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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 FOR
JUDICIAL NOTICE**

CONTESTED CASE NAME: *In re ASARCO–Irrigation*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.
DESCRIPTIVE SUMMARY: This order grants in part and denies in part ASARCO’s motions for judicial notice.
NUMBER OF PAGES: 8

INTRODUCTION

This order addresses both of ASARCO’s motions for judicial notice of other Arizona proceedings concerning water rights, including other contested cases in the Gila River General Stream Adjudication. Judicial notice of the specific records requested is granted, but the scope is limited to only the existence of the records. The Court declines to take judicial notice of any contents of the documents, especially any facts purported to be supported by the stipulations and decrees presented, as those “facts” may be subject to reasonable dispute.

1 **GOVERNING LAW**

2 Judicial notice permits a court to accept certain facts as true when such facts are
3 “generally known” or “can be accurately and readily determined from sources whose
4 accuracy cannot be reasonably questioned.” Ariz. R. Evid. 201(b). Rule 201 applies
5 only to adjudicative facts specific to parties or events in a case. Ariz. R. Evid. 201(a).
6 The court is required to take judicial notice “if a party requests it and the court is
7 supplied with the necessary information.” Ariz. R. Evid. 201(c).

8 In Arizona, even a “high degree of probability of the truth of a particular
9 proposition cannot justify a tribunal in taking judicial notice of its truth.” *Phelps*
10 *Dodge Corp. v. Ford*, 68 Ariz 190, 196, 203 P.2d 633, 637 (1949). A fact of which a
11 court may take judicial notice must be indisputable.

12
13 **MINTUE ENTRIES & STIPULATIONS**

14 In its May 18, 2026, motion ASARCO asks the Special Master to take judicial
15 notice of the following documents:¹

- 16 • Minute Entry, *In re Brighthawk LLC*, Contested Case No. WI-11-003312,
17 filed December 5, 2018.
- 18 • Order on Stipulation, Withdrawal of Objections, and Request that the Special
19 Master Approve Proposed Water Right Abstracts for Brighthawk LLC, *In re*
20 *Brighthawk LLC*, Contested Case No. WI-11-003312, filed February 13, 2019.
- 21 • Minute Entry, *In re Luebbermann*, Contested Case No. WI-11-003311, filed
22 April 24, 2019.
- 23 • Order on Stipulation, Withdrawal of Objections, and Request that the Special
24 Master Approve Proposed Water Right Abstracts, *In re Luebbermann*,
25 Contested Case No. WI-11-003311, filed September 12, 2019.

26
27
28 ¹ See Motion for Judicial Notice No. 1, *In re ASARCO-Irrigation*, Contested Case No. WI-11-002801, filed May 18, 2026.

1 ASARCO assert these documents are relevant to this contested case because
2 the objecting parties² in this contested case “have argued for an unreasonably high
3 degree of precision in proving the initiation and perfection of ASARCO's pre-1919
4 irrigation rights that is neither grounded in the law nor consistent with the practical
5 realities of early agricultural development on ASARCO's claimed fields.” Motion
6 No.1 at 3. ASARCO claims the requested records show that other pre-1919 irrigation
7 claims in the same San Pedro River Watershed as this contested case were “resolved
8 by stipulation and approved abstracts on the basis of the kinds of historical materials
9 that are often available in these cases such as homestead materials, notices of
10 appropriation, patents, and deed history.” *Id.* ASARCO requests that the Special
11 Master take judicial notice of the existence, filing, and approval of the stipulated
12 abstracts, as well as the facts, evidence, and contents of those records as reflected on
13 their face. *Id.* at 4.

14 Judicial notice is limited to facts so “notoriously true as to not be subject to
15 reasonable dispute or must be capable of immediate accurate demonstration.” *Phelps*
16 *Dodge*, 68 Ariz. at 196. Because the documents in question were supplied by
17 ASARCO with their motions, the Special Master judicially notices the stipulations as
18 court records that exist. However, because the facts purportedly represented by the
19 stipulations are ambiguous or disputed, any facts must be established through
20 introduction of evidence.

21 This is particularly relevant regarding the referenced stipulations. The Court’s
22 approval of the stipulations, while legally binding, does not establish any stipulated
23 facts with certainty. Furthermore, both stipulations include language opposing any
24 use beyond the specific contested cases and water rights abstracts that are the subject
25

27 ² Objectors in this case are the Yavapai-Apache Nation, the San Carlos Apache Tribe,
28 the City of Phoenix, the United States, the Gila River Indian Community, the Tonto
Apache Tribe, and the Salt River Project.

1 of the stipulations.³

2
3 **HISTORICAL ARIZONA DECREES**

4 In a separate May 18, 2026, motion ASARCO asks the Special Master to take
5 judicial notice of the following additional documents:⁴

- 6 • *Patrick T. Hurley and the United States of America v. Charles F. Abbott*
7 *and Four Thousand Eight Hundred Others*, No. 4564, Decree dated March
8 1, 1910, and effective April 1, 1910 (“Kent Decree”).
- 9 • *Globe Equity No. 59, The United States of America v. Gila Valley*
10 *Irrigation District, et al.*, Decree entered June 29, 1935 (“Globe Equity
11 Decree”).
- 12 • *Arlington Canal Company v. Edith M Simpson et al.*, No. 40828-Div. 3,
13 Judgment entered April 9, 1940 (“Simpson Decree”).

14
15 ASARCO claims these requested records are also directly relevant to this
16 contested case because the objecting parties “have challenged both ASARCO's requested
17 irrigation water duty and the level of historical specificity ASARCO must provide to
18 establish pre-1919 irrigation rights.” Motion No. 2 at 3. ASARCO asserts the referenced
19 decrees provide “context” by demonstrating that ASARCOs claimed irrigation duty of
20 7.4 acre-feet per acre per year is within the range of duties historically decreed for
21 irrigated lands in Arizona water-right adjudications historical irrigation cases approved
22 irrigation water duty. *Id.* at 4. As with Motion No. 1, ASARCO requests that the

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24 ³See Stipulations, *In re Luebberrmann*, Contested Case No. W1-11-003311, filed
25 September 11, 2019 (“This stipulation is entered into by the Parties for the reasons set
26 forth above and no precedent for use in any other contested case in the Adjudication
27 proceedings is intended.”); Stipulation, *In re Brighthawk LLC*, Contested Case No.
W1-11-003312, filed February 7, 2019 (“Nothing in this stipulation shall be used as
precedent in any other contested case in the Adjudication proceedings.”)

28 ⁴ See Motion for Judicial Notice No. 2, *In re ASARCO-Irrigation*, Contested Case No.
W1-11-002801, filed May 18, 2026.

1 Special Master take judicial notice of existence and of the facts, evidence, and
2 contents of those records. *Id.*

3 Once again, since the documents in question were supplied by ASARCO with
4 their motions, the Special Master judicially notices the stipulations as court records
5 that exist. And once again, the facts represented by these decrees are ambiguous or
6 disputed. To the extent that the *Simpson* and *Kent* decrees established water duties,
7 the courts in those cases determined those facts using a less-than-certain
8 preponderance of the evidence standard. Accordingly, those decrees are not “sources
9 whose accuracy cannot reasonably be questioned,” as required by Arizona Rule of
10 Evidence 201. The facts recited in the Globe Equity decree, a consent decree, are even
11 less certain. Simply put, the decrees cited do not establish ASARCO’s purported facts
12 as “notoriously true.”

13 Finally, because of the myriad of differences (known and unknown) between
14 the contested case currently before the Special Master and the cases documented in
15 the decrees listed in Motion No. 2, it would be entirely improper to accept any
16 statements within the referenced decree as relevant without a full evidentiary
17 evaluation.

18
19 **CONCLUSION**


20 The documents presented by ASARCO are products of party negotiations,
21 rather than indisputable factual evidence, and therefore are not eligible for judicial
22 notice. The documents may be noticed only for their existence. However, existence
23 does not equate to verity or relevance, both of which will need to be established by
24 ASARCO in the usual manner.

25
26 **IT IS ORDERED** taking judicial notice of the **EXISTENCE** of the
27 documents listed above

28 **IT IS FURTHER ORDERED** declining to take notice or recognize as the

1 truth any testimony or stipulations made in any documents listed above, as such
2 matters may be subject to reasonable dispute.

3
4 Signed this 4th day of June 2026

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8 _____
9 Sherri L. Zendri
10 Special Water Master

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12 The original of the foregoing was delivered to
13 the Clerk of the Maricopa County Superior
14 Court on June 4, 2026,
15 for filing and distributing a copy to all persons
16 listed on the Court approved mailing list for this
17 contested case.

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29 _____
30 Emily Natale

Court Approved Mailing List
In re ASARCO-Irrigation
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Prepared by the Special Master
6/4/2026

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