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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 Nos. W1-11-1207
W1-11-1412

ORDER GRANTING THE MOTION TO
CONSOLIDATE CASES AND VACATE
STATUS REPORT FILING

AND

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO STAY

CONTESTED CASE NAME: *In re Phelps Dodge Corporation I*
In re Phelps Dodge Corporation II
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: Contested Cases W1-11-1207 and W1-11-1412 are consolidated and all future pleadings shall be filed under Contested Case No. W1-11-1207. Order requiring a Status Report due on July 23, 2021 is vacated. The contested cases are stayed until a ruling issues on the Report of the Special Master on Methodology for Determination of Cone of Depression (November 14, 2018).
NUMBER OF PAGES: 3
DATE OF FILING: July 21, 2021

1 Freeport Minerals Corporation moved to consolidated two contested cases that originated
2 from Statement of Claimant 39-2297. It also moved to vacate the order requiring the filing of a
3 Status Report on July 23, 2021, and to stay any further action in this case until Arizona
4 Department of Water Resources completes the test known as the subflow depletion test. No
5 party objected to either the consolidation of the two contested cases or the vacating of the order
6 requiring the Status Reports. The San Carlos Apache Tribe objected to the granting of the
7 requested stay because it claims that Freeport Minerals Corporation sought to create delay in
8 violation of Ariz. R. Civ. P. 11(b)(1). It also argued that the test, the subflow depletion test, to
9 determine whether a claimant is pumping subflow has not been authorized. It is the position of
10 the San Carlos Apache Tribe that the only analysis that can be conducted at this time must be
11 based on the decision made by Judge Ballinger in his Order dated September 28, 2005, which is
12 the subject of the test developed by Arizona Department of Water Resources and the Report of
13 the Special Master on Methodology for Determination of Cone of Depression (November 14,
14 2018) ("Report") currently under review by Judge Brain. On July 19, 2021, Freeport Minerals
15 Corporation filed its Reply arguing that the water which is the subject of Statement of Claimant
16 39-2297 is percolating groundwater and that it would be inefficient and wasteful of party and
17 judicial resources to litigate the claims until Arizona Department of Water Resources develops
18 the subflow depletion test.

19 Freeport Minerals Corporation's request for the stay does not violate Ariz. R. Civ. P.
20 11(b)(1). Without addressing or making any decision on the merits of the arguments made by
21 the parties concerning the jurisdictional test, a stay will be granted until Judge Brain issues a
22 decision on the Report. Once that decision is issued, the parties may reurge their motions, i.e.,
23 Freeport Minerals Corporation may move for a further stay and San Carlos Apache Tribe may
24 move (or respond to a motion from Freeport Minerals Corporation) that a further stay of these
25 contested cases is not warranted.

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1 **IT IS ORDERED:**

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- 3 1. Contested Cases W1-11-1207 and W1-11-1412 are consolidated and all future
- 4 pleadings shall be filed under Contested Case No. W1-11-1207.
- 5 2. The requirement that Freeport Minerals Corporation file a Status Report by July 23,
- 6 2021 is vacated.
- 7 3. These contested cases are stayed until the issuance of a decision on the Report of the
- 8 Special Master on Methodology for Determination of Cone of Depression
- 9 (November 14, 2018)
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14 Susan Ward Harris
15 Special Master

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17 On July 21, 2021, the original of the foregoing was

18 delivered to the Clerk of the Maricopa County Superior

19 Court for filing and distributing a copy to all persons

20 listed on the Court-approved mailing list for these

21 contested cases.

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