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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

**IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
LITTLE COLORADO RIVER SYSTEM
AND SOURCE**

CV 6417-400

**REPORT OF THE SPECIAL MASTER
ON SUMMARY PROCEEDINGS IN THE
LOWER LITTLE COLORADO
SUBWATERSHED**

CASE NAME: *In re Lower Little Colorado River Subwatershed*

HSR INVOLVED: *In re Lower Little Colorado River Subwatershed (not yet issued)*

DESCRIPTIVE SUMMARY: Report issued pursuant to Ariz. R. Civ. P. 53 recommending the implementation of summary procedures to adjudicate *de minimis* claims to surface water for stock and wildlife watering and for stockponds having a capacity of not more than 15 acre feet of water. Objections to this Report must be filed with the Clerk of the Apache County Superior Court by **April 28, 2021**. A hearing on any objections will be held at a time and place to be set by the Court.

NUMBER OF PAGES: 27

DATE OF FILING: October 30, 2020

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1 The Lower Little Colorado River (“LLCR”) subwatershed supports more than 3,300
2 stockponds and stock and wildlife watering uses.¹ Water for stock and wildlife is a beneficial
3 use of appropriable water for which a person or entity may obtain a water right. A.R.S. §45-
4 151. This proceeding has been initiated to determine whether summary procedures should be
5 adopted to adjudicate water rights in the LLCR subwatershed for stockponds and stock and
6 wildlife watering uses.

7 Currently, claims for rights to water in the San Pedro River watershed for stockponds
8 with a capacity to store 15 acre feet of water or less, stock and wildlife watering, and domestic
9 uses are determined using summary procedures.² These procedures were approved based on
10 factual findings and legal conclusions that those three types of uses in the San Pedro River
11 watershed constitute “*de minimis*” uses. A *de minimis* determination is fundamentally a case
12 management decision by a court that the benefits of resolving certain types of claims are
13 substantially outweighed by the costs that must be incurred by the parties and the court.³
14 Thus, the purpose of this Report is to determine whether stockponds and stock and wildlife
15 watering constitute *de minimis* water uses in the LLCR subwatershed.

16
17 **I. Procedural Background**
18

19 Pursuant to A.R.S. §45-256, Arizona Department of Water Resources (“ADWR”) was
20 requested to identify the number of stockponds and stock and wildlife watering uses in the
21 LLCR subwatershed, calculate the amount of water consumed by those uses, and report on the
22

23 ¹ Arizona Department of Water Resources, *Technical Report: De Minimis Adjudication of Stockpond and*
24 *Stock and Wildlife Watering Uses Lower Little Colorado River Subwatershed*, July 2019 at 22-23
25 (“Technical Report”).

26 ² Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1 Cases involving
27 Stockwatering, Stockponds, and Domestic Uses, (Civil No. W1-11-19) filed November 14, 1994, amended
28 February 23, 1995, approved and modified September 27, 2002 at 5 (“San Pedro Decision”).

³ *Id.* at 32.

1 impact of stockponds and stock and wildlife watering on the quantity of available surface
2 water. It was not requested to investigate uses that relied on wells as the source of the water
3 supply.

4 In July 2019, ADWR issued its Technical Report. It stated that the total amount of
5 water used by stockponds was within the margin of error attributable to measurements from a
6 downstream gage that records the flow in the Little Colorado River. It also concluded that
7 stock and wildlife watering from the streams and springs are low density and highly variable
8 water uses that commonly occur along ephemeral washes that minimally impact the surface
9 water system.⁴

10 At the time it filed its Technical Report, ADWR also filed an Objection Notice for the
11 Technical Report with the Apache County Superior Court. It mailed copies of the Objection
12 Notice to all persons on the court-approved mailing list for the Little Colorado River (“LCR”)
13 General Adjudication, persons who filed a claim for a water right in the LCR adjudication, and
14 certain persons who had not filed a statement of claimant for a water right, but who were
15 believed to be using water for stockpond, stockwatering or wildlife purposes in the LLCR
16 subwatershed.⁵ Thirty-five claimants filed objections to the ADWR’s Technical Report. *See*
17 Appendix A.

18 An initial status conference was held on February 5, 2020 with the objecting parties to
19 begin the scheduling process to resolve the objections to the Technical Report. Due to
20 discussions at the status conference, ADWR filed a written response on March 20, 2020
21 (“ADWR’s Response”) to those comments and objections submitted by the parties that directly
22 addressed its Technical Report. A scheduling conference was held on May 28, 2020 to
23

24
25 ⁴ *Id.* at 30.

26 ⁵ Arizona Department of Water Resources’ Notice of Publication of Technical Report Concerning Certain
27 Water Uses in the Lower Little Colorado River Subwatershed and Commencement of Objection Period, filed
28 July 30, 2019.

1 identify specific issues that each party believed should be resolved and to finalize a schedule
2 for Disclosure Statements, discovery, motions, and a hearing date on the objections to the
3 Technical Report. The parties who appeared at the Scheduling Conference stated that there
4 was no need for any further proceedings. It was their position that the Technical Report, along
5 with ADWR's Response, provided the factual basis for the adoption of summary procedures
6 similar to those implemented in the San Pedro watershed to determine water rights for
7 stockponds and stock and wildlife watering uses in the LLCR subwatershed.

9 II. The Lower Little Colorado Subwatershed

11 The LLCR subwatershed is located in the Little Colorado River Watershed that includes

12 a large area of the Colorado
13 Plateau in northern Arizona. For
14 purposes of the general
15 adjudication of the Little
16 Colorado River watershed,
17 ADWR divided the watershed
18 into five separate areas: the
19 Hopi Reservation, the Navajo
20 Reservation, the Lower Little
21 Colorado River subwatershed,
22 the Silver Creek subwatershed,
23 and the Upper Little Colorado
24 River subwatershed. *See figure*

25 1. The LLCR subwatershed is
26 located in the southwestern

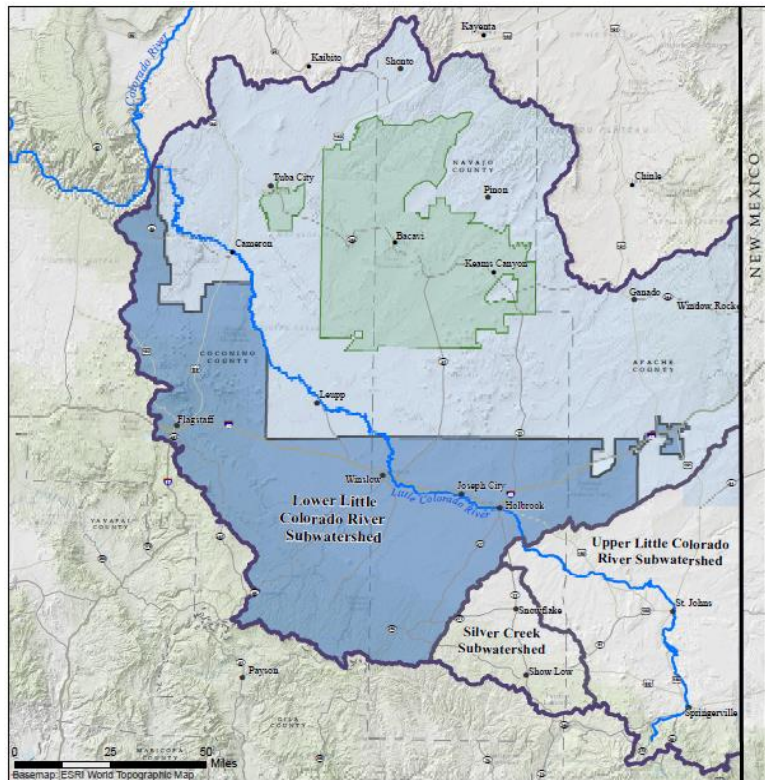


Figure 1. The LLCR subwatershed, shown by the darker area, is located in the southwest part of the Little Colorado River watershed.

Source. Technical Report, figure 2-1.

1 portion of the Little Colorado River watershed to the south and west of the Navajo Reservation
2 although it is also intended to encompass private in-holdings on the Navajo Reservation. It
3 covers approximately 6,150 square miles of land within Apache, Coconino, and Navajo
4 Counties.

5 Surface water sources in the LLCR subwatershed include the Little Colorado River that
6 flows downstream through the LLCR subwatershed and across a portion of the Navajo
7 Reservation to the Colorado River. The main tributaries of the river in the LLCR watershed
8 are the Moenkopi Wash, Dinnebito Wash, Cottonwood Wash, and the Puerco River.⁶ The
9 subwatershed also includes several perennial stream reaches, although intermittent and ephemeral
10 streams are more common.⁷

11 The LLCR subwatershed also includes four Closed Basins.⁸ A Closed Basin is a
12 drainage area where all surface flow remains within the drainage area and no overland flow
13 leaves the hydrologic unit.⁹ Consequently, a stream or wash located in a Closed Basin, by
14 definition, does not contribute to the Little Colorado River. In the LLCR subwatershed,
15 ADWR classified the Phoenix Park Wash/Dry Lake, Dent and Sayer Tank, Mormon Lake, and
16 The Sinks, as hydrologic units with no outlets, i.e., Closed Basins.¹⁰ Approximately nine
17 percent (9%) of the stockponds located in the LLCR subwatershed are located in the Closed
18 Basins. Eighty two percent (82%) of those stockponds have a surface area of less than one
19 acre and no stockpond has a surface area in excess of five acres.¹¹ In contrast, there are 53
20 stockponds outside the Closed Basin that have surface areas in excess of five acres. Thus, the
21

22
23
24 ⁶ Technical Report at 4.

25 ⁷ *Id.* at 5.

26 ⁸ *Id.*

27 ⁹ *Id.* at 6.

28 ¹⁰ *Id.* at 17.

¹¹ *Id.* at 22, Table 4-2.

1 water diversion for each stockpond within these basins is relatively small. As a result, ADWR
2 concluded that they have little to no expected impact on the greater watershed or river system.¹²

3
4 **III. De Minimis Considerations**

5
6 A *de minimis* finding is not simply a function of the amount of water required for a
7 particular class of use. Instead, it requires consideration of four factors:

- 8 (1) the amount of water available in the watershed;
9 (2) the number of stockponds and stock and wildlife watering uses;
10 (3) the scope and impact of these uses on the water supply; and,
11 (4) the costs and benefits of a complete, rather than summary, adjudication of the
12 claims for rights to water for these types of uses.¹³

13
14 **A. Quantification of Available Water**

15 Arizona Department of Water Resources calculated the amount of water originating in
16 the LLCR subwatershed based on the historical flow measurements of the Little Colorado
17 River at two gages maintained by the United States Geological Survey (“USGS”). One gage,
18 the Woodruff gage, is located on the eastern side of the subwatershed where the Little Colorado
19 River flows into the LLCR subwatershed. The downstream gage, the Cameron gage, is located
20 on the western side of the Little Colorado River watershed relatively close to the confluence of
21 the Little Colorado River and the Colorado River.

22 Using measurement collected over more than 70 years, ADWR determined the median
23 annual flow at each gage. When an annual streamflow data skews to the right, the extreme
24

25
26

¹² *Id.*

27 ¹³ San Pedro Decision at 12.

1 values exert a significant effect on
2 the mean.¹⁴ The annual flow data
3 generated by the Cameron gage
4 skews to the right due to high
5 flow in relatively few number of
6 years and substantially lower flow
7 in the remaining years. *See figure*
8 *2.* This mathematical result can
9 be observed in the statistical
10 results calculated by ADWR
11 based on the Cameron gage data.

12 The mean exceeds the median
13 annual flow by almost 25 percent.¹⁵
14 In such situations, the median is a
15 more appropriate statistical parameter to determine the relevant streamflow.¹⁶

16 Arizona Department of Water Resources reported the median flow at the upstream gage
17 (Woodruff) as 19,837 acre feet per year and a median flow of 128,722 acre feet per year at the
18 downstream gage (Cameron). It determined the available water supply in the LLCR
19 subwatershed to be 108,885 acre feet of water per year, the difference between the median
20 flows at the two gages.¹⁷

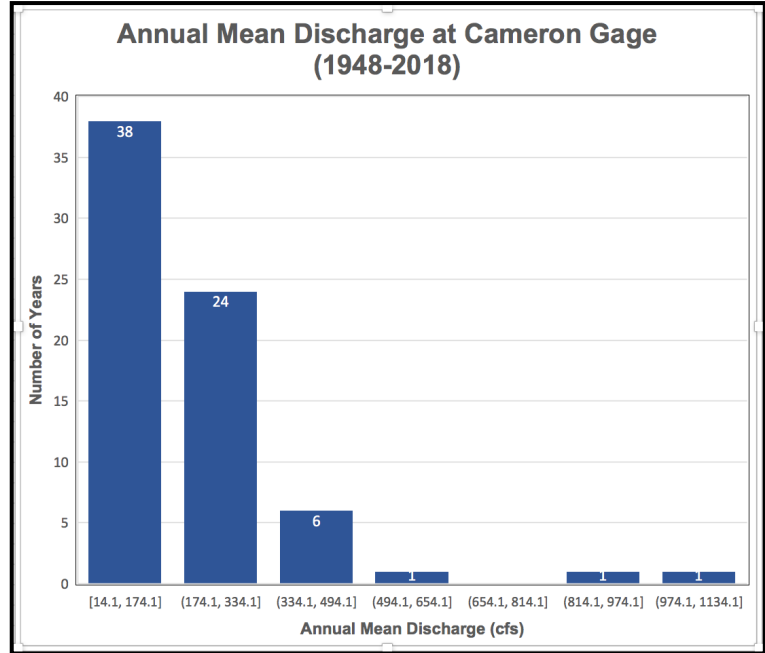


Figure 2. The distribution of the annual mean streamflow data from the Cameron gage is asymmetrical around the mean due to the years with substantially higher flow.

Source of data: US Geological Survey, Water Resources Data, 1948-2018

14 Ven Te Chow, David R. Maidment & Larry W. Mays, *Applied Hydrology* 362 (1987).

15 Technical Report, Appendix B, Table B-1.

16 *Id.*

17 *Id.* at 27.

1 **Finding of Fact No. 1.** The median values, rather than mean values are the preferable
2 statistics to estimate water supply and outflow in a watershed, such as the LLCR subwatershed,
3 that has years of lower flow and a relatively few years of high flow.

4 **Finding of Fact No. 2.** Based on the available period of record, the gage near
5 Woodruff provides a reasonable measurement of flow into the LLCR subwatershed and the
6 gage near Cameron provides a reasonable record of flow out of the LLCR subwatershed.

7 **Finding of Fact No. 3.** The difference between the calculated median flows at the two
8 gages is 108,885 acre feet.

9
10 **B. Number and Impact of Water Uses**

11 **1. Stockponds**

12 A stockpond is an impoundment, of any size, built to collect and store appropriable
13 water in an enclosure for the sole purpose of watering livestock and wildlife. A.R.S. §45-
14 251(10). For purposes of this proceeding, ADWR did not include any impoundment that was
15 not constructed on or supplied by a diversion from a natural drainage channel because it
16 assumed that a well provided the source of water for the impoundment.¹⁸ Applying the
17 statutory definition subject to the limitation imposed by the source of water, ADWR identified
18 2,828 stockponds in the LLCR subwatershed outside of Closed Basins.¹⁹

19 It determined the storage capacity of the stockponds in the subwatershed based on 97
20 stockponds that it surveyed by high-resolution Small Unmanned Aerial System imagery and
21 sonar measurements. Using field data and regression analysis, ADWR developed a formula
22 that related a stockpond's surface area to its capacity. It concluded that a stockpond's capacity
23 to hold water (in acre-feet) is equal to its surface area (in acres) multiplied by 3.21.²⁰ For
24

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26 ¹⁸ *Id.* at 9.

27 ¹⁹ *Id.* at 22, table 4-2.

28 ²⁰ *Id.* at 20.

1 example, a stockpond
2 that has a surface area
3 of four acres has the
4 capacity to store
5 approximately 12.84
6 acre feet of water (4 x
7 3.21 = 12.84). It
8 analyzed and remotely
9 mapped the smaller
10 stockponds using
11 aerial imagery and

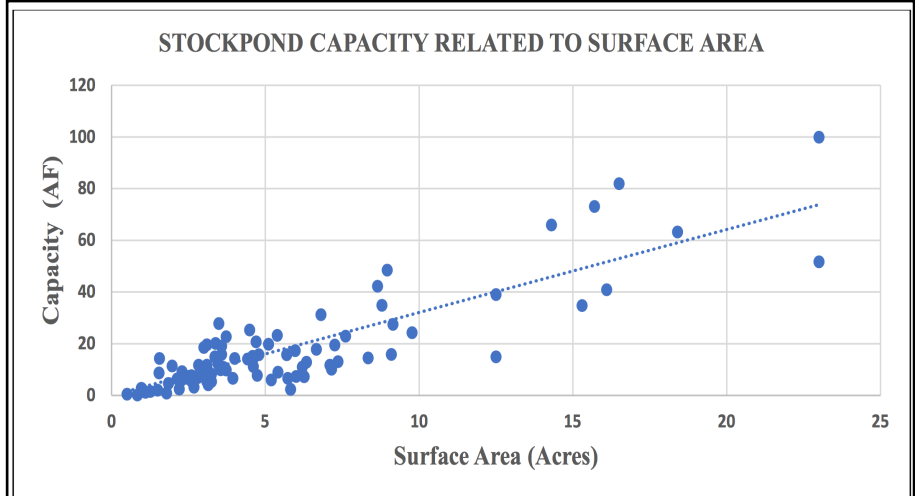


Figure 3. Data plotted for stockponds measured in the field shows the relationship between capacity and surface area. The dotted line results from regression analysis of the data.

Source. Technical Report, Figure 4-5

12 applied its formula to each stockpond to determine the total capacity of the stockponds in the
13 LLCR subwatershed located outside the Closed Basins as 7,384 acre feet.²¹

14 In its initial objection to the Technical Report, the Salt River Project (“SRP”)
15 highlighted the fact that the greatest difference between stockpond capacity determined by field
16 measurements and statistical analysis occurred with respect to stockponds with larger surface
17 areas. As shown in *figure 3*, the difference becomes more pronounced for stockponds with
18 approximately a capacity of 15-acre feet or more. Although the statutory definition of a
19 stockpond does not contain any size limitation, given the purpose for which this proceeding
20 was initiated, consideration should be given as to whether an upper limit should be applied to
21 the size of a stockpond that may be adjudicated in the LLCR subwatershed by a summary
22 proceeding.

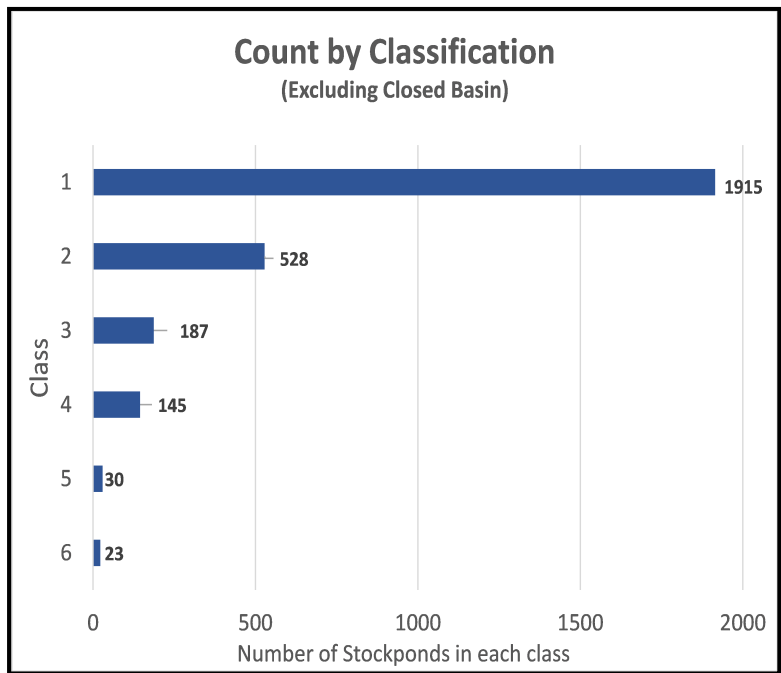
23 In the San Pedro watershed, summary adjudication is limited to stockponds with a
24 capacity of 15 acre feet or less.²² The statutory provisions that govern registration of

26 ²¹ *Id.* at 23.

27 ²² San Pedro Decision at 5.

1 stockponds define a stockpond as a pond having a capacity of not more than 15 acre feet of
 2 water. A.R.S. §45-271. In 2017, the legislature amended the statutes applicable to the General
 3 Adjudication to introduce the term “small water use claim”. A.R.S. §45-251(9). A small
 4 water use claim for a stockpond only applies to stockponds having a capacity of not more than
 5 15 acre feet. Accordingly, as the focus of this proceeding is on the small claims for water
 6 rights, the fact that the *de minimis* procedures that have been approved do not apply to
 7 stockponds with a capacity in excess of 15 acre feet, and the statutory provisions that apply a
 8 15 acre-foot standard, it is appropriate to differentiate between claims for water rights for
 9 stockponds that have a capacity equal to or less than 15 acre feet and those stockponds that can
 10 store more than 15 acre feet of
 11 water.

12 The stockponds identified
 13 by ADWR ranged in storage
 14 capacity from 0.013 to 154.81
 15 acre feet.²³ As shown in *figure 4*,
 16 the majority of the stockponds
 17 located outside of the Closed
 18 Basins have a capacity of less
 19 than one acre foot of water. Most
 20 of the stockponds (86%) can store
 21 no more than four acre feet of
 22 water. See *figure 4*. Arizona
 23 Department of Water Resources
 24 only identified 53 stockponds with



25 **Figure 4.** ADWR classified stockponds by size.

Class	Capacity (in acre feet)
1	< 2.0
2	2.0 – 3.99
3	4.0 – 5.99
4	6.0 – 14.99
5	15.0 – 29.99
6	≥ 30.0

26 **Source of data.** Technical Report, Table 4-3.

27 ²³ Technical Report, Appendix E.

1 a capacity of 15 acre feet or more outside the Closed Basins. Thus, a 15-acre size limitation
2 affects less than two percent (2%) of the stockponds located in the LLCR subwatershed.²⁴ The
3 impact on the amount of water stored in stockponds, however, is significant because those 53
4 stockponds account for 2,100 acre feet of water presumptively diverted from the river each
5 year.

6 Once it identified the stockponds and assessed their individual and cumulative storage
7 capacities, ADWR calculated the impact of stockponds on the LLCR subwatershed by applying
8 a water balance approach that focused on the surface water flow originating within LLCR
9 subwatershed along with a set of simplifying assumptions. As ADWR explained, the very
10 conservative assumptions on which it based its cumulative analysis of the impact of stockponds
11 can be “expected to result in an artificially high calculated percentage of outflow depletion.”²⁵
12 It estimated the maximum cumulative impact of stockponds by assuming that all 7,384 acre
13 feet of water per year that could be stored in the stockponds located outside of Closed Basins
14 depleted the flow of the Little Colorado River each year.²⁶ In other words, this assumption
15 means that in the absence of the stockponds, the downstream gage would report an additional
16 7,384 acre feet of water each year.

17 By basing its analysis on the assumption that the river provided the sole source of water
18 to the stockponds, ADWR excluded all other sources of water for stockponds in the
19 subwatershed. For example, ADWR did not consider the runoff from approximately 500
20 square miles of land below the downstream gage.²⁷ It did not capture the full flow of the river
21 leaving the watershed because the Cameron gage does not measure the approximately 69,000
22 acre feet of water discharged each year downstream from the Blue Springs.²⁸ Other
23

24
25 ²⁴ *Id.* at Table 4-2.

26 ²⁵ *Id.*

27 ²⁶ *Id.* at 28.

28 ²⁷ *Id.* at 27.

²⁸ *Id.*

1 assumptions made in this process include the assumption that none of the water diverted to
2 stockponds returned to the LLCR subwatershed. In addition, it did not take into account the
3 fact that diversions for irrigation or other uses, evaporation or transmission losses could have
4 reduced the measurable flow between the gages and, thus reduced the amount of available
5 water in the subwatershed.²⁹ Consequently, the percentage depletion attributed to the
6 cumulative stockponds is higher than it would have been if the amount of water in the
7 subwatershed had been determined based on all surface water in the subwatershed and in the
8 absence of the assumptions. Arizona Department of Water Resources concluded that the total
9 volume of the 2,828 stockponds reduced the streamflow in the Little Colorado River by 6.8%.
10 The exclusion of stockponds that can store more than 15 acre feet of water reduces the impact
11 on the LLCR subwatershed by the remaining stockponds located outside the Closed Basin to
12 4.5% ($5,284 / (108,885 + 7,384) \times 100$) of the streamflow in the Little Colorado River.

13 **Conclusion of Law No. 1.** The water balance methodology is a reasonable method,
14 albeit a very conservative method when undertaken using the simplifying assumptions made by
15 ADWR, based on data from USGS gages, for estimating the amount of water used by
16 stockponds in the LLCR subwatershed.

17 **Finding of Fact No. 4.** There are 3,103 stockpond uses reported by ADWR in the
18 LLCR subwatershed. Excluding the stockponds in the Closed Basins there are 2,828
19 stockponds.

20 **Finding of Fact No. 5.** The size of stockponds can be reasonably determined by
21 satellite and other aerial imagery that is available to ADWR. Data from the aerial sources
22 allows surface area to be determined for a stockpond as small as 0.004 acres.³⁰

23 **Finding of Fact No. 6.** ADWR has developed a means of reliably estimating capacity
24 of stockponds based on surface acreage using regression analysis.³¹

26 ²⁹ *Id.* at 27-28.

27 ³⁰ *Id.* at Appendix E at 1.

1 **Finding of Fact No. 7.** Based on ADWR's regression analysis, a stockpond in the LLCR
2 subwatershed with a surface area of one acre would have a statistically predicted storage capacity
3 of 3.21 acre-feet.

4 **Finding of Fact No. 8.** Approximately eighty six percent (86%) of the stockponds
5 located in the LLCR subwatershed and outside of the Closed Basins have a capacity of no more
6 than four acre feet of water.

7 **Finding of Fact No. 9.** The stockponds in the LLCR subwatershed located outside of
8 Closed Basins with a capacity of no more than 15 acre feet have a cumulative total of
9 approximately 5,284 acre feet. These stockponds account for 4.6% percent of the median
10 amount of water gained by the Little Colorado River between two gages selected assuming that
11 all water for all stockponds in the subwatershed is diverted from the river annually and, in
12 absence of such diversions, would increase the flow at the Cameron gage by 7,384 acre feet of
13 water.

14 **2. Stock and Wildlife Watering**

15 Stock and wildlife watering use entails the consumption of water by livestock and
16 wildlife either directly from a naturally occurring body of water or from small facilities, other
17 than a stockpond, that are sourced by diverting appropriable water. A.R.S. §45-251(11). In
18 2014, the United States Department of Agriculture estimated that there were a total of 108,133
19 head of cattle in Coconino, Navajo, and Apache Counties (49,318 in Coconino County, 26,133
20 in Navajo County, and 32,682 in Apache County).³² The LLCR subwatershed includes
21 portions of each of the three counties.
22

23
24
25
³¹ *Id.* at 20.2

26 ³² University of Arizona, 2014. *The Contribution of the Beef Industry to the Arizona Economy.*
27 Cooperative Extension, Department of Agriculture and Source Economics, May 2014.

1 Arizona Department of Water Resources mapped 294 stock and wildlife watering uses.
2 The overwhelming majority of the stock and wildlife uses are from springs located along
3 ephemeral streams that provide minimal contributions to the flow of water from the LLCR
4 subwatershed.³³ Due to the location of the water uses and the seasonal variations in the number
5 and location of stock, ADWR concluded that that stock and wildlife watering constitute a
6 minimal impact on the outflow of water from the LLCR subwatershed.³⁴

7 **Finding of Fact No. 10.** There are approximately 294 stock and wildlife watering uses
8 in the LLCR subwatershed.

9 **Finding of Fact No. 11.** Each animal unit (one cow and one calf) consumes
10 approximately 0.011 acre feet of water per year.³⁵

11 **Finding of Fact No. 12.** Approximately 98,000 animal units would have to drink water
12 that would otherwise flow into the Little Colorado River as the sole source of water for an
13 entire year in order to consume one percent of the flow gained by the Little Colorado River in
14 the LLCR subwatershed.³⁶

15 **Finding of Fact No. 13.** The number of animal units in the LLCR subwatershed is less
16 than 98,000 animal units.³⁷

17 **Finding of Fact No. 14.** The springs that support the livestock and wildlife make a
18 minimal contribution to the outflow of water from the LLCR subwatershed.

19 **Finding of Fact No. 15.** The consumption of water by livestock and wildlife at
20 instream locations or at springs has minimal impact on the water outflow from the LLCR
21 subwatershed.

24 ³³ Technical Report at 29.

25 ³⁴ *Id.* at 29

26 ³⁵ *Id.*

27 ³⁶ *Id.*

28 ³⁷ *Id.*

1 **C. Cost-Benefit Analysis**

2 The thousands of stockponds and stock and wildlife watering uses must be subject to a
3 complete adjudication if the public and private benefits of their adjudications outweigh the
4 associated costs.³⁸ The benefits of adjudicated water rights are the establishment of the proper
5 owners of valid rights that contains a sufficient description to allow the holders of the water
6 rights to either enforce or defend the right when required by the circumstances. As the final
7 step in a *de minimis* determination, a cost-benefit analysis must be undertaken to determine
8 whether those benefits justify the burden on judicial, administrative and litigant resources to
9 conduct a complete adjudication of each claim for a water right for a stock and wildlife
10 watering use or a stockpond.

11 In the San Pedro Decision, the Special Master considered the time and expense that the
12 parties would have to incur to prove, and the court to resolve, each separate characteristic of a
13 water right. The set of characteristics include: owner of the water right, the legal basis for the
14 water right, priority date, beneficial use, source of water, location of the place of use, point of
15 diversion, and annual volume. Determinations of characteristics such as owner of the water
16 right, the basis of the right, and the priority date could have required, in addition to factual
17 findings, lengthy proceedings on legal issues unique to the individual claims that could have
18 imposed significant costs in time and resources. Characteristics that should not have been in
19 dispute such as the actual location of the water use could cause the parties to incur expense
20 because even with advanced mapping capabilities, disputes can arise as to the correct legal
21 description of the physical location of a stockpond or a stock watering site. The procedures
22 adopted in the San Pedro Decision were designed to reduce this cost by permitting the physical
23 locations of the diversion and use of water for stockponds to be identified as located within an
24 area of 40 square acres or, in some cases, within an area of 10 square acres.

25
26 _____
27 ³⁸ San Pedro Decision at 26.
28

1 The potentially thousands of claims for water rights for stockponds and stock and
2 wildlife watering uses that will require adjudication in the LCCR subwatershed will involve a
3 large number of claimants and objectors. In addition to the time and resources necessary to
4 initiate, try and decide the individual cases, administrative time and resources will be required
5 to manage the cases over an extended period. The summary procedures designed to streamline
6 the determination of water rights would simplifying the process so cases can proceed to
7 completion more quickly thereby alleviating a substantial management burden.

8 Uses such as stock and wildlife watering and stockponds do not necessarily require a
9 detailed adjudication of every water right characteristic. This observation is due to the likely
10 reality that the water rights may never be the subject of an enforcement action. As explained
11 by ADWR, intermittent and ephemeral streams and washes and not the Little Colorado River
12 provide the source of water for most of these small water uses.³⁹ As these sources do not
13 meaningfully contribute to river flow, a holder of a senior right to river water would realize
14 little benefit from an enforcement action involving these rights. Moreover, the expense and
15 delay of enforcing a call against these hundreds if not thousands of small uses would be
16 uneconomical save for the most adverse drought conditions.

17
18 **Finding of Fact No. 16.** Because of the large number of uses and small sizes, the
19 administration of stock and wildlife watering uses is not practical.

20 **Finding of Fact No. 17.** Administration of individual stockponds with a capacity of not
21 more than 15 acre feet of water is generally not feasible in terms of making water available to
22 downstream users.

23 **Finding of Fact No. 18.** It could take the court system no less than five years of
24 concentrated effort focused exclusively on the LLCR subwatershed to complete a detailed,
25

26
27 ³⁹ Technical Report at 26.
28

1 individual adjudication of each stock and wildlife watering and stockpond claim assuming that
2 no more than 2.5 hours were required for each claim on average. In that time, the following
3 would have to be accomplished: reviewing the watershed file report and objections, the
4 statements of claimant, and any pre-filing documents, preparing the order to initiate the case,
5 compiling a distribution list, scheduling and holding status conferences, readiness conferences,
6 conducting a trial, issuing a decision, and preparing an abstract.

7 In summary, stockponds with a capacity of no more than 15 acre feet of water and stock
8 and wildlife watering uses are *de minimis* uses in the LLCR subwatershed. There is little
9 likelihood that administration will be required as the result of calls made by senior users and a
10 detailed adjudication of the thousands of claims would impose an unwarranted burden on the
11 parties and the court. Accordingly, based on the impact of individual uses, summary
12 adjudication of the two types of uses is justified.

13 **Conclusion of Law No. 2.** Stock and wildlife watering are *de minimis* uses of water in
14 the LLCR subwatershed.

15 **Conclusion of Law No. 3.** Individual stock and wildlife watering uses will be
16 adjudicated utilizing summary procedures and proposed water right characteristics appropriate
17 for these uses. The characteristics of these uses will be determined in accordance with the
18 procedures set forth in part V of this decision.

19 **Conclusion of Law No. 4.** Each stock and wildlife watering use will be adjudicated as
20 "reasonable use."

21 **Conclusion of Law No. 5.** Stockponds with a capacity of not more than 15 acre feet of
22 water are *de minimis* uses of water in the LLCR subwatershed. These stockponds will be
23 adjudicated utilizing summary procedures and proposed water right characteristics appropriate
24 for these uses. The characteristics of these uses will be determined in accordance with the
25 procedures set forth in part V of this decision.

1 **Conclusion of Law No. 6.** Volume, based on the maximum storage capacity of the
2 existing structure and expressed in acre feet of water, is the appropriate quantification unit for
3 stockponds.

4 **Conclusion of Law No. 7.** A uniform volume of “not to exceed (\leq) 2 ac-ft with
5 continuous fill" shall be adjudicated for all stockponds in the LLCR subwatershed with a
6 capacity of two acre feet or less. Any benefit resulting from a more exact quantification of
7 these stockponds would be outweighed by administrative, litigant, and judicial costs.

8 **Conclusion of Law No. 8.** A uniform volume of "not to exceed (\leq) 4 ac-ft with
9 continuous fill" shall be adjudicated for all stockponds in the LLCR subwatershed having a
10 capacity of more than two acre feet but not more than four acre feet. Any benefit resulting from
11 a more exact quantification of these stockponds would be outweighed by administrative,
12 litigant, and judicial costs.

13 **Conclusion of Law No. 9.** The remaining approximately fourteen percent (14%) of the
14 stockponds with a capacity of more than four acre feet but not more than 15 acre feet, shall be
15 adjudicated as an annual quantity equal to the surface area reported in the hydrographic survey
16 report prepared by ADWR, rounded to the nearest 0.1 acre multiplied by 3.21 (with continuous
17 fill).

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19
20 **IV. Summary Procedures to Determine *De Minimis* Water Rights**

21
22 Based on the findings of fact and conclusions of law set forth above, stockponds and
23 stock and wildlife watering uses constitute *de minimis* uses in the LLCR subwatershed. They
24 should be adjudicated in a summary fashion. Summary adjudication of claims for stockponds
25 and stock and wildlife watering uses shall be accomplished by:

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- A. Preparation of abstracts of proposed water rights consistently with the rules set forth in part V below;
- B. Incorporating the abstracts as part of the hydrographic survey report (“HSR”) for the LLCR subwatershed;
- C. Resolving those objections necessary to safeguard the statutory and due process rights of the claimants and the objectors to watershed file reports prepared by ADWR. No objections concerning quantity will be considered because the proceedings in this case have resulted in decisions based on the Technical Report filed by ADWR concerning reasonable quantification methods for these uses. Other objections to the original watershed file report and the proposed abstracts will be considered provided that the objector can establish that both:

- 1. Resolution of the objection will demonstrably protect or improve the objector’s own water rights; and
- 2. Resolution of the objection will provide relief that could not otherwise be obtained in a post-final decree enforcement proceeding.

The requisite showing may possible be made if the objector has evidence that a right described in the abstract has no legal basis or was not properly claimed in the adjudication, or a right was not documented in an abstract. No other objections to *de minimis* rights, whether filed to the watershed file report or to the related abstract, will be heard or resolved before the filing of the Master’s final report for the subwatershed. The final report will recommend that, upon entry of the final decree, any remaining objections shall be dismissed.

1 **D.** Administering, including enforcement of and enforcement against, these *de*
2 *minimis* rights along with all other water rights determined for the watershed. If,
3 however, a holder of a water right seeks to move a water right from the land to which it
4 is appurtenant or to change the purpose for which the water, the final report will contain
5 the recommendation that prior to any administrative action by ADWR pursuant to
6 A.R.S. 45-172, a judicial proceeding shall be held to determine the actual priority date
7 and quantity associated with the right proposed to be transferred.
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9 **Conclusion of Law No. 10.** The summary procedures described in this Section IV are
10 appropriate, reasonable, and necessary for the expeditious adjudication of individual stock and
11 wildlife watering and stockpond uses found to be *de minimis*. The application of summary
12 adjudication procedures is a necessary case management tool for making progress in the Little
13 Colorado River general stream adjudication that involves thousands of parties and water rights.

14 **Conclusion of Law No. 11.** As a precondition for applying to ADWR for permission
15 to sever or transfer a stockpond, the owner of the water right must first request the adjudication
16 court or the post-decree Superior Court to adjudicate the actual quantity and priority date of the
17 right.
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19 **V. Determination of Water Right Characteristics**
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21 Unless the relevant facts and circumstances applicable to a claimed water right for a *de*
22 *minimis* use are sufficiently unusual to warrant a deviation from the procedures set forth in this
23 Report, a proposed water right for a *de minimis* use shall be defined by the following attributes:
24 1) Proposed water right number; 2) Statement of Claimant associated with proposed water
25 right; 3) Basis of water right; 4) Owner of the water right; 5) Beneficial use (type of use); 6)
26 Priority date; 7) Source of water; 8) Place of use; 9) Point of diversion; and 10) Quantity.
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1 The following optional characteristics will be included in a water right abstract for
2 informational purposes: 1) Landowner, if different from water right owner; 2) Lessee name, if
3 different from water right owner; 3) Lease number; 4) facility name; and 5) Lessee’s right to
4 reimbursement for improvements, (if any).

5
6 **A. Proposed Water Right Number**

7 A proposed water right number will be created for each water right to be included in the
8 catalog of proposed water rights. Each water right recommended for adjudication will be
9 numbered as follows: Watershed file report where the water use is described + abbreviation of
10 the type of beneficial use + unique serial number. The proposed water right may be the same
11 as the potential water right (PWR) number used in the watershed file report.

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13 **B. Requirement of a Statement of Claimant**

14 As a Statement of Claimant must be filed as a condition of obtaining a water right. The
15 number assigned by Arizona Department of Water Resources to the Statement of Claimant that
16 matches the proposed water right will be included in the abstract. A.R.S. §45-254. An
17 abstract will not be prepared for de *minimis* use without a Statement of Claimant even if no
18 objection is filed to a potential water use identified by Arizona Department of Water
19 Resources. Instead, the use will be listed in the “no water right awarded” section of the
20 catalog of proposed water rights.

21
22 **C. Basis of Water Right**

23 The adjudication is a judicial confirmation of valid pre-existing water rights. The
24 abstract shall include the legal basis for a potential water right. A non-exclusive list of the
25 possible legal basis for these rights includes:
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- 1 1. Prior judicial decrees, A.R.S. §45-257(B)(1);
- 2 2. Filings pursuant to the Water Rights Registration Act, §§ 45-181 to
- 3 190;
- 4 3. Filings pursuant to the Stockpond Registration Act, §§ 45-271 to 276;
- 5 4. Certificate of water right issued under the public Water Code, §§ 45-
- 6 151 to 166; and
- 7 5. Notice of appropriation.

8
9 An abstract will not be prepared for *de minimis* use if a preadjudication filing or other
10 legal basis is not matched with a *de minimis* use claim even if no objection is filed to a
11 potential water use identified by Arizona Department of Water Resources. Instead, the use
12 will be listed in the “no water right awarded” section of the catalog of proposed water rights.

13
14 **D. Ownership**

15 The abstract for the water use shall identify the name of the owner of the *de minimis*
16 use. This Report contains no recommendation to determine the ownership of water rights as
17 between the United States and any lessee of federal land.

18
19 **E. Beneficial (Type of) Use**

20 The information contained in the watershed file reports and the definitions set forth in
21 this Report, will be used to determine the beneficial type of use for each right.

22
23 **F. Priority Date**

24 The priority date for a *de minimis* use will be the apparent date of first use listed in the
25 potential water right section of the watershed file report. If the watershed file report does not
26 contain a date or the data is incomplete, the priority date shall be the earliest date set forth in a
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1 judicial decree or Water Rights Registration Act filing; or (2) the earliest date set forth in any
2 other preadjudication filing, adjudication filing, or other admissible credible evidence. If the
3 information is available, the priority date will be assigned as the day, month, and year. If the
4 day is not available, the priority date will be the last day of the month and the year. If neither a
5 day nor month is provided, the priority date will be last day of the year.

6 7 **G. Source of Water**

8 Where the watershed file report indicates that surface water is used for a stock or
9 wildlife watering or stockpond use the source of water will be included by the name of the
10 source of the water.

11 12 **H. Place of Use and Point of Diversion**

13 For stock and wildlife watering uses, the information set forth in the watershed file
14 report under the “uses” section will be utilized for determining these characteristics. They will
15 be described to the quarter-quarter (1/4-1/4) section in which the use occurs. In cases of two or
16 more stock and wildlife watering uses within the same quarter-quarter section, the rights will
17 be described to the nearest quarter-quarter-quarter section (1/4-1/4-1/4). Arizona Department
18 of Water Resources shall prepare a map that identifies the place of use and point of diversion
19 that will include the full reach of the stream or river included in the right.

20 For stockponds, the information set forth in the "reservoir" section of the watershed file
21 report will be utilized to provide the legal description for the place of use. The quarter-quarter
22 (1/4-1/4) section in which the surface area of the stockpond extends will be utilized for the
23 legal description. In the case of two or more stockponds in the same quarter-quarter section,
24 each stockpond will be located to the nearest quarter-quarter-quarter (1/4-1/4-1/4) section.
25 Unless the watershed file report states to the contrary, the place of use shall also be the point of
26 diversion.

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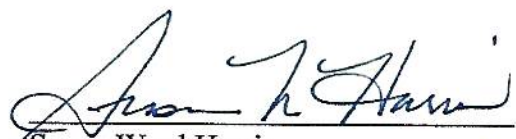
I. Quantity

The quantity of water used for stock and wildlife watering shall be "reasonable use". The amount of water for stockponds with a capacity of two (2) or less acre feet shall be two (2) acre feet of water annually with continuous fill. The amount of water for stockponds with a capacity of more than two (2) acre feet but no more than four (4) acre feet shall be 4 acre feet of water annually with continuous fill. The quantity for a stockpond that has a capacity greater than four (4) acre feet but no more than fifteen (15) acre feet shall be an annual amount with continuous fill equal to the surface area reported by ADWR multiplied by 3.21 (with continuous fill).

VI. RESOLUTION OF OBJECTIONS TO TECHNICAL REPORT AND PROCEDURE TO FILE OBJECTIONS TO THIS REPORT

All objections listed on Appendix A, other than those filed by Navajo Nation, SRP, and the LCR Coalition are dismissed because they do not object to any provision of the Technical Report. See A.R.S. §45-256. Objections filed by the Navajo Nation, SRP, the City of Flagstaff and the LCR Coalition to the Technical Report are deemed withdrawn based on their consent to move forward without a hearing or any further proceedings on the Technical Report.

Written objections to this Report must be filed on or before **April 28, 2021** with the Clerk of the Apache County Superior Court. A copy of all papers filed with objections shall be served on all persons listed on the Court-approved mailing list for this case.


Susan Ward Harris
Special Master

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APPENDIX A

CV6417-400 Objectors		
	Objector Name	Reason
1	Arthur Modica	Concern of potential adverse impact from proceeding.
2	Beryl Irely	Concern of potential adverse impact from proceeding.
3	Carter Family Trust	Residential pond should not be regulated by ADWR
4	Charles Ford	Reported ownership of a well
5	Charles K & Karen A. Struthers	Reported use of water for irrigation
6	City of Flagstaff	
7	Clayton Eddy	Reported receipt of well permit
8	David Ray Smith	No longer owns property
9	Dean Anthony Gesualdo	Questions about ability to drill a well
10	Dennis Bernard McBrearty	Reports miniscule water use
11	Don E Hunsaker	Requires water for cattle and wildlife on land and to earn a living
12	Don E or Jeanne E. Hunsaker Revocable Living Trust	Well owner who use water for gardening and domestic use
13	Emerson Y. Nez	Wants to maintain existing rights
14	Eric Dawson	Well owner using water for domestic use
15	Eric Hamblin	Opposes government regulation of spring water on property
16	Hopi Tribe	No objection
17	James Amsler	Uses water for domestic use
18	Jason Morgan	Does not own property within the Lower Little Colorado River watershed
19	John & Sharon Allbritton	Submitted ADWR forms and letters
20	John Donald Bawden or Donald J. Bawden	Attached ADWR forms
21	Joseph Lafoin	Only using water for domestic use and garden
22	Laurie & Michael Cospers	Uses water for personal use
23	LCR Coalition	
24	Mathew Poole	Damage to Greer Lakes, located outside and upstream of the LLCR subwatershed, caused by diverting water for irrigation and fill stockponds
25	Maurine Heisdorffer	Well used for domestic use
26	Navajo Nation	
27	Nels T Rogers	Concern of potential impact on his existing uses
28	Nicholas P Carter	Residential pond should not be regulated by ADWR
29	Paul or Julia Harn	No objection
30	Rickey R. Malott	Objects to regulation and suggests that time would be better spent addressing fracking and wasteful uses of water
31	Salt River Project (SRP)	
32	Scott Hamblin	Opposes government regulation of spring water and wells on property
33	Stephen P. & Rebecca J. Burch	Only uses water for irrigation
34	Sue E. Fountain	Water required for horses, cattle, and wildlife
35	Tim Rasmussen	Residential well only