

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 4, 2008

CIVIL NO. W1-11-232
(Consolidated)

ORDER DENYING MOTION
TO STAY BRIEFING ON
DESIGNATED ISSUES

CONTESTED CASE NAME: *In re San Pedro Riparian National Conservation Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master denies the motion of Freeport-McMoRan Corporation and Babacomari Ranch Company LLLP to stay the briefing on the designated issues.

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DATE OF FILING: August 4, 2008.

Freeport-McMoRan Corporation and Babacomari Ranch Company, LLLP (“the movants”) moved to stay the briefing of the designated issues until such time as the Arizona Department of Water Resources (“ADWR”) has completed a supplemental hydrographic survey report for the San Pedro River Watershed. No responsive pleadings were filed.

First, as stated in the Scheduling Order designating the issues for this briefing,

“this case will benefit by clarifying the nature of a reserved water right, if one exists.”¹ The issues designated for briefing will serve to clarify the attributes of a reserved right “if one exists.” We are taking the first of potentially many - not the final - step toward a determination. The movants might be concerned that once legal decisions start moving in a direction not favorable to their positions, they may not stop. That concern is premature.

Second, it is argued that judicial economy is served by staying the briefing. Judicial economy is defined as “the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary’s time and resources.”² It is an important value that promotes swift administration of justice and rations resources as appropriate.³

If the movants are correct, determinations made now may be rendered moot, as they argue. But if they are not correct, we will have passed up an opportunity to advance this case. Considerations of judicial economy must account for the unique circumstances of this adjudication begun over 30 years ago.

For nearly ten years following the Arizona Supreme Court’s decision in *San Carlos Apache Tribe v. Superior Court*,⁴ which returned the adjudication to litigation in the trial court, we have been compelled to use many avenues to advance this adjudication. In its October 19, 2007, progress report, ADWR was unable to estimate when it might start a supplement of the 1991 Final HSR for the San Pedro River Watershed.⁵ The completion of a narrower supplement of the watershed file reports for the SPRNCA has not gained a spot on the Court’s schedule of tasks for ADWR. At this point, it appears that supplemental HSRs for either the San Pedro River Watershed or for the riparian conservation area are years away.

As for this briefing, disclosures and discovery on the issues have been completed, and motions or position statements have been filed. Furthermore, making some determinations at this point might promote full or partial mutual resolutions of objections and adversarial positions. Given the history of mutual resolutions in this adjudication, the promotion of settlements is a factor that must be considered and encouraged.

The briefing addresses some but not all of the attributes of a reserved water right, if one exists, and considering the potential benefits and disadvantages of proceeding with the briefing at this time and the most appropriate use of limited resources, the Special Master concludes that the briefing should not be stayed. We should not be afraid of going slowly, but only of standing still.

¹ Scheduling Order 2 (June 28, 2007).

² BLACK’S LAW DICTIONARY 863 (8th ed. 2004) (“judicial economy”).

³ See generally *Sinochem Int’l Co. Ltd. v. Malaysia Int’l Shipping Corp.*, 549 U.S. ____ (2007).

⁴ 193 Ariz. 195, 972 P.2d 179 (1999).

⁵ ADWR Supp’l Rep. Concerning Future Adjudication Work, Exh. A (Analysis of Existing Non-De Minimis Uses) (Oct. 19, 2007).

For the foregoing reasons, IT IS ORDERED denying the motion to stay the briefing of the designated issues.

DATED: August 4, 2008.

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

On August 4, 2008, 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. W1-11-232 dated July 25, 2008.

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