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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, W-4 (Consolidated)  
Contested Case No. **W1-106**  
**ORDER DENYING MOTION TO STRIKE  
and  
GRANTING JOINT MOTION FOR  
SUMMARY JUDGMENT REGARDING  
REMAINING OBJECTIONS TO ADWR'S  
SUBFLOW ZONE DELINEATION  
REPORT FOR THE VERDE RIVER  
MAINSTEM**

**CONTESTED CASE NAME:** *In re Subflow Technical Report, Verde River Watershed*  
**TECHNICAL REPORTS INVOLVED:** *Subflow Zone Delineation Report for Verde River Mainstem & Sycamore Canyon, December 2021.*  
**DESCRIPTIVE SUMMARY:** Order DENYING Motion to Strike and GRANTING Joint Motion for Summary Judgement Regarding Remaining Objections to ADWR's Subflow Zone Delineation Report for the Verde River Mainstem.  
**NUMBER OF PAGES:** 12

On December 30, 2021, the Arizona Department of Water Resources (“ADWR”) filed the *Subflow Zone Delineation Report for Verde River Mainstem & Sycamore Canyon* (“Mainstem Report”), which delineated the proposed subflow zone for the mainstem of the Verde River and Sycamore Canyon Subwatersheds. Pursuant to the

1 Special Master's Order dated July 30, 2021, objections to the Mainstem Report were  
2 required to be filed by May 2, 2022

3 The objections of Cottonwood Ditch Association ("Cottonwood"), Desert Spice  
4 Tea, LLC ("Desert Spice"), and Watercrest, Inc. ("Watercrest") were all timely filed. On  
5 April 15, 2024, the Salt River Project Agricultural Improvement and Power District and  
6 Salt River Valley Water Users' Association (collectively, "SRP") and Freeport Minerals  
7 Corporation ("Freeport") jointly moved for summary judgment on the three objections  
8 pursuant to Rule 56 of the Arizona Rules of Civil Procedure ("Motion"). Rule 56 permits  
9 a party to move for summary judgment if the moving party can show there is no genuine  
10 dispute as to any material fact. Movants claim the objections of Cottonwood, Desert  
11 Spice, and Watercrest are "generally based on those parties' broad objection to ADWR's  
12 subflow zone delineation and failed to provide specific critiques of the Mainstem  
13 Report." Motion at 3.

14 On May 15, 2024, Counsel for Desert Spice and Watercrest requested an  
15 extension until May 31, 2024, to respond to the Motion. That request was granted May  
16 23, 2024. On May 31, 2024, Desert Spice and Watercrest filed a Motion to Strike Joint  
17 Motion for Summary Judgment Regarding Remaining Objections to ADWR's Subflow  
18 Zone Delineation Report for the Verde River Mainstem; and Response to Joint Motion  
19 for Summary Judgment.

20 Under Arizona law, any person or entity who has filed a Statement of Claimant in  
21 an adjudication may file an objection to a report prepared by ADWR for that  
22 adjudication. Ariz. Rev. Stat. §45-256(B). Arizona law further requires that objections  
23 "shall *specifically* address the director's recommendations regarding the particular water  
24 right claim or use investigated." *Id.* (emphasis added).

## 25 26 **COTTONWOOD**

27 The Cottonwood Objection states on page 2 that ADWR's use of professional  
28 judgment to determine the edge of the Holocene alluvium beneath the colluvium in the

1 Verde Valley "results in the decision making to be totally subjective and not based on  
2 scientific facts."<sup>1</sup> Cottonwood provided none of its own "scientific facts" to support its  
3 statement. Neither did Cottonwood provide any additional information or explanation as  
4 a response to the Motion.

5 The Special Master instructed ADWR to use specific objective scientific criteria  
6 when drafting the Mainstem Report.<sup>2</sup> In addition to the criteria specified in *Gila IV*<sup>3</sup> to  
7 accurately define the boundaries of the floodplain Holocene alluvium, the Special  
8 Master instructed ADWR to use "appropriate geological and hydrological criteria,  
9 vegetation patterns, aerial photography, topographic soil breaks and *its professional*  
10 *judgment.*"<sup>4</sup>

11 ADWR documented in the Mainstem Report that it reviewed Arizona Geological  
12 Survey surficial geology and mapping, analyzed pre-Holocene bounding topography,  
13 and applied the Court's directives to determine the lateral extent of the floodplain  
14 Holocene alluvium ("FHA"). Mainstem Report, at 20. Ariz. Rev. Stat. §45-256(A)  
15 instructs the Special Master to use the technical expertise of ADWR for the General  
16 Stream Adjudication. Such expertise necessarily requires, as ordered here by the Special  
17 Master, the use of professional judgment. ADWR's use of professional judgement in  
18 conjunction with the appropriate *Gila IV* and other scientific criteria, is statutorily  
19 authorized and acceptable.

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21 **THE COURT FINDS** that no genuine issue of material fact exists with respect to  
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24 <sup>1</sup> See Cottonwood Ditch's Objections to the Subflow Zone Delineation Report for  
the Verde River Mainstem and Sycamore Canyon Subwatershed (May 2, 2022)

25 <sup>2</sup> See W1-106, Order for Production of a Subflow Zone Delineation Technical  
26 Report for the Verde River Watershed at 3 (Nov. 27, 2017) ("Verde Subflow  
Order").

27 <sup>3</sup> In re General Adjudication of All Rights to Use Water in Gila River System &  
28 Source, 198 Ariz. 330, 344 (2000) ("Gila IV").

<sup>4</sup> *Id.* (emphasis added).

1 Cottonwood's objections.

2 **THEREFORE, IT IS ORDERED** that because Cottonwood's objections are not  
3 specific and do not point to a deficiency in ADWR's Mainstem Report, the objections  
4 are dismissed with prejudice.

5  
6 **DESERT SPICE and WATERCREST**

7 As pointed out in the Motion, Desert Spice and Watercrest filed objections that  
8 are substantively identical; therefore, the Motion addressed these objections collectively.  
9 Motion at 4 fn5. This Order will do the same.

10 **Motion to Strike**

11 Desert Spice and Watercrest moved to strike the Motion on grounds of deficient  
12 service, claiming that the Motion was sent to the Court Approved Mailing List  
13 ("CAML") for Contested Case W1-106, which did not include the most current address  
14 of Desert Spice/Watercrest's counsel. Due to the number of potential parties to the  
15 General Stream Adjudication, each contested case maintains a list of parties pertinent to  
16 the specific case – the CAML. To keep the CAML up to date, the Court requires  
17 litigants to "notify the Clerk of the Superior Court and the Special Master, in writing, of  
18 any change of address."<sup>5</sup> A review of the Court's records did not provide any evidence  
19 that Desert Spice and Watercrest's counsel informed the Court of any new address.  
20 Service of a document is proper if mailed "by US mail to the person's last known  
21 address..." Ariz. R. Civ. Pro. 5(c)(2)(C). SRP and Freeport complied with Rule  
22 5(c)(2)(C) by mailing the Joint Motion to Watercrest's last-known address as listed on  
23 the CAML. If the Adjudication Court is not made aware of an address change, then the  
24 CAML cannot be updated. The Joint Parties<sup>6</sup> provided service to the best of their ability

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27 <sup>5</sup> See Pretrial Order No. 4, Case No. W-1, W-2, W-3, W-4, at 2 (Jan. 24, 2000)  
28 (requiring any person who has filed a statement of claimant to notify ADWR of a change  
in address).

<sup>6</sup> SPR and Freeport.

1 given the information the Court, and thus they, were provided.  
2

3 **IT IS ORDERED** the Desert Spice and Watercrest Motion to Strike Joint Motion  
4 for Summary Judgment Regarding Remaining Objections to ADWR's Subflow Zone  
5 Delineation Report for the Verde River Mainstem is DENIED.  
6

7 **Cone of Depression Test**

8 The Desert Spice and Watercrest Objections asserted ADWR did not adequately  
9 explain its methodology and objected to ADWR's purported failure to propose a  
10 methodology for cone of depression testing and to define what wells within the subflow  
11 zone may be excluded from the Adjudication. Furthermore, the Desert Spice and  
12 Watercrest Objections assert that, contrary to *Gila IV* the Mainstem Report does not  
13 adequately describe the "proper test" or the "appropriate criteria" ADWR used to  
14 delineate the subflow zone for the Verde.<sup>7</sup>

15 As stated in the discussion regarding the Cottonwood Ditch objections, ADWR  
16 clearly documented in the Mainstem Report the methodology used to delineate the  
17 subflow zone, which complies with *Gila IV* and the the Special Master's Order. The  
18 argument that ADWR did not develop a test for establishing a well's cone of depression  
19 or define what constitutes "impermeable material" is misguided as ADWR was not  
20 tasked with either of those determinations as part of the Verde River subflow zone  
21 delineation.

22 Desert Spice and Watercrest are correct in that development by ADWR of a cone  
23 of depression test is required. However, development of the cone of depression test is a  
24 process separate from any subflow delineation. The lateral extent of a subflow zone for  
25

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27 <sup>7</sup> See Desert Spice's Objections to the Subflow Zone Delineation Report for the  
28 Verde River Mainstem and Sycamore Canyon Subwatershed (May 2, 2022);  
Watercrest's Objections to the Subflow Technical Report for the Verde River Mainstem  
and Sycamore Canyon Subwatershed (May 2, 2022).

1 any watershed must be based upon the geology, hydrogeology, and geomorphology of  
2 that watershed, irrespective of the location of any wells and the potential intersection of  
3 any cone of depression. Should Desert Spice and Watercrest care to engage in the  
4 process of the cone of depression test they may do so at the appropriate time and within  
5 the appropriate contested case.<sup>8</sup> ADWR's February 20, 2024, Groundwater Flow Model  
6 of the Upper San Pedro Groundwater Basin ("Model") can be found on the Agency's  
7 website at <https://infoshare.azwater.gov/docushare/dsweb/View/Collection-22580>.  
8 Comments were accepted by the Court through April 22, 2024. Additional proceedings  
9 on the Model, and how it will be used for cone of depression and subflow depletion  
10 testing in the San Pedro watershed will be heard in the future within the San Pedro case  
11 no. W1-103.

### 12 13 **Impermeable Materials**

14 Desert Spice/Watercrest also objected to the lack of guidance by ADWR regarding what  
15 is "impermeable material" with respect to a well's potential to be pumping subflow.  
16 Within the context of groundwater, "impermeable material" refers to substrate that does  
17 not allow water to penetrate the layer. Beyond that, because the analysis becomes case  
18 specific and fact intensive, it is not appropriate for a basin-wide delineation of the  
19 subflow zone. Further, ADWR was never ordered to make such a determination or  
20 provide any guidance; therefore, the Subflow Delineation report is not lacking for not  
21 including something that was never requested.

22  
23 **THE COURT FINDS** that no genuine issue of material fact exists with respect to  
24 Desert Spice and Watercrest's objections.

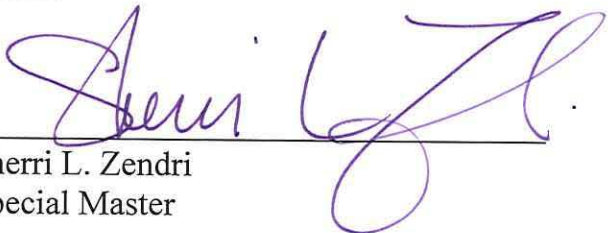
25 **THEREFORE, IT IS ORDERED** that because Desert Spice and Watercrest's  
26 objections are not specific and do not point to a legal deficiency in ADWR's Mainstem  
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28 <sup>8</sup> See generally W1-W4, Order RE: Report of the Special Master on Methodology for Determination of Cone of Depression (July 8, 2022).

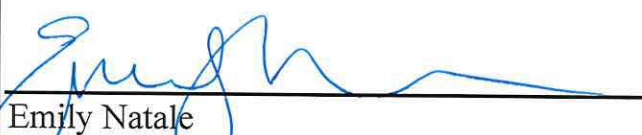
1 Report, those objections are dismissed with prejudice.

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3 **IT IS FURTHER ORDERED** that the Joint Motion for Summary Judgment  
4 Regarding Remaining Objections to ADWR's Subflow Zone Delineation Report for the  
5 Verde River Mainstem is GRANTED.

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9 Signed this 12<sup>th</sup> day of June 2024.

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12 \_\_\_\_\_  
13 Sherri L. Zendri  
14 Special Master

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16 The original of the foregoing was delivered  
17 to the Clerk of the Maricopa County Superior  
18 Court on June 12, 2024 for  
19 filing and distributing a copy to all persons  
20 listed on the Court approved mailing list for  
21 this contested case.

22   
23 \_\_\_\_\_  
24 Emily Natale

Court Approved Mailing List  
In re Subflow Technical Report, Verde River Watershed, Case No. W1-106  
W1-106 (60 Names)  
Prepared by the Special Master  
6/12/2024

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Alexander B. Ritchie  
San Carlos Apache Tribe  
Office of the Attorney General  
PO Box 40  
San Carlos, AZ 85550

Charles L. Cahoy, Asst. City  
Attorney  
Phoenix City Attorney's Office  
200 W. Washington 13th Flr.  
Phoenix, AZ 85003

Andrew J. Corimski  
U. S. Army Legal Services  
Environmental Law Division  
9275 Gunston Road  
Fort Belvoir, VA22060

Clerk of the Superior Court  
Maricopa County  
Attn: Water Case  
601 West Jackson Street  
Phoenix, AZ 85003

Brandon R & Natasha M.  
Pacheco  
Pacheco Brandon & Natasha  
Living Trust  
19400 N. Lower Territory Rd.  
Prescott, AZ 86305

Cottonwood Ditch Association  
Peter Andrew Groseta,  
President  
PO Box 445  
Cottonwood, AZ 86326

Burch & Cracchilo, P.A.  
1850 North Central, Suite 1700  
Phoenix, Az 85004

D. Brown, J Brown, A. Brown  
G Perkins, & B. Heiserman  
Brown & Brown Law Offices  
P.C.  
PO Box 1890  
St. Johns, AZ 85936

Carla A. Consoli  
May Potenza Baran & Gillespie  
P.C  
1850 N. Central Avenue, 16th  
Floor  
Phoenix, AZ 85004

Daniel Brenden /Peter Muthig  
Maricopa County Attorney's  
Office  
225 W. Madison St  
Phoenix, AZ 85003

Carlos D. Ronstadt  
Law Office of Carlos D.  
Ronstadt, PLLC  
7000 North 16th Street, Suite  
120, No. 510  
Phoenix, AZ 85020-5547

Daniel D. Haws  
U. S. Army  
Environmental Attorney  
2387 Hatfield Street  
Fort Huachuca, AZ 85613



Daniel F. McCarl  
United States Dept. of Justice -  
ENRD  
Indian Resources Section  
999 18th Street, So Terrace,  
Suite 370  
Denver, CO 80202

Dara Mora  
Liberty Utilities, Inc.  
1225 West Frontage Road  
Rio Rico, AZ 85648

David F. Jacobs and Kevin P.  
Crestin  
Arizona Attorney General  
Natural Resources Section  
2005 North Central  
Phoenix, AZ 85004

David Gehlert  
United States Dept. of Justice -  
ENRD  
999 18th Street, South Terrace  
Ste 370  
Denver, CO 80202

Diandra D. Benally  
Fort McDowell Yavapai Nation  
Legal Department  
P. O. Box 17779  
Fountain Hills, AZ 85269-7779

Duane C. Wyles  
205 Farm Circle Drive  
P. O. Box 1537  
Cornville, AZ 86325-1537

Emily Jurmu  
City of Peoria, City Attorney  
Office  
8401 West Monroe Street,  
Room 280  
Peoria, AZ 85345-6560

Eric C. Anderson & Karen Tyler  
City of Scottsdale  
City Attorney's Office  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

Eric L. Hiser & Luke Erickson  
Hiser Joy  
5080 N. 40th Street,, Suite 245  
Phoenix, AZ 85018

Frederick E. Davidson  
P.O. Box 556  
Grand Saline, TX 75140

Gregory L. Adams  
Central Arizona Water  
Conservation District  
P. O. Box 43020  
Phoenix, AZ 85080-3020

J. B. Weldon, M. A. McGinnis,  
M. K. Foy  
Salmon, Lewis & Weldon  
2850 E. Camelback Rd. Suite  
200  
Phoenix, AZ 85016

Jacob Kavkewitz  
Pima County Attorney's Office  
Civil Division  
32 N. Stone Avenue, Ste 2100  
Tucson, AZ 85701

John C. Lacy and Paul M.  
Tilley  
2525 East Broadway Blvd,  
Suite 200  
Tucson, AZ 85716-5303

Jason Simon  
Lewis Roca Rothgerber  
Christie L.L.P.  
One South Church Avenue,  
Ste. 2000  
Tucson, AZ 85701-1611

John C. Lemaster  
CLARK HILL PLC  
3200 North Central Ave., Suite  
1600  
Phoenix, AZ 85012

Javier Ramos & Sunshine  
Manuel  
Gila River Indian Community  
Office of the General Counsel  
P. O. Box 97  
Sacaton, AZ 85147

John D. Burnside  
Snell & Wilmer, L. L. P.  
One E. Washington Street,  
Suite 2700  
Phoenix, AZ 85004-2556

Jenny J. Winkler & Michelle N.  
Stinson  
Pierce Coleman P.L.L.C.  
7730 East Greenway Road,  
Suite 105  
Scottsdale, AZ 85260

Joseph Young, Chris Resare,  
& Matthew Podracky  
City of Prescott Legal  
Department  
221 S. Cortez St.  
Prescott, AZ 86303

Jeremiah Weiner, Kent  
Millward,  
Brett J. Stavin, & Lauren  
Mulhern  
ROSETTE, LLP.  
120 S. Ash Avenue, Suite 201  
Tempe, AZ 85281

Josh Edelstein Phoenix Field  
Solicitor  
Office of the Solicitor  
U.S. Department of the Interior  
Sandra Day O'Connor U.S.  
Courthouse  
401 W. Washington St., Ste.  
404, SPC 44  
Phoenix, AZ 85003

Joe P. Sparks and Laurel A.  
Herrmann  
The Sparks Law Firm, P.C.  
7503 First Street  
Scottsdale, AZ 85251-4573

Judy Mikeal  
San Pedro NRCD  
P. O. Box 522  
St. David, AZ 85630

Kelly Schwab & Daniel L.  
Brown  
City of Chandler  
City Attorney's Office  
Mail Stop 602, P. O. Box 4008  
Chandler, AZ 85244-4008

Lee Storey  
TSL Law Group, PLC  
8767 E. Via De Ventura, Suite  
126  
Scottsdale, AZ 85258

Kimberly R. Parks and Karen J.  
Nielsen  
Arizona Department of Water  
Resources  
1110 West Washington, Suite  
310  
Phoenix, AZ 85007

Lucas J. Narducci  
Snell & Wilmer, L.L.P.  
One E. Washington Street,  
Suite 2700  
Phoenix, AZ 85004-2556

KLUMP RANCHES, L.L.C.  
c/o Wayne D. Klump  
P. O. Box 357  
Bowie, AZ 85605

M'Leah Woodard and Leigh  
Sellari  
United States Department of  
Agriculture  
P. O. Box 586  
Albuquerque, NM 87103-0586

L. Richard Mabery  
L. Richard Mabery, P.C.  
234 North Montezuma Street  
Prescott, AZ 86301

M. Grabel; P. Londen; E.  
Ancharski  
Osborn Maledon P.A.  
2929 North Central Ave.  
Suite 2000  
Phoenix, AZ 85012

L. William Staudenmaier  
Snell & Wilmer, L. L. P.  
One E. Washington Street  
Suite 2700  
Phoenix, AZ 85004

M. Widerschein, M. Woodward,  
A. Penalosa  
United States Dept. of Justice -  
ENRD  
Natural Resources Section  
PO Box 7611  
Washington, DC 20044

Lauren Caster  
Fennemore Craig, P.C.  
2394 East Camelback Road  
Ste 600  
Phoenix, AZ 85016

Merrill C. Godfrey  
Akin Gump Straus Hauer &  
Feld LLP  
2001 K Street, N.W.  
Washington, DC 20006

Nicholle Harris  
City of Avondale  
City Attorney  
11465 West Civic Center Drive  
Avondale, AZ 85323

Rebecca M. Ross  
United States Dept. of Justice -  
ENRD  
P. O. Box 7611  
Ben Franklin Station  
Washington, D. 20044

Robert B. Hoffman  
6035 North 45th Street  
Paradise Valley, AZ 85253

Roric V. Massey  
City of Goodyear  
Office of the City Attorney  
1900 N. Civic Sq  
Goodyear, AZ 85395-2012

Susan B. Montgomery, Robyn  
Interpreter  
Montgomery & Interpreter PLC  
3301 E. Thunderbird Road  
Phoenix, AZ 85032

Sean Hood  
Fennemore Craig, P.C.  
2394 E Camelback Rd, St 600  
Phoenix, AZ 85016-3429

Sonia M. Blain & Janis L.  
Bladine  
Tempe City Attorney's Office  
21 E. Sixth Street #201  
Tempe, AZ 85281

Steve Wene  
Moyes Sellers & Sims  
1850 North Central Avenue,  
Suite 1100  
Phoenix, AZ 85004

Sherri L. Zendri  
Special Master  
Central Court Building, Ste 3A  
201 West Jefferson  
Phoenix, AZ 85003-2205

Tony Gioia  
P. O. Box 464  
Camp Verde, AZ 86322

William H. Anger  
Engelman Berger, P.C.  
2800 N. Central Ave. Ste. 1200  
Phoenix, AZ 85004

Yosef M. Negose  
United States Dept. of Justice -  
ENRD  
Indian Resources Section  
P.O. Box 7611  
Washington, DC 20044