

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 27, 2005

CIVIL NO. W1-11-605

ORDER SETTING A
STATUS CONFERENCE

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master will hold a status conference on March 8, 2005.

NUMBER OF PAGES: 3.

DATE OF FILING: January 27, 2005.

ORDER

The United States, Arizona Department of Water Resources (“ADWR”), Arizona Water Company, and jointly the Bella Vista Water Company, Inc., Pueblo Del Sol Water Company, and the City of Sierra Vista (collectively, the “Sierra Vista Parties”¹) filed comments in response to the Special Master’s inquiry as to how this contested case could be moved to finality. The comments indicate that ADWR’s lack of resources do not make it realistic that ADWR can, within the next twelve months, file a supplemental contested

¹ Both water companies are also part of the group designated Bella Vista Group of Objectors. The Bella Vista Ranches, L.L.P. is the third entity that is part of the Bella Vista Group of Objectors. See Bella Vista Groups’ Clarification of Objectors (Aug. 31, 2001).

case hydrographic survey report (“supplemental HSR”) and complete the requisite notifications, but progress could be made in determining certain legal issues regarding federal reserved water rights whose resolution does not require ADWR’s assistance. The Sierra Vista Parties suggest that a settlement track be established.

A. Determination of Issues

When this case came before him in 2001, the Special Master believed that a supplemental HSR was the first step towards its conclusion. A supplemental HSR is not feasible within at least a year and possibly longer. The Special Master is not persuaded that a supplemental HSR will not be necessary at some point in order to conclude this matter, as one may be needed to resolve critical issues dependent on ADWR’s technical analysis (such as significant diminishment). The Special Master believes, however, that deferring all further proceedings in this case until a supplemental HSR is published and noticed would be an indefensible delay.

The United States and the Arizona Water Company suggest that the Special Master could address legal issues regarding the establishment of the federal reservation of Fort Huachuca, its precise federal purposes, need for water for its primary purposes, and the priority of its federal reserved water rights, if any. These issues would be of law or mixed fact and law whose resolution would not require ADWR’s technical assistance.

The Special Master believes that the legal issues selected for briefing must be directly relevant to Fort Huachuca because that is the scope of this case, and a briefing or trial schedule should address the most important issues whose resolution will aid the conclusion of this matter.

The Arizona Water Company suggests using the “template” that the Superior Court established in its December 8, 1997, and July 16, 2002, orders (available online at <<http://www.supreme.state.az.us/wm>>). Applied to this case, that template calls for (1) the United States to file a disclosure statement setting forth a factual summary of its positions regarding the parameters of Fort Huachuca’s federal reserved water rights, (2) other parties filing responses and disclosure statements setting forth their positions on those parameters, and (3) the Special Master holding a comprehensive pretrial conference after which the issues to be heard would be framed or the parties are allowed to file summary judgment motions based on the disclosures filed. This template could be used or it could be expedited by framing the issues following the upcoming conference.

The Special Master wants to discuss the feasibility of the parties filing in conjunction with the disclosure statements stipulations as to historical facts or all or part of the components of water right attributes.

B. Settlement Track

Settlement has been productive in this adjudication. The Special Master has not involved himself actively in settlement negotiations, and no change in this regard is

contemplated. However, the Special Master wants to discuss whether a settlement track can be started, and if so, what could he do to facilitate that track, giving the litigants wide latitude but monitoring those efforts for effectiveness.

C. Arizona Water Company's Motion to Intervene

The Arizona Water Company has requested to intervene in this case. The last day to file responses is February 2, 2005, and the last day to file a reply is February 28, 2005.

The Special Master plans to hold a status conference to (1) discuss and, if possible, frame the legal issues that can and should be briefed and determined at this time, (2) discuss establishing a settlement track, and (3) take up the Arizona Water Company's motion to intervene.

IT IS ORDERED, setting a status conference on **Tuesday, March 8, 2005, at 10:00 a.m.**, in Courtroom 914, East Court Building, 101 West Jefferson, Phoenix, Arizona, to discuss the matters described above.

DATED: January 27, 2005.

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

On the 27th day of January, 2005, the original of the foregoing was filed with the Clerk of the Maricopa County Superior Court and a copy was mailed to all persons listed on the Court-approved mailing list for Contested Case No. W1-11-605 dated October 21, 2004, and to the attorneys for the Arizona Water Company.

/s/KDolge
Kathy Dolge