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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION) Nos. W-1 - W-4
OF ALL RIGHTS TO USE WATER IN)
THE GILA RIVER SYSTEM AND) Contested Case No. W1-11-232
SOURCE)
) ~~proposed~~ RULE 502(d) ORDER AND
) CLAWBACK PROVISIONS
)

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

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report

DESCRIPTIVE SUMMARY: Arizona Rule of Evidence 502(d) Order including "Clawback Provisions."

NUMBER OF PAGES: 4

Because the parties to this contested case or third parties may be required to produce documents, answer interrogatories, and provide testimony and other information that may contain information covered by the attorney-client privilege or attorney work product protection, and in order to permit discovery to proceed without delay and avoid possible disputes regarding the privileged or protected nature of such information, the Court hereby **ORDERS:**

Due to the large volume of electronic and hard copy data in the possession, custody, or control of the parties and the numerous concerns regarding attorney-client privilege and attorney work product protection, the Court enters this order consistent with Arizona Rule of Evidence 502(d) and includes "Clawback Provisions" to expedite and facilitate the production of electronic

1 and hard copy data, information and documents, and to protect against disclosure of attorney-
2 client privileged communications or work product materials in this contested case and other
3 proceedings.

- 4
5 1. The disclosure or production of any information or document that is subject to an
6 objection on the basis of attorney-client privilege or attorney work product protection,
7 will not constitute or be deemed a waiver or forfeiture - in this or any other state or
8 federal proceeding - of any claims of attorney-client privilege or work product protection
9 that the disclosing Party would otherwise be entitled to assert with respect to the
10 information or documents and their subject matter, or estop that party or the privilege
11 holder from designating the information or document as attorney-client privileged or
12 subject to the work product doctrine at a later date.
- 13 2. If a party determines that it has produced a document upon which it wishes to make a
14 claim of privilege, the producing party shall, within 14 days of making such
15 determination, give all counsel of record or parties notice of the claim of privilege. The
16 notice shall identify each such document and the date it was produced. If the producing
17 party claims that only a portion of a document is privileged, the producing party shall
18 provide, along with the notice of the claim of privilege, a new copy of the document with
19 the allegedly privileged portions redacted. Any party that complies with this paragraph
20 will be deemed to have taken reasonable steps to rectify disclosures of privileged or
21 protected information or materials.
- 22
23 3. If a party identifies a document that appears on its face or in light of facts known to the
24 party to be subject to another party's claim of privilege, the party identifying the potential
25 claim of privilege is under a good-faith obligation to notify the party holding the potential
26 claim of privilege. Such notification shall not waive the identifying party's ability to
27 subsequently challenge any assertion of privilege with respect to the identified document.
28

1 If the party holding the potential claim of privilege wishes to assert a claim of privilege, it
2 shall provide notice in accordance with paragraph 2 above within five (5) business days
3 of receiving notice from the identifying party.

- 4
- 5 4. Upon receiving notice of a claim of privilege on a produced document, the receiving
6 party must, in accordance with Ariz. R. Civ. P. 26.1(f)(2), promptly sequester the
7 specified information and any copies it has and may not use or disclose the information,
8 except as provided by Ariz. R. Civ. P. 26.1(f)(2). Copies of privileged documents or
9 information that have been stored on electronic media that is not reasonably accessible,
10 such as disaster recovery backup media, are adequately sequestered as long as they are
11 not restored; if such data is restored, the receiving party must take steps to re-sequester
12 the restored information. If the receiving party disclosed the information before being
13 notified, it must take reasonable steps to prevent further use of such information until the
14 claim is resolved.
- 15
- 16 5. Upon receiving notice of a claim of privilege as to specific information or documents, the
17 receiving party shall return the information or documents to the producing party within
18 five (5) business days, regardless of whether the receiving party agrees with the claim of
19 privilege and/or work-product protection.
- 20
- 21 6. If a party wishes to dispute a claim of privilege asserted under this Order, such party shall
22 within 14 days, move the Court for an order compelling disclosure of the information.
23 The party shall follow the procedures described in Ariz. R. Civ. P. 26.1(f)(2). Pending
24 resolution of the motion, the parties shall not use the challenged information for any other
25 purpose and shall not disclose it to any person other than those required by law to be
26 served with a copy of the sealed motion.
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- 7. The parties may stipulate to extend the time periods specified in the paragraphs above.
 - 8. Nothing in this order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the disclosing party that such materials have been produced.
 - 9. The party wishing to assert a claim of privilege retains the burden, upon challenge pursuant to paragraph 6, of establishing the applicability of the claimed privilege.
 - 10. This Order does not preclude a party from voluntarily waiving any claims of privilege.
- The provisions of Rule 502(a) of the Arizona Rules of Evidence apply when a party uses privileged information to support a claim or defense.

IT IS SO ORDERED.

DATED this _____ day of
April 2015.

 5/20/2015
HONORABLE MARK H. BRAIN
Judge of the Superior Court