

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 24, 2011

CIVIL NO. W1-11-232  
(Consolidated)

ORDER REGARDING:

1. REPORT OF THE UNITED STATES CONCERNING BOUNDARY MAP;
2. SUPPLEMENT TO LAND OWNERSHIP REPORT; AND
3. REPORT OF CONTESTED CASE STEERING COMMITTEE

CONTESTED CASE NAME: *In re San Pedro Riparian National Conservation Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master requests the United States to report on the status of submitting a map and legal description of the conservation area to the United States Congress as required by the Arizona-Idaho Conservation Act of 1988, directs the Arizona Department of Water Resources to supplement the SPRNCA Land Ownership Report, and requests the case's Steering Committee to submit a status report.

NUMBER OF PAGES: 4.

DATE OF FILING: January 24, 2011.

On July 2, 2010, the Arizona Department of Water Resources (“ADWR”) filed its report entitled Land Ownership Within the San Pedro Riparian National Conservation Area (SPRNCA) (“SPRNCA Land Ownership Report”). ASARCO LLC, Babacomari Ranch Company, LLLP, Freeport-McMoRan Corporation, Salt River Project (“SRP”), and the United States filed comments. The Special Master has considered the comments and determines that two issues should be addressed at this point.

## **I. Submission of Map and Legal Description to the Congress**

The Congress established the San Pedro Riparian National Conservation Area (“SPRNCA” or “conservation area”) as part of the Arizona-Idaho Conservation Act of 1988 (“the Act”) which became effective on November 18, 1988.<sup>1</sup> Section 101(c) of the Act states in pertinent part as follows:

(c) MAP. As soon as is practicable after enactment of this title, a map and legal description of the conservation area shall be filed by the Secretary of the Interior ... with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Each such map shall have the same force and effect as if included in this title....

It appears that the submission of a map and legal description to the congressional committees has not been completed; this statement shall not be construed to be a finding of fact. The United States explained in its comments that:

The Bureau of Land Management has produced a corrected map and legal description.... This new map and legal description will be formally submitted to Congress. At that time, the United States will inform the Court of the completion of the amendment process pursuant to the Act and will provide ADWR with a final copy of the map and legal description.<sup>2</sup>

The submission of a map and legal description that complies with section 101(c) of the Act is a logical first step to resolve the issues before us. Accordingly, the United States will be requested to file a report indicating when it expects to submit the map and legal description of the conservation area in accordance with section 101 (c). The Special Master and parties need to know when the congressional process will be fully completed.

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<sup>1</sup> Pub. L. No. 100-696, 102 Stat. 4572, codified in 16 U.S.C. §§ 460xx - 460xx-6. Subsequent editions of the United States Code substituted the word “subchapter” for “title” and “November 18, 1988,” for “the date of enactment of this title.”

<sup>2</sup> U. S. Response to ADWR’s Land Status Report for the SPRNCA 2 (Aug. 19, 2010). Previously, the United States indicated that a search of the records in the National Archives would be conducted to look for proof of compliance with the Act, but it appears that this search is either no longer deemed needed or has not been productive.

## II. Supplement to SPRNCA Land Ownership Report

ASARCO and SRP commented that ADWR's report does not show when lands acquired by the United States after November 18, 1988, were incorporated into the conservation area. This information is needed to make date of priority determinations.

ADWR was to provide a "summary description of ... the number of acres of lands acquired by the United States after November 18, 1988, and incorporated within the SPRNCA."<sup>3</sup> Appendix F (*Ownership and Acreage of Lands Within SPRNCA*) of the report lists the dates that the transfer deeds were recorded for 26 parcels of land that the United States acquired within the SPRNCA after November 18, 1988.

What needs to be clarified is whether a specific action or event occurred that marked the incorporation of a newly acquired parcel of land into the SPRNCA, and if so, on which date did the formal incorporation occur. The United States is in the best position to provide this information. In order to keep this information separate from other data to be provided by ADWR, the Special Master will direct ADWR to submit this information as a separate supplement to its report rather than include it in the other report due on April 16, 2011.

## III. Report of the Contested Case Steering Committee

The Contested Case Steering Committee noticed its initial meeting to be held on October 14, 2010. The Special Master will request the chair or designated member of the committee to submit a report indicating what actions the committee has taken that the committee wishes to share with the Special Master, recommendations concerning the future direction of this case, and plans for future meetings.

### IT IS ORDERED:

1. Requesting the United States to file a report on or before **March 25, 2011**, stating when it expects to comply fully with the requirements of section 101(c) of the Arizona-Idaho Conservation Act of 1988.

2. Directing the Arizona Department of Water Resources to supplement its SPRNCA Land Ownership Report on or before **April 16, 2011**, to show the action and date evidencing the formal incorporation into the conservation area of lands acquired by the United States after November 18, 1988. The United States and ADWR are requested to work together to compile this information in a timely manner. And,

3. Requesting the chair or designated member of the Contested Case Steering Committee to submit a report on or before **April 15, 2011**, indicating what actions the committee has taken that it wishes to share with the Special Master, recommendations

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<sup>3</sup> Order Determining Initial Issues Designated for Briefing 16 (Mar. 4, 2009); *see also* Order Lifting Stay, Directing the Arizona Department of Water Resources to File Land Status Report, and Allowing Comments 2 (May 24, 2010).

concerning the future direction of this case, and plans for future meetings.

DATED: January 24, 2011.

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

On January 24, 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. W1-11-232 dated January 12, 2011.

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