

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: September 22, 2008

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

ORDER REQUESTING A REPORT
FROM THE UNITED STATES
AND COMMENTS CONCERNING
ORGANIZING A CONTESTED
CASE FOR THE ARAVAIPA
CANYON WILDERNESS AREA

CONTESTED CASE NAME: None.

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master requests a report from the United States and comments from claimants in the San Pedro River Watershed concerning organizing a contested case for the Aravaipa Canyon Wilderness Area.

NUMBER OF PAGES: 3.

DATE OF FILING: September 22, 2008.

According to the Hydrographic Survey Report for the San Pedro River Watershed ("San Pedro HSR"), the United States filed Statement of Claimant ("SOC") No. 39-68704 "which claims a federal reserved water right for approximately twenty-one

identified water uses and twenty unnamed and unlocated water sources within the confines of the Aravaipa Canyon Wilderness Area.”¹ The Bureau of Land Management (“BLM”) manages the wilderness area which is located southeast of Winkelman.

The San Pedro HSR reports the technical findings of the Arizona Department of Water Resources (“ADWR”) in Watershed File Report (“WFR”) No. 115-05-019 found in volume 6, table 4, page 37. The report provides some of the history of the Aravaipa Canyon Wilderness Area in volume 1 at pages 447-8 and 453-4. WFR No. 115-05-019 identifies water rights filings, made by the United States and private persons, associated with water uses inside the wilderness area. The San Pedro HSR’s summary of “potential water rights” lists 18 stockponds (each having an estimated volume of less than or equal to 15 acre-feet), one instream right for stockwatering and wildlife uses from Aravaipa Creek, and nine springs for wildlife watering uses. To obtain copies of documents, call ADWR at (602) 771-8627 or 1-(866)-246-1414.

The BLM claimed a federal reserved water right for three of the nine springs pursuant to the Executive Order entitled Public Water Reserve No. 107 (April 17, 1926). The reserved water right claims to these springs were adjudicated in the contested case *In re PWR 107 Claims*. The United States was decreed a reserved water right in Purgatory Spring (SOC No. 39-14444) and Goat Spring (SOC No. 39-14492), and the United States withdrew its reserved water right claim to Saltuna Spring (SOC No. 39-14443). See *Order and Partial Decree of Stipulated Public Water Reserve No. 107 Water Rights of the United States of America in the San Pedro River Watershed* (Apr. 1, 2008).

The San Pedro HSR did not include the Aravaipa Canyon Wilderness Area in the listing of “non-Indian federal claims” (reviewed in chapter 5.4 of volume 1) but included it in the discussion of instream flow uses (reviewed in chapter 6). At the time there were five applications for instream flow uses in Aravaipa Creek pending before ADWR. The United States held one of these applications, no. 33-87114, for which the department had issued a permit.

Because the Aravaipa Canyon Wilderness Area involves a federal reserved water rights claim, appears to concern primarily surface water, and involves stockponds, the Special Master wants to consider whether it is feasible to consolidate the remaining objections to WFR No. 115-05-019 for resolution in a new contested case. The United States will be requested to file a report stating its position and addressing other matters set forth below. Claimants in the San Pedro River Watershed will be allowed to submit comments after the report is filed.

The following claimants filed objections to WFR No. 115-05-019 and would be parties in a contested case: Bureau of Land Management, Arizona Game and Fish Department, ASARCO LLC, Cities of Benson and Sierra Vista, Gila River Indian Community, Salt River Project, San Carlos Apache Tribe, Tonto Apache Tribe, and the Yavapai-Apache Nation.

¹ Vol. 1, Hydrographic Survey Report for the San Pedro River Watershed 453-454 (Nov. 20, 1991).

Accordingly, IT IS ORDERED:

1. On or before **December 31, 2008**, the United States shall file a report:
 - A. Stating its position concerning the designation of the Aravaipa Canyon Wilderness Area as a contested case,
 - B. Describing the technical and other work that needs to be completed before proceeding with a contested case,
 - C. Naming lessees, permittees, and allottees that may have an interest in the contested case,
 - D. Identifying legal issues that will have to be resolved in a contested case, and
 - E. Proposing a plan to address the remaining objections to WFR No. 115-05-019.

2. On or before **January 30, 2009**, any claimant in the San Pedro River Watershed may file comments concerning the organization of a contested case and any of the matters listed in paragraph 1.

DATED: September 22, 2008.

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

On September 22, 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 the Gila River Adjudication Nos. W-1, W-2, W-3, and W-4 (Consolidated) dated July 25, 2008, and the City of Benson, P. O. Box 2223, Benson, Arizona 85622.

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