

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: May 11, 2009

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

ORDER DIRECTING THE  
UNITED STATES TO AMEND  
STATEMENTS OF CLAIMANT

CONTESTED CASE NAME: None.

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master directs the United States to amend as appropriate by December 31, 2009, its statements of claimant asserting federal reserved water rights for both the Aravaipa Canyon and Redfield Canyon Wilderness Areas.

NUMBER OF PAGES: 3.

DATE OF FILING: May 11, 2009.

The Special Master requested comments concerning the designation of a contested case to consider the claims of the United States and objections to water rights within the Aravaipa Canyon Wilderness Area. The United States and the Salt River Project ("SRP") favor initiating a contested case for the limited purpose of briefing certain legal issues related to the claimed reserved water rights for the wilderness area.

Freeport-McMoRan Corporation opposes initiating a contested case because, among other reasons, the United States needs “to do more research and more fully define its claim.”

The United States indicated the Bureau of Land Management “intends to conduct new field studies... [A]nticipates that at least one field season is required to update and complete [an] inventory of water sources in the wilderness area,” and Statement of Claimant No. 39-68704 “will be amended upon completion of the field inventory.” However, the United States believes the extent of additional technical work associated with its reserved rights claims depends on whether the United States is entitled to all unappropriated water as of the date(s) of the reservation and would like this issue resolved in advance of undertaking technical work.

The Court recently clarified the directives to the Arizona Department of Water Resources concerning assignments. The Special Master needs to incorporate those directives in his schedule. Much experience has been gained in this adjudication addressing legal issues related to claimed non-Indian federal reserved water rights, a process that has included the amendment of claims as an initial action.

Statement of Claimant No. 39-68704 represents the claim of the United States to reserved water rights for the Aravaipa Canyon Wilderness Area. This claim was last amended in February, 1995. It would benefit a contested case to begin with updated claims that take into account hydrologic changes, new data, improved technical models, and legal precedent that have resulted since at least 1995.

The Special Master is inclined to designate a contested case for the initial purpose of addressing substantive reserved rights legal issues. Those issues, not yet selected, may or may not be the same proposed by the United States in its February 2, 2009 report. In the interest of moving this matter forward, the United States will be requested to amend Statement of Claimant No. 39-68704, and other claims, as appropriate, so the interested litigants learn the extent of the claimed reserved rights.

SRP suggested the inclusion of the Redfield Canyon Wilderness Area in a contested case initiated to address the reserved rights issues proposed by the United States. Procedurally, the issues involving this wilderness area would be addressed in a separate contested case, but both cases could proceed in parallel tracks.

However, the Special Master does not know if the United States can concurrently complete amendments to its Statement of Claimant No. 39-14413, which represents a claim to reserved rights for the Redfield Canyon Wilderness Area, and any other claims asserting such rights. If the request to amend is feasible to the United States, the Special Master is inclined to initiate a separate contested case for this wilderness area.

Accordingly, IT IS ORDERED:

1. On or before **Thursday, December 31, 2009**, the United States shall file amendments, if any, to Statement of Claimant No. 39-68704, and other claims, to show

the extent of its claims to federal reserved water rights for the Aravaipa Canyon Wilderness Area.

2. On or before **Thursday, December 31, 2009**, the United States shall file amendments, if any, to Statement of Claimant No. 39-14413, and other claims, to show the extent of its claims to reserved rights for the Redfield Canyon Wilderness Area.

A. On or before **Friday, July 17, 2009**, the United States shall advise the Special Master if the United States can meet this request. The Special Master may modify or vacate this request if the United States shows reasons for vacating or modifying the request.

3. A complete copy of all amendments shall be provided to the Special Master at the time amendments are submitted to the Arizona Department of Water Resources.

DATED: May 11, 2009.

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

On May 11, 2009, 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 January 23, 2009, and to the following persons:

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/s/ George A. Schade, Jr.  
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