

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: October 28, 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)*.

HSR INVOLVED: Silver Creek Hydrographic Survey Report.

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 implementation of the notice, objection, and administrative procedures related to the filing of the final supplemental contested case hydrographic survey report on or before January 31, 2005. All meetings will be held at the department between November 1, 2004, and January 31, 2005.

NUMBER OF PAGES: 3.

DATE OF FILING: Original mailed to the Clerk of the Court on October 28, 2004.

**NOTICE OF MEETING**

The Arizona Department of Water Resources (“ADWR”) will file the final supplemental contested case hydrographic survey report (“HSR”) on or before January 31, 2005. In accordance with the general stream adjudication statutes, Pretrial Orders No. 1, 4, 5, and 6, the Court’s order dated February 10, 2004, and the Special Master’s order dated March 9, 2004,

ADWR is required to prepare and distribute notices and objection forms, maintain a central repository of information related to the HSR, and provide public information. Many of these tasks have to be timely completed in order to meet mandated time periods. Some of these tasks must be coordinated with the Clerk of the Apache County Superior Court.

In the March 9, 2004, order, the Special Master directed ADWR “to prepare an objection notice(s) and an objection form to be used by claimants to file objections to the final supplemental contested case HSR,” and indicated that “the Special Master will work with ADWR in the preparation of the objection notice(s) and an objection form.”

In anticipation of the efficient and effective implementation of notice and objection procedures in this contested case, the Special Master plans to meet with ADWR’s staff to discuss their preparation and implementation. The Special Master anticipates that meetings will be necessary from time to time between now and January 31, 2005. The meetings will address administrative, clerical, and funding matters.

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.”<sup>1</sup> 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.<sup>2</sup> 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) [of the Arizona Code of Judicial Conduct] generally require notice to the parties.”<sup>3</sup>

Accordingly, the Special Master advises the parties that he will meet with ADWR’s staff, at the department, as necessary between November 1, 2004, and January 31, 2005, to prepare and review the notice, objection, and administrative procedures related to the filing of the final supplemental contested case HSR. The meetings will not be recorded. The Special Master plans to discuss:

1. The preparation, publication, and distribution of notices and objection forms.
2. The distribution and availability of the HSR and related forms.
3. The filing and processing of objections.
4. The coordination of these tasks with the Clerk of the Apache County Superior Court.

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<sup>1</sup> *San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, 72, 977 P.2d 790, 794 (1999).

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

<sup>3</sup> 194 Ariz. at 73, 977 P.2d at 795.

5. The maintenance of ADWR's central repository of information.

The Special Master will not advise, comment, recommend, or suggest regarding the scope and contents of the final supplemental contested case HSR, will not discuss any legal issue that may arise in this contested case, will not discuss any matter related to the pending motion, including responses and replies, filed by several parties to clarify and re-issue ADWR's 120-day notice, and will not ask ADWR to prepare any orders. The Special Master will be guided by the consideration that a claimant or party at a future time might challenge an aspect of these procedures.

DATED: October 28, 2004.

/s/George A. Schade, Jr.

GEORGE A. SCHADE, JR.

*Special Master*

The original of the foregoing was mailed this 28th day of October 2004, 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