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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**
12

13 IN RE THE GENERAL ADJUDICATION
14 OF ALL RIGHTS TO USE WATER IN
15 THE GILA RIVER SYSTEM AND
16 SOURCE

17 W-1 (Salt)
18 W-2 (Verde)
19 W-3 (Upper Gila)
20 W-4 (San Pedro)
21 (Consolidated)

22 Contested Case No. W1-106

23 **ARIZONA DEPARTMENT OF WATER**
24 **RESOURCES' REPLY TO SALT**
25 **RIVER PROJECT'S RESPONSE AND**
26 **MOTION FOR RECONSIDERATION**

Special Master Susan Ward Harris

27 **CONTESTED CASE NAME:** *In re Subflow Technical Report, Verde River Watershed*

28 **HSR INVOLVED:** None

29 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources hereby
30 submits its reply to the Salt River Project's Response and Motion for Reconsideration of
31 the Order Granting Request for Extension of Time to file ADWR's Subflow Technical
32 Report for the Verde River Watershed.

33 **NUMBER OF PAGES:** Eight and one-page attachment

34 **DATE OF FILING:** June 1, 2021

1 **I. BACKGROUND**

2 In the Order filed November 27, 2017, the Court requested that the Arizona
3 Department of Water Resources (“ADWR”) develop a technical report and map regarding
4 the subflow zone of the Verde River watershed. In the Minute Entry Order filed March 4,
5 2020, the Court requested that ADWR file its report by June 1, 2021. On April 2, 2021,
6 ADWR filed a Request for Extension of Time (“Request”) to file ADWR’s Subflow
7 Technical Report for the Verde River watershed (“Subflow Zone Report”) based on the
8 need for additional surficial geologic mapping by the Arizona Geological Survey. For
9 good cause shown, the Court issued an Order on April 14, 2021 granting ADWR’s
10 Request and allowing ADWR until April 30, 2023 to file its Subflow Zone Report.

11 On April 21, 2021, the Salt River Project Agricultural Improvement and Power
12 District and Salt River Valley Water Users’ Association (collectively “SRP”) filed a
13 Response¹ to ADWR’s Request and a Motion for Reconsideration arguing that the Court
14 should reconsider its decision to grant ADWR’s Request as to the Sycamore Canyon and
15 Lower Verde Valley subwatersheds. SRP argued that denial of ADWR’s request was
16 necessary to preserve the Court’s schedule for adjudication of water rights in the Verde
17 River watershed as previously outlined in the Minute Entry Order dated March 4, 2020.
18 SRP further argued that the Court should direct ADWR to include the Big Chino Wash in
19 ADWR’s subflow zone investigation. By Order dated April 28, 2021, the Court set time
20 for parties to respond to ADWR’s Request and for ADWR to reply to SRP’s Response.
21 On April 26, 2021, the Yavapai-Apache Nation and the Tonto Apache Tribe joined² in

22 ¹ Salt River Project’s Response to Arizona Department of Water Resources’ Request for
23 Extension of Time and Motion For Reconsideration of Order Granting Request for
24 Extension of Time (hereinafter “Response”) filed April 21, 2021.

25 ² Joinder by the Yavapai-Apache Nation and the Tonto Apache Tribe in Salt River
26 Project’s Response to Arizona Department of Water Resources’ Request for Extension of
Time and Motion For Reconsideration of Order Granting Request for Extension of Time
filed April 26, 2021.

1 SRP's Response. On April 30, 2021, the United States also joined³ in SRP's Response.
2 On May 17, 2021, the cities of Avondale, Glendale, Mesa, Scottsdale, and Tempe
3 partially joined⁴ SRP's Response. The City of Phoenix also joined⁵ SRP's Response on
4 May 17, 2021. ADWR hereby submits its reply to the issues raised in both SRP's
5 Response and the related joinders.

6
7 **II. THE COURT SHOULD DENY SRP'S MOTION TO REINSTATE THE**
8 **JUNE 1, 2021 SUBFLOW ZONE REPORT DEADLINE.**

9 In its Response, SRP argues that the Court should reinstate the June 1, 2021 deadline
10 (or assign a deadline shortly thereafter) for ADWR to issue its Subflow Zone Report as to
11 the Sycamore Canyon and Lower Verde Valley subwatersheds. Response at 11. SRP did
12 not object to ADWR's Request regarding the Subflow Zone Report for the remaining
13 subwatersheds in the Verde River watershed.⁶ *Id.*

14
15
16 ³ United States' Joinder in Salt River Project's Response to Arizona Department of Water
17 Resources' Request for Extension of Time and Motion for Reconsideration of Order
18 Granting Request for Extension of Time (hereinafter "US Joinder") filed April 30, 2021.
19 The US Joinder is limited to requesting the June 21, 2021 Subflow Zone Report deadline
20 be reinstated for the Sycamore Canyon and Lower Verde Valley subwatersheds.

21 ⁴ Cities' Joinder in Salt River Project's Response to Arizona Department of Water
22 Resources' Request for Extension of Time filed May 17, 2021, limited to requesting the
23 June 21, 2021 Subflow Zone Report deadline be reinstated for the Sycamore Canyon and
24 Lower Verde Valley subwatersheds.

25 ⁵ City of Phoenix's Joinder in Salt River Project's Response to Arizona Department of
26 Water Resources' Request for Extension of Time filed May 17, 2021.

⁶ ADWR is required to provide notice of its Subflow Zone Report to "all Claimants in the
Verde River watershed and to the persons listed on the Court-Approved Mailing List for
this case informing them of the availability of the report and of a Claimant's right to file
written objections to the report and of the deadline for filing objections" ("Objection
Notice"). November 27, 2017 Order at 4. If, as SRP requests, ADWR issues its Subflow
Zone Report in at least two parts, it is unclear whether ADWR would be required to
provide the Objection Notice to thousands of claimants twice.

1 **A. ADWR’s Request for Extension on the Subflow Zone Report will not affect**
2 **the previously established dates by which ADWR has been requested to issue**
3 **HSRs for the Sycamore Canyon and Lower Verde Valley subwatersheds.**

4 SRP’s primary argument in opposition to ADWR’s Request is that the Court’s
5 decision to grant ADWR’s Request necessarily results in the delay of ADWR’s
6 preparation of a Hydrographic Survey Report (“HSR”) for the Sycamore Canyon and
7 Lower Verde Valley subwatersheds. In support of its position, SRP points to the March 4,
8 2020 Minute Entry Order in which the Court stated, “Arizona Department of Water
9 Resources shall begin preparation of separate hydrographic survey reports for the
10 Sycamore Canyon and Lower Verde Valley subwatersheds *immediately after* filing the
11 subflow zone report for the Verde River watershed.” Response at 3, citing March 4, 2020
12 Order at 6 (emphasis added). SRP apparently takes the position that this language in the
13 March 4, 2020 Order prohibits ADWR from working on technical reports for the Verde
14 River watershed simultaneously.

15 ADWR requested and was granted an extension of time until April 30, 2023 to file
16 its Subflow Zone Report. ADWR plans to issue the Preliminary HSR for the Sycamore
17 Canyon subwatershed on January 5, 2024 and plans to issue the Preliminary HSR for the
18 Lower Verde Valley subwatershed on June 6, 2025, as previously requested by the Court.⁷
19 ADWR believes that it can work on the Subflow Zone Report and the Preliminary HSRs
20 simultaneously and that the extension of time for the Subflow Zone Report will not impact
21 the deadlines the Court has previously established for other technical reports for the Verde
22 River watershed. In the event that the Court has not approved a final delineation of the
23 lateral extent of the subflow zone prior to the issuance of the Final HSRs for the Sycamore
24 Canyon or Lower Verde Valley subwatersheds, due January 10, 2025 and June 3, 2026

25 _____
26 ⁷ See March 4, 2020 Order at 7.

1 respectively, ADWR nonetheless would include all wells located within the subwatershed
2 in the Final HSR that subwatershed but without identifying the source of water in the
3 proposed water right attributes (a legal issue). ADWR would issue a supplement to its
4 HSRs at a later date incorporating the delineation as approved by the Court.

5
6 **B. ADWR cannot issue its Subflow Zone Report (or any portion thereof)**
7 **prior to April 30, 2023.**

8 When ADWR requested an extension of time until April 30, 2023 to file its
9 Subflow Zone Report, it did not randomly or arbitrarily select that date; rather, the April
10 23, 2023 deadline was requested after careful consideration of the need for additional
11 surficial geologic mapping by the Arizona Geologic Survey along with ADWR's existing
12 deadlines for the numerous technical reports that have been requested by the Court in both
13 general stream adjudications as shown in **Attachment A**.

14 As described in ADWR's Request, both the Sycamore Canyon and Lower Verde
15 Valley subwatersheds require additional surficial geologic mapping in order to complete
16 the subflow zone delineation for those subwatersheds. Such mapping will not be
17 completed by the June 1, 2021 deadline. The Arizona Geologic Survey cannot begin its
18 mapping work until later this year. Until the mapping is completed, ADWR cannot
19 analyze the geologic information for incorporation into the Subflow Zone Report.
20 Further, even if the Arizona Geological Survey was able to finish its mapping sooner than
21 anticipated, ADWR will not be able to issue the Subflow Zone Report sooner than April
22 30, 2023 due to overlapping deadlines for other technical reports requested by the Court.
23 In short, April 30, 2023 was the most reasonable date ADWR could have requested under
24 the circumstances.
25
26

1 **III. ADWR IS CONTINUING TO INVESTIGATE ALL STREAM REACHES**
2 **IN THE VERDE RIVER WATERSHED UNDER PREDEVELOPMENT**
3 **CONDITIONS.**

4 In the Order dated November 27, 2017, the Court requested that ADWR delineate
5 the subflow zone of the “perennial and intermittent streams in the Verde River
6 Watershed.”⁸ The Order further stated that the report “shall also include the subflow zone
7 of ephemeral reaches of perennial and intermittent streams if: (1) anthropological surface
8 water diversions or groundwater pumping caused that portion of the perennial or
9 intermittent stream to become ephemeral; and (2) a saturated zone exists beneath the
10 ephemeral reach that is connected to the saturated zone beneath the adjoining perennial or
11 intermittent reaches.” *Id.* The Court directed that “ADWR shall determine the subflow
12 zone based on conditions existing in the earliest year or during a ‘range of years
13 immediately prior to regular, discernable diversion or depletion of stream flows resulting
14 from human activity’ for which reliable and reasonably complete data exists.”⁹

15 In its Response, SRP mistakenly assumes that ADWR did not evaluate the Big
16 Chino Wash under pre-development conditions based on ADWR’s preliminary
17 assessments provided to the Court in support of ADWR’s Request. Response at 8. Based
18 on this assumption, SRP provided certain information to ADWR regarding pre-
19 development conditions in the Big Chino Wash and requested that the Court “direct
20 ADWR to investigate whether the Big Chino was intermittent or perennial in pre-
21 development conditions, and if so, include the Big Chino in its subflow zone delineation
22 report for the Verde Watershed.” Response at 10.

23 The Court has already directed ADWR to consider all stream reaches in the Verde
24 River watershed to determine whether the reaches meet the pertinent criteria for inclusion

25 ⁸ See November 27, 2017 Order at 2.

26 ⁹ *Id.* at 4, citing September 5, 2005 Order, Contested Case W1-103, at 21.

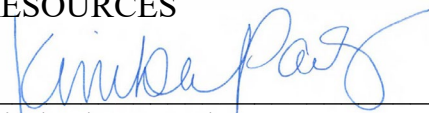
1 in the Subflow Zone Report.¹⁰ Consistent with the Court's orders, ADWR's
2 determinations regarding stream classifications are being based on pre-development
3 conditions. ADWR will consider the information provided by SRP in its Response in
4 addition to all other relevant information available to ADWR in making such
5 determinations.

6
7 **IV. CONCLUSION**

8 ADWR requests that the Court deny SRP's Motion to reinstate the June 1, 2021
9 deadline for the issuance of its Subflow Zone Report or any portion thereof. In
10 accordance with the April 14, 2021 Order granting ADWR's Request, ADWR should be
11 permitted to issue its Subflow Zone Report in its entirety on April 30, 2023, as such an
12 extension of time will have no impact on the other deadlines previously established in the
13 Court's March 4, 2020 Order. ADWR further requests that the Court deny SRP's request
14 that the Court require ADWR to include the Big Chino in its subflow investigation as
15 unnecessary. ADWR already is investigating stream reaches within the Verde River
16 watershed for inclusion in its Subflow Zone Report based on pre-development conditions
17 and other criteria set forth in the Court's November 27, 2017 Order.

18 **RESPECTFULLY SUBMITTED** this 1st day of June, 2021.

19
20 ARIZONA DEPARTMENT OF WATER
21 RESOURCES

22 
23 _____
24 Kimberly R. Parks, Deputy Counsel

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26 _____
¹⁰ *Supra* note 7.

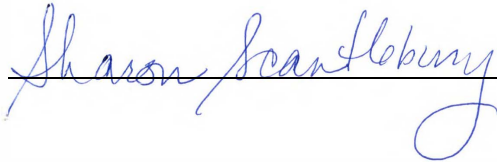
1 **ORIGINAL** of the foregoing and attachment
2 sent by first-class mail on June 1, 2021, to:

3 Clerk of the Maricopa Superior Court
4 Attn: Water Case
5 601 W. Jackson Street
6 Phoenix, Arizona 85003

7 **COPIES** of the foregoing and attachment
8 sent by first-class mail on June 1, 2021, to:

9 Special Master Susan Ward Harris
10 Maricopa County Superior Court
11 Central Court Building
12 201 West Jefferson Street, Suite 3A
13 Phoenix, AZ 85003-2205

14 **COPIES** of the foregoing and attachment
15 sent by first-class mail on June 1, 2021 to all
16 parties on the court-approved mailing list for
17 Contested Case No. W1-106.

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ATTACHMENT A

Major Reports Timeline June 2021

Project	Deadline	2019				2020				2021				2022				2023				2024				2025				2026				2027				2028				2029				2030				Projected Start Quarter	Time Required (in quarters)
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4						
San Pedro Contested Casework	Ongoing																																									2019 Q1									
Lower LCR Preliminary HSR	3/31/2022																																									2019 Q1	14								
Verde Subflow Zone	4/30/2023																																									2020 Q1	14								
Verde Domestic de minimis	12/3/2021																																									2021 Q1	4								
Verde Stockponds de minimis	6/3/2022																																									2021 Q1	6								
Sycamore Preliminary HSR	1/5/2024																																									2021 Q3	11								
Lower Verde Valley Preliminary HSR	6/6/2025																																									2022 Q1	14								
Navajo Prelim HSR Phase II - Ind/Com, Cultural/Recreation	2023 - TBD																																									2022 Q2	4								
Combined Navajo Preliminary HSR II and III	2025 - TBD																																									2022 Q2	12								
Lower LCR Final HSR	2023 - TBD																																									2022 Q3	4								
Navajo Final HSR Phase II	2024 - TBD																																									2023 Q2	4								
Navajo Prelim HSR Phase III - Irrigation	2027 - TBD																																									2024 Q2	12								
Sycamore Final HSR	1/10/2025																																									2024 Q2	4								
Little Chino Preliminary HSR	6/2/2028																																									2025 Q1	14								
Combined Navajo Final HSR	2026 - TBD																																									2025 Q2	4								
Lower Verde Valley Final HSR	6/3/2026																																									2025 Q3	4								
Big Chino Preliminary HSR	2029 - TBD																																									2026 Q1	14								
Navajo Final HSR Phase III	2028 - TBD																																									2027 Q2	4								
Little Chino Final HSR	5/29/2029																																									2028 Q3	4								
Navajo Report - Exterior Allotments	2030 - TBD																																									2028 Q3	8								
Big Chino Final HSR	2030 - TBD																																									2029 Q4	4								
San Pedro Mountain front streams	TBD																																																		
San Pedro HSR II - Sierra Vista Watershed	TBD																																																		

- = Planned work with issued deadline
- = Planned work, no ordered deadline yet
- = Contested Casework
- = Proposed Combined HSR
- = Proposed Phased HSR

