

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/10/2003

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

T. A. Pavia

CONTESTED CASE NO. W1-103

FILED: April 17, 2003

**IN RE THE GENERAL ADJUDICATION OF
ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE**

**IN RE: SUBFLOW TECHNICAL REPORT,
SAN PEDRO RIVER WATERSHED**

9:00 a.m. This is the date and time set for a conference to determine the scope of the Special Master's report to the Superior Court and the procedures to resolve the issues presented by the Arizona Department of Water Resources' Subflow Technical Report, San Pedro River Watershed, and the responses and objections filed by claimants. (Proceeding No. SF-01). Present are F. Patrick Barry and R. Lee Leininger and Oliver S. Page for U.S. Dept. of Justice, Joe P. Sparks, John Ryley, Robyn Kline and Susan Montgomery for the Apache Tribes, Janet L. Ronald, Rich Burtell and Tom Whitmer for ADWR, John T. Hestand and Allen Gookin for Gila River Indian Community, M. Byron Lewis, Mark McGinnis, Fritz Beeson and David Roberts for Salt River Project, James Callahan for City of Phoenix, William H. Anger for Cities of Mesa, Chandler, Scottsdale and Glendale, Cynthia Haglin and Doug Toy for City of Chandler, Paula Williams and Michael Lacy for Bella Vista Group and Pueblo del Sol, Cynthia M. Chandley, Tim Gibson, Lee Wilkening for Phelps Dodge Corp., Thomas Shedden and Graham Clark for Arizona Attorney General, Tom Wilmoth for Arizona Water Co., Charlotte Benson for

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/10/2003

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

T. A. Pavia

CONTESTED CASE NO. W1-103

City of Tempe, Chin-Zen Plotner of the U.S. Army, Lawrence Marquez of the Bureau of Indian Affairs, Anthony Fines and David A. Brown for GVID/FID and Verde Valley Communities, John Lacy and Robin Barnes for BHP Copper, Steve Wene and Lee Storey for Rio Rico Properties, City of Safford, and others, Lauren J. Caster for ASARCO, Chris Avery for the City of Tucson, Ralph Hunsaker for LDS Church, Charles Cahoy of the City of Mesa, Beth Miller for the City of Scottsdale, Carlos Ronstadt for the City of Prescott, Jim Conlogue for the City of Sierra Vista, George W. Reyes for Ft. Huachuca, Bill Staudenmaier for A.P.S, Richard Mabery for Verde Valley Water Users, Robert Sejkora of Arizona State Parks, Sally Worthington for Maricopa County, Frank Brophy for Babocomari Ranch, Alexis Glascock of the Arizona Legislature, and Doug C. Nelson of Gila Bend Dendora Valley Water Users Association. Also present is Kathy Dolge, Judicial Assistant.

Court Reporter, Patty Connelly, is present.

The Court has reviewed all reports and pleadings and presents the following procedure for consideration by the parties:

- 1) Need, if any, for oral argument on responses and objections to the Report.
- 2) Use of rebuttal declarations from expert witnesses.
- 3) Cross-examination of the reports.
- 4) Briefing of the legal issues.

The Court would propose a time span of between August and September to complete the process. The Special Master's report would then be submitted to Judge Ballinger by the end of the year.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/10/2003

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

T. A. Pavia

CONTESTED CASE NO. W1-103

Twenty-three parties have filed comments with eight of them having filed expert reports.

Future hearings would be held in a larger courtroom at Central Court Building.

Comments as to procedures were made by several parties.

Mr. Staudenmaier suggests the parties identify the issues, then a schedule on the responses and replies to the objections to be set.

Further discussion is held recommending briefing of the issues, cross-examination and comments then oral argument should be permitted after the expert witness testimony.

John Lacy suggests appointment of a technical committee. Agreed by Jim Callahan, Joe Sparks, Pat Barry and Bill Anger that a technical committee should not be appointed.

The Court feels that a technical committee would cause extra delay.

John Hestand: Issues should be hydrologic as they affect the rights of the people. Recommends rebuttal comments by the experts after cross-examination. The issue should include the cone of depression test.

The Court would like to focus on the cone of depression test.

Anthony Fines suggested rebuttal expert reports should be permitted prior to the hearings. As to existing reports, add cone of depression. Suggests time frame of September to October.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/10/2003

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

T. A. Pavia

CONTESTED CASE NO. W1-103

Discussion held regarding utilizing services of the Arizona Geological Survey. Jim Callahan and Pat Barry opposed utilizing Arizona Geological Survey.

The Court feels ADWR has the freedom to utilize the Arizona Geological Survey or any other appropriate source of information.

Further discussion is held as to the briefing schedule and cross-examination.

Byron Lewis indicated the Court should set out a briefing schedule and also what issues oral argument will be heard on. Rebuttal reports are not recommended. Briefing schedule would be set for memos, responses and replies, then oral argument which should be set prior to cross-examination hearing in September or October. Rebuttal declarations should be filed before the cross-examination hearing.

Pat Barry does not see value in oral argument on comments. The scope of cross-examination should be determined by the briefing of legal issues.

Jim Callahan recommends the Court conduct the cross-examination of ADWR's witnesses.

Rick Mabery stated the Special Master should set out as soon as possible a list of the issues to be briefed.

Mrs. Ronald informed the Court Mr. Burtell would be available as her expert witness.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/10/2003

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

T. A. Pavia

CONTESTED CASE NO. W1-103

Joe Sparks suggests using a multiple report approach. The report to be filed on the subflow would use the best available data and studies and then ADWR would submit a report with a line drawn, and each segment of the Gila River watershed would be done the same way. If there is time, objections could be filed and the Court may take oral argument, if desired. The Court would designate legal issues for briefing and oral argument. Their resolution would be a second report. A report on the technical methodology for the establishment of rules on cone of depression would follow. Predevelopment conditions need to have more information presented. Recommendations to Judge Ballinger could be made that ADWR establish the subflow zone and draw the lines on the map. The map is to be provided by ADWR and it should be filed with the Court. The parties have already been notified and do not need to be re-notified. Only the subflow zone map needs to be filed.

Ms. Chandley recommends that the parties give suggestions as to the issues and the parties have an opportunity to comment on the Court's list of issues.

Discussion is held on predevelopment conditions.

Byron Lewis stated that Judge Ballinger directed ADWR to consider predevelopment conditions.

Mr. Fines stated he believes the only watershed assigned to the Special Master is the San Pedro, and ADWR needs to publish a supplemental HSR.

Chris Avery agreed ADWR needs to file a supplemental HSR and the Special Master should order one prepared. Additional briefing is not needed on *de minimis* right issues.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/10/2003

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

T. A. Pavia

CONTESTED CASE NO. W1-103

Mr. Sparks moved to strike the recent filings listing suggested issues. The Court should determine the legal issues and set a briefing schedule.

Frank Brophy for Babocomari Ranch suggests Mexican land grant rights should be included in this inquiry. The Special Master states his order of reference is limited to subflow and *de minimis* issues.

The Court stated the report that will be sent to Judge Ballinger would cover subflow, the cone of depression test, and *de minimis* issues.

The Court will identify the issues, a briefing schedule will be set and a formal order will be sent out.

11:00 a.m. Court adjourns.

A copy of this minute entry is mailed to all parties on the Court-approved mailing list for W-1, W-2, W-3 and W-4 (Consolidated) dated December 10, 2002, as modified.