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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**

**DECISION REGARDING NOTICE TO
CLAIMANTS**

CONTESTED CASE NAME: *In re Subflow Technical Report, Verde River Watershed*
HSR INVOLVED: None
DESCRIPTIVE SUMMARY: ADWR must provide notice to Claimants at last known address provided by Claimants to ADWR; provided, however, ADWR has no obligation to deliver additional notices to Claimants in a watershed after a notice has been returned due to an undeliverable address.
NUMBER OF PAGES: 7
DATE OF FILING: December 13, 2022

The Arizona Department of Water Resources (“ADWR”) filed a Request for Clarification regarding its duties and obligations to distribute the Hydrographic Survey Report (“HSR”) and technical reports for the Verde River Watershed (collectively “the Reports”). As ADWR recognized,

1 it must send notice of the Reports to a large group of Claimants and water users. The Request seeks
2 clarification regarding two issues: (1) whether ADWR must send notices to Claimants who have not
3 maintained a current address with ADWR to which the required notices can be delivered, and (2)
4 whether ADWR has the authority to remove a recipient from a mailing list upon that person's
5 request.
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7 This decision pertains solely to notices provided to Claimants. A Claimant is a person who
8 has filed a Statement of Claimant asserting a water right or to whom a previously filed Statement of
9 Claimant has been assigned. *Pre-trial Order No. 5 Re: Notice of Hydrographic Survey Reports*, filed
10 March 29, 2000 in W-1, W-2, W-3, W-4 (consolidated). Notices of preliminary HSRs, final HSRs,
11 and technical reports are sent to Claimants. The Court has also required ADWR to provide notice
12 to those persons who ADWR has identified as currently using water within the geographic area
13 covered by the HSR but who have not filed a Statement of Claimant. *Id.* This group of people or
14 entities are known as "nonclaimant water users."
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16 In its Request for Clarification, ADWR reports that it incurred nearly \$7,000 in costs
17 attributable to undeliverable notices sent to Claimants about the 2021 Subflow Report for the
18 mainstem of the Verde River. The majority of the returned notices were undeliverable because the
19 intended recipients were not at the last known address on file with ADWR. It seeks clarification as
20 to whether it must continue expending time and resources to mail notices to such addresses in light
21 of the duty of every Claimant to "notify [ADWR] of . . . a change in that person's address . . . or a
22 transfer to another person of all or part of the land for which a water right has been claimed." *See*
23 *Pretrial Order No. 4 Re: Notification and Correction of Address Changes* at 2-3, filed January 24,
24 2000 ("Pretrial Order No. 4").
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26 Notice must be delivered using a method that provides a reasonable probability that the
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1 intended party will receive the notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,
2 (1950). In *Dixon v. Picopa Const. Co.*, 160 Ariz. 251, 772 P.2d 1104 (1989) the Court focused on
3 the extent of a party's obligation to provide notice when it did not have a deliverable mailing address.
4 Although the Court examined the extent of the diligence exercised by the party to discover a good
5 mailing address, the Court approved the address used to accomplish service, stating that "plaintiff
6 need not retain the Baker Street Irregulars to effectuate service, especially when the defendant
7 himself gives an address where he may be located." *Id.* at 262, 772 P. 2d at 1115. Here, ADWR
8 exercises diligence to provide notice by using software connected to the National Change of Address
9 database to correct the mailing address provided by Claimants to meet United States Postal Service
10 Standards. According to ADWR, the software enables ADWR to deliver thousands of notices that
11 would otherwise not be deliverable. There are, however, thousands of notices that ADWR cannot
12 deliver to Claimants even with the aid of the software program.

15 The Yavapai-Apache Nation appears to argue that ADWR must implement new programs or
16 take additional steps to address the "notice challenge." It points out that property owners and
17 Claimants are often unaware of their obligations to keep their water right claims filed with ADWR
18 updated with current addresses. It makes this argument in spite of the well-established rule that
19 ignorance of the law does not excuse a person from the obligation to comply with the law or from
20 the consequences of the person's failure to comply. *Mesquite Power, LLC v. Arizona Dep't of*
21 *Revenue*, 252 Ariz. 74, 78, ¶ 9, 497 P.3d 1023, 1027 (App. 2021), *review denied* (Feb. 4, 2022). In
22 line with this rule, a Claimant's duty to maintain a current address with ADWR remains whether or
23 not the Claimant is aware of such duty. Further, Pretrial Order No. 4 does not condition a Claimant's
24 obligation to report changes in address or a transfer of the land to a successor landowner on a
25 requirement that ADWR engage in a variety of efforts to apprise them of proceedings in the
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1 adjudication.

2 The use of the software is an appropriate method for ADWR to use to achieve a reasonable
3 probability that its notices will be delivered. While the software may be used to correct an address
4 provided by a Claimant so that the notice can be delivered, it cannot be used to exclude an address
5 provided by the Claimant from the mailing list before an attempt to deliver notice to the address is
6 made. The software should instead be used to confirm that a returned notice cannot be delivered at
7 the address that the Claimant has provided. Having once attempted to deliver a notice of proceedings
8 within a watershed, such as the issuance of a technical report, to the last known address of the
9 Claimant and had the notice returned, ADWR has no further obligation to deliver a notice in the
10 future to such address if the National Change of Address database confirms that a notice sent to that
11 address would be undeliverable. Arizona Department of Water Resources also has no obligation to
12 engage in either further diligence to discover a valid address for Claimants who are legally required
13 to maintain current addresses with ADWR. *See Dixon*, 160 Ariz. at 262, 772 P. 2d at 1115.

16 Notices of proceedings in that watershed can be provided to that class of Claimants for whom
17 ADWR does not have a valid mailing address by publication. In *Mullane*, the Court stated:

18 [t]his Court has not hesitated to approve of resort to publication ... where it
19 is not reasonably possible or practicable to give more adequate warning.
20 Thus, it has been recognized that, in the case of persons missing or
21 unknown, employment of an indirect and even a probably futile means of
22 notification is all that the situation permits and creates no constitutional bar
23 to a final decree foreclosing their rights.

24 *Mullane*, 339 U.S. at 315. Accordingly, ADWR shall publish notices of Reports in the local
25 newspapers as approved by the Court in *Matter of Rights to Use of Gila River*, 171 Ariz. 230, 235,
26 830 P.2d 442, 447 (1992). The notice and the Report being noticed shall also be made publicly
27 available on ADWR's website.

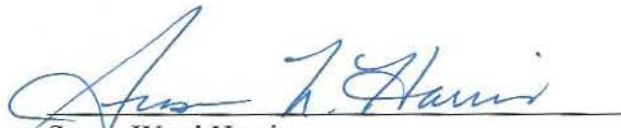
1 Moving beyond the issue of appropriate notice of Reports prepared by ADWR, the Yavapai-
2 Apache Nation asserts that due process concerns may also arise from notice practices in contested
3 cases. It contends that “ADWR and the Court will continue to waste judicial resources by moving
4 contested cases forward for claimants that are no longer associated with the property while the
5 current property owner – who has the most important interest at stake – is not even aware of the
6 proceeding.” Response at 3. The Yavapai-Apache Nation points to no cases that support its
7 description of a practice it claims to be occurring.
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9 Substantial time is spent prior to the initiation of a contested case to identify the current
10 landowners based on county tax rolls and include those persons or entities on the court-approved
11 mailing list. Orders initiating cases are accompanied both by the map prepared by ADWR of the
12 land investigated, when available, and the most current map available of the same land prepared by
13 county officials showing the relevant tax parcels. The Orders are sent to the last known addresses
14 of the Claimants, assignees of Claimants, and Objectors. The court-approved mailing lists also
15 utilize the county assessor or county treasurer tax notice mailing addresses for landowners shown by
16 the county to own property within the boundaries of the land investigated by ADWR in the contested
17 cases. Status conferences are scheduled to determine whether the Claimants and the noticed
18 landowners, who have neither filed Statements of Claimant nor obtained assignments of Statements
19 of Claimant, intend to pursue rights to water on the land investigated.
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22 Representative examples of this routine practice can be seen in *In re Elizabeth Hilliard*,
23 contested case no. W1-11-3385, *In re J.E. Warne Jr.*, contested case no W1-11-1351, *In re Ressor*
24 *G. Woodling*, contested case no. W1-11-2783, and *In re K-7 Development, Inc.* contested case No.
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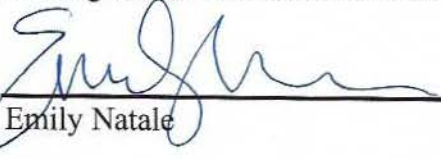
1 W1-11-1840.¹ The question of whether due process concerns exist with respect to a practice
2 described by the Yavapai-Apache Nation is moot because it does not accurately describe the practice
3 adopted in the adjudication.

4 Finally, Arizona Department of Water Resources also requests clarification as to whether it
5 has the authority to remove a recipient from a mailing list upon that person's request. Procedural
6 due process requires a person to receive reasonable notice and an opportunity to be heard in
7 connection with protected rights. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 18
8 (App. 2005). The purpose of the mailing list is to satisfy notice requirements necessary to protect
9 the due process rights of the recipient. A recipient can voluntarily relinquish the right to receive
10 notice. *See D. H. Overmyer Co. Inc., of Ohio v. Frick Co.*, 405 U.S. 174, 185 (1972); *Hall v. NACM*
11 *Intermountain, Inc.*, 988 P.2d 942, 946 (Utah, 1999) ("parties who fail to take the steps necessary
12 for receiving notice waive their constitutional protection and are not entitled to notice"). No due
13 process requirement exists that requires ADWR to continue to provide a recipient with notice after
14 the recipient voluntarily, knowingly and intelligently requests to be removed from the mailing list.
15 Thus, ADWR has the authority to remove a recipient from a mailing list when that person contacts
16 ADWR and affirmative requests to be removed from the mailing list.
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22 Susan Ward Harris
23 Special Master
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25 ¹ Cases have been reinstated in instances where a landowner, who had not filed a Statement of
26 Claimant but was sent notice of a hearing because the county showed the person as a current landowner,
27 represented that he or she had not received the notice of a Status Conference due to a change in address not
28 reflected on the county tax rolls. *See In re Edgar and Lorraine Dinwiddie*, Contested Case No. W1-11-1350
and *In re Mickey J. and Britta V. Rutherford*, contested case no. W1-11-0488.

1 The original of the foregoing was delivered to the
2 Clerk of the Maricopa County Superior Court on
3 December 13, 2022, for filing and distributing a
4 copy to all persons listed on the Court approved
5 mailing list for this contested case.

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Emily Natale