

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: June 20, 2013
CIVIL NO. W1-11-1174
ORDER

CONTESTED CASE NAME: *In re PWR Claims 107.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master gives the United States and the San Carlos Apache Tribe ninety days to submit a proposed stipulation and abstracts of water rights or advise that a settlement agreement will not be executed. If a stipulation is executed by all or some of the objectors, the Arizona Department of Water Resources is directed to review the proposed stipulation and abstracts of water rights. A schedule is set for the consideration of the stipulation and abstracts.

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A telephonic conference was held on June 11, 2013, to review the status of the sixteen springs whose adjudication is stayed. The United States and the San Carlos Apache Tribe (“Tribe”) have been negotiating about these springs since at least 2009 but have not reached a resolution.

It is clear that these parties may not reach a mutual resolution. However, the Special Master will give the United States and the Tribe ninety days to meet and confer with best efforts to see if a settlement can be executed. The Special Master would like to

see the status of the sixteen springs determined, and this case concluded.

The Tribe believes that the main impediment to a resolution is longstanding conflict “in the neighborhood.” In 2009, the Tribe optimistically reported that “another day” had arrived.¹ Another day gives these parties an excellent opportunity to adjudicate water rights in springs that the Tribe avows, are the difference between life and death in that remote country. These parties should seize the adjudicatory moment.

Indisputably, this Court does not have jurisdiction to determine the southwest boundary of the San Carlos Indian Reservation and should not overstep simply to bring this case to a close.

Within these limitations, the Special Master suggests that the parties consider a conditional reserved water right, and he is prepared to implement appropriate, even new, standards to frame that right. Parties can consider stipulating to a conditional reserved water right held by the United States in each of these springs; making that right junior to any decreed or reserved water right that the Tribe holds; stipulating that each of these sixteen rights has a limited duration such as four years before a court hearing is held to review their status; requesting judicial review of the sixteen springs in 2015 and 2017; and notifying the lessees and permittees of the United States, if any, of the terms of the agreement and water rights.

The following parties remain as objectors in this case, and their approval or lack of objection to an agreement will be required as occurred with the adjudication of the other fourteen springs: ASARCO LLC, City of Benson, Gila River Indian Community, City of Phoenix, Salt River Project, San Carlos Apache Tribe, City of Sierra Vista, and the United States. It is possible that not all these objectors filed objections to the sixteen springs being considered.

If an agreement is executed, the United States will be directed to submit to the Arizona Department of Water Resources (“ADWR”) the complete proposed stipulation and abstracts of water rights. ADWR will have sixty-five days to review the submissions and file its recommendations concerning the stipulation and abstracts in accordance with the directives set forth in this order.

Thereafter, if all the objectors executed the proposed stipulation, the Special Master will file a report with the Court regarding adoption and approval of the stipulation and abstracts of water rights. If all the objectors did not execute the proposed stipulation, the Special Master will give the non-settling objectors in this case the opportunity to comment on the stipulation, abstracts of water rights, and ADWR’s recommendations.

Claimants will have sixty days to file objections to the Special Master’s report because the report will not cover an entire federal reservation. A.R.S. §45-257 (A)(2).

IT IS ORDERED:

¹ Tribe’s Status Report Regarding Discussions Between the Tribe and the U.S. Concerning Boundary Issues Related to 16 Springs at 3 (Mar. 27, 2009).

1. On or before **Wednesday, September 18, 2013**, the United States and the Tribe shall report to the Special Master if a settlement agreement has been executed or one will not be executed. If an agreement is executed, the United States shall on the same day submit to ADWR the complete proposed stipulation and abstracts of water rights.

2. Whether all or some objectors executed the proposed stipulation, on or before **Friday, November 22, 2013**, ADWR shall review the stipulation and proposed abstracts of water rights in accordance with the following directives previously used in this case and file its recommendations:

A. A comprehensive technical report is not contemplated but rather a review and recommendations regarding the settlement agreement.

B. ADWR's review shall be limited to the accuracy and completeness of the factual information contained in the proposed stipulation and abstracts of water rights. During the course of ADWR's review, if it would facilitate and expedite, but not delay, the process, ADWR and the settling parties may discuss the stipulation and abstracts and make factual corrections.

3. If all the objectors have not executed the proposed stipulation, on or before **Monday, December 23, 2013**, the non-settling objectors in this case may comment on the stipulation, abstracts of water rights, and ADWR's recommendations. And,

4. Claimants will have sixty days to file objections to the Special Master's report. The last day to file objections will be set forth in the report. Thereafter, the Court will take up the report for consideration.

DATED: June 20, 2013.

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

On June 20, 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. W1-11-1174 dated January 10, 2013.

/s/ Barbara K. Brown
Barbara K. Brown