

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  
27  
28

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. W1-11-1343  
ORDER TO DECONSOLIDATE CASE  
AND  
ORDER SETTING STATUS CONFERENCE

CONTESTED CASE NAME: *In re Edward and Ethelyn Lehner*  
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report  
DESCRIPTIVE SUMMARY: Contested case deconsolidated from Case W1-11-0232 for the limited purpose of adjudicating rights to use on private land.  
Status conference set for **December 3, 2021 at 1:30 p.m.**  
NUMBER OF PAGES: 19  
DATE OF FILING: October 7, 2021

**General Explanation**

This Order begins the process necessary to adjudicate claims for rights under state law to appropriable water for use on land in Section 21 Township 23S Range 22E that the Cochise

1 County Assessor has identified as owned by Gary H. Fry and Karen Taylor Fry Family Trust  
2 and Phelps Dodge Corporation.

3 Edward Lehner filed Statements of Claimant (“SOC”) 39-6018, 39-6019, 39-6020, 39-  
4 6021, 39-6022, and 39-6023 (collectively “SOCs”) for state law rights to use appropriable  
5 water on land in Section 21 Township 23S Range 22E. The Arizona Department of Water  
6 Resources (“ADWR”) investigated those claims and prepared Watershed File Report 111-24-  
7 CBB-002 (“WFR”) published in the Final San Pedro River Watershed Hydrographic Survey  
8 Report (1991). Zone 2 Well Report 111-24-CBB-002 was also prepared by ADWR during its  
9 investigation of the claims made. Based on its investigation, ADWR found potential water  
10 rights for domestic and irrigation uses on the land. It identified six wells as the sources of  
11 water for the claimed uses. The Arizona Department of Water Resources has determined that  
12 wells 1, 5, 6, and 7 are within the subflow zone. A copy of the WFR is attached as Attachment  
13 A. The land included within the boundaries of the WFR is shown on the map attached as  
14 Attachment B and labeled as “(2)”.

15 This case was initiated and consolidated with *In re San Pedro Riparian National*  
16 *Conservation Area* contested case no. W1-11-232 for the purpose of adjudicating the claims for  
17 federal reserved water rights and to resolve the objections filed to the WFR. While a portion of  
18 the land included within the boundaries of the WFR is owned by the United States, the  
19 Cochise County Assessor shows the remainder of the land within the WFR as privately owned  
20 and not part of the San Pedro Riparian National Conservation Area. A copy of the map  
21 prepared by the Cochise County Assessor is attached as Attachment C.

22 The Cochise County Assessor identifies tax parcels 104-37-001E and 104-37-001F as  
23 owned by Gary H. Fry and Karen Taylor Fry Family Trust and Phelps Dodge Corporation,  
24 respectively. Accordingly, this contested case is deconsolidated from *In re San Pedro Riparian*  
25 *National Conservation Area* contested case no. W1-11-232 for the purpose of adjudicating  
26 claims for water rights on land not owned by the United States.  
27  
28

1 **Claimants**

2 Edward Lehner filed the SOC's listed in the WFR on June 2, 1980. On January 19,  
3 2007, SOC's 39-6018 and 39-6022 were assigned to Phelps Dodge Corporation. The public  
4 records maintained by ADWR do not include assignments of the remaining SOC's from Edward  
5 Lehner to successor landowners. Thus, the Claimants in this case are Edward Lehner and  
6 Phelps Dodge Corporation.

7  
8 **IT IS ORDERED:**

9 1. Deconsolidation. *In re Edward and Ethelyn Lehner*, contested case W1-11-  
10 1343 is deconsolidated from *In re San Pedro Riparian Conservation Area*, contested case W1-  
11 11-0232 for the purpose of adjudicating claims for rights to water for use on privately owned  
12 land. All motions filed concerning water rights for land within the boundaries of Watershed  
13 File Report 111-24-CBB-002 that is privately owned shall use contested case no. W1-11-1343  
14 in the caption.  
15

16 2. Status Conference.

- 17 a. A Status Conference shall be held to determine whether the Claimants  
18 and the trustees of the Gary H. Fry and Karen Taylor Fry Family Trust  
19 intend to pursue claims for rights to appropriable water for irrigation and  
20 domestic use on the land included within the boundaries of the WFR.  
21  
22 b. The Status Conference shall be held on **December 3, 2021 at 1:30 p.m.**  
23  
24 c. The Status Conference shall be held using the Court Connect program.  
25 Instructions for Court Connect are attached as Attachment D. If you  
26 receive this Order by email, click on the red box "Join Court Connect  
27 Hearing" on the attached instructions to make an appearance. If you do  
28 not receive this Order by email, log into the Court Connect program on

1 the internet by typing <https://tinyurl.com/specialwatermaster>. If you do  
2 not have access to the internet, you may attend telephonically using the  
3 telephone number and access code included in the instructions for Court  
4 Connect. An appearance may also be made telephonically using the  
5 following instructions:  
6

7 Dial: 602-506-9695 (local)

8 1-855-506-9695 (toll free long distance)

9 Dial Collaboration (conference) Code 357264#  
10

11 3. Court-Approved Mailing List.

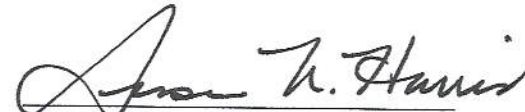
12 A. The Court-Approved Mailing List for this contested case shall be the  
13 mailing list for *In re San Pedro Riparian National Conservation Area* No. W1-  
14 11-232, amended to include the Claimants, the trustees of the Gary H. Fry and  
15 Karen Taylor Fry Family Trust, and the objectors in contested case W1-11-1343  
16 as listed on Attachment E.  
17

18 B. A copy of any pleading filed with the Clerk of the Maricopa County  
19 Superior Court in this case shall be served upon each person listed on the Court-  
20 approved mailing list.  
21


22 C. Claimants wishing to be added or removed from the mailing list shall file  
23 a motion with the Special Master. Parties allowed to intervene will be  
24 automatically added to the Court-approved mailing list.  
25

26 D. The Clerk of the Court will send copies of all minute entries and orders  
27 issued in this case to the parties listed on the Court-approved mailing list.  
28 Upon request, the Clerk of the Court will provide copies by email. Parties may

1 request emailed copies of minute entries and orders by completing and  
2 submitting a CONSENT FOR ELECTRONIC RECEIPT OF WATER CASE  
3 DOCUMENTS, which is attached as Attachment F.  
4  
5  
6

7  
8   
9 SUSAN WARD HARRIS  
10 Special Master  
11

12 On October 7, 2021, the original of the foregoing was  
13 delivered to the Clerk of the Maricopa County Superior  
14 Court for filing and distributing a copy to all persons  
15 listed on the Court-approved mailing list for this  
16 contested case.

17   
18 Emily Natale  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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  
27  
28

**ATTACHMENT A**

LAND OWNER  
-----  
LEHNER, EDWARD F.  
& ETHELYN

WATERSHED FILE  
REPORT NUMBER  
-----  
111-24-CBB-002

W1-11-1343

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION	TWNP	RNGE	CLAIM DATE	DIVERSION SECTION	LOCATION TWNP	RNGE
39-0006018	AMENDED QUE.RECD	IRRIGATION REC/FISH/WLDFL	4.00 1.00	SESWNE21	230S	220E	1900	SESWNE21	230S	220E
39-0006019	AMENDED QUE.RECD	IRRIGATION STOCK	.25 .25	SEWNE21	230S	220E	1900	SEWNE21	230S	220E
39-0006020	QUE.RECD	DOMESTIC REC/FISH/WLDFL	.25 .25	SWNE21	230S	220E	1900	SWNE21	230S	220E
39-0006021	QUE.RECD	IRRIGATION STOCK	2.00 1.00	SWNE21	230S	220E	1900	SWNE21	230S	220E
39-0006022	QUE.RECD	IRRIGATION STOCK	4.50 .50	SESENE21	230S	220E	1900	SESENE21	230S	220E
39-0006023	AMENDED QUE.RECD	IRRIGATION DOMESTIC	3.00 1.00	SESWNE21	230S	220E	1900	SESWNE21	230S	220E
		REC/FISH/WLDFL	.40 .50	NWNWNE21	230S	220E	1906	NWNWNE21	230S	220E
			.10							

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
39-0006018	IRRIGATION DOMESTIC STOCK WILDLIFE	DISCONTINUED DOMESTIC INCIDENTAL INCIDENTAL	W01	IR090, IR091
39-0006019	IRRIGATION DOMESTIC STOCK WILDLIFE	DISCONTINUED DOMESTIC INCIDENTAL INCIDENTAL	W02	DM001, IR090, IR091
39-0006020	IRRIGATION STOCK	DISCONTINUED INCIDENTAL	W07	IR090, IR091
39-0006021	IRRIGATION STOCK	DISCONTINUED INCIDENTAL	W05	IR090, IR091
39-0006022	IRRIGATION STOCK	DISCONTINUED INCIDENTAL	W06	IR090, IR091
39-0006023	IRRIGATION DOMESTIC WILDLIFE	DISCONTINUED DOMESTIC INCIDENTAL	W03	DM001, IR090, IR091

DIVERSIONS

DIV #	LOCATION SECTION	TWNP	RNGE	DIVERSION NAME	WATER SOURCE AND CLASSIFICATION
W01	SESWNE21	230S	220E	UNNAMED	GROUNDWATER : ZONE 2
W02	SEWNE21	230S	220E	UNNAMED	GROUNDWATER : ZONE 2
W03	NWNWNE21	230S	220E	UNNAMED	GROUNDWATER : ZONE 2
W05	SESENE21	230S	220E	UNNAMED	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER
W06	SESWNE21	230S	220E	UNNAMED	GROUNDWATER : ZONE 2
W07	SWNE21	230S	220E	UNNAMED	GROUNDWATER : ZONE 2

USES

PWR #	LOCATION SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCES	PHOTO DATE	SOURCE CHANGE	FACILITY NAME
DM001	NWNWNE21	230S	220E	W03	GROUNDWATER : ZONE 2		NO	
IR090	NE21	230S	220E	W01, W02, W05 W06, W07	GROUNDWATER : ZONE 1 GROUNDWATER : ZONE 2	1935	NO	
IR091	NWNE21 SWNE21	230S 230S	220E 220E	W01	GROUNDWATER : ZONE 2	1955	NO	

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	*APPARENT FIRST USE DATE* DATE BASIS FOR DATE	WATER SOURCES AND CLASSIFICATIONS
DMO01	39-0006019 39-0006023	NONE		GROUNDWATER : ZONE 2
IR090	39-0006018 39-0006019 39-0006020 39-0006021 39-0006022 39-0006023	NONE	1935 1935 AERIAL PHOTO	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER GROUNDWATER : ZONE 2
IR091	39-0006018 39-0006019 39-0006020 39-0006021 39-0006022 39-0006023	NONE	1955 1955 AERIAL PHOTO	GROUNDWATER : ZONE 2

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE	ACRES	CROP TYPE	EFF	WATER DUTY	ESTIMATED VOLUME	REMARKS
DMO01							
IR090	REGIONAL	83.6	NO CROP				SEE VOLUME 1 - GENERAL ASSESSMENT
IR091	REGIONAL	3.3	NO CROP				DISCONTINUED IRRG. DISCONTINUED IRRG.

EXPLANATION

FILINGS AND DECREES

FILINGS 39-6018 THROUGH 39-6023 - UNIFORM QUESTIONNAIRES WERE RECEIVED WHICH REFLECT INFORMATION PREVIOUSLY PROVIDED IN THE ORIGINAL STATEMENTS OF CLAIMANT.

DIVERSIONS

W1-W3 & W6-W7 - WELLS PROVIDE WATER FOR THE IRRIGATION OF NATIVE PASTURE FOR WILDLIFE ENHANCEMENT, DOMESTIC, STOCK, AND WILDLIFE USES.

USES AND RESERVOIRS

DM1 - DOMESTIC WATER USE INCLUDES STOCK AND WILDLIFE USES.

IR90 & IR91 - DISCONTINUED IRRIGATION: D.W.R. HAS DETERMINED THAT NO IRRIGATION HAS OCCURRED ON THIS PROPERTY IN THE LAST FIVE YEARS, BUT THERE HAS BEEN IRRIGATION WITHIN THE PAST TEN YEARS BASED UPON A REVIEW OF HISTORICAL AERIAL PHOTOGRAPHY AND FIELD INVESTIGATIONS.

DISPOSITION OF LAND OWNER/CLAIMANT COMMENTS

A COMMENT WAS RECEIVED FROM THE LAND OWNER WHICH REQUESTED A RE-EVALUATION OF THE "DISCONTINUED IRRIGATION" STATUS.



LAND OWNER	ZONE 2 WELL REPORT NUMBER
-----	-----
LEHNER, EDWARD F. & ETHELYN	111-24-CBB-002

WELLS	WELL NAMES	WELL LOCATION			WATER USES SERVED	REMARKS
		SECTION	TWNP	RNGE		
W01	UNNAMED	SESWNE21	230S	220E	IR090, IR091	W1-11-1343
W02	UNNAMED	SESWNE21	230S	220E	IR090	
W03	UNNAMED	NWNWNE21	230S	220E	DM001	
W06	UNNAMED	SESWNE21	230S	220E	IR090	
W07	UNNAMED	SWNE21	230S	220E	IR090	

WATER USE NUMBERS	WATER USE LOCATION			*** APPARENT FIRST USE ***		APPAR. ANNUAL VOLUME USED	ACRES IRRIGATED
	SECTION	TWNP	RNGE	DATE	BASIS FOR DATE		
DM001	NWNWNE21	230S	220E				
IR090	NE21	230S	220E	1935	1935 AERIAL PHOTO		83.6
IR091	NWNE21	230S	220E	1955	1955 AERIAL PHOTO		3.3
	SWNE21	230S	220E				

APPLICABLE STATEMENTS OF CLAIMANT	APPLIES TO: WELLS	APPLIES TO: WATER USES
39-0006018	W01	IR090, IR091
39-0006019	W02	DM001, IR090, IR091
39-0006020	W07	IR090, IR091
39-0006021		IR090, IR091
39-0006022	W06	IR090, IR091
39-0006023	W03	DM001, IR090, IR091

EXPLANATION

THE APPARENT ANNUAL VOLUME REPORTED FOR IR090 IS PARTIALLY SUPPLIED BY ZONE 1 GROUNDWATER.

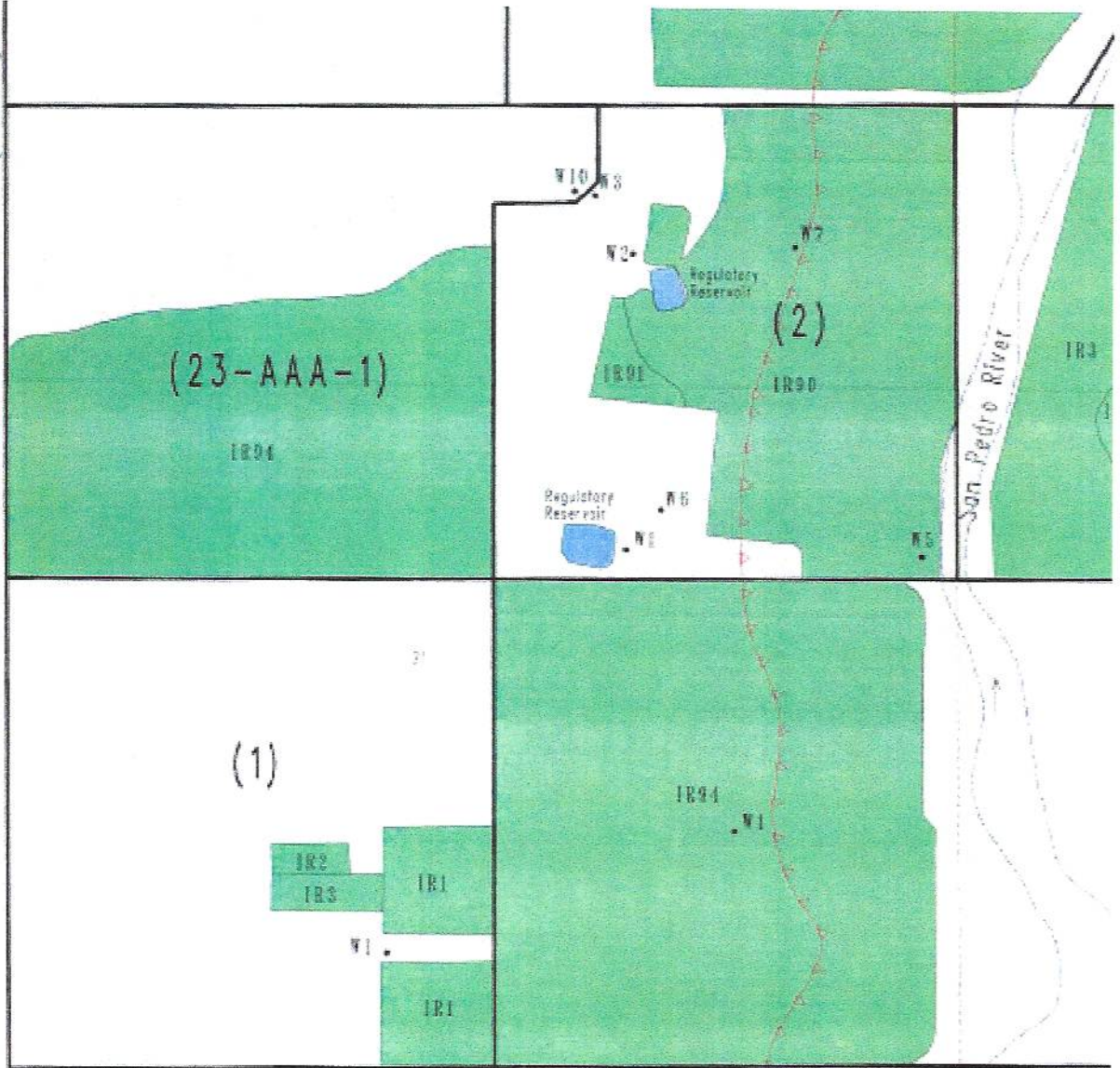
W1-W3 & W6-W7 - WELLS PROVIDE WATER FOR THE IRRIGATION OF NATIVE PASTURE FOR WILDLIFE ENHANCEMENT, DOMESTIC, STOCK, AND WILDLIFE USES.

DM1 - DOMESTIC WATER USE INCLUDES STOCK AND WILDLIFE USES.

IR90 & IR91 - DISCONTINUED IRRIGATION: D.W.R. HAS DETERMINED THAT NO IRRIGATION HAS OCCURRED ON THIS PROPERTY IN THE LAST FIVE YEARS, BUT THERE HAS BEEN IRRIGATION WITHIN THE PAST TEN YEARS BASED UPON A REVIEW OF HISTORICAL AERIAL PHOTOGRAPHY AND FIELD INVESTIGATIONS.

# ATTACHMENT B

T 23 S  
[91-23-064]



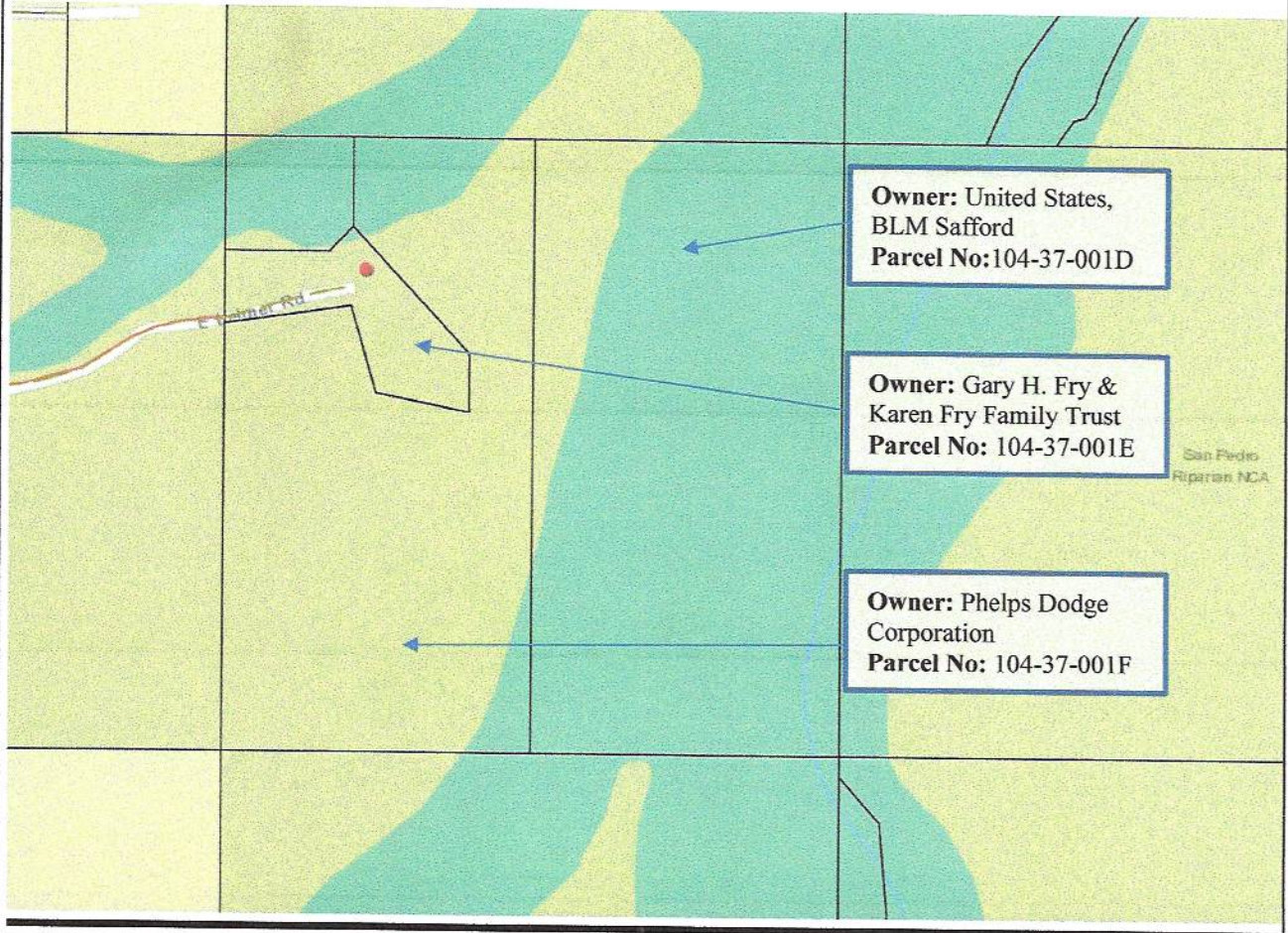
[111-24-095]

R 22 E

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  
27  
28

# ATTACHMENT C

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  
27  
28



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  
27  
28

**ATTACHMENT D**



## Court Connect Hearing Notice for In re Edward and Ethelyn Lehner

*This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.*

*All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.*

**Participants:** Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

**Case Name:** In re Edward and Ethelyn Lehner, Contested Case No. W1-11-1343

**Start Date/Time:** December 3, 2021 at 1:30 p.m.

**JOIN COURT CONNECT HEARING**

**Dial-in Information:** +1 917-781-4590

**Private Dial-in Information:** for privacy purposes, you can block your phone number by dialing \*67 +1 917-781-4590

**Dial-in Access Code:** 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)



# ATTACHMENT E

1  
2  
3 Arizona Department of Water Resources

4 Kimberly Parks

5 P. O. Box 36020

6 Phoenix, AZ 85067

7 ASARCO Incorporated

8 Lauren J. Caster

9 Fennemore Craig P.C.

10 2394 East Camelback Road

11 Suite 600

12 Phoenix, AZ 85016-3429

13 Bella Vista Ranches Ltd. Partnership

14 Daniel Cracchiolo

15 702 E. Osborn

16 P.O. Box 16882

17 Phoenix, AZ 85011

18 BHP Copper, Inc.

19 John D. Burnside

20 Snell & Wilmer, L.L.P.

21 400 E. Van Buren Street, Ste 1900

22 Phoenix, AZ 85003

23 City of Phoenix

24 Charles L. Cahoy, Asst. City Attorney

25 200 W. Washington St.

26 13<sup>th</sup> Floor

27 Phoenix, AZ 85003

28 Clerk of the Superior Court

Maricopa County

Attn: Water Case

601 West Jackson Street

Phoenix, AZ 85003

Gila River Indian Community

Linus Everling and Thomas L. Murphy

Office of the General Counsel

P. O. Box 97

Sacaton, AZ 85147

1 San Carlos Apache Tribe  
Joe P. Sparks and Laurel A. Herrmann  
2 The Sparks Law Firm, P.C.  
7503 First Street  
3 Scottsdale, AZ 85251-4573

4 Liberty Utilities (Bella Vista Water) Corp.  
CT Corporation  
5 3800 N. Central Ave. Ste. 460  
6 Phoenix, AZ 85012

7 Pueblo Del Sol Water Company  
Corporation Service Company  
8 2338 W. Royal Palm Rd.  
9 Suite J  
Phoenix, AZ 85021

10 R. Lee Leininger  
11 U.S. Department of Justice  
12 Natural Resources Section  
999 18<sup>th</sup> Street, So Terrace, Suite 370  
13 Denver, CO 80202

14 Tonto Apache Tribe  
15 Richard Palmer, Jr., Jeremiah Weiner  
and Lauren Mulhern  
16 Rosette, LLP  
565 W. Chandler Blvd. Suite 212  
17 Chandler, AZ 85225

18 Salt River Project  
19 John B. Weldon, Jr., Mark A. McGinnis, and Michael Foy  
Salmon, Lewis & Weldon PLC  
20 2850 E Camelback Rd, Ste. 200  
Phoenix, AZ 85016

21 Yavapai-Apache Nation  
22 S. Montgomery, R. Interpreter, J. Tomkus  
23 Montgomery & Interpreter, Plc  
3301 E. Thunderbird Road  
24 Phoenix, AZ 85032

25 Special Master Susan Ward Harris  
26 Superior Court of Arizona  
201 W. Jefferson Street  
27 Courtroom 301  
Phoenix, AZ 85003  
28

1 U.S. Department of Justice  
Patrick Barry  
2 Environment and Natural Resources  
P.O. Box 7611  
3 Washington, D.C. 20044-7611

4 Edward and Ethelyn Lehner  
5 P. O. Box 13  
Hereford, AZ 85615  
6

7 Edward and Ethelyn Lehner  
4871 Territory Loop  
8 Tucson, AZ 85750

9 Sean Hood  
10 Fennemore Craig, P.C.  
2394 E Camelback Rd, St 600  
11 Phoenix, AZ 85016-3429

12 Gary H. Fry and Karen Taylor Fry Family Trust  
13 10715 E. Lehner Road  
Hereford AZ 85615  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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  
27  
28

**ATTACHMENT F**

**CLERK OF THE COURT  
SUPERIOR COURT OF ARIZONA**

Jeff Fine  
Clerk

**MARICOPA COUNTY  
Customer Service Center  
601 West Jackson  
Phoenix, AZ 85003**

602 372-4115  
Water Case Clerk

**CONSENT FOR ELECTRONIC RECEIPT OF WATER CASE DOCUMENTS**

In an effort to provide more timely and cost effective distribution of copies of filed Water Case documents, the Clerk of the Superior Court would like implement electronic distribution via email. To do so, we require your consent to receive copies of documents electronically at an email address provided to our office.

This consent is voluntary and can be rescinded if you so choose. If you no longer wish to receive Water Case documents from the Clerk of Superior Court electronically, please send written notification to the Clerk of the Superior Court Water Case Specialist at the email address below requesting that all future records be sent in paper form.

Please note that if you consent to receive documents via email, you must notify the Clerk's Office of any change to your email address to avoid delay in receiving future filings. In the event there is no valid email address on file with the Clerk of the Superior Court Water Case Specialist, documents will be mailed to the address provided.

If you wish to consent to receive future documents via email, please either fill out the information below and mail to our office or provide the below information to [Mayra.Antelo@Maricopa.Gov](mailto:Mayra.Antelo@Maricopa.Gov).

Preferred email address:

---

Alternate email address:

---

Physical address:

---

Phone number:

---

Firm Name:

---

Name [Printed]:

---

Signature:

---

Date:

---

Thank you,

Mayra Antelo  
Clerk of the Superior Court  
Water Case Specialist  
(602) 372-5375 options 7,1,3,4