

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: September 22, 2011

CIVIL NO. W1-11-19
(Consolidated)

ORDER ADDING FREEPORT-
MCMORAN CORPORATION TO
THE COURT APPROVED MAILING
LIST AND CONFIRMING SANDS
INVESTMENT COMPANY'S
PLACEMENT ON THE LIST

CONTESTED CASE NAME: *In re Sands Group of Cases.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master adds Freeport-McMoRan Corporation and its in-house legal counsel to the Court approved mailing list and confirms the placement of Sands Investment Company on the list.

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DATE OF FILING: September 22, 2011.

The Special Master extended the time for parties to respond to the request of Freeport-McMoRan Corporation's outside and in-house legal counsel to be added to the Court approved mailing list ("CAML") and invited comments on ways to improve the use of CAMLs. ASARCO LLC ("ASARCO"), Freeport-McMoRan Corporation ("Freeport-McMoRan"), and Pinnacle West Capital Corporation filed comments. No objections were filed to Freeport-McMoRan's request for addition to the mailing list.

I. The Request of Freeport-McMoRan

The parties were informed that a review of the record available to the Special Master led to the conclusion that Freeport-McMoRan's predecessor Phelps Dodge Corporation ("Phelps Dodge") was not a litigant in this matter.

Freeport-McMoRan submitted a copy of a notice and request dated August 14, 1995, to add to this case's CAML as co-counsel one of Phelps Dodge's then private attorneys who was moving to in-house counsel. The request appears to assume that Phelps Dodge was already included in the CAML likely because in May, 1995, Phelps Dodge had filed objections to Special Master Thorson's report. The Special Master agrees that there is no record of this request having been acted upon, it was not, and he does not know why this omission occurred.

The Special Master will grant Freeport-McMoRan's request to add its outside and in-house attorneys to the CAML. After reading the comments, the Special Master believes that at least the parties and counsel in this case are satisfied with the current CAML procedures. Several good comments merit a response.

First, the requisites of Pre-Trial Order No. 1 Re: Conduct of Adjudication (May 30, 1986) must be followed until they are modified by order of the Court. Admittedly, provisions can be found in the order that in light of 25 years experience can be subject to different interpretations or have not been strictly adhered to, but the Special Master is not authorized to overlook Court imposed procedural requisites. Parties who wish to offer modifications to procedural aspects of the order are invited to do so.

Second, the Gila River Adjudication is exempt from mandatory civil e-filing requirements because the technological system that would allow e-filing must be modified as well as (reportedly) some provisions of Pre-Trial Order No. 1. For several years, the Special Master brought this matter for discussion with the Clerk of the Maricopa County Superior Court. Three years ago, it was decided that budget constraints and concerns with the uniqueness of Pre-Trial Order No. 1 precluded completion of the needed work to allow e-filing, and the project has been deferred.¹

Third, to allow the use of electronic mail for distribution of copies in substitution of the procedures mandated by the Arizona Rules of Civil Procedure will require the approval of the Court. However, for efficiency, economy, and expediency, the Special Master will allow parties and counsel - in this contested case - to agree formally between them to use electronic mail, facsimile, CD-ROM disks, or DVD-ROM disks to exchange copies of documents among themselves. The agreement does not have to be filed with the Special Master. Parties can agree to exchange copies using these alternative means. If the practice creates problems brought to the Special Master's attention, counsel will be asked to provide a copy of the agreement.

This case will serve as an experiment for this procedure. If the procedure works here, the Special Master will consider implementing it in other cases or for a particular briefing. If it does not work, the procedure will be modified or ended.

¹ One result of this effort is that the Clerk began making available by computer access at the Clerk's office scanned copies of documents filed in the Gila River Adjudication.

The Special Master appreciates being provided printed copies of documents specific to a briefing, a most helpful practice. As ASARCO noted, the Special Master does not have staff to assist with research.

Four, the Clerks of the Apache and Maricopa County Superior Court and the Arizona Department of Water Resources spend much time preparing and distributing the monthly docket subscription service. Due to various reasons, the docket sheets can be incomplete. The Special Master's office regularly reviews the dockets to assure their accuracy.

II. The Request of Sands Investment Company

On September 2, 2011, Sands Investment Company (dba the Sands Ranch) filed a Notice of Change of Firm Affiliation and Request to be Added to the Court-Approved Mailing List. Being a litigant in this case, the company is on the CAML.

IT IS ORDERED:

1. Granting the request of Freeport-McMoRan dated July 15, 2011, to be added to this case's CAML. This placement does not grant the status of an intervenor.
2. Granting the request of Freeport-McMoRan's in-house legal counsel to be placed on the CAML.
3. Allowing parties and their attorneys to agree to use electronic mail, facsimile, CD-ROM disks, or DVD-ROM disks to exchange and distribute among themselves copies of documents filed with the Clerk of the Superior Court. At this time, this practice will be an experiment limited to this contested case, and will be subject to modification or termination if problems are brought to the attention of the Special Master.
4. Confirming that Sands Investment Company is listed on the CAML.

DATED: September 22, 2011.

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

On September 22, 2011, 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 lists for both the Gila River Adjudication, Nos. W-1, W-2, W-3, and W-4 (Consolidated), and this contested case dated July 25, 2011.

/s/ Barbara K. Brown
Barbara K. Brown