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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

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

W-1, W-2, W-3, W-4 (Consolidated)
Contested Case No. W1-11-3356
ORDER TO INITIATE CONTESTED CASE

AND

ORDER FOR ADWR REVIEW OF ABSTRACTS
FOR *DE MINIMIS* WATER RIGHTS

AND

ORDER FOR JOINT REPORT FROM ARIZONA
STATE LAND DEPARTMENT AND LESSEES

CONTESTED CASE NAME: *In re SLD - Withrow Ranch, Inc.*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: Contested case W1-11-3356 initiated and nine abstracts prepared for ADWR review to be filed by **April 24, 2020** and joint report to be filed by Claimants by **May 22, 2020**.
NUMBER OF PAGES: 24
DATE OF FILING: February 28, 2020

1 This Order initiates a contested case to consider the claims for water rights and resolve
 2 objections to Watershed File Report 115-05-033 (“WFR”) published in the Final San Pedro River
 3 Watershed Hydrographic Survey Report (1991). The WFR identified potential water rights for
 4 stockponds and stock watering use on land located in sections 3, 4, 10, and 21 Township 7S Range
 5 20E. A copy of the watershed file report is attached as Attachment A. A copy of the map prepared
 6 for the WFR is attached as Attachment B.

7
 8 **Claimants & Landowner**

9 The WFR identified Statements of Claimant 39-2142, 39-2150, 39-2151, 39- 2156, 39-
 10 2161, 39-6980, 39-6981, 39-6982, 39-7029, 39-13899, 39-13943, and 39-13944 (“SOCs”) as the
 11 relevant filings for the potential water rights filed by the following claimants:
 12

Statement of Claimant	Claimant	Assignee of Statement of Claimant
39-2142	Whiting Ranches	Withrow Ranch, Inc./ Kaibab Industries
39-2150	Whiting Ranches	Withrow Ranch, Inc./ Kaibab Industries
39-2151	Whiting Ranches	Withrow Ranch, Inc./ Kaibab Industries
39-2156	Whiting Ranches	Withrow Ranch, Inc./ Kaibab Industries
36-2161	Whiting Ranches	Withrow Ranch, Inc./ Kaibab Industries
39-6980	Arizona State Land Department	
39-6981	Arizona State Land Department	
39-6982	Arizona State Land Department	
39-7029	Whiting Ranches	Withrow Ranch, Inc.
39-13899	Arizona State Land Department	
39-13943	Arizona State Land Department	
39-13944	Arizona State Land Department	

1 The Arizona State Land Department (ASLD) is named in the WFR as the owner of the
2 property described in the WFR. The public records of the Graham County Assessor's Office
3 identify the State of Arizona as the owner of the land included within the boundaries of the
4 WFR. A copy of Graham County map is attached as Attachment C.

5 The public records maintained by ASLD identify the lessees of the relevant land as
6 follows:
7

Lessee	Description by Township - Range - Section
MICHAEL J. CAVENDER	7S-20E-4 (559.16 acres)
MICHAEL J. CAVENDER	7S-20E-3 (600.01 acres)
MICHAEL J. CAVENDER	7S-20E-10 (664.95 acres)
MAGOFFIN FAMILY TRUST	7S-20E-21 (160 acres)

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16 **Adjudication of Claims**

17 Under current law, a claimant who has asserted claims for irrigation use and Small Water
18 Use Claims shall have the Small Water Uses Claims determined in conjunction with the claims
19 for water for irrigation use. A.R.S. §45-257(A)(1). The term "Small Water Use Claims"
20 includes claims for stock watering and stockponds with a capacity of not more than 15 acre feet.
21 A.R.S. §45-251(9). The Magoffin Family Trust is currently involved in a case asserting claims
22 for irrigation use in *In re Karen C. LeCount*, contested case no. W1-11-3395 and Michael J.
23 Cavender and Susan Cavender are asserting claims for irrigation use in *In re Whiting Ranches*,
24 contested case no. W1-11-3397. Accordingly, it is appropriate to determine Small Water Use
25 Claims asserted with respect to land each of the parties are currently leasing.
26
27
28

1 **Abstracts for *De Minimis* Claims**

2 In 1994, the Special Master issued a Memorandum Decision, Findings of Fact, and
3 Conclusions of Law for Group 1 Cases involving Stockwatering, Stockponds, and Domestic
4 Uses, dated November 14, 1994, amended February 23, 1995, approved and modified September
5 27, 2002 (“Decision”). The Decision established the procedures for adjudicating *de minimis*
6 water rights for claims in the San Pedro watershed. This procedure applies to the water rights
7 for many stockponds and stock watering.
8

9 As required by the Decision, proposed water right abstracts have been prepared for the
10 *de minimis* water rights analyzed by the WFR, which are attached as Attachment D. The
11 abstracts will be reviewed by Arizona Department of Water Resources who will provide
12 comments and maps.
13

14 **Ownership of Potential Water Rights**

15 Permits and certificates for rights to water used on state land are governed by A.R.S
16 §37-321.01. The statute requires that permits and certificates for the right to use water on state
17 land for stock watering uses or stockponds shall be issued in the name of the State of Arizona
18 except in three situations. Accordingly, if the current Lessees intend to assert rights to water
19 for use on the land, the Lessees and the Arizona State Land Department shall meet to discuss
20 ownership of the water rights for stock watering and stockponds on the land included within the
21 boundaries of the WFR. and submit a joint report to the Court regarding their position as to the
22 ownership of the potential water rights.
23

24 **IT IS ORDERED:**

25 1. Contested Case. This contested case shall be known as *In re SLD-Withrow*
26 *Ranch, Inc.* and it will address the Statements of Claimant listed above and the objections to
27 Watershed File Report 115-05-033 published in the Final San Pedro River Watershed
28

1 Hydrographic Survey Report (1991). Copies of objections can be found under the case name
2 and number on the following website:

3 [http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.
4 asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)

5 2. Litigants. The litigants in this contested case are the Claimants, the current
6 lessees, all persons who filed objections to the Watershed File Report who are listed on
7 Attachment E, and claimants who are allowed to intervene by order.

8
9 3. Court-Approved Mailing List.

10 A. The initial Court-approved mailing list for this case shall include all
11 persons listed on Attachment E to this order. The list may be modified only by
12 filing a motion with the Special Master to amend the Court-approved mailing list.
13 Litigants are responsible for using the current Court-approved mailing list.

14 B. A copy of any pleading filed with the Clerk of the Maricopa County
15 Superior Court in this case shall be served upon each person listed on the Court-
16 approved mailing list.

17 C. Claimants wishing to be added or removed from the mailing list shall file
18 a motion with the Special Master. Parties allowed to intervene will be
19 automatically added to the mailing list.

20
21 4. Courtesy Email List. The Special Master's office will email courtesy copies of
22 orders and minute entries entered in this case to persons listed on Attachment E.
23 Requests for inclusions on the email list should be sent to Barbara Brown at
24 brownb099@superiorcourt.maricopa.gov.
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ATTACHMENT A

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
36-0005031	STOCK	STOCK		
36-0005066	WILDLIFE	INCIDENTAL		SW006
36-0072570.0001	STOCK	STOCK		SW002
36-0072571.0001	WILDLIFE	INCIDENTAL		SW004
36-0072579.0001	STOCK	SPRING		SW003
36-0100043	STOCK	SPRING		SW001
36-0100298	STOCK	STOCK		SW007
36-0100299	WILDLIFE	INCIDENTAL		
38-0022955.0001	STOCK	SPRING		SW003
38-0072583.0001	WILDLIFE	SPRING		SW004
38-0072584.0001	STOCK	SPRING		
38-0072589.0001	WILDLIFE	SPRING		
38-0088429	STOCK	NONE		
38-0088432	STOCK	NONE		
39-0002142	WILDLIFE	STOCK		SPO01
39-0002150	STOCK	INCIDENTAL		
39-0002151	STOCK	STOCK		SPO02
39-0002156	WILDLIFE	INCIDENTAL		
39-0002161	STOCK	CATALOGUED WELL		
39-0006980	STOCK	STOCK		SPO02
39-0006981	WILDLIFE	INCIDENTAL		SPO01
39-0006982	STOCK	STOCK		SPO02
39-0007029	WILDLIFE	STOCK		SPO01
39-0013899	STOCK	SPRING		SW001
39-0013943	WILDLIFE	SPRING		SW004
39-0013944	STOCK	SPRING		SW007
	WILDLIFE	INCIDENTAL		SW003
	STOCK	SPRING		
	WILDLIFE	SPRING		

USES

PWR #	SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCES	PHOTO DATE	SOURCE CHANGE	FACILITY NAME
SW001	NENE04	070S	200E		SURFACE WATER		NO	SPRING CANYON SPRING
SW002	NESWSE21	070S	200E		SURFACE WATER		NO	INSTREAM USE
SW003	NESW03	070S	200E		SURFACE WATER		NO	BALOPAS SPRING
SW004	SWNE10	070S	200E		SURFACE WATER		NO	SECTION 10 SPRING
SW005	NENE04	070S	200E		SURFACE WATER		NO	INSTREAM USE
SW006	NENE04	070S	200E		SURFACE WATER		NO	INSTREAM USE
SW007	NESE10	070S	200E		SURFACE WATER		NO	INSTREAM USE

RESERVOIRS

PWR #	SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCES	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
SPO01	NENENE04	070S	200E		SURFACE WATER	1973	LITTLE WONDER TANK	STOCKWATERING WILDLIFE
SPO02	NWNENE04	070S	200E		SURFACE WATER	1973	SPRING CANYON TANK	STOCKWATERING WILDLIFE

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	*APPARENT FIRST USE DATE* DATE BASIS FOR DATE	WATER SOURCES AND CLASSIFICATIONS
SPOO1	39-0002150 39-0006980	38-0072583.0001 38-0088432	1958 38-72583 & 38-88432	SURFACE WATER: ARAVAIPA CREEK
SPOO2	39-0002142 39-0006982	38-0072584.0001 38-0088429	1958 38-72584 & 38-88429	SURFACE WATER: ARAVAIPA CREEK
SWO01	39-0002151 39-0006981	36-0005030 36-0072579.0001	1884 FILING 36-5030	SURFACE WATER: ARAVAIPA CREEK
SWO02	39-0007029	36-0005066	1884 FILING 36-5066	SURFACE WATER: ARAVAIPA CREEK
SWO03	39-0002161 39-0013944	36-0072571.0001 36-0100298	1884 FILING 36-100298	SURFACE WATER: ARAVAIPA CREEK SURFACE WATER: ARAVAIPA CREEK
SWO04	39-0002156 39-0013899	10-0501078.3100 36-0072570.0001 36-0100299	1884 FILING 36-100299	SURFACE WATER: ARAVAIPA CREEK
SWO05	39-0006980	36-0005029	1884 FILING 36-5029	SURFACE WATER: ARAVAIPA CREEK
SWO06	39-0006982	36-0005031	1884 FILING 36-5031	SURFACE WATER: ARAVAIPA CREEK
SWO07	39-0013943	36-0100043	1884 FILING 36-100043	SURFACE WATER: ARAVAIPA CREEK
NONE	NONE	33-0087693.0001 38-0022955.0001 38-0072589.0001		SURFACE WATER: ARAVAIPA CREEK

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE	ACRES	CROP TYPE	EFF	WATER DUTY	ESTIMATED VOLUME	REMARKS
SPOO1	MAX. AREA/CAP	LT 2.0					
SPOO2	MAX. AREA/CAP	LT 2.0				LTE 15.0 AF	
SWO01						LTE 15.0 AF	
SWO02							SEE VOLUME 1 - GENERAL ASSESSMENT
SWO03							SEE VOLUME 1 - GENERAL ASSESSMENT
SWO04							SEE VOLUME 1 - GENERAL ASSESSMENT
SWO05							SEE VOLUME 1 - GENERAL ASSESSMENT
SWO06							SEE VOLUME 1 - GENERAL ASSESSMENT
SWO07							SEE VOLUME 1 - GENERAL ASSESSMENT

EXPLANATION

FILINGS AND DECREES
FILINGS 33-87693 & 38-22955 - CLAIM STOCKWATERING AND WILDLIFE USES. NO STOCKWATERING OR WILDLIFE USES WERE FOUND AT THE CLAIMED LOCATION.

USES AND RESERVOIRS

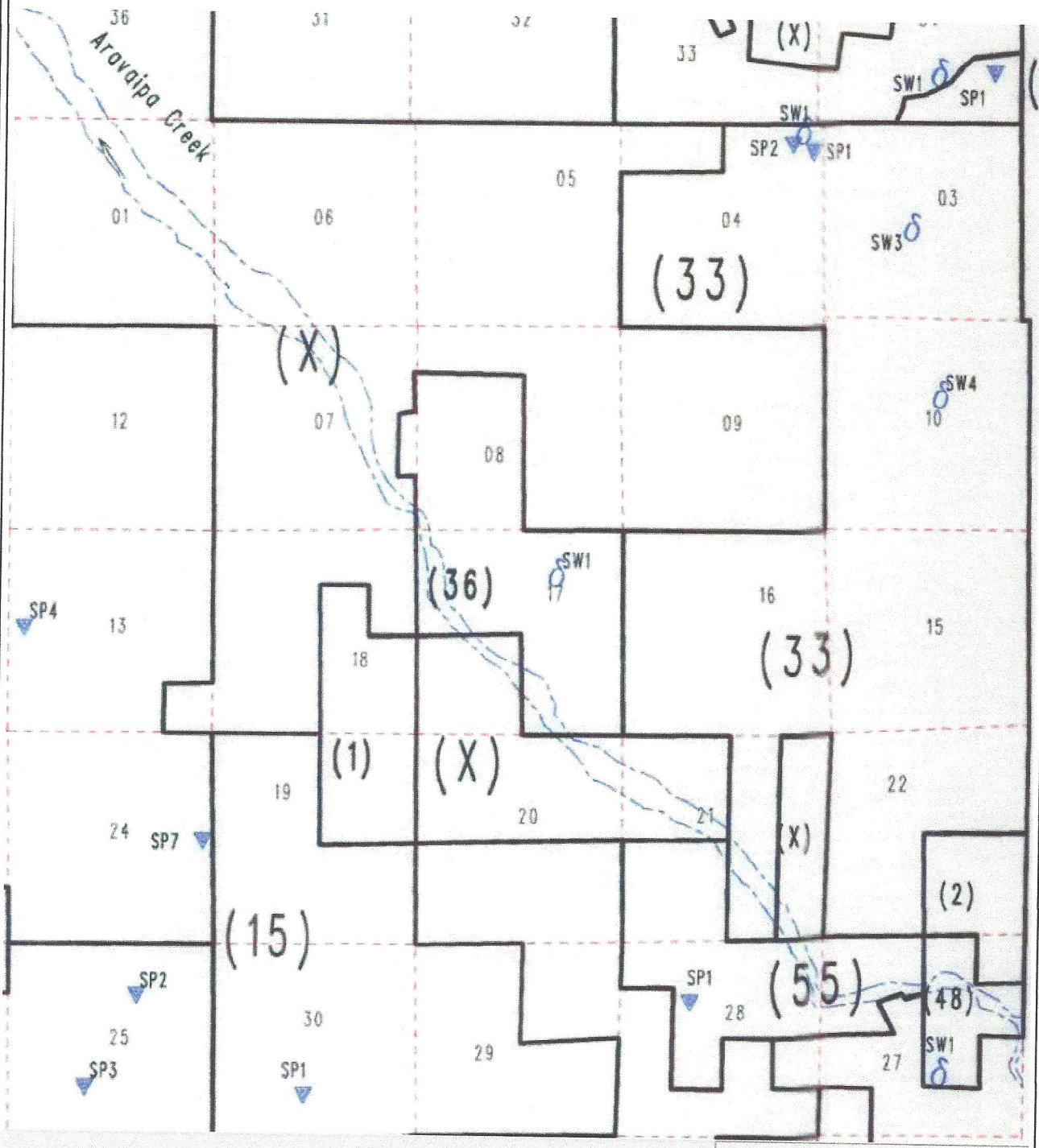
- SP1 - LITTLE WONDER STOCKPOND.
- SP2 - SPRING CANYON STOCKPOND.
- SW1 - STOCKWATERING AND WILDLIFE USES FROM SPRING CANYON SPRING.
- SW2 - INSTREAM STOCKWATERING AND WILDLIFE USES FROM ARAVAIPA CREEK.
- SW3 - STOCKWATERING AND WILDLIFE USES FROM BALOPAS SPRING.
- SW4 - STOCKWATERING AND WILDLIFE USES FROM SECTION 10 SPRING.
- SW5 - INSTREAM STOCKWATERING AND WILDLIFE USES FROM LITTLE WONDER WASH.
- SW6 - INSTREAM STOCKWATERING AND WILDLIFE USES FROM SPRING CANYON.
- SW7 - INSTREAM STOCKWATERING AND WILDLIFE USES FROM DEEP WELL CANYON.

DISPOSITION OF LAND OWNER/CLAIMANT COMMENTS

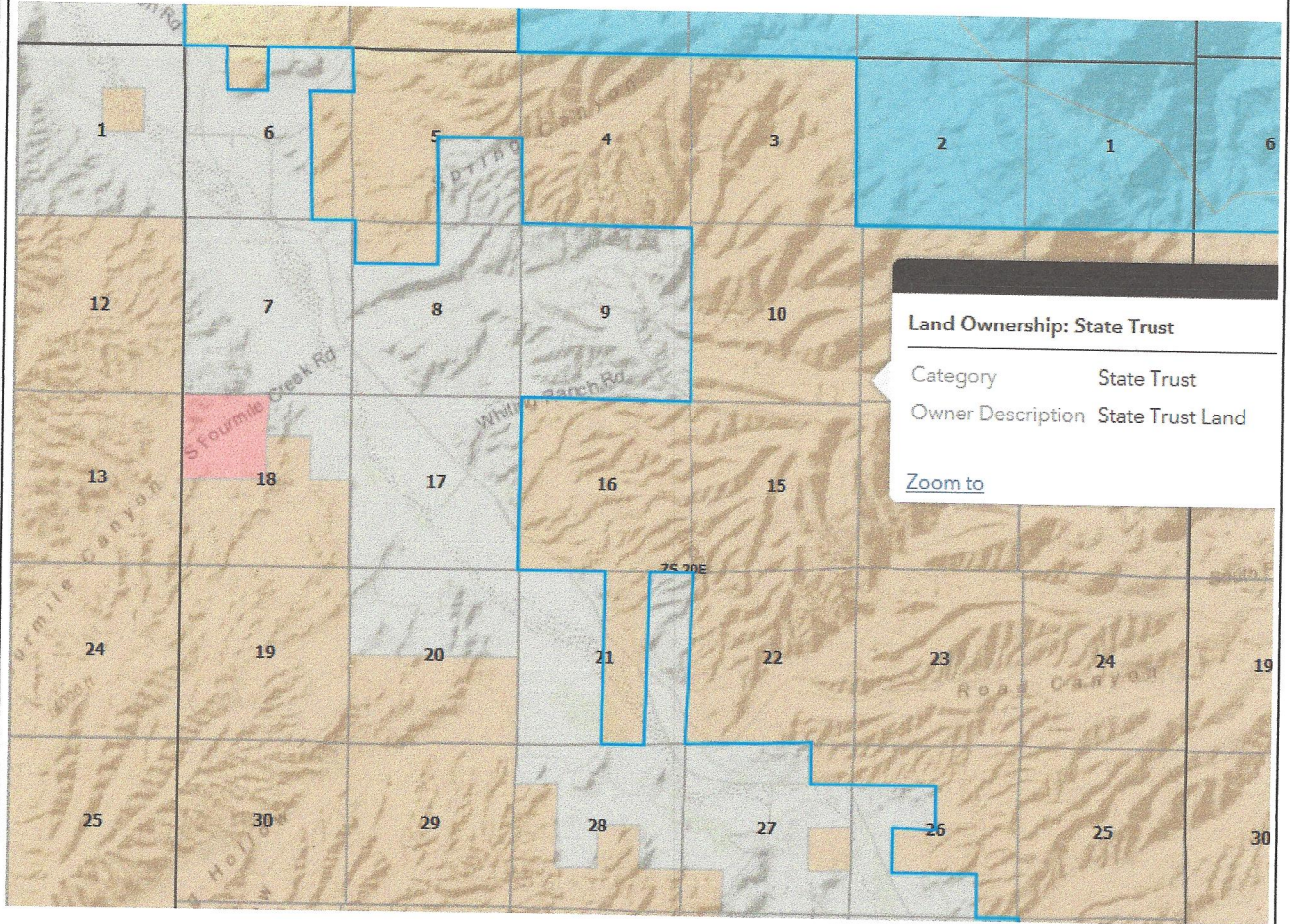
COMMENTS WERE RECEIVED WHICH MENTIONED A LESSEE NAME CHANGE AND THAT CERTAIN FILINGS DID NOT APPEAR IN THE HYDROGRAPHIC SURVEY REPORT.

ATTACHMENT B

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ATTACHMENT C



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ATTACHMENT D

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW001	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-2151 39-6981	
5. Statement of Claimant Name(s):	Whiting Ranch, Incorporated Arizona State Land Department	
6. Lessee:	Michael J. Cavender	
7. Basis of Right:	36-0005030 36-0072579	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	NENE 04 070S R20E	
12. Point of Diversion:	NENE 04 070S R20E	
13. Source of Water:	Spring Canyon Spring	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW002	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-7029	
5. Statement of Claimant Name(s):	Arizona State Land Department	
6. Lessee or Permittee:	Magoffin Family Trust	
7. Basis of Right:	36-0005066	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	NESWSE 21 070S R20E	
12. Point of Diversion:	NESWSE 21 070S R20E	
13. Source of Water:	Aravaipa Creek	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW003	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-2161 39-13944	
5. Statement of Claimant Name(s):	Whiting Ranch, Incorporated Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	36-0072571 36-0100298	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	NESW 03 070S R20E	
12. Point of Diversion:	NESW 03 070S R20E	
13. Source of Water:	Balopas Spring	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW004	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-2156 39-13899	
5. Statement of Claimant Name(s):	Whiting Ranch, Incorporated Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	36-0072570 36-0100299	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	SWNE 10 070S R20E	
12. Point of Diversion:	SWNE 10 070S R20E	
13. Source of Water:	Section 10 Spring	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW005	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-6980	
5. Statement of Claimant Name(s):	Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	36-0005029	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	NENE 04 070S R20E	
12. Point of Diversion:	NENE 04 070S R20E	
13. Source of Water:	Little Wonder Wash	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW006	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-6982	
5. Statement of Claimant Name(s):	Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	36-0005031	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	NENE 04 070S R20E	
12. Point of Diversion:	NENE 04 070S R20E	
13. Source of Water:	Spring Canyon	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SW007	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-13943	
5. Statement of Claimant Name(s):	Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	36-0100043	
8. Beneficial Use:	Stock watering and wildlife	
9. Priority Date:	12/31/1884	
10. Quantity:	Reasonable Use	
11. Place of Use:	NESE 10 070S R20E	
12. Point of Diversion:	NESE 10 070S R20E	
13. Source of Water:	Deep Well Canyon	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SP001	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	39-2150 39-6980	
5. Statement of Claimant Name(s):	Whiting Ranch, Incorporated Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	38-0072583 38-0088432	
8. Beneficial Use:	Stock watering from a stockpond	
9. Priority Date:	09/01/1958	
10. Quantity:	Not to exceed (\leq) 4 acre feet annually with continuous fill	
11. Place of Use:	NENENE 04 070S R20E	
12. Point of Diversion:	NENENE 04 070S R20E	
13. Source of Water:	Aravaipa Creek	
14. Name of Facility:	Little Wonder Tank	

**Proposed Abstract of Water Right
San Pedro Watershed**

Attribute	Proposed Abstract of Water Right	ADWR Comments
1. Proposed Water Right No.:	115-05-033-SP002	
2. Owner of Water Right:		
3. Landowner:	State of Arizona – Arizona State Land Department	
4. Statement of Claimant No.(s):	Whiting Ranch, Incorporated Arizona State Land Department	
5. Statement of Claimant Name(s):	Arizona State Land Department	
6. Lessee or Permittee:	Michael J. Cavender	
7. Basis of Right:	38-0072584 38-0088429	
8. Beneficial Use:	Stock watering from a stockpond	
9. Priority Date:	09/15/1958	
10. Quantity:	Not to exceed (\leq) 4 acre feet annually with continuous fill	
11. Place of Use:	NWNENE 04 070S R20E	
12. Point of Diversion:	NWNENE 04 070S R20E	
13. Source of Water:	Aravaipa Creek	
14. Name of Facility:	Spring Canyon Tank	

ATTACHMENT E

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3 Arizona Department of Water Resources
4 Kimberly Parks
5 P. O. Box 36020
6 Phoenix, AZ 85067

7 Carrie Brennan and Kevin Crestin
8 Arizona Attorney General
9 Natural Resources Department
10 2005 N. Central
11 Phoenix, Az 85004

12 D. A. Brown, J. Albert Brown, Amy Brown
13 Brown & Brown Law Offices
14 P. O. Box 1890
15 St. Johns, AZ 85936

16 Clerk of the Superior Court
17 Maricopa County
18 Attn: Water Case
19 601 West Jackson Street
20 Phoenix, AZ 85003

21 Joe P. Sparks and Laurel A. Herrmann
22 The Sparks Law Firm, P.C.
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26 Gordan K. Whiting
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2 Tucson, AZ 85755

3 S. Montgomery, R. Interpreter, J. Tomkus
Montgomery & Interpreter, Plc
4 3301 E. Thunderbird Road
5 Phoenix, AZ 85032

6 Salt River Valley Water Users Association,
Salt River Project Agricultural Improvement and Power District
7 John B. Weldon, Jr. and Mark A. McGinnis
8 Salmon, Lewis & Weldon PLC
2850 E Camelback Rd, Ste. 200
9 Phoenix, AZ 85016

10 Special Master Susan Ward Harris
Superior Court of Arizona
11 201 W. Jefferson Street
12 Courtroom 301
Phoenix, AZ 85003

13 Withrow Ranch, Inc.
14 33044 Machado Street
15 Lake Elsinore, CA 92330

16 U. S. Department of Justice
Patrick Barry and Emmi Blades
17 Environment and Natural Resources
P. O. Box 7611
18 Washington, D.C. 20044-7611

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