

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 26, 2005

CIVIL NO. W1-11-1174
(Consolidated)

ORDER

CONTESTED CASE NAME: *In re PWR 107 Claims.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master allows briefing on the position of the United States as to how to proceed with the adjudication of its claims to springs that are located in areas either adjoining or within the San Carlos Indian Reservation and directs the United States to file a report concerning the locations of certain springs.

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DATE OF FILING: October 26, 2005.

On October 13, 2005, a telephonic status conference was held. The United States and the City of Sierra Vista reported that they had executed stipulations resolving the City's objections.

The United States and the San Carlos Apache Tribe ("Apache Tribe") have agreed to resolve the Apache Tribe's objections to fourteen of the United States' thirty Public Water Reserve No. 107 claims and have requested sixty days to execute the stipulations. This process is in motion, and further directives from the Special Master are not necessary.

At this time, the principal unresolved objections are those of the Apache Tribe to sixteen of the United States' claims. These parties cannot reach agreement on nine of the sixteen claims because only cadastral locations are available for the nine springs (nos. 21 through 29 listed in the Aug. 1, 2005, Joint Status Report), and the Apache Tribe desires more accurate legal descriptions. The United States plans to field investigate these nine springs and will try to obtain Global Positioning System ("GPS") locations for these and any other springs (such as nos. 6 and 11, *supra*) that would benefit from a more accurate legal description of their locations. The field work will be conducted early next year, and the United States will report its findings in May, 2006.

The Special Master reiterates that the use of GPS descriptions in this case should not be viewed as binding precedent requiring them in future contested cases. This case presents a factual issue, namely, the location of several springs, whose resolution will benefit from using GPS technology, an offer that the United States made in order to conclude this matter.

There was much discussion regarding the Court's jurisdiction to proceed with the resolution of the Apache Tribe's objections to the seven remaining claims of the United States (nos. 5, 7, 8, 9, 10, 12, and 15, *supra*). These seven springs are located within areas on which these parties differ as to the demarcation of the San Carlos Indian Reservation's southwest boundary. The concept of a conditional reserved water right, a jointly held reserved water right, possible withdrawal of claims, ongoing high level negotiations addressing boundary issues, and the Court's jurisdiction to determine the boundary of an Indian reservation was discussed. One version of a conditional reserved water right involves decreeing a water right but reserving to certain parties the right to request a modification of the decree or order when more accurate information of a reservation's boundary is obtained.

The United States requested to file a memorandum setting forth its position on how to proceed with the adjudication of those springs whose locations, according to the evidence that has been presented, are within the areas where the United States and the Apache Tribe have different opinions as to the correct boundary of the San Carlos Indian Reservation. The request was granted.

Discussion was held regarding joint field investigations and technical reviews between the United States and the Apache Tribe. The Special Master believes that these parties will benefit from jointly working on technical investigations regarding the locations of the springs in dispute, and strongly encourages such cooperation. If invited, the staff of the Arizona Department of Water Resources ("ADWR") should participate in joint field investigations to the extent that such investigations will assist ADWR with its own review of the stipulated abstracts of water rights.

It was agreed that the United States will submit all the stipulations and proposed abstracts of water rights as a group to ADWR for the department's technical review. ADWR's technical review should be sufficient to allow the Special Master to make appropriate findings regarding "the accuracy and completeness of the factual information contained in the stipulated abstracts of water rights" (Sept. 30, 2004, order).

Concerning the withdrawal of ten federal claims, the withdrawals will be filed together with the stipulations.

In light of the foregoing, timelines for filing disclosure statements and completing discovery will not be set at this time.

IT IS ORDERED:

1. The United States shall have until **Friday, January 13, 2006**, to file a memorandum regarding proceeding with its claims affected by the boundary issues.
2. The parties in this contested case shall have until **Friday, February 17, 2006**, to file responses.
3. The United States shall have until **Tuesday, March 14, 2006**, to reply.
4. On or before **Friday, May 5, 2006**, the United States shall file a report concerning the locations of the nine springs for which only cadastral locations are available and the locations of any other springs that have been better ascertained.
5. The United States, the Apache Tribe, and ADWR are directed to work jointly in field investigations and technical reviews to the greatest extent appropriate and possible.
6. If deemed necessary, a status conference will be set in the spring of 2006.

DATED: October 26, 2005.

/s/ George A. Schade, Jr.

GEORGE A. SCHADE, JR.
Special Master

On October 26, 2005, 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. W1-11-1174 dated June 15, 2005.

/s/ KDolge

Kathy Dolge