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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

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

Contested Case No.: **W1-11-2428**

**ORDER SETTING STATUS
CONFERENCE**

CONTESTED CASE NAME: *In re Magma Copper – Mining*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: Status conference set for **December 18, 2020 at 1:30 p.m.**
NUMBER OF PAGES: 7
DATE OF FILING: November 25, 2020

Watershed File Report 113-08-022 (“WFR”) investigated 13 Statements of Claimant filed by BHP Copper, Inc., formerly known as Magma Copper Company (“Claimant”), for uses of water pumped from 13 wells located along the San Pedro River. A map of the wells is shown on Attachment A. The Statements of Claimant originally asserted rights to 21,383 acre feet of water per year. In the WFR, Arizona Department of Water Resources (“ADWR”) stated that the

1 Claimant used 16,045 acre feet of water for mining purposes. It also found between 24.1 and 30.2
 2 acre feet of water were used in each year to irrigate a golf course. After this case was initiated,
 3 Claimant filed amendments to eleven of the Statements of Claimant listed in the WFR that are
 4 listed in the table below along with the associated well that provides the source of water.¹

Statement of Claimant No.	Claimed Use	Well No.	Status of Well (ADWR Report & BHP Copper Amended Statement of Claimant)
39-3157	Other Uses – Industrial Production	03 (replaced by well 3R which is referred to as W15 by ADWR)	Water for Mining/Commercial/Industrial Use – Operable
39-3158	Other Uses – Industrial Production	12	Water for Mining/Commercial/Industrial Use – Operable
39-3172	Other Uses – Industrial Production	11	Artesian
39-3173	Other Uses – Industrial Production	10	Abandoned
39-3174	Other Uses – Industrial Production	09	Water for Mining/Commercial/Industrial Use – Operable
39-3175	Other Uses – Industrial Production	08	Artesian
39-3176	Other Uses – Industrial Production	07	Abandoned
39-3177	Other Uses – Industrial Production	06 (replaced by well 6R which is referred to as W16 by ADWR)	Water for Mining/Commercial/Industrial Use – Operable
39-3178	Other Uses – Industrial Production	05	Water for Mining/Commercial/Industrial Use – Operable
39-3179	Other Uses – ore treatment and domestic use (not amended)	04 (“Dodge Well” attributed to this SOC by ADWR. It refers to Dodge Well as W17.)	Artesian
39-3180	Other Uses – San Manuel Mine Shafts		Dewatering of mine shafts
39-3181	Other Uses – San Manuel Mine Shafts		Dewatering of mine shafts

1 No amendment was filed to SOC 39-3179 or 39-3182, which list Well 4 and Well 2 as the sources of water, respectively. The amended WFR reported that both wells had been abandoned.

1 In its amended Statements of Claimant, BHP Copper, Inc. reported the results of pumping
2 tests and the highest annual volumes for two time periods. The parties and ADWR agreed that
3 ADWR would investigate the amended claims and prepare an amended WFR. On September 18,
4 2020, Arizona Department of Water Resources filed an amended WFR and provided copies to all
5 parties in this contested case as well as to all parties on the court-approved mailing list for the Gila
6 River Adjudication.

7 The amended WFR reported that Claimant seeks 10,451 acre feet of water per year. It
8 identified eight wells as the sources of water in its PWR Summary. Attached as Attachment B is
9 Figure 1 to the amended WFR, which shows the location of wells 05, 08, 09, 11, 12, 15, 16, and 17
10 (identified using ADWR nomenclature). Arizona Department of Water Resources concluded that
11 8,402 acre feet of water per year were used for mining purposes, which are characterized as mine
12 maintenance rather than the previous mining use of processing sulfide ore. The amended WFR
13 found no water used to irrigate a golf course. It also classified the use of water provided by the
14 three artesian wells as wildlife watering for which it quantified the amount of water as “reasonable
15 use”. In terms of priority dates, ADWR assigned the same 1954 date to the mining use that it had
16 applied to the two mining uses in the original WFR.

17 The filing of the amended WFR presents an issue initially discussed at the Status
18 Conference held on March 22, 2019 about whether additional notice should be provided to persons
19 who received notice of the original WFR, but did not receive notice of the amended WFR. At
20 issue here is not notice at the pendency of the action but an additional notice in the midst of a
21 contested case to persons who did not object to the original WFR and who have not moved to be
22 added to the court-approved mailing list for this case or the court-approved mailing list for the Gila
23 River Adjudication. Due process simply requires that a party receive a notice that contains
24 sufficient information to adequately inform potential claimants of the pendency and nature of the
25 action. *Matter of Rights to Use of Gila River*, 171 Ariz. 230, 238, 830 P.2d 442, 450 (1992). A
26 due process right to notice does not exist at all stages of the proceeding. *Emmett McLoughlin*
27 *Realty, Inc. v. Pima County*, 212 Ariz. at 356, ¶ 20, 132 P.3d at 295 (App. 2006), *as corrected*

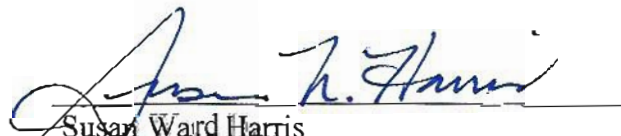
1 (Mar. 9, 2006). A requirement for notice at the pendency of the action does not necessarily dictate
2 notice of a subsequent proceeding in the action that has been properly noticed. *Lu Ranching Co.*
3 *v. United States*, 138 Idaho 606, 609, 67 P.3d 85, 88 (2003) (“The United States Supreme Court
4 has insisted on less exacting standards for notice of subsequent procedures and actions when
5 parties know proceedings may affect their rights.”)

6 **IT IS ORDERED** that a status conference shall be held on **December 18, 2020** at
7 **1:30 p.m.** The purpose of the status conference is to determine if, in fact, the parties believe that
8 a due process issue exists that may require additional notice of the amended WFR to be provided to
9 persons in addition to those already noticed by ADWR. In addition, the parties should be prepared
10 to state their positions with respect to objections, which include whether a deadline should be set to
11 file new or amended objections or whether the parties intend to proceed based on their original
12 objections. Finally, the parties are encouraged to raise any other procedural issues they deem
13 relevant prior to or in connection with establishing a schedule to adjudicate water rights and
14 resolve objections to the amended WFR.


15 Arizona Department of Water Resources shall be prepared to answer any questions that
16 arise regarding the location of wells relative to the subflow zone as shown in Figure 1 to the
17 amended WFR.

18 Instructions for public access to the status conference:

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20 Dial: 602-506-9695 (local)
21 1-855-506-9695 (toll free long distance)
22 Dial Collaboration (conference) Code 357264#

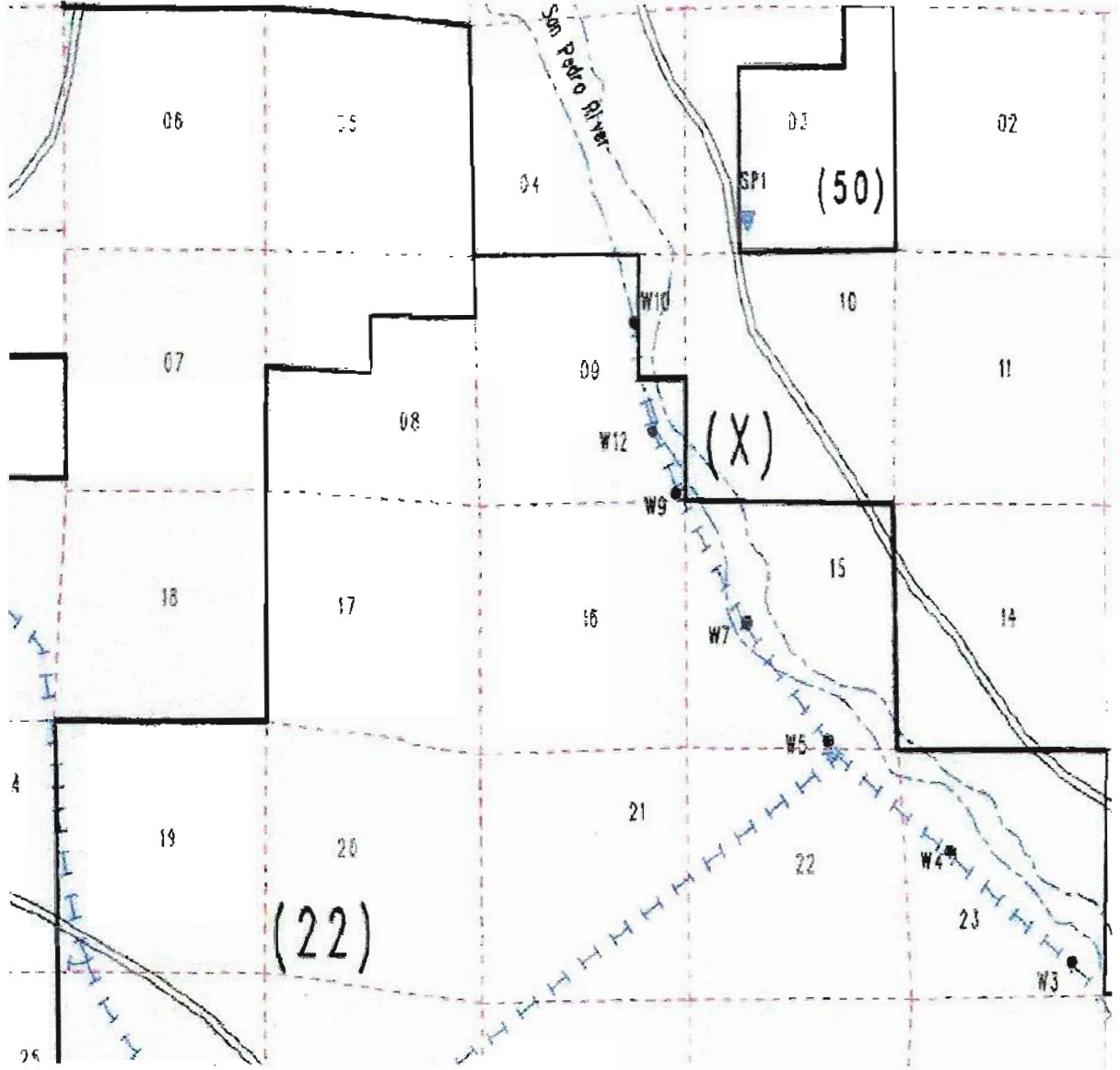
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25 Susan Ward Harris
26 Special Master
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1 On November 25, 2020, the original of the
2 foregoing was delivered to the Clerk of the
3 Maricopa County Superior Court for filing and
4 distributing a copy to all persons listed on the
Court-approved mailing list for this contested
case. W1-11-2428

5 
6 Durina Farrall

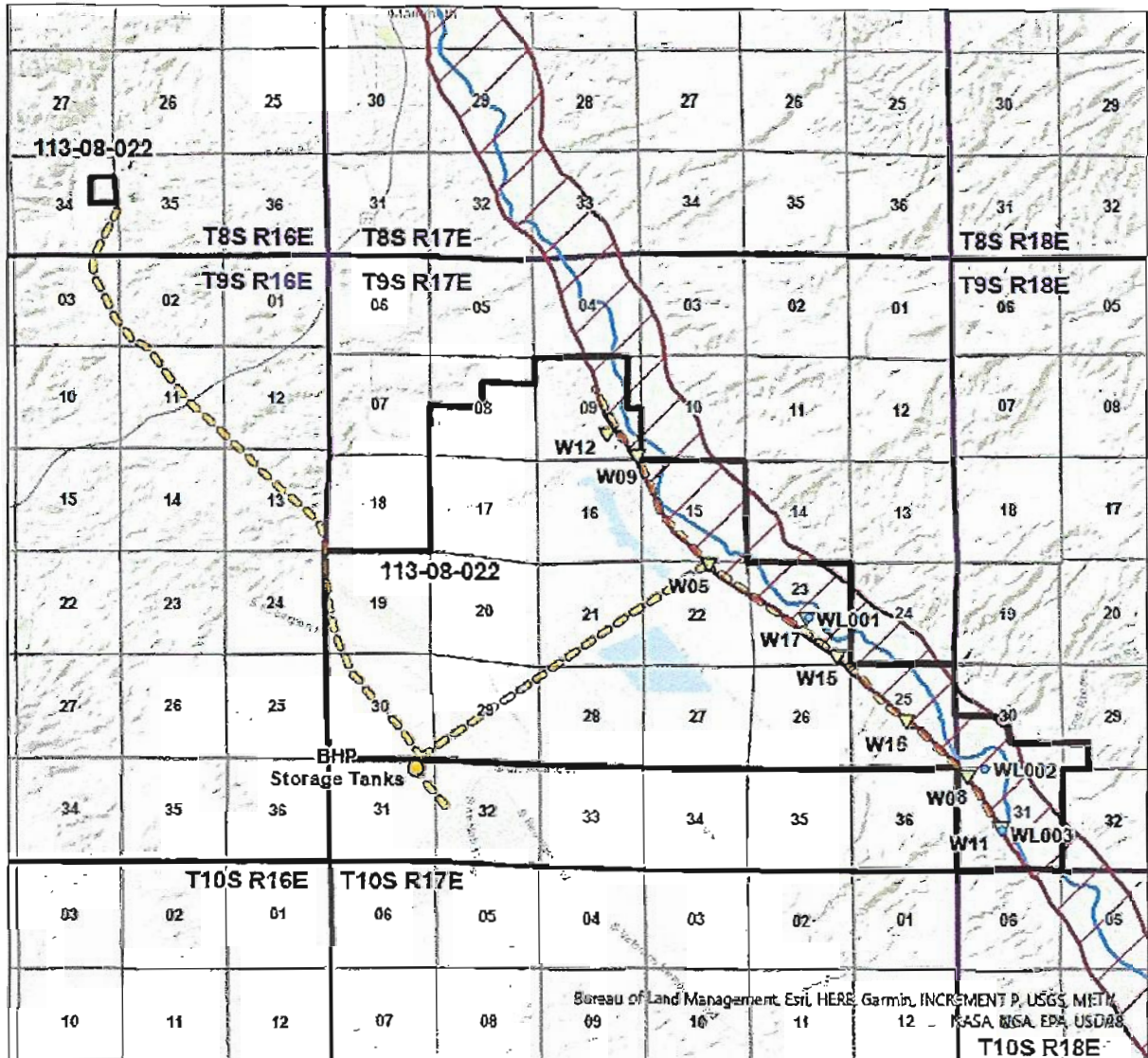
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Attachment A




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ATTACHMENT B

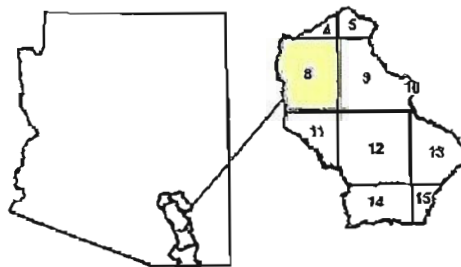
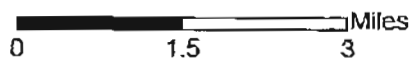


WFR No. 113-08-022 Map

River System: Gila
 Watershed: San Pedro
 Subwatershed: Redington
 Region: 08
 Date: September 2020



ADWR September 2020



Legend

- BHP Pipeline
- BHP Storage Tanks
- Township
- Section
- WFR Boundary
- Subflow zone
- San Pedro River
- Well Subflow Location**
- Inside SFZ
- Outside SFZ
- WL - Wildlife Use