

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

June 25, 2026

CLERK OF THE COURT
A. Parmar
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

In Re The General Adjudication of
All Rights to Use Water in the Gila
River System and Source
W1-00-001234 (Consolidated)

FILED: July 1, 2026

In re: ASARCO – Irrigation
Contested Case No. W1-11-002801

MINUTE ENTRY

Courtroom 613 – East Court Building

9:00 a.m. This is the time set for Oral Argument regarding ASARCO LLC's *Motion in Limine No. 1* filed May 18, 2026 ("MIL #1") and ASARCO's *Motion in Limine No. 2* filed May 18, 2026 ("MIL #2") before Special Water Master Sherri Zendri.

The following parties/attorneys appear in person:

- William G. Klain, Kaitlyn Smith, and Rhett Billingsley on behalf of American Smelting and Refining Company ("ASARCO")
- Guss Guarino on behalf of the United States Department of Justice (in its capacity as trustee for Indian Tribes)
- Merrill C. Godfrey on behalf of the Gila River Indian Community ("GRIC")
- Jana Sutton, Bernardo M. Velasco, and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Katrina Wilkinson, Mike Foy and Christina Jovanovic (from SRP's in-house legal team) on behalf of Salt River Project ("SRP")

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

The Special Master addresses the parties regarding the scope of today's hearing.

Counsel Klain presents oral argument regarding MIL #2. Counsel requests sanctions under Rule 37 for untimely disclosure and details how the untimely disclosure is prejudicial to the Claimants.

Counsel Guarino presents oral argument regarding MIL #2. Counsel provides further explanation of the disclosure issue related to the underlying GIS files and details why sanctions should not be entered.

Counsel Godfrey presents oral argument regarding MIL #2. Counsel provides details of the GIS files and notes that ASARCO did not raise this disclosure issue prior to the deposition of Dr. Ley.

Counsel Klain presents further argument regarding MIL #2.

The Special Master asks Counsel Guarino to explain what a “placeholder” is as the term is used in the US’s response to MIL #2. Counsel Guarino clarifies that the US primarily produces documents using Adobe Acrobat and uses a placeholder page in instances where a file must stay in its native form, such as an excel file or as in this case a GIS shapefile.

The Special Master inquires if ASARCO looked for the GIS files prior to Dr. Ley’s deposition. Counsel Klain states that he is unable to provide an answer as Counsel Hood was present for the deposition and was unable to attend today’s proceeding.

Counsel Guarino addresses the Special Master regarding what occurred at Dr. Ley’s deposition. Counsel Guarino clarifies that he was not aware that the underlying files had not been provided to ASARCO at the time of the deposition and instead believed that Counsel Hood had chosen not to use them.

Discussion is held regarding the timeline of the untimely disclosure and why the disclosure issue was not raised prior to the filing of MIL #2.

Counsel Klain addresses the Special Master. Counsel notes that Dr. Ley was unable to testify regarding lands he included as irrigated or unirrigated at his deposition.

10:06 a.m. This matter stands in recess.

10:18 a.m. This matter reconvenes with the above-named parties present.

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

Discussion is held regarding the GIS files. Counsel Guarino clarifies that the files in question are GIS files with imagery and GIS files with line work performed by Dr. Ley. He states that ASARCO’s witness Mr. Garrett had access to similar images, but not the line work. Counsel Godfrey informs the Special Master that Mr. Garrett noted a few exceptions but did not believe the differences in his and Dr. Ley’s photos were significant.

Counsel Billingsley addresses the Special Master. He informs the Special Master that Mr. Garrett obtained image files from public resources and put them into a GIS system.

However, they did not have the underlying data and the lines that Dr. Ley's independently created shapefiles contained to form Dr. Ley's analysis.

Further discussion is held regarding Dr. Ley's deposition and the disclosure of the files.

Counsel Klain further presents oral argument regarding the MIL #2.

Counsel Smith presents oral argument regarding MIL #1. Counsel requests enforcement of paragraph 28 of the *Stipulation Regarding Quantification of Water Rights for Irrigation Uses* filed July 10, 2020, in W1-11-01675 (the "Stipulation") under Rule 80 with respect to the use of the Penman-Monteith equation.

Counsel Wilkinson presents oral argument regarding MIL #1. Counsel explains ASARCO's use of water duty to quantify its appropriative rights and why the objectors' arguments are contrary to the prior appropriation doctrine and paragraph 28 of the Stipulation.

Counsel Godfrey presents oral argument regarding MIL #1. Counsel notes that paragraph 28 of the Stipulation does not preclude a party from having to prove its historical beneficial use to support its water right.

Counsel Smith presents further argument regarding the MIL #1.

Counsel Wilkinson presents further argument regarding the MIL #1.

Discussion is held regarding paragraphs 26 through 28 of the Stipulation.

Discussion is held regarding irrigation uses and beneficial use. The Special Master clarifies that in the stipulation the parties did not agree that a calculation of the crop water requirement for today is the amount of water they're going to get for a water right.

Counsel Wilkinson addresses the Special Master.

Counsel Godfrey addresses the Special Master.

The Special Master inquires if the US or GRIC has claimed that the Penman-Monteith is improper as a methodology for the quantification of crop water requirements. Counsel Godfrey states they have not. Counsel Smith states that they want to ensure that Mr. Burtell's use of the Penman-Monteith equation is not contested.

Further discussion is held regarding the Stipulation and the Penman-Monteith equation.

Based on the matters presented,

IT IS FURTHER ORDERED taking the MIL #1 and MIL #2 under advisement.

11:35 a.m. Matter concludes.

LATER:

Motion in Limine #1 – Use of the Penman-Monteith Methodology

One of the goals at the outset of the *In re St. David* group of contested cases was to determine a “methodology to determine the amount of water used for irrigation and the quantities used for irrigation.”¹ St. David Irrigation District and objectors subsequently signed the Stipulation Regarding Quantification of Water Rights for Irrigation Uses (“Methodology Stipulation”) on July 10, 2020.

Through the Methodology Stipulation, various objectors in the St. David contested cases agreed to a precise, multi-step method for determining the quantity of water that claimants in those cases are “legally entitled to divert or withdraw . . . for irrigation uses on its lands.”² First, a “Net Irrigation Requirement” is calculated by subtracting “Effective Precipitation” from “Crop Evapotranspiration.” Crop evapotranspiration, also known as “crop water requirements,” is determined using the “Penman-Monteith Equation.”³ To obtain the water duty, the Methodology Stipulation states that the net irrigation requirement is divided by the product of “On-Farm Efficiency” and “Conveyance Efficiency” figures.⁴

Paragraph 28 of the Methodology Stipulation contains the single reference to cases beyond the St. David group of cases. With respect to other cases in the San Pedro River Watershed, parties agreed in Paragraph 28 that they would not dispute the use of the Penman-Monteith Equation to develop reference evapotranspiration estimates.⁵

In the Motion in Limine No. 1, ASARCO seeks to foreclose various arguments by the United States regarding the irrigation water duties applicable to this case. Specifically, ASARCO cites the Methodology Stipulation in order to bar the United States’ arguments that the “St. David work was uniquely specific to St. David, assumed an unlimited water supply, and calculated a ‘full crop demand’ for greatest plant growth rather than historical use.”⁶ In other words, ASARCO seeks a ruling that the Methodology Stipulation provides the exclusive means of quantifying the claimed water rights in this contested case.

ASARCO’s motion covers well-trodden ground. In May 2025, the Special Master determined that the Methodology Stipulation has minimal application outside the St. David group of contested cases.⁷ Specifically, the Court held that “[t]he agreement in Paragraph 28 requires the signing parties to accept the use of the Penman-Monteith equation to calculate crop water requirements”, i.e. crop evapotranspiration, “only to the extent that

¹ Minute Entry at 3, Contested Case No. W1-11-1675 (Aug. 21, 2019).

² Methodology Stipulation ¶ 18.

³ Methodology Stipulation ¶¶ 24–25, 28.

⁴ Methodology Stipulation ¶¶ 47–49.

⁵ Methodology Stipulation ¶ 28.

⁶ ASARCO LLC’s Motion in Limine No. 1, Contested Case No. W1-11-2801 (May 18, 2026).

⁷ Order on Motions for Summary Judgment at 8–11, Contested Case Nos. W1-11-2081 et al. (May 13, 2025).

crop water requirements are at issue in a contested case.”⁸ Hence, the Methodology Stipulation does not establish an exclusive means of quantifying water rights claims outside the St. David group of cases.

The Court grants ASARCO’s motion to the extent that it merely restates the Methodology Stipulation:

1) Paragraph 28 of the Methodology Stipulation is enforceable against objectors in this contested case who are parties to that stipulation under Rule 80(a) to the extent the language in the paragraph is relevant to the controversy.

2) To the extent objectors or their expert witnesses offer testimony or argument quantifying crop water requirements in this contested case, they may not contest the use of reference evapotranspiration estimates based on the Penman-Monteith equation.

Otherwise, the motion, and any requested expansion of the language in the Stipulation is denied.

IT IS ORDERED granting in part and denying in part ASARCO’s Motion in Limine No. 1.

Motion in Limine #2 – Late-Produced GIS Shapefiles

Under Rule 37(c)(1) of the Arizona Rules of Civil Procedure, ASARCO seeks to preclude the U.S. from using at trial various late-disclosed “shapefiles”⁹ as evidence of absence of water use. Absent a finding of “no prejudice or . . . good cause,” the rule requires the Court to exclude the “information, witness, or document as evidence at trial, at a hearing, or with respect to a motion.” No party disputes that the U.S. disclosed the relevant files after the relevant disclosure deadline. Accordingly, the relevant issue is whether good cause exists or prejudice is sufficiently minimal to allow objectors (the U.S., the Gila River Indian Community, and the San Carlos Apache Tribe) to use the late-disclosed GIS files as evidence at trial.,

There are no disagreements between the parties on the timeline:

10/3/2024 US uploads files to a cloud directory for all parties; “placeholder” coversheets (PDF documents) are included for the GIS files, however the actual shapefiles in native format are not included.

5/8/2025 Discovery closes

⁸ *Id.*

⁹ Shapefiles store geographic features such as points (wells), lines (roads), or polygons (property boundaries) with precise mathematical coordinate-based geometry rather than the pixel-based imagery from a digital photograph. This coordinate system maintains feature precision at any scale – i.e you can zoom in on a boundary line without creating a blurry image and losing detail.

- 6/24/2025** Dr. Ley is deposed by ASARCO and indicates he is unable to answer questions without using the native files.
- 7/8/2026** US uploads the missing native format files and notifies all parties
- 7/15/2025** ASARCO acknowledges receipt of the files
- 5/18/2026** ASARCO files a motion in limine to preclude the US from using the native files and any of Dr. Ley's testimony relying on the native files.

Here, the Court must determine whether an absence of prejudice or “good cause” justifies the use of the late-disclosed shapefiles. Given the minimal prejudice caused by the U.S.’s error and its good-faith effort toward correcting the error, late disclosure of the shapefiles are no bar to their use at trial.

First, the U.S.’s late disclosure of the shapefiles caused minimal prejudice to ASARCO. Several facts demonstrate the absence of prejudice to ASARCO. To start, the U.S. referenced the existence of the missing shapefiles in its timely disclosed placeholder files. The omission of the native files, therefore, was readily apparent before the close of discovery. None of the parties, including ASARCO, realized the files were missing. Once the omissions were noted, the U.S. promptly posted the files.¹⁰ ASARCO then had a year within which it could have worked with the US to remedy the June 24, 2025, deposition.¹¹ In sum, ASARCO had ample time to recognize the missing files and to work with objectors to correct any omissions from the June 2025 deposition. Therefore, the late disclosures caused little, if any prejudice, to ASARCO.

Second, good cause exists for allowing use of the shapefiles. No one questions that the U.S.’s failure to share the shapefiles prior to July 2025 was inadvertent. *Allstate v. O’Toole* is crystal clear that the Arizona Supreme Court never intended “that substantive legal rights should automatically be forfeited on the basis of harmless human failings.” *Allstate Insurance Co. v. O’Toole*, 182 Ariz. 284, 287 (1995). Moreover, the *Allstate* court was clear that “good cause . . . should be broadly interpreted,” and “[w]henver possible, procedural rules should be interpreted to maximize the likelihood of a decision on the merits.” *Id.* Importantly, “[l]ying in wait is not an acceptable strategy.” *Allstate*, 182 Ariz. at 288. Here, the minor inadvertence of the U.S.’s failure to upload the native shapefiles and its prompt, good-faith efforts at remedying the issue favor a finding of good cause. Moreover, the fact that ASARCO sought to resolve this issue only three months before trial counsels against granting its motion. This issue could have been resolved in any number of ways far less punitive to the objectors than wholesale exclusion of the shapefiles.

Moreover, during oral argument, ASARCO attempted to draw parallels between their request to preclude late supplied files by the U.S., and ASARCO’s request in

¹⁰ It remains unclear why the US did not make the files instantly available during the deposition of their witness, especially when their witness was unable to properly answer questions.

¹¹ ASARCO chose to bring the situation to the attention of the court three months prior to trial.

September 2025 to use late discovered tax records and the elusive “Southworth Maps.”¹² The only similarity between the two cases is that ASARCO filed the motion. First, the Southworth Maps had not yet been found. That is strikingly different from known GIS shapefiles, shared with all parties after the U.S. recognized their omission. Secondly, the tax ledgers purported to describe property tax assessments made in the vicinity of the properties at issue in this case; however, ASARCO failed to articulate how those documents would advance a decision on the merits. Here the value of the native format shapefiles is clear. The two situations are not the same.

IT IS ORDERED denying ASARCO’s Motion in Limine #2.

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

¹² 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)