

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: October 21, 2004

CIVIL NO. W1-11-605

ORDER DIRECTING THE
UNITED STATES AND THE
ARIZONA DEPARTMENT OF
WATER RESOURCES TO FILE
STATUS REPORTS AND
REQUESTING COMMENTS
FROM THE OTHER PARTIES

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master requests the United States and the Arizona Department of Water Resources to file status reports on or before December 23, 2004. Any other parties in this contested case may file comments by December 23, 2004.

NUMBER OF PAGES: 3; Attachment A - 2 pgs.; Total 5 pgs.

DATE OF FILING: October 21, 2004.

ORDER

The progress of this case has been delayed pending the determination of issues regarding the scope of contested cases particularly those organized in the San Pedro River Watershed, consideration of the Arizona Department of Water Resources' ("ADWR") *Subflow Technical Report, San Pedro River Watershed* (2002), and the

scheduling of ADWR's technical work. On February 10, 2004, the Court issued an order determining the issues of the scope and procedures of contested cases such as this one. The Court is currently taking up the objections to the Special Master's report on the subflow procedures described in ADWR's report. On February 21, 2003, the Court set the relative priority ADWR should give to the projects ADWR has been directed to undertake, and the "work related to the Fort Huachuca contested case" was the second of five listed priorities.

In May 2002, the United States reported that its "Geological Survey is conducting a detailed study of the subsurface and hydrogeology in the Sierra Vista Subwatershed and will be using the new information to create the most comprehensive groundwater model to date."¹ In March 2003, ADWR filed its last status report in this matter. ADWR reported that the United States Geological Survey's "groundwater model for the Sierra Vista subbasin...is expected to be released to the public in 2004."²

The department indicated it "will not be able to proceed with cone of depression tests on the 25 wells included in the Fort's claims" until "a court-approved methodology has been established."³ That methodology is being reviewed by the Court, whose determination will not be known until at least next year. ADWR indicated that the modeling work required to update the significant diminishment analysis contained in the Final San Pedro River Watershed Hydrographic Survey Report ("HSR") (1991) could take "at least one year to complete" assuming one full time modeling specialist.⁴

While it appears this case may have to wait for the finalization of the subflow and cone of depression procedures, the Special Master wants to consider if progress could be made in moving this case forward at this time. Consideration could be given to the feasibility of (1) determining some water right attributes, (2) making findings regarding the nature and extent of the Fort's federal reserved water rights, (3) resolving minor objections, (4) narrowing the key issues to be litigated, (5) using partial stipulations on a continuing basis, (6) appointing a technical committee, and (7) directing ADWR to prepare a technical report of lesser scope than a supplemental contested case HSR that could help to conclude this case or encourage settlement negotiations.

In other contested cases in the San Pedro River Watershed involving federal reserved water right claims, the parties succeeded in reaching a settlement. The Special Master does not know if settlement negotiations are in progress, and if they are not, if negotiations could be started, or if they are, if they could be assisted. In light of the importance of Fort Huachuca in its community and in the watershed, the Special Master wishes to hear if there are factors or impediments outside this contested case that may impact the litigation or settlement of this case.

¹ United States' Comments to ADWR's Report Re: *In re Fort Huachuca 2* (May 1, 2002).

² ADWR's Status Report Concerning the Preparation of a Supplemental Contested Case Hydrographic Survey Report for Fort Huachuca 5 (March 7, 2003).

³ *Id.* at 3.

⁴ *Id.* at 5.

It is time to evaluate whether this case, or portions of it, could be moved to finality, and if so, how. The parties will be asked for their positions and comments, and after reviewing all the papers filed, the Special Master may set a status conference.

IT IS ORDERED:

1. The United States shall file on or before **Thursday, December 23, 2004**, a report regarding the completion and availability of the federal or other agencies' hydrogeologic studies in the Sierra Vista Subwatershed, the feasibility of ADWR preparing a supplemental contested case HSR or a technical report of lesser scope that could help to conclude this case or encourage settlement negotiations, and the implementation of practical procedures to complete this case including the prospects for settlement.

2. ADWR shall file on or before **Thursday, December 23, 2004**, a report regarding the feasibility of preparing a supplemental contested case HSR or a technical report of lesser scope that could help to conclude this case or encourage settlement negotiations.

3. Any other parties in this contested case may file on or before **Thursday, December 23, 2004**, their comments regarding the feasibility of ADWR preparing a supplemental contested case HSR or a technical report of lesser scope that could help to conclude this case or encourage settlement negotiations, and the implementation of practical procedures to complete this case including the prospects for settlement.

DATED: October 21, 2004.

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

A copy of the foregoing was mailed this 21st day of October 2004, to those parties who appear on the Court-approved mailing list for Contested Case No. W1-11-605 dated October 21, 2004 (Attachment A).

/s/ KDolge
Kathy Dolge