

1 GEORGE A. SCHADE, JR.
Special Master
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5

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTIES OF APACHE AND MARICOPA
7

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

DATE: September 5, 2012

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

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11
12 IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
13 LITTLE COLORADO RIVER SYSTEM
AND SOURCE
14

CV-6417

REPORT CONCERNING THE FUNDING
OF THE SPECIAL MASTER'S EXPENSES

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16 CONTESTED CASE NAME: None.

17 HSR INVOLVED: None.

18 DESCRIPTIVE SUMMARY: At the request of the Gila River Adjudication Steering Committee
and the Little Colorado River Adjudication Settlement Committee, the Special Master files a report
19 concerning the funding of the Special Master's expenses.

20 NUMBER OF PAGES: 5.

DATE OF FILING: September 5, 2012.
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22 On August 22, 2012, the Special Master met with members of the Gila River Adjudication
23 Steering Committee and the Little Colorado River Adjudication Settlement Committee to present
24 information concerning the future funding needs of the Special Master. The members requested a

1 report containing the information the Special Master presented.

2 **I. HISTORICAL REVIEW**

3 Pursuant to A.R.S. § 45-255(A), the Arizona Supreme Court appointed a Special Master for
4 both the Gila River and Little Colorado River Adjudications. The first Special Master began
5 employment and incurring expenses on May 1, 1990.

6 **A. Funding of the Special Master's Expenses**

7 In accordance with A.R.S. § 45-255(B)¹, the Special Master's compensation and expenses
8 have been funded by the filing fees paid by claimants in both adjudications. Between June 22, 1990,
9 and August 22, 2012, the Gila River Adjudication fund of filing fees paid \$3,156,952.16 for the
10 Special Master's expenses and \$159,077.00 for expenses incurred by the Clerk of the Maricopa
11 County Superior Court. During the same period, the Little Colorado River Adjudication fund of
12 filing fees paid \$373,172.43 for the Special Master's expenses and \$6,389.00 for expenses incurred
13 by the Clerk of the Apache County Superior Court.

14 The Clerks' expenses were incurred for the processing and storage of statements of claimant.
15 No funds have been paid to the Clerk of the Maricopa County Superior Court since June, 2001, and
16 to the Clerk of the Apache County Superior Court since June, 1994.

17 Beginning with Fiscal Year 2000 and ending with Fiscal Year 2012, the expenses of the
18 Special Master's office averaged \$173,802.43. Significant increases occurred during the last two
19 fiscal years due to higher legislatively mandated retirement contributions and health benefits. During
20 this period, the Special Master's expenses averaged 89% of the annual budget, the range being from
21 70% to 103%. Both Special Masters to date have operated under a budget approved by the Court.

22
23 ¹ A.R.S. § 45-255(B) states that, "A master's compensation and other expenses related to the conduct of an
24 adjudication shall be fixed by the court and paid out of the fund of fees paid by the claimants pursuant to
section 45-254. If that fund of fees is insufficient, a master's compensation and other expenses related to the

1 Historically, the Court has allocated the compensation and expenses of the Special Master
2 based on the proportion of statements of claimant filed in each adjudication. The totals of claims
3 represent a count of the files with a unique numerical prefix. Since Fiscal Year 2002, this allocation
4 has resulted in the Gila River Adjudication fund of filing fees reimbursing 84%-88% of the Special
5 Master's expenses, and the remaining 16%-12% being reimbursed from the Little Colorado River
6 Adjudication fund.² An 88%-12% allocation was used in Fiscal Year 2002. An 87%-13% split was
7 applied in Fiscal Year 2003. An 84%-16% split was used in Fiscal Year 2005. In addition, expenses
8 incurred solely for the benefit of a specific adjudication, such as travel expenses, are charged to that
9 adjudication's fund and are not allocated by percentage.

10 Annually, monies are transferred, pursuant to the Court's orders, from both funds to the
11 Administrative Office of the Courts, which acts as the Special Master's fiscal agent. After this year's
12 disbursements are completed this month, the balance of the Gila River Adjudication fund will be
13 approximately \$166,966.14. The balance of the Little Colorado River Adjudication fund will be
14 approximately \$92,180.88.

15 **B. Revenues from New Use Filing Fees and Interest Accruals**

16 The balances of both funds are increased by new use filing fees and accrued interest. Between
17 July, 2002, and August, 2012, the Gila River Adjudication fund received \$409,160.77 in new use
18 filing fees. Between September, 2003, and August, 2012, the Little Colorado River Adjudication
19 fund received \$97,239.31 in new use filing fees. The total of these new use filing fees is
20 \$506,400.08. It is noteworthy that \$289,555.20 (57%) of the total of \$506,400.08 was received prior
21 to June 30, 2003, likely due to the fact that new use summonses had not been served for many years.

22 Between December, 1999, and June, 2012, the Gila River Adjudication fund received

23
24 conduct of an adjudication shall be paid from the state general fund as a separate line item appropriation for
the superior court.”

1 \$392,969.31 in accrued interest. Between December, 2002, and June, 2012, the Little Colorado River
2 Adjudication fund received \$22,302.85 in accrued interest. Interest accruals have declined in recent
3 years due to lower interest rates and declining fund balances. The Special Master has inquired on
4 several occasions about the accuracy and promptness of interest accruals.

5 In Fiscal Years 2004 and 2005, the Dividing the Waters Program reimbursed the office of the
6 Special Master \$13,750.00 for services rendered. This revenue source is no longer available. The
7 foregoing receipts of filing fees, interest, and reimbursements total \$935,422.24.

8 Since 2004, the Legislature has appropriated \$20,000.00 annually for the expenses incurred
9 only in the Little Colorado River Adjudication. This appropriation was sought because the fund of
10 filing fees would have been insufficient for Fiscal Year 2005. This appropriation has been received
11 for every subsequent fiscal year and has assured the sufficiency of the fund of filing fees.

12 In Fiscal Year 2012, the Little Colorado River Adjudication fund was assessed a negative
13 cash receipt and a set aside transfer totaling \$4,889.17. These reductions in the balance of the fund
14 were due to global accounting revisions implemented by the Apache County Treasurer.

15 It is estimated that the Gila River Adjudication fund of filing fees will be insufficient to pay
16 fully the expenses of the Special Master after December 31, 2013, or half-way through Fiscal Year
17 2014. The Little Colorado River Adjudication fund will be insufficient after June 30, 2015, or after
18 the end of Fiscal Year 2015.

19 **II. REQUEST FOR LEGISLATIVE FUNDING**

20 A.R.S. § 45-255(B) provides that if a fund of filing fees is insufficient, “a master’s
21 compensation and other expenses related to the conduct of an adjudication shall be paid from the
22 state general fund as a separate line item appropriation for the superior court.”

23 On June 13, 2012, the Court submitted a budget request to the Administrative Office of the
24

² This allocation is explained in the Court’s order filed on August 22, 2012, at <http://tinyurl.com/9tmpej5>.

1 Courts for partial funding in Fiscal Year 2014 (second half) and full funding in Fiscal Year 2015.
2 The funding request for Fiscal Year 2014 is \$74,000.00, and for Fiscal Year 2015 is \$215,800.00.
3 The Special Master has been informed that these requests, planned since 2010, are proceeding in the
4 normal course of legislative business.

5 These requests are based on the following factors prevailing between now and June 30, 2015:
6 one full time Special Master, one three-quarters time secretary (up from one-quarter time), a level of
7 case activity similar to or nominally higher than current, continuation of the annual \$20,000.00
8 appropriation for the Little Colorado River Adjudication, no increase in filing fees, low interest rates,
9 and no salary increases for judicial officers.

10 If these circumstances change within the next five years, the annual expenses of the Special
11 Master could be as high as \$250,000.00.

12 Submitted this 5th day of September, 2012.

13
14 /s/ George A. Schade, Jr.
15 GEORGE A. SCHADE, JR.
16 Special Master

17 On September 5, 2012, an original of the foregoing
18 was mailed to the Clerk of the Apache County
19 Superior Court and a duplicate original was
20 delivered to the Clerk of the Maricopa County
21 Superior Court for filing and distribution to the
22 persons listed on the main Court approved mailing
23 lists for the Gila River Adjudication and Little
24 Colorado River Adjudication dated July 17, 2012.

22 /s/ George A. Schade, Jr.
23 George A. Schade, Jr.