

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 3, 2014

CIVIL NO. W1-11-3342

ORDER CONCERNING
DISCOVERY, THE PENDING
MOTION FOR PARTIAL
SUMMARY JUDGMENT, AND
OTHER MATTERS

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

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master sets timelines for the completion of discovery and filing of responses and replies concerning the pending motion of the United States for partial summary judgment. Other matters are considered.

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On March 27, 2014, the Special Master held a status conference. Completing discovery and the pending motion of the United States for partial summary judgment generated the most discussion.

A timeline for the completion of discovery has been carefully considered. Arguments were made for July and the end of November, 2014. The Special Master has considered the scope of the active discovery schedules in the *Fort Huachuca* and *San Pedro Riparian National Conservation Area* (“*SPRNCA*”) contested cases and counsels’

workload. Some discovery has been made in this case, and parties have exchanged expert witness reports. The initial discovery period was seven months long. The Special Master finds that October 31, 2014, is a most reasonable deadline to complete discovery.

Discussion was held on whether the recent technical Report of the Arizona Department of Water Resources (“ADWR”) Concerning Federal Reserved Water Rights Claim for Aravaipa Canyon Wilderness Area is subject to discovery during this period. Because the Court may consider this report in the evidentiary hearing, the Special Master finds that parties should have the opportunity to engage in discovery of the report.

The United States filed a motion for partial summary judgment requesting that the Special Master adopt the ruling made in the *SPRNCA* case that a federal reserved water right can be quantified without first determining the existence of unappropriated water on the date of the reservation.¹ That ruling was made in October 2013, eighteen months after the five issues in this case were designated for briefing.

Argument was made that responses and further consideration of this motion should wait until after discovery closes in order to give parties the opportunity to discover facts to oppose the motion. The Special Master finds that the issue raised by the motion is legal and not factual, and the question can be determined prior to the conclusion of discovery. Accordingly, the motion will be taken up at this time.

It is cautioned that a ruling in favor of the United States is not a reason to end discovery on the two issues concerning the existence of unappropriated water. As was held in *SPRNCA*, “[i]t is necessary to determine the quantity of unappropriated water available for use as of the dates of reservation...” Discovery can continue on the existence of unappropriated water on August 28, 1984, and November 28, 1990.

The list of San Pedro River Watershed contested cases numbers 3,451 cases. We have worked on a fraction of this total. Discovery and litigation must be efficient, appropriate, prudent, reasonable, and cost effective if this adjudication is to succeed.

Discussion was held regarding the report ADWR must prepare pursuant to A.R.S. § 45-256(B). This report will come after the evidentiary hearing on the designated issues.

On July 20, 2012, the United States reported that the Bureau of Land Management (“BLM”) had conducted a cadastral survey of the Aravaipa Canyon Wilderness Area (“ACWA”), the Chief Cadastral Surveyor of the U.S. Department of the Interior had certified the resulting maps and legal descriptions, which the Arizona State BLM Director had accepted, and copies of the certified and approved maps and legal

¹ Special Master’s Order Determining the Issues Designated for Briefing in the Order Dated May 29, 2013, at 10 (Oct. 17, 2013) (“It is necessary to determine the quantity of unappropriated water available for use as of the dates of reservation, but it is not required to do so prior to quantifying the reserved water right.”).

descriptions had been transmitted to the Congress.² The Chief Cadastral Surveyor calculated that the ACWA contains 19,617 acres, more or less. At the conference, the major litigants had no issue with the surveyed size of the ACWA. The issue has not been set for litigation.

A Contested Case Steering Committee will not be appointed at this time.

IT IS ORDERED:

1. On or before **Friday, May 9, 2014**, parties shall file responses to the motion of the United States for partial summary judgment filed on March 11, 2014.
2. On or before **Friday, May 30, 2014**, the United States shall file its replies.
3. On or before **Friday, October 31, 2014**, all discovery including depositions shall be completed.
4. The recent Report of ADWR Concerning Federal Reserved Water Rights Claim for Aravaipa Canyon Wilderness Area is subject to discovery. And,
5. On **Thursday, November 6, 2014, at 9:00 a.m. (MST)**, location to be announced later, a conference will be held to review the status of this case, set appropriate timelines, and consider any matter relevant to the evidentiary hearing.

DATED: April 3, 2014.

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

On April 3, 2014, 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 January 9, 2014.

/s/ Barbara K. Brown
Barbara K. Brown

² The cadastral survey was commenced on February 12, 2001, and completed on February 16, 2011. Maps of the Aravaipa Canyon Wilderness Area were submitted to the Senate Energy and Natural Resources Committee (June 20, 2012) and the House Natural Resources Committee (June 25, 2012). The survey and submission were completed in compliance with the Arizona Desert Wilderness Act of 1990, Pub. Law No. 101-628, 104 Stat. 4469 (Nov. 28, 1990).