

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: August 17, 2001

CIVIL NO. W1-11-605

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master rules on the unopposed Motion to Intervene of the State of Arizona Agency Claimants and on the opposed Motion to Intervene of the City of Sierra Vista. Both motions are granted.

NUMBER OF PAGES: 4.

DATE OF FILING: Original sent to the Clerk of the Court on August 17, 2001.

ORDER

At the Scheduling Conference held on May 21, 2001, the State of Arizona Agency Claimants and the City of Sierra Vista requested permission to file motions to intervene in this contested case. These claimants were granted until June 8, 2001, to file motions.

1. Motion of State of Arizona Agency Claimants. The State of Arizona filed a motion to intervene on June 7, 2001. No opposition was filed to this motion.

2. Motion of the City of Sierra Vista (“City”). The City filed a motion to intervene on June 8, 2001. The United States on behalf of Fort Huachuca (“the Fort”) requested an extension of time to July 10, 2001, to respond to the City’s motion. The Special Master granted this request and extended the time for the City to file a reply to July 25, 2001. On July 10, 2001, the United States filed a response opposing the City’s motion to intervene. On July 25, 2001, the City replied.

The City moved to intervene because as “a claimant and groundwater user in the San Pedro River Adjudication,” it “wishes to preserve its right to participate in any or all issues raised in this contested case that may affect its water rights.”¹ The City claims “the Fort and the City pump groundwater from the same groundwater basin.”²

The City did not file objections to the Fort’s watershed file report or major user report contained in the 1991 San Pedro River Hydrographic Survey Report, although it filed objections to other portions of the Report. The City stated it may file, or may decide not to file, objections to the Fort’s updated watershed file report that the Arizona Department of Water Resources will prepare after the Fort files amended statements of claimant later this year.

The United States opposes the City’s motion on the ground that the City does not have standing to intervene because the City has not shown that it is “entitled to water rights.”³ According to the United States, the City “has made no showing, or even averment, that it is using appropriable groundwater,”⁴ and therefore, the City does not have “a cognizable interest in the outcome of this case,”⁵ a requisite for standing as an intervenor. The United States argues that before the City can be permitted to intervene in this contested case, the City must show or aver “that its wells are intercepting or affecting subflow.”⁶

In 1995, the City filed twelve amended statements of claimant for the San Pedro River watershed. As the United States indicates, “The City’s claims to water rights include only general claims to groundwater,” and in a footnote, “All of these claims are to groundwater from four wells.”⁷ The City is a claimant in this adjudication, and it claims to use groundwater.

The City’s claims have not been adjudicated; they have not even been addressed. Whether the City is “entitled” to an adjudicated water right for its groundwater wells has not been determined. Such a determination would come at a future time after the Arizona

¹ Motion to Intervene, p. 3, lns. 6-7.

² Id., p. 2, ln. 5.

³ Response, p. 2, ln 7.

⁴ Id., p. 2, lns. 6-7.

⁵ Id., p. 5. ln. 25.

⁶ Id., p. 4. ln. 2.

⁷ Id., p. 2, lns. 5-6 and fn. 1.

Department of Water Resources determines the “specific parameters” of the “subflow zone,” as defined by the Arizona Supreme Court⁸, and the appropriate proceedings thereafter.

At this point, the City does not know whether its wells will be included or excluded from the general adjudication. Further, the City does not know if its claimed use of groundwater may or may not be subject to claims by the Fort that the groundwater “is necessary to accomplish the purpose of [the] reservation.”⁹

Due to their land areas and populations, the City and the Fort are major water users in the San Pedro River watershed. They are adjoining neighbors (“The City has annexed Fort Huachuca”¹⁰). Both are claimants in this adjudication, and their claims include the use of groundwater. Whether the City’s claims will be included or excluded from this adjudication, and whether they might impact the Fort’s adjudicated reserved water rights are significant issues that are unclear at this time. Because this contested case may address or lead to those issues, the City has a “direct and immediate interest” in the outcome of this case, which “would have a direct and legal effect upon [its] rights, and not merely a possible and contingent equitable effect.”¹¹ Lastly, there is no assurance that the existing parties in this contested case (even though two of the parties are cities) will adequately protect the City’s interest in its water claims.

Rule 24(a), ARIZ. R. CIV. P., states that intervention “shall be permitted:”

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

The City meets the requirements of Rule 24(a) to intervene in this contested case.¹²

⁸ In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 198 Ariz. 330, 344, 9 P.3d 1069, 1083 (2000), cert. denied *sub nom.* Phelps Dodge Corp. v. U.S., 2001 WL 290213 (June 25, 2001).

⁹ In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 195 Ariz. 411, 423, 989 P.2d 739, 751 (1999), cert. denied *sub nom.* Phelps Dodge Corp. v. U.S. and Salt River Valley Water Users’ Assn. v. U.S., 530 U.S. 1250 (June 19, 2000).

¹⁰ Motion to Intervene, p. 2, lns. 3-4.

¹¹ Miller v. City of Phoenix, 51 Ariz. 254, 263, 75 P.2d 1033, 1037 (1938).

¹² Although not a consideration for intervention, given the extent of settlement activity in this adjudication to date, allowing the City to intervene in this contested case might facilitate efforts to reach a mutual resolution of the disputed issues.

IT IS ORDERED:

1. The unopposed motion to intervene of the State of Arizona Agency Claimants is GRANTED.
2. The City's motion to intervene is GRANTED.

DATED: August 17, 2001.

GEORGE A. SCHADE, JR.
Special Master

The original of the foregoing sent on August 17, 2001, to the Clerk of Maricopa County Superior Court for filing; copies mailed to those parties who appear on the Court-approved mailing list for Case No. W1-11-605 dated April 12, 2001, and to:

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