

OPEN MEETING ITEM



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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 30, 2014
DOCKET NO.: W-03718A-07-0687

Arizona Corporation Commission
DOCKETED

JUN 30 2014

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

RANCHO SAHUARITA WATER COMPANY, L.L.C.
(ORDER EXTENDING TIME DEADLINE CONTAINED IN DECISION NO. 73157 AND FOR DELETION OF TERRITORY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 9, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 22, 2014 and JULY 23, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF
RANCHO SAHUARITA WATER COMPANY,
L.L.C. FOR THE TRANSFER OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO SAHUARITA WATER
COMPANY, L.L.C. AND EXTENSION OF THE
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WATER SERVICE.

DOCKET NO. W-03718A-07-0687

DECISION NO. _____

**ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 73157 AND FOR
DELETION OF TERRITORY**

Open Meeting
July 22 and 23, 2014
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

FINDINGS OF FACT

Background

1. On November 19, 2008, the Commission issued Decision No. 70620, granting Rancho Sahuarita Water Company, L.L.C.’s request to transfer its Certificate of Convenience and Necessity (“CC&N”) to Sahuarita Water Company, L.L.C. (“Sahuarita” or “Company”), and to extend its CC&N. The approved CC&N extension covered three parcels each held by a different owner: Mission Peaks 4000, L.L.C. (“Mission Peaks”), Sahuarita Mission Partners (“SMP”), and the Arizona State Land Department (“ASLD”). Residential subdivisions and commercial plots had been planned for the parcels.

2. Decision No. 70620 required Sahuarita to file within three years “copies of the Approval to Construct from the Arizona Department of Environmental Quality for well(s), storage tank(s), booster pump station(s), and the distribution system necessary to serve the initial subdivision

1 in the extension area.”¹ The Approval to Construct (“ATC”) was due to be filed with the
2 Commission on or before November 19, 2011.

3 3. On November 4, 2011, Sahuarita docketed a request for an extension of time to file the
4 ATC. The Company stated that because of the depressed real estate market, Mission Peaks
5 terminated its project and sold its parcel to Freeport – McMoRan Copper and Gold, Inc. (“Freeport –
6 McMoRan”). SMP and ASLD were also re-evaluating development of their respective parcels, but
7 had not finalized their plans. Sahuarita attached to its motion letters from Freeport – McMoRan,
8 SMP and ASLD indicating they preferred the Company to continue to be the future water provider
9 for their respective parcels. Sahuarita stated it still wished to provide water service within the CC&N
10 extension areas.

11 4. Decision No. 73157 (May 18, 2012), granted the Company’s request and extended the
12 compliance deadline for the ATC to November 19, 2013.

13 5. On November 4, 2013, Sahuarita filed a Motion for Extension of Compliance Date
14 (“Motion”). According to the Motion, the 2008 economic downturn continued to delay development
15 in the extension area and the planned projects had not moved forward. In addition, ASLD had sold
16 its parcel to another mining company, ASARCO, L.L.C. (“ASARCO”). Sahuarita attached to the
17 Motion a letter from SMP advising that SMP still plans to develop its parcel and supports Sahuarita’s
18 Motion. The Company stated that although its request specifically related to the SMP parcel, and
19 although Sahuarita had not received letters from Freeport – McMoRan or ASARCO renewing
20 requests for service, the Company sought an extension of the filing deadline for the entire CC&N
21 extension area approved in Decision No. 70620.

22 6. Sahuarita noted that it has satisfied all other requirements of the Decision 70620 and
23 requested that the Commission grant an extension of time to file the ATC for an additional five years,
24 to November 19, 2018.

25 7. On January 17, 2014, the Commission’s Utilities Division (“Staff”) filed a
26 Memorandum recommending approval of Sahuarita’s Motion to extend the ATC filing deadline for
27

28 ¹ Decision No 70620, page 11.

1 the SMP parcel. However, Staff recommended that the extension should be approved for the typical
2 two years, to November 19, 2015, rather than five, and that no further extensions of time should be
3 granted in this matter. Additionally, Staff recommended that since Sahuarita had not received
4 updated requests for service from the owners of the two remaining parcels, the Motion should be
5 denied for those areas and the property should be deleted from the Company's certificated area.

6 8. On January 24, 2014, Sahuarita docketed its Reply to Staff's Response to Sahuarita's
7 Motion for Extension of Compliance Date ("Reply"). The Company asserted that its request for a
8 five-year extension was not unreasonable given the current state of the economy and noted that SMP
9 has consistently affirmed its intention to move forward with the development of its parcel once the
10 real estate market has improved. Alternatively, Sahuarita requested that if a two-year extension is
11 granted, the Company should be allowed to file another extension request before that extension
12 expires, if necessary.

13 9. Pursuant to a Procedural Order docketed March 26, 2014, a procedural conference was
14 held on April 10, 2014, to discuss Staff's recommendation that the Freeport - McMoRan parcel and
15 the ASARCO parcel should be deleted from Sahuarita's certificated area. During the procedural
16 conference, Sahuarita stated that it did not oppose Staff's recommendation regarding the deletion of
17 the two parcels.² The parties discussed due process concerns and also whether the property owners
18 had received sufficient notice of the possible removal of their parcels from the Company's CC&N.
19 The parties agreed that written notice should be provided to the parcels' owners.

20 10. A Procedural Order docketed April 15, 2014, directed Sahuarita to mail to all property
21 owners within the two parcels a letter explaining the background of the matter and advising them of
22 the following points:

- 23 • Staff recommended that the parcels should be deleted from Sahuarita's CC&N;
- 24 • If the parcels are deleted, Sahuarita will no longer be the exclusive provider of water
25 service for that property;
- 26 • The property owners have 45 days from the date of the letter to respond in writing
- 27

28 ² Transcript of April 10, 2014, Procedural Conference, page 8; see also, Reply, page 1.

1 indicating whether the property owners wish Sahuarita to continue to be the sole water
2 service provider for the parcels;

- 3 • If the property owners did not respond in writing within 45 days of the letter's date,
4 the Company and Staff could conclude that the property owners are no longer
5 interested in having Sahuarita as the exclusive water provider for their parcels; and,
- 6 • Sahuarita must provide contact information for both the Company and Staff in case the
7 property owners had questions about the information contained in the letter.

8 11. On April 23, 2014, Sahuarita docketed copies of letters dated April 22, 2014, it sent to
9 ASARCO and Freeport – McMoRan providing the information required by the April 15, 2014,
10 Procedural Order. The Company attached an affidavit averring that, to the best of the Sahuarita's
11 knowledge, ASARCO and Freeport – McMoRan are the sole property owners within their respective
12 parcels, and verified that the Company does not oppose deletion of the two parcels from its CC&N.

13 12. Given the date of these letters, responses from ASARCO and Freeport – McMoRan
14 were due on or before June 6, 2014.

15 13. On June 17, 2014, a Procedural Order was issued directing the Company and Staff to
16 file a Joint Notice indicating, among other things, whether ASARCO and Freeport – McMoRan had
17 written to confirm their desire to receive water service from Sahuarita.

18 14. On June 24, 2014, the Company and Staff docketed their Joint Notice of Filing stating
19 that neither ASARCO nor Freeport – McMoRan had written to either party renewing requests for
20 water service from Sahuarita. The Company and Staff agreed that due to the substantial changes in
21 situation since the Commission issued Decision No. 70620, it is in the public interest to remove the
22 two parcels from the Company's CC&N. The parties attached to the Joint Notice of Filing the
23 correct legal descriptions for the property to be deleted.

24 **Extension of Compliance Deadline**

25 15. Under the circumstances, we find Staff's recommendation that the deadline for filing
26 the ATC for the parcel owned by SMP should be extended is reasonable. Given the state of the real
27 estate market in the area where SMP's parcel is located, we believe it is reasonable to grant an
28 extension beyond the typical two year period, but a five year extension is excessive.

1 16. Accordingly, we find it is reasonable to extend the compliance filing deadline for the
2 ATC for the SMP parcel to December 30, 2016.

3 **Deletion of Territory**

4 17. The circumstances supporting Sahuarita’s CC&N extension have materially changed
5 since the Commission issued Decision No. 70620. Two of the three developers who requested
6 service from Sahuarita have since sold their property to mining companies for operational use,
7 representing a significant departure from the original plan to develop the land for residential and light
8 commercial use. Additionally, ASARCO and Freeport – McMoRan have not responded to requests
9 from the Company for written statements indicating whether the entities wish Sahuarita to continue to
10 be the sole provider of water service for their respective parcels.

11 18. Based on these facts, we find it is in the public interest to delete the parcel owned by
12 Freeport – McMoRan (the legal description is attached as Exhibit A) and the parcel owned by
13 ASARCO (the legal description is attached as Exhibit B) from Sahuarita’s CC&N.

14 **CONCLUSIONS OF LAW**

15 1. Sahuarita is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. §§40-281 and 40-282.

17 2. The Commission has jurisdiction over Sahuarita and the subject matter of the Motion.

18 3. It is in the public interest to delete from Sahuarita’s CC&N the two parcels currently
19 owned by Freeport – McMoRan and ASARCO, as set forth in Exhibits A and B.

20 **ORDER**

21 IT IS THEREFORE ORDERED that Sahuarita Water Company, L.L.C.’s Motion for
22 Extension of Compliance Deadline is granted, and the compliance deadline for filing the Arizona
23 Department of Environmental Quality Approval to Construct for the parcel owned by Sahuarita
24 Mission Partners, L.L.C. is extended to December 30, 2016.

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26 ...
27 ...
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1 IT IS FURTHER ORDERED that the parcel owned by Freeport – McMoRan Copper and
2 Gold, Inc., as described in Exhibit A, and the parcel owned by ASARCO, L.L.C., as described in
3 Exhibit B, which comprise a portion of the extension of Sahuarita Water Company, L.L.C.’s
4 certificated area granted in Decision No. 70620 (November 19, 2008), are deleted from Sahuarita
5 Water Company, L.L.C.’s Certificate of Convenience and Necessity.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8

9 _____
10 CHAIRMAN _____ COMMISSIONER

11 _____
12 COMMISSIONER _____ COMMISSIONER

13 IN WITNESS WHEREOF, I, JODI JERICH, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____ 2014.

18 _____
19 JODI JERICH
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22 DISSENT _____
23 BAM:tv

24
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1 SERVICE LIST FOR: SAHUARITA WATER COMPANY, L.L.C.

2 DOCKET NO.: W-03718A-07-0687

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13 Steven M. Olea, Director
14 Utilities Division
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17 Phoenix, AZ 85007

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EXHIBIT A

July 27, 2007
Psomas # 95016-10

EXHIBIT A

**LEGAL DESCRIPTION
RANCHO SAHUARITA WATER COMPANY BOUNDARY**

Section 24, Township 17 South, Range 12 East, Gila and Salt River Meridian,
Pima County, Arizona,

EXCEPT the north one-half of the north one-half said Section 24, and
FURTHER EXCEPTING any portion lying within the right-of way of Mission -Twin
Buttes Road.

Section 25, Township 17 South, Range 12 East, Gila and Salt River Meridian,
Pima County, Arizona,

EXCEPT any portion lying southerly of the northerly right of way line of Mission -
Twin Buttes Road.

Section 26, Township 17 South, Range 12 East, Gila and Salt River Meridian,
Pima County, Arizona.

The east one-half of Section 27, Township 17 South, Range 12 East, Gila and
Salt River Meridian, Pima County, Arizona.

A portion of northeast one-quarter of Section 34, Township 17 South, Range 12
East, Gila and Salt River Meridian, described as Parcel 2 of Quiet Desert
Ranches, recorded in Book 14 Records of Survey at Page 53, records of Pima
County, Arizona.

Those portions of the west one-half of Section 35, Township 17 South, Range 12
East, Gila and Salt River Meridian, described as Parcels 5, 12, 13 and 14 of
Quiet Desert Ranches, recorded in Book 13 Records of Survey at Page 70, being
corrected in Book 14 Records of Survey at Page 35, and again in Book 14
Records of Survey at Page 53, records of Pima County, Arizona.

The East one-half of Section 35, Township 17 South, Range 12 East, Gila and
Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying within the right of way of Mission -Twin Buttes Road
and **FURTHER EXCEPTING** any portion lying within the right of way of McGee
Ranch Road, also known as Twin Buttes - McGee Road.

July 27, 2007
Psomas # 95016-10

The North one-half of Section 36, Township 17 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying southeasterly of the northwesterly right of way line of Mission -Twin Buttes Road.

The southwest one-quarter of the northwest one-quarter of Section 1, Township 18 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying northeasterly of the southwesterly right of way line of Mission -Twin Buttes Road.

Lots 1 and 2 and the south one-half of the northeast one-quarter of Section 2, Township 18 South, Range 12 East, Gila and Salt River Meridian Pima County, Arizona,

EXCEPT any portion lying within the right of way of Mission -Twin Buttes Road.

Section 16, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying northerly of the southerly right of way of Helmet Peak – Sahuarita Road.

Section 19, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying within the right of way of Mission -Twin Buttes Road.

Section 20, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying southerly of the northerly right of way line of Twin Buttes Road and **FURTHER EXCEPTING** the north 30 feet of the west one-half of said Section 20 and **FURTHER EXCEPTING** Lot 28 of Pimeria Alta Estates as recorded in Book 38 of maps and plats at page 9 therein, Records of Pima County, Arizona.

July 27, 2007
Psomas # 95016-10

The west one-half of Section 21, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying easterly of the following described line;

COMMENCING at the northeast corner of said west one-half;

THENCE upon the north line of said west one-half, S 89°25'53" W, a distance of 959.80 feet to the **POINT OF BEGINNING**;

THENCE southerly upon the west line of that parcel as described in Docket 7437 at page 453 therein, Records of Pima County, Arizona, S 01°20'28" E to the northerly right of way line of Twin Buttes Road and the **POINT OF TERMINUS**.

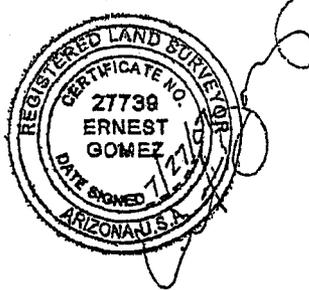
FURTHER EXCEPTING any portion lying southerly of the northerly right of way line of Twin Buttes Road.

The north one-half and the southwest one-quarter of Section 30, Township 17 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona,

EXCEPT any portion lying southerly of the northerly right of way line of Twin Buttes Road and **FURTHER EXCEPTING** any portion lying easterly and southerly of the westerly and northerly right of way lines of Mission -Twin Buttes Road.

See attached Exhibit B

Prepared by:
Psomas



Ernest Gomez AZ. R.L.S. 27739

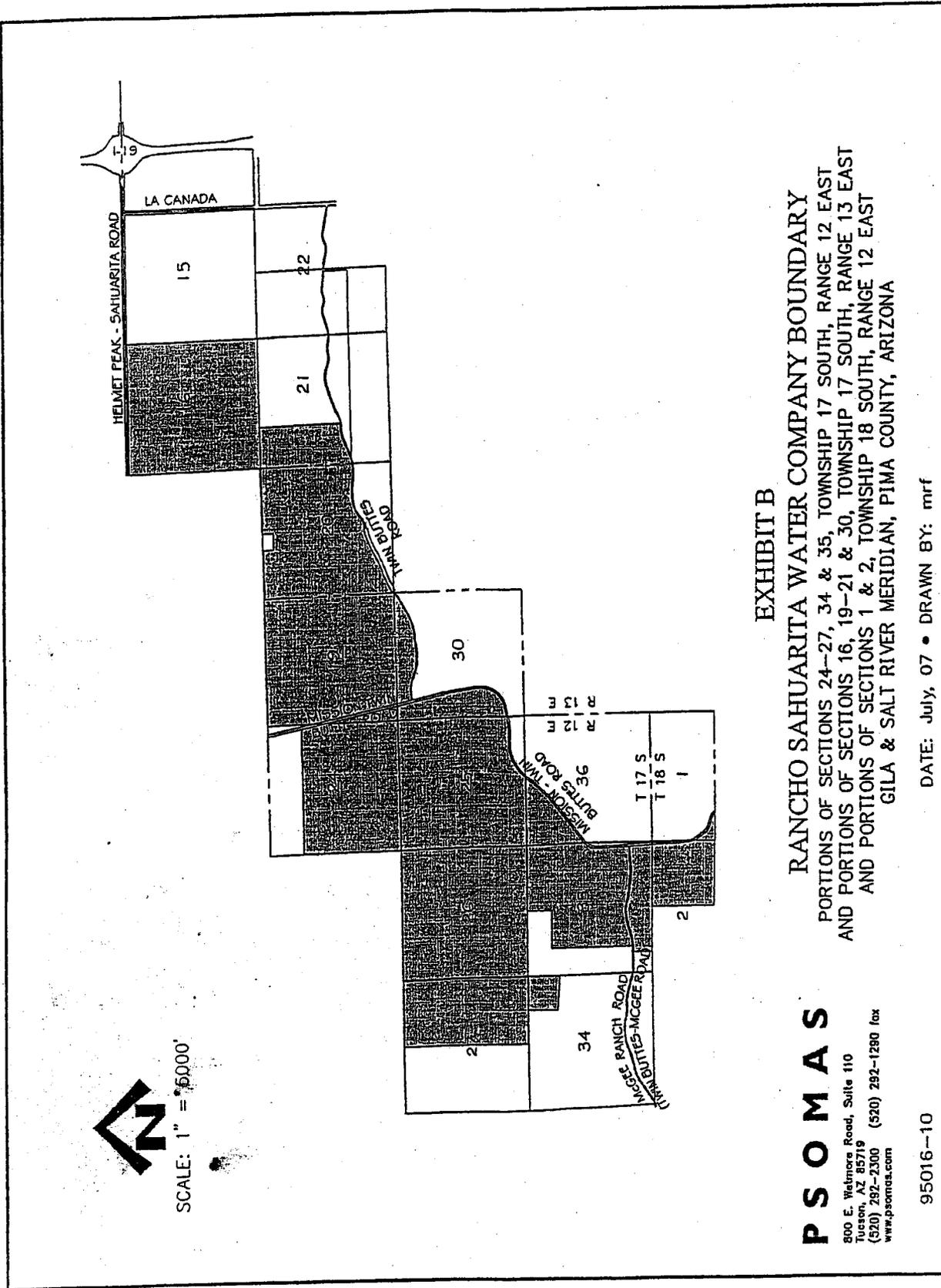


EXHIBIT B

RANCHO SAHUARITA WATER COMPANY BOUNDARY

PORTIONS OF SECTIONS 24-27, 34 & 35, TOWNSHIP 17 SOUTH, RANGE 12 EAST
 AND PORTIONS OF SECTIONS 16, 19-21 & 30, TOWNSHIP 17 SOUTH, RANGE 13 EAST
 AND PORTIONS OF SECTIONS 1 & 2, TOWNSHIP 18 SOUTH, RANGE 12 EAST
 GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

PSOMAS

800 E. Wetmore Road, Suite 110
 Tucson, AZ 85719
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 www.psomas.com

DATE: July, 07 • DRAWN BY: mrf

95016-10

E:\95016\10\Constraints\legal\water_dist_bndy.dwg egomez Fri, 27 Jul 2007, 10:52am

EXHIBIT B

May 24, 2006

EXHIBIT "A"

Rancho Maria: Description of State Parcel in Section 16

Section 16, Township 17 South, Range 13 East of the Gila and Salt River Meridian, Pima County, Arizona.

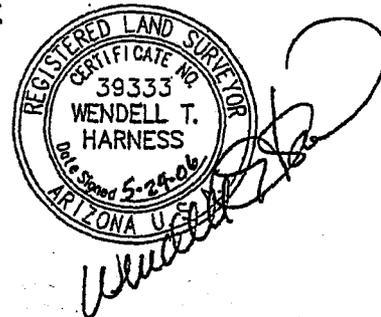
Excepting therefrom that portion of said Section 16 lying within the right-of-way of Helmet Peak Road, Road Proceeding No. 1019 as recorded in Book 8 of Road Maps at Page 97, records of Pima County, Arizona.

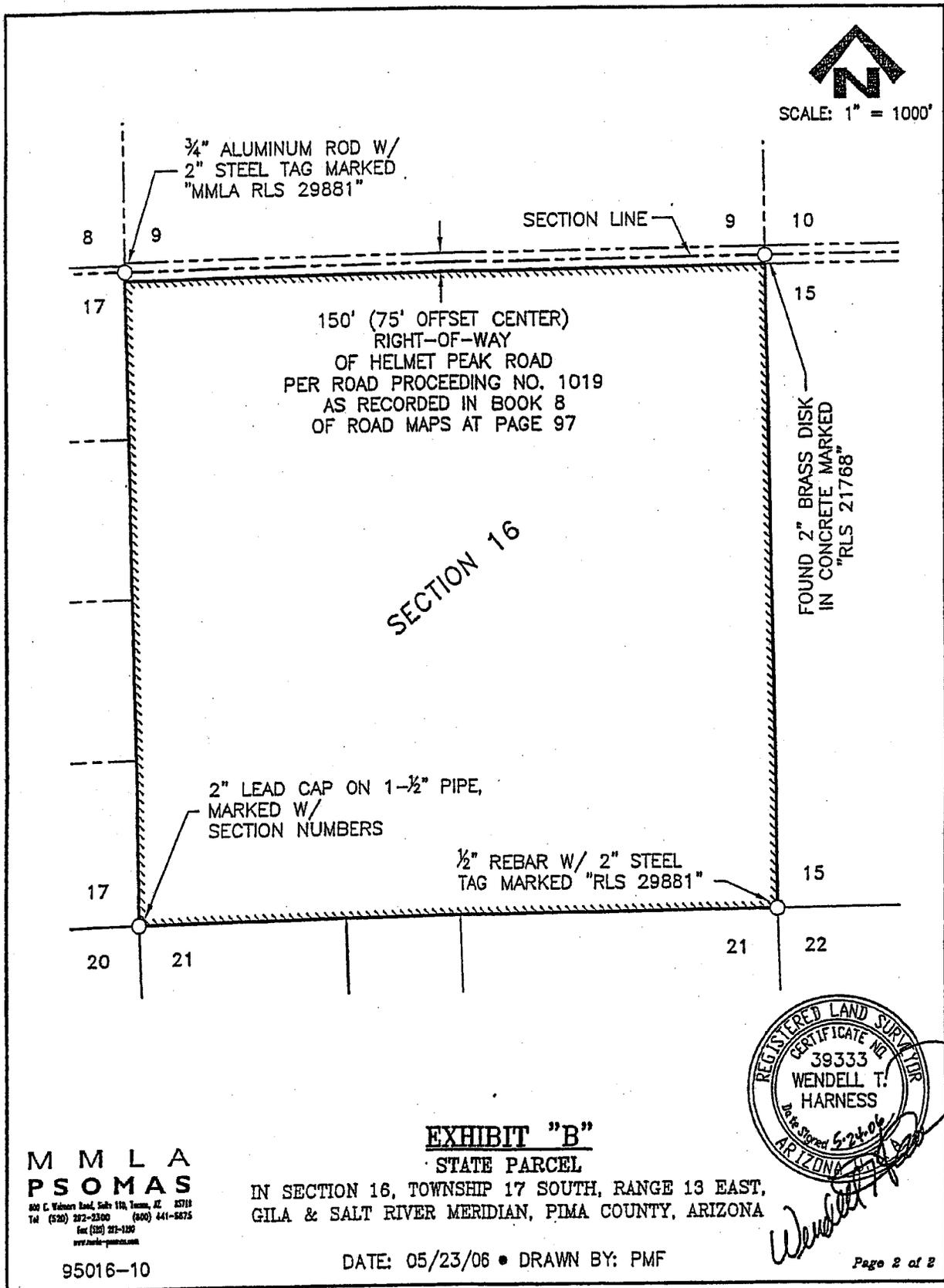
See Exhibit 'B' attached hereto and made a part hereof.

Prepared for and on behalf of

**M M L A
P S O M A S**

Project No. 95016-10





**M M L A
P S O M A S**

400 E. Veterans Blvd., Suite 110, Tucson, AZ 85718
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95016-10

EXHIBIT "B"

STATE PARCEL

IN SECTION 16, TOWNSHIP 17 SOUTH, RANGE 13 EAST,
GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

DATE: 05/23/06 • DRAWN BY: PMF