

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/08/2018

CLERK OF THE COURT

HONORABLE MARK H. BRAIN

S. Yoder  
Deputy

In Re: The General Adjudication Of All Rights To  
Use Water In The Gila River System And Source  
W-1, W-2, W-3, W-4 (Consolidated)

**FILED: 06/11/2018**

In Re: San Pedro Riparian National Conservation  
Area Contested Case No. W1-11-232

In Re: Oral Argument on US Motion for Protective  
Order

**MINUTE ENTRY**

Courtroom CCB 1201

2:03 p.m. This is the time set for Oral Argument before Judge Mark Brain on the United States' Motion for Protective Order, and Freeport Mineral Corporation's cross-motion.

Court Reporter Christine Coaly is present, and a record of the proceedings is also made digitally.

The following attorneys and parties appear telephonically: Carrie Brennan on behalf of Arizona State Land Department; Michael Foy, Jeff Heilman and Lisa McKnight on behalf of Salt River Project; John Gaudio on behalf of United States Department of Interior and Bureau of Land Management; David Gehlert, Lee Leininger and David Negri on behalf of the United States Department of Justice; Brian Heiserman and Sean Hood on behalf of Freeport Minerals; Sara Ransom on behalf of Cochise County; Joe Sparks on behalf of the San Carlos Apache Tribe; and William Sullivan on behalf of the City of Sierra Vista and Pueblo Del Sol Water Company.

The Court has reviewed the United States' Motion for Protective Order (filed June 7, 2018), and Freeport Minerals Corporation's Response to Federal Government's Motion for Protective Order and Motion to Compel (filed on June 8, 2018).

Argument is presented.

IT IS ORDERED taking the matter under advisement.

3:01 p.m. Matter concludes.

**Later:**

Having considered the parties' papers and arguments, the United States' Motion for Protective Order (dated June 7, 2018) is GRANTED and Freeport Mineral's Motion to Compel (dated June 8, 2018) is DENIED. By way of brief explanation, the Court notes the following. Of course written material exchanged between counsel and disclosed, testifying experts (as opposed to non-testifying consultants) is generally discoverable. Here, however, the United States' attorneys had a reasonable and well-founded expectation of privacy—discovery had closed and trial was imminent. Rule 1 provides that the rules of civil procedure are to be construed to secure the just, speedy and inexpensive determination of disputes, and new Rule 26(b)(1) confirms that the Court has discretion in such matters ("*Unless otherwise limited by court order, the scope of discovery is as follows...*") (emphasis added). Requiring the production of the materials sought (including the government's draft opening statement and proposed outlines of testimony) in these specific circumstances does not strike the Court as just.

A copy of this minute entry is mailed to all persons listed in the Court-approved mailing list.