

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

11/06/2014

CLERK OF THE COURT  
Form V000

JUDGE MARK H. BRAIN

T. Springston  
Deputy

W1-11-3342

FILED: March 4, 2015

In re Aravaipa Canyon  
Wilderness Area

W1-11-3342

In re Status Conference

**MINUTE ENTRY**

9:03 a.m. This is the time set for a status conference before the Special Master set for November 6, 2014, at 9:00 a.m. (MST) to discuss the status of discovery and scheduling.

The following attorneys appear telephonically: Julia M. R. Kolsrud and Joe P. Sparks on behalf of the San Carlos Apache Tribe and the Tonto Apache Tribe; William P. Sullivan on behalf of the City of Sierra Vista; Susan B. Montgomery on behalf of the Yavapai-Apache Nation; The following attorneys appear in-person: R. Lee Leininger, John L. Gaudio, Mark A. Holycross, and Daniel D. Haws II on behalf of the United States; Scott M. Deeny, John B. Weldon, Jr., Patrick B. Sigl and Lisa M. McKnight on behalf of Salt River Project; Sean T. Hood and Shilpa Hunter-Patel on behalf of Freeport Minerals Corporation; Janet L. Miller and Nicole D. Klobas on behalf of the Arizona Department of Water Resources; Theresa M. Craig on behalf of the State of Arizona; David A. Brown on behalf of Bayless & Berkalew Company. Also present is Special Master George A. Schade, Jr.

Court reporter Brenda Brown is present and a record of the proceedings is also made by audio and/or videotape.

Judge Brain informs the parties that he will be presiding over the conference instead of Special Master Schade.

Discussion is held regarding the status of the case, discovery deadlines, trial issues, trial dates, and a possible site visit to Aravaipa Canyon Wilderness Area.

There being no objection to a pending motion to extend discovery deadlines by one month,

**IT IS ORDERED** granting the motion of the United States to extend the completion of discovery by one month.

**IT IS FURTHER ORDERED** that discovery shall be concluded by **November 30, 2014**. [Note: Prior to the filing of this minute entry, this deadline was extended by order to December 12, 2014.]

**IT IS FURTHER ORDERED** setting a **twelve (12) day trial to the court** regarding issues three and five (listed below) for **July 13, 2015 at 9:30 a.m.** Trial days shall be: July 13-17, 2015; July 20-24, 2015; and July 27-30, 2015. The trial schedule is from 9:30 a.m. to 4:30 p.m. with lunch from 12 noon to 1:30 p.m.

Issue 3: If unappropriated water was available on August 28, 1984, what is the precise quantity of unappropriated water required to fulfill the minimal need of, and satisfy, the primary purposes of the Arizona Desert Wilderness Act of 1990?

Issue 5: If unappropriated water was available on November 28, 1990, what is the precise quantity of unappropriated water required to fulfill the minimal need of, and satisfy, the primary purposes of the Arizona Desert Wilderness Act of 1990?

**IT IS FURTHER ORDERED** setting a **final trial management conference** on **May 28, 2015 at 9:30 a.m. (time allotted: 1 day)** in this division. Counsel who wish to actively participate in the final trial management conference shall appear in-person.

**IT IS FURTHER ORDERED** that dispositive motions shall be filed by **5:00 p.m. on January 5, 2015**.

**IT IS FURTHER ORDERED** scheduling a site visit by Judge Brain to take place on **May 21, 2015**. No court reporter shall be present. The parties shall file an itinerary and the names of the persons expected to participate regarding the trip by **May 1, 2015**.

9:55 a.m. Matter concludes.

#### **DUTIES PRIOR TO THE FINAL TRIAL MANAGEMENT CONFERENCE**

**MOTIONS IN LIMINE.** All motions *in limine* shall be filed no later than **5:00 p.m. on May 1, 2015** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a motion *in limine* is to avoid

disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written response to a motion *in limine* may be filed no later than **5:00 p.m. on May 15, 2015**. No replies shall be filed. The court may rule on motions *in limine* without oral argument. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any motion *in limine*.

**JOINT PRETRIAL STATEMENT.** Counsel shall file and deliver to the trial Judge no later than **5:00 p.m. on May 21, 2015** a copy of the **joint pretrial statement** signed by all counsel.

a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the final trial management conference provide to the court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.

b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the joint pretrial statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.

**DUTIES AT FINAL TRIAL MANAGEMENT CONFERENCE.** Counsel shall be prepared to discuss:

- a) Time limits in opening statements, examination of witnesses and closing arguments.
- b) Stipulations for the foundation and authenticity of exhibits.
- c) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
- d) Any special scheduling or equipment issues.

**ATTORNEYS AND ASSISTANTS  
PLEASE READ THE FOLLOWING CAREFULLY**

Exhibits to be offered at trial shall be delivered to this division no later than **4:30 p.m. on June 22, 2015**.

**EXHIBIT GUIDELINES:**

- Exhibits shall be marked serially by number, plaintiff's first; defendant's exhibit numbers will begin where plaintiff's numbers end.
- Confer with the other party to eliminate duplicate exhibits before presenting to the clerk.
- Submit a written list or inventory describing each exhibit; descriptions should be concise and can be as simple as "letter," "e-mail," or "photo".
- Do **not** skip numbers, or describe exhibits as "blank" or "withdrawn"; do not "reserve" numbers for items not submitted to the clerk.
- Do not submit exhibits with subparts (e.g. exhibit 1a, 1b, 1c).
- Staple or otherwise secure each individual exhibit so that pages do not become separated.
- Separate exhibits by a colored sheet of paper with the exhibit number written on front.
- If an exhibit is too heavy or large for a hanging file folder, place it in a binder.
- Do not mark depositions as exhibits; original depositions may be submitted to the division clerk to be filed and will be available for use during the trial.
- Blow-up charts and large items may only be used for demonstrative purposes. Counsel may bring blow-up charts and large items to court to use during trial; however, if counsel would like any blow-up charts or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph of the item.
- Provide a separate copy of exhibits, in a binder with numbered tabs, to the court to be referenced by the Judge during trial; If counsel intends to submit more than 50 exhibits, please provide a courtesy copy of the exhibits in a thumb drive (flash drive) for the Judge to access on his computer; If any exhibits are spreadsheets, please provide an additional hard copy.
- Contact the clerk at 602.506.6928 if you have questions regarding exhibits.

The dates set forth in this Order are FIRM dates and will not be extended or modified by this court absent good cause. Lack of preparation will not ordinarily be considered good cause.

**Judge Mark H. Brain**  
**Maricopa County Superior Court**  
**East Court Building**  
**101 West Jefferson Street**  
**4th Floor, Courtroom 413**  
**Phoenix, AZ 85003**  
**Tel: 602.372.1141**

**Please Note:** Judge Brain's division is now an FTR division. Any requests for a court reporter will need to be made three (3) days prior to a hearing.

The parties are reminded that, effective July 1, 2013, Maricopa County Local Rule of Practice 3.2 requires notices of settlement, stipulations to dismiss, and

stipulations for the entry of judgment to contain a statement regarding whether such settlements or stipulations dispose of the entire case.

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3342 dated March 3, 2015.