

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE
DONNA J. GRIMSLEY, PRESIDING JUDGE**

Special Master, GEORGE A. SCHADE, JR.

SUE HALL, Clerk

COURT REPORTER: Sheryl Taylor Barker

By: Barbara J. Silversmith, Deputy

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE Contested Case No. 6417-033-0060 In Re Phelps Dodge Corporation (Show Low Lake)	Case No. CV-6417-033-0060 DATE: April 19, 2005 TIME: 8:53 A. M. MINUTE ENTRY: Status Conference
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DESCRIPTIVE SUMMARY NUMBER OF PAGES DATE OF FILING	Status Conference held in the Pinetop/Lakeside Council Chambers, Pinetop/Lakeside, Arizona. (5) June 10, 2005
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MINUTE ENTRY

This is the date and time set for a Status Conference in Civil No. 6417-033-0060.

APPEARANCES

Mr. Michael Brown, representing various clients; Mr. Scott McElroy and Ms. Biddah N. Becker, representing the Navajo Nation; Mr. John Lemaster, representing Phelps Dodge; Ms. Jan Ronald and Mr. Rich Burtell, representing Arizona Department of Water Resources; Mr. John B. Weldon, Jr.; Mr. Jeff Ehlers and Ms. Lisa McKnight, representing Salt River Project; Ms. Vanessa Boyd Willard, representing U.S. Department of Justice (Indian Resources Section); Mr. Steve Wene, representing City of Flagstaff; Ms. Shanti Rosset, representing Arizona Attorney General's Office; Mr. Chuck Cahoy, representing City of Mesa; Mr. K. Kane Graves, representing City of Show Low; and Mr. Richard W. Kelley, representing Show Low Crossroads Homeowners Association.

Also in attendance: Kathy Dolge, Assistant to the Special Master.

The Special Master welcomes everyone in attendance.

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Supplemental Contested Case HSR

The Special Master explains that having this type of conference prior to the close of the objection period is somewhat unusual. He wants to talk with the parties about their experience with the objection process to date and discuss the procedures for resolving issues brought out during the objection period which closes on August 1, 2005. Mr. Schade indicates that disclosure statements, discovery, evidentiary hearings, and dismissal of objections need to have a process established. The last conference in this contested case was held in February 2003, and since that time the first supplemental contested case HSR has been published. Mr. Schade commends the Arizona Department of Water Resources' efforts in the publication of the supplemental HSR.

ADWR Report on Mailing Notices of HSR and Claimants' Response

Ms. Jan Ronald, Arizona Department of Water Resources, reports on the success of mailing notices to parties following the publication of the supplemental HSR on January 31, 2005, compared to the prior mailing of the 120-day notice. She states that the department alleviated some of the problems associated with the first mailing by spending four months updating the address list prior to mailing the objection notification. The department also fielded numerous phone calls after the first mailing which reduced the number of phone calls associated with the objection notification. She estimates that ADWR had an 80% delivery rate on the second mailing which is a significant improvement over past mailings.

Mr. Michael Brown, representing various claimants, attributes the reduced number of phone calls to the fact that his firm provided information to clients prior to the notices of the HSR being mailed.

Mr. Schade asks for suggestions for improving the objection process. Parties concur that the supplemental HSR process has moved forward fairly smoothly.

Clerk of the Apache County Superior Court; Pending Motions and Deposition; Process for Determining Objections; and Process for Dismissing Objections Non-Compliant with A.R.S. 45-256(B)

The Special Master reports that as of today one objection to the supplemental HSR has been filed. He has discussed procedures for processing the objections with the Apache County Clerk of the Superior Court.

Mr. Schade discusses what will occur after the end of the objection period including timelines for disclosure statements, discovery, evidentiary hearings, settlement, and procedures for dismissing objections that do not comply with A.R.S. § 45-256(B).

Mr. John Lemaster, representing Phelps Dodge, feels that it would be difficult to set any timelines because they do not know the nature of the objections, therefore they would not know what discovery needs to be done. Mr. Schade explores setting a time frame after August 1, 2005, for parties to review the objections. Mr. Lemaster feels that setting a status conference thirty days after the close of the objection period may not be adequate time to categorize the issues raised in the objections. Mr. Schade inquires if parties are agreeable to setting a conference sixty days after August 1, 2005. Mr. Lemaster indicates that sixty days would be reasonable.

Mr. Scott McElroy, representing the Navajo Nation, suggests having a telephonic status conference promptly after August 1, 2005, to see if timelines need to be adjusted. He states that sixty days would be adequate time to review the objections. Mr. McElroy states he wants a fairly quick discovery process after August 1, 2005, and suggests that disclosure statements be filed within sixty days after August 1, 2005, and discovery be completed within one hundred and twenty days.

Mr. Schade inquires about the usefulness of the 1994 Amended Pretrial Statement. Mr. McElroy states it can be useful and is a good starting point for discovery guidelines and for the purpose of outlining factual matters.

Mr. Schade outlines a process for dismissing objections that do not comply with A.R.S. § 45-256(B). The Special Master will examine all the objections, review their compliance with A.R.S. § 45-256(B), file a listing of the objections that do not appear to comply with A.R.S. § 45-256(B), and will give those objectors and the parties an opportunity to comment on the Special Master's listing including adding or removing objections from the list. Mr. Lemaster states that this process should be undertaken early.

Pending Motions and Disposition

Upon inquiry by the Special Master, Mr. McElroy gives a quick over view of legal issues such as the right of way through the White Mountain Apache Reservation, non-use of water, the Black River exchange, continued viability of Show Low Lake for its original purpose, the quantity of both use and storage, and the question of Phelps Dodge's alternative waters.

Mr. Schade asks Mr. McElroy if he is going to raise those issues in objections or later by motion. Mr. McElroy states that the issues should be raised through the objection process. He comments on pending issues including laches and Phelps Dodge's other water rights.

The Special Master indicates that the laches issue is before the Superior Court. It is his preference to resolve the issues raised by the objections through hearings and submitting a report to the Superior Court and avoid appeals to the Superior Court as

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the litigation proceeds. Mr. McElroy suggests there is a potential for streamlining the issues

and thinks some issues may become moot. The Special Master encourages everyone to identify issues in their objections.

Mr. Lemaster agrees with the Special Master that objections should identify the legal issues. He comments on the scope of some of the issues that may need to be addressed, such as Phelps Dodge's future water uses at Morenci and negotiations with the White Mountain Apache Tribe regarding a right-of-way.

Mr. Schade inquires if any party anticipates doing any discovery of ADWR or taking the depositions of ADWR staff. Mr. Lemaster states he is waiting for the objections to be filed so he knows what they are and is considering taking depositions of ADWR staff. Mr. McElroy indicates that it is possible there will be depositions taken of ADWR's staff.

Mr. Schade asks if there should be a separate timeline for discovery involving ADWR's staff. Mr. Lemaster states he does not think that it needs to be separate as long as time for discovery is adequate.

The Special Master addresses the pending motions stating there are three before him, and the laches motion is in the Superior Court awaiting a ruling. Mr. Lemaster reiterates that until the objections are received they will not be able to put a strategy together. Mr. McElroy indicates that the Navajo Nation has not responded to the laches motion for the Superior Court and wants the opportunity to respond.

Discussion ensues concerning settlement. Mr. Lemaster states he has not been involved in settlement efforts. Mr. McElroy states that there has been a very preliminary initiation of settlement talks in the context of the overall Little Colorado River Adjudication, and he is willing to meet with Phelps Dodge if Phelps Dodge thinks it would be helpful.

The Special Master inquires if it is possible to resolve this contested case apart from a global settlement. Mr. McElroy states that he can see a potential for that, but other parties may not agree.

The Special Master inquires about the involvement of other Indian Tribes in this case. Ms. Vanessa Boyd Willard, representing the U.S. Department of Justice, responds that she does not directly represent other Tribes but is present on behalf of the United States' trust responsibility for all Tribes. She supports Mr. McElroy's comments and agrees that issues arising from the objections could be considered for resolution separately from a global settlement. The Special Master informs that in the Gila River Adjudication two contested cases involving Federal non-Indian reserved water rights

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were successfully settled and states the parties should explore settling this case apart from a global settlement.

The Special Master asks if there are other issues to discuss. Mr. Brown states that he would like adequate opportunity to review the objections and to get some feedback from clients. He suggests that a minimum of sixty days following the close of the objection period be allowed to review and categorize the issues. Mr. Schade indicates he will provide sufficient time for parties to review objections.

Mr. Schade states that it is his understanding that when this case was stayed in 1994, agreements had been reached between several parties and Phelps Dodge, and inquires if those agreements are in effect. Mr. Brown states he cannot answer with certainty until he reviews the matter further but knows there were stipulations signed by some parties. The Special Master states that the three parties who were going to participate in an evidentiary hearing when this case was stayed were the Navajo Nation, Salt River Project, and Phelps Dodge.

Ms. Ronald states that ADWR serves as a central repository of information for all claimants and parties, and she is not sure what purpose depositions of ADWR's staff would serve.

The Special Master states that after he reviews the transcript of this conference he will consider all the comments before setting timelines for disclosures, discovery, evidentiary hearings, and addressing the pending motions. He encourages the parties to use their objections to the supplemental HSR to identify issues.

Future Hearings

Setting another status conference is discussed, but a date and time certain are not set. The Special Master states that future hearings will be held in Pinetop-Lakeside area.

Hearing adjourned is adjourned at 10:03 a.m.

The original is filed with the
Apache County Superior Court.

A copy of this edited Minute Entry is
mailed to parties on the Court-
approved mailing list for CV-6417-
033-0060 dated October 21, 2004.

