

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: May 5, 2005

CIVIL NO. W1-11-605

SCHEDULING ORDER FOR
THE DETERMINATION
OF FOUR ISSUES

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master issues a Scheduling Order concerning the determination of four issues, disclosure statements, discovery, briefing, settlement, and a status conference. The Arizona Water Company's motion to intervene is granted.

NUMBER OF PAGES: 9.

DATE OF FILING: May 5, 2005.

SCHEDULING ORDER

A status conference was held on March 8, 2005. Based on the discussions held, the Special Master believes that pending the preparation of a supplemental hydrographic survey report, four issues can be addressed whose determinations are important in this contested case. The Special Master has considered all the comments as to how to structure the resolution of those issues in an efficient and proper manner.

The Special Master will designate four issues for disclosure, discovery, and briefing. Disclosure, discovery, and briefing will be limited to those issues. The United

States will be directed to file its disclosure statement before the other parties are required to file their disclosures because the United States most likely has the majority of the documents relevant to the issues. Accordingly, the United States will have more time to file its disclosures than the other parties.

The Arizona Department of Water Resources (“ADWR”) will be directed to develop and maintain an electronic data base and index of disclosed documents, available on the Internet, but because the department will not be able to undertake such a project until after October 2005, due to its relocation, the schedule for filing disclosure statements will take into account that situation.

The Arizona Water Company moved, pursuant to Arizona Rule of Civil Procedure 24(a), to intervene as of right in this case. According to its motion, the company is a public service corporation that owns and operates a public utility water system in and around the City of Sierra Vista, and under a certificate of convenience and necessity served groundwater to 2,541 customers via this system as of October 31, 2004. The company’s request to intervene was not opposed. The Special Master finds that the company meets the requirements of Rule 24(a) to intervene, and the motion will be granted.

Discussion was held regarding settlement. A group of parties indicated “they would support an effort to resolve this matter through settlement rather than through a litigated contested case.”¹ Arizona Rule of Civil Procedure 16.1(a) states that “[t]he court may also schedule a settlement conference upon its own motion.” The Special Master will not set a Rule 16.1 settlement conference, but believes that this rule provides sufficient authority to ask the parties to confer and discuss the prospects for settlement. As parties suggested, a good time for this effort would be after the disclosures are filed.

IT IS ORDERED:

1. Motion to Intervene. The Arizona Water Company’s motion to intervene in this contested case is granted.

2. Litigants. The litigants in this contested case are the following:

A. Objectors (May 18, 1991): United States of America (also the claimant), Gila River Indian Community, San Carlos Apache Tribe, Yavapai-Apache Nation, Tonto Apache Tribe, Salt River Project, City of Phoenix, City of Mesa, Bella Vista Water Company, Inc., Bella Vista Ranches, L.L.L.P., and Pueblo Del Sol Water Company.

B. Intervenors: ASARCO Incorporated (April 5, 1995), BHP Copper, Inc. (then Magma Copper Company, April 5, 1995), Phelps Dodge Corporation (April 5, 1995), City of Sierra Vista (August 17, 2001), State

¹ Comments of Sierra Vista Parties 2 (Dec. 23, 2004).

of Arizona Agency Claimants (August 17, 2001), and the Arizona Water Company (May 5, 2005).

3. Court-Approved Mailing List. The Court-approved mailing list for this case includes all persons listed in the certificate of service. The mailing list will be updated as needed, and a copy will be posted at <<http://www.supreme.state.az.us/wm>>.

4. Issues. The following four issues are set for determination, and no other issues are set for hearing at this time:

A. Whether, and to what extent, does the evidence establish that the United States withdrew land from the public domain and reserved the property of Fort Huachuca for a federal purpose(s)?

B. If the land was withdrawn and reserved, what was the purpose(s) to be served by the reservation?

C. If the land was withdrawn and reserved, did the United States intend to reserve unappropriated waters to accomplish the purpose(s) of the reservation?

D. If unappropriated waters were reserved for the purpose of the reservation, what is the date of priority of the reserved water rights?

5. Disclosure Statements.

A. Scope. The disclosure statements that shall be filed at this time shall be limited to matters concerning the designated four issues.

B. Filing Date for the United States. On or before November 7, 2005, 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 January 9, 2006, all other parties in this case 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 or relevant documents that the disclosing party plans to use to support its claims.

(8). A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by the disclosing party to exist whether or not in its possession, custody, or control and which it 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 will be made, or have been made, available for inspection and copying. If production is not made, the name and address of the custodian of the document shall be indicated. Any document produced for inspection shall be produced as it is 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 to all persons appearing on the Court-approved mailing list for this case. Hard (paper) copies of disclosed documents need not be served upon the other parties in this case, as copies of documents can be obtained from ADWR.

G. Not Filing. Parties who do not file a disclosure statement shall file a notice stating that the party is not filing a disclosure statement.

6. Electronic Data Base and Index Provided by ADWR. ADWR is directed to develop and maintain an electronic data base and index of all disclosed documents which shall be available on the Internet. If deemed necessary, ADWR may confer and work with any of the parties in this case to implement the electronic data base and index. This order provides standards that follow past procedures in this adjudication and takes into account ADWR's requirements described in a report ADWR filed on April 15, 2005, in the contested case *In re State Trust Lands*.

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

(1). Number each document with a unique alpha identifier and in numeric sequence. The alpha identifier 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.
- b. Unique identifying number created by the disclosing party for each document.
- c. Date of publication or preparation of document.
- d. Document type (article, book, letter, map, report).
- e. Recipient.
- f. Number of pages of document.
- g. Disclosing party.
- h. Date of submittal of document.
- i. Subject matter of document (up to three categories).
- j. Any other item that would make the disclosed document easy to find and read.

(3). Create a portable document format (.pdf) for each document.

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

(5). Provide to ADWR hard (paper) copies of disclosed documents and corresponding Disclosure Input Forms. ADWR will maintain the hard 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 the parties in this case and to all persons listed on the Gila River Adjudication Court-Approved Mailing List. In order to provide access to the disclosed documents, each index field in the Disclosure Input Form shall be subject to query. Copies of all disclosed documents and completed Disclosure Input Forms shall be 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 have the right to 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.

7. Discovery.

A. Scope. Discovery shall be limited to matters concerning the designated issues.

B. Commencement. The parties in this case may commence formal discovery on or after January 9, 2006. Prior to that date, parties may engage in informal discovery conducted cooperatively.

C. Completion. All discovery, including depositions, shall be completed by April 14, 2006.

D. Rules. All discovery related to the designated issues shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, Pre-Trial Order No. 1 Re: Conduct of Adjudication ¶ 11.00, and Sections 9.00 and

11.02 of the Rules for Proceedings Before the Special Master. For purposes of Section 9.00, the United States is a Group 2 litigant.

8. Motions. On or before April 28, 2006, 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 filing motions shall to the greatest extent possible present all their positions in the initial papers so as to keep the need to amend motions to a minimum. Parties sharing the same position are encouraged to file joint pleadings.

9. Responses. Responses to all motions shall be filed by June 27, 2006.

10. Replies. Replies to all motions shall be filed by August 28, 2006.

11. Oral Argument. Oral argument will be held on all the issues. The date and time of oral argument will be set later.

12. Status Conference. A status conference is set on **Tuesday, May 16, 2006, at 10:00 a.m.**, in a courtroom to be announced later. The Special Master will consider the parties' positions regarding the need, if any, for an evidentiary hearing, the use and examination of expert witnesses at an evidentiary hearing, set a date for oral argument, hear the status of settlement discussions, and take up any other matters requiring attention at that time.

13. Location of Oral Argument and Hearings. Oral argument and hearings will be held in the Maricopa County Superior Court in Phoenix. A party in this case may request that a hearing be held in another location.

14. Settlement. On or before January 27, 2006, all parties in this case shall confer to discuss prospects for settlement including initiating a process for holding negotiations.

DATED: May 5, 2005.

/s/ George A. Schade, Jr.

GEORGE A. SCHADE, JR.
Special Master

A copy of the foregoing was mailed this 5th day of May 2005, to the following parties who appear on the Court-approved mailing list for Contested Case No. W1-11-605 dated May 5, 2005:

Clerk of the Superior Court
Maricopa County
Attn: Water Case
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Attn: ATZS-JAD (George W. Reyes)
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/s/KDolge
Kathy Dolge