

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

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

CIVIL NO. W1-11-232

9 ORDER GRANTING MOTION TO  
10 SUBMIT EXPERT REBUTTAL  
11 REPORTS AND EXTEND DISCOVERY  
12 DEADLINES  
13 AND  
14 ORDER SETTING TRIAL DATE

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

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

17 DESCRIPTIVE SUMMARY: The Special Master grants United States' motion to submit  
18 expert rebuttal reports and sets a trial date.

19 NUMBER OF PAGES: 6.

20 DATE OF FILING: September 1, 2016.

21 On August 19, 2016, the United States, the claimant in this contested case, filed a  
22 motion that nominally requested permission to submit rebuttal expert reports to the expert  
23 reports filed by Freeport Minerals Corporation, Arizona State Land Department and Liberty  
24 Utilities (Bella Vista Water) Corp., Pueblo Del Sol Water Company and the City of Sierra  
25 Vista (collectively the "SV Parties"). The United States also requested four additional  
26 months to complete discovery and an extension of the deadline for filing dispositive  
27 motions until after the conclusion of discovery. The United States claimed that the  
28

1 schedule it proposed would not necessitate a delay of the trial date tentatively scheduled for  
2 September 18, 2017. Freeport Minerals Corporation, the SV Parties and the Arizona State  
3 Land Department opposed the motion and Salt River Project Agricultural Improvement and  
4 Power District and Salt River Valley Water Users' Association supported the motion.  
5

6  
7 EXPERTS

8 By order dated October 9, 2014, the Special Master determined that rebuttal reports  
9 would not be permitted. Instead, the parties would be expected to elicit rebuttal expert  
10 opinions by deposition. The issue here, however, is not about the filing of rebuttal reports  
11 by timely identified experts; rather, it is a request by the United States to call additional  
12 experts having different areas of expertise to rebut the expert reports submitted by the non-  
13 claimant parties. The United States contends that the non-claimant parties had an  
14 obligation to provide information about their respective experts' opinions in their 2014 and  
15 2015 disclosure statements and, the absence of such information caused it to not retain  
16 additional experts by the December 1, 2015 deadline. It further claims that the expert  
17 reports address new subject matters and topics. Consequently, the United States argues that  
18 it will be prejudiced if it is not now permitted to retain rebuttal experts to respond to the  
19 non-claimant parties' experts.  
20  
21  
22

23 Freeport Minerals Corporation, the SV Parties and the Arizona State Land  
24 Department timely produced their expert reports in accordance with the Court's order dated  
25 November 19, 2016, which simply approved the discovery schedule proposed by all  
26 parties, including the United States. No grounds exist for finding that Freeport Minerals  
27  
28

1 Corporation, the Arizona State Land Department or the SV Parties acted improperly. To  
2 the contrary, they met their obligation of producing expert reports by the July 29, 2016  
3 deadline. It is not clear that the expert reports produced by the non-claimants addressed  
4 new topics or simply contained new methodologies and approaches to the defined issues in  
5 this case. Nevertheless, given the very limited scope about which the United States'  
6 requests that its new experts be permitted to opine, the relatively short extension required in  
7 this case that has been pending for years and the potential prejudice to the United States to  
8 proceed in the absence of such testimony, the United States will be permitted to identify  
9 rebuttal experts and submit rebuttal reports.

12 In its motion, the United States did not identify the number of rebuttal experts it  
13 would like to employ. It did, however, identify general subject areas included in the non-  
14 claimant parties' expert reports: complex groundwater modeling, avian habitat  
15 requirements, analysis of temporal changes in riparian conditions using two different  
16 methodologies, causes of the decline of river flow, effects of flow augmentation on natural  
17 resource, impact of surface water flow on fisheries in the San Pedro River, and  
18 management practices. While the United States will be permitted to name as many as  
19 seven rebuttal experts, it is expected that each rebuttal report will address discrete topics  
20 studied by the non-claimants' experts and that no rebuttal expert report will be duplicative  
21 of any other.

25 **IT IS ORDERED:**

- 26 1. No later than October 14, 2016, the United States shall:
  - 27 a. Provide a curriculum vitae for each rebuttal expert; and,

- 1           b.       file an amended disclosure statement which shall:
- 2                   i.    identify each rebuttal expert,
- 3                   ii.   identify the non-claimant expert report that each rebuttal
- 4                           expert shall address and,
- 5                   iii.   provide a general statement of the topics or the
- 6                           methodologies in the non-claimant expert report that will be
- 7                           the subject of the rebuttal report.
- 8
- 9

10       2.       The United States shall provide by November 30, 2016, no fewer than five

11                   (5) dates on which depositions may be taken of each of its rebuttal experts

12                   between February 1, 2017, and March 22, 2017. (By agreement of the

13                   parties, the depositions of the rebuttal experts may be scheduled and taken

14                   prior to February 1, 2017.)

15

16       3.       Rebuttal expert reports shall be filed by December 15, 2016.

17

18       4.       The United States shall file an amended disclosure statement no later than

19                   December 30, 2016, to the extent it deems necessary to update its

20                   disclosure statement filed on October 14, 2016.

21

22   DISCOVERY DEADLINES

23       The deadline to complete discovery must necessarily be extended as the result of

24   granting the United States' motion to call rebuttal experts to provide time for the non-

25   claimant parties to study the rebuttal reports and prepare for the additional depositions.

26

27   The United States requested an extension until March 30, 2017, for all discovery. While

28

1 the discovery deadline will be extended, the new deadlines will be tailored to address the  
2 specific needs raised by the United States. No reason exists to extend the deadline for  
3 discovery that pertains to fact witnesses and the United States' experts who were timely  
4 disclosed. The non-claimant parties represented, quite reasonably, that they have already  
5 invested time into preparing for those witnesses. The non-claimant parties should not have  
6 to duplicate that effort at a later date. Accordingly, no changes are made with respect to  
7 discovery deadlines except as set forth below:  
8  
9

10  
11 **IT IS ORDERED:**

- 12  
13 1. The deadline to file notices of deposition for fact witnesses, the United States'  
14 timely disclosed experts, and the non-claimant expert witnesses is extended to  
15 September 16, 2016.
- 16  
17 2. The deadline for filing notices of deposition for the United States' rebuttal  
18 experts is January 18, 2017.
- 19  
20 3. The deadline for the United States to take the depositions of the non-claimant  
21 expert witnesses is extended to January 25, 2017.
- 22  
23 4. The deadline for the non-claimant parties to engage in discovery solely with  
24 respect to and take the depositions of the United States rebuttal experts is  
25 extended to March 22, 2017.  
26  
27  
28

1           5. The discovery deadline for all other discovery including depositions of fact  
2           witnesses and the United States' experts identified by December 1, 2016, shall  
3           remain November 30, 2016.  
4

5  
6       DISPOSITIVE MOTIONS

7           The Special Master's Order dated May 29, 2013 sets the three issues that are the  
8           subject of the evidentiary hearing in this case. Currently, January 30, 2017, is set as the  
9           date for filing dispositive motions. The parties are encouraged, but not required, to file  
10          dispositive motions on or by January 30, 2017, on such legal issues and other issues that  
11          have no material issue of fact in dispute and that do not require the discovery that may be  
12          completed after November 30, 2016.  
13  
14

15          **IT IS ORDERED** that the deadline for filing all dispositive motions is extended to  
16          June 23, 2017. Responses shall be filed on July 31, 2017, and replies shall be filed on  
17          August 21, 2017. Oral argument shall be held on August 31, 2017, at 1:30 p.m.  
18

19       TRIAL DATES

20               As correctly predicted by Freeport Minerals Corporation, the SV Parties and the  
21               Arizona State Land Department, the United States' motion necessitates rescheduling the  
22               tentative trial date of September 18, 2017. To fail to do otherwise would impose an  
23               unwarranted burden on counsel who are expected to prepare for and appear in trial in *In re*  
24               *Redfield Canyon Wilderness Area* that commences on April 24, 2016, and is expected to  
25               continue through May 4, 2017.  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A three week trial in this matter will begin on Monday, November 6, 2017, before:

The Honorable Mark H. Brain  
Maricopa County Superior Court  
Courtroom 1201, Central Court Building  
201 West Jefferson Street  
Phoenix, Arizona 85003

Trial will be held on the following dates from 10:30 a.m. to 4:30 p.m.:

November 6, 2017 through November 9, 2017

November 13, 2017 through November 16, 2017

November 27, 2017 through November 30, 2017

DATED: September 1, 2016.

  
SUSAN WARD HARRIS  
Special Master

On September 1, 2016, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-232.