

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: May 5, 2005

CIVIL NO. 6417-033-0060

PROCEDURAL ORDER

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

HSR INVOLVED: Silver Creek Hydrographic Survey Report and Supplemental Contested Case Report.

DESCRIPTIVE SUMMARY: The Special Master issues a Procedural Order concerning the review of objections to the supplemental contested case hydrographic survey report, disclosure statements, discovery, settlement, and a status conference.

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DATE OF FILING: Original mailed to the Clerk of the Court on May 5, 2005.

PROCEDURAL ORDER

A status conference was held on April 19, 2005. At this point, it is difficult to estimate or reasonably predict the number and scope of the objections that might be filed to the Supplemental Contested Case Hydrographic Survey Report for the Claims of Phelps Dodge to Show Low Lake. On the other hand, given the posture of this contested case when it was stayed in 1994, it is reasonable to start putting together the procedural framework for the determination of the objections and the continuation of the litigation.

The Special Master will outline a procedure for identifying and dismissing those objections that do not comply with A.R.S. § 45-256(B), adopt certain procedures for filing

disclosure statements and conducting discovery, request the current parties to confer concerning the prospects for settlement, and will plan a status conference to finalize these and other matters.

The Special Master plans to implement the following procedures for dismissing objections that do not comply with A.R.S. § 45-256(B). This statute provides in relevant part that:

The report shall also include the director's proposed water right attributes for each individual water right claim or use investigated as prescribed by this article. If no water right is proposed in connection with an individual water right claim or use, the director's recommendations shall so indicate. Any claimant may file with the court or the master written objections to the report or any part of the report within one hundred eighty days of the date on which the report was filed. An objection shall specifically address the director's recommendations regarding the particular water right claim or use investigated. The court or master shall summarily dismiss with prejudice objections that do not comply with this subsection.

The Special Master will examine all the objections filed before, on, or reasonably after August 1, 2005, to evaluate their compliance with A.R.S. § 45-256(B). It is anticipated that this process will be completed by December 31, 2005. The Special Master will file a notice describing all the objections that do not appear to comply with A.R.S. § 45-256(B) and will notify those objectors.

The parties in this case will be given the opportunity to comment on the Special Master's list including adding or removing objections from the list. A hearing will be held to hear from those objectors why their objections should not be dismissed for failing to comply with A.R.S. § 45-256(B).

At the status conference, settlement was discussed. Some parties favor continuing efforts to reach a global settlement. The Special Master suggested that this contested case be viewed as an individual matter that can be settled separate from the desire to accomplish a global settlement. Arizona Rule of Civil Procedure 16.1(a) states that "[t]he court may also schedule a settlement conference upon its own motion." The Special Master will not set a Rule 16.1 settlement conference, but believes that this rule provides sufficient authority to ask the current parties, who are major parties with years invested in this matter, to confer and discuss the prospects for settlement of this case.

IT IS ORDERED:

1. Disclosure Statements. A date for filing initial disclosure statements in accordance with Arizona Rule of Civil Procedure 26.1 will be set at the next status conference, but it is anticipated that disclosure statements will be due before formal discovery commences. The following procedures shall be implemented:

A. Filing. All parties will be requested to file their initial Rule 26.1 disclosure statements at the same time.

B. Contents. All disclosures shall include information and data in the possession, custody, and control of the disclosing party as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation. The disclosure statement shall set forth:

- (1). The factual basis of a party's claim.
- (2). The legal theory upon which each claim is based including, where necessary for a reasonable understanding of the claim, citations of pertinent legal or case authorities.
- (3). The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call to substantiate its claims with a fair description of the substance of each witness' expected testimony.
- (4). The names and addresses of all persons whom the disclosing party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to each claim, and the nature of the knowledge or information each such individual is believed to possess.
- (5). The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
- (6). The name and address of each person whom the disclosing party expects to call as an expert witness, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert.
- (7). The existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use to support its claims.
- (8). A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by the disclosing party to exist whether or not in its possession, custody, or control and which it believes may be relevant to any of its claims, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents will be made, or have been made, available for inspection and copying. If production is not made, the name and address of the custodian of the document shall be indicated. Any document produced for inspection shall be produced as it is kept in the usual course of business.

C. Continuing Duty. All parties shall have a continuing duty to disclose as required by and in the manner provided in Rule 26.1(b)(2).

D. Service of Disclosures. All disclosing parties shall provide a notice of filing and a listing of the disclosed documents to all persons appearing on the Court-approved mailing list for this case. Hard (paper) copies of disclosed documents need not be served upon the other parties in this case, as copies of documents can be obtained from ADWR.

E. Not Filing. Parties who do not file a disclosure statement shall file a notice stating that the party is not filing a disclosure statement.

2. Electronic Data Base and Index Provided by ADWR. ADWR is directed to develop and maintain an electronic data base and index of all disclosed documents which shall be available on the Internet. If deemed necessary, ADWR may confer and work with any of the parties in this case to implement the electronic data base and index. This order provides standards that take into account ADWR's requirements described in a report ADWR filed on April 15, 2005, in the contested case *In re State Trust Lands*.

A. Electronic Format. The disclosing party shall submit to ADWR all documents and an index of the documents in accordance with the following requirements:

(1). Number each document with a unique alpha identifier and in numeric sequence. The alpha identifier is related to the name of the disclosing party.

(2). Complete a Disclosure Input Form in Microsoft Excel format for each disclosed document containing the following searchable index fields:

- a. Title or description of document.
- b. Unique identifying number created by the disclosing party for each document.
- c. Date of publication or preparation of document.
- d. Document type (article, book, letter, map, report).
- e. Recipient.
- f. Number of pages of document.
- g. Disclosing party.
- h. Date of submittal of document.
- i. Subject matter of document (up to three categories).

j. Any other item that would make the disclosed document easy to find and read.

(3). Create a portable document format (.pdf) for each document.

(4). Provide a compact disc to ADWR with copies of the Disclosure Input Forms (Microsoft Excel files) and corresponding disclosure documents (.pdf files).

(5). Provide to ADWR hard (paper) copies of disclosed documents and corresponding Disclosure Input Forms. ADWR will maintain the hard copies to satisfy the Public Records Act, A.R.S. §§ 39-101 *et seq.*

B. Internet Access. ADWR shall place a blank copy of the Disclosure Input Form together with format protocols on the Internet at a domain or address made known to the parties in this case and to all persons listed on the Little Colorado River Adjudication Court-Approved Mailing List. In order to provide access to the disclosed documents, each index field in the Disclosure Input Form shall be subject to query. Copies of all disclosed documents and completed Disclosure Input Forms shall be available on the Internet for viewing and copying.

C. Form. To the extent possible, parties shall submit documents in the following form: single-sided, 8.5" x 11" size, no punched holes, no permanent binding (staples excepted), and no tabs.

D. Copies of Disclosed Documents. ADWR shall make available to any claimant, at the claimant's expense, a copy of disclosed documents on a CD-ROM or a paper copy. ADWR shall have the right to determine the best and most practical manner for providing copies.

E. Fees. ADWR may collect its standard fees for copies and other services rendered related to the use of the electronic data base and index.

3. Discovery. Dates for commencing and completing formal discovery, including depositions, will be set at the next status conference. The following procedures shall be implemented:

A. On or after August 1, 2005, the parties in this case, which by then may include new objectors, may engage in informal discovery conducted cooperatively.

B. Rules. Discovery shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, Pre-Trial Order No. 1 Re: Conduct of Adjudication ¶ 11.00, and Sections 9.00 and 11.02 of the Rules for Proceedings Before the Special Master. For purposes of Section 9.00, Phelps Dodge Corporation is a Group 2 litigant.

4. Pending Motions. The Special Master will address the pending motions in this case at an early point.

5. Status Conference. A status conference will be set early next year to consider dates for filing disclosure statements and conducting formal discovery, the parties' positions regarding the need, if any, for an evidentiary hearing, the use and examination of expert witnesses at an evidentiary hearing, briefing schedules for motions, the status of settlement discussions, and any other matters requiring attention at that time.

6. Settlement. On or before August 1, 2005, the current parties in this case shall confer to discuss the prospects for settlement of this case. At the next status conference, the parties will be asked to report on these efforts.

DATED: May 5, 2005.

/s/George A. Schade, Jr.

GEORGE A. SCHADE, JR.

Special Master

On the 5th day of May 2005, the original of the foregoing was mailed to the Clerk of the Apache County Superior Court for filing, and a copy was mailed to all persons listed on the Court-approved mailing list for Contested Case No. 6417-033-0060 dated October 21, 2004.

/s/KDolge

Kathy Dolge