

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

11/06/2017

CLERK OF THE COURT  
Form V000

JUDGE MARK BRAIN

M. ASKEW  
Deputy

W1-11-232

FILED: 11/06/2017

In re: San Pedro Riparian National Conservation Area

W1-11-232

In re: Trial to the Court Day One / Trial Reset

**MINUTE ENTRY**

Courtroom 1201 – CCB

10:32 a.m. This is the time set for Trial to the Court before the Honorable Mark H. Brain. The following attorneys appear in person: Joe P. Sparks on behalf of the San Carlos Apache Tribe; Lee Leininger and Mitchell Tribbett on behalf of the United States; Patrick Sigl, Michael Foy, Jeff Heilman, and Lisa McKnight on behalf of Salt River Project; Sean Hood and Brian Heiserman on behalf of Freeport Minerals Corporation; Bill Anger on behalf of the cities of Avondale, Glendale, Chandler, Mesa and Scottsdale; Monique Coady on behalf of the City of Phoenix; Carrie J. Brennan, on behalf of the State of Arizona Land Department; Susan Montgomery on behalf of the Pascua Yaqui Tribe and Yavapai Apache Nation; David Gehlert, Jennifer Najjar, and David Negro on behalf of the United States Department of Justice; John Gaudio on behalf of the United States Department of Interior – BLM; Robert Anderson on behalf of Liberty (Bella Vista Water) Corp.; Kimberly Parks on behalf of Arizona Department of Water Resources; Sara Ransom on behalf of Cochise County; and William Sullivan on behalf of City of Sierra Vista, Pueblo Del Sol Water Co.

Court reporter, Christine Coaly, is present.

A record of the proceedings is also made digitally.

Oral argument was presented to this Court on 10/06/2017 regarding United States' Motion in Limine to Exclude Irrelevant Evidence (filed August 31, 2017) and joinders, Freeport Mineral Corporation's Motion in Limine Re: Untimely Disclosure of New Expert Work (filed August 31, 2017) and joinders, and Arizona State Land Department's Motion in Limine to Exclude Untimely Evidence and Joinder in Freeport

Mineral Corporation's Motion in Limine Re: Untimely Disclosure of New Expert Work (filed September 8, 2017).

United States' Motion in Limine to Exclude Irrelevant Evidence is DENIED. As set forth more fully on the record, the Court believes that a discussion of the various management plans may give it greater insight into the area and its need.

Freeport Mineral Corporation's Motion in Limine Re: Untimely Disclosure of New Expert Work and Joinders and Arizona State Land Department's Motion in Limine to Exclude Untimely Evidence and Joinder in Freeport Mineral Corporation's Motion in Limine Re: Untimely Disclosure of New Expert Work are DENIED. As set forth more fully on the record, it does appear that the disclosures were untimely, although there are a variety of reasons for this, including that the parties have let various deadlines lapse by agreement (which eliminates the buffer zones otherwise built into scheduling orders). It appears that the United States has acted in good faith and violations of Rule 37 do not automatically lead to the exclusion of evidence; indeed, Rule 37(c)(3)(C) grants the Court almost unfettered authority to craft appropriate sanctions. Here, Congress set aside SPRNCA so that it would exist for future generations, which provides a compelling reason to resolve the issues on the merits rather than limiting evidence due to disclosure issues.

Sean Hood on behalf of Freeport Minerals Corporation and Carrie Brennan on behalf of the State of Arizona make an oral motion to continue the Trial set this date based on the rulings provided by the Court as to the aforementioned motions.

Discussion is held regarding same.

10:46 a.m. The Court stands at recess so that the parties may confer.

11:12 a.m. Court reconvenes with respective parties and counsel present.

Court Reporter, Christine Coaly, is present.

A record of the proceedings is also made digitally.

Discussion continues regarding the motion to continue trial.

IT IS ORDERED vacating the Trial dates set this date through January 11, 2018 and resetting same to **April 2, 2018 through May 10, 2018**. Trial will be held Monday through Thursday during the above-referenced dates and will begin at 10:30 a.m. each day.

IT IS FURTHER ORDERED setting a Status Conference on **December 8<sup>th</sup>, 2017 at 1:30 p.m.** before this division.

The Court is in receipt of Freeport Minerals Corporation's State Law Parties' Request for Evidentiary Rulings on the Admissibility of "Impact Testimony" and the Existence of a Pre-Reservation Certificate of Water Right, filed on 10/05/2017.

Discussion is held regarding same.

For the reasons stated on the record,

IT IS ORDERED granting Freeport Minerals Corporation's State Law Parties' Request for Evidentiary Rulings on the Admissibility of "Impact Testimony" and the Existence of a Pre-Reservation Certificate of Water Right.

11:30 a.m. Matter concludes.

A copy of this order is mailed to all persons listed on the court approved mailing list for Contested Case No. W1-11-232.