

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: January 17, 2013

CIVIL NO. W1-11-2664
(Consolidated)

ORDER DENYING THE
MOTION OF THE UNITED
STATES TO STAY AND
MODIFYING THE CASE
INITIATION ORDER TO SET
NEW TIME LINES

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

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master denies the Motion of the United States for Clarification or, Alternatively, Further Request to Stay and sets new time lines for filing disclosure statements, completing discovery, exchanging expert reports, and filing motions, responses, and replies.

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DATE OF FILING: January 17, 2013.

The United States filed a Motion for Clarification or, Alternatively, Further Request to Stay. Freeport-McMoRan Corporation opposed the motion. On January 9, 2013, the Special Master heard oral argument from these parties.

The United States is in the process of analyzing water flows data to be used to amend the statement of claimant for a reserved water right for the Redfield Canyon Wilderness Area (“RCWA”). However, it is argued that this data, without some guidance, will not be sufficient to amend the claim. The United States requests that the current briefing schedule be stayed until the federal reserved water rights for the Aravaipa Canyon Wilderness Area are adjudicated, and guidance to amend the RCWA claim becomes available.

Freeport-McMoRan Corporation points out that the United States was granted a stay of the order directing the United States to amend the RCWA claim, but was advised that the briefing schedule would proceed. The Case Initiation Order and Designation of Initial Issues for Briefing (“Case Initiation Order”) stated that:

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

It is further argued that the legal issues being briefed “address foundational facts” related to the RCWA whose consideration is not dependent upon the outcome in the *Aravaipa Canyon Wilderness Area* contested case.

The motion of the United States will be denied. An amended federal statement of claimant is not absolutely required to resolve the legal issues in the current briefing. Furthermore, claims can be amended in the future, and some federal claims have been amended more than once (the federal reserved water right statement of claimant for the San Pedro Riparian National Conservation Area has been amended three times). The final deadline to amend the RCWA statement of claimant is years away.²

Second, the Special Master conservatively estimates it will be at least five years before the federal reserved water rights of the Aravaipa Canyon Wilderness Area are adjudicated. This estimate could reasonably be increased if appeals are filed. Deferring this contested case so long would be unfair to the many claimants who have waited for years to learn where their claimed water rights stand in the cue for adjudication.

It is noted that in 1995, the legislature declared the following as part of its “policy and intent” regarding the adjudications:

¹ Case Initiation Order at 2 (Apr. 5, 2012).

² See A.R.S. § 45-254(E).

The legislature further finds that a primary purpose of the general stream adjudication is to quantify and prioritize claims made by the United States government and Indian tribes to waters from the river systems and sources in this state.... The legislature further finds that an early quantification and prioritization of Indian and non-Indian federal claims are prudent objectives in order to plan for the impacts that the federal water rights may have on the welfare of this state.³

The focus on federal reserved water rights is in accord with the expressed intent of the legislature.

This last point is a practical one for the United States. “Make hay while the sun shines” has been good wisdom since medieval times.⁴ The reserved water right claims of the RCWA are now at the head of the line. Today the sun shines. Tomorrow’s weather is unknown.

New time lines will be set to replace those previously suspended, and the Case Initiation Order will be modified. The fact these parties are currently litigating three other contested cases will be taken into account in setting the new time lines.

IT IS ORDERED:

1. Denying the Motion of the United States for Clarification or, Alternatively, Further Request to Stay.

2. All references to the modified paragraphs in directives 2 through 11 are to the Case Initiation Order. Modifying Section II, Paragraph 8(B) (Disclosure Statements) of the Case Initiation Order to provide that on or before **Friday, April 19, 2013**, the United States shall file its initial Arizona Rule of Civil Procedure 26.1 disclosure statement.

3. Modifying Section II, Paragraph 8(C) (Disclosure Statements) to provide that on or before **Friday, June 21, 2013**, all other parties shall file their initial Rule 26.1 disclosure statements.

4. Modifying Section II, Paragraph 10(B) (Discovery) to provide that parties may commence formal discovery on or after **Monday, June 24, 2013**, but prior thereto may, and are encouraged, to engage in informal discovery.

5. Modifying Section II, Paragraph 10(C) (Discovery) to provide that all discovery including depositions shall be completed by **Friday, September 27, 2013**.

³ 1995 Ariz. Sess. Laws, ch. 9, § 25(C) (1st Reg. Sess.).

⁴ This proverb is first recorded in John Heywood’s *A dialogue conteinyng the nomber in effect of all the prouerbes in the Englishe tongue*, 1546:

Whan the sunne shineth make hay. Whiche is to say.

Take time whan time cometh, lest time steale away.

6. Modifying Section II, Paragraph 11 (Expert Reports) to provide that on or before **Friday, August 23, 2013**, all parties shall exchange expert reports that a party considers relevant to the issues designated for briefing.

7. Modifying Section II, Paragraph 12 (Motions) to provide that on or before **Friday, November 29, 2013**, any party in this case may file the appropriate motion that presents the party's position concerning any of the designated issues.

8. Modifying Section II, Paragraph 13 (Responses) to provide that responses to all motions shall be filed by **Friday, January 31, 2014**.

9. Modifying Section II, Paragraph 14 (Replies) to provide that replies to all motions shall be filed by **Friday, March 14, 2014**.

10. Modifying Section II, Paragraph 17 (Oral Argument and Hearings) to provide that oral argument will be held on all the issues on a date, time, and location that will be announced later. And,

11. All other directives of the Case Initiation Order shall remain in effect.

DATED: January 17, 2013.

/s/ George A. Schade, Jr.

GEORGE A. SCHADE, JR.

Special Master

On January 17, 2013, 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. W1-11-2664 dated January 10, 2013.

/s/ Barbara K. Brown

Barbara K. Brown