

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: December 5, 2002

CIVIL NO. 6417-033-9005
(Special Consolidated Case)

CONTESTED CASE NAME: *In re Reporting of Diversion Information and Other Objections.*

DESCRIPTIVE SUMMARY: The Special Master schedules a conference on February 4, 2003, to discuss the determination of the water right claims of Phelps Dodge Corporation to Show Low Lake.

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

DATE OF FILING: Original mailed to the Clerk of the Court on December 5, 2002.

ORDER

On December 2, 2002, the Hon. Eddward P. Ballinger, Jr. referred to the Special Master for further proceedings a matter associated with this special consolidated case.

The determination of water rights in the Silver Creek Watershed was stayed in April 1994. In July 2002, the Court dissolved the stay of litigation relating to the water right claims of Phelps Dodge Corporation ("Phelps Dodge") to Show Low Lake (Watershed File Report No. 033-56-ABC-027) to allow the parties to proceed with any needed discovery for the determination of water rights in that specific case.

When the Silver Creek litigation was stayed in 1994, the determination of Phelps Dodge's claims to Show Low Lake (hereafter "the Show Low Lake case") was part of a larger special consolidated case that addressed numerous issues of broad legal importance. In its order of December 2, 2002, the Court directed the Special Master to proceed only with the Show Low Lake case, whose trial prior to the stay was anticipated to be held in late 1994.

The Special Master is setting a conference with the litigants and *amici curiae* ("friends of the court") that appeared in the Show Low Lake case to discuss the status of this matter and schedule proceedings to lead to its conclusion. In accordance with the Court's order of reference, the Special Master will focus on the disposition of the Show Low Lake case.

The Special Master wishes to discuss the nature and scope of both pending¹ and future motions; disclosures of information and discovery; need to update Watershed File Report No. 033-56-ABC-027; a trial schedule; settlement negotiations; a Court-Approved Mailing List for this case; and any other matters that would expedite the conclusion of the Show Low Lake case.

The persons who appear on the mailing list attached to this order and marked as Attachment A are claimants who, prior to 1994, expressed their intent to participate in Special Consolidated Case No. 6417-033-9005 as a litigant or as an *amicus curiae*. This list was the Court-approved mailing list for that case and was derived from the mailing lists of the several contested cases that were consolidated. Some persons listed in Attachment A may not wish to participate in the determination of the Show Low Lake case, or their addresses may have changed since 1994. The Special Master wishes to prepare a Court-Approved Mailing List of persons who intend to participate in the determination of the Show Low Lake case.

IT IS ORDERED:

1. A status conference concerning the Show Low Lake case will be held on **Tuesday, February 4, 2003, at 9:00 a.m.**, at the Town of Pinetop-Lakeside Council Chambers, 1360 North Niels Hansen Lane, Lakeside, Arizona.

2. Litigants and *amici curiae* should be prepared to discuss the following matters:

a. Resolution of the Show Low Lake case considering the scope of Special Consolidated Case No. 6417-033-9005 when the litigation was stayed in 1994, and in view of subsequent events and changes in law.

b. All motions pending since this matter was stayed in 1994 and a schedule for their disposition.

c. Legal and procedural issues that will require briefing and determination prior to the trial of the Show Low Lake case.

¹ The Special Master has identified at least two pending motions related to the Show Low Lake case, namely, Phelps Dodge's Motion for Interlocutory Stay and Request for Expedited Consideration (filed on January 12, 1994) and Request for Review of Decisions of the Special Master on the Issue of Laches (filed on March 4, 1994). Both motions ask the Superior Court to review decisions of Special Master John E. Thorson, who retired in December 2000.

- d. A schedule for disclosures of information and discovery.
- e. The need for the Arizona Department of Water Resources to update Watershed File Report No. 033-56-ABC-027 and the extent and scope of updating.
- f. Trial dates, presentation of evidence, and duration of trial.
- g. Possibility of a full or partial settlement of the Show Low Lake case.
- h. Preparation of a Court-Approved Mailing List for the Show Low Lake case.

3. A copy of this order will be mailed to all the persons listed on the Court-Approved Mailing List contained in Attachment A to this order. This mailing list shall be used until an updated list is prepared following the status conference.

4. Any litigant or *amicus curiae* who does not wish to participate further in the Show Low Lake case shall so notify the Office of the Special Master in writing on or before **Friday, January 17, 2003**.

5. Any litigant or *amicus curiae* who wishes to remain on the mailing list and whose current address is different from that listed in Attachment A shall advise the Office of the Special Master of the new mailing address on or before **Friday, January 17, 2003**.

DATED: December 5, 2002.

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

The original of the foregoing mailed this 5th day of December 2002, to the Clerk of the Apache County Superior Court for filing. Also, copies mailed to those parties who appear on the Court-approved mailing list for Special Consolidated Contested Case No. 6417-033-9005 dated December 5, 2002 (Attachment A).

/s/ KDolge
Kathy Dolge