

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: December 19, 2011

CIVIL NO. W1-11-605

ORDER DESIGNATING ISSUES
FOR CONSIDERATION AND
SETTING SCHEDULE FOR THE
SECOND PHASE OF THIS CASE

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master designates three issues for consideration in the second phase of this case, creates a Court approved mailing list, and sets time lines for motions to intervene, amicus petitions, disclosure statements, discovery, and a telephonic conference.

NUMBER OF PAGES: 8; Attachment A - 1; total 9 pages.

DATE OF FILING: December 19, 2011.

A telephonic conference was held on December 8, 2011, at which several issues suggested by parties and the process to address them were discussed. The Special Master has considered the papers filed and positions presented at the conference.

In the next phase of this case, the Special Master will consider the three issues jointly presented by ASARCO LLC ("ASARCO"), Freeport-McMoRan Corporation ("Freeport-McMoRan"), Salt River Project ("SRP"), Sierra Vista Parties, and the United States. The two supplemental issues suggested by Freeport-McMoRan will not be taken

up at this time because Judge Ballinger is considering matters raised by the first one, and it is premature to take up the second issue.¹

Time lines for filing disclosure statements and completing discovery will be set. Disclosures and discovery will be limited to the three issues designated in this order.

Because the United States likely has the majority of the documents relevant to these issues, it will be directed to file its disclosure statement in advance of the other parties and will be given more time to file its disclosures than other parties.

The Arizona Department of Water Resources (“ADWR”) will be directed to maintain, and if necessary, improve the electronic data base and index of disclosed documents which it developed for this case. Until further order, ADWR will not be directed to update or conduct technical work related to the issues designated in this order.

Following the completion of discovery, a telephonic conference will be held to set the future course of this phase.

When the Special Master’s April 4, 2008, report was filed with the Court, this case’s Court approved mailing list was expanded to include all persons listed on the main Gila River Adjudication list. The initial mailing list for the second phase will be limited to the litigants in the case prior to April 4, 2008.

Parties who wish to participate as litigants in the second phase will be required to file a motion to intervene. In the contested case *In re Subflow Technical Report, San Pedro River Watershed, W1-103*, upon request, parties were added to the Special Master’s Court approved mailing list, but without status as intervenors. That procedure was adopted for the reason that the case was concurrently proceeding before the Court and the Special Master to address similar matters, namely, objections filed to a technical report. That procedure will not be adopted in this phase. Claimants who wish to be litigants in the second phase will need to file a motion to intervene.

Former Special Master Thorson allowed amici curiae to participate when petitioned. The Special Master believes that the most useful way to participate in this phase at this point is as an intervenor.

Neither a contested case steering nor settlement committee will be appointed at this time. The mutual cooperation of the litigants is appreciated and expected to continue.

I. ADMINISTRATIVE MATTERS

1. Litigants: The litigants in this phase, who were the litigants in the case

¹ The first issue is determining the status of underground water withdrawn by Fort Huachuca as either subflow or percolating groundwater. The second issue is assigning the Arizona Department of Water Resources to determine the extent of all water resources potentially available to satisfy any reserved water right ultimately decreed to Fort Huachuca.

prior to April 4, 2008, are Arizona Water Company, ASARCO, Bella Vista Water Company, Inc., BHP Copper Inc., City of Sierra Vista, Freeport-McMoRan, Gila River Indian Community, Pueblo Del Sol Water Company, SRP, San Carlos Apache Tribe, State of Arizona, Tonto Apache Tribe, United States of America, and Yavapai-Apache Nation. These are the litigants designated in accordance with Rule for Proceedings Before the Special Master 7.01[6] (Nov. 1, 1991). The Cities of Mesa (Jan. 10, 2006) and Phoenix (Jan. 12, 2006) withdrew as objectors.

2. Court Approved Mailing List. The initial mailing list for the second phase is set forth in Attachment A of this order. The list reflects counsel substitutions that have occurred since April 4, 2008. Judge Eddward P. Ballinger, Jr. is not included in the list.

A. Parties allowed to intervene or participate will be added to the mailing list. Litigants are responsible for using the current approved mailing list.

B. A copy of any pleading filed with the Clerk of the Maricopa County Superior Court shall be served upon all persons listed on the mailing list.

3. Motions to Intervene: Motions to intervene and petitions for amicus curiae participation shall be filed on or before **Friday, January 27, 2012**. Responses shall be filed on or before **Friday, February 24, 2012**. Replies will not be allowed.

4. Filings.

A. Date of Filing. Papers submitted to the Clerk of the Maricopa County Superior Court shall be considered timely filed if postmarked by the deadline specified in an order issued in this case.

B. Signature Page. In papers joined by numerous parties, in lieu of separate signature pages, the Special Master will accept as sufficient an avowal by the lead counsel that includes a listing of the attorneys and the parties each represents who join in the pleading. This allowance is made pursuant to Arizona Rule of Civil Procedure 1 that the rules “shall be construed to secure the ... inexpensive determination of every action.” If a party has concerns related to Rule 11(a), that party may request or provide an individual signature.

II. SCHEDULE

1. Issues for Consideration. The following three issues will be considered in the second phase of this case:

A. What is in detail the scope of water uses encompassed by the term “military purposes.”

B. What is the quantity of water reserved to fulfill the military purposes?

C. Are the sources of water other than groundwater adequate to accomplish the military purposes, and if not, what is the quantity of groundwater required to accomplish those purposes?

2. Disclosure Statements.

A. Scope. Disclosure statements shall be limited to matters concerning the three issues designated for consideration in this order.

B. Filing Date for the United States. On or before **Friday, April 27, 2012**, the United States shall file its initial Arizona Rule of Civil Procedure 26.1 disclosure statement.

C. Filing Date for All Other Parties. On or before **Friday, June 22, 2012**, all other parties shall file their initial Rule 26.1 disclosure statements.

D. Contents. All disclosures shall include information and data in the possession, custody, and control of the disclosing party as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation. The disclosure statement shall set forth:

(1). the factual basis for each of a party's claims concerning each of the designated issues.

(2). The legal theory upon which each claim is based including, where necessary for a reasonable understanding of the claim, citations of pertinent legal or case authorities.

(3). the names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call claims with a fair description of the substance of each witness' expected testimony.

(4). The names and addresses of all persons whom the disclosing party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to each claim, and the nature of the knowledge or information each such individual is believed to possess.

(5). the names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6). The name and address of each person whom the disclosing party expects to call as an expert witness, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary

of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert.

(7). the existence, location, custodian, and general description of any tangible evidence, relevant documents, or electronically stored information that the disclosing party plans to use.

(8). A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by the disclosing party to exist whether or not in its possession, custody, or control and which that party believes may be relevant to any of its claims concerning the designated issues, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made, available for inspection, copying, testing or sampling. Unless good cause is stated for not doing so, a copy of the documents and electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the documents and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

E. Continuing Duty. All parties shall have a continuing duty to disclose as required by and in the manner provided in Rule 26.1(b) (2).

F. Service of Disclosures. All disclosing parties shall provide a notice of filing and a listing of the disclosed documents and electronically stored information to all persons appearing on the Court approved mailing list for this case. Paper copies of disclosed documents need not be served upon the other parties in this case, as copies can be obtained from ADWR.

G. Service of Lengthy Listing of the Disclosed Documents: If a party's listing of its disclosed documents or electronically stored information, not the disclosure statement, exceeds twenty-five pages, that party shall so state in its disclosure statement and shall provide a copy of the complete listing to the Special Master, ADWR, and to those parties who request from the disclosing party a copy of the complete listing.

H. ADWR shall reasonably assist parties in locating and retrieving information in ADWR's custody that may be used in disclosure statements and discovery.

3. Electronic Data Base and Index Provided by ADWR. The parties participating in this phase shall continue to use ADWR's electronic data base and index of all disclosed documents. The following directives are provided as the data base and its usage have undergone changes since the May 5, 2005, Scheduling Order.

A. Electronic Format. A disclosing party shall submit to ADWR a copy of all documents disclosed and an index of the documents in accordance with the following requirements:

(1). Number each document in numeric sequence with a unique alpha identifier that is related to the name of the disclosing party.

(2). Complete a Disclosure Input Form in Microsoft Excel format for each disclosed document containing the following searchable index fields:

a. Title or description of document. The verbatim title of the document shall be used. If a document does not have a title, a brief description in square brackets shall be provided.

b. Unique identifying number created by the disclosing party for each document. The unique identifying number shall be limited to ten alpha numeric characters.

c. Date of publication or preparation of document. The format shall be YYYY/MM/DD. Where a date is not identified in a document, the format shall be YYYY/MM/00. Where neither a date nor a month is identified, the format shall be YYYY/00/00.

d. Document type (article, book, letter, map, report).

e. Recipient. The format shall be Last Name, First Name.

f. Number of pages of document.

g. Disclosing party.

h. Date of submittal of document.

i. Subject matter of document (up to three categories). To the extent a party wishes to use the subject matter field, information already entered in any other field shall not be repeated in the subject matter field.

j. Author. The format shall be Last Name, First Name.

k. Recipient Title Position. The format shall be Position Title, Employee Entity.

(3). Create a portable document format file (.pdf) of each document.

(4). Provide a compact disc to ADWR with copies of the Disclosure Input Forms (Microsoft Excel files) and corresponding disclosure documents in .pdf file format.

(5). Provide to ADWR paper copies of disclosed documents and corresponding Disclosure Input Forms. ADWR will maintain paper copies to satisfy the Public Records Act, A.R.S. §§ 39-101 *et seq.*

B. Internet Access. ADWR shall place a blank copy of the Disclosure Input Form together with format protocols on the Internet at a domain made known to all persons who appear on the Court approved mailing list. In order to provide access to the disclosed documents, each index field in the Disclosure Input Form shall be subject to query. To the greatest extent possible, electronic copies of all disclosed documents and Disclosure Input Forms shall be made available on the Internet for viewing and printing.

C. Form. To the extent possible, parties shall submit documents in the following form: single-sided, 8.5" x 11" size, no punched holes, no permanent binding (staples excepted), and no tabs.

D. Copies of Disclosed Documents. ADWR shall make available to any claimant, at the claimant's expense, a copy of disclosed documents on a CD-ROM or a paper copy. ADWR shall determine the best and most practical manner for providing copies.

E. Fees. ADWR may collect its standard fees for copies and other services rendered related to the use of the electronic data base and index.

4. Discovery.

A. Scope. Discovery shall be limited to matters concerning the issues designated in this order for consideration.

B. Commencement. Parties may commence formal discovery on or after **Monday, June 25, 2012**, but prior thereto may, and are encouraged, to engage in informal discovery.

C. Completion. All discovery including depositions shall be completed by

Friday, December 28, 2012.

D. Rules. All discovery related to the designated issues shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, and as applicable, pretrial orders issued in this adjudication and the Rules for Proceedings Before the Special Master.

5. Expert Reports. On or before **Friday, September 21, 2012**, all parties will exchange expert reports that a party considers relevant to the designated issues.

6. Conference. A telephonic conference is set for **Tuesday, January 15, 2013, at 9:00 a.m. (MST)** to take up the following matters:

- A. Designation of issues for briefing.
- B. Schedule for filing motions, statements of position, responses, and replies.
- C. Date, time, and location of oral argument on motions and evidentiary hearing(s).
- E. Scope and timing of ADWR's participation in these processes.

A party may request a conference be held before then, if a conference will assist the progress of this phase. The Special Master may inquire as to the status of activities.

7. Technical Investigations. Until further order, ADWR will not be directed to update or conduct technical work related to the issues designated for consideration.

DATED: December 19, 2011.

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

On December 19, 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 list for Contested Case No. W1-11-605 dated July 25, 2011.

/s/ George A. Schade, Jr.
George A. Schade, Jr.

Court Approved Mailing List
 In re Fort Huachuca, W1-11-605
 14 Names, December 19, 2011

<p>Clerk of the Superior Court Maricopa County Attn: Water Case 601 West Jackson Street Phoenix AZ 85003</p> <p>Fennemore Craig, P.C. Lauren J. Caster and Gregory L. Adams 3003 North Central Avenue, Suite 2600 Phoenix AZ 85012-2913</p> <p>Snell & Wilmer, L.L.P. Cynthia M. Chandley, R. J. Pohlman, L. W. Staudenmaier, and C. W. Payne 400 East Van Buren Street Phoenix AZ 85004-2202</p> <p>Office of the Arizona Attorney General Natural Resources Section Theresa M. Craig 1275 West Washington Phoenix AZ 85007-2997</p> <p>Gila River Indian Community Law Office Linus Everling and Thomas L. Murphy P. O. Box 97 Sacaton AZ 85147</p> <p>Freeport-McMoRan Copper & Gold Inc. Legal Department Shilpa Hunter-Patel 333 North Central Avenue Phoenix AZ 85004</p> <p>U.S. Department of Justice Environment and Natural Resources R. Lee Leininger 999 18th Street, South Terrace, Suite 370 Denver CO 80202</p>	<p>Montgomery & Interpreter, P.L.C. Susan B. Montgomery and Robyn L. Interpreter 4835 East Cactus Road, Suite 210 Scottsdale AZ 85254</p> <p>Polsinelli Shughart, P.C. Lucas J. Narducci and Margaret B. LaBianca 1 East Washington Street, Suite 1200 Phoenix AZ 85004</p> <p>Arizona Department of Water Resources Legal Division Janet L. Ronald 3550 North Central Avenue Phoenix AZ 85012</p> <p>Special Master Arizona General Stream Adjudication George A. Schade, Jr. 201 West Jefferson, CCB 5B Phoenix AZ 85003-2205</p> <p>The Sparks Law Firm, P.C. Joe P. Sparks and Laurel A. Herrmann 7503 First Street Scottsdale AZ 85251-4573</p> <p>Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. William P. Sullivan 501 East Thomas Road Phoenix AZ 85012-3205</p> <p>Salmon, Lewis & Weldon, P.L.C. John B. Weldon, Jr. and Lisa M. McKnight 2850 East Camelback Road, Suite 200 Phoenix AZ 85016</p>
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Attachment A