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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

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

W-1, W-2, W-3, and W-4 (Consolidated)

Contested Case No. W1-106

**ORDER GRANTING STIPULATION
REGARDING SUMMARY
ADJUDICATION OF CLAIMS TO
WATER RIGHTS FOR *DE MINIMIS*
STOCK AND WILDLIFE WATERING
USES IN THE VERDE RIVER
WATERSHED and

PROPOSED SUMMARY
ADJUDICATION PROCEDURES**

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

DESCRIPTIVE SUMMARY: Order granting stipulation regarding summary adjudication of claims to water rights for *de minimis* stock and wildlife uses in the Verde River Watershed and proposed summary adjudication procedures.

NUMBER OF PAGES: 15

Stipulation for Stock and Wildlife Water Uses

On June 19, 2024, the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users’ Association (collectively “SRP”), the Arizona State Land Department, the City of Phoenix, Brandon and Natasha Pacheco, the Tonto Apache Tribe, the Town of Chino Valley, the United States, and the Yavapai Apache

1 Nation, (“Parties”) filed a stipulation regarding whether summary adjudication procedures
2 should be adopted for claims to water rights for *de minimis* stock and wildlife uses in the
3 Verde River Watershed.

4 The Parties have noted there is no dispute among them regarding the proper
5 conclusion to draw from an application of Thorson Factor #4 to *de minimis* stock and
6 wildlife uses in the Verde River Watershed, irrespective of what the precise values are used
7 for Factors 1 through 3¹. Because there is no dispute, the Parties desire to enter into this
8 Stipulation “for purposes of promoting judicial efficiency and avoiding unnecessary
9 expenditure of the public and private resources for the Court, ADWR, and Parties.”²

10 **THEREFORE, IT IS ORDERED** granting the stipulation regarding summary
11 adjudication of claims to water rights for *de minimis* stock and wildlife uses in the Verde
12 River Watershed.

13 14 **Summary Adjudication Procedures**

15 The Parties have now filed stipulations regarding three of the four uses
16 recommended by ADWR as possible *de minimis* uses that could be summarily adjudicated
17 in the Verde River System. Irrespective of whether a stipulation is filed or a hearing
18 proceeds for stockpond uses, summary adjudication procedures for domestic, stock, and
19 wildlife uses must be developed. The Parties have suggested providing the Court a briefing
20 schedule for such procedures at the August 6, 2024, status conference. The Verde River
21

22 ¹The “Thorson Factors” are four criteria that Special Master Thorson used to determine
23 whether the Court should adopt summary adjudication procedures of claims to water rights for
24 certain *de minimis* uses in the San Pedro Watershed, as set forth in his 1994 Decision. The factors
25 are 1) “water availability in the watershed;” 2) the number of stockwatering, stockpond, and
26 domestic uses;” 3) “the extent and impact of those uses;” and 4) “the costs and benefits of a
complete, rather than abbreviated, adjudication of these small uses.” W1-11-0019, *Memorandum
Decision, Findings of Fact, and Conclusions of Law for Group 2 Cases Involving Stockwatering,
Stockpond, and Domestic Uses* at 12 (Nov. 14, 1994).

27 ² W1-106, Stipulation Regarding Summary Adjudication of Claims to Water Rights For *De*
28 *Minimis* Stock and Wildlife Uses in The Verde River Watershed at 7 (June 19, 2024).

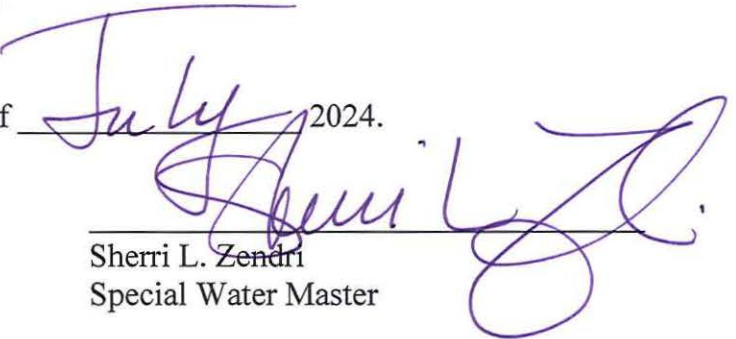
1 System is the fourth river system to have summary adjudication procedures for certain uses,
2 all of which are relatively similar:³

- 3 • A draft abstract of a proposed water right is prepared.
- 4 • The draft abstract must include certain specific characteristics for the use.
- 5 • Publication of the draft abstract – specifics of publication differ depending upon
6 whether the hydrographic survey report for the river system has been completed.
- 7 • Permission of only limited types of objections.
- 8 • Inclusion of the final abstracts in the Special Master's Catalog of Proposed Water
9 Rights for final adjudication and administration.

10 Given the relative similarity in the four orders, additional briefing for the Verde
11 River System is not required. Rather, comments on the Special Master's proposal included
12 here as Attachment A are requested.

13 **THEREFORE, IT IS ORDERED** that any comments regarding the attached
14 proposed summary adjudication procedures must be presented at the previously scheduled
15 **August 6, 2024**, status conference.

16
17 DATED this 3rd day of July 2024.

18
19 
20 Sherri L. Zandri
21 Special Water Master
22
23

24 ³See generally: W1-11-0019, *Memorandum Decision, Findings of Fact, and Conclusions of*
25 *Law for Group 2 Cases Involving Stockwatering, Stockpond, and Domestic Uses* (Nov. 14, 1994),
26 approved with modifications by Judge Ballinger, Jr., (Sept. 26, 2002); CV6417-033-9005R
27 (consolidated), *Report of the Special Master on Summary Proceedings in the Silver Creek*
28 *Watershed* (Aug. 23, 2022), approved with modifications by Judge Blaney (April 17, 2023); and
CV6417-400 *Report of the Special Master on Summary Proceedings in the Little Colorado*
Watershed (Oct. 20, 2020), approved by Judge Brain (May 28, 2021).

1 On July 3, 2024, the
2 original of the foregoing was delivered to the
3 Clerk of the Maricopa County Superior Court
4 for filing and distributing a copy to all persons
5 listed on the Court-approved mailing list for
6 Case No. W1-106.

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Attachment A

DRAFT SUMMARY PROCEDURES TO DETERMINE DE MINIMIS WATER RIGHTS FOR THE VERDE RIVER WATERSHED

Summary adjudication of *de minimis* water uses in the Verde River Watershed will be accomplished according to the following steps:

1. Preparation of a draft abstract of a proposed water right for each eligible water use, including the attributes listed below for the use.
2. Incorporation of the draft abstracts into the applicable hydrographic survey report (HSR).
3. A streamlined objection process.
4. Inclusion of the final abstracts in the Special Master's Catalog of Proposed Water Rights for final adjudication and administration.

1. ABSTRACT ATTRIBUTES

Unless the relevant facts and circumstances applicable to a potential water right for a *de minimis* use are sufficiently unusual to warrant a deviation from the procedures set forth, a draft abstract for a proposed water right for a *de minimis* use shall be defined by the following attributes:

1.1 Proposed Water Right Number

A proposed water right number (“PWR No.”) will be created for each water right to be included in the Catalog of Proposed Water Rights. Generally, the PWR No. will be the same as the potential water right reported in the watershed file report. For each water right recommended to be included in the final decree, the number will be assigned as follows:

Watershed file report (WFR) in which the water use is described + abbreviation of the type of beneficial use + unique numerical identifier.

1.2 Statement of Claimant Associated with Proposed Water Right

The Statement of Claimant (“SOC”) associated with the proposed water right must be listed.

A draft abstract will not be prepared for a *de minimis* use without an SOC. If a potential water use is identified by the Arizona Department of Water Resources (ADWR) that could otherwise be adjudicated summarily, the potential claimant will have until the end of the HSR objection period (180 days) to file an appropriate SOC. If once the deadline to file an objection has passed and the potential water use has not been matched to a valid SOC, a potential claimant may adjudicate the claim through the normal adjudication process.

1.3 Basis of Water Right

The draft abstract shall include the legal basis for a potential water right. A non-exclusive

list of the possible legal bases for these rights includes:

1. Prior judicial decrees, Ariz. Rev. Stat §45-257(B)(1).
2. Filings pursuant to the Water Rights Registration Act, Ariz. Rev. Stat §§ 45-181 to 190.
3. Filings pursuant to the Stockpond Registration Act, Ariz. Rev. Stat §§ 45-271 to 276.
4. Certificate of water right issued under the public Water Code, Ariz. Rev. Stat §§ 45-151 to 166.
5. Notice of appropriation.

A draft abstract will not be prepared for a *de minimis* use if an appropriate pre-adjudication filing or other legal basis is not matched with the *de minimis* use, whether or not an objection is filed on that ground. If a potential water use is identified by ADWR that could otherwise be adjudicated summarily, the potential claimant will have until the end of the HSR objection period (180 days) to file any appropriate a pre-adjudication filing or provide another valid legal basis right. If once the deadline to file an objection has passed and the potential water use has not been matched with a valid basis right, a potential claimant may adjudicate the claim through the normal adjudication process.

1.4 Ownership of the Water Right

The draft abstract for the water use shall identify the name of the owner of the land on which the *de minimis* use occurs as the owner of the water right. The ownership of water rights on state trust land will be determined in accordance with Arizona Revised Statutes section 37-321.01 The ownership of water rights as between the United States and any lessee of federal land will be determined in accordance with the lease documents between the United States and the lessee.

The following optional characteristics will be included in a water right abstract for informational purposes when available: 1) Landowner, if different from water right owner; 2) Lessee name, if different from water right owner; 3) Lease number; 4) facility name; and 5) Lessee's right to reimbursement for improvements (if any).

1.5 Beneficial Use

- A stock and wildlife watering (SW) beneficial use will be summarily adjudicated for unimproved and improved instream watering, and watering from a small facility, other than a stockpond, that is used solely by stock and wildlife.
- A wildlife (WL) beneficial use will be summarily adjudicated for unimproved instream watering, improved instream watering, and watering at a pond or artificial facility having a capacity of not more than 15 acre-feet that is used solely for wildlife.
- A stockpond (SP) beneficial use will be summarily adjudicated for a pond or impoundment having a capacity of not more than 4 acre-feet that is used solely for stock

and wildlife.¹

- Domestic uses within the Verde River System are defined in the ADWR *De Minimis* report as “a single appropriative right serving a residence or multiple residences up to a maximum number of three connections, for household purposes with associated irrigation of lawns, gardens or landscape in an amount not more than one-half acre per residence.” Such uses are de minimis to the extent that they do not exceed 1 acre-foot per year.

1.6 Priority Date

Priority dates will be established through the following hierarchy. First, the earliest date set forth in an applicable judicial decree or Certificate of Water Right. Second, if no date is set forth in an applicable judicial decree or Certificate of Water Right, the earliest date set forth in a Water Rights Registration Act filing made in good faith. Third, if there is no date set forth in an applicable judicial decree, Certificate of Water Right, or Water Rights Registration Act filing made in good faith, the priority date shall be the earliest date established in a verified and attested filing determined by the Court to be a valid basis of right.

1.7 Source of the Water

The "drainage area/water source name" information listed in a WFR will be set forth as the description of the source in the abstracts of proposed water right for these uses.

1.8 Place of Use and Point of Diversion

1.8.1 Description of Place of Use and Point of Diversion

For stock and wildlife watering uses, the information set forth in the watershed file report under the "uses" section will be utilized for determining these characteristics. The place of use will be described to at least the quarter-quarter (1/4-1/4) section in which the use occurs. In cases of two or more stock and wildlife watering uses within the same quarter-quarter section, the rights will be described to the nearest quarter-quarter-quarter section (1/4-1/4-1/4). ADWR shall prepare a map for each abstract that identifies the place of use and point of diversion that will include the full reach of the stream or river included in the right.

For stockponds, the information set forth in the "reservoir" section of the watershed file report will be utilized to provide the legal description for the place of use. The quarter-quarter (1/4-1/4) section in which the surface area of the stockpond extends will be utilized for the legal description unless more precise location information is readily available to ADWR. In the case of two or more stockponds in the same quarter-quarter section, each stockpond will be located to

¹ As a practical matter, wildlife cannot be barred from those locations where water is provided for livestock therefore an appropriation of water may be made for the joint watering of stock and wildlife from the same instream flow or at same pond.

the nearest quarter-quarter-quarter (1/4-1/4-1/4) section. ADWR shall prepare a map for each abstract that identifies the place of use and point of diversion.

Unless the watershed file report states to the contrary, the place of use shall also be the point of diversion.

1.8.2 Severance and Transfer of De Minimis Rights

If a holder of a de minimis water right seeks to move the water right from the land to which it is appurtenant or to change the purpose for which the water is used the owner of the water right must first request the adjudication court or the post-decree Superior Court to adjudicate the actual quantity and priority date of the right as a precondition for applying to ADWR for permission to sever or transfer a stockpond,

1.8.3 Effect of Cone of Depression Testing on De Minimis Uses Served by Wells

If cone of depression testing is not available at the time of adjudication of a de minimis use served by a well outside the subflow zone, the use will be adjudicated in a summary fashion. After the cone of depression test is completed, those de minimis right holders may request that the Court determine that their use is not subject to the jurisdiction of the Adjudication. Further, the Court on its own motion may undertake proceedings to determine the same.

1.9 Quantity

1.9.1 Domestic Uses

Such uses may be summarily adjudicated for a claimed quantity of use not to exceed (\leq) 1 acre-foot per year.

1.9.2 Stockwatering and Wildlife Uses

As previously discussed, the consumptive use of stock and wildlife that drink water from surface water excluding stockponds is negligible—whether considered individually or cumulatively throughout the Verde River Watershed. Thus, stock and wildlife uses will be quantified as "reasonable use."

1.9.3 Stockponds (Stockponds \leq 4 Acre-Feet)²

Volume, based on the maximum storage capacity of the existing stockpond and expressed in acre-feet, is the appropriate quantification unit for stockponds. A uniform volume not to exceed (\leq) 4 acre-feet, with continuous fill, will result in a quantification reasonably related to actual beneficial use for stockponds in the Verde River Watershed.

² Stockpond quantities are currently still pending litigation in October 2024.

2. DRAFT ABSTRACTS WILL BE INCLUDED IN THE HSR

The HSR will be organized by landowner, therefore draft abstracts for *de minimis* uses will be included with the WFRs to which they belong. To make *de minimis* water uses searchable, ADWR will include an index of all proposed *de minimis* water rights in the report.

3. OBJECTIONS AND CORRECTIONS

3.1 Objections Regarding Quantity of Right

No objections concerning quantity will be considered because the Technical Report filed by ADWR demonstrates that the method of quantification of *de minimis* uses is reasonable.

3.2 Objections Before Entry of Subwatershed Final Report

Before the filing of the Master's final report for the subwatershed, the following objections may be made with respect to a *de minimis* proposed abstract:

1. Absence of legal basis.
2. Absence of a proper adjudication claim.
3. That a right was not documented in the abstract.

3.3 Objections Following Entry of Subwatershed Final Report

Objections to the original WFR and the proposed abstracts, other than those listed in § 3.2, will be considered after the entry of the subwatershed final report 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 final report will recommend that, upon entry of the final decree, any remaining objections shall be dismissed.

3.4 Corrections

Non-substantive corrections to a draft abstract such as spelling corrections, or other typographical errors where the draft abstract does not match the WFR or the underlying SOC/basis of right, may be forwarded to Court during the time period for objections to the HSR. ADWR will modify the objection forms for the Verde River HSRs to identify objections to WFRs versus non-substantive edits to a draft abstract.

4. POST-DECREE ADMINISTRATION

De minimis water rights incorporated into the final decree will be finally adjudicated and administered along with all other water rights determined for the watershed.