

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA
3
4

5 IN RE THE GENERAL ADJUDICATION
6 OF ALL RIGHTS TO USE WATER IN THE
7 GILA RIVER SYSTEM AND SOURCE

CIVIL NO. W1-11-232

8 ORDER SETTING A
9 DISCOVERY CONFERENCE

10
11 CONTESTED CASE NAME: *In re San Pedro Riparian National Conservation*
12 *Area.*

13 HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

14 DESCRIPTIVE SUMMARY: The Special Master sets a conference to address
15 discovery issues raised by Freeport Minerals Corporation

16 NUMBER OF PAGES: 2.

17 DATE OF FILING: August 19, 2016.
18

19 By letter dated August 18, 2016, a copy of which is attached, Freeport
20 Minerals requested a hearing on Monday, August 22, 2016, to address the deposition
21 schedule. IT IS ORDERED scheduling a discovery conference on Monday, August
22 22, 2016, at 1:30 p.m. before:

23 Special Master Susan Ward Harris
24 Courtroom 301, Central Court Building
25 Superior Court of Arizona
26 201 West Jefferson Street
27 Phoenix, AZ 85003-2202
28

- 1 Instructions for telephonic appearance
2 1. Dial 877-820-7831.
3 2. Dial Participant Pass Code 2743132 #
4

5 DATED: August 19, 2016.
6

7
8 
9 SUSAN WARD HARRIS
10 Special Master
11

12
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14 On August 19, 2016, the original of the
15 foregoing was delivered to the Clerk of
16 the Maricopa County Superior Court
17 for filing and distributing a copy to all
18 persons listed on the Court approved
19 mailing list for Contested Case No.
20 W1-11-232.
21
22
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August 18, 2016

VIA E-MAIL & U.S. MAIL

Special Master Susan Ward Harris
c/o Barbara Brown
Superior Court of Arizona
201 West Jefferson Street
Phoenix, Arizona 85003-2202
brownb099@superiorcourt.maricopa.gov

Re: *In re SPRNCA* / Expedited Request for Status Conference

Dear Special Master Harris:

Freeport Minerals Corporation ("Freeport") and other non-claimants just learned about an urgent case management issue in *In re SPRNCA* that threatens to derail the existing case schedule and undermine the goal of proceeding to trial in September 2017. I spoke with Barbara Brown to see whether you have any availability on your calendar this coming Monday, August 22, 2016 for an in-person status conference to address this issue. Ms. Brown asked that I provide a brief description in writing, which is the purpose of this letter.

The parties have been working diligently for weeks to schedule the numerous depositions that must be completed in *In re SPRNCA* prior to expiration of the November 30, 2016 deadline. A chart reflecting the expert deposition schedule that had been agreed upon by the Federal Government and the other parties is enclosed.

At 9:00 a.m. this morning, we were notified by counsel for the Federal Government that the Government is unilaterally cancelling all of the nine (9) expert depositions that have already been scheduled in *In re SPRNCA*. The purpose for the telephonic meet and confer this morning was to schedule depositions for the three (3) additional expert witnesses who have been designated, and the Government refused to schedule the depositions for these expert witnesses.

The Federal Government's stated justification for refusing to engage in expert discovery is that the Government will be filing a motion for an entirely new case management schedule that would afford the Government an opportunity to conduct additional expert work prior to engaging in expert discovery. The Government proposes a new expert disclosure deadline of end of

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December 2016 at which time the Government would submit new expert disclosures. Expert depositions would, as a result, be shifted into 2017 under the Government's proposal.

In short, what the Federal Government proposed during the meet and confer this morning would derail the case and render a September 2017 trial unfeasible.

The existing deadline for the Federal Government to disclose expert witnesses expired in December 2015. That deadline was established at the request of the Federal Government when it filed multiple motions seeking an extension of the prior deadline.¹ Just like the Federal Government's expert deadline that expired over eight months ago, the existing November 30, 2016 deadline to complete depositions is the result of an extension granted to the Federal Government as requested in its October 2015 Motion to Extend.

Freeport and the other parties have expended significant resources scheduling and preparing for expert depositions, which were scheduled to begin just 2 weeks from today. The non-claimants have worked diligently to observe the existing deadlines, and the Government's proposal would prejudice Freeport and these other parties with respect to these efforts.

Freeport objects to the Federal Government's unilateral cancellation of depositions that have already been scheduled, and the Government's refusal to schedule the remaining expert witnesses. Freeport also objects to the Federal Government's attempt to terminate the existing case management schedule and recreate a new one from whole cloth.

Freeport has consulted with counsel for the State of Arizona, and the State also objects to the Federal Government's proposal. The State joins in this request for a status conference in the hopes of preserving the existing schedule.

The Federal Government's repeated strategy of delay in this Adjudication has already caused far too many years to pass by with far too little progress.² A workable case schedule is in place, expert depositions are already scheduled, and Freeport and the State of Arizona believe that the parties should process this case to an efficient conclusion.

Freeport brings this issue to your attention immediately and requests a conference on Monday in the hopes of preserving the existing deposition schedule and keeping this case on

¹ See the Federal Government's Consolidated Expedited Motion to Revise Discovery Deadlines and Set Pre-Trial and Trial Schedules filed on October 22, 2015 in *In Re Fort Huachuca*, *In Re Redfield Canyon Wilderness*, and *In Re SPRNCA* ("October 2015 Motion to Extend").

² See, e.g., the enclosed chart labeled Exhibit 1 memorializing numerous of the requests for extensions and motions for stay that the Federal Government has filed in this Adjudication over the past several years.

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track for trial in September 2017. One of Freeport's expert witnesses, Chris Garrett of SWCA, Inc., is scheduled for deposition in two weeks, and Freeport has already begun preparing to complete the expert deposition schedule. The parties will be conducting depositions in *In re Redfield Canyon Wilderness Area* Tuesday through Thursday of next week, and the telephonic status conference set for Friday, August 26, 2016, will be less than a week before Mr. Garrett's scheduled deposition. It is important for the parties to know whether the existing deposition schedule will be maintained so that appropriate preparations can be made without the risk of additional wasted resources. If your schedule would permit, addressing this issue on Monday would be valuable to Freeport and the other parties that are strongly interested in maintaining the existing schedule. Every day is important for those parties, like Freeport, that are intent upon meeting the November 30 deadline and staying on track for trial in September 2017.

We appreciate your attention to this issue and look forward to discussing it with you next week.

Very truly yours,

FENNEMORE CRAIG, P.C.



Sean T. Hood

Enclosure

cc: (via e-mail)

Shilpa Hunter-Patel, Esq.
William Staudenmaier, Esq.
Larry Caster, Esq.
Doug Northup, Esq.
Brian Heiserman, Esq.
David Brown, Esq.
Patrick Barry, Esq.
Janet Miller, Esq.
Joe Sparks, Esq.
John Weldon, Jr., Esq.
Linus Everling, Esq.
Lucas Narducci, Esq.
Michael McNulty, Esq.
Nicole Klobas, Esq.
Lee Leininger, Esq.
Ralph Hunsaker, Esq.

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Sara Porsia, Esq.

Susan Montgomery, Esq.

Theresa Craig, Esq.

William Anger, Esq.

William Sullivan, Esq.

COPY mailed this 18th day of August, 2016 to
all persons appearing on the Court-
approved mailing list in W1-11-2664 dated
June 14, 2016

11936274.2/028851.0254

EXHIBIT 1

Date Filed	Contested Case	Motion / Order	Submitted By
12/10/2013	W1-W-4	Order Granting the US' Motion for Extension of time	US
12/4/2013	W1-W4	Motion for for an extension of time to file its reply to the responses to its motion to stay proceedings	US
10/18/2013	W1-W4	Motion to stay proceedings	US
4/13/2015	SPRNCA	Ex Parte Motion to Stay Production of Discovery	US
11/26/2013	SPRNCA	Motion to suspend deadlines	US
6/20/2011	SPRNCA	Motion For Extension of Time to Respond to ASARCO LLC's Motion for Rulings RE US Notice of Submission of Third Amended Statement of Claimant and Accompanying Exhibit 1	US
4/7/2010	SPRNCA	US Motion for Extension of Time to File Recommendations for Next Phase of Case	US
11/13/2009	SPRNCA	Motion for Extension of Time to File Responses Regarding Supplemental Briefing Issues	US
8/28/2009	SPRNCA	Motion to Stay Report of ADWR Concerning the Size of the SPRNCA	US
8/25/2008	SPRNCA	Motion for Extension of Time to File Responsive Memoranda	US
2/27/2015	Fort Huachuca	Unopposed Motion for Extension of Time	US
10/8/2014	Fort Huachuca	US Motion for Extension to Complete Production to of Electronically Stored Informaiton	US
1/10/2014	Fort Huachuca	Reply to Responses to the US' Motion for Stay Proceedings	US
11/8/2013	Fort Huachuca	Response to Notice that the United States Has Not Completed Production of Discovery and Motion for Protective Order	US
5/30/2013	Fort Huachuca	Notice that the United States Has Not Completed Production of Discovery	FMC
5/30/2013	Fort Huachuca	US Motion to Extend Deadlines	US
11/24/2008	Fort Huachuca	Motion for Extension of Time to File Responsive Memoranda	US
5/29/2007	Fort Huachuca	Motion for Extension of Time to File Motion and Memorandum in Support RE Four Designated Issues in the Contested Matter <i>In re Fort Huachuca</i>	US
7/14/2006	Fort Huachuca	Motion for Extension of Briefing Schedule	US
11/26/2001	Fort Huachuca	Motion for Extension of Time to File Amended Claims to Water Rights in the Contested Matter <i>In re Fort Huachuca</i>	US
6/29/2001	Fort Huachuca	Unopposed Motion for Extension of Time to Respond to City of Sierra Vista's Motion to Intervene	US
10/22/2015	Redfield Canyon	Consolidated Expedited Motion to Revise Discovery Deadlines and Set Pre-trial and Trial Schedules	US
10/22/2015	Redfield Canyon	Motion to Reset Date of Oral Argument on Freeport Minaerals Corporation's Motion for Partial Summary Judgment	US
11/26/2013	Redfield Canyon	Motion to Suspend Deadlines	US
8/31/2012	Redfield Canyon	Motion for Clarification or, Alternatively, Further Request to Stay	US
3/28/2012	Redfield Canyon	Motion to Stay Orders Concerning Amending Statements of Claimant	US
10/28/2014	Aravaipa Canyon	US Motion for Extension of Discovery	US
11/26/2013	Aravaipa Canyon	Motion to Suspend Deadlines	US
11/8/2013	Aravaipa Canyon	Motion for Protective Order	US
4/22/2013	Aravaipa Canyon	US Motion for Temporary Stay	US
3/8/2013	Aravaipa Canyon	US Motion to Extend Time to File Expert Witness Reports	US
4/17/2012	Aravaipa Canyon	Order Concerning the Requests of the US for (1) Additional Time to Submit Information and (2) the Submission of a Special Master's Report	The Special Master
2/26/2012	Aravaipa Canyon	Motion to Extend Schedule for Initial Issues for Briefing	US
2/10/2012	Aravaipa Canyon	US Response to Order Determining the Initial Seven Issues and Motion for Rule 53(g) Report	US
2/2/2012	Aravaipa Canyon	US Motion for Extension of Time to File Brief on Issues for Next Round of Briefing	US
12/16/2010	Aravaipa Canyon	Motion for Extension of Time to File Motions and Responses Concerning the Designated Issues	US
10/25/2010	Aravaipa Canyon	Motion to Extend Discovery Deadline	US

EXPERT DEPOSITION SCHEDULING

In re SPRNCA
Contested Case No. W1-11-232

<u>NAME</u>	<u>DEPOSITION DATE</u>	<u>LOCATION</u>
Federal Government Experts		
Steven Swanson	September 19 (tentative)	Denver, CO
Steven Swanson	September 20	Denver, CO
William Miller	November 2	Denver, CO
Matt Dickson	November 3	Denver, CO
Freepoint Experts		
Richard Burtell	November 22	Phoenix, AZ
Amy Hudson	September 9	Phoenix, AZ
Steve Carothers	November 29	Phoenix, AZ
Chris Garrett	September 1	Phoenix, AZ
Arizona State Land Department Experts		
John Bodenchuk	November 30	Phoenix, AZ
Mark Edelman	November 8	Phoenix, AZ
Sierra Vista Parties Experts		
Ann Redmond	Proposed: September 23	Phoenix, AZ
Matt Lindburg	Proposed: October 25, 26, or 27	Phoenix, AZ
Jeff Weaver	Proposed: October 25, 26, or 27	Phoenix, AZ