

1 GEORGE A. SCHADE, JR.
Special Master
2 Arizona General Stream Adjudication
Arizona State Courts Building, Suite 228
3 1501 W. Washington Street
Phoenix, AZ 85007
4 (602) 542-9600
State Bar No. 003289
5

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

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

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

11 **Contested Case No. W1-11-1174**
(Consolidated)

12 NOTICE OF LODGING PROPOSED ORDER
13 ADOPTING AND MODIFYING THE
14 SPECIAL MASTER'S REPORT ON
ISSUES OF BROAD LEGAL IMPORTANCE

16 CONTESTED CASE NAME: *In re PWR 107 Claims.*

17 HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

18 DESCRIPTIVE SUMMARY: The Special Master lodges a proposed order pursuant to the Court's
minute order dated October 21, 2003. Objections to the proposed order must be filed with the
19 Superior Court on or before **Tuesday, December 9, 2003.**

20 NUMBER OF PAGES: 2 pgs.

21 DATE OF FILING: Original delivered to the Clerk of the Court on October 30, 2003.
22
23
24

1 Pursuant to the Court's request in a minute order signed on October 21, 2003, the Special
2 Master has lodged a proposed form of Order Adopting and Modifying the Special Master's Report on
3 Issues of Broad Legal Importance. A copy of the proposed order is attached hereto.

4 Parties must file written objections to the proposed order by **Tuesday, December 9, 2003**, with
5 the Clerk of the Maricopa County Superior Court, 601 West Jackson Street, Phoenix, Arizona 85003,
6 Attn: Water Case. Copies of objections must be served personally or by mail on all persons appearing
7 on the mailing lists for this matter. In order to allow time for the distribution of the monthly docket
8 sheet to subscribers and based on Pre-Trial Order No. 1 Re: Conduct of Adjudication ¶ 8(C) (May 29,
9 1986), the Special Master is allowing additional time until December 9, 2003, to file objections.

10 DATED: October 30, 2003.

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

15 The original form of order was lodged with
16 the Hon. Eddward P. Ballinger, Jr. on
17 October 30, 2003, and copies of this notice
18 were delivered to the Distribution Center for
19 copying and mailing to the parties who
20 appear on the Court-approved mailing lists
21 for Contested Case No. W1-11-1174
22 (Consolidated), dated October 30, 2003; the
23 Gila River Adjudication Court-Approved
24 Mailing List, Nos. W-1, W-2, W-3, and W-4
(Consolidated); and the Little Colorado
River Adjudication Court-Approved
Mailing List, No. 6417, both dated October
6, 2003.

23 KDolge
Kathy Dolge

1 GEORGE A. SCHADE, JR.
Special Master
2 Arizona General Stream Adjudication
Arizona State Courts Building, Suite 228
3 1501 W. Washington Street
Phoenix, AZ 85007
4 (602) 542-9600
State Bar No. 003289
5

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

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

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

10
11 **Contested Case No. W1-11-1174**
(Consolidated)

12
13 ORDER ADOPTING AND MODIFYING
THE SPECIAL MASTER'S REPORT ON
ISSUES OF BROAD LEGAL IMPORTANCE
14

15 The Court has reviewed the Special Master's Report on Issues of Broad Legal Importance
16 Regarding Supplemental Contested Case Hydrographic Survey Reports Filed in the San Pedro River
17 Watershed ("Special Master's Report"). The Court has also considered the comments, objections, and
18 requests for clarification of the report filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and
19 the Yavapai-Apache Nation (collectively, the "Apache Tribes"); the Arizona Water Company
20 ("AWC"); the Arizona Department of Water Resources ("ADWR"); Mr. Wayne D. Klump; and the
21 United States.
22
23
24

1 **Comments, Objections, and Clarification Requests**

2 The United States requests various clarifications to the Special Master’s recommendations. One
3 request is that the Court clarify that recommended notice and service procedures will apply to all
4 claims in the San Pedro River Watershed and that all claimants will have renewed opportunity to
5 object to all water claims for the subwatershed when ADWR issues new recommendations in
6 supplemental contested case hydrographic survey reports (“HSRs”).

7 Since the Final San Pedro River Watershed HSR was filed in 1991, there have been a number
8 of new claim filings, water uses, and assignments. There have also been transfers of land and/or water
9 rights. It is likely that many of the water uses reported in that HSR have been expanded, reduced, or
10 terminated. All of these changes will have to be investigated and reported. A number of additional
11 contested cases will undoubtedly be commenced. Any identified water use change and all new uses
12 reported in a supplemental contested case HSR will be subject to objection pursuant to A.R.S. § 45-
13 256(B).

14 With respect to another of the United States’ requests, the Court agrees that subflow zone
15 determinations are a requisite to issuance of supplemental contested case HSRs relating to the San
16 Pedro River Watershed, but does not agree that the Court should, as part of its review of the Special
17 Master’s Report, specifically delineate each issue to be addressed by ADWR in supplemental contested
18 case HSRs. The report did not treat with this issue, and the affected parties should have the opportunity
19 to comment on the question before the Court provides direction to ADWR. In this regard, the Court
20 agrees with ADWR that the department should be permitted to submit a draft of the first supplemental
21 contested case HSR, which conforms to the requirements of A.R.S. § 45-256(B), for comment by the
22 parties.

1 AWC's comments suggest that, with respect to the 120-day notice, the Court expand the
2 provisions currently in effect under Pretrial Order No. 5 Re: Notice of Hydrographic Survey Reports
3 (March 29, 2000). The Court believes that Pretrial Order No. 5, as clarified by this order, provides
4 adequate notice to parties interested in, or potentially affected by, the supplemental reports described in
5 the Special Master's Report.

6 As mentioned above, the Court will adopt ADWR's suggestion to file and disseminate a draft
7 of the first supplemental contested case HSR to permit the parties to comment on content and
8 formatting issues. The Court also approves of ADWR's recommendations that the Special Master's
9 notice, described in Recommendation 5 of the report, contain information regarding a claimant's
10 responsibility to notify ADWR of changes of address or ownership as required by Pretrial Order No. 4
11 Re: Notification and Correction of Address Changes (January 24, 2000) and that it be sent together
12 with ADWR's notice of filing of the first supplemental contested case HSR.*

13 The Apache Tribes suggest that the protections of due process for all parties will be enhanced if
14 recipients of the notice of the first supplemental contested case HSR are made aware that they may
15 elect to receive notice of subsequent supplemental contested case HSRs by requesting to be placed on a
16 mailing list maintained by ADWR. The Court agrees that this procedure will assist in assuring that due
17 process requirements are fulfilled.

18 The notice of objection filed by Mr. Wayne D. Klump does not relate to any of the matters in
19 the Special Master's Report, and will be dismissed.

22 * ADWR has concerns regarding the accuracy of its databases. The Court encourages ADWR to continue its
23 efforts to update its databases using all means available and to seek the necessary funding to permit it to fulfill
24 its notification responsibilities.

1 **Finding and Order**

2 The Court finds that notice of the Special Master’s Report was given as required by law, prior
3 orders of this Court, and the Rules for Proceedings Before the Special Master.

4 IT IS ORDERED:

5 1. The Court accepts the findings of fact and conclusions of law as set forth in the Special
6 Master’s Report.

7 2. The Court adopts all the recommendations and their supporting reasons as set forth in
8 the Special Master’s Report. The recommendations adopted are:

9 A. Recommendation 1: A preliminary supplemental contested case HSR is not
10 required prior to the filing of any supplemental contested case HSR.

11 B. Recommendation 2: The procedures set forth in Pre-Trial Order No. 1 ¶ 12(D)(1
12 and 2) are not adopted for supplemental contested case HSRs.

13 C. Recommendation 3: All claimants in the Gila River Adjudication shall be
14 notified of the filing of supplemental contested case HSRs in the San Pedro River Watershed.

15 D. Recommendation 4: Upon filing the first supplemental contested case HSR in
16 the San Pedro River Watershed, ADWR is directed to send a copy of the objection notice by
17 first-class mail to the persons included on the mailing list for the contested case, to persons
18 appearing on the Court-approved mailing list, to each claimant and nonclaimant water user in
19 the San Pedro River Watershed, to all persons who filed objections to the Final San Pedro River
20 Watershed HSR (1991), and to every other claimant in the Gila River Adjudication.

21 E. Recommendation 5: Upon ADWR filing the first supplemental contested case
22 HSR in the San Pedro River Watershed, the Special Master is directed to send a notice
23 informing all claimants in the Gila River Adjudication that other supplemental contested case
24

1 HSRs will be filed in the San Pedro River Watershed, but notice of future supplemental
2 contested case HSRs filed in the San Pedro River Watershed will be sent by first-class mail
3 only to the persons included on the mailing list for the contested case, to persons appearing on
4 the Court-approved mailing list, to each claimant and nonclaimant water user in the San Pedro
5 River Watershed, and to all persons who filed objections to the Final San Pedro River
6 Watershed HSR (1991). This notice should include, if available, a description and filing
7 schedule for future supplemental contested case HSRs in the San Pedro River Watershed and
8 other relevant information about the Gila River Adjudication.

9 F. Recommendation 6: For subsequent supplemental contested case HSRs filed in
10 the San Pedro River Watershed, ADWR is directed to send a copy of the objection notice by
11 first-class mail to the persons included on the mailing list for the contested case, to persons
12 appearing on the Court-approved mailing list, to each claimant and nonclaimant water user in
13 the San Pedro River Watershed, and to all persons who filed objections to the Final San Pedro
14 River Watershed HSR (1991).

15 G. Recommendation 7: The procedures set forth in Pretrial Order No. 5 ¶¶ 3 and
16 5(B)(C)(E) and (F) are adopted for all supplemental contested case HSRs.

17 H. Recommendation 8: At least 120 days before a supplemental contested case
18 HSR is filed in the San Pedro River Watershed, ADWR shall file a notice with the Clerk of the
19 Superior Court. This 120-day notice shall state the date on which the supplemental contested
20 case HSR is to be filed and the deadlines for filing a new statement of claimant or amendment
21 to an existing statement of claimant as provided by A.R.S. § 45-254. ADWR shall send a copy
22 of the 120-day notice by first-class mail to all persons listed on the mailing list for the contested
23 case, to persons appearing on the Court-approved mailing list, and to all claimants and
24

1 nonclaimant water users in the subwatershed or subwatersheds of the major watershed covered
2 by the supplemental contested case HSR.

3 I. Recommendation 9: All claimants in the Gila River Adjudication will be
4 allowed to file objections to any supplemental contested case HSR filed in the San Pedro River
5 Watershed.

6 J. Recommendation 10: Any claimant may file written objections to a
7 supplemental contested case HSR or any part of the report, filed in the San Pedro River
8 Watershed, within one hundred eighty days of the date on which the report was filed.

9 K. Recommendation 11: The requirements for objections to a final HSR contained
10 in Pre-Trial Order No. 1 ¶ 12(D)(3)(a)(b) and (c) are adopted for objections to all supplemental
11 contested case HSRs.

12 L. Recommendation 12: The procedures set forth in Pretrial Order No. 5 ¶ 7(B) and
13 (C) are adopted for all supplemental contested case HSRs.

14 M. Recommendation 13: Objections to supplemental contested case HSRs filed in
15 the San Pedro River Watershed shall not be limited in any manner to the supplemental
16 information reported in the HSR.

17 3. When the first San Pedro River Watershed supplemental contested case HSR is filed,
18 ADWR shall send the persons included on the mailing list for the contested case, persons appearing on
19 the Gila River Adjudication Court-Approved Mailing List, each claimant and nonclaimant water user
20 in the San Pedro River Watershed, all persons who filed objections to the Final San Pedro River
21 Watershed HSR (1991), and every other claimant in the Gila River Adjudication a written notice
22 providing a mechanism that permits a claimant or person to request to be placed on a mailing list,
23 maintained by ADWR, to be notified whenever a supplemental contested case HSR is filed.

1 The notice shall state that a claimant or person can elect, at any time, not to receive any further
2 notice of the filing of a supplemental contested case HSR by advising ADWR in writing, and that a
3 claimant or person requesting to be placed on this mailing list shall notify ADWR, within thirty (30)
4 days of the change, of any of the following changes regarding that person or concerning that person's
5 statement of claimant form: (1) a change in that person's address; (2) an assignment of the statement of
6 claimant form to another person; (3) a transfer to another person of all or part of the land for which a
7 water right has been claimed; and (4) a transfer to another person of all or part of the water right
8 claimed, if the claimed water right has been severed and transferred to another parcel of land. ADWR
9 may provide any other information that would benefit claimants or help ADWR in subsequent
10 notifications.

11 4. ADWR is directed to provide a draft of the first supplemental contested case HSR for
12 review by the parties listed on the Gila River Adjudication Court-Approved Mailing List, with an
13 opportunity for comment, so that content and formatting issues may be addressed. This process should
14 not delay the finalization of the first supplemental contested case HSR.

15 5. The Special Master is directed to incorporate the notice procedures described in
16 Recommendation 5 of the Special Master's Report together with ADWR's notice of filing of the first
17 supplemental contested case HSR. The Special Master's notice shall reflect claimants' responsibility to
18 notify ADWR of changes of address or ownership changes as required under Pretrial Order No. 4 Re:
19 Notification and Correction of Address Changes. The information regarding claimants' responsibilities
20 under Pretrial Order No. 4 shall be publicized frequently.

21 6. The objection filed by Mr. Wayne D. Klump is dismissed.

22 7. The motion of the Special Master to approve the recommendations contained in the
23 report is GRANTED subject to the foregoing modifications.

