

1 GEORGE A. SCHADE, JR.  
*Special Master*  
2 Arizona General Stream Adjudication  
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(602) 542-9600  
4 State Bar No. 003289

5  
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

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

W-1 (Salt)  
W-2 (Verde)  
W-3 (Upper Gila)  
W-4 (San Pedro)  
(Consolidated)

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11 REPORT OF THE SPECIAL MASTER

12 CONTESTED CASE NAME: Not applicable.

13 DESCRIPTIVE SUMMARY: The Special Master files a report of his pending contested cases and  
14 other activities for discussion at the January 22, 2003, status conference.

15 NUMBER OF PAGES: 8.

16 DATE OF FILING: Original filed with the Clerk of the Court on January 10, 2003.

17 To assist the Superior Court and parties with matters the Court will consider at the next  
18 conference, the Special Master reports on the contested cases before him and on other relevant  
19 matters.

20 **I. Contested Cases Before the Special Master**

21 There are three active contested cases in the Gila River Adjudication and one contested case in  
22 the Little Colorado River Adjudication before the Special Master. With the exception of *In re Phelps*  
23 *Dodge Corporation (Show Low Lake)*, the contested cases involve federal non-Indian reserved water  
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1 right claims. With the exception of *In re PWR 107 Claims*, Special Master John E. Thorson initiated  
2 these cases. Special Master Schade undertook these contested cases in order to continue the work  
3 Special Master Thorson began. The cases are:

4 A. Gila River Adjudication

5 1. *In re Coronado National Memorial*, W1-11-556 - Special Master Thorson initiated this  
6 contested case on February 9, 1995, but stayed it on June 3, 1996. The case has been on a settlement  
7 track since Special Master Schade issued his first order in this matter on September 19, 2001.

8 The involved parties have indicated that mutual resolution of the United States' claims is  
9 possible<sup>1</sup> and have worked diligently to accomplish this possibility. As a result of their discussions,  
10 the parties have agreed to include another contested case in their settlement talks and have expanded  
11 the number of claims being reviewed. Since July 2002, the National Park Service has amended two  
12 statements of claimant and completed the assignment of other statements of claimant.

13 The parties filed written reports on the progress of discussions on December 21, 2001, July 1,  
14 2002, and December 30, 2002. The last report stated that the "parties have reached an agreement in  
15 principle on the water right claims for the Memorial" and the "United States believes a fully executed  
16 document will be filed with the Court within three to four weeks."

17 2. *In re Fort Huachuca*, W1-11-605 - Special Master Thorson initiated this case on February 9,  
18 1995, stayed it on April 26, 1995, and resumed the matter on October 26, 2002. Special Master  
19 Schade held a status conference on May 21, 2001.

20 Since then, the State of Arizona and the City of Sierra Vista have been allowed to intervene in  
21 this case; the Bella Vista Group of Objectors has clarified its identity; the United States has filed an  
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23 <sup>1</sup> A settlement similar to the one completed in *In re Saguaro National Monument (Rincon Mountain Unit)*,  
24 Contested Case No. W1-11-2782, might be possible. In *Saguaro National Monument*, Judge Ballinger issued  
an Order and Partial Decree of Stipulated Water Rights on July 11, 2001.

1 amended statement of claimant; and the Arizona Department of Water Resources (“ADWR”) has filed  
2 two reports addressing the time needed and certain issues and procedures related to the updating of the  
3 watershed file reports of the United States’ claims for Fort Huachuca.

4 On August 13, 2002, the Special Master issued an order addressing six questions that ADWR  
5 presented in its report of issues and procedures. The Special Master did not direct ADWR to complete  
6 a supplemental contested case HSR for the Fort’s watershed file reports, but stated that he “believes  
7 that the Fort’s HSR should be published by September 30, 2003.” The completion of the HSR will  
8 depend on ADWR’s resources and the time ADWR will need to complete it. The answers to these  
9 questions will be clearer after the Superior Court issues its directives to ADWR.

10 The water right claims of Fort Huachuca will raise important issues regarding subflow and the  
11 determination of federal non-Indian reserved water rights. The Special Master anticipates that this  
12 contested case will require one or more evidentiary hearings. Following submission of the Special  
13 Master’s report to the Superior Court, further hearings before the Court may occur.

14 3. *In re PWR 107 Claims*, W1-11-1174 - Special Master Schade initiated this case on May 2,  
15 2002, following comments from the affected parties as to whether this matter should be commenced.  
16 A prehearing conference was held on June 11, 2002.

17 Following the conference, on June 26, 2002, Special Master Schade issued an order directing  
18 the United States to file amended statements of claimant by December 31, 2002; directing ADWR to  
19 file a supplemental contested case HSR by March 3, 2003; designating two issues for determination as  
20 issues of broad legal importance<sup>2</sup>; and setting a briefing schedule for the two issues. Oral arguments  
21 were heard on December 10, 2002.

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23 <sup>2</sup> Section 12 of the Rules for Proceedings Before the Special Master provides a process for raising and  
24 determining issues of broad legal importance. Section 12.01 states in pertinent part, “A motion or objection  
raises an issue of broad legal importance if the issue is one of procedural or substantive significance that is

1 The issues of broad legal importance are:

2 1. Which claimants or parties should ADWR notify that a supplemental contested case HSR  
3 has been filed, and which claimants or parties should be allowed to file written objections?

4 2. How much time should claimants or parties have to file written objections after ADWR files  
5 a supplemental contested case HSR?

6 The Special Master's determinations of these issues will be reported to the Superior Court in  
7 accordance with Rule 53, Ariz. R. Civ. P. If objections are filed to the Special Master's report, the  
8 Court may have to hear and will have to rule on the objections. The Special Master anticipates that  
9 this contested case will require one or more hearings.

10 B. Little Colorado River Adjudication

11 1. *In re Phelps Dodge Corporation (Show Low Lake)*, 6417-033-0060 - The Superior Court  
12 referred this matter to the Special Master on November 26, 2002, with directives to "undertake all  
13 steps necessary to move towards resolution of disputes relating to these claims, including, among  
14 other things, entering appropriate orders resolving any discovery issues that may arise during the  
15 proceedings and addressing the determination or scheduling of any pending motions in that matter."  
16 This case is part of a larger special consolidated case whose litigation Special Master Thorson began  
17 on April 3, 1992, but the Court stayed on April 11, 1994.

18 The Special Master has set a status conference on February 4, 2003, at 9:00 a.m. in Lakeside,  
19 Arizona. The Special Master anticipates that this contested case will require one or more hearings.  
20 The progress of this case may depend on ADWR's capability to complete required technical work.

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23 similar to issues in other contested cases and that, if decided in the instant contested case, may establish a  
24 precedent for other contested cases in that river system adjudication and, possibly, in another river system  
adjudication."

1 **II. Expenses and Funding**

2 The filing fees paid by the claimants in both adjudications fund the office of the Special  
3 Master. Presently, the balance of the Gila River Adjudication fund of fees is approximately \$1.075  
4 million, and of the Little Colorado River Adjudication fund is approximately \$43,800.00.<sup>3</sup>

5 Although the Special Master’s opinion is that cost savings will prolong the life of the funds  
6 more than future filing fees, both new fees and cost savings have been pursued. Under current statutes,  
7 new fees will only result from the filing of new statements of claimant. Since his appointment in  
8 March 2001, the Special Master has worked with ADWR to complete the first service of new use  
9 summonses on potential claimants since 1991, a process begun by Special Master Thorson. ADWR  
10 has served new use summonses in the Gila River Adjudication, and anticipates serving new use  
11 summonses in the Little Colorado River Adjudication in early 2003.

12 The Special Master has undertaken actions to gain cost savings. Previously, the Clerks of the  
13 Superior Court of Apache County and Maricopa County were reimbursed for services rendered. In the  
14 Little Colorado River Adjudication, the office of the Special Master contracted for services with an  
15 independent courtroom clerk and court reporter. The funds of filing fees reimbursed the Clerk of the  
16 Maricopa County Superior Court and paid the courtroom clerk and court reporter in the Little  
17 Colorado River Adjudication.

18 Between May 1995 and June 2001, the Clerk of the Maricopa County Superior Court was  
19 reimbursed \$23,059 annually for services rendered. With the Clerk’s concurrence, this payment has  
20 not been made during the past two fiscal years. In the Little Colorado River Adjudication, following  
21 the retirement of the independent contractor, the staff of the Clerk of the Apache County Superior

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22 <sup>3</sup> Idaho’s Snake River Basin Adjudication is similar to Arizona’s adjudications. To have some perspective on  
23 these balances, consider that “[I]daho’s Snake River basin adjudication has cost Idaho between \$4.4 and \$5.3  
24 million per year in the most recent years.” Office of the Washington Attorney General, Federal and Indian  
Reserved Water Rights, Rep. to the Washington State Legislature, at 29 (October 2002).

1 Court resumed providing courtroom clerk services, and currently those services are provided without  
2 reimbursement from the filing fees. The filing fees will, however, be used to pay for court reporting  
3 services incurred by the Special Master in hearing contested cases in the Little Colorado River  
4 Adjudication.

5 In prior years, the funds of fees reimbursed both Clerks for storage shelves and computer  
6 equipment. Since June 1996 (Gila River Adjudication), neither fund has been used to reimburse the  
7 Clerk of the Superior Court for equipment expenses.

8 In orders dated August 28, 2002, the Superior Court approved charging each adjudication for  
9 those expenses that are "paid solely for the benefit of" a specific adjudication. Previously, all expenses  
10 processed through the office of the Special Master were reimbursed from the funds of filing fees on a  
11 percentage of 86% from the Gila River Adjudication and 14% from the Little Colorado River  
12 Adjudication. The percentages were based on the fact that 86% of all statements of claimant were  
13 filed in the Gila River Adjudication, and 14% were filed in the Little Colorado River Adjudication.

14 Not only were these percentages updated to 88% (Gila River Adjudication) and 12% (Little  
15 Colorado River Adjudication) to agree with current filings but also certain expenses were determined  
16 to be directly attributable to one or the other adjudication, and reimbursement was accordingly  
17 charged to the relevant fund. For the fiscal year ending on June 30, 2002, the direct expenses totaled  
18 \$2,095.30 in the Gila River Adjudication and \$3,692.23 in the Little Colorado River Adjudication.

19 Savings have been gained in office expenses, publications, and professional education.  
20 Purchase of legal and other publications has been substantially reduced, and future expenses are  
21 frozen; the cost of maintaining Internet access to the Index of Disclosed Documents in Contested  
22 Cases No. W1-203 and W1-206 has been negotiated; and professional continuing education has been  
23 limited to free seminars and courses.

1 Since the establishment of the office of the Special Master in May 1990, the Administrative  
2 Office of the Courts (“AOC”) has been the financial agent for the Special Master. AOC provides  
3 accounting, payroll, purchasing, and procurement services to the office of the Special Master. The  
4 Special Master pays for office equipment (computers, printers, fax machines) and telephone services.

5 AOC prepares general fund appropriation requests and legislative proposals related to the State  
6 Judiciary. Because the Superior Court of Arizona appoints the Special Master,<sup>4</sup> requests for general  
7 fund appropriations for the office of the Special Master will be done through AOC’s auspices and  
8 subject to AOC’s procedures. The Special Master is limited in pursuing general fund appropriations  
9 for other adjudication expenses or submitting legislative proposals pertaining to the Water Code, as  
10 these are processes within AOC’s administration.

### 11 **III. Enhancing Public Awareness of the Adjudications**

12 More awareness of the adjudications is a primary objective of the Special Master.

13 A. Internet Web Pages <<http://www.supreme.state.az.us/wm/>>

14 The office of the Special Master has designed its Web site to include either links to or copies  
15 of all judicial decisions, orders, and minute entries entered since 1998 and selected prior ones; has  
16 added a *What’s New* page showing upcoming deadlines and hearings and summarizing the latest  
17 news; and has updated all pages. The Web site is regularly updated and expanded.

18 The Web site consists of nine main pages developed and maintained by the AOC as part of the  
19 maintenance of its Web site. The Special Master and his staff have obtained training in Web  
20 publication and are responsible for updating the Special Master’s pages.

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24 <sup>4</sup> A.R.S. § 45-255(A) was amended in 1995 to provide that the “superior court judge assigned to the  
adjudication may appoint a master...”

