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2 Arizona General Stream Adjudication  
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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

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

W-1 (Salt)  
W-2 (Verde)  
W-3 (Upper Gila)  
W-4 (San Pedro)  
(Consolidated)

**Contested Cases Nos. W1-11-556  
and W1-11-1132**

PARTIAL REPORT OF THE SPECIAL  
MASTER ON CLAIMS ADJUDICATED IN  
THE SAN PEDRO RIVER WATERSHED

14 CONTESTED CASE NAME: *In re Coronado National Memorial.*

15 HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

16 DESCRIPTIVE SUMMARY: The Special Master files a partial report on water rights of the United  
17 States within the Coronado National Memorial (National Park Service) which have been settled by  
18 stipulation and moves the Superior Court to approve the report and enter a partial decree in the San  
19 Pedro River Watershed adjudicating these rights. Objections to this report must be filed with the  
20 Clerk of the Superior Court on or before **November 12, 2003**. Responses to the objections shall be  
21 filed by **December 8, 2003**. A hearing on any objections will be held at a time and place to be set by  
22 the Superior Court.

23 NUMBER OF PAGES: 9; Appendix A - 23 pgs; Appendix B - 34 pgs; Appendix C - 2 pgs;  
24 Appendix D - 4 pgs; Total 72 pgs.

DATE OF FILING: Original delivered to the Clerk of the Court on May 15, 2003.

1 **I. INTRODUCTION**

2 These contested cases involve water right claims of the United States within the Coronado  
3 National Memorial, a federal reservation of land in the San Pedro River Watershed administered by  
4 the United States Department of the Interior, National Park Service.<sup>1</sup> Each case was organized during  
5 the normal course of the adjudication of the San Pedro River Watershed. The cases address the  
6 objections filed to the water right claims within the Coronado National Memorial<sup>2</sup> reported in the  
7 Final San Pedro River Watershed Hydrographic Survey Report (1991) (“San Pedro HSR”).

8 All the parties in each case entered into stipulated agreements, which include abstracts of  
9 proposed water right for the claims of the United States. The United States and the objectors have  
10 mutually resolved these contested cases.

11 A.R.S. § 45-257(A)(2) states that. “[t]he master shall...[f]or all determinations,  
12 recommendations,...prepare and file with the court a report in accordance with rule 53(g) of the  
13 Arizona rules of civil procedure, which shall contain those determinations, recommendations,....”  
14 This report recommends that the Superior Court approve stipulated determinations of the water rights  
15 of the United States within the Coronado National Memorial and enter a partial decree in the San  
16 Pedro River Watershed adjudication.<sup>3</sup>

17 **II. STIPULATION ACCEPTED ON MARCH 26, 1996, BY SPECIAL MASTER THORSON**

18 On March 26, 1996, Special Master Thorson accepted a stipulation filed by the parties on  
19 March 19, 1996, in Contested Case No. W1-11-556. A copy of the stipulation is in Appendix A. The  
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21 <sup>1</sup> The original pleadings and orders are available at the office of the Clerk of the Maricopa County Superior  
22 Court, 601 West Jackson Street, Phoenix, Arizona 85003, under the docket of Contested Case No. W1-11-556.

23 <sup>2</sup> The water right claims in Contested Case No. W1-11-1132 are for a private land inholding that the United  
24 States acquired in 2001 which is now part of the Coronado National Memorial.

<sup>3</sup> This procedure is similar to the one the Superior Court used in the partial decree entered in *In re Saguario National Monument (Rincon Mountain Unit)* (July 11, 2001), which is available online at <[www.supreme.state.az.us/wm/](http://www.supreme.state.az.us/wm/)> on the *Gila River Adjudication (Judge Eddward P. Ballinger, Jr.)* page.

1 stipulation contained abstracts of proposed water rights for three springs and ten wells (“underground  
2 water”). This was the first of two stipulations filed regarding the Coronado National Memorial.

3 Special Master Thorson found that the agreement was fair and just and had been entered into  
4 in good faith, and he ruled that the abstracts would be held for inclusion in the first appropriate  
5 catalog or report of water uses for the San Pedro River Watershed. But on June 3, 1996, upon the  
6 United States’ unopposed motion, he stayed “all further proceedings in regard to the definition of the  
7 attributes of the wells” for which abstracts had been submitted with the stipulation accepted on  
8 March 26, 1996.”<sup>4</sup> The stay was to last until after the resolution of Interlocutory Review Issues Nos.  
9 2, 4, and 5, which were then before the Arizona Supreme Court, or further order of the Court. Neither  
10 the motion to stay nor Special Master Thorson’s order included the three springs.

11 This case remained in abeyance until September 19, 2001, when Special Master Schade  
12 requested a report from the parties regarding the progress of negotiations. The parties filed reports on  
13 December 21, 2001, June 28, 2002, and December 30, 2002. A status conference was set on May 5,  
14 2003, but that conference was vacated when the parties filed a second stipulated agreement.

15 The second stipulation, filed on May 2, 2003, contained abstracts of proposed water rights or  
16 withdrawals for the same wells for which abstracts were filed on March 19, 1996. The new abstracts  
17 are discussed in the next section. A copy of the stipulation is in Appendix B. Special Master Schade  
18 accepted the second stipulation on May 6, 2003.

19 The second stipulation did not contain new or modified abstracts for the three springs that  
20 were included in the stipulation accepted on March 26, 1996.<sup>5</sup> There have been no indications that  
21 the abstracts for the three springs that Special Master Thorson accepted on March 26, 1996, are no

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22 <sup>4</sup> Minute Entry 1 (June 3, 1996).

23 <sup>5</sup> The springs are *Joe’s Spring No. 3* (Appendix 1 of the May 19, 1996, stipulation), *Tunnel Mine Spring*  
24 (*Appendix 2 id.*), and *Brown Allotment Spring* (*Appendix 3 id.*). See San Pedro HSR Watershed File Report  
24 (“WFR”) No. 111-23-016, vol. 3 at 2-238 and vol. 1 at 5-431-435 (National Park Service).

1 longer valid. In the status report filed on December 21, 2001, the United States stated that three of  
2 the parties “have acknowledged the continued validity of the abstracts for the three springs.”<sup>6</sup>

3 On May 13, 2003, the Special Master received a copy of a letter dated May 7, 2003, sent by  
4 the National Park Service to the Arizona Department of Water Resources (“ADWR”). The letter  
5 submitted various amendments and withdrawals of statements of claimant and well registrations in  
6 accord with the stipulated abstracts contained in the second stipulation.

7 One amendment related to Tunnel Mine Spring. The United States requested to amend the  
8 legal descriptions of Tunnel Mine Spring and of the place of use to the South East (SE) North West  
9 (NW) South East (SE), Section 11, Township 24 South, Range 20 East, G&SRB&M. The letter  
10 indicated that the statement of claimant for Tunnel Mine Spring is 39-11130(B), but according to the  
11 records in the case file, the statement of claimant for this spring is 39-11129(B). Statement of  
12 Claimant No. 39-11130(B) is described in the second stipulation as being for Brown Allotment Well.

13 In the order of May 6, 2003, accepting the stipulation, Special Master Schade stated that he  
14 would include the stipulation and abstracts for the three springs in the partial report he would file  
15 with the Superior Court. The Special Master finds that the abstracts for the three springs that Special  
16 Master Thorson accepted on March 26, 1996, including the amendments to Tunnel Mine Spring, are  
17 valid and should be included in this report for the Superior Court’s consideration.

18 **III. STIPULATION ACCEPTED ON MAY 6, 2003, BY SPECIAL MASTER SCHADE**

19 The stipulation accepted on May 6, 2003, addressed twenty-five water right claims (24 claims  
20 involve wells and one a stockpond). It contained abstracts of proposed water rights for twenty-one  
21 claims and listed four statements of claimant that the United States will withdraw within sixty days  
22 after the Superior Court approves the stipulation.

23 \_\_\_\_\_  
24 <sup>6</sup> Status Report 2 (December 21, 2001). The parties were ASARCO Incorporated, Gila River Indian  
Community, and Salt River Project.

1 The stipulation covered eleven claims that are part of Contested Case No. W1-11-556  
2 (including the four claims to be withdrawn) and fourteen claims that are part of Contested Case No.  
3 W1-11-1132. The stipulation filed on May 2, 2003, contained abstracts of proposed water rights or  
4 withdrawals for the same wells or groundwater claims for which abstracts were submitted with the  
5 stipulation accepted on March 26, 1996. The Special Master finds that the abstracts of water rights  
6 for the wells or groundwater claims included in the stipulation accepted on March 26, 1996, were  
7 amended and superseded by new abstracts contained in the stipulation accepted on May 6, 2003.

8 In 2001, the United States acquired a private land inholding and the water right claims  
9 appurtenant to the land. The determinations of those claims and objections were docketed in  
10 Contested Case No. W1-11-1132. A case initiation order has not been filed in that case, but the  
11 United States and the objectors reached an agreement and submitted abstracts for the claims in that  
12 case. The abstracts of water rights for that contested case are for one stockpond and thirteen wells.<sup>7</sup>

13 The following are the abstracts that the Special Master recommends that the Court approve:

14 1. Contested Case No. W1-11-556. Stipulation accepted by Special Master Thorson on March  
15 26, 1996: Statements of Claimant Nos. 39-11129(A), 39-11129(B) (as amended), and 39-11130(A)  
16 for three springs tributary to Montezuma Canyon Wash described in footnote 4.

17 2. Contested Case No. W1-11-556. Stipulation accepted by Special Master Schade on May 6,  
18 2003: Statements of Claimant Nos. 39-11130(B) (the first two abstracts relate to the same registered  
19 well); 39-11130(C), 39-11130(E); 39-11130(F); 39-11130(G); and 39-13636 for six registered wells.

20 3. Contested Case No. W1-11-1132. Stipulation accepted by Special Master Schade on May  
21 6, 2003: Statements of Claimant Nos. 39-4343(A) through 39-4343(M), inclusive, for thirteen  
22 registered wells, and 39-4344 for one stockpond.<sup>8</sup>

23 <sup>7</sup> See San Pedro HSR WFR No. 111-23-DCC-001, vol. 3 at 2-272 (Richards, Richard B.).

24 <sup>8</sup> Although not included in the abstract, Montezuma Pond was registered as Stockpond No. 38-64702. *Id.*

1 The United States agreed to withdraw Statements of Claimant Nos. 39-8265, 39-11130(D),  
2 39-11130(H), and 39-13637 involving four wells no longer in use (Contested Case No. W1-11-556).

3 In its May 7, 2003, letter to ADWR, the United States withdrew these four claims.

4 **IV. SPECIAL PROCEDURAL ORDER PROVIDING FOR THE APPROVAL OF**  
5 **FEDERAL WATER RIGHTS SETTLEMENTS, INCLUDING THOSE OF INDIAN TRIBES**

6 Special proceedings to consider both stipulations and the abstracts are not warranted under  
7 the Arizona Supreme Court’s Special Procedural Order Providing for the Approval of Federal Water  
8 Rights Settlements, Including Those of Indian Tribes (1991)<sup>9</sup> for the reasons that the settlement of  
9 these claims was reached in the normal course of the adjudication of the San Pedro River Watershed,  
10 and there are no special circumstances preventing the Superior Court from considering the settlement  
11 agreements in the normal course of the adjudication.

12 These claims were settled following the preparation of the San Pedro HSR, the filing of  
13 objections to the HSR, the organization of contested cases, and the completion of negotiations begun  
14 in 1995. Special proceedings are warranted when “[t]here are special circumstances preventing the  
15 consideration of the settlement agreement in the normal course of the adjudication.”<sup>10</sup> There has been  
16 no showing of special circumstances that would prevent the Court from considering these agreements  
17 in the normal course of the adjudication.

18 **V. TIME TO FILE OBJECTIONS**

19 A.R.S. § 45-257(A)(2) provides in pertinent part that when the Special Master submits a  
20 report to the Superior Court in accordance with Rule 53(g), Ariz. R. Civ. P., “[i]f the report covers an  
21 entire...federal reservation, each claimant may file with the court written objections to the report  
22 within one hundred eighty days of the date on which the report was filed with the court.”

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23 <sup>9</sup> The Special Procedural Order (May 16, 1991) is available online at <[www.supreme.state.az.us/wm/](http://www.supreme.state.az.us/wm/)> on the  
24 *Arizona Supreme Court: Decisions and Orders* page.

<sup>10</sup> *Id.* at ¶ A(5).

1 The San Pedro HSR describes the United States' water right claims within the Coronado  
2 National Memorial in WFRs Nos. 111-23-016 and 111-23-DCC-001. WFR No. 111-23-DCC-001  
3 reports the water right claims within the private land inholding acquired by the United States in 2001.  
4 All of the abstracts, whose approval is recommended in this report, are for claims reported in both  
5 WFRs. Because the abstracts pertain to an entire federal reservation, the 180-day period specified by  
6 A.R.S. § 45-257(A)(2) should be provided for filing objections to this report.

7 **VI. RECOMMENDATIONS**

8 The Special Master recommends that the Superior Court:

9 1. Find that notice of this report was given as required by law, and the time allowed for  
10 claimants to file objections to the report was as required by law.

11 2. Find that the stipulated agreements of the parties and the abstracts of proposed water  
12 rights for the United States within the Coronado National Memorial should be approved.

13 3. Adjudicate and decree the water rights of the United States within the Coronado  
14 National Memorial as set forth in the twenty-four abstracts of water rights stipulated by the parties,  
15 including amendments, as described in this report.

16 4. Order that the twenty-four stipulated abstracts shall be incorporated in the tabulations  
17 or lists of all water rights and their relative priorities on the Gila River system and source in the form  
18 that the Court shall determine, pursuant to A.R.S. § 45-257(B)(2), to be most appropriate.

19 **VII. SUBMISSION AND AVAILABILITY OF REPORT**

20 This report will be filed with the Clerk of the Maricopa Court Superior Court. A copy of the  
21 report will be mailed to all the parties in both contested cases and to all persons listed on the Gila  
22 River Adjudication Court-Approved Mailing List. An electronic copy will be posted on the Special  
23  
24

1 Master's Web site (<<http://www.supreme.state.az.us/wm/>>) on the *Gila River Adjudication (In re*  
2 *Coronado National Memorial)* page.

3 **VIII. MOTION FOR APPROVAL OF THE SPECIAL MASTER'S PARTIAL REPORT**

4 The Special Master recommends that the Superior Court approve the stipulation and the  
5 abstracts of water rights for the three springs accepted by Special Master Thorson on March 26,  
6 1996, including amendments, and approve the stipulation and abstracts of water rights accepted by  
7 Special Master Schade on May 6, 2003. The Special Master moves the Superior Court, under A.R.S.  
8 § 45-257(B) and Rule 53(h), Ariz. R. Civ. P., to adopt the recommendations contained in this report  
9 and adjudicate the water rights proposed for the Coronado National Memorial in a partial decree in  
10 the San Pedro River Watershed adjudication. A proposed Order and Partial Decree of Stipulated  
11 Water Rights in the San Pedro River Watershed for the Coronado National Memorial is in Appendix  
12 C.

13 **IX. NOTICE OF SUBSEQUENT PROCEEDINGS**

14 Any claimant in the Gila River Adjudication may file a written objection to this report on or  
15 before **Wednesday, November 12, 2003**. Responses to objections shall be filed by **Monday,**  
16 **December 8, 2003**. Objections and responses must be filed with the Clerk of the Maricopa County  
17 Superior Court, 601 West Jackson Street, Phoenix, Arizona 85003, Attn: Water Case. Copies of  
18 objections and responses must be served personally or by mail on all persons listed on the Court-  
19 approved mailing list for this matter that is contained in Appendix D.

20 The hearing on the Special Master's motion to approve the report and any objections to the  
21 report will be taken up as ordered by the Superior Court. Rule 53(h), Ariz. R. Civ. P., provides that  
22 "[t]he court after hearing may adopt the report or modify it or may reject it in whole or in part or may  
23 receive further evidence or may recommit it with instructions."  
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1 Submitted this 15th day of May, 2003.

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3  
4 /s/ George A. Schade, Jr.  
GEORGE A. SCHADE, JR.  
5 *Special Master*  
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7 The original report was filed with the Clerk of the  
8 Maricopa County Superior Court on May 15, 2003,  
9 and was delivered to the Distribution Center for  
10 copying and mailing to all the parties in both  
11 contested cases and to all persons who appear on the  
12 Court-approved mailing list for the Gila River  
13 Adjudication dated May 6, 2003 (Appendix D).

11 /s/ KDolge  
12 Kathy Dolge  
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