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

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER JOHN E. THORSON
Presiding

DATE: December 3, 1993

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

CIVIL NO. W-1, W-2, W-3, W-4
(Consolidated)
W1-11-19
W1-11-212
W1-11-2401
W1-11-2412
W1-11-2578
W1-11-2583
W1-11-2585
W1-11-3294

CONTESTED CASE NAMES: *In re Sands Group of Cases (W1-11-19), Pyeatt Group of Cases (W1-11-212), Mercer Group of Cases (W1-11-2401), Goff Group of Cases (W1-11-2412), Hendrickson Group of Cases (W1-11-2578), Lunt Group of Cases (W1-11-2583), Bayless & Berkalew Group of Cases (W1-11-2585), and White Group of Cases (W1-11-3294).*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master issues a Memorandum Decision and Order designating the possible *de minimis* or uniform adjudication of stockwatering, stockpond, and domestic uses as issues of broad legal importance. The Master further orders consolidation of the Group 1 contested cases.

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MEMORANDUM DECISION AND ORDER

The City of Phoenix has filed a Motion to Adopt Expedited Procedure and to Declare an Issue of Broad Legal Significance (Oct. 28, 1993). The State of Arizona filed a response on November 19, 1993. The City of Phoenix filed its reply on November 29, 1993.

The motion arises in the eight consolidated contested cases that are collectively referred to as "the Group 1 cases." Important decisions concerning stockwatering, stockpond, and domestic uses are expected to be decided in these cases--including a determination of whether these water uses will be adjudicated in a simplified manner (*i.e.*, a *de minimis* or uniform adjudication).

While the motion makes numerous requests, only one request is addressed in this memorandum decision and order: a request to "[d]eclare the adoption and formulation of an expedited procedure for stockponds, stockwatering and domestic uses to be an issue of broad legal significance." Motion at 17; *see* RULES FOR PROCEEDINGS BEFORE THE SPECIAL MASTER § 12.00 (Nov. 1993) (hereinafter "RULES"). The remainder of the motion may be argued at the status conference scheduled for December 17, 1993.

In earlier oral comments and in their motion, counsel for the City of Phoenix have expressed their concern that insufficient notice has been provided to other parties in the Gila River adjudication about the important decisions that are likely to be made in the first group of cases. In particular, counsel have argued that the possibility of a *de minimis* or uniform adjudication has never been explicitly designated an issue of broad legal importance under section 12.00 of the RULES.

If there is confusion about whether issues of broad legal importance will be decided in the first group of cases, the confusion exists despite numerous efforts by the Court to focus attention on the importance of the first groups of cases. The Master's recommended case management strategy for the San Pedro watershed was served on the Court-approved mailing list for the Gila River adjudication and discussed at several hearings before Judge Goodfarb before it was approved. *See* Recommendation for San Pedro Watershed Case Management Strategy (Nov. 25, 1992); Order Approving San Pedro River Watershed Case Management Strategy (Jan. 26, 1993).

Notice of the commencement of these initial cases was mailed to claimants and objectors. Notice of Commencement of Adjudication of Water Rights Claims and Objections in the San Pedro River Watershed (Mar. 12, 1993). In this notice, the Master indicated that the litigation would begin "by designating individual contested cases for the litigation of objections that

raise important legal issues." *Id.* at 2. The notice indicated that "[r]elatively simple contested cases [sic], starting with stockwatering and stockpond uses" would be chosen initially. *Id.* The notice continued to discuss the expected significance of decisions in these early cases and how other persons could seek to participate in the cases either by motions to intervene or by filing *amicus curiae* briefs.

The first set of contested cases was initiated by a series of minute entries (case initiation and prehearing conference/scheduling) sent on April 2, 1993, to the litigants involved in the first group of cases. Each of the minute entries indicated that "[t]his contested case has been selected as a 'targeted' individual contested case since the case includes objections raising one or more issues of broad legal importance in the adjudication of the San Pedro River watershed." A specimen copy of these minute entries was attached to the minute entry of April 7, 1993, which was served on the Court-approved mailing list for the Gila River adjudication.¹ The April 7th minute entry further indicated that the first group of cases "involve objections to stockwatering uses (SW), stockponds (SP), small reservoirs (SR), domestic uses (DM) supplied by surface water sources, domestic claims (DM) with no uses found, and irrigation associated with a domestic use (OT)."

The Special Master has reported on the progress of the first group of San Pedro cases at every monthly hearing before Judge Stanley Z. Goodfarb since April 1993. Articles or information on the first group of cases have appeared in the May, August, September, October, and November issues of the *Arizona General Stream Adjudication Bulletin*, which is available on a subscription basis from the office of the Special Master.

Thus, numerous efforts have been made to alert interested parties in the general stream adjudication that significant decisions will be made in the first group of San Pedro cases about how stockwatering, stockpond, and domestic uses will be adjudicated. A *de minimis* or uniform adjudication of these uses is one possible means for determining these uses.

One recent development does affect the scope of the first group of cases. As originally organized, the first group of cases included domestic uses supplied by surface water sources, domestic claims with no uses found, and irrigation claims associated with a domestic use. The Department of Water Resources' Court-ordered TECHNICAL REPORT ON DE MINIMIS ADJUDICATION OF DOMESTIC, STOCKPOND, AND STOCKWATERING USES IN THE SAN PEDRO RIVER WATERSHED (Nov. 19, 1993) analyzes all types of domestic uses--whether supplied from surface water or groundwater sources. Thus, the

¹The Arizona Supreme Court has held that service upon the Court-approved mailing list satisfies due process requirements and, along with a docket system, "afford[s] the litigants adequate notice of all filings in the adjudication." *In re Rights to the Use of the Gila River*, 171 Ariz. 230, 241, 830 P.2d 442, 453 (1992).

scope of the first group of cases should be expanded to consider this question as well.

ORDER

In addition to the issues of broad legal importance designated in the minute entry of April 7, 1993, for consideration in the first group of San Pedro cases, the following issues are ORDERED designated as issues of broad legal importance under section 12.03 of the RULES for resolution in the first group of cases:

1. Should stockwatering uses (SW), domestic uses (DM) supplied from surface water sources, and irrigation associated with a domestic use (OT) be adjudicated in a *de minimis* or uniform manner?
2. Should domestic uses (DM) supplied from underground water sources be adjudicated in a *de minimis* or uniform manner?
3. If domestic uses (DM) supplied from underground water sources are to be adjudicated in a *de minimis* or uniform manner, should they be adjudicated conditionally pending a determination on whether the water source is subject to adjudication?

It is further ORDERED that this memorandum decision and order be served on the Court-approved mailing list for the Gila River adjudication. Since similar proceedings are pending in the Silver Creek watershed, this notice need not be served on the Court-approved mailing list for the Little Colorado River adjudication.

CONSOLIDATION ORDER

In order to simplify proceedings and the filing of pleadings in the first group of San Pedro cases, it is further ORDERED that *In re Sands Group of Cases* (W1-11-19), *Pyatt Group of Cases* (W1-11-212), *Mercer Group of Cases* (W1-11-2401), *Goff Group of Cases* (W1-11-2412), *Hendrickson Group of Cases* (W1-11-2578), *Lunt Group of Cases* (W1-11-2583), *Bayless & Berkalew Group of Cases* (W1-11-2585), and *White Group of Cases* (W1-11-3294) are hereby consolidated as *In re Sands Investment Co. (Group 1 Cases)*, No. W1-11-19 (Consolidated). The Court-approved mailing list of October 6, 1993, can continue to be used for service of pleadings in this contested case until further notice.

DATED this 3rd day of December, 1993.



JOHN E. THORSON
Special Master

The original of the foregoing delivered to the Distribution Center, Maricopa County Superior Court Clerk's Office, for filing with the Clerk's office and for copying and mailing to those parties not requesting service by facsimile transmission who appear on the Court-approved mailing list for the San Pedro Watershed Group 1 Cases dated October 6, 1993, and for the Gila River adjudication dated November 16, 1993; also, sent by facsimile transmission to those parties who have requested service of documents from the Special Master by FAX.



Kathy Dolge