

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: August 4, 2008

CIVIL NO. W1-11-605

SPECIAL MASTER'S RESPONSE
TO SUGGESTION

CONTESTED CASE NAME: *In re Fort Huachuca.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master declines the suggestion of ASARCO LLC and the Arizona Water Company to allow parties to supplement their disclosures concerning the existence or nonexistence, timing, and extent of any official survey of the boundaries of and the lands within Fort Huachuca.

NUMBER OF PAGES: 2.

DATE OF FILING: August 4, 2008.

The Special Master requested comments from the parties in this contested case to determine if other matters can be addressed while waiting for the Court's determination of the Special Master's report filed on April 4, 2008. Only one comment was submitted. No responses to the comment were filed.

ASARCO LLC and the Arizona Water Company ("the Companies") suggested that the parties be given until September 5, 2008, to supplement their disclosures "limited to the existence or nonexistence, timing, and extent of any official survey of the boundaries of Fort Huachuca and of the land lying within Fort Huachuca." The basis of this suggestion is the Special Master's recommendation to the Court that the United

States be required to provide evidence of the land surveys of Fort Huachuca before entering a judgment adjudicating the Fort's water rights.

In his report, the Special Master addressed the Companies' contention that President Chester A. Arthur's orders issued on October 29, 1881, and May 14, 1883, "were ineffective as withdrawals of public domain because the lands were unsurveyed at the time the orders were issued."¹ The Special Master concluded as a matter of law that the executive orders "were not ineffective as withdrawals from the public domain because the lands within the orders were not surveyed" officially.² The lack of an official survey did not render the executive orders ineffective as withdrawals of public domain.

The Special Master's recommendation "that before a judgment and decree adjudicating the water rights of Fort Huachuca is entered ... the Court should direct the United States to provide evidence of the land surveys of Fort Huachuca" was made in the interest of obtaining information that would be helpful to other aspects of this case and to those who in future years will be involved with Fort Huachuca's water rights.

The Companies' suggestion that the parties be allowed to supplement their disclosures for the limited purpose amounts to a request to reopen the record. The "power of the [Special Master] to allow a reopening is highly discretionary."³ The Court can determine the survey issue related to the 1881 and 1883 executive orders on the record submitted to it. Furthermore, allowing supplemental disclosures for this limited purpose runs a risk of raising extraneous issues and impacting the schedule for considering objections without a commensurate benefit to the case at this time.

The Special Master appreciates that the Companies came forth with a suggestion but declines it.

DATED: August 4, 2008.

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

On August 4, 2008, 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 W-1, W-2, W-3, and W-4 (Consolidated) dated July 25, 2008.

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

¹ Report of the Special Master; Motion for Adoption of Report; and Notice for Filing Objections to the Report 26 (Apr. 4, 2008).

² *Id.* at 27 (Conclusion of Law No. 5).

³ *Garling v. Seeley*, 16 Ariz. App. 434, 438, 494 P.2d 39, 43 (1972).