

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

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  
GILA RIVER SYSTEM AND SOURCE

DATE: August 9, 2012

CIVIL NO. W1-11-3342

ORDER SETTING A PRE-HEARING  
SCHEDULE AND CLARIFYING THE  
SCOPE OF THE TECHNICAL  
ASSISTANCE OF THE ARIZONA  
DEPARTMENT OF WATER  
RESOURCES AT THIS TIME

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master sets time lines for filing disclosure statements, completing discovery, disclosing expert reports, filing dispositive motions, and holding a status conference. The Special Master clarifies the scope of the technical assistance of the Arizona Department of Water Resources at this time.

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The Special Master has considered the proposed pre-hearing statements and the comments concerning the technical assistance to be provided by the Arizona Department of Water Resources (“ADWR”) at this time.

All understand “the burden that the trial court will face in adjudicating the extent

and relative priority of' federal reserved water rights, but "we must heed the lesson that 'the best way out is always through.'"<sup>1</sup> The Special Master is going to focus on the five issues set for an evidentiary hearing and will proceed in the most efficient and proper manner to advance this case.

Directing ADWR at this time to prepare a report consistent with A.R.S. § 45-256(B), as the United States argues, will put this case on hold for 12 to 24 months. It will require ADWR to ask the parties for information and data that could be obtained more completely and efficiently through disclosures. Moreover, we risk involving ADWR in determining what the majority of the litigants argue are questions of law.

The optimal timing for such a report is not at this time. However, such report will have to be considered at a future time as the San Carlos Apache Tribe, Tonto Apache Tribe, and City of Sierra Vista argue.

The Special Master will set time lines for filing disclosure statements, completing discovery, disclosing expert reports, filing dispositive motions, and holding a status conference.

Concurrent with these time lines, ADWR will be directed to work on several matters whose completion will make the scope of a report clearer. An update of the watershed file reports associated with the wilderness area should satisfy the suggestion of the San Carlos Apache Tribe and Tonto Apache Tribe concerning the identification of water claims and users.<sup>2</sup>

The Salt River Project mentioned the issue of the interaction of a federal reserved water right and a vested state law based right. This is an issue the Special Master hopes and encourages the litigants to discuss to determine if a mutual resolution or stipulations on certain aspects can be reached.

IT IS ORDERED:

1. On or before **November 13, 2012**, the United States shall file its initial Arizona Rule of Civil Procedure 26.1 disclosure statement.
2. On or before **January 11, 2013**, all other parties shall file their initial Rule 26.1 disclosure statements.
3. All disclosure statements shall be limited to matters concerning the five issues designated in the Special Master's order filed on April 17, 2012. All disclosures shall conform to the procedures and requirements set forth in section II.7 of the Special Master's case initiation order filed on August 17, 2009.

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<sup>1</sup> *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 422, 989 P.2d 739, 750 (1999), *cert. denied sub nom. Phelps Dodge Corp. v. U.S. and Salt River Valley Water Users' Assn. v. U.S.*, 530 U.S. 1250 (2000).

<sup>2</sup> Apache Tribes' Comments at 4 (June 22, 2012).

4. ADWR is directed to maintain the electronic data base and index of all disclosed documents as set forth in section II.8 of the Special Master's case initiation order filed on August 17, 2009.

5. On or after **January 14, 2013**, parties may commence formal discovery, but prior thereto may, and are encouraged, to engage in informal discovery. Discovery shall be limited to matters concerning the five issues designated in the Special Master's order filed on April 17, 2012. All discovery related to these issues shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, and as applicable, pretrial orders issued in this adjudication and the Rules for Proceedings Before the Special Master.

6. On or before **March 8, 2013**, the United States shall disclose expert reports for any expert witnesses that it plans to call as witnesses at the evidentiary hearing.

7. On or before **May 10, 2013**, all other parties shall disclose expert reports for any expert witnesses that they plan to call as witnesses at the evidentiary hearing.

8. By **July 12, 2013**, all discovery including depositions shall be completed.

9. On or before **September 13, 2013**, any party in this case may file the appropriate motion or statement of position that presents the party's position concerning any of the designated issues. Each issue shall be separately addressed. Parties sharing the same position are encouraged to file joint pleadings. Parties are excused from mandated page limitations for motions, responses, and replies, but reasonableness is expected.

10. On **October 2, 2013, at 9:00 a.m. (MST)**, location to be announced later, a conference will be held to discuss the status of the case, set time lines for responses and replies, schedule oral argument, discuss the need and scope of a report provided by ADWR, and consider any other matter that will expedite the conclusion of this case.

11. ADWR is directed to begin immediately compiling the following information:

- A. A summary of the federal claims for reserved water rights as amended and all state law based water rights held or claimed by the United States within the boundaries of the Aravaipa Canyon Wilderness Area;
- B. An evaluation of the methodologies used by the United States to quantify its federal and state law based claims;
- C. An evaluation of the quantities claimed by the United States for its state law based water rights and claims; and,
- D. An update of the watershed file reports associated with the Aravaipa Canyon Wilderness Area reported in the 1991 Final Hydrographic Survey Report for the San Pedro River Watershed.

ADWR is directed to exert its best efforts to complete or significantly complete these four assignments by September 9, 2013.

DATED: August 9, 2012.

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

On August 9, 2012, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3342 dated July 17, 2012.

/s/ Barbara K. Brown  
Barbara K. Brown