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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 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. **W1-106**

**ORDER REGARDING ADWR's
REQUEST TO MODIFY
SCHEDULE FOR ISSUANCE OF
REPORTS**

CONTESTED CASE NAME: *In re Subflow Technical Report, Verde River Watershed*
HSR INVOLVED: None
DESCRIPTIVE SUMMARY: New schedule set to complete preliminary and final HSRs for the Sycamore, Lower Verde Valley, the Little Chino and the Big Chino Subwatersheds.
NUMBER OF PAGES: 14
DATE OF FILING: February 27, 2023

Arizona Department of Water Resources ("ADWR") filed a Request to Modify Schedule for Issuance of Reports to extend the deadlines for filing Preliminary and Final Hydrographic Survey Reports ("HSRs") for the Sycamore Subwatershed and the Lower Verde Valley Subwatershed. It stated that the extension is necessary to incorporate the results of a determination about *de minimis* uses in the Verde River Watershed and the adoption of summary procedures.

1 The evidentiary hearing is scheduled for July 10, 2024 and the due dates for the Preliminary HSRs
2 for the two subwatersheds are January 5, 2024, and June 6, 2025, respectively.

3 A *de minimis* determination is essentially a case management decision made by a court that
4 the benefits of resolving objections to certain types of claims for water rights are substantially
5 outweighed by the costs that would otherwise be incurred by the parties and the court. The
6 determination affects the adjudication of the claimed water rights because it provides the basis for
7 the adoption of summary procedures to expedite the adjudication of water rights. A determination
8 that a particular type of use is *de minimis* does not impact the obligations or the responsibilities of
9 Arizona Department of Water Resources to fully investigate claims and prepare HSRs pursuant to
10 A.R.S. §45-256. The validity of the summary proceedings is fundamentally rooted in the
11 expectation that ADWR will fully apply its technical expertise to the examination of the
12 Statements of Claimant filed, the water rights claimed, and its physical investigation of the water
13 uses that are the subject of the claimed water rights. Thus, a finding that certain water uses are *de*
14 *minimis* and the adoption of summary proceedings should not impact ADWR's analysis of claimed
15 water rights, the number of attributes investigated, the preparation of the individual watershed file
16 reports incorporated in the HSRs, or any other technical work that ADWR must complete to
17 prepare the HSRs. Similarly, the adoption of *de minimis* proceedings have no impact on the
18 obligations of claimants establishing and asserting water rights before the adjudication process is
19 undertaken by the courts.

20 Arizona Department of Water Resources states that the HSRs will provide ADWR with an
21 opportunity to provide each claimant with all of the information that pertains to the relevant water
22 claims. The watershed file reports prepared by ADWR in the San Pedro River Watershed and the
23 Silver Creek Watershed provided comprehensive information about claims for water rights and the
24 results of ADWR's investigations. In the case of the Verde River Watershed, ADWR proposes to
25 take an additional step to aid in expediting the adjudications. Specifically, it will prepare draft
26 abstracts for at least those proposed water rights that qualify as *de minimis* uses in addition to the
27 watershed file reports. The results of the *de minimis* proceedings must be incorporated into those
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1 draft abstracts for water rights that qualify as *de minimis* uses. The draft abstracts will also be
2 accompanied by maps of the places of use and points of diversion. Arizona Department of Water
3 Resources is undertaking this additional work to give claimants a better understanding of the
4 attributes of the proposed water rights. Given the unquestionable merit of this proposal and its
5 potential benefit to claimants, a reasonable delay in the issuance of the HSRs to allow the
6 incorporation of the results of the *de minimis* decision in draft abstracts for proposed water rights is
7 justified.

8 Under the current schedule, ADWR would issue its first preliminary HSR for a
9 subwatershed in the Verde River Watershed in less than a year with preliminary HSRs for two
10 additional subwatersheds due in 18-month intervals. Specifically, the Preliminary HSRs for the
11 Sycamore Subwatershed, the Lower Verde Valley Subwatershed, and the Little Chino
12 Subwatershed are due on January 5, 2024, June 6, 2025, and January 5, 2026, respectively. The
13 final HSR for each subwatershed is due approximately one year after the issuance of the
14 Preliminary HSR. The schedule submitted by ADWR would delay the deadline for the
15 Preliminary HSR for the Sycamore Subwatershed for five years and postpone the deadline for the
16 Preliminary HSR for the Lower Verde Valley for a year until June 2026. It proposes no change for
17 the Little Chino Subwatershed and adds dates for the Big Chino Preliminary and Final HSR, which
18 have not yet been set. Thus, the inclusion of draft abstracts for proposed water rights based on
19 decisions issued in connection with the *de minimis* proceedings under the ADWR proposed
20 schedule will delay the issuance of the first preliminary HSR in the Verde River Watershed by at
21 least two and one-half years.

22 The *de minimis* decision should not affect any aspect of the preparation of the HSRs and
23 therefore should not cause any delay in ADWR's current plans to prepare the HSRs. It also should
24 not affect the preparation of the maps of the *de minimis* uses that will be attached to the draft
25 abstracts. Arizona Department of Water Resources' mapping capabilities have significantly
26 improved since the 1990s and it requires much less time to identify the precise locations of uses.
27 Accordingly, ADWR should focus its efforts on creating maps that locate the places of use and
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1 points of diversion as specifically as possible. The issue presented here is the amount of time that
2 ADWR will require to prepare the draft abstracts after the issuance of the final *de minimis*
3 decision. Assuming that the decision is issued in March 2025, 12 months should be sufficient
4 time for ADWR to identify the attributes governed by the *de minimis* decision and complete the
5 draft abstracts for the potential water rights consistent with the decision.

6 In its reply, ADWR raised the possibility that proceedings or additional proceedings in the
7 adjudication court may prolong the anticipated process to issue a decision. If the *de minimis*
8 decision cannot be finalized by early 2025, the timeline for the issuance of the HSRs should not be
9 further extended. Similarly, if ADWR determines it cannot generate the draft abstracts from its
10 watershed file reports by the due dates set forth below, the timeline for the issuance of the HSRs
11 should not be extended. Instead, ADWR should issue the HSRs on the dates set below without the
12 draft abstracts of the potential water rights. Claims for water uses that may qualify as *de minimis*
13 should not be permitted to further delay the adjudication of other claims for water rights in the
14 subwatersheds. The legislature determined with its revisions to A.R.S. §45-257 in 2017 that larger
15 claims are to be adjudicated prior to the adjudication of most of the small water claims. While
16 ADWR's current plan to distribute draft abstracts with individual watershed file reports would
17 benefit claimants, the adjudication of *de minimis* water rights can proceed with the preparation of
18 the draft abstracts after a contested case is initiated as is currently done in the San Pedro
19 Watershed.

20 Arizona Department of Water Resources also proposed changing the order of the
21 watersheds for which HSRs will be prepared and adding dates for the preparation of the Big Chino
22 Subwatershed. The order of the HSRs will not be changed. The dates proposed by ADWR for the
23 preparation of the Big Chino Subwatershed will be adopted and it will be issued simultaneously
24 with the preliminary and final HSRs for the Little Chino Subwatershed.

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1 **IT IS ORDERED** setting the following deadlines:

2 Sycamore Subwatershed

- 3 • March 6, 2026
4 Preliminary HSR for Sycamore Subwatershed
- 5 • September 4, 2026
6 Comments on the Preliminary HSR for Sycamore Subwatershed
- 7 • March 12, 2027
8 Final HSR for Sycamore Subwatershed

9 Lower Verde Valley Subwatershed


- 10 • September 3, 2027
11 Preliminary HSR for Lower Verde Valley Subwatershed
- 12 • March 10, 2028
13 Comments on Preliminary HSR for Lower Verde Valley Subwatershed
- 14 • September 5, 2028
15 Final HSR for Lower Verde Valley Subwatershed

16 Little Chino Subwatershed

- 17 • March 9, 2029
18 Preliminary HSR for Little Chino Subwatershed
- 19 • September 4, 2029
20 Comments on Preliminary HSR for Little Chino Subwatershed
- 21 • March 8, 2030
22 Final HSR for Little Chino


23 Big Chino Subwatershed

- 24 • March 9, 2029
25 Preliminary HSR for Big Chino Subwatershed
- 26 • September 4, 2029
27 Comments on Preliminary HSR for Big Chino Subwatershed
- 28 • March 8, 2030
 Final HSR for Big Chino



Susan Ward Harris
Special Master

1 The original of the foregoing was delivered to the
2 Clerk of the Maricopa County Superior Court on
3 February 27, 2023 for filing and distributing a copy
4 to all persons listed on the Court approved mailing
5 list for this contested case.

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