

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 9, 2006

Nos. W-1, W-2, W-3, and W-4
(Consolidated)

REQUEST FOR COMMENTS

CONTESTED CASE NAME: *In re San Pedro Riparian National Conservation Area* (a contested case not yet initiated).

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master requests comments on a proposed plan to conduct this matter and alternatives. Any claimant or party in this matter may file comments or suggestions on or before **Monday, August 7, 2006**.

NUMBER OF PAGES: 3.

DATE OF FILING: Original filed with the Clerk of the Court on May 9, 2006.

On January 31, 2006, the United States filed with the Arizona Department of Water Resources (“ADWR”) a second amended Statement of Claimant No. 39-13610 for a federal reserved water right for the San Pedro Riparian National Conservation Area (“SPRNCA”). The amended statement is available for review at ADWR.

In October, 2003, ASARCO Incorporated and BHP Copper, Inc. commented that a decision to initiate a contested case should be made after the United States files its amended claims, and interested claimants have had an opportunity to review the scope of the reserved water right claims. We are now here.

Under current procedures, the amended statement of claimant and the Watershed File Reports for the SPRNCA contained in the Final San Pedro River Watershed Hydrographic Survey Report (1991) (“HSR”) would be assigned to ADWR to update.¹ ADWR would prepare and file both a draft and a final supplemental contested case HSR. All claimants in the Gila River Adjudication would be allowed to file objections to the supplemental HSR.

The Special Master has reviewed the second amended statement. Additional field investigations will likely be required. For example, the amendments state that 30 of the 94 “point sources” do not have an associated statement of claimant or an administrative filing raising the question of whether these 30 claims were reported in the 1991 watershed HSR. On the other hand, the amendments describe 47 wells, a lesser number than the 76 wells the United States in May, 1995, informed Special Master Thorson that its SPRNCA claim covered.²

“As indicated on several occasions in the past,” ADWR has informed the Court that “ADWR does not have the resources to work on more than one technical matter at a time for the adjudication program.”³ Currently, ADWR is preparing a technical report for the special proceeding *In re Proposed Zuni Indian Tribe Water Rights Settlement*, expects to be directed to prepare two technical reports for upcoming special proceedings related to the Arizona Water Settlements Act,⁴ anticipates working on subflow issues in the San Pedro River Watershed, is working on the Hopi Reservation HSR, and anticipates being directed to provide assistance in other ongoing contested cases. In short, ADWR’s capability to undertake before 2009 or even 2010 any technical work or field investigations concerning the SPRNCA is unrealistic.

It is a concern that the information the United States has filed - after much work and two years of persistence - will become stale if we wait until 2010 to consider it. Another concern is that the progress of a formal contested case for the SPRNCA, or even a settlement track, might be curtailed by the evolution of subflow issues.

A contested case has not been initiated. If one is begun, rulings must be made on the motions to intervene filed by Phelps Dodge Corporation (Mar. 2, 1995) and jointly by ASARCO Incorporated and Magma Copper Company (Sept. 29, 1995).

¹ Superior Court’s Order (Feb. 10, 2004); Special Master’s Report On Issues of Broad legal Importance Regarding Supplemental Contested Case Hydrographic Survey Reports Filed in the San Pedro River Watershed (Jan. 24, 2003). Copies of both are available at <<http://www.supreme.state.az.us/wm>> on the *Gila River Adjudication* page.

² Letter from Gary B. Randall, Special Litigation Counsel, to Special Master John M. Thorson (May 1, 1995) containing “a listing of water sources associated with the [SPRNCA] updated as of April 28, 1995.”

³ ADWR’s Status Report 8 (Jan. 31, 2006).

⁴ Pub. L. No. 108-451, 118 Stat. 3478 (2004).

The Special Master is considering initiating a contested case; granting the pending motions to intervene if not withdrawn, and objections are not filed; asking the parties in this matter to form a settlement committee; and directing the settlement committee to undertake discussions to determine if the reserved water right claims of the United States to the SPRNCA can be resolved by agreement. Until further order, ADWR will not be directed to do any technical work or field investigations for the case, and the parties will not be required to file disclosure statements or allowed to conduct any formal discovery. In short, a contested case would be initiated to explore a partial or full settlement.

Participation in the settlement committee would be limited to the parties involved in this case and claimants allowed to intervene upon motion. The Special Master will appoint a chair and approve the committee's members. The committee will be requested to file a written report of its activities within six months after being formed.

This process provides limited judicial involvement because at this point litigation is not realistic. It is a choice, dictated by circumstances, which may be useful only in this case. Other ideas are invited.

IT IS ORDERED:

1. On or before Monday, August 7, 2006, any claimant or party in this matter may file comments concerning these procedures or suggest others.
2. Persons filing comments shall provide a copy of their comments to all persons listed on the mailing list for this matter. The current list is available at <<http://www.supreme.state.az.us/wm>> on the *Court Approved Mailing Lists* page.

DATED: May 9, 2006.

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

On May 9, 2006, 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 this uninitiated contested case dated May 9, 2006.

/s/ KDolge
Kathy Dolge