

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: June 26, 2002

CIVIL NO. W1-11-1174
(Consolidated)

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

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master (1) sets dates for the United States to file amended statements of claimant and for the Arizona Department of Water Resources to file a supplemental contested case hydrographic survey report; (2) designates two issues for determination as issues of broad legal importance; and (3) sets a schedule for briefing the issues.

NUMBER OF PAGES: 5; Attachment A - 1; total - 6 pages.

DATE OF FILING: Original delivered to the Clerk of the Court on June 26, 2002.

ORDER

The Special Master, after considering the matters heard at the first prehearing conference held on June 11, 2002, orders the following:

1. Filing Amended Statements of Claimant. The Bureau of Land Management ("BLM") anticipates filing amended statements of claimant, dismissing some statements, and making other amendments related to its claims in this contested case. Although some claims have been amended, much of the information on which the claims are based was compiled over

twenty years ago, and the statements of claimant were filed over ten years ago. Updating the statements of claimant to include the most current information is the most efficient way to begin this case. A period of six months to allow the BLM to complete this process is reasonable.

2. Updating the Watershed File Reports. The Arizona Department of Water Resources (“ADWR”) will update the watershed file reports (“WFRs”) in accordance with Judge Susan R. Bolton’s order of September 28, 2000.¹ The BLM and ADWR are encouraged to work cooperatively, when and where practical, to complete the updating of the WFRs. A period of two months after the BLM files amended statements of claimant for ADWR to prepare a supplemental contested case HSR is reasonable.

3. Designation of Issues of Broad Legal Importance. Several issues whose resolution would expedite this contested case were identified. One issue is determining the nature and scope of Public Water Reserve No. 107 (“PWR 107”). The need to brief this issue will be reviewed at a future prehearing conference.

The Special Master has concluded that two issues must be addressed at this early stage because they relate to the first procedural steps to take after ADWR files a supplemental contested case HSR, and their determinations will apply to other contested cases. Pursuant to Section 12.00 of the Rules for Proceedings Before the Special Master (1991 and as amended) (the “Rules”), these two issues will be designated and determined as issues of broad legal importance. The issues are:

A. Which claimants or parties should ADWR notify that a supplemental contested case HSR has been filed, and which claimants or parties should be allowed to file written objections?

B. How much time should claimants or parties have to file written objections after ADWR files a supplemental contested case HSR?

ADWR wishes to have directions regarding the distribution of a supplemental contested case HSR and the filing of objections to the HSR. Second, the length of the objection period is not clear; for example, 60, 90, and 180 days have been suggested.

¹ Judge Bolton ruled that:

“Rather than order the Department to undertake to update all its watershed file reports for all of the statements of claimant in the San Pedro River Basin, the Court adopts the proposal of the Department. As contested cases are scheduled, the Department will be ordered to update and supplement the watershed file reports to include recommendations of water right attributes and also to advise the Court concerning new uses and any new or amended statement of claimants. Objections will be allowed as the updates are published.” Order, September 28, 2000 (available online at <http://supreme.state.az.us/wm> on the *Gila River Adjudication* page).

4. Procedures for Issues of Broad Legal Importance. In accordance with the Rules, all persons on the Court-approved mailing lists for both the Gila River and the Little Colorado River Adjudications will be mailed a copy of this order. Claimants in both adjudications may participate in the determination of one or both issues of broad legal importance. The participation of other claimants may be limited to the determination of the issues of broad legal importance.

The office of the Special Master will prepare and distribute a mailing list for service of all pleadings and disclosure statements related to the portion of this case addressing these issues of broad legal importance. The list will consist of the persons who file a Notice of Intent to Appear and the persons on the current mailing list for this case.

ADWR may submit written comments about administrative or procedural points that would be beneficial for the litigants to know.

Claimants and counsel are encouraged to meet and discuss their interest in participating in the determination of these issues and to explore using lead counsel and other ways to make participation economical and efficient. Claimants who wish to participate in the determination of these issues of broad legal importance must familiarize themselves with the Rules, as the office of the Special Master cannot give legal advice. The Special Master wishes to move expeditiously toward the resolution of these issues.

5. Briefing the Issues of Broad Legal Importance. A briefing schedule will be set for filing motions and hearing oral arguments to determine the issues of broad legal importance. The Special Master's determination of the issues may, upon request of a claimant, be submitted to Maricopa County Superior Court Judge Eddward P. Ballinger, Jr. as a report under Rule 53, ARIZONA RULES OF CIVIL PROCEDURE.

6. Disclosures of Information. Claimants or persons interested in participating in the determination of one or both of the issues of broad legal importance shall make the initial disclosure of information required by Rule 26.1(a), ARIZONA RULES OF CIVIL PROCEDURE. Disclosures shall be limited to the determination of the two designated issues of broad legal importance. A timeline for disclosures of information regarding other issues in this case will be set at a later time.

7. Discovery. Discovery pursuant to Rule 26, ARIZONA RULES OF CIVIL PROCEDURE, will remain stayed except for matters disclosed under Rule 26.1(a).

8. Future Conferences. The Special Master will set future conferences when oral arguments are heard. The Master would like to have a conference after the BLM files its amended claims and prior to ADWR's filing of the supplemental contested case HSR in order to determine the status of field investigations, settlement discussions, and other matters.

IT IS ORDERED:

1. The BLM shall have until **Tuesday, December 31, 2002**, to file amended statements of claimant associated with water rights claimed pursuant to PWR 107 and which are the subject of this contested case.

2. ADWR shall file on or before **Monday, March 3, 2003**, a supplemental contested case HSR for the watershed file reports associated with the BLM's statements of claimant. The report shall contain ADWR's proposed water right attributes for each individual water right claim or use investigated in accordance with A.R.S. § 45-256(B).

3. The following issues are designated issues of broad legal importance and shall be briefed and argued before the Special Master in accordance with Section 12.00, Rules for Proceedings Before the Special Master:

A. Which claimants or parties should ADWR notify that a supplemental contested case HSR has been filed, and which claimants or parties should be allowed to file written objections?

B. How much time should claimants or parties have to file written objections after ADWR files a supplemental contested case HSR?

4. The litigants in this contested case and the claimants and persons listed on the Court-approved mailing lists for the Gila River and the Little Colorado River Adjudications may participate in the determination of the issues of broad legal importance. All claimants who wish to participate in the determination of these issues shall comply with the requirements of the Rules.

5. Claimants wishing to participate in the determination of the issues of broad legal importance, and who are not on the Court-approved mailing list for this contested case, shall file with the Clerk of the Maricopa County Superior Court on or before **Friday, August 30, 2002**, a Notice of Intent to Appear. The notice shall state that the person wishes to participate in the determination of the issues and shall specify the issue on which the person wishes to be heard. One copy of the notice shall be sent to the office of the Special Master. A copy need not be sent to persons appearing on any Court-approved mailing list.

6. The initial disclosure of information shall be completed as fully as then possible by **Friday, September 13, 2002**. Disclosures of information required by Rule 26.1(a), ARIZONA RULES OF CIVIL PROCEDURE, shall be limited to the determination of the designated issues of broad legal importance. Disclosure need not be made of the information required by Rule 26.1(a)(7). The disclosure process should be commensurate with the expectation that the issues will be determined by motion and not trial. A claimant shall serve one copy of the claimant's disclosure statement on the persons who are on the Court-approved mailing list for

this contested case that the office of the Special Master will distribute before September 6, 2002.

7. Claimants wishing to participate in the determination of the issues of broad legal importance shall have until **Friday, September 27, 2002**, to file motions addressing one or both of the issues. Responses shall be filed on or before **Friday, November 1, 2002**. Replies shall be due on or before **Friday, November 22, 2002**. Service of these pleadings shall be limited to persons on the mailing list that the office of the Special Master will prepare and distribute before September 6, 2002.

8. Subject to the same timelines, ADWR may submit comments about administrative or procedural points that would be beneficial for the litigants to know.

9. Discovery pursuant to Rule 26, ARIZONA RULES OF CIVIL PROCEDURE, remains stayed except that discovery is allowed on matters disclosed under Rule 26.1(a).

10. A claimant may request the Special Master to report his determination of an issue of broad legal importance to the Maricopa County Superior Court under Rule 53, ARIZONA RULES OF CIVIL PROCEDURE, prior to the completion of the Special Master's report of the proposed water rights in the San Pedro River Watershed.

11. The Special Master will hear oral arguments on the motions regarding the issues of broad legal importance on **Tuesday, December 10, 2002, at 9:00 a.m.**, in Conference Room 230, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona. Other conferences concerning motions or other matters related to this contested case may be set at that time.

12. All persons on the Court-approved mailing lists for both the Gila River and the Little Colorado River Adjudications shall be mailed a copy of this order.

DATED: June 26, 2002.

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

The foregoing delivered this 26th day of June 2002, to the Distribution Center, Maricopa County Superior Court Clerk's office, for copying and mailing to those parties who appear on the Court-approved mailing lists for Contested Case No. W1-11-1174 (Consolidated) dated June 26, 2002 (Attachment A); Case No. W-1, W-2, W-3, and W-4 (Consolidated) dated February 7, 2002; and Case No. 6417 dated February 7, 2002.

/s/ KDolge
Kathy Dolge

Attachment A

W1-11-1174

Court-approved Mailing List -- June 26, 2002

PWR 107 Claims (14 names)

Prepared by the Office of the Special Master

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Attn: Water Case
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AZ Attorney General's Office representing
AZ Game & Fish Dep't; AZ State Land Dep't
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U.S. Dep't of Justice
Environment & Natural Resources Div.
Attn: R. Lee Leininger
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Salt River Project
c/o Salmon, Lewis & Weldon, P.L.C.
**Attn: M. Byron Lewis, J.B. Weldon, M.A.
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Office of Water Rights
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Safford District Office
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