

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

December 11, 2025

CLERK OF THE COURT
N. Johnson
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

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: January 6, 2026

In re: ASARCO – Irrigation
Contested Case No. W1-11-2801

MINUTE ENTRY

Courtroom CV-CCB-301

10:00 a.m. This is the time set for a virtual Oral Argument before Special Water Master Sherri Zendri.

The following parties/attorneys appear virtually through Court Connect:

- Sean Hood, Rhett Billingsley, and Nyla Hightower on behalf of American Smelting and Refining Company (“ASARCO”)
- Karen Nielsen and Dustin Rector on behalf of Arizona Department of Water Resources (“ADWR”)
- Katrina Wilkinson, Mark A. McGinnis, and Michael K. Foy on behalf of Salt River Project (“SRP”)
- Joe Sparks, Laurel Herrmann, Jana Sutton, Bernardo Velasco, and Alex Ritchie on behalf of the San Carlos Apache Tribe (“the Tribe”)
- Guss Guarino on behalf of the United States Department of Justice (in its capacity as trustee for Indian Tribes)
- Rosemary Avila on behalf of the Tonto Apache Tribe
- Charles Cahoy on behalf of the City of Phoenix

- Michael Rolland observing on behalf of the Cities of Mesa, Tempe, Scottsdale, Avondale and Glendale
- John Burnside observing on behalf of BHP Copper
- Merrill C. Godfrey and Brette Pena on behalf of the Gila River Indian Community (“the Community”)
- Susan Montgomery on behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaqui Tribe)
- Kevin Crestin and Eric Wilkins observing on behalf of the Arizona State Land Department
- Brian Heiserman and Brad Pew observing on behalf of the Saint David Irrigation District

A record of the proceedings is made digitally in lieu of a court reporter.

Argument is presented on the following pleadings:

United States	Motion for Partial Summary Judgment - Robinson Ranch	8/22/2025
United States	Motion for Partial Summary Judgment - Aravaipa Ranch	8/22/2025
United States	Motion for Partial Summary Judgment - PZ Ranch	8/22/2025
ASARCO LLC	Motion for Partial Summary Judgment No. 1 Establishment of Pre-1919 WR for Aravaipa Ranch	8/22/2025
ASARCO LLC	Motion for Partial Summary Judgment No. 2 Establishment of Pre-1919 WR for PZ Ranch	8/22/2025
ASARCO LLC	Motion for Partial Summary Judgment No. 3 Establishment of Pre-1919 WR for Robinson Ranch	8/22/2025
ASARCO LLC	Motion for Partial Summary Judgment No. 4 Changes in Points of Diversion	8/22/2025
San Carlos Apache Tribe	Motion for Partial Summary Judgment	8/22/2025
Gila River Indian Community	Motion for Partial Summary Judgment	8/26/2025
ASARCO LLC	Motion for Leave to Obtain the “Southworth Maps” and to Use the Newly Discovered Evidence	9/30/2025
Gila River Indian Community	Cross-Motion to Re-Open Discovery at ASARCO’s Expense	12/3/2025
ASARCO LLC	Motion For Leave to Use Evidence to Rebut New "Illegal" Diversion Argument	12/3/2025
Gila River Indian Community	Motion to Strike ASARCO’s Filings in Violation of Ariz. R. Civ. P. 56(c)(3)(C)	12/10/2025

The Special Master addresses the parties.

Mr. Hood presents oral argument with respect to the issue of no injury. Mr. Hood states that the community's assertion that a showing of injury would somehow result in relinquishment of ASARCO's water rights should be dispensed with. Mr. Hood references ASARCO's response that if a change in point of diversion results in downstream harm, the appropriate remedy is to

adjust the water right to address the injury. Mr. Hood points to Mr. Snyder's analysis of no injury and Special Water Master Harris' minute entry dated December 6, 2021, in the St. David Irrigation District case (W1-11-001675).

Mr. Hood states that Mr. Snyder opines that the transition to wells has not resulted in an increase in overall consumption, and that there is no reduction in the amount of water available downstream by virtue of that transition. Mr. Hood discusses Mr. Westfall's analysis. Mr. Hood states that there is no factual basis for concluding that ASARCO's crop consumption has increased.

With respect to the issue of timing, Mr. Hood states that Mr. Snyder's opinion is that there would be no material change in timing when water is available downstream.

Mr. Hood presents oral argument with respect to the issue of no forfeiture. Mr. Hood discusses the various experts' opinions. Mr. Hood shares a presentation slide with respect to irrigation.

Mr. Billingsley presents oral argument with respect to the issue of initiation of the water rights and the water duty. Mr. Billingsley states that with respect to acreage and location, ASARCO has provided a comprehensive record showing irrigated acres of the subject fields consistent with the state water commissioner maps. Mr. Billingsley states that the water rights that were shown on the maps were established pre-1919. Mr. Billingsley discusses ASARCO's claimed priority dates as well as potential alternative priority dates. Mr. Billingsley further discusses the experts' reports and the methodology used with respect to quantity.

The Special Master makes inquiry of the experts' reports with respect to the pumping records. The Special Master makes further inquiry of the experts' reports with respect to actual records that show the numbers of how much is being irrigated right now, how much water is being used right now, how much water is actually discharged past the ranches, all three of them, and how many animals are actually being raised right now. The Special Master and counsel discuss the same.

Mr. Guarino presents oral argument. Mr. Guarino discusses continuous use and how this particular case differs from the Saint David case. Mr. Guarino further discusses the experts' reports regarding the same. Mr. Guarino discusses historic beneficial use and continuous use with respect to securing a water right claim. Mr. Guarino states that there is no evidence of forfeiture and abandonment as established in the United States' motion. Mr. Guarino discusses the various maps with respect to irrigation.

Ms. Sutton presents oral argument. Ms. Sutton states that the San Carlos Apache Tribe joins the United States in their response to ASARCO's affirmative motions on their irrigation claims. Ms. Sutton discusses the priority dates and what was being grown. Ms. Sutton states that with respect to the stock watering and domestic claims, these claims have the same elements as an irrigation claim. Domestic use and animals are discussed regarding the properties and land.

Mr. Godfrey presents oral argument. Mr. Godfrey discusses the historical consumptive use from the original point of diversion and the historical timing of diversions. Mr. Godfrey discusses the experts' reports. Mr. Godfrey addresses the ditch and the issue of discontinued use.

Mr. Billingsley presents oral argument. Mr. Billingsley responds to Mr. Godfrey's assertions regarding the ditch and the issue of discontinued use.

Mr. Godfrey continues to present oral argument. Mr. Godfrey discusses consumptive use.

Ms. Wilkinson presents oral argument. Ms. Wilkinson states that SRP's filings in this case were focused on two issues of Arizona law that were raised in the United States' motions. Ms. Wilkinson discusses the two legal issues of continuous use theory and the burden of proof on forfeiture. Ms. Wilkinson states that water rights are vested rights as of the time that water was applied to beneficial use. Ms. Wilkinson discusses the experts' reports. Ms. Wilkinson discusses the application of water to beneficial use.

Mr. Hood continues to present oral argument. Mr. Hood discusses continuous use theory. Mr. Hood discusses the experts' reports. Mr. Hood further discusses the various maps, overall consumption, and the use of wells.

Mr. Billingsley continues to present oral argument. Mr. Billingsley points to the historical record on domestic use and stock watering use of the ranches. Mr. Billingsley states that there is ample evidence of domestic and stock watering uses and the consolidation of those ranches that support the claims for those uses.

The Special Master and counsel discuss pretrial matters and scheduling. Procedural and logistical matters are discussed with respect to expert witness testimony at trial. The Special Master encourages counsel to confer regarding scheduling matters.

The Special Master addresses counsel. The Special Master cautions counsel to stop with some of the hyperbole. The Special Master further cautions counsel to remember that the experts, especially whenever they are looking back at history and estimating, that they are creating a scenario or a set of potential numbers or a set of potential situations. It is not the one and only inference that can be made.

Ms. Sutton, Mr. Godfrey, and Mr. Billingsley present rebuttal arguments.

The Special Master thanks counsel. The Special Master addresses counsel regarding her ruling.

Mr. Hood updates the Special Master on the "Southworth maps" as outlined on the record. Mr. Hood advises the Special Master that if they are found, they will be disclosed and they will be used, with permission.

The Special Master addresses counsel regarding her ruling and adding time frames for the parties to submit a joint schedule.

For the reasons stated on the record,

IT IS ORDERED taking this matter under advisement.

12:06 p.m. Matter concludes.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.

LATER:

In this minute entry, the Special Master addresses pending evidentiary and procedural disputes. In addition, the Special Master addresses the portion of the Tribe's Motion for Partial Summary Judgment regarding the proper basis of right for a stockpond claim asserted by ASARCO. All other pending motions for summary judgment will be addressed in a separate order.

I. The Court grants in part San Carlos Apache Tribe's Motion for Partial Summary Judgment.

The Tribe asserts that "ASARCO asserts a post-1919 priority date for its Aravaipa Ranch stockpond." The Tribe correctly states that the stockpond claim "must be supported by a certificate of water right."¹ As of this minute entry, ASARCO has not yet received a certificate of water right for this stockpond. Therefore, the claim is not ripe for consideration.

IT IS ORDERED GRANTING IN PART the Tribe's Motion for Partial Summary Judgment.

II. The Court denies ASARCO's Motion for Leave to Obtain the "Southworth Maps" and to Use Newly Discovered Evidence.

Discovery in this case ended on May 2, 2025. Between July and September 2025, ASARCO disclosed in late supplemental disclosures: Pinal County tax ledgers for the years 1890–1914, the Arizona Water Commissioner's first biennial report, and a series of documents known as the "Southworth Maps Documents." In a motion filed September 30, 2025, ASARCO seeks permission from the Court to use the above-mentioned documents ("the Newly Discovered Evidence") at trial under Rule 37(c)(4) of the Arizona Rules of Civil Procedure.² In that motion, ASARCO also seeks advance permission to use, if located, a set of possibly existing maps known as the "Southworth Maps."

The tax ledgers describe property tax assessments made in the vicinity of the properties at issue in this case: PZ Ranch, Aravaipa Ranch, and Robinson Ranch ("the Ranches"). Further, ASARCO asserts that the Southworth Maps³ are a set of maps published in 1913 and 1914 that depict irrigation and cultivation in the areas now comprising the Ranches. ASARCO seeks permission to disclose these maps in order to bolster its claims of pre-1919 irrigation.⁴ As of December 11, 2025, the claimed "Southworth Maps" had yet to be found.

ASARCO presents the biennial report and Southworth Maps Documents in order to establish the existence of the Southworth Maps. The biennial report discusses how the Arizona Water Commissioner relied on "maps or plats prepared by the Indian Service in the years 1913 and 1914 of the irrigated and cultivated lands along the Gila River and its tributaries" in preparing his 1920 survey. The 1920 survey is ASARCO's primary evidence of pre-1919 irrigation on the Ranches.⁵ ASARCO also seeks admission of other documents (the "Southworth Maps Documents") that, according to ASARCO, demonstrate the existence and relevance of the

¹ W1-11-2801, San Carlos Apache Tribe's Motion for Partial Summary Judgment at 17 (Aug. 22, 2025); W1-11-1511, Notice of Decision Regarding Issue of Broad Legal Importance at 9 (Sept. 16, 2025).

² W1-11-2801, ASARCO's Motion for Leave to Obtain the "Southworth Maps" and to Use the Newly Discovered Evidence ("Southworth Motion") (Sept. 30, 2025)

³ ASARCO names these maps for their presumed author, Clay "Charles" Southworth. Southworth Motion at 4.

⁴ Southworth Motion at 2.

⁵ Southworth Motion at 3–4.

Southworth Maps.⁶ The most notable document in this collection is a map showing that the U.S. Indian Service had drafted reconnaissance surveys of “fields along the San Pedro River and Aravaipa Creek.”⁷

1. Rule 37(c)(4) requires a finding of good cause or the absence of prejudice.

ASARCO requests permission to use the Newly Discovered Evidence under Rule 37(c)(4) of the Arizona Rules of Civil Procedure. Rule 37(c)(4) allows use of evidence “disclosed later than the deadline set in a Scheduling Order” only if the evidence “would be allowed under the standards of Rule 37(c)(1),” and the party disclosed the evidence “as soon as practicable after its discovery.” Ariz. R. Civ. P. 37(c)(4)(A), (B). Under Rule 37(c)(1), late disclosure is excused only if “such failure caused no prejudice or [the court] orders otherwise for good cause.” Ariz. R. Civ. P. 37(c)(1). Therefore, according to Rule 37(c)(4), ASARCO must show (1) good cause or the absence of prejudice regarding the use of the late-disclosed evidence and (2) the prompt disclosure of the evidence after its discovery.

2. The motion seeking permission to disclose the Southworth Maps is unripe.

A party may obtain relief under Rule 37(c)(4) only after the party has “disclosed the information, witness, or document as soon as practicable after discovery.” Ariz. R. Civ. P. 37(c)(4)(B). ASARCO has not confirmed the existence of the Southworth Maps, let alone disclosed the maps. Accordingly, the Southworth Maps are outside the purview of the rule.

This requirement exists for good reason. ASARCO could discover the maps anywhere from a few months to a few days before trial, possibly leaving objectors no time at all to prepare a rebuttal. Therefore, at this stage, it is impossible to evaluate the full extent of the prejudice resulting from their future use.

3. Use of the other Newly Discovered Evidence lacks good cause and causes prejudice.

ASARCO does not assert a persuasive reason for its late disclosure of the Newly Discovered Evidence. ASARCO’s sole claim of good cause is that “allowing the use of the Newly Discovered Evidence advances a decision on the merits.”⁸ While it is true that a better developed factual record leads to better reasoned decisions, this objective must be weighed against the goals of efficiency and economy.

Here, the evidence that ASARCO seeks to use would only marginally aid a decision on the merits. ASARCO has already amassed a significant quantity of historical evidence pertaining to the Ranches. While the tax ledgers may corroborate some of that evidence, their inclusion or exclusion from the case will not be determinative. The Southworth Maps Documents and Biennial Report are even less so. While these documents substantiate the existence of the Southworth Maps, they are not directly probative of any issue in this contested case.

Furthermore, willful conduct and prejudice towards objectors weighs heavily against granting ASARCO’s motion. Without leave of court, ASARCO relied extensively on its late-disclosed tax ledgers in its motions for partial summary judgment. This willful violation of Rule 37 caused objectors to spend valuable “time, attention, and space in their briefing” to rebut new, unanticipated arguments.⁹

Moreover, permitting ASARCO to use the tax ledgers and other Newly Discovered Evidence at trial would cause further prejudice for the same reason. Without an opportunity for further discovery, ASARCO would have an unfair advantage. On the other hand, if given the

⁶ Southworth Motion at 4.

⁷ Southworth Motion at 4–7.

⁸ Southworth Motion at 10.

⁹ Community Response at 8.

opportunity for further discovery, objectors would have to expend money, time, and effort to level the playing field. In either case, prejudice against objectors counsels against permitting the use of the Newly Discovered Evidence.

In conclusion, the absence of good cause for use of the evidence and the existence of prejudice to objectors favor exclusion of the Newly Discovered Evidence.

IT IS ORDERED DENYING ASARCO's Rule 37(c) Motion for Leave to Obtain the "Southworth Maps" and to Use the Newly Discovered Evidence. If the Southworth Maps are discovered, ASARCO may move for leave at that time.

IT IS FURTHER ORDERED DENYING the Community's cross-motion to reopen discovery.

IT IS FURTHER ORDERED excluding evidence disclosed after the discovery period, specifically evidence contained within ASARCO's Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Supplemental Disclosures.

III. The Court denies ASARCO's Rule 37(c) Motion for Leave to Use Evidence to Rebut New "Illegal" Diversion Argument.

ASARCO also seeks leave under Rule 37(c)(4) to use new evidence rebutting the Community's argument that irrigation of Aravaipa Ranch via the "San Pedro Ranch Company Ditch" was illegal "because it crossed an Indian allotment belonging to Captain Chiquito," without a valid right-of-way."¹⁰ The evidence consists of a "GLO tract-book entry" describing an allotment request by "Captain Chiquito" and another record showing Captain Chiquito's allotment.¹¹ As discussed above, in order to grant ASARCO's motion, the Court must find the existence of good cause or the absence of prejudice. The Court concludes that, here as well, neither ground exists.

The good cause alleged by ASARCO is essentially that the Community's "illegal ditch" argument was not adequately disclosed during discovery. However, in the Community's third supplemental disclosure statement, the Community stated that Aravaipa Ranch "was historically served by a ditch that crossed Indian lands without a legal right."¹² ASARCO's claim of surprise is further diminished by its own expert's July 2024 expert report. In his report, Scott Snyder states that "Aravaipa Ranch was historically served by the San Pedro Ranch Company Ditch. The use of the [d]itch continued until the mid-1970s when flood damage and closure of the ditch across Indian land rendered the ditch obsolete."¹³ It is clear from these statements that ASARCO had adequate notice of the identity of the "illegal ditch" that the Community referenced in its disclosure statement.

ASARCO also asserts that granting permission to use the documents describing Captain Chiquito's allotment will not prejudice objectors. The documents that ASARCO seeks to use describe complicated historical dispositions of property. When dealing with unfamiliar historical documents, context and interpretation are key. As discussed above, allowing use of the documents without allowing objectors to develop relevant context would be unfair. However, reopening discovery would cost objectors time, effort, and money. Therefore, use of the documents proffered

¹⁰ W1-11-2801, ASARCO's Rule 37(c) Motion for Leave to Use Evidence to Rebut New "Illegal" Diversion Argument ("Illegal Diversion Motion") (Dec. 9, 2025); W1-11-2801, The Community's Response to ASARCO's Motion for Partial Summary Judgment No. 1: Establishment of Pre-1919 Water Rights – Aravaipa Ranch at 12 (Sept. 18, 2025).

¹¹ Illegal Diversion Motion at 1.

¹² W1-11-2801, The Community's Third Supplemental Disclosure at 3 (May 2, 2025).

¹³ ASARCO Exhibit 47 at 5, PDF 12 (July 2024).

by ASARCO would cause prejudice.

In conclusion, because ASARCO has demonstrated neither good cause nor absence of prejudice, the Court denies ASARCO's request to use late-disclosed records pertaining to "Captain Chiquito's" allotment.

IT IS ORDERED DENYING ASARCO's Rule 37(c) Motion for Leave to Use Evidence to Rebut New "Illegal" Diversion Argument.

IV. The Court grants Gila River Indian Community's Motion to Strike ASARCO's Filings in Violation of Rule 56(c)(3)(C).

The Community moves to strike the following two documents as violations of Rule 56(c)(3)(C) of the Arizona Rules of Civil Procedure:

1. ASARCO's Responses and Objections to the Community's Responses to ASARCO's Statement of Facts in Support of Motions for Partial Summary Judgment No. 1, No. 2, No. 3, and No. 4 (65 pages)
2. ASARCO's Responses and Objections to the United States' Responses to ASARCO's Statement of Facts in Support of Motions for Partial Summary Judgment No. 1, No. 2, No. 3, and No. 4 (46 pages).¹⁴

The Community properly points out that under this rule, if an opposing party has filed a statement of additional facts, the movant may respond or object only within the allotted pages of its reply memorandum in support of its summary judgment motion. Ariz. R. Civ. P. 56(c)(3)(C). Rule 7.1 likewise provides that "[a]ny response to an objection must be included in the responding party's reply memorandum and may not be presented in a separate responsive memorandum." Ariz. R. Civ. P. 7.1(f)(3)(B). Moreover, movants may raise "objections to evidence" in reply to an opposing party's statement of facts only in the movant's reply memorandum. Ariz. R. Civ. P. 7.1(f)(3)(C).

IT IS ORDERED GRANTING the motion and **STRIKING** from the record: (1) ASARCO's Responses and Objections to the Community's Responses to ASARCO's Statement of Facts in Support of Motions for Partial Summary Judgment No. 1, No. 2, No. 3, and No. 4, and (2) ASARCO's Responses and Objections to the United States' Responses to ASARCO's Statement of Facts in Support of Motions for Partial Summary Judgment No. 1, No. 2, No. 3, and No. 4.

¹⁴ W1-11-2801, The Community's Motion to Strike ASARCO's Filings in Violation of Ariz. R. Civ. P. 56(c)(3)(C) (Dec. 10, 2025).