

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, 2013

CIVIL NO. W1-11-232
(Consolidated)

ORDER CONCERNING THE
SCOPE AND ISSUES FOR AN
EVIDENTIARY HEARING ON
FEDERAL RESERVED WATER
RIGHTS CLAIMS

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 gives parties sixty (60) days to recommend issues for an evidentiary hearing concerning the reserved water rights claims of the United States.

NUMBER OF PAGES: 4.

DATE OF FILING: January 24, 2013.

A conference was held on January 9, 2013, to consider the Arizona Department of Water Resources' ("ADWR") *Report Concerning Federal Reserved Water Rights Claims for SPRNCA* (May 2012), ADWR's Land Ownership Report (June 2010) and supplement (April 2011), and the scope of future proceedings. The Special Master has considered the

papers filed and positions presented at the conference.

I. ADWR's Report Concerning Federal Reserved Water Rights Claims for SPRNCA

The Special Master finds that ADWR's May 2012 report cannot be considered to be the report required by A.R.S. § 45-256(B) because ADWR did not "[i]nvestigate or examine" every claim asserted by the United States, A.R.S. § 45-256(A)(4), nor did the report "include the director's proposed water right attributes for each individual water right claim or use investigated," A.R.S. § 45-256(B). Accordingly, the report does not trigger the 180-day objection period allowed in A.R.S. § 45-256(B).

II. Evidentiary Hearing

The Special Master stated will set an evidentiary hearing concerning the quantification of the reserved water rights claims of the United States for the conservation area. He has not heard an argument that would dictate otherwise.

The Special Master stated he would give parties sixty days to submit recommended issues for the evidentiary hearing. In order to simplify the process, each party will be limited to recommending no more than five issues.

The United States has surface water claims for streamflows and point sources. The groundwater claims are for wells and riparian vegetation. The Special Master wishes to hear ways to address these claims efficiently and effectively.

ADWR's May 2012 report described four segments of the San Pedro River that relate to the third amended federal statement of claimant, namely, Palominas, Charleston, Tombstone, and the Babocomari River. ADWR recommended that due to "[s]everal technical issues ... raised by the Babocomari methodology," "an alternative method be used to quantify the streamflow claim for the Babocomari River" (p. 3-9). This segment may have to be considered later or the parties could propose a way to address it.

After the issues are defined, time lines for disclosure statements, expert reports, and discovery will be set. Disclosures and discovery will be limited to the issues designated for consideration. Upon the completion of discovery, a conference will be held to consider future proceedings. Procedural suggestions are invited.

III. Pending Appropriative Applications of the United States

The Special Master agrees with counsel that the three pending state law applications of the United States for instream flow water rights should not be considered at this time. They will not be considered until ADWR grants a permit or the United States withdraws the applications.

IV. Land Ownership Information

ADWR's May 2012 report shows little disagreement between ADWR's findings

and the Bureau of Land Management's ("BLM") latest information. ADWR recommends reviewing three BLM point sources that do not appear to be located on riparian area lands (p. 3-18), 23.412 acres of claimed post-designated lands (p. 5-3), and 16.686 acres of digitized acres (p. 5-3), and correcting what may be three typographical errors (p. 5-4).

These matters should be resolved as this litigation proceeds. ADWR and the BLM will be directed to work on finalizing these matters.

V. Settlement and Contested Case Steering Committee

Parties are encouraged to engage in discussions targeting the resolution of all or most of the issues that will arise in an evidentiary hearing. The speedy conclusion of this case will require litigants to mutually resolve disputed issues. Some issues will be complex, and good faith efforts to resolve them by agreement will be productive. The Steering Committee is encouraged to exercise leadership in these efforts.

Freeport-McMoRan has recommended that non-attorney representatives with settlement authority be allowed to participate in negotiations. The Special Master agrees and consents to this practice.

IT IS ORDERED:

1. Issues. On or before **Friday, March 29, 2013**, parties may submit recommendations for issues to be considered at an evidentiary hearing concerning the quantification of the reserved water rights claims of the United States for the conservation area. Recommendations from each party shall be limited to no more than five issues.

2. Pending Appropriative Applications of the United States. The applications for an appropriative water right filed with ADWR by the United States numbers 33-95487 (Oct. 2, 1990), 33-95780 (Jan. 8, 1991), and 33-95789 (Apr. 1, 1991) will not be considered until ADWR grants a permit or the United States withdraws the applications.

3. Land Ownership Information. The United States and ADWR are directed to review the matters described in ADWR's May 2012 report as requiring further study.

4. Settlement and Contested Case Steering Committee. Parties are strongly encouraged to mutually resolve disputed issues and seek common ground for a potential settlement. Non-attorney representatives with settlement authority may participate in negotiations.

DATED: January 24, 2013.

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

On January 24, 2013, 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 10, 2013.

/s/ Barbara K. Brown

Barbara K. Brown