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MAR 13 2015

LEGAL
DEPT OF WATER RESOURCES

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 IN RE: THE GENERAL ADJUDICATION OF
10 ALL RIGHTS TO USE WATER IN THE GILA
11 RIVER SYSTEM AND SOURCE,

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

Contested Case No. W1-11-2664

13 **FREEPORT MINERALS**
14 **CORPORATION'S RULE 26.1**
15 **INITIAL DISCLOSURE**
16 **STATEMENT FOR PHASE II**

(Assigned to the
Honorable Mark H. Brain)

17
18 CONTESTED CASE NAME: *In re Redfield Canyon Wilderness Area*

19 DESCRIPTIVE SUMMARY: Freeport Minerals Corporation files its Rule 26.1 Initial
20 Disclosure Statement for Phase II.

21 NUMBER OF PAGES: 8

22 STATEMENT OF CLAIMANT NOS: 39-02297 *et al.* (numerous claims)

23 DATE OF FILING: March 11, 2015.
24
25
26

1 Freeport Minerals Corporation (“Freeport”) submits its Rule 26.1 Disclosure
2 Statement for Phase II of this contested case regarding the United States claimed federal
3 reserved right for the Redfield Canyon Wilderness Area (“RCWA”). Discovery has not
4 yet been conducted. Freeport reserves the right to supplement and / or amend each and
5 every section of this initial disclosure statement as the case proceeds.

6 Pursuant to the Special Master’s order dated July 9, 2014 (“Special Master’s
7 Order”), it was ordered that, “[o]n or before Wednesday, January 7, 2015, the United
8 States shall file its Rule 26.1 disclosure statement” addressing the following issues
9 designated for this phase of the case:

- 10 A. How much, if any, unappropriated water was available on November 28,
11 1990?
- 12 B. If unappropriated water was available on November 28, 1990, what is
13 the quantity of water sufficient to fulfill the purposes of the Redfield
Canyon Wilderness Area?

14 The United States submitted a disk containing documents on January 7,¹ but the
15 United States has failed to file an initial disclosure statement as required by Rule 26.1 and
16 the Special Master’s order.

17 **1. FACTUAL BASIS OF THE CLAIMS AND DEFENSES**

18 As claimant, the United States bears the burden with respect to each of the issues
19 designated for this phase of the contested case. The United States also has the obligation
20 to “disclose in writing to every other party” the factual bases for each of its claims. Ariz.
21 R. Civ. P. 26.1(a)(1). The United States failed to submit its initial 26.1 disclosure
22 statement on January 7, 2015 as ordered by the Special Master. Accordingly, the United
23 States has failed to comply with the Special Master’s Order and its obligations under Rule
24 26.1(a)(1).

25 _____
26 ¹ See United States’ Notice of Submission of Phase Two Initial Disclosures mailed on
January 7, 2015.

1 As discussed below, in considering a federal reserved water right for the RCWA,
2 the purposes for the reservation must be strictly construed and only unappropriated waters
3 may be reserved.

4 Freeport expressly reserves the right to supplement and amend this disclosure.

5 **2. LEGAL THEORIES**

6 The United States has the obligation to “disclose in writing to every other party”
7 the legal theories supporting each of its claims. Ariz. R. Civ. P. 26.1(a)(2). The United
8 States failed to submit its initial 26.1 disclosure statement on January 7, 2015 as ordered
9 by the Special Master. Accordingly, the United States has failed to comply with the
10 Special Master’s Order and its obligations under Rule 26.1(a)(2).

11 Congress could only reserve water that was “then unappropriated” at the time of
12 the reservation. *In re General Adjudication of All Rights to Use Water in Gila River Sys.*
13 *& Source*, 195 Ariz. 411, 417 ¶ 14, 989 P.2d 739, 745 (1999), *cert denied*, 530 U.S. 1250
14 (2000) (“[W]hen the Federal Government withdraws its land from the public domain and
15 reserves it for a federal purpose, the Government, by implication, reserves appurtenant
16 water *then unappropriated* to the extent needed to accomplish the purpose of the
17 reservation. In doing so the United States acquires a reserved right *in unappropriated*
18 *water* which vests on the date of the reservation and is superior to the rights of *future*
19 *appropriators.*”) (emphasis added) (quoting *Cappaert v. United States*, 426 U.S. 128, 138
20 (1976)). When water is reserved, the United States is limited to “the minimal amount
21 needed” for the original, primary purpose of the reservation. *In re General Adjudication*
22 *of All Rights to Use Water in Gila Sys. & Source*, 201 Ariz. 307, 312-13 ¶ 14, 35 P.3d 68,
23 73-74 (2001) (“*Gila V*”).

24 “[N]on-Indian reserved rights” like the one claimed by the United States for the
25 RCWA “are narrowly quantified to meet the original, primary purpose of the reservation;
26 water for secondary purposes must be acquired under state law.” *Gila V*, 201 Ariz. 307,

1 312 ¶ 14, 35 P.3d 68, 73 (2001) (citation omitted). “[T]he primary purpose for which the
2 federal government reserves non-Indian land is strictly construed after careful
3 examination.” *Id.* at 313 ¶ 14, 35 P.3d at 74. Applying these standards, the Arizona
4 Desert Wilderness Act does not evince any intent by Congress to reserve all
5 unappropriated waters at the time of the reservation.

6 Freeport expressly reserves the right to supplement and amend this disclosure.

7 **3. WITNESSES WHOM THE DISCLOSING PARTY EXPECTS TO**
8 **CALL AT TRIAL**

9 The United States has the obligation to “disclose in writing to every other party”
10 the witnesses it intends to call at trial. Ariz. R. Civ. P. 26.1(a)(3). The United States
11 failed to submit its initial 26.1 disclosure statement on January 7, 2015 as ordered by the
12 Special Master. Accordingly, the United States has failed to comply with the Special
13 Master’s Order and its obligations under Rule 26.1(a)(3).

14 Freeport makes the following disclosure concerning witnesses it may call at trial:

- 15 1. All witnesses identified pursuant to Rule 26.1(a)(3) of any initial or
16 supplemental disclosure statement submitted by any party in this
17 phase or any other phase of this contested case.
- 18 2. All persons identified pursuant to Rule 26.1(a)(4) of any initial or
19 supplemental disclosure statement submitted by any party in this
20 phase or any other phase of this contested case.
- 21 3. All persons who give statements identified pursuant to Rule
22 26.1(a)(5) in any initial or supplemental disclosure statement
23 submitted by any party in this phase or any other phase of this
24 contested case.
- 25 4. All persons necessary to lay foundation for any exhibit designated by
26 any party in this phase or any other phase of this contested case.

Freeport expressly reserves the right to supplement and amend this disclosure.

1 **4. PERSONS WHO MAY HAVE RELEVANT KNOWLEDGE OR**
2 **INFORMATION**

3 The United States has the obligation to “disclose in writing to every other party”
4 the names of all people who may have relevant knowledge. Ariz. R. Civ. P. 26.1(a)(4).
5 The United States failed to submit its initial 26.1 disclosure statement on January 7, 2015
6 as ordered by the Special Master. Accordingly, the United States has failed to comply
7 with the Special Master’s Order and its obligations under Rule 26.1(a)(4).

8 Freeport makes the following disclosure concerning people that may have relevant
9 knowledge or information:

- 10 1. All witnesses identified pursuant to Rule 26.1(a)(3) of any initial or
11 supplemental disclosure statement submitted by any party in this
12 phase or any other phase of this contested case.
13 2. All persons identified pursuant to Rule 26.1(a)(4) of any initial or
14 supplemental disclosure statement submitted by any party in this
15 phase or any other phase of this contested case.
16 3. All persons who give statements identified pursuant to Rule
17 26.1(a)(5) in any initial or supplemental disclosure statement
18 submitted by any party in this phase or any other phase of this
19 contested case.

20 Freeport expressly reserves the right to supplement and amend this disclosure.

21 **5. PERSONS WHO HAVE GIVEN STATEMENTS**

22 The United States has the obligation to “disclose in writing to every other party” all
23 persons who have given statements. Ariz. R. Civ. P. 26.1(a)(5). The United States failed
24 to submit its initial 26.1 disclosure statement on January 7, 2015 as ordered by the Special
25 Master. Accordingly, the United States has failed to comply with the Special Master’s
26 Order and its obligations under Rule 26.1(a)(5).

Freeport makes the following disclosure concerning persons who have given
statements:

1. None at this time other than those identified pursuant to Rule

1 26.1(a)(5) in disclosures by other parties.

2 Freeport expressly reserves the right to supplement and amend this disclosure.

3 **6. EXPERT WITNESSES**

4 The United States has the obligation to “disclose in writing to every other party” all
5 persons that it may call as an expert. Ariz. R. Civ. P. 26.1(a)(6). The United States failed
6 to submit its initial 26.1 disclosure statement on January 7, 2015 as ordered by the Special
7 Master. Accordingly, the United States has failed to comply with the Special Master’s
8 Order and its obligations under Rule 26.1(a)(6).

9 Freeport does not designate any expert witness in this initial disclosure. Freeport
10 expressly reserves the right to designate one or more expert witnesses in the future, in
11 which case this disclosure will be supplemented.

12 **8. EXHIBITS**

13 Freeport makes the following disclosure pursuant to Rule 26.1(a)(8) without
14 waiving any objections concerning any documents, including, without limitation,
15 objections as to admissibility.

16 Freeport discloses the following documents that Freeport may use at hearing:

- 17 1. All statements identified pursuant to Rule 26.1(a)(5) in any initial or
18 supplemental disclosure statement submitted by any party in this
 phase or any other phase of this contested case.
- 19 2. All exhibits identified pursuant to Rule 26.1(a)(8) in any initial or
20 supplemental disclosure statement submitted by any party in this
 phase or any other phase of this contested case.
- 21 3. All documents identified pursuant to Rule 26.1(a)(9) in any initial or
22 supplemental disclosure statement submitted by any party in this
 phase or any other phase of this contested case.
- 23 4. All transcripts of all depositions taken in connection with this phase
24 or any other phase of this contested case.
- 25 5. All exhibits marked or used during any depositions taken in
26 connection with this phase or any other phase of this contested case.

1 Freeport is still in the process of identifying the documents that it will use at
2 hearing, and expressly reserves the right to supplement and amend this disclosure.

3 **9. OTHER RELEVANT DOCUMENTS**

4 The United States has the obligation to “disclose in writing to every other party” all
5 documents that are relevant or may be reasonably calculated to lead to the discovery of
6 admissible evidence. Ariz. R. Civ. P. 26.1(a)(9). The United States failed to submit its
7 initial 26.1 disclosure statement on January 7, 2015 as ordered by the Special Master.
8 Accordingly, the United States has failed to comply with the Special Master’s Order and
9 its obligations under Rule 26.1(a)(9).

10 Freeport makes the following disclosure:

- 11 1. All exhibits identified pursuant to Rule 26.1(a)(8) in any initial or
- 12 supplemental disclosure statement submitted by any party in this
- 13 phase or any other phase of this contested case.
- 14 2. All documents identified pursuant to Rule 26.1(a)(9) in any initial or
- 15 supplemental disclosure statement submitted by any party in this
- 16 phase or any other phase of this contested case.

17 Freeport expressly reserves the right to supplement and amend this disclosure.

18 DATED this 11th day of March, 2015.

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22 By Sean Hood
 Sean T. Hood
 Attorneys for Freeport Minerals Corporation

1 ORIGINAL of the foregoing filed
2 this 11th day of March, 2015 with:

3 Clerk of Maricopa County Superior Court
4 Attn: Water Case
5 601 West Jackson Street
6 Phoenix, Arizona 85003-2205

7 COPY hand-delivered this 11th day of March, 2015 to

8 Hon. Mark H. Brain
9 Judge of the Superior Court
10 East Court Building, Suite 413
11 101 West Jefferson
12 Phoenix, AZ 85003

13 COPY mailed this 11th day of March, 2015 to
14 all persons appearing on the Court-
15 approved mailing list in W1-11-2664 dated
16 March 3, 2015

17 By: Kathy Power

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