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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 SETTING SCHEDULING  
CONFERENCE**

**AND**

**ORDER ADDING PARTIES TO  
COURT-APPROVED MAILING  
LIST**

**CONTESTED CASE NAME:** *In re Subflow Technical Report, Verde River Watershed*  
**HSR INVOLVED:** None  
**DESCRIPTIVE SUMMARY:** Scheduling conference set for **December 12, 2022 at 1:30 p.m.**  
Objecting parties added to court approved mailing list.  
**NUMBER OF PAGES:** 18  
**DATE OF FILING:** November 18, 2022

1 This proceeding is part of a general adjudication of legal rights to take and use water on  
2 land in the Verde River Watershed. The purpose of this specific phase of the proceeding is to  
3 determine whether expedited procedures can be adopted to determine rights claimed by people for  
4 appropriable water for domestic uses, stockponds, and stock and wildlife watering.  
5

6  
7 **A. Appropriable Water**

8 Appropriable water includes water from Arizona’s lakes, ponds, springs, streams, canyons,  
9 ravines, other natural surface channels, and definite underground channels. A well may also pump  
10 appropriable water. In 1931, the Arizona Supreme Court decided that appropriable water includes  
11 water pumped by a well when the pumping of that water depletes the water flowing in a stream or  
12 river, which is called subflow. The Court defined subflow:  
13

14 ...as those waters which slowly find their way through the sand and gravel  
15 constituting the bed of the stream, on the lands under or immediately adjacent  
to the stream and are themselves a part of the surface stream.

16 *Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co.*, 39 Ariz. 65,  
17 96 4P.2d 369, 380 (1931).

18 This proceeding only concerns water rights to appropriable water. It does not concern rights to  
19 water taken from the watershed that is percolating groundwater, which is not considered to be  
20 appropriable water.  
21

22 **B. Making a Claim for Appropriable Water**

23 To make a claim for a right to water in the adjudication, a person or entity is required by  
24 law to file a Statement of Claimant. This proceeding will only concern rights to water for which a  
25 Statement of Claimant has been filed. The accepted practice is that the Statement of Claimant is  
26 filed with Arizona Department of Water Resources. If a person or entity does not claim a water  
27  
28

1 right and file a Statement of Claimant, then the court will not determine that the person or entity  
2 has a legal right to use the water.

3 Under Arizona law, if a person or entity does not timely file a Statement of Claimant, the  
4 person or entity cannot later assert a water right and will forfeit any right to use appropriable water.  
5 The final deadline for filing a Statement of Claimant in the Verde River Watershed is 90 days  
6 before Arizona Department of Water Resources files it's final report. The first final report of  
7 claims made in the Verde River Watershed is due January 10, 2025.  
8

9  
10 **C. Elements of a Right to Appropriable Water**

11 The determination of a legal right to water requires that the right be defined. A water right  
12 is defined by the following elements:

- 13 1) the owner of the water right,
- 14 2) the place where the water is used;
- 15 3) the owner of the land on which the water is used;
- 16 4) the place from which the water is taken;
- 17 5) the source of the water;
- 18 6) the type of use (for example, domestic use);
- 19 7) the amount of water used;
- 20 8) the date that the water was first put to use; and
- 21 9) the legal basis for the water right.  
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23

24  
25 **D. Procedures to Establish a Right to Appropriable Water**

26 Each of the elements listed above can potentially result in factual disputes among water  
27 users. Disputes cost the person claiming water rights time and money. Disputes also impose costs  
28 on the court in terms of time and resources and delay the final resolution of all the claims for water

1 rights in the watershed. In the past, the court has concluded that the costs of litigating all possible  
2 disputes about all of the facts necessary to determine water rights for certain types of claims  
3 outweigh the benefits to the person claiming the water right, the person objecting to the water right,  
4 and to the general adjudication process. Where the court has reached the decision that the potential  
5 costs exceed benefits, procedures have been adopted to lower the costs, in time and resources, to  
6 the court and the parties to determine the particular types of water right.  
7

8 In the San Pedro River Watershed, the court adopted expedited procedures to determine  
9 water rights for water uses that fit into three categories. Those categories include domestic uses,  
10 stock watering, and certain stockponds. In this proceeding, a decision will be made about whether  
11 expedited procedures should be adopted to determine rights to water for domestic uses,  
12 stockponds, and stock and wildlife watering in the Verde River Watershed.  
13

14 Arizona Department of Water Resources filed a Technical Report on August 29, 2022, that  
15 provided its analysis of stock and wildlife watering, stockponds and domestic uses in the Verde  
16 River Watershed. Objections to the Technical Report have been filed. The next step is to  
17 establish a schedule that will result in a hearing on the objections and a decision about whether to  
18 adopt expedited procedures for the three types of water uses.  
19  
20

21 **E. Scheduling Conference**

22 A Scheduling Conference shall be held on **December 12, 2022 at 1:30 p.m.** to establish a  
23 schedule for the determination of whether expedited procedures should be adopted to determine  
24 rights to water for stock and wildlife watering uses, stockponds, and domestic uses. The schedule  
25 shall include a hearing date.  
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1 **F. Addition of People to the Court-Approve Mailing List**

2 Under Arizona law, any person or entity who has filed a Statement of Claimant may file an  
3 objection to a report prepared by Arizona Department of Water Resources. The Court has received  
4 signed forms of Comment or Objection to the Technical Report prepared by Arizona Department  
5 of Water Resources from the following people and entities:  
6

- 7 The City of Phoenix
- 8 Town of Chino Valley
- 9 Brian Murphy
- 10 Frances Scurei
- 11 Justine Schaible
- 12 Wolfgang Koehler
- 13 Brandon and Natasha Pacheco and the Pacheco Brandon R and Natasha M Living Trust
- 14 Kathy Masters-Jaeckel & Lawrence J. Jaeckel
- 15 Joel Price
- 16 Vito T. Greco & Colleen Corrigan Greco
- 17 The Yavapai-Apache Nation
- 18 Salt River Project
- 19 The United States of America
- 20 Tonto Apache Tribe
- 21 Byron D. Fleming
- 22 Harold Cowles
- 23 Michele Guy
- 24 Lewallen Family Trust – Gary W. and Katharine S. Lewallen
- 25 Michael E. Giboney
- 26 Randall L. Russell
- 27 Alberta M. Kriese
- 28 William Sasser
- Carl Hendrickson
- Toni M. Brown
- Casey J. Smith
- Rhonda Lunn Rhodes

23 Ten of the people listed above do not have Statements of Claimant filed with the Arizona  
24 Department of Water Resources that are publicly available. Four people in that group stated that  
25 they had filed Statements of Claimant or would soon file Statements of Claimant and had not  
26 received a filing number. Those four people are:  
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Brian Murphy  
Frances Scurei  
Harold Cowles  
Carl Hendrickson

Based on their representations, Brian Murphy, Frances Scurei, Harold Cowles, and Carl Hendrickson shall be added to the Court-approved mailing list for this proceeding. Each of these persons is subject to removal from the Court-approved mailing list if a subsequent review of the public records of Arizona Department of Water Resources does not show that a Statement of Claimant has been filed. A review will not be conducted any earlier than May 1, 2023.

Six people did not provide a Statement of Claimant numbers and made no representations about filing a Statement of Claimant:

Joel Price  
Byron D. Fleming  
Michael E. Giboney  
Alberta N. Kriese  
Casey Smith  
Rhonda Lunn Rhodes

In the absence of a Statement of Claimant, the statute does not permit a person to file an objection. These six individuals will be provided with a courtesy copy of this Order but will not be added to the court-approved mailing list. A person listed above who files a Statement of Claimant with Arizona Department of Water Resources and provides a copy of the Statement of Claimant to the court will be added to the Court-approved mailing list upon receipt of the filed Statement of Claimant.

**IT IS ORDERED** that a Scheduling Conference will be held on **December 12, 2022 at 1:30 p.m.** to establish a schedule for the determination of whether expedited procedures should be


1 adopted to determine rights to water for stock and wildlife watering uses, stockponds, and domestic  
2 uses. The schedule shall include a hearing date.

3  
4 The Scheduling Conference will be held using the Court Connect program. Instructions for  
5 Court Connect are attached as Attachment A. If you receive this Order by email, click on the red  
6 box "Join Court Connect Hearing" on the attached instructions to make an appearance. If you do  
7 not receive this Order by email, log into the Court Connect program on the internet by typing  
8 <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend  
9 telephonically using the telephone number and access code included in the instructions for Court  
10 Connect. Alternatively, you may attend telephonically using the following instructions:

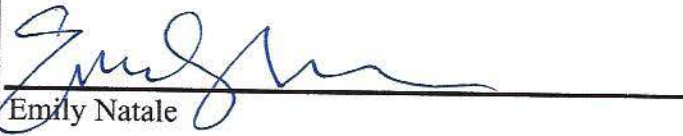
11  
12  
13 Instructions for telephonic appearance:  
14 Dial: 602-506-9695 (local)  
15 1-855-506-9695 (toll free long distance)  
16 Dial Participant Pass Code 357264#

17 **IT IS FURTHER ORDERED** that the following parties are added to the Court-approved  
18 mailing list for this case.

19 Brian Murphy  
20 Frances Scurei  
21 Justine Schaible  
22 Wolfgang Koehler  
23 Byron D. Fleming  
24 Harold Cowles  
25 Michele Guy  
26 Lewallen Family Trust – Gary W. and Katharine S. Lewallen  
27 Randall L. Russell  
28 Carl Hendrickson  
Toni M. Brown

  
Susan Ward Harris  
Special Master

1  
2 The original of the foregoing was delivered to the  
3 Clerk of the Maricopa County Superior Court on  
4 November 18, 2022, for filing and distributing a  
5 copy to all persons listed on the Court approved  
6 mailing list for this contested case.

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Emily Natale



Court Approved Mailing List  
In re Subflow Technical Report, Verde River Watershed, Case No. W1-106  
W1-106 (95 Names)  
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# **ATTACHMENT A**



## Court Connect Hearing Notice for In re Subflow Technical Report, Verde River Watershed

*This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.*

*All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.*

**Participants:** Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

**Case Name:** In re Subflow Technical Report, Verde River Watershed, Contested Case No. W1-106

**Start Date/Time:** December 12, 2022 at 1:30 p.m.

**JOIN COURT CONNECT HEARING**

**Dial-in Information:** +1 917-781-4590

**Private Dial-in Information:** for privacy purposes, you can block your phone number by dialing \*67 +1 917-781-4590

**Dial-in Access Code:** 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)

