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Special Master  
2 Arizona General Stream Adjudication  
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4 (602) 542-9600  
State Bar No. 003289

5  
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE

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

CV 6417

9 REPORT OF THE SPECIAL MASTER  
CONCERNING FUNDING OF THE  
10 ARIZONA DEPARTMENT OF WATER  
RESOURCES

11 CONTESTED CASE NAME: None.

12 HSR INVOLVED: None.

13 DESCRIPTIVE SUMMARY: The Special Master submits a report recommending the  
14 organization of a work group to review and recommend funding sources for the administrative  
and technical support provided by the Arizona Department of Water Resources.

15 NUMBER OF PAGES: 6.

16 DATE OF FILING: May 18, 2006.  
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18 At the status conference held in the Little Colorado River Adjudication on May 12,  
19 2006, the Special Master brought to the Court's attention the issues presented in this report. The  
20 Court requested the Special Master to submit his comments in a report filed in both  
21 adjudications.

22 In January, 2006, the Arizona Department of Water Resources ("ADWR") informed the  
23 Court that "ADWR does not have the resources to work on more than one technical matter at a  
24

1 time for the adjudication program.”<sup>1</sup> Currently, ADWR expects to be directed to prepare two  
2 technical reports for upcoming special proceedings related to the Arizona Water Settlements  
3 Act,<sup>2</sup> anticipates working on subflow issues in the San Pedro River Watershed, is working on  
4 the Hopi Reservation Hydrographic Survey Report (“HSR”), and anticipates being directed to  
5 provide assistance in other ongoing contested cases as well as the special proceeding *In re*  
6 *Proposed Zuni Indian Tribe Water Rights Settlement*. The Department continues to provide  
7 administrative assistance with the service of process of new use summonses and the litigation  
8 support central repository.

9       The Special Master agrees that ADWR cannot simultaneously undertake all or even  
10 most of the technical work the Court has set. This inability has, and unless resolved, will  
11 continue to impact the manner and speed with which both adjudications advance. The progress  
12 of the adjudications was originally based on the publication of comprehensive HSRs for  
13 watersheds and federal reservations. The Special Master believes that in order to accommodate  
14 funding limitations, the adjudications are drifting from that accepted and directed core concept.

15       The problem is lack of adequate funding to enable ADWR to provide the required level  
16 of administrative and technical support for the adjudications. ADWR has reported that:

17             Resources currently available for the adjudication are limited and depend  
18 in part on ADWR’s other statutory obligations.... Staff dedicated to providing  
19 technical assistance to the court consists of two attorneys (half-time each), one  
20 registered geologist/hydrologist (half-time), an intern (full-time), and one  
21 administrative assistant (full-time). On an as-needed basis, ADWR also draws on  
22 expertise from personnel within other program areas including hydrologists,  
23 groundwater flow modelers, Geographic Information System (GIS) and database  
24 specialists, field investigators, and publication and administrative support staff.  
... However, the availability of non-dedicated staff and resources for the

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<sup>1</sup> ADWR’s Status Report 8 (Jan. 31, 2006).

<sup>2</sup> Pub. L. No. 108-451, 118 Stat. 3478 (2004).

1 adjudication program necessarily competes with ADWR's other statutorily  
2 mandated responsibilities.<sup>3</sup>

3 To compare with two states whose adjudications are comparable to Arizona's, currently,  
4 Idaho's Adjudications Bureau, which is part of the Idaho Department of Water Resources, has  
5 37 staff persons,<sup>4</sup> and Montana's Water Rights Bureau Adjudication Program, a part of the  
6 Department of Natural Resources and Conservation, has 28 positions.<sup>5</sup> In January 1995,  
7 ADWR's former Adjudications Division had 31 staff persons; in the early 1990s, the Division  
8 had authorized personnel of 40 employees.

9 In 2005, "ADWR considered this resource issue and determined that a budget increase  
10 of approximately \$900,000 would allow ADWR to provide additional adjudication support to  
11 the court through an increase in technical and administrative staff dedicated to the adjudication  
12 effort." ADWR requested this additional funding, but the funds were not included in the  
13 Governor's proposed budget for Fiscal Year 2007.<sup>6</sup>

14 The Executive's protocol is that if a state agency's funding request is not included in the  
15 Governor's proposed annual budget, the agency cannot lobby the Legislature for the funding.  
16 Therefore, ADWR could not on its own lobby the Legislature for the \$900,000 funding request.

17 This situation offers a view of what could happen in the future and some of the  
18 alternatives to address such a situation. If ADWR cannot lobby for adjudication funding, other  
19 ways to seek that funding are to (1) ask or depend on claimants or their counsel to contact  
20 legislators, (2) ask the Judiciary's lobbyists to lobby for ADWR's funding requests, and (3)  
21 have the Court, Special Master, or both visit legislators.

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22 <sup>3</sup> ADWR's Status Report 3.

23 <sup>4</sup> See <http://www.idwr.idaho.gov/water/srba/people.htm>.

24 <sup>5</sup> See [http://dnrc.mt.gov/wrd/about\\_us/staff\\_directory/default.asp](http://dnrc.mt.gov/wrd/about_us/staff_directory/default.asp).

<sup>6</sup> In its January 31, 2006, report, ADWR stated that "[a]t this time, ADWR is facing a potential decrease in its entire FY07 budget of \$1.7 million." Status Report 12-13.

1           The Special Master found the following difficulties with these actions: (1) parties can  
2 have differences of opinion and lack of agreement about the adequacy and urgency of levels of  
3 funding, (2) claimants may support adjudication funding, but their legislative agendas are set by  
4 others, and those agendas may focus on other issues, (3) people are not motivated to lobby for  
5 an agency's funding when the agency itself cannot do it, and (4) as for the Court and Special  
6 Master lobbying the Legislature, besides the judicial and political propriety of doing so, the  
7 Court lacks the expertise, wherewithal, contacts, and time to do that job at all.

8           The solution is to implement a funding mechanism that is ongoing, stable, and free of  
9 political vicissitudes. Funding must be viewed not only from the immediate need for field  
10 investigations and technical assessments to get where we should have been years ago but also  
11 for the benefits of retaining the most qualified staff and always using the best hydrology,  
12 computer capability, and mapping as we move into the future.

13           A funding mechanism could take several forms such as increasing filing fees, assessing  
14 all or some adjudication claimants, assessing all or some water right holders, assessing water  
15 uses, and asking parties involved in water rights settlements to contribute as part of the  
16 settlement. The Special Master does not have an answer, preference, or opinion as to the  
17 propriety of a specific funding idea. In St. Johns, on May 12, the Court expressed reservations  
18 about assessments.

19           A part of the mechanism could be the institution of benchmarks to evaluate and measure  
20 the progress of the adjudications. Funding levels would be related to the overall progress of the  
21 adjudications.

22           In order to accomplish these objectives, the Special Master recommends that the Court  
23 appoint and direct a working group to explore and recommend a stable and ongoing funding  
24 mechanism for both adjudications. The Court should expressly direct that the scope of the

1 recommendations of the working group shall be limited to funding for ADWR and shall not  
2 include any proposed legislative amendments that are not directly and legitimately related to a  
3 funding mechanism.

4         The group would be composed of representatives of surface water, groundwater, Tribal,  
5 state and federal government, and small claimants. Consideration should be given to including  
6 representatives of the Administrative Office of the Courts, the Superior Court of Arizona, and  
7 the Directorate of ADWR. It is suggested that members of this working group could be clients  
8 rather than legal counsel, especially clients who have expertise in fiscal and legislative matters.  
9 The Special Master may be a member of the group but shall not chair the group, and his  
10 standing within the group shall be the same as that of any other member.

11         The group should not have more than ten members so that its efforts can be focused and  
12 speedily put to work. The Court should appoint a chair to serve for a one year term. The group  
13 would not be managed as a steering or a settlement committee is generally managed and would  
14 terminate upon conclusion of its duties.

15         Because A.R.S. § 45-255(A) allows the Court to fix and pay “other expenses related to  
16 the conduct of an adjudication” out of the funds of fees paid by claimants, the Court could  
17 direct that the members will be reimbursed, in accordance with the policies of the office of the  
18 Special Master, their travel expenses from the funds of filing fees, the expenses to be borne  
19 equally by the two funds.

20         Meetings would be announced to both Court-approved mailing lists, and would be open  
21 to all claimants and interested persons. The group should be able to meet in executive session.

22         The Court would request the group to file a detailed report within five months after  
23 being formed with the idea of possibly submitting proposed legislation in 2007. This process,  
24 however, may take longer to realize legislative results.

1 The Court would approve or reject, following comments by claimants, any  
2 recommendations presented to it. Recommendations would not be referred to the Special Master  
3 for hearing.

4 Because results may not be achieved or implemented for possibly two or three years, it  
5 is recommended that the Court promptly bring this matter to the attention of all claimants.

6 Submitted this 18th day of May, 2006.

7  
8 /s/ George A. Schade, Jr.  
9 GEORGE A. SCHADE, JR.  
Special Master

10 On May 18, 2006, the original report was  
11 filed with the Clerk of the Court and a copy  
12 of the report was delivered to the  
13 Distribution Center for distribution to all  
14 persons listed on the Court-approved  
mailing list for Case No. CV 6417 dated  
February 28, 2006.

15 /s/ KDolge  
16 Kathy Dolge