

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: June 25, 2013

CIVIL NO. W1-11-605

THIRD ORDER MODIFYING THE
SCHEDULING ORDER AND
SETTING ADDITIONAL TIME
LINES FOR A CONFERENCE,
MOTIONS, AND EVIDENTIARY
HEARING

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master sets new time lines for exchanging expert reports; completing discovery; filing motions, responses, and replies; holding a conference; and scheduling an evidentiary hearing.

NUMBER OF PAGES: 4.

DATE OF FILING: June 25, 2013.

A telephonic conference was held on June 11, 2013, to consider the matters set forth in the December 19, 2011, Scheduling Order.¹ Prior to the conference on May 30, 2013, the United States filed a Motion to Extend Deadlines for service of expert reports

¹ Those matters were designation of issues for briefing; schedule for filing motions, statements of position, responses, and replies; date, time, and location of oral argument on motions and evidentiary hearing(s); and, scope and timing of ADWR's participation.

and completion of discovery. No opposition to the motion was raised at the conference.

The Special Master proposed a schedule to take this case up to the evidentiary hearing on the quantification of water uses for military purposes.² The schedule is set forth in this order. Discussion was held concerning the appointment of either a steering or settlement committee, the participation of the Arizona Department of Water Resources (“ADWR”), the ongoing discovery process, and the transfer of this case to the Court.

Neither a steering nor a settlement committee will be appointed at this time. The litigants in this case are sufficiently familiar with each other’s position that if a comprehensive settlement is sought, the interested parties will be able to begin and hold negotiations among themselves.

ADWR is currently working on several extensive technical assignments ranging from a final hydrographic survey report to studies in several other contested cases. Its capability to undertake an active technical role in this phase is limited.

Much has been said about the ongoing discovery process. Discovery is a normal and beneficial process in complex litigation, but must never be allowed to become a delaying strategy. We have so far avoided the situations encountered in the past in other proceedings that powerfully affected where we and ADWR find ourselves today with the adjudications. Focus must remain on the issues actually being litigated and on what is being done today rather than on what might be done on another day.

The Court will decide if and when this case is transferred. The Special Master will set up this case to assure a smooth transition.

The Scheduling Order was previously modified by orders dated November 8, 2012, and February 27, 2013 (amended order nunc pro tunc April 17, 2013).

IT IS ORDERED:

1. Granting the Motion of the United States to Extend Deadlines for service of expert reports and completion of discovery. Granting the motion will result in the following two modifications of the December 19, 2011, Scheduling Order:

A. Modifying Section II, Paragraph 4(C) (Discovery) to provide that all discovery including depositions shall be completed by **Friday, February 28, 2014**.

B. Modifying Section II, Paragraph 5 (Expert Reports) to provide that

² The issues being considered in this phase involve determining (A) the scope of water uses encompassed by the term “military purposes,” (B) the quantity of water reserved to fulfill the military purposes, and (C) if the sources of water other than groundwater are adequate to accomplish the military purposes, and if not, determining the quantity of groundwater required to accomplish those purposes.

on or before **Friday, December 6, 2013**, all parties will exchange expert reports that a party considers relevant to the designated issues.

2. Conference. A conference is set for **Thursday, March 13, 2014, at 9:00 a.m. (MST)** to take up the following matters:

- A. Discussion of issues for prehearing briefing.
- B. Schedule for filing and briefing motions in limine.
- C. Any other matters relevant to the evidentiary hearing.

A ruling will be filed by Friday, April 11, 2014. The conference will be held in court; the courtroom will be announced later.

3. Motions. On or before **Wednesday, June 4, 2014**, any party in this case may file prehearing motions. Parties sharing the same position are encouraged to file joint pleadings.

4. Responses. Responses to motions shall be filed by **Friday, July 18, 2014**.

5. Replies. Replies to motions shall be filed by **Friday, August 22, 2014**.

6. Statement of Position. A party may file a statement of position in lieu of a motion. Responses and replies to a statement of position will be subject to the foregoing deadlines.

7. Page Limitations. Because this case may be transferred to the Court, parties are not excused from mandated page limitations for motions, responses, and replies. Until this case is transferred requests to exceed page limitations should be filed with the Special Master.

8. Schedule of Presentation. On or before **Tuesday, September 2, 2014**, counsel who will present oral argument are requested to submit a proposed schedule of presentation.

9. Oral Argument. Oral argument will be held on the motions on **Wednesday, September 3, 2014, at 9:00 a.m. (MST)** in the Maricopa County Superior Court. The courtroom will be announced later.

10. Evidentiary Hearing. An evidentiary hearing is planned to commence in November or December 2014, in the Maricopa County Superior Court. The date, time, and courtroom will be announced later. If this case is transferred to the Court prior to November 2014, the schedule for the evidentiary hearing may change.

DATED: June 25, 2013.

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

On June 25, 2013, 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. W1-11-605 dated January 10, 2013.

/s/ Barbara K. Brown
Barbara K. Brown