

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

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.
Presiding

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

DATE: February 12, 2004

CIVIL NO. 6417-033-0060

NOTICE TO PARTIES THAT
THE SPECIAL MASTER WILL
MEET WITH THE ARIZONA
DEPARTMENT OF WATER
RESOURCES

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

DESCRIPTIVE SUMMARY: The Special Master informs the parties that he will meet with the staff of the Arizona Department of Water Resources to discuss the status of completion of the supplemental contested case hydrographic survey report and the department's capability to implement notice and objection procedures following the filing of the report. The meeting will be held at the department prior to March 5, 2004.

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NOTICE OF MEETING

The Arizona Department of Water Resources ("ADWR") has requested additional time to file the supplemental contested case hydrographic survey report ("HSR") which was due by December 31, 2003. ADWR wants "clarification from the Special Master or the Court regarding the applicability of the supplemental contested case HSR procedures" that the Court recently adopted in the Gila River Adjudication.

On February 10, 2004, the Superior Court approved and modified the Special Master's report¹ that contained 13 recommendations regarding notice and objection procedures that will be implemented when ADWR files a supplemental contested case HSR in the Gila River Adjudication. The Court's order states that "The Court and the Special Master may consider implementing these procedures in the Little Colorado River Adjudication." Abitibi Consolidated Sales Corporation and the Arizona Water Company filed a response to ADWR's request, as amici curiae, raising the issue of extending a ruling made in one adjudication to the other adjudication.

The notice and objection procedures for supplemental contested case HSRs adopted in the Gila River Adjudication are comprehensive and reasonable. The publication of the supplemental contested case HSR must be considered together with these procedures as they constitute a process extending over several months that will call for increased administrative and financial resources from ADWR.

In anticipation of the possible implementation of all or some of those procedures in this contested case, the Special Master plans to meet with ADWR's staff to discuss the status of completion of the supplemental contested case HSR and the department's capability to implement notice and objection procedures related to the filing of the report. At this point, a meeting would be more useful and expeditious than asking ADWR and the parties for reports and comments as these matters involve administrative details that do not come through clearly or fully in written reports.

In a special action arising in the Gila River Adjudication, the Arizona Supreme Court held that "A.R.S. § 45-256 expressly authorizes ex parte communications between a general adjudication judge...and DWR....The statute, as noted, authorizes the...master to call upon the director's 'other expertise' regarding the general adjudication."² Based on the work done by ADWR in the adjudications since 1980, the term "other expertise" includes, but is not limited to, work such as printing reports; preparing, printing, and distributing notices and objection forms; compiling and maintaining mailing lists; completing large mailings; answering inquiries and requests for information; publicizing reports; and providing monies to complete these tasks.³

Although the Special Master may initiate ex parte communications with ADWR, the Arizona Supreme Court held that the "ex parte communications approved by Canon 3(B)(7) generally require notice to the parties."⁴

Accordingly, the Special Master advises the parties that he will meet with ADWR's staff, at the department, on a date and time before March 5, 2004. The meeting will not be recorded. The Special Master plans to discuss:

¹ Copies of the report and orders are available at <http://www.supreme.state.az.us/wm/> on the page titled *Gila River Adjudication (In re PWR 107 Claims)*.

² *San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, 72, 977 P.2d 790, 794 (1999).

³ See *In the Matter of the Rights to the Use of the Gila River*, 171 Ariz. 230, 830 P.2d 442 (1992).

⁴ 194 Ariz. at 73, 977 P.2d at 795.

1. The status of completion of the supplemental contested case HSR ADWR anticipates filing in this contested case.
2. The anticipated date for filing a draft report for comment by the parties regarding content and formatting issues, if a draft report is filed.
3. The length of a comment period, if comment is allowed.
4. ADWR's readiness to undertake and complete the kinds of notice and objection procedures recently adopted in the Gila River Adjudication.
5. The availability of funds to complete these tasks.

The Special Master will not advise, comment, recommend, or suggest regarding the scope and contents of the supplemental contested case HSR, will not discuss any legal issue that may arise in this contested case, and will not ask ADWR to prepare any orders.

Following the meeting, the Special Master will rule upon ADWR's request for additional time and will set a schedule regarding the filing of the supplemental contested case HSR.

DATED: February 12, 2004.

/s/ George A. Schade, Jr.

GEORGE A. SCHADE, JR.

Special Master

The original of the foregoing was mailed this 12th day of February 2004, to the Clerk of the Apache County Superior Court for filing; also, a copy was mailed to all persons listed on the Court-approved mailing list for Contested Case No. 6417-033-0060 dated October 6, 2003.

/s/ KDolge

Kathy Dolge