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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR MARICOPA COUNTY AND APACHE COUNTY**

13 IN RE THE GENERAL
14 ADJUDICATION OF ALL RIGHTS TO
15 USE WATER IN THE GILA RIVER
16 SYSTEM AND SOURCE

17 W-1 (Salt), W-2 (Verde), W-3 (Upper
18 Gila), and W-4 (San Pedro)
19 (Consolidated)

20 IN RE THE GENERAL
21 ADJUDICATION OF ALL RIGHTS TO
22 USE WATER IN THE LITTLE
23 COLORADO RIVER SYSTEM AND
24 SOURCE

25 CV 6417
26 (Assigned to Hon. Mark H. Brain)

**ARIZONA DEPARTMENT OF
WATER RESOURCES' PROGRESS
REPORT CONCERNING CONE OF
DEPRESSION TESTS AND OTHER
ADJUDICATION ACTIVITIES**

27 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources hereby
28 files a progress report concerning cone of depression tests and other adjudication
29 activities.

30 **NUMBER OF PAGES:** Six

31 **DATE OF FILING:** January 28, 2016

32 The Arizona Department of Water Resources ("Department") is filing this
33 progress report to inform the Court of activities recently undertaken by the Department
34

1 in the Gila River adjudication and the Little Colorado River adjudication. These
2 activities are described briefly below.

3 **Hopi Final Hydrographic Survey Report**

4 The Department completed the Final Hydrographic Survey Report for the Hopi
5 Reservation and filed its report on December 18, 2015 in the Little Colorado River
6 adjudication. The Department sent a “Notice of Publication and Commencement of
7 Objection Period for the Final Hopi Hydrographic Survey Report” and an Objection
8 Booklet to over 8,300 persons in the Little Colorado River adjudication who own
9 property for which a statement of claimant of water rights may have been filed.
10 Objections are due by June 15, 2016.

11 **Cone of Depression Testing**

12 On April 23, 2015, the Department filed in the Gila River adjudication its “Initial
13 Progress Report Concerning Implementation of Cone of Depression Tests” for the San
14 Pedro River watershed. As required by Court order entered September 8, 2015,
15 comments to the Department’s cone of depression report were filed on or about
16 November 6, 2015. The Department is preparing responses to the comments and is
17 refining its proposal for cone of depression testing based on the comments. The
18 Department plans to submit a second progress report to the Court by March 31, 2016.

19 **Mountain Front Streams**

20 In 2014, the Department filed in the Gila River adjudication its “Revised Subflow
21 Delineation Report for the San Pedro River Watershed,” which was supplemented in
22 2015. These reports included delineations of subflow zones for the San Pedro River, the
23 Babocomari River, and Aravaipa Creek, but did not include mountain front streams. The
24 Department is currently assessing mountain front streams to prepare a list of targets for
25 field reconnaissance. The Department plans to finalize this list by March 31, 2016 and
26

1 complete the field reconnaissance of selected targets prior to June 30, 2016, subject to
2 the availability of Arizona Geological Survey staff. Following the field reconnaissance,
3 the Department will report to the Court the number and names of mountain front
4 streams, if any, which will require detailed geologic mapping to delineate the subflow
5 zone.

6 De Minimis Uses

7 The Arizona Supreme Court and the Gila River adjudication court have indicated
8 that certain *de minimis* uses should be adjudicated by a summary process. Categorizing
9 those uses and establishing a summary adjudication process has been an ongoing effort.

10 In 1994, certain uses within the San Pedro River watershed were categorized as
11 *de minimis* uses by Special Master Thorson to be adjudicated by a summary process.
12 This process was described in a report issued in November 1994 (modified in February
13 1995) in the *Sands* group of cases.¹ In that report, Special Master Thorson set forth the
14 water rights attributes to be included in abstracts of water rights for certain *de minimis*
15 uses in the San Pedro River watershed.

16 In 1995, legislation was enacted that amended several adjudication statutes,
17 including new provisions related to *de minimis* uses. In 1999, the Arizona Supreme
18 Court issued a decision that invalidated those statutes, among others.²

19 In 2000, the Arizona Supreme Court issued a decision in *Gila IV* that affirmed the
20 trial court's 1994 decision regarding certain issues related to the delineation of a subflow
21 zone in the San Pedro River watershed. In that opinion, the Court indicated that it
22 continued to endorse "a rationally based exclusion for wells having a *de minimis* [*sic*]
23

24 _____
25 ¹ *In re Sands Group of Cases*, Contested Case No. W1-11-19.

26 ² *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 217-18, 972 P.2d 179, 201-202, ¶ 63 (1999).

1 effect on the river system” as stated in prior Arizona Supreme Court decisions
2 concerning the Gila River watershed.³

3 In 2002, Judge Ballinger for the Gila River adjudication court issued an order
4 adopting Special Master Thorson’s *de minimis* report in large part. Since that time, both
5 Judge Ballinger and Special Master Schade (appointed following Special Master
6 Thorson’s resignation in 2000) entered further orders relating to the adjudication of *de*
7 *minimis* uses.

8 In 2005, 2006 and 2011, as requested by Special Master Schade, the Department
9 issued comments and a report concerning *de minimis* uses. Due to factual and legal
10 issues identified by the Department and certain parties, as well as the priority of other
11 adjudication matters, including the delineation of the subflow zone, Special Master
12 Schade did not request further work from the Department.

13 ADWR is currently reviewing the orders entered by Judge Ballinger and Special
14 Masters Thorson and Schade concerning *de minimis* uses in the San Pedro River
15 Watershed and assessing whether Geographic Information System (GIS) tools and
16 techniques can be used to compile abstracts of proposed water rights for *de minimis* uses
17 in a timely manner without impairing progress on other tasks. The Department will
18 report on the outcome of this assessment along with the second progress report for cone
19 of depression testing.

20 **Verde River Watershed Predevelopment Streamflow Conditions**

21 The Department does not anticipate conducting any activities related to the Verde
22 River watershed prior to July 1, 2016. The Court has directed the Department to
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24

25 ³ *In Re the General Adjudication of all Rights to Use Water in the Gila River Systems*
26 *and Source*, 198 Ariz. 330, 342, 9 P.3d 1069, 1081, ¶ 37 (2000).

1 prioritize work within the San Pedro River Watershed. See March 4, 2015 Minute Entry
2 (Contested Case No. W1-103).

3 **Adjudication Committee**

4 The Kyl Center of the Morrison Institute at Arizona State University convened an
5 Adjudication Committee in November, 2014, at which time the Department was invited
6 to participate together with several representatives of parties in both the Gila River
7 adjudication and the Little Colorado River adjudication and other interested persons.
8 The primary purpose of the committee is to identify and discuss whether consensus can
9 be reached on methods for increasing progress in the adjudications. The Adjudications
10 Program Director and counsel for the Department are attending the monthly
11 Adjudication Committee meetings.

12 **DATED** this 28th day of January, 2016.

13
14 ARIZONA DEPARTMENT OF WATER
RESOURCES

15 

16 Janet L. Miller, Deputy Counsel
17 Nicole D. Klobas, Deputy Counsel

18 **ORIGINALS** of the foregoing sent by
19 first-class mail this 28th day of January, 2016, to:

20 Clerk of the Superior Court for Maricopa County
21 Attention: Water Case
22 601 W. Jackson Street
23 Phoenix, AZ 85003

24 Clerk of the Superior Court for Apache County
25 Attention: Water Case
26 70 West Third South
St. Johns, AZ 85936

1 **COPIES** of the foregoing sent by first-class
2 mail on this 28th day of January, 2016, to:

3 Honorable Mark H. Brain
4 Maricopa County Superior Court
5 Central Court Building, Suite 12A
6 201 West Jefferson
7 Phoenix, AZ 85003-2205

8 Special Master Susan Ward Harris
9 Maricopa County Superior Court
10 Central Court Building, Suite 3A
11 Phoenix, AZ 85003-2205

12 **COPIES** of the foregoing notice sent by
13 first-class mail this 28th day of January, 2016
14 to all parties on the court-approved mailing list
15 for W-1, W-2, W-3, W-4 (consolidated) and
16 CV 6417.

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