

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

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 LITTLE
COLORADO RIVER SYSTEM AND SOURCE

DATE: January 12, 2009

CV 6417-201

SECOND ORDER MODIFYING
THE CASE INITIATION ORDER

CONTESTED CASE NAME: *In re Hopi Tribe Priority.*

HSR INVOLVED: None.

DESCRIPTIVE SUMMARY: The Special Master grants the Hopi Tribe's requests to modify the Case Initiation Order by extending the dates for filing disclosure statements, exchanging expert reports, and commencing discovery, clarifies the filing of motions and briefs, and denies a request to allow disclosures only in digital form.

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The Hopi Tribe requested additional time until January 30, 2009, to file its initial disclosure statement, an extension of time to March 6, 2009, for other parties to file their disclosure statements, permission to file some disclosures in digital form, and clarification concerning the time to file briefs. The United States filed a motion in support of the Hopi Tribe's requests.

The Navajo Nation did not object to the Hopi Tribe's request for additional time to file an initial disclosure statement if the Nation is granted a similar extension to file the Nation's initial disclosure statement and if the last day to file and exchange expert reports

is extended to March 30, 2009. No other parties in this contested case filed papers either in support or in opposition. All requests concerning timelines are granted.

The Hopi Tribe requested that parties be allowed to elect to submit a disclosure either in paper or digital form, or at least, to submit documents existing in digital form to remain in that form for disclosure. The Case Initiation Order requires parties to submit disclosures in both paper and digital form (in portable document file format).

When appropriate, a request to reduce the costs and burdens of litigation should be granted. The reason for the requirement of paper submissions is to comply with the Public Records Act, A.R.S. §§ 39-101 *et seq.*, and the reason for submissions in digital form in a compact disc is the convenience of the parties.

The Arizona Department of Water Resources (“ADWR”) serves as the central repository of information relevant to this adjudication.¹ ADWR believes that in this capacity it is obligated to comply with the statutes and regulations concerning the preservation of public records. A.R.S. § 39-101(A) provides in part that “[p]ermanent public records of the state ... shall be transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state library, archives and public records.” According to ADWR, digital and portable document format files do not meet these standards, hence, the need for paper copies. It is added that most adjudication documents, even those filed with the court, are considered permanent records for retention and disposition purposes.

However, the Special Master has no objection if the Hopi Tribe files its paper copies with ADWR not more than five days late but only if all its disclosures are timely filed in digital form. This extension is only intended to alleviate the copy staff’s work.

The Hopi Tribe requests clarification as to when parties can file briefs. Paragraphs 11, 12, 13, and 14 of the Case Initiation Order pertain to the filing of motions or statements of position, responses, and replies. In contested cases held in the Gila River Adjudication (*In re the Water Rights of the Gila River Indian Community*, W1-203; *In re San Pedro Riparian National Conservation Area*, W1-11-232, and *In re Fort Huachuca*, W1-11-605) but also in *In re State Trusts Lands*, No. CV 6417-100, parties filed summary judgment motions or a statement of position concerning the issues designated for resolution. The Special Master anticipates this case will proceed in the same manner.

In order to clarify and allow full opportunity for a party to make its positions known, a party may file the appropriate motion that presents the party’s position concerning any of the designated issues, a statement of position, or briefs on or before September 1, 2009. The briefing of such motions, statements, or briefs shall be in accordance with the timelines set forth in Paragraphs 12 and 13.

¹ See Pre-Trial Order No. 1 Re: Conduct of Adjudication ¶ 11(F) (Apr. 24, 1987) and Rules for Proceedings Before the Special Master § 10.00.

IT IS ORDERED:

1. Modifying Paragraphs 6(B) and (C) (Disclosure Statements) of the Case Initiation Order as follows:

B. Filing Date for the United States, the Hopi Tribe, and the Navajo Nation. On or before **January 30, 2009**, the United States acting as trustee, the Hopi Tribe, and the Navajo Nation shall file their initial Arizona Rule of Civil Procedure 26.1 disclosure statements.

C. Filing Date for All Other Parties. On or before **March 9, 2009**, all other parties shall file their initial Rule 26.1 disclosure statements.

2. Denying the request to modify Paragraphs 8(A) (4) and (5) (Electronic Data Base and Index Provided by ADWR) of the Case Initiation Order.

3. Modifying Paragraph 9 (Expert Reports) of the Case Initiation Order, as modified, to provide that on or before **March 30, 2009**, all parties shall exchange expert reports that a party considers relevant to the issues designated for briefing. Parties may stipulate to a different date but not later than March 30, 2009.

4. Modifying Paragraph 10(B) (Discovery: Commencement) of the Case Initiation Order to provide that parties may commence formal discovery on or after **January 30, 2009**, but prior thereto may, and are encouraged, to engage in informal discovery.

5. Modifying Paragraph 14 (Statement of Position) of the Case Initiation Order to provide that a party may file a statement of position or a brief in lieu of a motion. Responses to a statement or brief and replies shall be subject to the existing deadlines.

DATED: January 12, 2009.

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

On January 12, 2009, the original of the foregoing was mailed to the Clerk of the Apache County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for the Little Colorado River Adjudication Civil No. 6417-201 dated July 25, 2008.

/s/ George A. Schade, Jr.
George A. Schade, Jr.