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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)

CIVIL NO. W1-11-1174 (Consolidated)

11 REPORT OF THE SPECIAL MASTER
12 CONCERNING 16 CLAIMS FOR FEDERAL
13 RESERVED WATER RIGHTS BASED ON
14 PUBLIC WATER RESERVE NO. 107

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

16 **HSR INVOLVED:** San Pedro River Watershed Hydrographic Survey Report.

17 **DESCRIPTIVE SUMMARY:** The Special Master files a report on federal reserved water rights for
18 lands managed by the United States Department of the Interior, Bureau of Land Management that
have been settled by stipulation and moves the Court to adopt the report and enter a partial decree
adjudicating these rights.

19 Objections to this report and to the proposed partial decree must be filed with the Clerk of the
20 Maricopa County Superior Court on or before July 17, 2017. Responses to objections shall be filed
by August 16, 2017.

21 **NUMBER OF PAGES:** 24.

22 **DATE OF FILING:** May 17, 2017.
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1 **I. INTRODUCTION**

2 This contested case originally involved 40 federal reserved water rights asserted by the
3 United States pursuant to Public Water Reserve No. 107 (“PWR 107”), an Executive Order of
4 President Calvin Coolidge dated April 17, 1926.¹ On August 4, 2004, the United States amended
5 two of its statements of claimants to remove federal reserved water rights under PWR 107 as the
6 basis for its claims, instead relying on state law to support its claimed water rights.² By Order dated
7 April 1, 2008, the Court dismissed eight of the original claims³ and issued a partial decree for 14
8 claims⁴ to water from springs located on federal public lands managed by the United States
9 Department of the Interior, Bureau of Land Management (“BLM”), within the San Pedro River
10 Watershed. On May 9, 2017, the United States, the Tonto Apache Tribe and the Yavapai-Apache
11 Nation filed a stipulation to resolve their objections and agreed to the entry of a partial decree for the
12 remaining sixteen federal reserved water rights based on PWR 107. The 16 Statements of Claimant
13 subject to this Report are: 39-11181, 39-11182, 39-11183, 39-11187, 39-11201, 39-11202, 39-11203,
14 39-11204, 39-11205, 39-11206, 39-11207, 39-11209, 39-11210, 39-11211, 39-14445, and 39-14446.

15 The Special Master accepts the stipulation and the proposed abstracts of water rights.
16 Pursuant to A.R.S. § 45-257(A)(2) the Special Master has the duty to “prepare and file with the
17 court a report in accordance with rule 53(g) of the Arizona rules of civil procedure, which shall
18 contain those determinations, recommendations,....” The Special Master recommends that the Court
19 approve the stipulated agreement and proposed abstracts of water rights and enter a partial decree.

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22 ¹ The San Pedro Hydrographic Survey Report, issued November 20, 1991, lists the claims in Vol. 1, Table 5-50, pp. 378-379.

² Those two claims were asserted in amended statements of claimant: 39-11157 and 39-11169.

³ Those eight claims were asserted in statements of claimant: 39-11161; 39-11188; 39-11189; 39-11208; 39-11217; 39-11221; 39-11243; and 39-14443. See Partial Report of the Special Master filed June 12, 2007, p. 9.

⁴ Those 14 claims were asserted in statements of claimant: 39-11160; 39-11180; 39-11219; 39-11222; 39-11228; 39-14438; 39-14439; 39-14440; 39-14441; 39-14442; 39-14444; 39-14492; 39-14499; 39-14500.

1 **II. CHRONOLOGY OF PROCEEDINGS**

2 This case was initiated on May 2, 2002, to resolve the objections to 40 statements of claimant
3 filed by the BLM's Safford District that claimed federal reserved water rights pursuant to PWR 107
4 (collectively, "PWR 107 claims"). ASARCO Incorporated, City of Benson, Gila River Indian
5 Community,⁵ City of Phoenix, Salt River Project Agricultural Improvement and Power District and
6 Salt River Valley Water Users' Association ("SRP"), and the City of Sierra Vista executed
7 stipulations with the United States resolving all of their respective objections to the PWR 107 claims.
8 *Partial Report of the Special Master Concerning Public Water Reserve No. 107 Claims of the United*
9 *States in the San Pedro Watershed*, filed June 12, 2007, p. 3. The San Carlos Apache Tribe, the
10 Tonto Apache Tribe and the Yavapai-Apache Nation did not execute a stipulation for the 16 springs
11 that are the subject of this Report.

12 On April 20, 2016, the San Carlos Apache Tribe and the United States filed a joint report
13 attaching a proposed stipulation and 16 proposed abstracts for water rights. Each abstract named the
14 United States as the owner, listed the priority date as April 17, 1926, identified the water use as
15 stockwater, and acknowledged the basis of claim as a federal reserved water right under PWR 107.
16 Given its technical expertise in analyzing the information included in an abstract of a water right, the
17 Arizona Department of Water Resources (ADWR) was directed to assess the accuracy and
18 completeness of the factual information contained in the stipulated abstracts of water rights. On June
19 19, 2016, ADWR filed its Technical Review. On May 9, 2017, the United States and the Tonto
20 Apache Tribe and the Yavapai-Apache Nation filed a stipulation to resolve objections and agreed to
21 the entry of a decree for each of the listed 16 claims.

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23 ⁵ On May 4, 2017, the United States filed stipulations resolving objections by the Gila River Community, SRP and
24 Wilfred Claridge to statements of claimant 39-11201, 39-11202, 39-11203 and 39-14445. Counsel for the United States
represented that the stipulations were originally signed in 2003, but inadvertently were not filed with the court.

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2 **III. PROPOSED ABSTRACTS OF WATER RIGHTS**

3 The Arizona Department of Water Resource examined the proposed abstracts to verify the
4 ownership of the land; consistency with the amended statements of claimant; the reasonableness of
5 the volume of water claimed; and the locations of the point of diversion and place of use. It
6 confirmed that the Bureau of Land Management owned all of the land involved and that the abstracts
7 were consistent with the amended statements of claimant. Specifically, ADWR “found that each of
8 the 16 springs was reported as being within a BLM grazing lease.” *Id. at p. 3.* After converting the
9 flow rate/volume reported in acre-feet per annum to gallons per day, ADWR determined that amount
10 of water claimed would provide sufficient water for four to thirty cattle animal units and concluded
11 that the volumes were “not unreasonable”. Arizona Department of Water Resources’ Review of
12 Stipulation and Water Right Abstracts, filed June 19, 2016, p. 4. It suggested no changes to the
13 identified places of use and points of diversion. As its final recommendation, ADWR stated:
14 “Based on ADWR’s review, ADWR recommends that a partial decree be entered for each of the
15 claims described in the stipulated water rights abstracts”. *Id. at p. 6.*

16 The basis of the claims is President Calvin Coolidge’s Executive Order entitled Public Water
17 Reserve No. 107 dated April 17, 1926. The Idaho Supreme Court⁶ and the Colorado Supreme Court⁷
18 have determined that this executive order provides a basis for a federal reserved water right for stock
19 watering with a date of priority of April 17, 1926.

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22 ⁶ *United States v. Idaho*, 131 Idaho 468, 959 P.2d 449, 453 (1998) (“We hold that PWR 107 is a valid basis for a federal
23 reserved water right for the limited purpose of stockwatering.”), *cert. denied Idaho v. United States*, 526 U.S. 1012
(1999), *cert. denied sub nom. Hoagland v. United States*, 526 U.S. 1012 (1999). The Court noted the benefit of a
consistent date of priority for these water rights, namely, April 17, 1926.

24 ⁷ *United States v. City and County of Denver*, 656 P.2d 1, 31 (Colo. 1982) (“We agree that the federal government has
reserved rights to provide a watering supply for animal and human consumption.”).

1 The Special Master recommends that the Court adjudicate and decree the water rights of the
2 United States as set forth in the 16 proposed abstracts of water rights stipulated by the parties.

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4 **IV. SPECIAL PROCEDURAL ORDER PROVIDING FOR THE APPROVAL OF
5 FEDERAL WATER RIGHTS SETTLEMENTS, INCLUDING THOSE OF INDIAN TRIBES**

6 Special proceedings to consider the stipulation and proposed abstracts are not warranted
7 under the Arizona Supreme Court's Special Procedural Order Providing for the Approval of Federal
8 Water Rights Settlements, Including Those of Indian Tribes for the reasons that the settlement of
9 these claims was reached in the normal course of the adjudication of the San Pedro River Watershed,
10 and there are no special circumstances preventing the Court from considering the settlement
11 agreements in the normal course of the adjudication.

12
13 **V. RECOMMENDATIONS**

14 The Special Master recommends that the Court:

- 15 1. Find that notice of this Report was given as required by law and prior orders of this
16 Court, and the time allowed for claimants to file objections to the Report was as required by law.
- 17 2. Approve the stipulated agreement of the parties.
- 18 3. Adjudicate and decree the water rights of the United States of America as set forth in
19 the 16 abstracts of water rights stipulated by the parties.
- 20 4. Order that the 16 stipulated abstracts shall be incorporated in the tabulations or lists of
21 all water rights and their relative priorities on the Gila River System and Source in the form that the
22 Court shall determine to be most appropriate.

1 **VI. MOTION FOR ADOPTION OF THE SPECIAL MASTER'S PARTIAL REPORT**

2 The Special Master moves the Court under A.R.S. § 45-257(B) and Rule 53(h), Ariz. R. Civ.
3 P. to adopt the recommendations contained in this report and adjudicate the water rights set forth in
4 the abstracts in Attachment A in a partial decree in the San Pedro River Watershed adjudication.

5 A.R.S. § 45-257(A)(2) provides in pertinent part that when the Special Master submits a
6 report to the Court in accordance with Rule 53(g), Ariz. R. Civ. P., “[e]ach claimant may file written
7 objections with the court to any rule 53(g) report within...sixty days after the report is filed with the
8 court.... If the report covers an entire...federal reservation, each claimant may file with the court
9 written objections to the report within one hundred eighty days of the date on which the report was
10 filed with the court.” The stipulated agreement and proposed abstracts do not cover an entire federal
11 reservation but pertain to a portion of the water rights claimed for the BLM’s lands within the San
12 Pedro River Watershed. Accordingly, the 180-day period specified by A.R.S. § 45-257(A)(2) for
13 filing objections to this report is not applicable. The period for filing objections to this report is 60
14 days.

15 Any claimant in the Gila River Adjudication may file a written objection to this report and the
16 proposed partial decree on or before **July 17, 2017**. Responses to objections shall be filed by **August**
17 **16, 2017**.

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19 Submitted this 17th day of May, 2017.

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22 Susan Ward Harris
23 Special Master
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1 On May 17, 2017, the report was delivered to
2 the Clerk of the Maricopa County Superior
3 Court for filing and distributing a copy to all
persons listed on the Court approved mailing
list for Contested Case No. W1-11-1174.

4 *Barbara K. Brown*
5 Barbara K. Brown

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Attachment A

Bureau of Land Management

CLAIM NUMBER	39-11181
OWNER:	United States
NAME:	Oak Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NW¼ SW¼ Sec 29 T5S R19E
PLACE OF USE:	NW¼ SW¼ Sec 29 T5S R19E
FLOW RATE/VOLUME	0.11 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11182
OWNER:	United States
NAME:	John Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NW¼ SE¼ Sec 30 T5S R19E
PLACE OF USE:	NW¼ SE¼ Sec 30 T5S R19E
FLOW RATE/VOLUME	0.11 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11183
OWNER:	United States
NAME:	Juniper Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SE¼ SE¼ Sec 30 T5S R19E
PLACE OF USE:	SE¼ SE¼ Sec 30 T5S R19E
FLOW RATE/VOLUME	0.11 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11187
OWNER:	United States
NAME:	Bull Muhly Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SW¼ NW¼ Sec 29 T5S R19E
PLACE OF USE:	SW¼ NW¼ Sec 29 T5S R19E
FLOW RATE/VOLUME	0.20 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	ORIGINAL SOC INCORRECTLY CLAIMED 0.020 AFA, THIS AMOUNT IS AMENDED TO 0.20 AFA.

Bureau of Land Management

CLAIM NUMBER	39-11201
OWNER:	United States
NAME:	No. 2 Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NW¼ NE¼ Sec 29 T5S R19E
PLACE OF USE:	NW¼ NE¼ Sec 29 T5S R19E
FLOW RATE/VOLUME	0.40 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11202
OWNER:	United States
NAME:	Upper Boulder Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NE¼ SW¼ Sec 20 T5S R19E
PLACE OF USE:	NE¼ SW¼ Sec 20 T5S R19E
FLOW RATE/VOLUME	0.40 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11203
OWNER:	United States
NAME:	Claridge Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 29 T5S R19E
PLACE OF USE:	NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 29 T5S R19E
FLOW RATE/VOLUME	0.19 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11204
OWNER:	United States
NAME:	Cottonwood Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SE¼ NW¼ Sec 29 T5S R19E
PLACE OF USE:	SE¼ NW¼ Sec 29 T5S R19E
FLOW RATE/VOLUME	0.40 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11205
OWNER:	United States
NAME:	Upper Deer Creek #1Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NE¼ NE¼ Sec 18 T5S R20E
PLACE OF USE:	NE¼ NE¼ Sec 18 T5S R20E
FLOW RATE/VOLUME	0.07 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11206
OWNER:	United States
NAME:	Indian Draw Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 7 T5S R20E
PLACE OF USE:	SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 7 T5S R20E
FLOW RATE/VOLUME	0.07 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11207
OWNER:	United States
NAME:	Upper Deer Creek #2 Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NE¼ NE¼ Sec 18 T5S R20E
PLACE OF USE:	NE¼ NE¼ Sec 18 T5S R20E
FLOW RATE/VOLUME	0.07 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11209
OWNER:	United States
NAME:	Goat Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SE¼ NE¼ Sec 13 T5S R19E
PLACE OF USE:	SE¼ NE¼ Sec 13 T5S R19E
FLOW RATE/VOLUME	0.05 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11210
OWNER:	United States
NAME:	Horse Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 18 T5S R20E
PLACE OF USE:	SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 18 T5S R20E
FLOW RATE/VOLUME	0.05 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-11211
OWNER:	United States
NAME:	Juniper Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NE¼ SE¼ Sec 13 T5S R19E
PLACE OF USE:	NE¼ SE¼ Sec 13 T5S R19E
FLOW RATE/VOLUME	0.05 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	

Bureau of Land Management

CLAIM NUMBER	39-14445
OWNER:	United States
NAME:	Warm Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	NE¼ SW¼ Sec 23 T5S R19E
PLACE OF USE:	NE¼ SW¼ Sec 23 T5S R19E
FLOW RATE/VOLUME	0.153 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	ORIGINAL SOC INCORRECTLY CLAIMED 0.077 AFA THIS IS AMENDED TO 0.153 AFA.

Bureau of Land Management

CLAIM NUMBER	39-14446
OWNER:	United States
NAME:	Chest Spring
DATE OF RESERVATION:	04/17/1926
SOURCE:	Spring
POINT OF DIVERSION:	SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 29 T5S R19E
PLACE OF USE:	SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 29 T5S R19E
FLOW RATE/VOLUME	0.06 AFA
USE:	Stockwater
BASIS OF CLAIM:	Federal reserved water right - PWR 107
REMARKS:	