

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

August 25, 2026

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
W1-00-001234 (Consolidated)

FILED: August 31, 2026

In Re: *ASARCO - Irrigation*
Contested Case No. W1-11-002801

BENCH TRIAL – DAY TWO

East Court Building – Courtroom 613

9:10 a.m. Trial to the Court continues from August 24, 2026 before Special Water Master Sherri Zendri.

The following parties/attorneys are present:

- Sean T. Hood, William Klain, and Kaitlin Smith on behalf of American Smelting and Refining Company (“ASARCO”)
- Andrew “Guss” Guarino on behalf of the U.S. Department of Justice, Environment and Natural Resources Division
- Merrill C. Godfrey, Christina Makarova Quiggle, Radiance Campbell, and Michael Carter on behalf of the Gila River Indian Community (“GRIC”)
- Alexander Ritchie, Laurel A. Hermann, Jana Sutton, Bernardo Velasco, and Steve Titla on behalf of the San Carlos Apache Tribe
- Katrina Wilkinson and Kathryn Ust on behalf of the Salt River Project (“SRP”)

Court Reporter, Jovanna Roman, is present. A record of the proceeding is also made digitally.

Court Reporter, Jovanna Roman, is sworn to perform the duties of the court reporter.

Mr. Godfrey addresses the Court regarding Mr. Burtell's testimony and Objectors' corresponding objections. Procedural and logistical matters are discussed regarding the raising of objections in open court during testimony or being allowed to raise any of those objections in post-trial briefing. Mr. Godfrey states that they have objections under Rules 702, 402, 701, 602, 611, 802, 107, 1002, and 1006. Discussion is held regarding Objectors being permitted to have a standing objection. Argument is presented. The Court states that certain objections will be preserved until the final briefing. The Court advises counsel that there will be page limitations to the final briefing. The Court addresses counsel regarding the balance of a trial.

For the reasons stated on the record,

IT IS ORDERED that Objectors may have standing objections to Mr. Burtell's testimony and that those objections may be included in the final briefing.

Court and counsel discuss the Court's ruling. Mr. Guarino addresses the Court regarding procedural and logistical matters with respect to objections to Mr. Burtell's testimony. Argument continues to be presented. Discussion is held regarding witnesses Mr. Burtell and Mr. Snyder. Mr. Hood advises the Court that the parties met and conferred regarding demonstrative exhibits prior to any witness testimony. Discussion is held regarding the same. The Court advises counsel to avoid the same issues with Mr. Snyder as with Mr. Burtell. The Court addresses the parties regarding Mr. Burtell's testimony.

ASARCO's case continues:

LET THE RECORD REFLECT that Objectors have standing objections to various exhibits during Mr. Burtell's testimony as outlined on the record, and the Court takes notice of the same.

Rich Burtell resumes the stand and testifies further.

ASARCO's exhibit CL 59 is received in evidence.

ASARCO's exhibit CL 19 is received in evidence, specifically PDFs 6 and 7.

Mr. Godfrey makes a standing objection with respect to historical documents as to relevance. The Court notes Mr. Godfrey's standing objection. Argument is presented. The Court states that it will consider the weight of the relevance. Argument continues to be presented. Ms. Wilkinson states that SRP would have a standing response that this goes to reasonable diligence.

ASARCO's exhibit CL 431 is received in evidence.

ASARCO's exhibit CL 24 is received in evidence.

ASARCO's exhibit CL 434 is received in evidence.

ASARCO's exhibit CL 20 is received in evidence.

ASARCO's exhibit CL 264 is received in evidence, specifically PDFs 35 and 36.

ASARCO's exhibit CL 433 is received in evidence.

10:31 a.m. Court stands at recess.

10:47 a.m. Court reconvenes with respective parties and counsel present.

Court Reporter, Jovanna Roman, is present. A record of the proceeding is also made digitally.

Rich Burtell continues testifying.

ASARCO's exhibit CL 55 is received in evidence.

ASARCO's exhibit CL 19 is received in evidence, specifically PDF 8.

ASARCO's exhibit CL 42 is received in evidence.

ASARCO's exhibit CL 33 is received in evidence. LET THE RECORD REFLECT that it is admitted as a newspaper article with a statement.

ASARCO's exhibit CL 53 is received in evidence.

Argument is presented regarding pre-1920 evidence as to relevance.

ASARCO's exhibit CL 48 is received in evidence.

Mr. Godfrey advises the Court that ASARCO's exhibit CL 52 is not complete. Discussion is held regarding the same.

ASARCO's exhibit CL 52 is received in evidence. The Court notes that it is not a complete article.

ASARCO's exhibits CL 194 and 60 are received in evidence. The Court notes that ASARCO's exhibit CL 60 is the full version of ASARCO's exhibit CL 194.

ASARCO's exhibit CL 77 is received in evidence.

Trial scheduling matters are discussed.

11:42 a.m. Court stands at recess.

1:00 p.m. Court reconvenes with respective parties and counsel present.

Court Reporter, Jovanna Roman, is present. A record of the proceeding is also made digitally.

Rich Burtell continues testifying.

Discussion is held regarding ASARCO's exhibits CL 181 and 267 as to the statement of claims.

ASARCO's exhibit CL 267, PDFs 7-13, is received in evidence. LET THE RECORD REFLECT that it is admitted for the truth being asserted, subject to the Objectors' standing objection as to relevance.

ASARCO's exhibit CL 181, specifically PDFs 39-41, is received in evidence. LET THE RECORD REFLECT that it is admitted for the truth being asserted, subject to the Objectors' standing objection as to relevance.

Mr. Guarino makes a standing objection regarding the specificity for the 7, 8, 9, 10, and 11 IR parcels as to relevance. Discussion is held and argument is presented. Ms. Wilkinson addresses the Court regarding the reasonable diligence doctrine. The Court states that it will allow the material in, noting that the Objectors still have concerns regarding relevance due to the lack of specific historic location of the acreage. The Court advises Ms. Wilkinson to make her arguments when discussion is held regarding whether or not specificity is required.

ASARCO's exhibit CL 441 is received in evidence.

ASARCO's exhibit CL 43 is received in evidence.

ASARCO's exhibit CL 289 is received in evidence, specifically PDFs 5-18.

ASARCO's exhibit CL 34 is received in evidence. The Court notes Objectors' standing objection regarding historical documents as to relevance.

2:29 p.m. Court stands at recess.

2:45 p.m. Court reconvenes with respective parties and counsel present.

Court Reporter, Jovanna Roman, is present. A record of the proceeding is also made digitally.

Rich Burtell continues testifying.

ASARCO's exhibit CL 180 is received in evidence, specifically PDFs 12-13.

ASARCO's exhibit CL 58 is received in evidence.

ASARCO's exhibit CL 50 is received in evidence.

ASARCO's exhibit CL 180 is received in evidence, specifically PDFs 23-24.

ASARCO's exhibit CL 19 is received in evidence, specifically PDFs 1-3.

ASARCO's exhibit CL 51 is received in evidence.

ASARCO's exhibit CL 35 is received in evidence.

ASARCO's exhibit CL 180 is received in evidence, specifically PDFs 14-16.

ASARCO's exhibit CL 75 is received in evidence.

Mr. Godfrey states his objection to the witness's testimony regarding the indirect pumping plant as to lack of foundation and hearsay. Discussion is held regarding the definition of direct and indirect diversion of surface water. The Court notes that there was no official definition provided by the Water Commissioner for clarification; that it is the opinion of a hydrologist.

Mr. Godfrey states his objection to ASARCO's exhibit CL 290 and notes that with respect to this parcel, the Court has already ruled that the claimed priority date of 1892 cannot be supported, and the demonstrative is still reflecting that as a claimed priority. Discussion is held regarding the same.

ASARCO's exhibit CL 290 is received in evidence, specifically PDFs 31-34.

With respect to lot numbers versus section and range numbers, the Court inquires if lot number maps were provided in the exhibits. Mr. Burtell informs the Court that he can provide a link to the BLM's website. Discussion is held regarding the same. Mr. Velasco advises the Court that it is potentially subject to judicial notice.

ASARCO's exhibit CL 292 is received in evidence, specifically PDF 66.

ASARCO's exhibit CL 30 is received in evidence.

With respect to the consumptive use rate calculated using the Penman-Monteith method, Mr. Godfrey states his objection as to foundation and as to Mr. Burtell's qualifications. Discussion is held and argument is presented. Ms. Wilkinson states that Mr. Burtell has used these kinds of calculations in his work with ADWR in the adjudication section. Mr. Godfrey requests to preserve his Rule 702 objection and to be able to renew his objection. The Court states that Mr. Godfrey may preserve his Rule 702 objection and cross examine Mr. Burtell. The Court advises Mr. Burtell regarding the use of Dr. Ley's work. Discussion is held regarding Dr. Ley's report.

4:18 p.m. Court stands at recess.

4:30 p.m. Court reconvenes with respective parties and counsel present.

Court Reporter, Jovanna Roman, is present. A record of the proceeding is also made digitally.

Rich Burtell continues testifying.

Mr. Godfrey states his objection to ASARCO's exhibit CL 394 as to relevance. Discussion is held and argument is presented. The Court states that the Objectors are signatories to this particular document.

ASARCO's exhibit CL 394 is received in evidence.

ASARCO's exhibit CL 46 is received in evidence.

Trial and witness scheduling matters are discussed.

5:01 p.m. Court stands at recess until 9:00 a.m. on August 26, 2026.

A copy of this minute entry will be sent to all people on the court-approved mailing list for this matter.