

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: January 4, 2002

CIVIL NO. W-1, W-2, W-3, W-4
(Consolidated)

CONTESTED CASE NAME: None.

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master requests comments from claimant Bureau of Land Management - Safford District and objectors regarding the initiation of a contested case concerning the claimed water rights of the Bureau of Land Management pursuant to Public Water Reserve No. 107 as interpreted in Solicitor's Opinion M-36914 and Supplemental Opinions.

NUMBER OF PAGES - 3; Attachment A - 1: total - 4 pgs.

DATE OF FILING: Original sent to the Clerk of the Court on January 4, 2002.

ORDER

The Bureau of Land Management, Safford District, filed forty statements of claimant in the San Pedro River watershed claiming non-Indian federal reserved water rights in thirty-nine springs and one dam pursuant to Public Water Reserve No. 107, as interpreted in four opinions of the Solicitor of the U.S. Department of the Interior. The opinions discussed how Public Water Reserve No. 107, an Executive Order of President Calvin Coolidge issued on April 17, 1926,¹ relates to lands of the Bureau of Land Management. The nature and extent of the

¹ The order was reprinted in 51 Interior Dec. 457 (1926).

claimed federal reserved rights are described in Section 5.4, at pages 376 through 380, of the Final San Pedro River Watershed Hydrographic Survey Report published in 1991 (“Final San Pedro HSR”).

As reported in the Final San Pedro HSR, in its statements of claimant, the Bureau of Land Management claimed a federal reserved water right based on Solicitor Leo M. Krulitz’s Opinion M-36914 (June 25, 1979²), and Supplemental Opinions of Solicitor Clyde O. Martz (January 16, 1981³) and Solicitor William H. Coldiron (September 11, 1981⁴ and February 16, 1983⁵). A keynote summary of Solicitor Coldiron’s February 16, 1983 opinion states, “The Executive Order of April 17, 1926, reserved the minimum amount of water necessary in springs and waterholes to provide water for the purposes of human and animal consumption. The entire flow of these water sources was not necessarily reserved.”⁶

The Final San Pedro HSR describes in the following watershed file reports (“WFRs”) the rights claimed:

- | | | | |
|----|----------------|-----|---------------|
| 1. | WFR 111-24-20 | 9. | WFR 113-12-17 |
| 2. | WFR 111-24-22 | 10. | WFR 114-4-10 |
| 3. | WFR 111-24-87 | 11. | WFR 115-2-7 |
| 4. | WFR 112-15-54 | 12. | WFR 115-2-11 |
| 5. | WFR 112-15-109 | 13. | WFR 115-2-16 |
| 6. | WFR 113-5-8 | 14. | WFR 115-4-5 |
| 7. | WFR 113-5-13 | 15. | WFR 115-5-17 |
| 8. | WFR 113-12-8 | 16. | WFR 111-5-19 |

The Clerk’s files show that the Apache Tribes and the Gila River Indian Community filed objections to all of these sixteen WFRs. The Bureau of Land Management objected to all these WFRs except WFRs 111-24-87, 113-5-13, and 115-5-17. The Salt River Project objected to all the WFRs except WFRs 113-12-17 and 115-5-17. The City of Phoenix objected to WFR 113-5-8. Mr. Wilford H. Claridge objected to WFR No. 115-2-11. ASARCO Incorporated objected to WFRs 115-5-17 and 115-5-19. The Arizona Game and Fish Department, City of Benson, and City of Sierra Vista objected to WFR 115-5-19.

A printout of objections shows that the Bureau of Land Management and the Salt River Project objected to WFR 115-5-17, and the Arizona State Land Department objected to WFR 115-5-19.

² 86 Interior Dec. 553 (1979).

³ 88 Interior Dec. 253 (1981) (Supplemental Opinion).

⁴ 88 Interior Dec. 1055 (1981) (Supplement I).

⁵ 90 Interior Dec. 81 (1983) (Supplement II).

⁶ *Id.* at 81; Final San Pedro HSR, 376 (1991).

Previously, before Judge Bolton, the timing for proceeding with the determination of the issues related to water rights claimed pursuant to Public Water Reserve No. 107 was discussed.⁷ Priority for disposition of pending issues was given to other matters.

The Special Master wishes to hear from the Bureau of Land Management and the objectors named above, if a contested case should be initiated to address the water rights of the Bureau of Land Management, in the San Pedro River watershed, claimed pursuant to Public Water Reserve No. 107.

The Special Master will schedule a meeting or a conference thereafter, if one is deemed useful or necessary, or may issue a case management order.

IT IS ORDERED:

1. The Bureau of Land Management and any of the objectors named above shall file on or before **Friday, April 5, 2002**, comments regarding initiating a contested case, based on the WFRs described in this order, concerning the claimed water rights of the Bureau of Land Management pursuant to Public Water Reserve No. 107. If the Bureau of Land Management or any objector wishes that a contested case be initiated, comments are invited as to the legal or procedural issues that can or should be addressed in a contested case. Such issues may include the intent, purpose, scope, legal authority, and quantification of Public Water Reserve No. 107, and any other issues deemed relevant.

2. The parties shall promptly inform the Special Master of any corrections that should be made to the mailing addresses shown on the Court-approved mailing list (Attachment A).

DATED: January 4, 2002.

/s/ George A. Schade, Jr.

GEORGE A. SCHADE, JR.

Special Master

The original of the foregoing sent on January 4, 2002, to the Distribution Center, Maricopa County Superior Court, for copying, filing, and mailing to those parties who appear on the Court-approved mailing list for Case No. W-1, W-2, W-3, & W-4 dated Oct. 30, 2001; also, mailed to those parties appearing on the proposed Court-approved mailing list for PWR107 claims (Attachment A).

/s/ K Dolge

Kathy Dolge

⁷ Minute entry dated September 28, 2000. The minute entry is available online in the Special Master's Web site on the page titled Gila River Adjudication.