

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTIES OF APACHE AND 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 19, 2005

CIVIL NO. W1-104

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

CV 6417-100

SCHEDULING ORDER

CONTESTED CASE NAME: *In re State Trust Lands.*

HSR INVOLVED: None.

DESCRIPTIVE SUMMARY: The Special Master issues a Scheduling Order concerning filings, disclosure statements, discovery, motions, briefing, and a status conference.

NUMBER OF PAGES: 9.

DATE OF FILING: May 19, 2005.

**SCHEDULING ORDER**

The Special Master has considered all comments concerning the procedures for this contested case. The effort was made to implement as many as possible of the recommendations presented, and when differences stood out, those were resolved in favor of the broadest opportunity to argue a position. The Special Master appreciates the careful consideration that counsel gave to their comments.

A group of parties commented that allowing other claimants to file cross-motions on the issues to be determined would not be helpful and would confuse the issues because only the State of Arizona's ("State") motions are to be resolved in this case. The order of reference states that "[t]he Special Master shall organize a contested case to hear the State

of Arizona's motions for partial summary judgment...,” but the order designates for determination three unique issues and “[a]ny other issues required to be resolved in connection with addressing the matters listed above.”<sup>1</sup>

Allowing others to file cross-motions gives parties the opportunity to present “any other issues” that should be addressed in this case but are not raised in the State’s motions.<sup>2</sup> The issues presented by the State are significant as counsel stated to the Superior Court. Claimants in both adjudications should have the opportunity to brief and argue all their positions on the referred issues. The order of reference, however, is clear that “any other issues” must be connected to the resolution of the three specific issues.

A group of claimants who designate themselves the “Opposing Claimants (Parties)” have requested to serve upon the State sixteen requests for production of documents and nine non-uniform interrogatories in the form attached to their comments. The Special Master will grant the request to serve, but will allow the State to serve upon the Opposing Parties not more than sixteen requests for production and nine non-uniform interrogatories with the same time to respond. However, this discovery as well as all other discovery will be limited to matters concerning the issues referred for determination. No other formal discovery will be allowed until the commencement of discovery as provided in this order except by leave of the Special Master. If this initial discovery presents issues concerning production and inspection of documents, service of responses, objections, or unforeseen events, the parties are requested to present them to the Special Master at the earliest time.

The parties who plan to file disclosures are reminded that “[t]he purpose of the disclosure rule is [to] give the parties ‘a reasonable opportunity to prepare for trial...nothing more, nothing less’ (citation omitted) and to ‘maximize the likelihood of a decision on the merits.’ (citation omitted). The rule should be applied with common sense to promote that end, rather than being used as a technical weapon....”<sup>3</sup> Counsel should avoid in their disclosures duplication, irrelevance, and immateriality.

The Arizona Department of Water Resources (“ADWR”) will be directed to develop and maintain an electronic data base and index of disclosed documents, available on the Internet, but because the department will not be able to undertake such a project until after October 2005, due to its relocation, the schedule for filing disclosure statements will take into account that situation.

The order of reference provides that “[t]he Special Master shall set an initial meeting to discuss the best method for considering the matters required to be resolved by this order.” The comments that have been submitted are sufficient to cover form of filings, service of documents, disclosure statements, discovery, an electronic data base,

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<sup>1</sup> Order Re: State of Arizona’s Request for Partial Summary Judgment 3, 4 (Jan. 20, 2005) [hereinafter “order of reference”].

<sup>2</sup> The Special Master will refer to the State’s motions in the plural to show that the motions were filed in both general stream adjudications.

<sup>3</sup> *Gerow v. Covill*, 192 Ariz. 9, 18, 960 P.2d 55, 64 (App. 1998).

and a briefing schedule. At this time, the Special Master does not see a need to hold an initial meeting pursuant to Arizona Rule of Civil Procedure 53(d).

IT IS ORDERED:

1. Filings.

A. Docket Numbers. The docket number of this contested case in the Gila River Adjudication will be W1-104 and in the Little Colorado River Adjudication will be CV 6417-100.

B. Caption. The form of caption shown on this Scheduling Order shall be the form of caption in all papers filed in this case.

C. Duplicate Original: An original, and not a photocopy, of all pleadings in this case shall be filed with the Clerks of the Maricopa County Superior Court and the Apache County Superior Court. The filing of an original document comports with the Clerks' procedures.

D. Date of Filing. Filings submitted to the Clerk of the Apache County Superior Court shall be considered timely filed if postmarked by the relevant deadline specified in any order issued in this case.

E. Signature Page. The comments submitted by the Opposing Claimants (Parties) contain ten pages each with a signature of counsel. For purposes of this case, in lieu of numerous pages with a single signature, the Special Master will accept as sufficient an avowal by the lead counsel that includes a listing of the attorneys and the parties each represents who join in the particular pleading. This allowance is made pursuant to Arizona Rule of Civil Procedure 1 that the rules "shall be construed to secure the...inexpensive determination of every action." If a party has concerns related to Rule 11(a), that party may request or provide an individual signature.

2. Litigants. At this time, all the litigants in this case cannot be specified, but they include all the parties who submitted comments on April 15, 2005.

3. Court-Approved Mailing List. The Court-approved mailing list for this case shall include all persons who appear on the Gila River Adjudication and Little Colorado River Adjudication Court-Approved Mailing Lists. The office of the Special Master will post a mailing list for this case, free of duplicate names, at <<http://www.supreme.state.az.us/wm>>. The mailing list has been updated and posted as of May 19, 2005.

4. Issues. The issues to be determined in this case shall be those designated in the order of reference which are the following:

A. Whether, and to what extent, does the evidence establish that the United States withdrew land from the public domain and reserved this property as state trust land?

B. If land was withdrawn and reserved, what was the purpose to be served by each reservation?

C. If lands were withdrawn and held in trust, did the United States intend to reserve unappropriated waters to accomplish the purpose of each reservation?

D. Any other issues required to be resolved in connection with addressing the matters listed above.

5. Disclosure Statements.

A. Scope. The disclosure statements shall be limited to matters concerning the issues listed in Paragraph 4.

B. Filing Date for the State of Arizona. On or before November 7, 2005, the State of Arizona shall file its initial Rule 26.1 disclosure statement.

C. Filing Date for All Other Parties. On or before January 9, 2006, all other parties shall file their initial Rule 26.1 disclosure statements.

D. Contents. All disclosures shall include information and data in the possession, custody, and control of the disclosing party as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation. The disclosure statement shall set forth:

(1). The factual basis of a party's claim concerning each of the designated issues.

(2). The legal theory upon which each claim is based including, where necessary for a reasonable understanding of the claim, citations of pertinent legal or case authorities.

(3). The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call to substantiate its claims with a fair description of the substance of each witness' expected testimony.

(4). The names and addresses of all persons whom the disclosing party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to each claim,

and the nature of the knowledge or information each such individual is believed to possess.

(5). The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6). The name and address of each person whom the disclosing party expects to call as an expert witness, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert.

(7). The existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use to support its claims.

(8). A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by the disclosing party to exist whether or not in its possession, custody, or control and which it believes may be relevant to any of its claims concerning the designated issues, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents will be made, or have been made, available for inspection and copying. If production is not made, the name and address of the custodian of the document shall be indicated. Any document produced for inspection shall be produced as it is kept in the usual course of business.

E. Continuing Duty. All parties shall have a continuing duty to disclose as required by and in the manner provided in Rule 26.1(b)(2).

F. Service of Disclosures. Except as provided in subparagraph G below, all disclosing parties shall provide a notice of filing and a listing of the disclosed documents to all persons appearing on the Court-approved mailing list for this case. Hard (paper) copies of disclosed documents need not be served upon the other parties in this case, as copies of documents can be obtained from ADWR.

G. Service of Lengthy Listing of the Disclosed Documents: If a party's listing of its disclosed documents, not the disclosure statement, exceeds twenty-five pages, that party shall so state in its disclosure statement and shall provide a copy of the complete listing to the Special Master, ADWR,

and to those parties who request from the disclosing party a copy of the complete listing.

H. Not Filing. Parties who do not file a disclosure statement shall file a notice stating that the party is not filing a disclosure statement.

6. Electronic Data Base and Index Provided by ADWR. ADWR is directed to develop and maintain an electronic data base and index of all disclosed documents which shall be available on the Internet. If deemed necessary, ADWR may confer and work with any of the parties in this case to implement the electronic data base and index.

A. Electronic Format. The disclosing party shall submit to ADWR all documents and an index of the documents in accordance with the following requirements:

(1). Number each document with a unique alpha identifier and in numeric sequence. The alpha identifier is related to the name of the disclosing party.

(2). Complete a Disclosure Input Form in Microsoft Excel format for each disclosed document containing the following searchable index fields:

- a. Title or description of document.
- b. Unique identifying number created by the disclosing party for each document.
- c. Date of publication or preparation of document.
- d. Document type (article, book, letter, map, report).
- e. Recipient.
- f. Number of pages of document.
- g. Disclosing party.
- h. Date of submittal of document.
- i. Subject matter of document (up to three categories).
- j. Any other item that would make the disclosed document easy to find and read.

(3). Create a portable document format (.pdf) for each document.

(4). Provide a compact disc to ADWR with copies of the Disclosure Input Forms (Microsoft Excel files) and corresponding disclosure documents (.pdf files).

(5). Provide to ADWR hard (paper) copies of disclosed documents and corresponding Disclosure Input Forms. ADWR will maintain the hard copies to satisfy the Public Records Act, A.R.S. §§ 39-101 *et seq.*

B. Internet Access. ADWR shall place a blank copy of the Disclosure Input Form together with format protocols on the Internet at a domain or address made known to all persons who appear on the Court-approved mailing list for this case. In order to provide access to the disclosed documents, each index field in the Disclosure Input Form shall be subject to query. Copies of all disclosed documents and completed Disclosure Input Forms shall be available on the Internet for viewing and copying.

C. Form. To the extent possible, parties shall submit documents in the following form: single-sided, 8.5" x 11" size, no punched holes, no permanent binding (staples excepted), and no tabs.

D. Copies of Disclosed Documents. ADWR shall make available to any claimant, at the claimant's expense, a copy of disclosed documents on a CD-ROM or a paper copy. ADWR shall have the right to determine the best and most practical manner for providing copies.

E. Fees. ADWR may collect its standard fees for copies and other services rendered related to the use of the electronic data base and index.

7. Discovery.

A. Scope. Discovery, including that allowed in Paragraphs 8 and 9, shall be limited to matters concerning the issues listed in Paragraph 4.

B. Commencement. Excepting the discovery allowed in Paragraphs 8 and 9 or by leave of the Special Master, the parties in this case may commence formal discovery on or after January 9, 2006. Prior to that date, parties may engage in informal discovery conducted cooperatively.

C. Written Discovery. All requests for written discovery shall be served by January 31, 2006. All responses to written discovery and supplemental responses shall be served by March 17, 2006.

D. Completion. All discovery, including depositions, shall be completed by May 9, 2006.

E. Rules. All discovery related to the designated issues shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, and as applicable, the pretrial orders issued in both adjudications and the Rules for Proceedings Before the Special Master.

8. Opposing Parties' First Request for Production of Documents and Non-Uniform Interrogatories to the State of Arizona.

A. Service. On or before May 31, 2005, the Opposing Parties may serve the Requests for Production of Documents and Non-Uniform Interrogatories on the State in the form submitted on April 15, 2005.

B. Responses. On or before August 31, 2005, the State shall respond to the Opposing Parties' requests for production of documents and non-uniform interrogatories.

9. The State's Request for Production of Documents and Non-Uniform Interrogatories to the Opposing Parties.

A. Service. On or before June 20, 2005, the State may serve not more than sixteen requests for production of documents and nine non-uniform interrogatories on the Opposing Parties.

B. Responses. On or before September 19, 2005, the Opposing Parties shall respond, if they have been served, to the State's requests for production of documents and non-uniform interrogatories.

10. State of Arizona's Amendments to its Motions. Although the State avows that it "does not intend to amend its motions for partial summary judgment,"<sup>4</sup> should this position change, the State may amend its motions in accordance with the following procedures:

A. Leave of Court. On or before May 19, 2006, the State shall file a motion for leave to amend its motions which shall include a copy of the proposed amended motions. The Special Master will rule on the motion for leave to amend.

B. Scope of Amendments. A motion for leave to amend will be denied if the proposed amendments expand the scope of this case beyond that set by the order of reference.

C. Time. If a motion for leave to amend is granted, the State shall file its amended motions within ten days after the granting of the motion.

11. Other Motions for Summary Judgment. On or before June 9, 2006, any party in this case may file a motion for summary judgment that presents the party's position concerning any of the designated issues. Each issue shall be separately addressed in the motion. Parties filing motions shall to the greatest extent possible present all their positions in the initial papers so as to keep the need to amend motions to a minimum.

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<sup>4</sup> Comments 4 (Apr. 15, 2005).

Parties who hold the same position are encouraged to file joint pleadings. This and related timelines might change if the State requests to amend its motions.

12. Responses. Responses to all motions for summary judgment shall be filed by August 11, 2006.

13. Replies. Replies to all motions for summary judgment shall be filed by September 29, 2006.

14. Oral Argument. Oral argument will be held on all the issues. The date and time of oral argument will be set later.

15. Status Conference. A status conference is set on Tuesday, June 20, 2006, at 9:00 a.m., in a courtroom to be announced later. The Special Master will consider the parties' positions regarding the need, if any, for an evidentiary hearing, the use and examination of expert witnesses at an evidentiary hearing, set a date for oral argument, and take up any other matters requiring attention at that time.

16. Location of Oral Argument and Hearings. Oral argument and hearings will be held in the Maricopa County Superior Court in Phoenix, but because this case involves claimants in both adjudications, the Special Master retains discretion to hold a hearing in another location. A party in this case may request that a hearing be held in another location.

DATED: May 19, 2005.

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

On the 19th day of May 2005, an original of the foregoing was mailed to the Clerk of the Apache County Superior Court for filing, and a duplicate original was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing to the persons who appear on the Court-approved mailing list for this contested case dated May 19, 2005.

/s/KDolge \_\_\_\_\_  
Kathy Dolge