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.: **W1-11-2503** **ORDER SETTING STATUS CONFERENCE**

CONTESTED CASE NAME: *In re Magma Copper – Irrigation*

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: 6

DATE OF FILING: November 25, 2020

Watershed File Report 113-08-AD-002 ("WFR") investigated seven Statements of Claimant filed by BHP Copper, Inc. formerly known as Magma Copper Company ("Claimant"), for uses of water pumped from six wells located along the San Pedro River. [1] A map of the wells

[1] The WFR also included Statements of Claimant filed by Hampton & Hicks. *See* 39-4351 and 39-4351, for which no assignments appear in ADWR's public records.

is shown on Attachment A. The Arizona Department of Water Resources ("ADWR") concluded that the Claimant used water for domestic and irrigation purposes. It estimated the volume of water for irrigation to be more than 1,100 acre feet per year using the maximum potential method. It also determined that Claimant stored water in a reservoir for irrigation use. After this case was initiated, Claimant filed amended Statements of Claimant.

The Statements of Claimant listed in the original WFR filed by BHP Copper, Inc. asserted rights to approximately 3,900 acre feet of water per year. In its amended Statements of Claimant 39-3159, 39-3162, 39-3172, and 39-3175 for Other Uses, BHP Copper, Inc. estimated the flow from the artesian wells as 1,860 acre feet per year. In its amended Statements of Claimants 39-3159, 39-3162, 39-3165, 39-5228, 39-5229, 39-5230, and 39-5231 for Irrigation Uses, BHP Copper, Inc. stated that its field and ranches located in the floodplain of the San Pedro River were not being irrigated. It incorporated by reference the historical place of use, place and means of diversion, and quantities of use from its original Statements of Claimant. The parties and ADWR agreed that ADWR would investigate the amended claims and prepare an amended WFR. On September 18, 2020, Arizona Department of Water Resources filed its amended WFR and provided copies to all parties in this contested case as well as to all parties on the court-approved mailing list for the Gila River Adjudication.

The amended WFR encompassed the same land included in the original WFR. Amended WFR at 5. It reported that BHP Copper, Inc claims 527 acre feet of water per year. Arizona Department of Water Resources concluded that no water was used for irrigation and that the only uses were for wildlife watering. It assigned a quantity of water those uses of "reasonable use". In terms of priority dates, ADWR assigned no priority date in its amended WFR earlier than the priority dates in the original WFR. It also identified the wells that provided the sources of water for the claimed uses. A copy of the map referenced in the amended WFR, as Figure 2, is attached as Attachment B.

As stated in the Minute Entry filed on March 26, 2019, two general issues should be

considered at this time. The first issue is whether notice of the amended WFR should be provided to persons who received notice of the original WFR but did not receive notice of the amended WFR. At issue here is not notice at the initiation of the action but an additional notice in the midst of a contested case to persons who did not object to the original WFR and who have not moved to be added to the court-approved mailing list for this case or the court-approved mailing list for the Gila River Adjudication. A due process right to notice does not exist at all stages of the proceeding. *Emmett McLoughlin Realty, Inc. v. Pima County*, 212 Ariz. at 356, ¶ 20, 132 P.3d at 295 (App. 2006), *as corrected* (Mar. 9, 2006). A requirement for notice at the pendency of the action does not necessarily dictate notice of a subsequent proceeding in the action that has been properly noticed. *Lu Ranching Co. v. United States,* 138 Idaho 606, 609, 67 P.3d 85, 88 (2003) ("The United States Supreme Court has insisted on less exacting standards for notice of subsequent procedures and actions when parties know proceedings may affect their rights.")

A second general issue concerns whether a stay of this matter is warranted because not all of the wells are located in the subflow zone. The amended WFR shows seven wells listed as points of diversion are located within the subflow zone and an eighth well, Well 07, that is located outside the boundary of the subflow zone. According to the amended WFR, Well 07 is located in NESESW section 14 of T9S R17E. The original WFR does not list a Well 07 as a point of diversion. The amended WFR explains that "Well No. 33 was included in the amended SOCs and added to filing 39-5228 and designated as Diversion No. W07 in the amended WFR." Amended WFR at 7. The only use that Well 07 supplies according to the amended WFR is wildlife watering.

IT IS ORDERED that a status conference shall be held on **December 18, 2020** at **1:30 p.m.** The purpose of the status conference is to determine if, in fact, the parties believe that a due process issue exists as to whether additional notice of the amended WFR must be provided to persons in addition to those already noticed by ADWR. In addition, the parties should be prepared to state their positions with respect to objections, which include whether a deadline should be set to file new or amended objections or whether the parties intend to proceed based on their original objections. The parties will be expected to state their positions with respect to the merits of a stay

of the proceedings. Finally, the parties are encouraged to raise any other procedural issues they deem relevant prior to or in connection with establishing a schedule to adjudicate water rights and resolve objections to the amended WFR.

Arizona Department of Water Resources shall be prepared to answer any questions that arise regarding the location of wells relative to the subflow zone as shown in Figure 2 to the amended WFR.

Instructions for public access to the status conference:

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

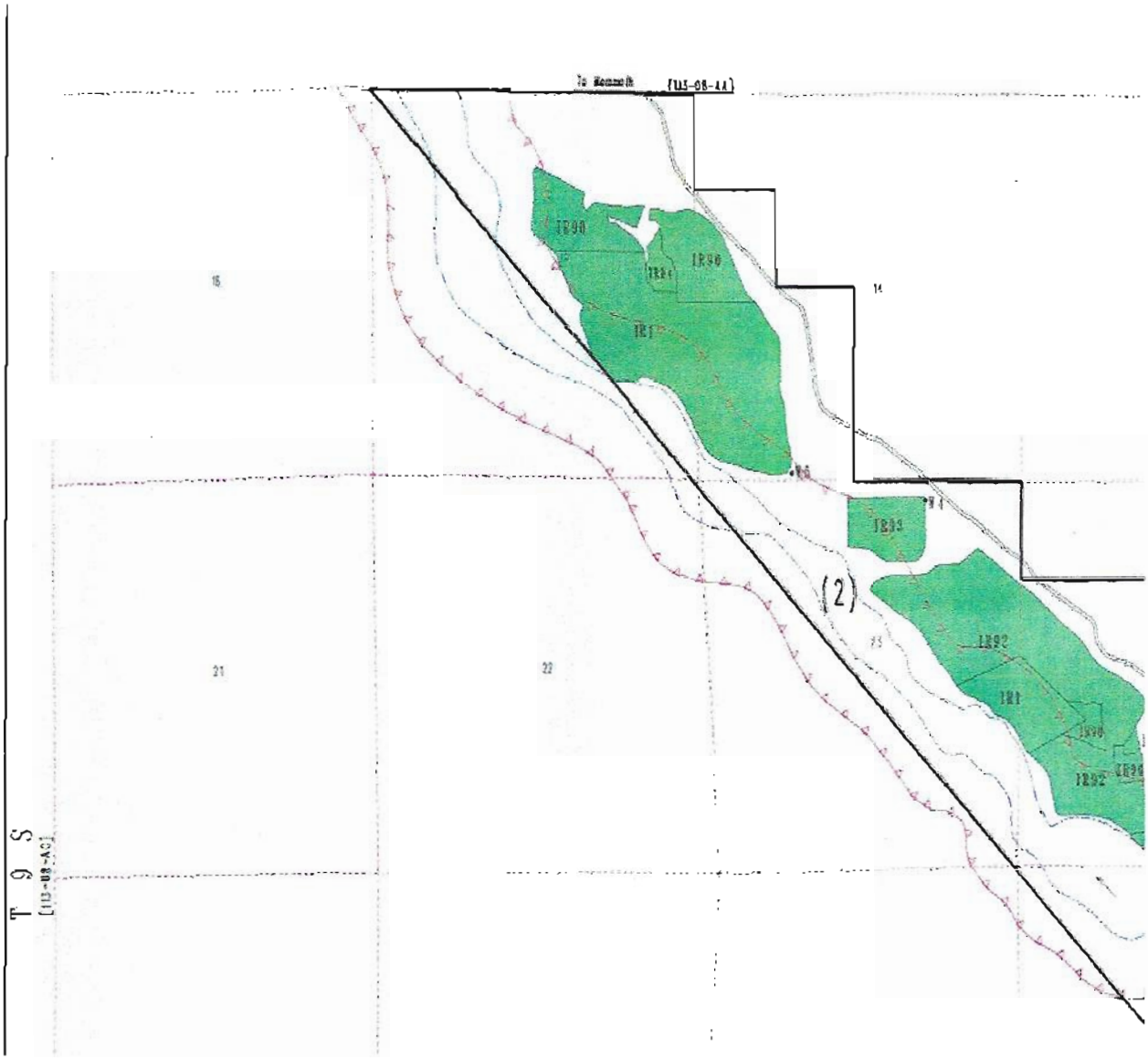
DATED: November 25, 2020

Susan Ward Harris
Special Master

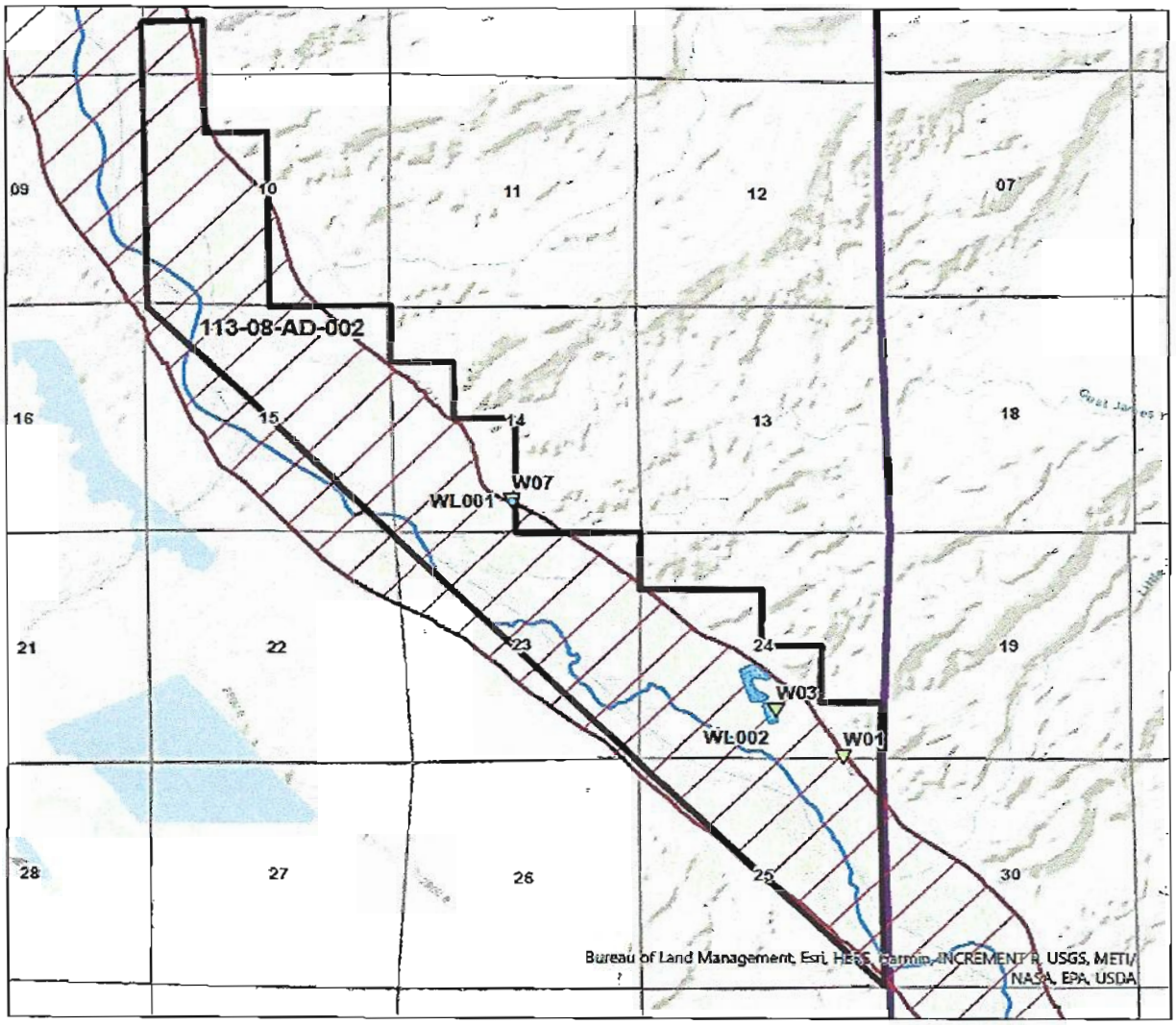
On November 25, 2020, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing list for this contested case No(s) W1-11-2503.

Durina Farrall

Attachment A



ATTACHMENT B



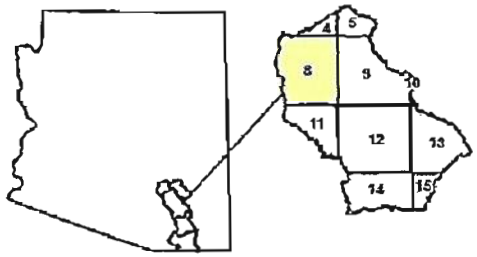
WFR No. 113-08-AD-002 Map

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

ADWR September 2020

0 0.5 1 Miles

N



Legend

Well Subflow Location
- Inside SFZ
- Outside SFZ
- WL - Wildlife Use

WL - Wildlife Use
WFR Boundary
Subflow zone
San Pedro River
Township
Section