

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: October 23, 2013

CIVIL NO. W1-11-605

ORDER REQUESTING A  
RESPONSE FROM THE UNITED  
STATES, REQUESTING A NEW  
PROPOSED SCHEDULE IF ONE  
IS NECESSARY, AND  
DIRECTING COMPLIANCE WITH  
THE COURT APPROVED  
MAILING LIST FOR THIS CASE

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master requests a response from the United States to the request to suspend deadlines, requests a new proposed schedule if one is necessary, and directs that parties comply with the Court approved mailing list for this case.

NUMBER OF PAGES: 3.

DATE OF FILING: October 23, 2013.

Freeport-McMoRan Corporation (“Freeport-McMoRan”) filed a notice that the United States has not completed the production of documents due on October 1, 2013, and a request that future deadlines be suspended until the United States completes its

production of electronically stored information and these parties can submit a new proposed schedule for completion of production, exchanging expert reports, and completing discovery.

The Special Master will direct the United States to respond to Freeport-McMoRan's request to suspend deadlines, and if a new schedule is necessary, will request these parties to submit a schedule of proposed time lines for the completion of the production of electronically stored information, exchanging expert reports, and completing discovery. The Special Master will set other time lines as appropriate. A response will not be required if a proposed schedule is filed by the time a response is due.

The Special Master is concerned with Freeport-McMoRan's decision to provide Judge Brain a copy of its notice and request although acknowledging that Judge Brain is not included in the Court approved mailing list for this case. The importance of using the designated Court approved mailing list is a matter that the Special Master has previously taken up with Freeport-McMoRan.<sup>1</sup> In the Special Master's opinion, this action verges on not complying with this case's procedural orders. The "scheduling and case administration" reasons given for providing Judge Brain a copy of the notice and request do not strike the Special Master as convincing or persuasive.

This case has not been transferred to the Court. The Special Master does not believe that when the Court stated that "it appears appropriate to transfer the Fort Huachuca, SPRNCA and Aravaipa Canyon cases to the Court in the near future," the Court did not infer that it is fine to slam dunk the Special Master.<sup>2</sup>

However, of greater importance - and this is what the Special Master emphasizes in this discussion - is knowing that at least five court personnel, working with two different docketing systems, immediately deal with papers filed, and a pleading entitled "request" (or "motion") triggers special attention. The potential for confusion arises as well as the burden of additional work and the unnecessary overloading of court paperwork.

Every week, the Special Master provides the Court and his judicial assistant a tracking calendar of pending matters and required actions. The Special Master personally regularly provides the Court and its judicial assistant with administrative case management information. He provides training to the Court's support staff. The special masters in the adjudications have not undertaken global case management decisions without the knowledge of the Court.

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<sup>1</sup> On September 17, 2013, the Special Master sent all parties and counsel in this case the following electronic mail message: "Please be reminded that the Hon. Mark H. Brain is not included in the Court approved mailing list for this contested case, and copies of documents should not be sent to his office. Thank you for your cooperation."

<sup>2</sup> Court's Order at 2 (July 2, 2013).

The Special Master requests compliance with the Court approved mailing list.<sup>3</sup>

IT IS ORDERED:

1. Requesting the United States to file a response to Freeport-McMoRan's Request to Suspend Deadlines on or before **Friday, November 15, 2013**. A response is not required if a new schedule of proposed time lines, as directed in the next paragraph, is submitted by November 15, 2013.

2. Requesting Freeport-McMoRan and the United States to submit on or before **Friday, November 29, 2013**, if one is necessary, a schedule of proposed time lines for the completion of the production of electronically stored information, exchanging expert reports, and completing discovery. And,

3. Directing all parties to comply with the Court approved mailing list for this case.

DATED: October 23, 2013.

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

On October 23, 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. W1-11-605 dated July 1, 2013.

/s/ Barbara K. Brown  
Barbara K. Brown

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<sup>3</sup> The Special Master believes that Arizona originated the idea of using Court approved mailing lists in adjudications, which other states have adopted and implemented. Very early, the Arizona Supreme Court affirmed the legal correctness of using these lists in our adjudications. *In the Matter of the Rights to the Use of the Gila River*, 171 Ariz. 230, 830 P.2d 442 (1992).