

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/27/2016

CLERK OF THE COURT  
Form V000

SPECIAL WATER MASTER SUSAN HARRIS

L. Stogsdill  
Deputy

W1-11-605

FILED: 9/27/2016

In re Fort Huachuca

W1-11-605

In re: Readiness Conference and United States Motion re: Freeport's Exhibits

**MINUTE ENTRY**

Courtroom 301 - CCB

10:01 a.m. This is the time set for the Readiness Conference and the Oral Argument re: the United States Motion to Strike Freeport's Exhibit List and Request for Expedited Consideration and Readiness Conference before Special Water Master Susan Harris. The following attorneys appear in person: Joe P. Sparks, Laurel A. Hermann and Julia M.R. Kolsrud on behalf of the San Carlos Apache Tribe and Tonto Apache Tribe. R. Lee Leininger, Sara C. Porsia and Adam M. Bean on behalf of the United States; Lisa M. McKnight, Patrick Sigl, Michael Foy and Mark A. McGinnis on behalf of Salt River Project; Sean T. Hood, Brian J. Heiserman and Shilpa Hunter Patel on behalf of Freeport Minerals Corporation; Robert D. Anderson on behalf of Liberty Utilities; William P. Sullivan on behalf of Pueblo Del sol Water Company and City of Sierra Vista; Carrie J. Brennan, on behalf of the State of Arizona; Janet L. Miller and Nichole D. Klobas on behalf of the Arizona Department of Water Resources. The following attorney appears telephonically: Susan B. Montgomery on behalf of Pascua Yaqui Tribe and Yavapai-Apache Nation.

Court reporter Patricia Kotarba is present and a record of the proceedings is made digitally.

Discussion is held regarding time allocation during the trial.

The parties advise the court that they will agree amongst themselves as to the allotment of time during the trial.

Oral argument is presented on the United States' Motion.

The court will not strike any exhibits, but Freeport Minerals will amend its exhibit list.

The court outlines additional requirements for the exhibit list, as follows:

Exhibits listed by Freeport Minerals which are exact duplicates will be noted as duplicates on the exhibit list and cross reference the duplicate exhibit number. Exhibits which are identical except for their resolution will be noted as duplicates with different resolution. The United States will provide to Freeport Minerals its list of 70 duplicate exhibits based on its review of Freeport Minerals' exhibits. Freeport Minerals will also review all parties' exhibits and either remove exhibits it has listed that are duplicative or identify the Freeport Mineral exhibit listed as duplicative of another party's exhibit, which shall be identified by number.

The court advises Freeport Minerals that additional detailed descriptions need to be provided for Freeport's exhibits #1330-2985. Exhibits which are identified as a "letter" or "email" will be identified by sender, recipient, date and subject. "Declarations" "Report" and "memo" will be identified by the declarant or writer, respectively, date and subject. All other exhibits within the range #1330-2985 will include subject descriptions.

Discussion is held regarding Freeport's use of "placeholders" within their exhibit list and documents that are not in PDF, word or excel format that cannot be opened using standard Microsoft software. Counsel for Freeport Mineral's advises the court that these documents were listed merely to reserve their right for impeachment purposes and counsel does not plan on offering the exhibits otherwise.

Counsel for the United States said that he did not believe that any document will be used by their experts during trial that cannot be opened in either PDF, word or excel format.

For the reasons stated on the record,

**IT IS ORDERED** that Freeport Minerals will deliver an amended Exhibit List, as outlined in detail by the court on the record, to the other parties and filed **by 5:00 p.m. September 29, 2016.**

Discussion is held regarding use of exhibits that are subject to the Protective Order.

Counsel for Freeport Minerals avows to the court that the exhibits subject to the Protective Order will not be displayed, introduced or used during trial without first obtaining court approval and allowing the court the time necessary to take necessary security measures.

Trial and witness scheduling is discussed as well as time allowed for opening statements.

**IT IS FURTHER ORDERED** allowing 45 minutes per side for opening statements.

**IT IS FURTHER ORDERED** that each party shall use its best efforts to deliver demonstrative exhibits by **5:00 p.m. on September 30, 2016.**

**IT IS FURTHER ORDERED** pending Motions in Limine will be addressed at the beginning of trial following opening statements.

Counsel for Freeport Minerals inquires whether or not federal employees whom he intends to call will require subpoenas to appear at trial.

Counsel for the United States agreed that subpoenas will not be required for federal employees.

For the reasons stated on the record,

**IT IS FURTHER ORDERED** any change in witness scheduling shall be provided 24 hours before the time the witness was previously scheduled to appear.

Discussion is held regarding taking Freeport's witness Elijah Abenah out of order.

For the reasons stated on the record,

**IT IS FURTHER ORDERED** Mr. Abenah shall be slotted to testify the week of October 17, 2016, or later.

LET THE RECORD REFLECT all objections to exhibits are preserved by counsel.

Technical/equipment issues are discussed.

Discussion is held regarding the order granting Partial Summary Judgment entered by the court on September 1, 2016 regarding the adequacy of the surface water and usage in Fort Huachuca.

For the reasons stated on the record, the court advises that testimony will be required regarding the adequacy of the surface water.

11:12 a.m. Matter concludes.

**Later:**

Counsel shall provide updated thumb drives (the clerk currently has one thumb drive for each claimant) if any of the exhibits are changed, to the clerk for the Honorable David B. Gass, 514 East Court Building, as well as an updated exhibit list which shall be also be on one of the updated thumb drives.

A copy of this order is mailed to all persons listed on the court approved mailing list for Contested Case No. W1-11-605 dated September 27, 2016.