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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

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

W1-00-001234 (Consolidated)
Contested Case No. **W1-11-002801**
**ORDER ON MOTIONS IN LIMINE –
TESTIMONY OF BURTELL, MOCK,
SNYDER, & WESTFALL**

CONTESTED CASE NAME: *In re ASARCO–Irrigation*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.
DESCRIPTIVE SUMMARY: This order denies all motions in limine restricting the testimony of witnesses Richard Burtell, Dr. Peter Mock, Scott Snyder, and Brian Westfall.
NUMBER OF PAGES: 7

I. INTRODUCTION

This order addresses all motions in limine in this case regarding expert testimony:

- Gila River Indian Community’s Motion in Limine to Limit Expert Opinion by Scott Snyder, *In re ASARCO-Irrigation*, Contested Case No. W1-11-002801, filed May 18, 2026.
- Gila River Indian Community’s Motion in Limine to Limit Expert Opinion by Richard Burtell, *In re ASARCO-Irrigation*, Contested Case No. W1-11-002801, filed May 18, 2026.
- United States’ Motion in Limine: Incorporation of Order (W1-11-2697/2708, May 21, 2025) Related to Opinion Testimony from Richard

1 Burtell, *In re ASARCO-Irrigation*, Contested Case No. W1-11-002801,
2 filed May 18, 2026.

- 3 • ASARCO LLC’s Motion in Limine #3 (Dr. Peter Mock), *In re ASARCO-*
4 *Irrigation*, Contested Case No. W1-11-002801, filed May 18, 2026.
- 5 • ASARCO LLC’s Motion in Limine #4 (Brian Westfall), *In re ASARCO-*
6 *Irrigation*, Contested Case No. W1-11-002801, filed May 18, 2026.

7 **II. GOVERNING LAW**

8 **Motions in limine**

9 The purpose of a motion in limine is to obtain an advance ruling on evidentiary
10 issues and streamline the trial process, especially to safeguard against inadmissible
11 evidence coming before a jury. *Zimmerman v. Shakman*, 204 Ariz. 231 (2003) (“A
12 motion in limine is generally used as a substitute for evidentiary objections at trial.”).

13 Primarily intended to avoid potential disclosures to a jury of any evidence that
14 may be inappropriately prejudicial, the utility of the motion in limine is different in a
15 bench trial. *State ex rel. Berger v. Superior Ct.*, 108 Ariz. 396, 397 (1972). Where the
16 fact-finder is the judge, or in this case a Special Master, the judicial officer is presumed
17 to know the law and to apply it in making their decisions and distinguish between
18 admissible and inadmissible evidence. *Fuentes v. Fuentes*, 209 Ariz. 51, 58, 97 (Ct.
19 App. 2004). For bench trials, motions in limine allow parties to resolve purely legal
20 evidentiary questions before trial begins, provide clarity about what evidence will be
21 presented, and preserve objections for appeal without requiring repeated objections
22 during trial. *See generally Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198 (2006).

23 **Expert Witness Testimony**

24 Typically, a witness must demonstrate personal knowledge of a matter. Ariz. R.
25 Evid. 702. However, expert witnesses may testify regarding matters beyond their
26 personal knowledge if the proponent demonstrates that the testimony will help the
27 trier of fact, is based on sufficient facts or data, and is the product of reliable
28

1 principles and methods.¹ Under Rule 702, the proponent of expert testimony must
2 demonstrate that the testimony “more likely than not” meets this reliability
3 requirement.² Rule 702 recognizes that judicial officers should serve as the
4 gatekeepers in assuring that proposed expert testimony is reliable and thus helpful to
5 the determination of facts at issue.³ This gatekeeping function is separate from the
6 fact-finding determinations of credibility and the weight to be afforded otherwise
7 admissible testimony.⁴ This principle still applies in bench trials where the judge
8 serves as both gatekeeper and fact-finder. This dual role of the judicial officer
9 requires separate inquiries for the differing questions of admissibility and credibility.
10 *Id.* The Arizona Court of Appeals has held that trial courts have great discretion
11 whether to set a pretrial hearing to evaluate proposed expert testimony and may
12 properly decide to hear the evidence and objections during the trial itself. *Sandretto v.*
13 *Payson Healthcare Management, Inc.*, 234 Ariz. 351 (2014).

15 **III. ALL RULE 702 OBJECTIONS ARE TO BE HEARD AT TRIAL**

16 At issue in all these motions in limine is a concern for unreliable or irrelevant
17 testimony from expert witnesses. By and large, ASARCO objects to the specific
18 analyses performed by Dr. Mock and Mr. Westfall, asserting these experts did not
19 perform relevant analyses. The Gila River Indian Community (“Community”) objects
20 to Mr. Snyder’s testimony on the grounds he is not an irrigation expert, and the
21 Community and the United States (“US”) both object to Mr. Burtell on the grounds
22 that he is not an appropriately qualified expert for his proposed testimony. More
23

24 ¹ Ariz. R. Evid. 702.

25 ² *Id.*

26 ³ Ariz. R. Evid. 702, cmt. to 2012 Amendment.

27 ⁴ *State v. Romero, State v. Romero*, 239 Ariz. 6 (2016) (explaining that “the same
28 proof used to challenge admissibility also impacted weight and credibility” and that
“it did not follow that weight and credibility of [expert] testimony, once admitted,
could not have been challenged.”).

1 detailed discussions of the precise nature of the witnesses’ testimony are not relevant
2 for the purposes of this order. Though the principal intent of a motion in limine may
3 be to avoid disclosing to the jury prejudicial matters; a motion in limine is not, except
4 upon a clear showing of non-admissibility, intended to reject evidence.⁵

5 In this case, meaningful analysis of expert testimony requires some
6 examination of witnesses. Since this is a bench trial where the admissibility and
7 weight of testimony will be determined by the same individual, holding a pretrial
8 hearing on the testimony is a duplication of effort. Consequently, all issues of
9 admissibility will be addressed during the trial.

10 The US further requests that a previous order, in another case, regarding Mr.
11 Burtell’s testimony should be applied to this case. The “Burtell Order,”⁶ as the US has
12 titled the May 21, 2025, Order Denying the United States’ Motion In Limine Regarding
13 the Testimony of Richard Burtell,⁷ does not need to be “applied” to this case because
14 the order did not limit Mr. Burtell’s testimony beyond the limits imposed by Rule 702.

15
16 **CONCLUSION**

17 Arizona law recognizes that trial judges possess unique capabilities when
18 serving as factfinders in bench trials. When presented with motions to preclude expert
19 testimony, it is well within the court's discretion to conduct such reviews during the
20 trial, where opposing parties will have the opportunity for cross-examination and
21 presentation of contrary evidence.

22
23 **IT IS ORDERED** DENYING ASARCO’s motions to preclude testimony
24 from Dr. Peter Mock and Mr. Brian Westfall.

25 _____
26 ⁵ *State ex rel. Berger v. Superior Ct. In & For Maricopa Cnty.*, 108 Ariz. 396, 397
(1972) (quoting *State v. Johnson*, Iowa, 183 N.W.2d 194, 197 (1971)).

27 ⁶ Apologies to Mr. Burtell for this dubious honor.

28 ⁷ Order Denying the U.S. Motion Regarding the Testimony of Richard Burtell, In re
Hope Iselin Jones, contested case no. W1-11-002697 (May 21, 2025).

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IT IS FURTHER ORDERED DENYING the Community’s motions to preclude testimony from Mr. Richard Burtell and Mr. Scott Snyder.

IT IS FURTHER ORDERED DENYING the U.S. motion to preclude testimony from Mr. Richard Burtell.

Signed this 10th day of June 2026



Sherri L. Zendri
Special Water Master

The original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court on June 10th, 2026, for filing and distributing a copy to all persons listed on the Court approved mailing list for this contested case, a copy of which is attached.

Emily Natale

Court Approved Mailing List
In re ASARCO-Irrigation
W1-11-002801 (29 Names)
Prepared by the Special Master
6/10/2026

A. Ritchie, J. Sutton, B.
Velasco
San Carlos Apache Tribe
Office of the Attorney General
PO Box 40
San Carlos, AZ 85550
alex.ritchie@scat-nsn.gov;
jana.sutton@scat-nsn.gov;
bern.velasco@scat-nsn.gov

Carla A. Consoli
May Potenza Baran & Gillespie
P.C
1850 N. Central Ave, 16th Fl
Phoenix, AZ 85004
cconsoli@maypotenza.com

Charles L. Cahoy, Asst. City
Attorney
Phoenix City Attorney's Office
200 W. Washington 13th Flr.
Phoenix, AZ 85003
charles.cahoy@phoenix.gov

Charmayne G. Staloff
U.S. Dept. of Justice - ENRD
Tribal Resources Section
PO Box 7611, Ben Franklin
Station
Washington, DC 20044
charmayne.staloff@usdoj.gov

Clerk of the Superior Court
Maricopa County
Attn: Water Case
601 West Jackson Street
Phoenix, AZ 85003

David Gehlert and Andrew
"Guss" Guarino
U.S. Dept. of Justice - ENRD
999 18th Street, N. Terrace,
Ste. 600
Denver, CO 80202
david.gehlert@usdoj.gov;
guss.guarino@usdoj.gov

David Jacobs, Kevin Crestin
& Eric Wilkins
Arizona Attorney General
Natural Resources Section
2005 N. Central Avenue
Phoenix, AZ 85004
NaturalResources@azag.gov

Eric C. Anderson
Tempe City Attorney's Office
21 E. Sixth St #201
Tempe, AZ 85281
cityattorney_administrator@te
mpe.gov;
eric_anderson@tempe.gov

Frederick E. Davidson
P.O. Box 556
Grand Saline, TX 75140
fed@davidsonlaw.net

Javier Ramos & Michael Carter
Gila River Indian Community
Office of the General Counsel
P. O. Box 97
Sacaton, AZ 85147
javier.ramos@gric.nsn.us;
michael.carter@gric.nsn.us

Jeremiah Weiner
ROSETTE, LLP.
120 S. Ash Avenue, Suite 201
Tempe, AZ 85281
jweiner@rosettelaw.com

Joe Sparks & Laurel Herrmann
The Sparks Law Firm, P.C.
7503 First Street
Scottsdale, AZ 85251-4573
joesparks@sparkslawaz.com;
laurel.herrmann@scat-nsn.gov

John D. Burnside
Snell & Wilmer, L.L.P.
One E. Washington Street,
Suite 2700
Phoenix, AZ 85004-2556
jburnside@swlaw.com

Josh Edelstein Phoenix Field
Solicitor
Office of the Solicitor
U.S. Department of the Interior
Sandra Day O'Connor US
Courthouse
401 W. Washington St., Ste.
404, SPC 44
Phoenix, AZ 85003
Josh.Edelstein@sol.doi.gov

Jothi Beljan & Robert Striling
City of Mesa Attorney's Office
PO Box 1466
Mesa, AZ 85211-1466
mesacityattorney@mesaaz.gov

Karen J. Nielsen
Arizona Dept. of Water
Resources
1110 W. Washington, Ste 310
Phoenix, AZ 85007
knielsen@azwater.gov

Kelly Schwab & Jenny Winkler
City of Chandler
City Attorney's Office
Mail Stop 602, P. O. Box 4008
Chandler, AZ 85244-4008
kelly.schwab@chandleraz.gov

L. William Staudenmai
Snell & Wilmer, L. L. P.
One E. Washington Street
Suite 2700
Phoenix, AZ 85004
wstaudenmaier@swlaw.com

Lauren Caster
Fennemore Craig, P.C.
2394 East Camelback Road
Ste 600
Phoenix, AZ 85016-3429
lcaster@fclaw.com

Michael P. Rolland
Engelman Berger, P.C.
2800 N. Central Ave., Ste.
1200
Phoenix, AZ 85004
mpr@eblawyers.com

Lee Storey
TSL Law Group, PLC
8767 E. Via De Ventura, Suite
126
Scottsdale, AZ 85258
lee@tsllawgroup.com

Palo Verde RV Park LLC
Charles Tracy Jordan, Jr.
9880 S Malpais Rd
Winkelman, AZ 85192

Lucas J. Narducci
Snell & Wilmer, L.L.P.
One E. Washington Street,
Suite 2700
Phoenix, AZ 85004-2556
lnarducci@swlaw.com

Susan B. Montgomery &
Robyn Interpreter
Montgomery & Interpreter PLC
3301 E. Thunderbird Road
Phoenix, AZ 85032
smontgomery@milawaz.com;
rinterpreter@milawaz.com

Mark McGinnis, Michael Foy,
Katrina Wilkinson, Kathryn Ust
Salmon, Lewis & Weldon
2850 E. Camelback Rd. Suite
300
Phoenix, AZ 85016
mam@slwplc.com;
mkf@slwplc.com;
klw@slwplc.com;
kmu@slwplc.com

Sean Hood, Rhett Billingsley,
Nyla Knox, & William Klain
Fennemore Craig, P.C.
2394 E. Camelback Road
Phoenix, AZ 85016
shood@fennemorelaw.com;rbil
lingsley@fennemorelaw.com;n
hightower@fennemorelaw.com

Merrill Godfrey & Brette Pena
Akin Gump Straus Hauer &
Feld LLP
2001 K Street, N.W.
Washington, DC 20006
mgodfrey@akingump.com;
bpena@akingump.com

Sherri L. Zendri
Special Master
Central Court Building, Ste 3A
201 West Jefferson
Phoenix, AZ 85003-2205

Michael J. Pearce
Gammage & Burnham PLC
40 North Central Ave. 20th Flr
Phoenix, AZ 85004
mpearce@gbllaw.com