

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: December 11, 2013

CIVIL NO. W1-11-232

CIVIL NO. W1-11-605

CIVIL NO. W1-11-2664

CIVIL NO. W1-11-3342

CONSOLIDATED ORDER
CONCERNING THE MOTIONS OF
THE UNITED STATES FOR A
PROTECTIVE ORDER, SUSPEND
SCHEDULES, AND FILE A MOTION
OUT OF TIME

CONTESTED CASE NAMES: *In re San Pedro Riparian National Conservation Area*; *In re Fort Huachuca*; *In re Redfield Canyon Wilderness Area*; and *In re Aravaipa Canyon Wilderness Area*.

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master transfers to the Adjudication Court the motions of the United States for a protective order and motions to suspend the litigation schedules concerning the active contested cases in the San Pedro River Watershed. The Special Master grants the motion of the United States to file a motion for summary judgment out of time in the contested case *In re Redfield Canyon Wilderness Area*.

NUMBER OF PAGES: 5.

DATE OF FILING: December 13, 2013.

This order addresses the following seven motions filed by the United States with the Special Master:

1. Motion for a Protective Order filed in the contested case *In re Fort Huachuca*
2. Motion for a Protective Order filed in the contested case *In Aravaipa Canyon Wilderness Area*
3. Motion to Suspend Schedule and Request for Expedited Consideration filed in the contested case *In re San Pedro Riparian National Conservation Area*
4. Motion to Suspend Schedule and Request for Expedited Consideration filed in *In re Fort Huachuca*
5. Motion to Suspend Schedule and Request for Expedited Consideration filed in the contested case *In re Redfield Canyon Wilderness Area*
6. Motion to Suspend Schedule and Request for Expedited Consideration filed in *In re Aravaipa Canyon Wilderness Area*, and
7. Motion for Filing United States' Motion for Summary Judgment Out of Time filed in *In re Redfield Canyon Wilderness Area*.

I. Motions for A Protective Order and Motions to Suspend Schedule and Request for Expedited Consideration

On October 24, 2013, the United States filed with the Adjudication Court a Motion for, and Memorandum in Support of, a Stay of Proceedings in the four contested cases in the San Pedro River Watershed that involve non-Indian federal reserved water rights (“Stay Motion”). The motion raises legal arguments concerning compliance with the adjudication statutes, standing of litigants in the four contested cases, and the Court’s jurisdiction to determine water rights.

The Stay Motion “requests the Court to stay all contested case proceedings involving non-Indian federal reserved water rights in the San Pedro River watershed until [the Arizona Department of Water Resources (“ADWR”)] completes the Subflow Report, the Court approves ADWR’s identification of the subflow zone, and ADWR supplements the San Pedro [Hydrographic Survey Report] to comply with the requirements of A.R.S. § 45-256.”

Arizona Public Service Company, ASARCO LLC, Bella Vista Water Co., Inc., City of Sierra Vista, Franklin Irrigation District, Freeport-McMoRan Corporation, Gila Valley Irrigation District, Pueblo Del Sol Water Company, Salt River Project (“SRP”), and the Yavapai-Apache Nation have filed responsive memoranda. A reply from the United States is due on January 10, 2014.

On November 13, 2013, the United States filed with the Special Master two Motions for a Protective Order “from all discovery, including the ... deposition of witnesses, until such time that the United States’ Motion to Stay is resolved” (“Protective

Motions”).¹ The Protective Motions do not raise the legal arguments made in the Stay Motion. The motions argue that a protective order should be granted until the Stay Motion is resolved in order to avoid an undue burden and expense on the United States as other parties could possibly be removed as litigants in the contested cases *In re Fort Huachuca* and *In re Aravaipa Canyon Wilderness Area*. The United States and Freeport-McMoRan are currently engaged in discovery in both of these cases. Freeport-McMoRan filed a response opposing both Protective Motions.

On November 27, 2013, the United States filed with the Special Master in each of the four contested cases a similar Motion to Suspend Schedule and Request for Expedited Consideration (“Suspension Motions”). The motion filed in each case “requests the Court issue an Order suspending the schedule and all deadlines in this contested case until a final ruling on the Stay Motion.” The Suspension Motions do not raise the legal arguments made in the Stay Motion.

Freeport-McMoRan has informed the Special Master that it intends to respond to the Suspension Motions by December 17, 2013.

The Special Master has considered the motions, the posture of these cases, and the proceedings that have occurred over the past year. For the following reasons, the Special Master will transfer the Protective Motions and Suspension Motions to the Adjudication Court for rulings.

First, the relief requested in these motions is compellingly the same. All these cases are going through active but different phases of litigation. The Protective Motions and Suspension Motions seek a halt to the litigation of these cases until the Stay Motion is finally resolved, and new scheduling orders are issued. The United States does not ask for other relief.

Second, the Adjudication Court has indicated that “it would be proper for the Court to take the lead on various issues” and “[i]n particular, it appears appropriate to transfer the *Fort Huachuca*, *SPRNCA* and *Aravaipa Canyon* cases to the Court in the near future.”² The Court has expressed its willingness to assume these three cases.

In fact, the Court is currently considering proposals “for transferring *Fort Huachuca* to the Court, so that the Court can set aside time to hold hearings in that matter, including an evidentiary hearing.”³ A ruling on the proposals will presumably result in the transfer of this case to the Adjudication Court “in the near future.”

Third, Freeport-McMoRan has filed a Motion for Immediate Transfer of Contested Cases to the Trial Court. The motion requests that the Adjudication Court immediately assume all further litigation of the four cases involving non-Indian federal

¹ In the motion filed in *In re Fort Huachuca*, the omission stated “production of ESI [electronically stored information] and other documents, submission of expert reports, and.”

² Minute Entry Order at 2 (July 2, 2013). The text is available at <http://tinyurl.com/kvfb4fk>.

³ *Id.*

reserved water rights. SRP supports the motion and has submitted proposals for the transfer and subsequent proceedings in these cases. No other parties have filed responsive memoranda. A ruling on the motion could result in the immediate transfer of the four cases to the Adjudication Court.

The Adjudication Court's July 2, 2013, order did not mention the *In re Redfield Canyon Wilderness Area* case, but Freeport-McMoRan has moved to transfer this matter to the Court.

Four, transferring these motions to the Adjudication Court at this time will preclude the possibility of conflicting rulings and disruptive consequences.

Five, transferring the motions should expedite the resolution of all the motions that have been filed regarding the future direction of these cases and this adjudication. The Special Master has consistently worked to expedite matters and move this adjudication forward. These objectives are now best served by transferring these motions.

The Special Master strongly recommends that parties comply with all timelines until the Court has ruled on the Stay Motion. Although this suggestion might not be favorably received for the matters where discovery is proceeding, it is valid for the *In re Redfield Canyon Wilderness Area* case where core issues are being briefed. Summary judgment motions have been filed. This briefing should not be derailed.

II. Motion for Filing United States' Motion for Summary Judgment Out of Time in the Contested Case *In re Redfield Canyon Wilderness Area*

The United States requests that its motion for summary judgment, supporting memorandum, and statement of facts be filed and accepted as timely although they were filed one day late. Motions were due on Friday, November 29, 2013; the United States mailed its pleadings on Monday, December 2, 2013; and the Special Master received copies on Tuesday, December 3, 2013. The motion will be granted.

III. Filing of the Special Master's Consolidated Order

Because the Clerk of the Maricopa County Superior Court maintains a separate docket for each contested case, the Special Master will file one original of this order in each of the four cases. However, the Special Master requests that parties who file pleadings from here on do not adopt this procedure but continue to file separately in each case.

IT IS ORDERED:

1. Transferring to the Honorable Mark H. Brain the United States' Protective Motions filed in *In re Fort Huachuca* and *In re Aravaipa Canyon Wilderness Area* and the Suspension Motions filed in each of the four contested cases.

A. Parties may file responsive memoranda, and the United States may file a reply regarding these motions as they deem appropriate.

B. Parties who file pleadings concerning the Protective Motions and Suspension Motions shall use the Court approved mailing lists for the contested cases as required and shall provide a copy to the Adjudication Court.

2. Granting the United States' Motion for Filing United States' Motion for Summary Judgment Out of Time in *In re Redfield Canyon Wilderness Area*. And,

3. Requesting the Clerk of the Maricopa County Superior Court to file an original of this order in the docket of each of these contested cases.

DATED: December 13, 2013.

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

On December 13, 2013, four original documents of the foregoing order were delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to the Honorable Mark H. Brain and all persons listed on the Court approved mailing lists for Contested Cases Nos. W1-11-232, W1-11-605, W1-11-2664, and W1-11-3342 dated July 1, 2013.

/s/ George A. Schade, Jr.
George A. Schade, Jr.