IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	**Case No. 05-21207**
	§	
ASARCO LLC, *et al.*	§	**Chapter 11**
	§	
Debtors.	§	**(Jointly Administered)**
	§	

SETTLEMENT AGREEMENT REGARDING NATURAL RESOURCE DAMAGE CLAIMS FOR MINERAL CREEK, THE GILA RIVER, AND THE SAN PEDRO RIVER, ARIZONA

WHEREAS, the Ray Mine is a copper mining facility of approximately 6,100 acres near Kelvin, Arizona which discharges into Mineral Creek, a tributary of the Gila River, and the Hayden Facility is a facility located in Hayden Arizona along the Gila River;

WHEREAS, the United States, and the State of Arizona (the "State") have alleged that ASARCO LLC, formerly known as ASARCO Incorporated, a New Jersey corporation ("ASARCO" or the "Debtor"), is liable for natural resource damages to Mineral Creek and the Gila River related to releases from Ray Mine and the Hayden Facility (collectively, those portions of Mineral Creek and the Gila River alleged to have suffered natural resource injuries are hereinafter referred to as the "Sites"; these areas are: a) the Gila River from the Ashurst-Hayden Diversion Dam, upstream past the confluence of the San Pedro and Gila Rivers, and for a distance of 5 miles up each of those rivers beyond the confluence and b) Mineral Creek from its confluence with the Gila River upstream to a point one mile above the Big Box Canyon Dam);

WHEREAS, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the "ASARCO Bankruptcy Case");

WHEREAS, the United States and the State each filed Proofs of Claim in the ASARCO Bankruptcy Case (number 10745 by the United States and 10827 and 10830 by the State) (collectively, the proofs of claim filed by the United States and the State shall be referred to herein as the "Proofs of Claim") setting forth claims against ASARCO under CERCLA 42 U.S.C. §§ 9601-9675, the Clean Water Act, 33 U.S.C. § 1321, and other environmental statutes for natural resource damages and related costs for injuries to and loss of natural resources related to the Sites and for natural resource damage assessment costs;

WHEREAS, ASARCO has disputed the amount of the liabilities with respect to the Sites filed by the United States and the State as set forth in the Proofs of Claim;

WHEREAS, the parties hereto desire to settle, compromise and resolve their disputes, which may have otherwise been the subject of an estimation hearing, without the necessity of an estimation hearing;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Settlement Agreement ("Settlement Agreement"); and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the ASARCO Bankruptcy Case. For the purposes of this Settlement Agreement, including without limitation Paragraphs 5 and 11, successors and assigns includes, without limitation, subsequent owners of Ray Mine and the Hayden Facility.

III. ALLOWANCE OF CLAIMS

3.

(a) In settlement and full satisfaction of all claims and causes of action against the Debtor related to natural resource damages in the past, present and future relating to the Sites (including but not limited to costs of natural resource damage assessments), that may be held now or in the future by the United States on behalf of the Department of Interior, U.S. Fish and Wildlife Service and Bureau of Land Management, and by the State, whether or not such claims or causes of action were asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court, and except as provided in the last two sentences of Paragraph 10:

(i) the United States on behalf of the Department of Interior, U.S. Fish and Wildlife Service and Bureau of Land Management, and the State of Arizona on behalf of the Director of the Arizona Department of Environmental Quality and Trustee for Natural Resources for the State of Arizona and the Arizona State Land Commissioner (collectively with the Department of Interior, U.S. Fish and

Wildlife Service and Bureau of Land Management, the "Trustees") shall have a joint indivisible allowed general unsecured claim in the amount of $3,773,604. Distributions or proceeds of distributions received by the Trustees under this subparagraph 3(a)(i) shall be deposited into the DOI Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198. A separate, site-specific numbered account for the Sites has been established with Account No. 0521 within DOI's Natural Resource Damage Assessment and Restoration Fund ("Restoration Account"). The funds received shall be assigned pursuant to this site-specific Restoration Account to allow the funds to be maintained as segregated accounts within the DOI Natural Resource Damage Assessment and Restoration Fund. The Trustees shall use the funds in the Restoration Accounts, including all interest earned on such funds, for restoration activities at or in connection with the Sites (including, but not limited to, restoration activities at the San Pedro River Properties) as they jointly direct in accordance with an approved restoration plan. For purposes of voting on plan confirmation, with respect to the undivided allowed claim referred to in subparagraph (a)(i) of this Paragraph 3, the United States shall vote 50% ($1,886,802.00) and the State of Arizona shall vote 50% ($1,886,802).

(ii) the United States on behalf of the Department of Interior shall have an additional allowed general unsecured claim of $226,396;

(iii) ASARCO shall convey by quit claim deed to the Arizona Game and Fish Commission ("AGFC") the following three tracts of land (identified in the map attached as Exhibit A) and any associated water rights: (1) the Triangle Bar tract

also known as VS (approximately 490 acres); (2) the ASARCO-owned tract located at the southern reach of the Old Camp Grant Military Reservation and approximately 1.0 mile south from Aravaipa Creek (approximately 180 acres); and (3) the ASARCO-owned parcel located approximately 0.5 mile north of the confluence of Aravaipa Creek and the San Pedro River (approximately 325 acres) (collectively, the "San Pedro River Properties"); provided, however that ASARCO shall allow AGFC or its agent, at AGFC's own expense, to conduct a title search and an Environmental Site Assessment ("2009 Phase I ESA") for the San Pedro River Properties. Should the title search reveal any Recorded Encumbrances or Cloud on Title or should the 2009 Phase I ESA reveal Recognized Environmental Conditions (RECs), all as defined in this Paragraph, Arizona and the United States may withdraw from this Agreement by giving written notice to ASARCO of such RECs and of their desire to cancel this Agreement prior to noon, Arizona time, on the earlier of (1) the 120th day after this Settlement Agreement is filed with the Court or (2) 20 days prior to the start of the confirmation hearing. For purposes of this Settlement Agreement, the following terms are defined to mean:

(1) Recorded Encumbrance means any easement, covenant, lien, claim, or defect;

(2) Cloud on Title means an incomplete certificate of occupancy, outstanding building violations, claims for possession of any portion of the property, or inaccurate survey; and

(3) Recognized Environmental Conditions ("RECs") means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. The term includes hazardous substances or petroleum products even when used under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not RECs.

4. This Paragraph governs any attempt by the State in any of its capacities, or by its successors or assigns, to convert any water right now or hereafter associated with the San Pedro River Properties to an instream flow right.

(a) The State, on behalf of itself and its successors and assigns, agrees:

(i) Any such attempt to convert a water right to an instream flow right shall be consistent with then-applicable law;

(ii) Any such conversion that occurs during the life of the Ray Mine or the Hayden Facility, whichever is longer, shall be restricted to an instream flow right on the San Pedro River;

(iii) Any such conversion that occurs during the life of the Ray Mine or the Hayden Facility, whichever is longer, shall be restricted to the reach of the San Pedro River extending no further downstream than the point immediately above the confluence of Aravaipa Creek and the San Pedro River;

(iv) For any such conversion that occurs during the life of the Ray Mine or the Hayden Facility, whichever is longer, the State shall not enforce any resulting instream flow right in a manner that impairs the ability of ASARCO or its successors or assigns to utilize its water rights, including without limitation any appropriative right obtained by ASARCO or its successors or assigns to allow the continued diversion and use of appropriable subsurface flow, for the purposes identified in Subparagraph 4(a)(vi);

(v) For any such conversion that occurs during the life of the Ray Mine or the Hayden Facility, whichever is longer, the State shall not enforce any resulting instream flow right in a manner that impairs the ability of ASARCO or its successors or assigns to divert and use, for the purposes identified in Subparagraph 4(a)(vi), underground water withdrawn from lands it owns, leases or holds under permit on the date of this Agreement, including without limitation the properties it is retaining along Aravaipa Creek and the San Pedro River but excluding the San Pedro River Properties;

(vi) The State's agreement to forbear enforcement of the resulting instream flow right is conditioned on ASARCO or its successors or assigns limiting the utilization of its water rights described in Subparagraph 4(a)(iv) or the diversion or use of underground water described in Subparagraph 4(a)(v) to that which it

currently makes or has made for irrigation, agricultural, domestic and environmental purposes on the properties retained along Aravaipa Creek and the San Pedro River; for mineral extraction and/or processing and environmental purposes, including, but not limited to, dust control and revegetation at the Ray Mine or Hayden Facility, or both; and for provision of water for municipal purposes within the Town of Hayden;

(vii) The State will not forbear from enforcement of the resulting instream flow right if and to the extent that ASARCO or its successors or assigns divert and use water from the properties ASARCO is retaining along Aravaipa Creek or the San Pedro River for any purposes not identified in Subparagraph 4(a)(vi), including but not limited to diversion or use for new residential subdivisions or resorts outside the service area of the Town of Hayden. For purposes of this Settlement Agreement, the term "service area" shall have the meaning set forth in Arizona Revised Statutes § 45-402(31)(a);

(viii) The State's commitments under this Paragraph shall bind all of its successors and assigns; and

(ix) In the event the State elects to transfer any right or interest in any of the San Pedro River Properties or any associated water right to the United States, the United States must first agree to the commitments set forth in subparagraphs (i) through (viii) of this Paragraph.

(b) So long as the State and its successors and assigns comply with Subparagraph 4(a), ASARCO, on behalf of itself and its successors and assigns, agrees that during the life of the Ray Mine or the Hayden Facility, whichever is longer:

(i) It shall not object to the conversion of any water right associated with the San Pedro River Properties to an instream flow right;

(ii) It shall not object to the conversion of any water right associated with the San Pedro River Properties from one use to another, so long as the place of use remains on the San Pedro River Properties; and

(iii) It shall not object to the severance and transfer of a water right (other than an instream flow right) from one of the San Pedro River Properties to another of the San Pedro River Properties.

5.

(a) ASARCO and its successors and assigns shall have the exclusive right to conduct mitigation projects unrelated to this Settlement Agreement consistent with the Trustees' restoration projects, and subject to the Trustees' right to conduct mitigation projects required to accomplish their restoration projects, at the San Pedro River Properties for a period of five (5) years from the effective date of a Confirmation Order by the bankruptcy court. Moreover, during the same period, ASARCO and its successors and assigns shall have the exclusive right to apply to the appropriate government agency for mitigation credits, if any, related to upland environmental benefits generated by that portion of any Trustee restoration project that is funded by monies from this Settlement Agreement addressing natural resource damages at the San Pedro River Properties, to the extent such mitigation credits are not required to accomplish the Trustee restoration project(s) that generate them.

(b) For an additional period of ten (10) years following the period in subparagraph (a) of this Paragraph, ASARCO and its successors and assigns shall have the right of first refusal regarding mitigation projects unrelated to this Settlement Agreement that are proposed to be

conducted at the San Pedro River Properties and have been approved by the relevant governmental authorities.

(c) Obligations associated with mitigation projects conducted by ASARCO and/or its successors and assigns under the provisions of this Paragraph may extend beyond the time periods identified herein, as necessary.

6. All allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation Sections 105 and 510 of the Bankruptcy Code.

7. This Settlement Agreement does not address or resolve in any way any other claims and causes of action of the United States and the State relating to the Sites, Ray Mine, and/or the Hayden Facility, including but not limited to matters addressed in: In the Matter of ASARCO Hayden Plant Site, Hayden, Gila County, Arizona, ASARCO LLC, Respondent (EPA Region IX Docket No. CERCLA-2008-13), claims for response costs, reclamation costs, closure and post-closure costs, permitting fees, the alleged underground storage tank releases, residential property cleanup costs, penalties, federal and state laws governing environmental compliance, including but not limited to the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the State Hazardous Waste Management Act, the State Water Quality Assurance Revolving Fund Act, other State solid waste laws, Arizona AZPDES and APP permits issued to ASARCO, United States of America and State of Arizona v. ASARCO Incorporated, CIV 98-0137 (PHX ROS), United States of America, et al. v. Gila Valley Irrigation District, et al., No. CV31-0059-TUC-SRB (aka Globe Equity No. 59), In re: The General Adjudication of All Rights to Use Water in the Gila River System and Source, No. W-1 - W-4 (Consolidated), Maricopa

County Superior Court, and the pending class action lawsuit Amparano v. ASARCO, No. 20023364, (collectively, the "Other Claims"). For the avoidance of doubt, nothing in this Settlement Agreement is intended to, or does, affect any issue of fact or law in the pending cases titled United States of America, et al. v. Gila Valley Irrigation District, et al., No. CV31-0059-TUC-SRB (a/k/a Globe Equity No. 59) and In re: The General Adjudication of All Rights to Use Water in the Gila River System and Source, No. W-1 - W-4 (Consolidated).

8. With respect to the allowed unsecured claims set forth in Paragraph 3 for the United States on behalf of DOI, and for the State of Arizona, only the amount of cash received by each such agency or state (and net cash received by each such agency or state on account of any non-cash distributions) under this Settlement Agreement for the allowed general unsecured claims and not the total amount of the allowed claims, shall be credited by each such agency or state to its account for a particular site, which credit shall reduce the liability to such agency of non-settling potentially responsible parties for the particular site by the amount of the credit.

9. The general unsecured claims allowed under this Settlement Agreement shall remain the obligation of ASARCO only. Nothing in this Settlement Agreement shall be deemed to transfer this obligation to any subsequent owners of Ray Mine or the Hayden Facility.

IV. COVENANTS NOT TO SUE

10. With respect to the Sites (including releases of hazardous substances from any portion of the Ray Mine and Hayden Facility to the Sites, and all areas of the Sites affected by natural migration of such substances from Ray Mine, the Hayden Facility, and the Sites) and except as specifically limited in this Paragraph, and except as specifically provided in Paragraph 7 with respect to the Other Claims and Section VI (Reservation of Rights), the United States on behalf of the Department of Interior, U.S. Fish and Wildlife Service and Bureau of Land Management,

and the State in all its capacities, covenant not to sue or assert any civil claims or causes of action for natural resource damages against ASARCO pursuant to Sections 106, 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613; the Clean Water Act, 33 U.S.C. § 1251 *et seq.* ("CWA"); or any similar state law; for natural resource damages relating to the Sites, whether or not asserted in the Proofs of Claim. The covenants contained in this Paragraph are limited to any natural resource damages, whether resulting from past, present, or future releases by ASARCO or its successors or assigns at the Ray Mine or the Hayden Facility, to a) the Gila River from the Ashurst-Hayden Diversion Dam, upstream past the confluence of the San Pedro and Gila Rivers, and for a distance of 5 miles up each of those rivers beyond the confluence and to b) Mineral Creek from its confluence with the Gila River upstream to a point one mile above the Big Box Canyon Dam. The covenants contained in this Paragraph are further limited to exclude future natural resource damages to riparian or surface water resources, or to trust species for which such resources are supporting habitat, resulting from deviations from current levels of releases from the Ray Mine or the Hayden Facility.

11. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

12. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraph 10 and the scope of the restrictions contained in Paragraph 4, and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to ASARCO's successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer,

director, employee, or trustee of ASARCO is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of ASARCO.

13. The covenants not to sue contained in Paragraph 10 of this Settlement Agreement extend only to ASARCO and the persons described in Paragraph 12 above and do not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than ASARCO, the United States, the State, and the persons described in Paragraph 12. The United States, the State, and ASARCO expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, the State, and ASARCO may have against all other persons, firms, corporations, entities, or predecessors of ASARCO for any matter arising at or relating in any manner to the sites or claims addressed herein.

14. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the State to take any response action at the Sites under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable state or federal law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States and the State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States and the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable state or federal law or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA or any other applicable state or federal law or regulation.

15. Except for the Other Claims and as provided in Section VI (Reservation of Rights), Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Sites, including but not limited to: any direct or

indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law (including, but not limited to, any claims for reimbursement from the State Water Quality Assurance Revolving Fund pursuant to A.R.S. §49-296); any claims against the United States and the State, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, A.R.S. §§49-285, 49-287.07, or any other law seeking substantially similar relief. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

V. OUTSTANDING OBLIGATIONS

16. The parties stipulate that ASARCO has no outstanding natural resource damage obligations under any consent decree, unilateral administrative order, or administrative order on consent relating to the Sites.

VI. RESERVATION OF RIGHTS

17. The covenants not to sue herein do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against ASARCO with respect to all other matters. The United States, the State and ASARCO reserve the right, and this Settlement Agreement is without prejudice to take any action to enforce the terms of this Settlement Agreement. This Settlement Agreement does not address or resolve in any way liability ASARCO may have to the United States or the State concerning locations other than those identified in Paragraph 10.

18. Except as provided in Paragraph 4, herein, ASARCO, the United States, and the State reserve all of their claims, defenses, and substantive and procedural rights and positions relating to the Other Claims in the pending ASARCO Bankruptcy Case. Nothing herein nor the entry into this Settlement Agreement shall affect the claims, defenses and substantive and procedural rights and positions of ASARCO, the United States, and the State regarding the Other Claims.

19. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

VII. CONTRIBUTION PROTECTION

20. As of the Effective Date, ASARCO is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement include all claims for natural resource damages and related past and future costs of assessment and oversight and maintenance costs with respect to the Sites as further described in Paragraph 10.

VIII. JUDICIAL APPROVAL

21. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtor shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval. After this Settlement Agreement is lodged with the Bankruptcy Court, notice of the Settlement Agreement will be published in the Federal Register. The United States and the State reserve the right to withdraw or withhold consent if within thirty days after publication of the notice public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate.

22. The effectiveness of this Settlement Agreement is contingent on the approval required by Paragraph 21.

IX. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

X. EFFECTIVE DATE

24. The Effective Date of this Settlement Agreement shall be the date upon which the last contingency in Paragraph 21 is satisfied.

XI. SIGNATORIES/SERVICE

25. The signatory for each Party certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document. The United States on behalf of the United States Department of Interior, Fish and Wildlife Service and Bureau of Land Management, has signed this Settlement Agreement as evidence of its acceptance of these terms and conditions. The Trustee for Natural Resources for the State of Arizona, on behalf of the State and all its agencies with regard to Natural Resource Damages under the trusteeship of the State, and the Commissioner for the Arizona State Land Department have signed this Settlement Agreement as evidence of their acceptance of these terms and conditions.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date: 1-29-09

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 2/3/09

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

FOR THE STATE OF ARIZONA

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY:

Date: 1/20/09

Stephen A. Owens, Director of the Arizona Department of Environmental Quality and Trustee for Natural Resources for the State of Arizona

ARIZONA STATE LAND DEPARTMENT:

Date: 3/2/09

Mark Winkleman
Arizona State Land Commissioner

OFFICE OF THE ARIZONA
ATTORNEY GENERAL:

Date: 1/20/09

Terry Goddard
Attorney General of the State of Arizona

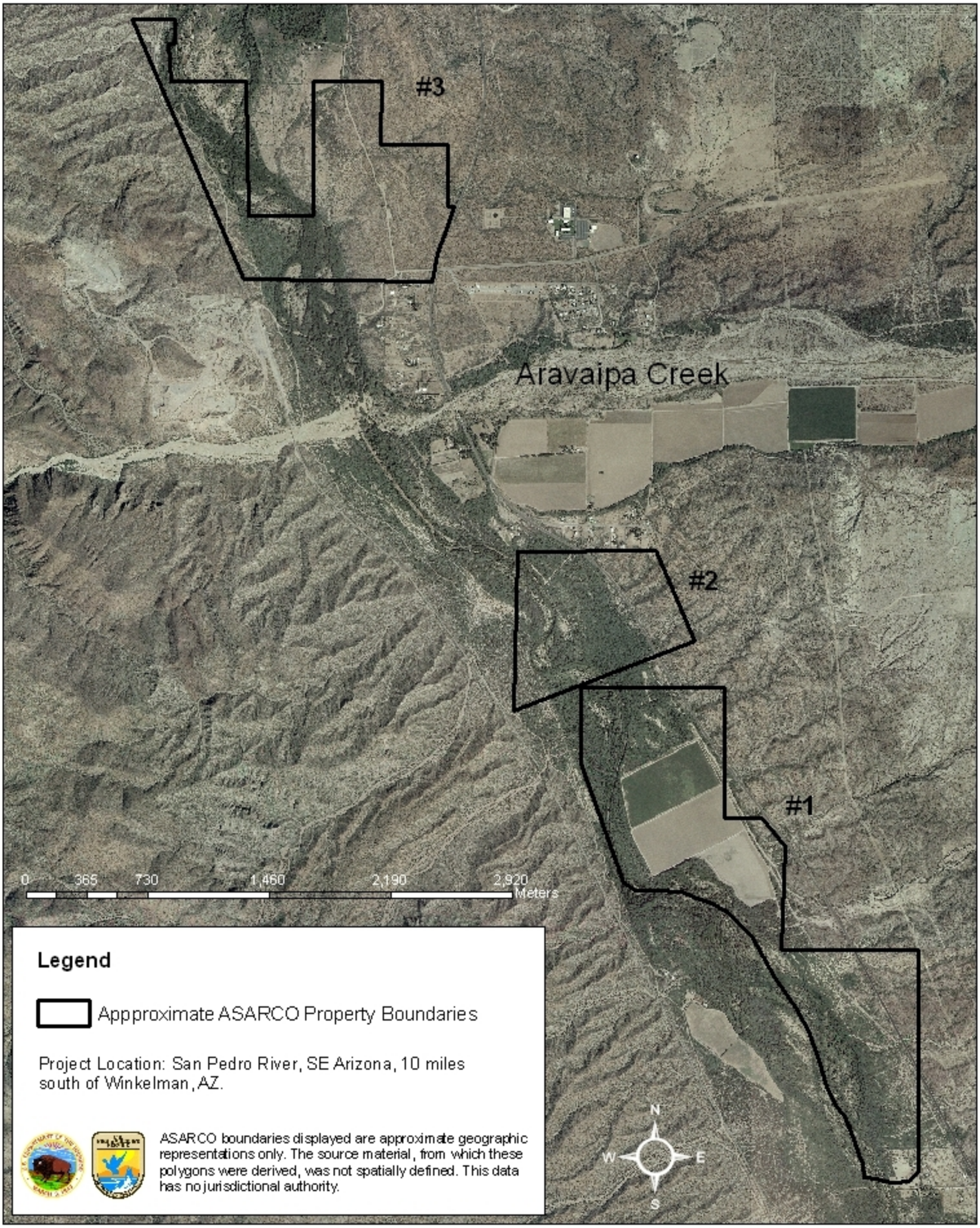
FOR ASARCO LLC:

Date: March 03, 2009

Thomas L. Aldrich
Vice President, Environmental Affairs

Douglas E. McAllister
Executive Vice President, General Counsel

Approximate ASARCO Property Boundaries
San Pedro River, Arizona



THIS MAP IS FOR ILLUSTRATIVE PURPOSES ONLY.