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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTIES OF APACHE AND 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)
IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE	CV 6417
	ORDER REGARDING FORM OF VERIFICATION

CONTESTED CASE NAME: <i>None</i>
HSR INVOLVED: <i>None</i>
DESCRIPTIVE SUMMARY: Verification of Statements of Claimant cannot be accomplished using alternatives available under Ariz. R. Civ. P. 80(c).
NUMBER OF PAGES: 6
DATE OF FILING: March 6, 2023

On January 13, 2023, Arizona Department of Water Resources filed a Request seeking court approval of a proposed change in the procedures for the verification of a Statement of Claimant ("SOC"), an assignment of a SOC, or an amendment of a SOC. Currently, the SOC,

1 assignment, and amendment forms available from ADWR require that a claimant's signature be
2 notarized. To provide greater ease of access and compliance for claimants and potential claimants
3 and streamline the processing of documents, ADWR proposes allowing claimants and authorized
4 representatives to electronically complete SOC's and the related forms, electronically sign them,
5 and file the forms through its website.¹ Under the proposed procedure, signatures would not be
6 notarized. Instead, the person would certify, under penalty of perjury, that to the best of the
7 person's knowledge, information, and belief, the facts in the form are true and accurate.
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9 The controlling statute in Title 45, Art. 9 that governs the general adjudication of water
10 rights provides: "The statement of claimant shall be verified by the claimant or the person
11 authorized to file as provided in subsection B of this section." Ariz. Rev. Stat. §45-254(D).
12 Arizona Department of Water Resources contends that the verification requirement is governed by
13 the Arizona Rules of Civil Procedure. It is correct that the Arizona Rules of Civil Procedure apply
14 to the adjudication. A.R.S. §45-259. Rule 8(h) defines the requirements to verify a document.
15 It states in relevant part that "[i]f a rule or statute requires a pleading to be verified, the pleading
16 must be accompanied by an affidavit by the party . . . attesting under oath that, to the best of the
17 party's . . . knowledge, the facts set forth in the pleading are true and correct." Ariz. R. Civ. P.
18 8(h). An affidavit is a signed, written statement, made under oath before an officer authorized to
19 administer an oath or affirmation in which the affiant vouches that what is stated is true. *Matter*
20 *of Wetzel*, 143 Ariz. 35, 43, 691 P.2d 1063, 1071 (1984). In essence, the approach proposed by
21 ADWR eliminates the requirement that the claimant sign the documents under oath before a
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26 ¹ A person served with a summons in this adjudication files a timely SOC with the court.
27 A.R.S. § 45-254 (A). A person is permitted by A.R.S. § 45-254 (E) to file a SOC or amended
28 SOC after the date set in a summons or order of the court requiring SOC's to be filed. Claimants
filing under A.R.S. § 45-254 (E), file a SOC or amended SOC with ADWR. A.R.S. § 45-254
(E)(1), (2) and(3).

1 notary. Arizona Department of Water Resources relies on Ariz. R. Civ. P. 80(c) to support its
2 proposed change. The rule states:

3 When these rules require or allow a matter to be supported, evidenced,
4 established, or proved by a sworn written declaration, verification,
5 certificate, statements, oath, or affidavit, the same may be unsworn – and
6 have the same force and effect – if it is:

- 7 (1) Signed by the person as true under penalty of perjury;
- 8 (2) Dated; and
- 9 (3) In substantially the following form:

10 ‘I declare [or certify, verify or state] under penalty of perjury that the
11 foregoing is true and correct. Executed on [date].

12 [Signature]’

13 Salt River Project filed a response in support of ADWR’s Request to implement a system
14 that permits claimants to sign and file SOC’s, assignments, and amendments electronically on
15 ADWR’s website. It, however, questioned whether compliance with Rule 80 of the Arizona Rules
16 of Civil Procedure satisfies the requirements imposed by the statute.

17 Rule 80(c) does not apply to the verification of a SOC because the verification requirement
18 arises from A.R.S. 45-254(D), a statute, and not from a rule included in Arizona Rules of Civil
19 Procedure. The legislature requires that the SOC be verified. In the context of other statutes, the
20 courts have determined that verification is a substantive, as opposed to a merely technical
21 requirement. *See id, State ex rel. McDougall v. Superior Court In & For Cnty. of Maricopa*, 173
22 Ariz. 385, 386, 843 P.2d 1277, 1278 (App. 1992). When the legislature has defined, in explicit
23 terms, the elements needed to assert a claim for a water right, the court must enforce the plain
24 language of the statute. *See Matter of \$70,269.91 in U.S. Currency*, 172 Ariz. 15, 20, 833 P.2d 32,
25 37 (App. 1991).

26 While the courts generally attempt to harmonize statutes and rules of civil procedure
27 wherever possible, it is not always possible when a specific statutory requirement must take
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1 precedence. *Phoenix of Hartford, Inc. v. Harmony Restaurants, Inc.*, 114 Ariz. 257, 258, 560 P.2d
2 441, 442 (App.1977) (holding that statute designating director of insurance as exclusive recipient
3 of service of process on foreign insurers takes precedence over general rule permitting agents to
4 receive service for corporations); *State ex rel. McDougall v. Superior Court In & For Cnty. of*
5 *Maricopa*, 173 Ariz. 385, 387, 843 P.2d 1277, 1279 (App. 1992) (determined that statutory
6 requirement that a party must sign under penalty of perjury cannot be satisfied by compliance with
7 Ariz. R. Civ. P 11(b) that permitted verification by a person, acquainted with the facts, on behalf
8 of the party). The legislature has expressly stated that the statutes enacted to govern the general
9 adjudication will take precedence in the event of a conflict with the rules of civil procedure. A.R.S.
10 §45-259. Thus, Rule 80(c) cannot provide the basis to substitute a different procedure for the
11 statutorily required verification.
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13 The legislature has adopted procedures regarding the electronic filing of documents that
14 must be verified. A.R.S. §44-7034.² The statute states in relevant part that when a law requires a
15 signature to be verified, that requirement will be satisfied if all of the following are true:
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- 17 1. A secure electronic signature of the individual who is authorized to perform those acts
18 and all other information that is required to be included pursuant to any other applicable
19 law are applied to a secure electronic record.
- 20 2. The secure electronic record has a time stamp token that is both:
 - 21 (a) Created by a party recognized by the secretary of state.
 - 22 (b) In a form that is accepted by the secretary of state to do all of the
23 following:

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27 ² Chapter 26, Article 2, which includes A.R.S. §44-7034, applies to electronic records or
28 signatures when the record or signature is governed by a law other than those enacted under Title 14 or
portions of Title 47. A.R.S. §44-703(D).


1 (i) reasonably verify the validity of the signing party's secure
2 electronic signature.

3 (ii) reasonably establish the time of signing.

4 3. The secure electronic record cannot be altered without invalidating the time stamp
5 token.

6 Salt River Project also advises that ADWR should ensure that its new systems comply with
7 the statutory requirements for electronic documents filed with state agencies. A.R.S. §§ 44-7042
8 and 18-106. Arizona Revised Statute §44-7042 requires state agencies that accept electronic
9 records and electronic signatures to comply with procedures adopted by the Department of
10 Administration and further grants the government agencies discretion to adopt procedures to
11 manage its electronic records. Arizona Department of Water Resources notes that A.R.S. §44-
12 7042 does not apply to the judicial branch. A.R.S. §44-7042(C). The actions that ADWR must
13 take with the respect to its electronic records as it moves forward with the implementation of its
14 plans are outside the scope of ADWR's Request and will not be addressed. The Request focused
15 on the procedures acceptable to meet the verification requirements of A.R.S. §45-254(D) for
16 electronically filed documents.
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18 Arizona Department of Water Resources cannot satisfy that statutory requirement using
19 the procedure described in Ariz. R. Civ. P. 80(c). Under the current law, if ADWR elects to allow
20 SOC's to be filed electronically, A.R.S. §44-7034 provides the procedures to be followed for
21 documents required by statute to be verified.
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26 Susan Ward Harris
Special Master

1 On March 6, 2023, the original of the foregoing
2 was mailed to the Clerk of the Apache County
3 Superior Court and Maricopa County Superior
4 Court for filing and distributing a copy to all
5 persons listed on the Court approved mailing
6 list.

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Emily Natale