have passed for water users in the Silver Creek Watershed who have  
7 already been summoned. See A.R.S. § 45-254.A. and E.1.

9           Even though a water user may have missed the first two deadlines, a third filing  
10 opportunity is now available because the Special Master has not yet concluded hearings  
11 in the Silver Creek Watershed. **Any water user who has not yet filed, or needs to**  
12 **amend, a statement of claimant should do so before the Special Master completes**  
13 **hearings in the Silver Creek Watershed and files a report with the court.** See  
14 A.R.S. § 45-254.E.2. The Department will notify the court of any new or amended  
15 statements of claimant that are filed during this time.

17           There will be one final opportunity to file a new, or amend an existing, statement  
18 of claimant after the Special Master has completed hearings for the Silver Creek  
19 Watershed and has filed a report with the court. This opportunity is not yet available,  
20 and water users who wait until then to file a new, or amend an existing, statement of  
21 claimant will be required to obtain the court's permission to intervene in the  
22 adjudication. See A.R.S. § 45-254.E.3.

1 **B. Address and Ownership Changes**

2 Any person who has already filed a statement of claimant in this adjudication  
3 must notify the Department of any of the following changes: (1) a change in that  
4 person's address, (2) an assignment of the statement of claimant to another person, (3) a  
5 transfer to another person of all or part of the land for which a water right has been  
6 claimed, or (4) a transfer to another person of all or part of the water right claimed, if  
7 the claimed water right has been severed and transferred to another parcel of land. **For**  
8 **changes that have already occurred, the Department should be notified promptly**  
9 **upon receipt of this notice. For changes that may occur in the future, the court has**  
10 **ordered that the Department be notified within 30 days of any change.**

13 To notify the Department of a change of address, the claimant may either file an  
14 amendment to the statement of claimant or send a letter to the Department. To notify  
15 the Department of an assignment or a transfer, either the buyer or the seller must file an  
16 assignment form with the Department.

17 **C. Obtaining Information and Forms**

18 Information regarding filing or amending a statement of claimant, payment of  
19 filing fees, and address and ownership changes may be obtained from the Department's  
20 web site at [www.water.az.gov](http://www.water.az.gov) or by contacting the Department at 1-866-246-1414.

21 **Before contacting the Department, please read this *entire* notice carefully, and be**  
22 **prepared to provide specific water use information, such as the well registration**  
23 **number, parcel number, legal description, and permit number.**

24 **DATED** the 1<sup>st</sup> day of October 2004.  
25

1 ARIZONA DEPARTMENT OF WATER  
2 RESOURCES

3 /s/ Janet L. Ronald

4 W. Patrick Schiffer, Chief Counsel  
5 Janet L. Ronald, Deputy Counsel  
6 500 North 3<sup>rd</sup> Street  
7 Phoenix, Arizona 85004  
8 (602) 417-2420

9 ORIGINAL of the foregoing mailed  
10 on the 1<sup>st</sup> day of October 2004 to:

11 Clerk of the Superior Court  
12 Apache County  
13 Attention: Water Case  
14 P.O. Box 365  
15 St. Johns, AZ 85936

16 COPIES of the foregoing hand-delivered  
17 on the 1<sup>st</sup> day of October 2004 to:

18 Honorable Eddward P. Ballinger, Jr.  
19 Judge of the Superior Court  
20 101 West Jefferson, 5<sup>th</sup> Floor  
21 Phoenix, AZ 85003-2212

22 Special Master George A. Schade, Jr.  
23 Arizona General Stream Adjudication  
24 Arizona State Courts Building  
25 1501 West Washington, Suite 228  
Phoenix, AZ 85007

COPIES of the foregoing  
mailed on the 1<sup>st</sup> day of October 2004 to:

All parties on the mailing list for this  
contested case, the court-approved  
mailing list for the Little Colorado River  
adjudication, and all claimants and  
non-claimants in the Silver Creek Watershed.

/s/ Glenda Winters