

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

08/23/2018

CLERK OF THE COURT  
FORM V000

SPECIAL WATER MASTER  
SUSAN HARRIS

A. Hatfield

Deputy

In re: Magma Copper – De Minimis  
Contested Case No. W1-11-2421

**FILED: 08/30/2018**

In Re: The General Adjudication  
of All Rights to Use Water in the  
Gila River System and Source  
W-1, W-2, W-3 and W-4 (Consolidated)

In re: Scheduling Conference

**MINUTE ENTRY**

**Courtroom: CCB 301**

1:30 p.m. This is the time set for a Scheduling Conference before Special Master Susan Ward Harris.

The following attorneys appear telephonically: Patrick Barry on behalf of the United States Department of Justice; Carla Consoli on behalf of the AZ Chapter of the Nature Conservancy; Laurel Herrmann on behalf of the San Carlos Apache Tribe and the Tonto Apache Tribe; Susan Montgomery on behalf of the Pascua Yaqui Tribe and the Yavapai-Apache Nation; and Thomas Murphy on behalf of the Gila River Indian Community.

The following attorneys are present in the courtroom: John Burnside on behalf of BHP Copper (BHP) f.k.a. Magma Copper; Monique Coady on behalf of the City of Phoenix; and Michael Foy and Mark McGinnis on behalf of the Salt River Project.

Court reporter, Jeanne Kappedal, is present and a record of these proceedings is made digitally.

Mr. Burnside responds to the Court's questions. He explains that Magma Copper Company is now known as BHP Copper Inc. Additionally, he states that in looking over the San Pedro HSR for additional claims made by Magma Copper he has located

additional Watershed File Reports (WFRs). At this point, he is unable to confirm the status of the claims referenced in the WFRs.

The Court requested BHP to submit a status report as to which claims it intends to assert and which claims it will request an order to withdraw.

Mr. Burnside states that he requires additional time in order to amend the Statements of Claimant (SOCs) and to investigate the current scope of use.

Discussion is held regarding the *De Minimis* use. The Court states that there are four stock ponds and that one of the objections filed by BHP was that Arizona Department of Water Resources (ADWR) did not list the wells associated with the water use. The Court also inquires if BHP knows the source of the water and if it is still using the stock ponds.

Mr. Burnside states that he will have to investigate current uses with his client.

With regards to irrigation and mining use, the Court states that it looks like the source of water is provided by wells located in the northern part of the San Pedro and asks if they are in the subflow zone.

Mr. Burnside responds that he will have to investigate with his client further.

The Court inquires what amount of time that BHP will require to complete its investigation and file amended SOC's.

Mr. Burnside states that BHP needs to investigate the current status of the uses and determine what water is being used where and for what purpose. He further states that BHP also has to consider its possible future use of the properties. He requests nine to ten months to conduct the investigation.

IT IS ORDERED directing BHP to submit a list of SOC's and/or WFR's that should be included in these cases but are not currently included by **October 22, 2018**.

Discussion is held whether or not the municipal water provider should be brought in to this case.

Mr. Burnside states that it isn't necessary.

Mr. McGinnis agrees with BHP's position and that SRP's objections will likely be different once the SOC's and WFR's are amended. He states that the focus should be on existing uses and existing claims rather than what was happening twenty-five years ago.

Discussion is held concerning procedural issues.

Ms. Coady, Ms. Herrmann, Ms. Montgomery, Mr. Barry and Mr. Murphy agree with SRP and BHP's position.

The Court inquires if the wells located in the northern part of the San Pedro are BHP wells that were identified in the WFRs.

Mr. Burnside indicates that there are new wells, abandoned wells, and replacement wells that are not reflected in the WFR.

The Court is inclined to have ADWR prepare a map showing all the wells that BHP and Magma Copper have registered along the San Pedro.

The Court will not issue an order to ADWR until BHP provides a list of all the claims for water rights it is asserting that are included in the 1991 San Pedro HSR.

IT IS FURTHER ORDERED that by **January 31, 2019** BHP shall submit their amended SOC's.

Discussion is held regarding the need for a status conference after the amended SOC's have been submitted.

There being no objection, a status conference will be held after the filing of the amended SOC's.

1:53 p.m. Matter concludes.

LATER:

IT IS FURTHER ORDERED setting a status conference for **February 8, 2019** at 11:00 a.m. in the Maricopa County Superior Court, Courtroom 301, Central Court Building, 201 West Jefferson, Phoenix, Arizona 85003.

Instructions for telephonic participation:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Collaboration (conference) Code 357264#

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case No. W1-11-2421.