

1 **MARK BRNOVICH**
Attorney General
2 (Firm State Bar No. 14000)
Carrie J. Brennan SBA #018250
3 Theresa M. Craig SBA #010585
4 Assistant Attorney General
Natural Resources Section
5 1275 W. Washington Street
Phoenix, Arizona 85007-2997
6 Telephone: 602.542.7782
Fax: 602.542.4084
7 NaturalResources@azag.gov

8 Attorneys for Arizona State Land Department

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS
12 TO USE WATER IN THE GILA
13 RIVER SYSTEM AND SOURCE

Case Nos.: W-1, W-2, W-3, W-4
(Consolidated) (Gila)

Contested Case No.: W1-11-605

14 **ARIZONA STATE LAND**
15 **DEPARTMENT'S PHASE 2 INITIAL**
16 **DISCLOSURE STATEMENT**

(Assigned to the Honorable Mark H. Brain)

18 CONTESTED CASE NAME: *In re Fort Huachuca.*

19 HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report

20 DESCRIPTIVE SUMMARY: Arizona State Land Department's Phase 2 Initial
21 Disclosure Statement

22 NUMBER OF PAGES: 7

23 DATE OF FILING: March 7, 2016
24

25 The Arizona State Land Department ("ASLD") hereby submits its initial
26 disclosure statement pursuant to Arizona Rule of Civil Procedure 26.1 and the Special

RECEIVED
MAR 09 2016
LEG
DEPT OF WATER RESOURCES

1 Master's Order. ASLD reserves the right to supplement and/or amend this disclosure
2 statement through the discovery process, and rely upon any information disclosed by any
3 other party in this phase or in any other phase of this contested case. Disclosure is
4 limited to matters concerning three designated issues:

5 A. What is in detail the scope of water uses encompassed by the term "military
6 purposes?"

7 B. What is the quantity of water reserved to fulfill the military purposes?

8 C. Are the sources of water other than groundwater adequate to accomplish the
9 military purposes, and if not, what is the quantity of groundwater required to
accomplish those purposes?

10 This disclosure is made with respect to the three designated issues for Phase 2. While the
11 Court's September 7, 2011, minute entry concluded that federal reserved water rights for
12 a military reservation exist for the areas referred to in the 1881 and 1883 Executive
13 Orders signed by President Arthur, the minute entry is not a final decision, is opposed in
14 this contested case and remains appealable at this time, and ASLD reserves all rights to
15 challenge on appeal the existence of a reserved right.

16 **I. Factual Basis for Claims and Defenses Asserted.**

17 While Fort Huachuca has claimed in excess of 7,000 acre feet of groundwater
18 annually, discovery has revealed that it only uses approximately 1,100 acre feet per year.
19 Thus, the Fort's minimal need is far less than what it has claimed.

20 **II. Legal Theory upon Which Claims/Defenses Are Based.**

21 Federal reserved water rights are narrowly defined and limited to the primary and
22 original purpose as set forth in an Act of Congress, Executive Order, or Treaty
23 establishing the reservation. *In re General Adjudication of All Rights to Use Water in*
24 *Gila River Sys. & Source*, 201 Ariz. 307, 312, ¶14, 35 P.3d 68, 78 (2001) ("*Gila V*")
25 ("Non-Indian reserved rights are narrowly quantified to meet the original, primary
26 purpose of the reservation; water for secondary purposes must be acquired under state

1 law.”); *Totemoff v. State*, 905 P.2d 954, 963 (Alaska 1995) (“In determining the scope of
2 implied reserved water rights, a court may look only to the primary purposes of a
3 reservation at the time the land was first reserved by the federal government, and may not
4 consider other purposes later given to the reservation.”); *United States v. Idaho*, 23 P.3d
5 117, 126 (Idaho 2001) (“Present day desires cannot be imposed as purposes on past
6 decisions if those purposes were not present at the time of the reservation.”). Moreover,
7 the United States is limited to the minimal amount needed to satisfy the original, primary
8 purpose. *Gila V*, 201 Ariz. at 312, ¶14, 35 P.3d at 73.

9 The United States only has a right to groundwater when other waters are not
10 sufficient to accomplish the purpose of the reservation. *In re the General Adjudication of*
11 *All Rights to Use Water in the Gila River Sys. & Source*, 195 Ariz. 411, 420, ¶31, 989
12 P.2d 739, 748 (1999) (“*Gila III*”).

13 **III. Witnesses Whom ASLD Expects to Call at Trial.**

- 14 A. All witnesses identified pursuant to Rule 26.1(a)(3) or the Court’s scheduling
15 orders in any initial or supplemental disclosure statement submitted by any
16 party in any phase of this case.
- 17 B. All persons identified pursuant to Rule 26.1(a)(4) or the Court’s scheduling
18 orders in any initial or supplemental disclosure statement submitted by any
19 party in any phase of this case.
- 20 C. All persons who have given statements identified pursuant to Rule 26.1(a)(5)
21 or the Court’s scheduling orders in any initial or supplemental disclosure
22 statement submitted by any party in any phase of this case.
- 23 D. All persons necessary to provide foundation for any exhibit designated by any
24 party in any phase of this case.

25 ///

1 **IV. Persons Whom ASLD Believes May Have Knowledge or Information**
2 **Relevant to the Events, Transactions, or Occurrences That Gave Rise to This**
3 **Action.**

4 A. All witnesses identified pursuant to Rule 26.1(a)(3) or the Court's scheduling
5 orders in any initial or supplemental disclosure statement submitted by any
6 party in any phase of this case.

7 B. All persons identified pursuant to Rule 26.1(a)(4) or the Court's scheduling
8 orders in any initial or supplemental disclosure statement submitted by any
9 party in any phase of this case.

10 C. All persons who have given statements identified pursuant to Rule 26.1(a)(5)
11 or the Court's scheduling orders in any initial or supplemental disclosure
12 statement submitted by any party in any phase of this case.
13

14
15 **V. Persons Who Have Given Statements.**

16 Any person identified pursuant to Rule 26.1(a)(5) or the Court's scheduling orders
17 in any initial or supplemental disclosure statement submitted by any party in any phase of
18 this case.

19 **VI. Each Person Whom ASLD Expects to Call As an Expert Witness at Trial.**

20 ASLD does not intend to designate any expert witness in this contested case. To
21 the extent that the testimony of any person identified in sections III, IV, or V above may
22 be considered expert witness testimony, ASLD hereby incorporates their designation
23 herein.

24 **VII. Tangible Evidence or Relevant Documents That the ASLD Intends to Use at**
25 **Trial.**

26 A. All statements identified pursuant to Rule 26.1(a)(5) or the Court's scheduling

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

orders in any initial or supplemental disclosure statement submitted by any party in any phase of this case.

- B. All exhibits identified pursuant to Rule 26.1(a)(8) or the Court's scheduling orders in any initial or supplemental disclosure statement submitted by any party in any phase of this case.
- C. All documents identified pursuant to Rule 26.1(a)(9) or the Court's scheduling orders in any initial or supplemental disclosure statement submitted by any party in any phase of this case.
- D. All transcripts of depositions conducted relating to any phase of this case.
- E. All exhibits marked or used during any deposition conducted relating to any phase of this case.

ASLD will supplement and amend this disclosure through discovery consistent with the Arizona Rules of Civil Procedure, and the Court's orders.

RESPECTFULLY SUBMITTED this 7th day of March, 2016.

Mark Brnovich
Attorney General



Carrie J. Brennan, Esq.
Theresa M. Craig, Esq.
Assistant Attorneys General
Attorney for Arizona State Land Department

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORIGINAL of the foregoing filed with
the Maricopa County Superior Court Clerk
this 7th day of March, 2016, and delivered to:


Clerk of the Court
Maricopa County Superior Court
Attn: Water Case
601 West Jackson Street
Phoenix, Arizona 85003

COPY of the foregoing emailed this 7th day of March, 2016, to:

The Honorable Mark H. Brain
Maricopa County Superior Court
East Court Building #413
101 West Jefferson Street
Phoenix, Arizona 85003

Susan Ward Harris
Special Master
Central Court Building, Ste 3A
201 West Jefferson
Phoenix, AZ 85003-2205

COPIES of the foregoing were deposited for
mailing this 7th day of March, 2016, upon all
parties on the court-approved mailing list for
In re Fort Huachuca.

By 
Paula Brewer

4953151