

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: March 9, 2004

CIVIL NO. 6417-033-0060

ORDER REGARDING FILING OF
SUPPLEMENTAL CONTESTED
CASE HYDROGRAPHIC SURVEY
REPORT AND PROCEDURES
FOR NOTICE AND OBJECTIONS

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

HSR INVOLVED: Silver Creek Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master sets dates for the Arizona Department of Water Resources to file a draft and a final supplemental contested case hydrographic survey report ("HSR"), provides an opportunity to comment on content and formatting issues, and adopts procedures for supplemental contested case HSRs.

NUMBER OF PAGES: 5; Attachment A - 3 pgs; Total - 8 pgs.

DATE OF FILING: Original mailed to the Clerk of the Court on March 9, 2004.

ORDER

On March 1, 2004, the Special Master met with the staff of the Arizona Department of Water Resources ("ADWR") which is preparing the supplemental contested case HSR for this case. ADWR has requested additional time to file the HSR in order to obtain clarification

regarding the applicability of the supplemental contested case HSR procedures the Court recently adopted for the Gila River Adjudication.

As the parties in this case were advised, the discussions at the meeting involved the following:

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.

Recently, the Court ruled on the Special Master's recommendations¹ for notice and objection procedures when ADWR files a supplemental contested case HSR in the Gila River Adjudication. The Court's order provided 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, as amici curiae, a response to ADWR's request for additional time raising the issue of extending a ruling made in one adjudication to the other adjudication. No other responses were filed. The Court will consider this issue at its April 6, 2004, conference.

In the absence of other direction from the Court, the Special Master intends to implement in this case, to the most practical extent, the supplemental contested case HSR procedures adopted in the Gila River Adjudication. The implementation of those procedures accords with the directive in Pre-Trial Order No. 1 Re: Conduct of Adjudication ¶ 14 (April 24, 1987) that "to the extent possible all proceedings" in the Little Colorado River Adjudication "shall be carried out in a manner consistent with the proceedings conducted as part of" the Gila River Adjudication.

At the March 1, 2004, meeting, ADWR advised the Special Master that ADWR has the capabilities to implement those procedures in this case. ADWR can file a draft supplemental contested case HSR by July 2, 2004. ADWR would welcome comments on content and formatting issues, from the parties in this case and those appearing on the Little Colorado River Adjudication Court-Approved Mailing List. ADWR can review the comments and file a final supplemental contested case HSR by January 31, 2005. This timeline takes into account not only ongoing tasks such as updating mailing lists and sending new use summonses but also the implementation of the new supplemental contested case procedures.

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)*.

A period of ninety days to submit comments to ADWR regarding content and formatting issues of the HSR is appropriate and reasonable.²

The Special Master will not implement in this case the procedure adopted in the Gila River Adjudication for notice of subsequent supplemental contested case HSRs. That procedure calls for ADWR to send, upon filing the first supplemental contested case HSR, a notice providing a mechanism that permits a claimant or person to request to be placed on a mailing list, maintained by ADWR, to be notified whenever a supplemental contested case HSR is filed. Because it is likely that such a mailing list will grow stale before the next supplemental contested case HSR is filed, that procedure will not be implemented in this case. The effect of this decision is that ADWR will have to do a comprehensive mailing when the next supplemental contested case HSR is filed, at which time the procedure may be implemented.

A conference will be set near the end of the objection period to discuss the pending motions in this case, scheduling orders for disclosure of information and discovery, and any other matters including the process for determining objections.

Accordingly, IT IS ORDERED:

1. The request for additional time is granted. ADWR is directed to file a draft supplemental contested case HSR with the Clerk of the Apache County Superior Court on or before **Friday, July 2, 2004**.
2. ADWR shall send a copy of the draft supplemental contested case HSR to all the parties on the mailing list for this contested case and all persons appearing on the Little Colorado River Adjudication Court-Approved Mailing List.
3. On or before **Friday, October 1, 2004**, claimants and parties may submit comments to ADWR regarding content and formatting issues. The comments should assist ADWR to produce a practical and useful HSR for the limited scope of a contested case. Comments shall not address the merits or attributes of any specific water right as these matters are reserved for later hearing. Persons submitting comments shall provide a copy to all persons appearing on the mailing list for this contested case and on the Little Colorado River Adjudication Court-Approved Mailing List.
4. ADWR shall consider the comments and prepare a supplemental contested case HSR in conformance with A.R.S. 45-256(A) and (B).
5. ADWR is directed to file a final supplemental contested case HSR with the Clerk of the Apache County Superior Court on or before **Monday, January 31, 2005**.
6. A preliminary supplemental contested case HSR shall not be required prior to the filing of any supplemental contested case HSR. The procedures set forth in Pre-Trial Order No. 1 ¶ 12[C. HSRs: Notice and Comment](1 and 2) are not adopted for supplemental contested case HSRs.

² See Pretrial Order No. 6 Re: Notice of Hydrographic Survey Reports ¶ 4(A) (July 26, 2000).

7. At least 120 days before the final supplemental contested case HSR is filed, ADWR shall file a notice (“the 120-day notice”) with the Clerk of the Apache County Superior Court that states:

A. The date on which the final supplemental contested case HSR is to be filed.

B. The deadlines for filing a new statement of claimant or amendment to an existing statement of claimant as provided by A.R.S. § 45-254.

C. That any person who has filed a statement of claimant in this adjudication shall notify ADWR, within thirty (30) days of the change, of any of the following changes regarding that person or concerning that person’s statement of claimant form: (1) a change in that person’s address; (2) an assignment of the statement of claimant form to another person; (3) a transfer to another person of all or part of the land for which a water right has been claimed; and (4) a transfer to another person of all or part of the water right claimed, if the claimed water right has been severed and transferred to another parcel of land.

ADWR may provide any other information that would benefit claimants and others or help ADWR in subsequent notifications.

8. A claimant’s responsibility under Pretrial Order No. 4 Re: Notification and Correction of Address Changes (July 26, 2000) to notify ADWR of changes of address or ownership changes shall be publicized frequently.

9. ADWR shall send a copy of the 120-day notice by first-class mail to all persons listed on the mailing list for this contested case, to the persons appearing on the Little Colorado River Adjudication Court-Approved Mailing List, and to all claimants and nonclaimant water users in the Silver Creek Watershed.

10. ADWR is directed 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. As was done when the Final Silver Creek HSR (1990) was published, the Special Master would like to have a single mandatory objection form. Likewise, the Special Master will work with ADWR in the preparation of the objection notice(s) and an objection form.

11. Upon filing the supplemental contested case HSR, ADWR shall send a copy of the objection notice(s) by first-class mail to the persons included on the mailing list for this contested case, to the persons appearing on the Little Colorado River Adjudication Court-Approved Mailing List, to each claimant and nonclaimant water user in the Silver Creek Watershed, to all persons who filed objections to the Final Silver Creek HSR (1990), and to every other claimant in the Little Colorado River Adjudication.

12. The procedures set forth in Pretrial Order No. 6 ¶¶ 3 and 5(B)(C)(E) and (F) are adopted for all supplemental contested case HSRs.

13. All claimants in the Little Colorado River Adjudication will be allowed to file objections to any supplemental contested case HSR.

14. A claimant may file written objections to a supplemental contested case HSR or to any part of the report within one hundred eighty days of the date on which the report was filed or until **Monday, August 1, 2005**.

15. The requirements for objections to a final HSR contained in Pre-Trial Order No. 1 ¶ 12[C. HSRs: Notice and Comment]3(a)(b) and (c) are adopted for objections to all supplemental contested case HSRs.

16. The procedures set forth in Pretrial Order No. 6 ¶ 7(B) and (C) are adopted for all supplemental contested case HSRs.

17. Objections to the final supplemental contested case HSR shall not be limited in any manner to the supplemental information.

18. A conference will be held near the end of the objection period to discuss the pending motions, scheduling orders for disclosure of information and discovery, and any other matters including the process for determining objections.

DATED: March 9, 2004.

/s/ George A. Schade, Jr.
GEORGE A. SCHADE, JR.
Special Master

The original of the foregoing was mailed this 9th day of March 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 (Attachment A).

KDolge
Kathy Dolge