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2 Arizona General Stream Adjudication
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5
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

7 IN RE THE GENERAL ADJUDICATION OF
ALL RIGHTS TO USE WATER IN THE LITTLE
8 COLORADO RIVER SYSTEM AND SOURCE

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

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10 REPORT OF THE SPECIAL MASTER
CONCERNING FUNDING OF THE
ARIZONA DEPARTMENT OF WATER
11 RESOURCES

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13 CONTESTED CASE NAME: None.

14 HSR INVOLVED: None.

15 DESCRIPTIVE SUMMARY: The Special Master submits a report recommending the
organization of a work group to review and recommend funding sources for the administrative
16 and technical support provided by the Arizona Department of Water Resources.

17 NUMBER OF PAGES: 6.

18 DATE OF FILING: May 18, 2006.

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20 At the status conference held in the Little Colorado River Adjudication on May 12,
21 2006, the Special Master brought to the Court's attention the issues presented in this report. The
22 Court requested the Special Master to submit his comments in a report filed in both
23 adjudications.

1 In January, 2006, the Arizona Department of Water Resources (“ADWR”) informed the
2 Court that “ADWR does not have the resources to work on more than one technical matter at a
3 time for the adjudication program.”¹ Currently, ADWR expects to be directed to prepare two
4 technical reports for upcoming special proceedings related to the Arizona Water Settlements
5 Act,² anticipates working on subflow issues in the San Pedro River Watershed, is working on
6 the Hopi Reservation Hydrographic Survey Report (“HSR”), and anticipates being directed to
7 provide assistance in other ongoing contested cases as well as the special proceeding *In re*
8 *Proposed Zuni Indian Tribe Water Rights Settlement*. The Department continues to provide
9 administrative assistance with the service of process of new use summonses and the litigation
10 support central repository.

11 The Special Master agrees that ADWR cannot simultaneously undertake all or even
12 most of the technical work the Court has set. This inability has, and unless resolved, will
13 continue to impact the manner and speed with which both adjudications advance. The progress
14 of the adjudications was originally based on the publication of comprehensive HSRs for
15 watersheds and federal reservations. The Special Master believes that in order to accommodate
16 funding limitations, the adjudications are drifting from that accepted and directed core concept.

17 The problem is lack of adequate funding to enable ADWR to provide the required level
18 of administrative and technical support for the adjudications. ADWR has reported that:

19 Resources currently available for the adjudication are limited and depend
20 in part on ADWR’s other statutory obligations.... Staff dedicated to providing
21 technical assistance to the court consists of two attorneys (half-time each), one
22 registered geologist/hydrologist (half-time), an intern (full-time), and one
administrative assistant (full-time). On an as-needed basis, ADWR also draws on
expertise from personnel within other program areas including hydrologists,
groundwater flow modelers, Geographic Information System (GIS) and database

23 ¹ ADWR’s Status Report 8 (Jan. 31, 2006).

24 ² Pub. L. No. 108-451, 118 Stat. 3478 (2004).

1 specialists, field investigators, and publication and administrative support staff.
2 ... However, the availability of non-dedicated staff and resources for the
3 adjudication program necessarily competes with ADWR's other statutorily
4 mandated responsibilities.³

5 To compare with two states whose adjudications are comparable to Arizona's, currently,
6 Idaho's Adjudications Bureau, which is part of the Idaho Department of Water Resources, has
7 37 staff persons,⁴ and Montana's Water Rights Bureau Adjudication Program, a part of the
8 Department of Natural Resources and Conservation, has 28 positions.⁵ In January 1995,
9 ADWR's former Adjudications Division had 31 staff persons; in the early 1990s, the Division
10 had authorized personnel of 40 employees.

11 In 2005, "ADWR considered this resource issue and determined that a budget increase
12 of approximately \$900,000 would allow ADWR to provide additional adjudication support to
13 the court through an increase in technical and administrative staff dedicated to the adjudication
14 effort." ADWR requested this additional funding, but the funds were not included in the
15 Governor's proposed budget for Fiscal Year 2007.⁶

16 The Executive's protocol is that if a state agency's funding request is not included in the
17 Governor's proposed annual budget, the agency cannot lobby the Legislature for the funding.
18 Therefore, ADWR could not on its own lobby the Legislature for the \$900,000 funding request.

19 This situation offers a view of what could happen in the future and some of the
20 alternatives to address such a situation. If ADWR cannot lobby for adjudication funding, other
21 ways to seek that funding are to (1) ask or depend on claimants or their counsel to contact

22 ³ ADWR's Status Report 3.

23 ⁴ See <http://www.idwr.idaho.gov/water/srba/people.htm>.

24 ⁵ See http://dnrc.mt.gov/wrd/about_us/staff_directory/default.asp.

⁶ In its January 31, 2006, report, ADWR stated that "[a]t this time, ADWR is facing a potential decrease in its entire FY07 budget of \$1.7 million." Status Report 12-13.

1 legislators, (2) ask the Judiciary's lobbyists to lobby for ADWR's funding requests, and (3)
2 have the Court, Special Master, or both visit legislators.

3 The Special Master found the following difficulties with these actions: (1) parties can
4 have differences of opinion and lack of agreement about the adequacy and urgency of levels of
5 funding, (2) claimants may support adjudication funding, but their legislative agendas are set by
6 others, and those agendas may focus on other issues, (3) people are not motivated to lobby for
7 an agency's funding when the agency itself cannot do it, and (4) as for the Court and Special
8 Master lobbying the Legislature, besides the judicial and political propriety of doing so, the
9 Court lacks the expertise, wherewithal, contacts, and time to do that job at all.

10 The solution is to implement a funding mechanism that is ongoing, stable, and free of
11 political vicissitudes. Funding must be viewed not only from the immediate need for field
12 investigations and technical assessments to get where we should have been years ago but also
13 for the benefits of retaining the most qualified staff and always using the best hydrology,
14 computer capability, and mapping as we move into the future.

15 A funding mechanism could take several forms such as increasing filing fees, assessing
16 all or some adjudication claimants, assessing all or some water right holders, assessing water
17 uses, and asking parties involved in water rights settlements to contribute as part of the
18 settlement. The Special Master does not have an answer, preference, or opinion as to the
19 propriety of a specific funding idea. In St. Johns, on May 12, the Court expressed reservations
20 about assessments.

21 A part of the mechanism could be the institution of benchmarks to evaluate and measure
22 the progress of the adjudications. Funding levels would be related to the overall progress of the
23 adjudications.

1 In order to accomplish these objectives, the Special Master recommends that the Court
2 appoint and direct a working group to explore and recommend a stable and ongoing funding
3 mechanism for both adjudications. The Court should expressly direct that the scope of the
4 recommendations of the working group shall be limited to funding for ADWR and shall not
5 include any proposed legislative amendments that are not directly and legitimately related to a
6 funding mechanism.

7 The group would be composed of representatives of surface water, groundwater, Tribal,
8 state and federal government, and small claimants. Consideration should be given to including
9 representatives of the Administrative Office of the Courts, the Superior Court of Arizona, and
10 the Directorate of ADWR. It is suggested that members of this working group could be clients
11 rather than legal counsel, especially clients who have expertise in fiscal and legislative matters.
12 The Special Master may be a member of the group but shall not chair the group, and his
13 standing within the group shall be the same as that of any other member.

14 The group should not have more than ten members so that its efforts can be focused and
15 speedily put to work. The Court should appoint a chair to serve for a one year term. The group
16 would not be managed as a steering or a settlement committee is generally managed and would
17 terminate upon conclusion of its duties.

18 Because A.R.S. § 45-255(A) allows the Court to fix and pay “other expenses related to
19 the conduct of an adjudication” out of the funds of fees paid by claimants, the Court could
20 direct that the members will be reimbursed, in accordance with the policies of the office of the
21 Special Master, their travel expenses from the funds of filing fees, the expenses to be borne
22 equally by the two funds.

23 Meetings would be announced to both Court-approved mailing lists, and would be open
24 to all claimants and interested persons. The group should be able to meet in executive session.

1 The Court would request the group to file a detailed report within five months after
2 being formed with the idea of possibly submitting proposed legislation in 2007. This process,
3 however, may take longer to realize legislative results.

4 The Court would approve or reject, following comments by claimants, any
5 recommendations presented to it. Recommendations would not be referred to the Special Master
6 for hearing.

7 Because results may not be achieved or implemented for possibly two or three years, it
8 is recommended that the Court promptly bring this matter to the attention of all claimants.

9 Submitted this 18th day of May, 2006.

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

13 On May 18, 2006, the original report was
14 filed with the Clerk of the Court and a copy
15 of the report was delivered to the
16 Distribution Center for distribution to all
17 persons listed on the Court-approved
mailing list for Case No. W-1, W-2, W-3,
and W-4 (Consolidated) dated February 28,
2006.

18 /s/ KDolge
19 Kathy Dolge