

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: April 5, 2012

CIVIL NO. W1-11-2664
(Consolidated)

CASE INITIATION ORDER
AND DESIGNATION OF
INITIAL ISSUES FOR BRIEFING

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

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master organizes a contested case to resolve the objections arising from the Final Hydrographic Survey Report for the San Pedro River Watershed concerning the Redfield Canyon Wilderness Area, designates seven issues for initial briefing, and sets times for disclosure statements, discovery, and briefing.

NUMBER OF PAGES: 10; Attachment A - 1; total 11 pages.

DATE OF FILING: April 5, 2012.

At a telephonic conference held on March 28, 2012, in the contested case *In re Aravaipa Canyon Wilderness Area* (“*Aravaipa Canyon*”), the Special Master inquired about the status of the objections concerning the Redfield Canyon Wilderness Area. Legal counsel expressed interest in initiating a contested case to resolve the objections.

The consensus was to set a schedule to brief issues similar to those considered in

the *Aravaipa Canyon* case.¹ A briefing process was previously considered, but as stated in the *Aravaipa Canyon* case initiation order:

The suggestion appeals but is not implemented because the Final Hydrographic Survey Report for the San Pedro River Watershed (“San Pedro HSR”) does not present as much information about the Redfield Canyon area as it does for the Aravaipa Canyon area,² and determinations of the issues involving Aravaipa Canyon could be adopted as precedent for the Redfield Canyon area.³

On November 2, 2011, the Special Master issued a determination of the seven initial issues briefed in *Aravaipa Canyon*. No opinion is made concerning the precedent of those determinations, but a contested case will be organized to address the Redfield Canyon Wilderness Area. The case will begin with the same issues set for briefing.

Disclosures, discovery, and briefing shall be limited to these issues. Because the United States likely has the majority of the documents relevant to these issues, it will be directed to file its disclosure statement before the other parties are required to file their disclosures and will be allowed more time than the other parties to file its disclosures.

The Arizona Department of Water Resources (“ADWR”) will be directed to develop and maintain an electronic data base and index of disclosed documents similar to those it created in other contested cases. Until further order, ADWR will not be directed to update or conduct technical work related to the Redfield Canyon Wilderness Area.

I. REQUEST OF THE UNITED STATES TO STAY ORDER REQUIRING AMENDMENT OF STATEMENTS OF CLAIMANT

The United States requested a stay of the May 11, 2009, and August 19, 2009, orders to amend Statement of Claimant No. 39-14413 and other statements, to show the extent of its claims to federal reserved water rights for the Redfield Canyon Wilderness Area until a decision on the quantity of water reserved for the Aravaipa Canyon Wilderness Area is made. The request has not been opposed.

The request will be granted, but the United States is strongly encouraged to highly prioritize its technical work for the Redfield Canyon Wilderness Area because this litigation is proceeding.

¹ Case Initiation Order and Designation of Initial Issues for Briefing, *In re Aravaipa Canyon Wilderness Area*, W1-11-3342 (Aug. 17, 2009). The text of the order is available at http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/ACWAcio081709.pdf.

² The reason may be that the Redfield Canyon Wilderness Area was established shortly before the San Pedro HSR was published. Compare Vol. 1, Hydrographic Survey Report for the San Pedro River Watershed 447-56 (Aravaipa Canyon) and 464-5 (Redfield Canyon).

³ Case Initiation Order, n.1, *supra*, at 2.

IT IS ORDERED granting the request of the United States for a stay. This order is subject to modification upon the motion of a litigant in this case or the Special Master's motion depending on the progress of this case and *Aravaipa Canyon*.

II. DESIGNATION OF CONTESTED CASE

A contested case is organized to address the objections and issues related to the adjudication of the water rights claimed for the Redfield Canyon Wilderness Area. The following procedures and timelines shall apply.

1. Contested Case. This case is designated *In re Redfield Canyon Wilderness Area*, Docket No. W1-11-2664 (Consolidated). The Special Master's analysis of the 1991 Final Hydrographic Survey Report for the San Pedro River Watershed ("San Pedro HSR") shows that all or portions of three watershed file reports ("WFRs") appear to be associated with the claimed reserved water rights for Redfield Canyon Wilderness Area. These are WFRs Nos. 113-12-009, 113-12-010, and 113-12-011.

The contested case numbers assigned to these WFRs are 2664, 2665, and 2666, respectively. These three contested cases will be consolidated under Docket No. W1-11-2664. The San Pedro HSR does not contain a comprehensive description of the Redfield Canyon Wilderness Area. If clarifying evidence becomes available, the contested case numbers will be corrected as necessary.

2. Litigants. At this time, the litigants in this case are the United States of America, Bureau of Land Management, Arizona Game and Fish Department, Arizona State Land Department, City of Benson, City of Sierra Vista, C-Spear Ranch, L.L.C., successor-in-interest to the Estate of Hope I. Jones, Gila River Indian Community, Salt River Project, San Carlos Apache Tribe, Tonto Apache Tribe, and the Yavapai-Apache Nation. These litigants are the landowner, lessees or permittees reported in the San Pedro HSR in the WFRs associated with the wilderness area, and claimants who objected to all or portions of WFRs Nos. 113-12-009, 113-12-010, and 113-12-011.

Section 7.01[6] of the Rules for Proceedings Before the Special Master provides that "parties in either adjudication who participate pursuant to an order of the Master issued in an effort to resolve similar issues of law or fact" can participate as litigants in a contested case. The Special Master will include Freeport-McMoRan Corporation as a litigant. The corporation participated in briefing the same issues in *Aravaipa Canyon*, is actively participating in other contested cases in the San Pedro River Watershed involving federal reserved water rights, and judicial efficiency will be served by presaging the inevitable motion to intervene. Any party may object to this inclusion by filing a motion on or before **June 8, 2012**.

A. Other Potential Litigants. Because permittees and the information set forth in the San Pedro HSR may have changed since 1991, the United States is ordered to provide to the Special Master on or before **June 8, 2012**, the names and mailing addresses of any current lessees, permittees, and allottees who are using lands associated with the Redfield Canyon Wilderness Area. If the United States

identifies any such persons, the Special Master will include them as litigants. If there are none, this information should be provided.

3. Motion to Intervene. Any claimant in the San Pedro River Watershed may request to intervene in this contested case pursuant to Arizona Rule of Civil Procedure 24. A claimant who wishes to intervene shall file a motion on or before **June 29, 2012**.

4. Court Approved Mailing List. The mailing list for this case shall include all the litigants named in Paragraph 2, the Clerk of the Maricopa County Superior Court, the Arizona Department of Water Resources, and the Special Master. Judge Eddward P. Ballinger, Jr. will not be included in the mailing list.

A. The initial mailing list is set forth in Attachment A. 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.

D. Listed persons shall inform the Special Master of any address changes.

5. 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 as sufficient an avowal by the lead counsel that includes a listing of 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.

6. Exchange of Documents. Parties can agree to use electronic mail, facsimile, CD-ROM disks, or DVD-ROM disks to exchange copies of documents among themselves. The agreement does not have to be filed with the Special Master. Parties may seek guidance if this procedure can be improved or problems arise.

7. Initial Issues. The following issues shall be initially briefed:

A. Did Congress in enacting the legislation establishing the Redfield

Canyon Wilderness Area expressly intend to reserve unappropriated waters to accomplish the purposes of the reservation?

B. If so, what were the purposes of the reservation?

C. If Congress did not expressly intend to reserve water, does the evidence establish that the United States withdrew land from the public domain and reserved the Redfield Canyon Wilderness Area for federal purposes?

D. If the land was withdrawn and reserved, what were the purposes of the reservation?

E. If the land was withdrawn and reserved, did the United States impliedly reserve unappropriated waters to accomplish the purposes of the reservation?

F. If unappropriated waters were reserved for the purposes of the reservation, what is the date or dates of priority of the reserved water rights?

G. If unappropriated waters were reserved for the purposes of the reservation, did Congress intend to reserve all unappropriated waters at the time of designation?

8. Disclosure Statements.

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

B. Filing Date for the United States. On or before **September 4, 2012**, 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 **November 2, 2012**, 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 issues.

(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, the party shall so state in its disclosure statement. The party shall provide a copy of the complete listing to the Special Master, ADWR, and parties who request a copy.

9. 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). 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.

10. Discovery.
 - A. Scope. Discovery shall be limited to matters concerning the issues designated for briefing in this order.
 - B. Commencement. Parties may commence formal discovery on or after **November 5, 2012**, but prior thereto may, and are encouraged, to engage in informal discovery.
 - C. Completion. All discovery including depositions shall be completed by **February 4, 2013**.
 - 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.
11. Expert Reports. On or before **December 21, 2012**, all parties shall exchange expert reports that a party considers relevant to the issues designated for briefing.
12. Motions. On or before **April 5, 2013**, any party in this case may file the appropriate motion that presents the party's position concerning any of the designated issues. Each issue shall be separately addressed in the motion. Parties sharing the same position are encouraged to file joint pleadings.
13. Responses. Responses to all motions shall be filed by **June 4, 2013**.
14. Replies. Replies to all motions shall be filed by **August 5, 2013**.
15. 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.
16. Page Limitations. Parties are excused from mandated page limitations for motions, responses, and replies, but reasonableness is expected.
17. Oral Argument and Hearings. Oral argument will be held on all the issues in October or November 2013. The date, courtroom, and time will be announced later. Oral argument and hearings will be held in the Maricopa County Superior Court.
18. Technical Investigations. Until further order, ADWR will not be directed to update or conduct technical work related to the Redfield Canyon Wilderness Area.
19. Status Conferences. Any party may request a conference, which may be held telephonically, to consider any matter including the need for an evidentiary hearing.
20. Additional Information. For more information about the Gila River Adjudication, but not legal advice, you may contact the following offices:

A. For information about the San Pedro HSR, copies of documents, and ordering a monthly docket subscription for the Gila River Adjudication:

Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012
Tel. (602) 771-8649 (Phoenix area)
Tel. 1-(866) 246-1414 (toll free within the United States)

B. For information about filing papers, reviewing contested case court files, and obtaining copies of court filings:

Clerk of the Maricopa County Superior Court
Attn: Water Case
601 West Jackson Street
Phoenix, Arizona 85003

DATED: April 5, 2012.

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

On April 5, 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 the Gila River Adjudication Nos. W-1, W-2, W-3, and W-4 (Consolidated) dated January 31, 2012, and to the persons listed on the mailing list contained in Attachment A.

/s/ Barbara K. Brown
Barbara K. Brown

Court Approved Mailing List
 In re Redfield Canyon Wilderness Area
 W1-11-2664 (15 Names)
 Prepared by the Special Master
 April 5, 2012

<p>Clerk of the Superior Court Maricopa County Attn: Water Case 601 West Jackson Street Phoenix AZ 85003</p> <p>U.S. Bureau of Land Management Safford District Office 711 14th Avenue Safford AZ 85546</p> <p>Snell & Wilmer, L.L.P. Cynthia M. Chandley, R. J. Pohlman, L. W. Staudenmaier, and C. W. Payne 400 East Van Buren Street Phoenix AZ 85004-2202</p> <p>C-Spear Ranch, L.L.C. Scott H. Cole 8300 East Dixileta Drive, No. 302 Scottsdale AZ 85266</p> <p>Gila River Indian Community Law Office Linus Everling and Thomas L. Murphy P. O. Box 97 Sacaton AZ 85247</p> <p>Freeport-McMoRan Copper & Gold Inc. Legal Department Shilpa Hunter-Patel 333 North Central Avenue Phoenix AZ 85004</p> <p>U.S. Department of Justice Environment and Natural Resources R. Lee Leininger 999 18th Street, South Terrace, Suite 370 Denver CO 80202</p> <p>Office of the Arizona Attorney General Natural Resources Section Theresa M. Craig 1275 West Washington Street Phoenix AZ 85007-2997</p>	<p>Benson, City of City Attorney's Office Michael J. Massee P. O. Box 2223 Benson AZ 85602</p> <p>Montgomery & Interpreter, P.L.C. Susan B. Montgomery and Robyn L. Interpreter 4835 East Cactus Road, Suite 210 Scottsdale AZ 85254</p> <p>Arizona Department of Water Resources Legal Division Janet L. Ronald 3550 North Central Avenue Phoenix AZ 85012</p> <p>Special Master Arizona General Stream Adjudication George A. Schade, Jr. 201 West Jefferson, CCB 5B Phoenix AZ 85003-2205</p> <p>The Sparks Law Firm, P.C. Joe P. Sparks and Laurel A. Herrmann 7503 First Street Scottsdale AZ 85251-4573</p> <p>Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. William P. Sullivan 501 East Thomas Road Phoenix AZ 85012-3205</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>
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