

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: November 12, 2009

CIVIL NO. W1-11-3423

ORDER DESIGNATING AN
ISSUE FOR BRIEFING

CONTESTED CASE NAME: *In re Powers Garden Administrative Site.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master designates an issue for briefing and sets times for disclosure statements, discovery, and briefing.

NUMBER OF PAGES: 7; Attachment A - 1; total 8 pages.

DATE OF FILING: November 12, 2009.

The United States requested the Special Master to designate an issue for briefing and set times for initial disclosures and a briefing schedule. The request is granted, and the following procedures and timelines shall apply.

1. Issue Designated for Briefing. Is the United States entitled to a federal reserved water right that includes the use of water for irrigation and stockwatering purposes at the Powers Garden Administrative Site in the Coronado National Forest?

2. Court Approved Mailing List. Previously, parties were informed that “[a]t

a future time, the Special Master will post a mailing list for this case [on the Special Master's Internet site]." Order 4 (Nov. 30, 2007). The mailing list for this case shall include the Coronado National Forest, Gila River Indian Community, Salt River Project, San Carlos Apache Tribe, Tonto Apache Tribe, Yavapai-Apache Indian Community, Camp Verde Reservation, Mr. Anthony J. Lunt, Clerk of the Maricopa County Superior Court, Arizona Department of Water Resources ("ADWR"), and the Special Master. Judge Eddward P. Ballinger, Jr. will not be included in the mailing list. The mailing list is set forth in Attachment A.

A. These parties are the landowner, current livestock grazing permittee, and claimants who objected to all or portions of Watershed File Report No. 115-9-1 of the Hydrographic Survey Report for the San Pedro River Watershed (1991). Parties allowed to intervene will be added to the mailing list. The list may be modified from time to time, and litigants are responsible for using the current Court approved mailing list.

B. A copy of any pleading filed with the Clerk of the Maricopa County Superior Court shall be served upon all persons listed on the mailing list.

C. Claimants wishing to be added or removed from the mailing list shall file a motion with the Special Master.

3. Filings.

A. Date of Filing. Papers submitted to the Clerk of the Maricopa County Superior Court shall be considered timely filed if postmarked by the deadline specified in an order issued in this case.

B. Signature Page. In papers joined by numerous parties, in lieu of separate signature pages, the Special Master will accept an avowal by lead counsel that lists the attorneys and the parties each represents who join in the pleading. This allowance is made pursuant to Arizona Rule of Civil Procedure 1 that the rules "shall be construed to secure the ... inexpensive determination of every action." If a party has concerns related to Rule 11(a), that party may request or provide an individual signature.

4. Disclosure Statements.

A. Scope. Disclosure statements shall be limited to matters concerning the issue designated for briefing in this order.

B. Filing Date for the United States. On or before **February 10, 2010**, the United States shall file its initial Arizona Rule of Civil Procedure 26.1 disclosure statement.

C. Filing Date for All Other Parties. On or before **March 12, 2010**, all other parties shall file their initial Rule 26.1 disclosure statements.

D. Contents. All disclosures shall include information and data in the

possession, custody, and control of the disclosing party as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation. The disclosure statement shall set forth:

- (1). The factual basis of a party's claim concerning each of the designated issue.
- (2). The legal theory upon which each claim is based including, where necessary for a reasonable understanding of the claim, citations of pertinent legal or case authorities.
- (3). The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call to substantiate its claims with a fair description of the substance of each witness' expected testimony.
- (4). The names and addresses of all persons whom the disclosing party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to each claim, and the nature of the knowledge or information each such individual is believed to possess.
- (5). The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
- (6). The name and address of each person whom the disclosing party expects to call as an expert witness, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert.
- (7). The existence, location, custodian, and general description of any tangible evidence, relevant documents, or electronically stored information that the party plans to use to support its claims.
- (8). A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by the disclosing party to exist whether or not in its possession, custody, or control and which that party believes may be relevant to any of its claims concerning the designated issues, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made,

available for inspection and copying. Unless good cause is stated for not doing so, a copy of the documents and electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

E. Continuing Duty. All parties shall have a continuing duty to disclose as required by and in the manner provided in Rule 26.1(b)(2).

F. Service of Disclosures. All disclosing parties shall provide a notice of filing and a listing of the disclosed documents and electronically stored information to all persons appearing on the Court approved mailing list for this case. Paper copies of disclosed documents need not be served upon the other parties in this case, as copies can be obtained from ADWR.

G. Service of Lengthy Listing of the Disclosed Documents: If a party's listing of its disclosed documents or electronically stored information, not the disclosure statement, exceeds twenty-five pages, that party shall so state in its disclosure statement and shall provide a copy of the complete listing to the Special Master, ADWR, and to those parties who request from the disclosing party a copy of the complete listing.

5. Electronic Data Base and Index Provided by ADWR. ADWR is directed to create and maintain an electronic data base and index of all disclosed documents which shall be available on ADWR's Internet site. ADWR may confer and work with any of the parties in this case to implement the electronic data base and index.

A. Electronic Format. A disclosing party shall submit to ADWR a copy of all documents disclosed and an index of the documents in accordance with the following requirements:

(1). Number each document in numeric sequence with a unique alpha identifier that is related to the name of the disclosing party.

(2). *Counsel who has prior experience with these data bases should note the changes made in subsections a, b, c, e, i, and j, and new subsection k.* Complete a Disclosure Input Form in Microsoft Excel format for each disclosed document containing the following searchable index fields:

a. Title or description of document. The verbatim title of the document shall be used. If a document does not have a title, a brief description in square brackets shall be provided.

b. Unique identifying number created by the disclosing

party for each document. The unique identifying number shall be limited to ten alpha numeric characters.

c. Date of publication or preparation of document. The format shall be YYYY/MM/DD. Where a date is not identified in a document, the format shall be YYYY/MM/00. Where neither a date nor a month is identified, the format shall be YYYY/00/00.

d. Document type (article, book, letter, map, report).

e. Recipient. The format shall be Last Name, First Name.

f. Number of pages of document.

g. Disclosing party.

h. Date of submittal of document.

i. Subject matter of document (up to three categories). To the extent a party wishes to use the subject matter field, information already entered in any other field shall not be repeated in the subject matter field.

j. Author. The format shall be Last Name, First Name.

k. Recipient Title Position. The format shall be Position Title, Employee Entity.

(3). Create a portable document format file (.pdf) of each document.

(4). Provide a compact disc to ADWR with copies of the Disclosure Input Forms (Microsoft Excel files) and corresponding disclosure documents in .pdf file format.

(5). Provide to ADWR paper copies of disclosed documents and corresponding Disclosure Input Forms. ADWR will maintain paper copies to satisfy the Public Records Act, A.R.S. §§ 39-101 *et seq.*

B. Internet Access. ADWR shall place a blank copy of the Disclosure Input Form together with format protocols on the Internet at a domain or address made known to all persons who appear on the Court approved mailing list for this case. In order to provide access to the disclosed documents, each index field in the Disclosure Input Form shall be subject to query. To the greatest extent possible, electronic copies of all disclosed documents and completed Disclosure Input Forms shall be made available on the Internet for viewing and copying.

C. Form. To the extent possible, parties shall submit documents in the following form: single-sided, 8.5" x 11" size, no punched holes, no permanent binding (staples excepted), and no tabs.

D. Copies of Disclosed Documents. ADWR shall make available to any claimant, at the claimant's expense, a copy of disclosed documents on a CD-ROM or a paper copy. ADWR shall determine the best and most practical manner for providing copies.

E. Fees. ADWR may collect its standard fees for copies and other services rendered related to the use of the electronic data base and index.

6. Discovery.

A. Scope. Discovery shall be limited to matters concerning the issue designated for briefing in this order.

B. Commencement. Parties may commence formal discovery on or after **March 12, 2010**, but prior thereto may, and are encouraged, to engage in informal discovery.

C. Completion. All discovery including depositions shall be completed by **June 11, 2010**.

D. Rules. All discovery related to the designated 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.

7. Motions. On or before **July 2, 2010**, any party in this case may file the appropriate motion that presents the party's position concerning the issue set for briefing. Parties sharing the same position are encouraged to file joint pleadings.

8. Responses. Responses to all motions shall be filed by **August 27, 2010**.

9. Replies. Replies to all motions shall be filed by **October 1, 2010**.

10. Statement of Position. A party may file a statement of position in lieu of a motion. Responses to a statement and replies shall be subject to the foregoing deadlines.

11. Page Limitations. Parties are excused from mandated page limitations for motions, responses, and replies, but reasonableness is expected.

12. Oral Argument. Oral argument on all motions shall be held on **November 2, 2010 at 9:00 a.m.**, in the Maricopa County Superior Court. The location of oral argument will be announced later.

On or before **November 1, 2010**, counsel who will participate in oral argument shall file a proposed schedule of presentation and allocation of time. Counsel may plan

for a half court day of argument or less as necessary.

DATED: November 12, 2009.

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

On November 12, 2009, 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. W1-11-3423 dated July 27, 2009.

/s/ Barbara K. Brown
Barbara K. Brown

Court Approved Mailing List
 In re Powers Garden Administrative Site
 W1-11-3423 (10 Names)
 Prepared by the Special Master
 November 12, 2009

<p>Clerk of the Superior Court Maricopa County Attn: Water Case 601 West Jackson Street Phoenix AZ 85003</p>	<p>Montgomery & Interpreter, P.L.C. Susan B. Montgomery and Robyn L. Interpreter 11811 North Tatum Blvd, Suite 3031 Phoenix AZ 85028</p>
<p>Coronado National Forest Forest Supervisor 300 West Congress Tucson AZ 85701</p>	<p>Arizona Department of Water Resources Legal Division Janet L. Ronald 3550 North Central Avenue, 4th Floor Phoenix AZ 85012</p>
<p>Gila River Indian Community Jennifer K. Giff, R. B. Lewis, J. T. Hestand, R. E. Koester, and A. M. Chischilly 525 West Gu u Ki P. O. Box 97 Sacaton AZ 85247</p>	<p>Special Master Arizona General Stream Adjudication George A. Schade, Jr. 201 West Jefferson, CCB 5B Phoenix AZ 85003-2205</p>
<p>U.S. Department of Justice Environment and Natural Resources Division R. Lee Leininger 1961 Stout Street, 8th Floor Denver CO 80294</p>	<p>The Sparks Law Firm, P.C. Joe P. Sparks and Laurel A. Herrmann 7503 First Street Scottsdale AZ 85251-4573</p>
<p>Anthony J. Lunt 33000 West Deer Creek Ranch Road Klondyke AZ 85643</p>	<p>Salmon, Lewis & Weldon, P.L.C. John B. Weldon, Jr. and Lisa M. McKnight 2850 East Camelback Road, Suite 200 Phoenix AZ 85016</p>