

1 John B. Weldon, Jr., 003701
2 Lisa M. McKnight, 011638
3 Michael K. Foy, 032736
4 **SALMON, LEWIS & WELDON, P.L.C.**
5 2850 East Camelback Road, Suite 200
6 Phoenix, Arizona 85016
7 (602) 801-9060
8 jbw@slwplc.com
9 lmm@slwplc.com
10 mkf@slwplc.com

11 *Attorneys for Salt River Project Agricultural*
12 *Improvement and Power District and Salt River*
13 *Valley Water Users' Association*

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LEGAL
DEPT OF WATER RESOURCES

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF MARICOPA**

16 IN RE: THE GENERAL
17 ADJUDICATION OF ALL RIGHTS
18 TO USE WATER IN THE GILA
19 RIVER SYSTEM AND SOURCE

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

Contested Case No. W1-11-2664

**SALT RIVER PROJECT'S SECOND
SUPPLEMENTAL DISCLOSURE
STATEMENT FOR SECOND PHASE
OF THIS CASE**

(Assigned to the Hon. Mark H. Brain)

20 Contested Case Name: *In re Redfield Canyon Wilderness Area.*

21 HSR Involved: San Pedro River Watershed Hydrographic Survey Report.

22 Descriptive Summary: The Salt River Project submits its second supplemental
23 disclosure statement for Phase II of this contested case.

24 Statement of Claimant Nos.: 39-07-1040, -1041, -1998, -1206, -1207; 39-05-50053,
25 -50054, -50055; 39-L8-35212 and -35213.

26 Date of Filing: February 23, 2017.

27 Number of Pages: 10.

1 **I. Introduction**

2 This Second Supplemental Disclosure Statement is made on behalf of the Salt River
3 Project Agricultural Improvement and Power District and the Salt River Valley Water Users'
4 Association (collectively, "SRP"). SRP's Second Supplemental Disclosure Statement sets
5 forth statements of its positions on the two issues identified for decision by the Special
6 Master's Order dated July 9, 2014. The two issues are:

- 7 A. How much, if any, unappropriated water was available on November 28, 1990?
8 B. If unappropriated water was available on November 28, 1990, what is the
9 quantity of water sufficient to fulfill the purposes of the Redfield Canyon
10 Wilderness Area?

11 The information and positions set forth in this Second Supplemental Disclosure
12 Statement are based on materials disclosed by the United States and other parties to date. The
13 information and positions are subject to change pending SRP's review of documents disclosed
14 by the United States and other parties in their Supplemental Disclosure Statements.

15 With these reservations, and consistent with the requirements of Rule 26.1 of the
16 Arizona Rules of Civil Procedure, SRP's disclosures relevant to the above-referenced two
17 issues are set forth below. This disclosure includes only those subsections that contain
18 additional information beyond what already has been disclosed in SRP's previous disclosure
19 statements.

20 **II. Rule 26.1(a)(1)-(2): Factual Basis for Each Claim Concerning the Designated**
21 **Issues and the Legal Theory Upon Which Each Claim is Based.**

- 22 A. How much, if any, unappropriated water was available on November 28, 1990?

23 The Special Master previously addressed this question in *In Re San Pedro Riparian*
24 *National Conservation Area*, Contested Case No. W1-11-232 ("SPRNCA"), and held in his
25 October 17, 2013 Order that "it is necessary to determine the quantity of unappropriated water
26 available for use as of the dates of reservation [of the SRPNCA], but it is not required to do so
27 prior to quantifying the reserved right." *Id.* at 7. The Special Master subsequently adopted

1 this approach in *In re Aravaipa Canyon Wilderness Area*, Contested Case No. W1-11-3342
2 (“ACWA”), in an Order dated June 9, 2014. In the June 9, 2014 Order, the Special Master
3 held that “the Court can quantify a federal reserved water right without first determining the
4 availability of unappropriated water on the date of the reservation.” *Id.* at 3.

5 The approach taken in SPRNCA and ACWA as it relates to this issue should be
6 adopted in this contested case as well. The amount of water available for appropriation for the
7 Redfield Canyon Wilderness Area (“RCWA”) federal reserved right need not be determined at
8 this time. Rather, the RCWA’s federal reserved right should be quantified and placed in
9 priority with all other rights to surface water and administered as part of a final decree.
10 Proceeding in this manner assures that the United States will not be able to “jump ahead” of
11 those holding senior rights and will be able to utilize the RCWA’s federal reserved right only
12 to the extent that unappropriated water remains in the system after senior right holders are
13 satisfied.

14 B. If unappropriated water was available on November 28, 1990, what is the
15 quantity of water sufficient to fulfill the purposes of the Redfield Canyon
16 Wilderness Area?

17 SRP’s position is that the Arizona Desert Wilderness Act of 1990 (“1990 Act”)
18 expressly reserved water sufficient to fulfill the purposes of the designated wilderness areas.
19 The United States claims all natural flows within the RCWA.¹ In its December 16, 2016
20 Motion for Summary Judgment (the “U.S. Motion”), the United States demonstrated that all
21 the water flowing through the RCWA must be included in the federal reserved water right in
22 order for the reservation to have water “sufficient” to fulfill its purposes. Specifically,
23 Congress designated RCWA as a protected wilderness area to preserve its primeval wilderness

24 ¹ See United States’ Initial Disclosure Statement, dated April 19, 2013 (“The United States is
25 entitled to a right, as a matter of law, for the entire amount of unappropriated water
26 constituting the natural flow in the wilderness area in order to fulfill Congress’ intent to
27 preserve and protect the wilderness areas.”); United States’ Motion for Summary Judgment,
Dated December 16, 2016, at 2 (“[A]ll the water in and flowing through Redfield is
reserved.”).

1 character in an untouched, natural state. If RCWA received anything less than all of the
2 natural flows, RCWA would neither be untouched nor in its natural state. Therefore, the
3 United States is entitled to receive all natural flows within the RCWA as part of its decreed
4 federal reserved right and does not need to specifically quantify the location and annual
5 volume of every source of such natural flows. The quantification must reflect the fact that the
6 United States is not entitled to receive a federal reserved right to springs that are located on
7 lands that fall outside the boundaries of the RCWA, including any state trust lands.

8 In the statement of claimant it filed for the RCWA (SOC No. 39-14413, hereinafter the
9 "Claim"), the United States claims (1) streamflows in Redfield Canyon and Swamp Springs
10 Canyon; (2) flows originating from various springs located within the RCWA; and (3) certain
11 manmade structures within the RCWA, including a well and several stock tanks. *See* Claim at
12 pp. 1-2 of Attachment. The claimed annual quantities for the springs and manmade structures
13 range between .02 acre-feet per annum and 15 acre-feet per annum. *Id.* In addition, there are
14 several springs for which the United States has not claimed a specific annual quantity.

15 The Adjudication Court has set forth a summary procedure for adjudicating small, "*de*
16 *minimis*" water uses within the San Pedro River watershed. *See* Report of the Special Master
17 dated November 14, 1994, Contested Case No. W1-11-19 (the "*De Minimis* Report"); Order
18 of Judge Ballinger dated September 26, 2002, Contested Case No. W1-11-19 (the "*De*
19 *Minimis* Order"). Because the United States is claiming only a small quantity of water for the
20 springs and manmade structures listed in the Claim, evidence regarding the springs and
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1 manmade structures should be presented in a *de minimis* proceeding rather than at trial in this
2 contested case.²

3 The summary procedure for adjudicating *de minimis* water uses stems from a 1993
4 decision in which the Supreme Court of Arizona invited the Adjudication Court to “adopt a
5 rationally based exclusion for wells having a *de minimis* effect on the river system.” *In re*
6 *Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 175 Ariz. 382, 394,
7 857 P.2d 1236, 1248 (1993) (“*Gila River I*”). The Court explained that a *de minimis*
8 procedure “could simplify and accelerate the adjudication by reducing the work involved in
9 preparing the hydrographic survey reports and by reducing the number of contested cases
10 before the special master.” *Gila River II*, 175 Ariz. at 394, 857 P.2d at 1248. In response to
11 the Supreme Court’s invitation, Special Master Thorson issued the *De Minimis* Report, which
12 report recommended that certain stockwatering, stockpond, and domestic water uses within
13 the San Pedro River Watershed should be subject to expedited *de minimis* proceedings. The
14 Special Master stated that wildlife water uses also are subject to the *de minimis* summary
15

16 ² If the Court elects to adjudicate the United States’ claims to springs and manmade structures
17 in this contested case rather than in a separate *de minimis* proceeding, the United States is
18 entitled to the full amount of water flowing in the springs and manmade structures. In
19 addition to the reasons set forth in the U.S. Motion, a federal reserved water right for Redfield
20 Canyon Creek and Swamp Springs Canyon Creek necessarily would protect against diversions
21 of surface water or the pumping of groundwater affecting the flow of the creeks. *See*
22 *Cappaert v. United States*, 426 U.S. 128, 142-43 (1976) (finding that off-reservation
23 groundwater pumping was affecting the surface water levels within Devil’s Hole, and holding
24 that “since implied-reservation-of-water-rights doctrine is based on the necessity of water for
25 the purpose of the federal reservation, we hold that the United States can protect its water
26 from subsequent diversion, whether the diversion is of surface or groundwater”); *see also In*
27 *re General Adjudication of All Rights to Use Water in Gila River System and Source*, 195
Ariz. 411, 418 ¶¶ 19-20, 989 P.2d 739, 747 (1999) (recognizing that federal reserve water
rights protect against diversions of source water whether surface or groundwater). Most or all
of the water from the springs and tributaries drains into Redfield Canyon Creek or Swamp
Springs Canyon Creek. Requiring the United States to spend the time and money to find,
identify, and study each and every spring or tributary to these creeks is unnecessary because
those waters already are protected as tributaries.

1 procedure. *De Minimis* Report, at 44 n.16 (“[W]ildlife watering presents a situation similar to
2 the watering of stock and, for that reason, abstracts should be prepared for these uses in the
3 same manner.”). In the *De Minimis* Order, which approved the conclusions set forth in the *De*
4 *Minimis* Report with certain minor modifications,³ Judge Ballinger explained that “[t]he
5 Arizona Supreme Court’s goal of insuring that the adjudication court devotes the proper level
6 of resources to determining small water claims, while not requiring claimants to engage in
7 unproductive litigation, supports the Special Master’s conclusion that summary adjudication
8 should be extended to all types of *de minimis* claims (as opposed to only claims involving
9 wells).” *De Minimis* Order, at 2.

10 In determining whether certain water uses should be subject to a summary *de minimis*
11 adjudication procedure, the Special Master analyzed the costs of litigating each individual use,
12 the effects (both individually and cumulatively) of the water uses in question, and the benefits
13 of full litigation of each use. The Special Master concluded that all stockwatering uses within
14 the San Pedro River Watershed are *de minimis* both individually and cumulatively. *De*
15 *Minimis* Report, at 31. The Special Master further concluded that certain stockponds and self-
16 serving domestic uses are *de minimis* individually, but not cumulatively. Nevertheless, these
17 uses still are subject to summary adjudication procedure “because of the unlikelihood of
18 stockponds or domestic uses being administered to provide water to senior users.” *Id.* at 30-
19 33.

20 The *De Minimis* Order created a procedure for summarily adjudicating *de minimis* uses
21 in the San Pedro River Watershed. In doing so, the Special Master explained that “[w]hen
22 numerous *de minimis* uses are present, the application of summary adjudication procedures is
23 a necessary case management tool for making progress in the multi-decade general stream
24 adjudication involving thousands of parties and water rights.” *De Minimis* Report, at 37-38.

25
26 ³ Judge Ballinger declined to adopt Findings of Fact Nos. 42 through 44 and 53 through 58.
27 In addition, Judge Ballinger modified Conclusion of Law No. 31 prior to adopting that
conclusion.

1 The first step in the *de minimis* procedure is preparation of proposed water right abstracts for
2 “all stockwatering uses; all stockponds (regardless of size); and self-supplied residential
3 domestic rights in the San Pedro River watershed.” *Id.* at 35. Once prepared, the abstracts of
4 proposed water right “will be incorporated into the Master’s catalog of proposed water rights
5 for the San Pedro River watershed.” *Id.* After the abstracts are issued, the *de minimis*
6 procedure provides for an abbreviated objection process for the abstracts. In order to have
7 standing to object, an objector must demonstrate that (1) “resolution of the objection will
8 demonstrably protect or improve the objector’s own water right,” and (2) “resolution of the
9 objection will provide relief that could otherwise not be obtained in a post-final decree
10 enforcement proceeding.” *Id.* The Special Master will recommend that all other objections
11 will be dismissed upon entry of the final decree.

12 The *De Minimis* Report and *De Minimis* Order were issued in the context of Contested
13 Case No. W1-11-19. Nevertheless, the *De Minimis* Report makes clear that the summary
14 adjudication procedure applies broadly to all *de minimis* uses within the San Pedro River
15 watershed. *See De Minimis* Report, at 34 (“[B]ased on the *de minimis* nature of these uses
16 throughout the watershed, the Master will implement simplified, summary procedures to
17 adjudicate all of these uses in the San Pedro River watershed.”). For example, Contested Case
18 No. W1-11-19A recently was initiated to adjudicate *de minimis* water use claims addressed in
19 Watershed File Report No. 111-19-002. *See* Special Master’s Order dated November 30,
20 2016, Contested Case No. W1-11-19A. Further, the *De Minimis* Order applies to water uses
21 that are *de minimis* in nature but fall outside the specific categories of *de minimis* uses that the
22 Special Master addressed in the *De Minimis* Order. To that end, the Special Master issued an
23 Order setting a conference “to receive comments and discuss the organization of a contested
24 case to establish standards and guidelines for identifying agricultural, municipal, industrial,
25 and other water uses that can and should be summarily adjudicated as *de minimis* water
26 rights.” Special Master’s Order dated October 20, 2005, at 1. Following the conference, the
27 Special Master issued a report in which he recommended, among other things, that “[t]he

1 Court should direct ADWR to propose a uniform standard or a use-specific standard, or if
2 appropriate both, for the following water uses that ADWR investigates and reports in the
3 Supplemental San Pedro HSR: agricultural irrigation, nonagricultural irrigation, municipal,
4 industrial, commercial, mining, recreation, fish and wildlife, small business, and any other
5 water uses that are appropriate.” *Id.* at 16.

6 The spring flows and manmade sources described in the Claim are *de minimis* uses that
7 must be adjudicated through the *de minimis* procedure that the Adjudication Court has
8 established for the San Pedro River watershed. The location of these sources within a
9 designated wilderness area demonstrate their potential for wildlife use – a use that expressly
10 was recognized in the *De Minimis* Report at subject to the *de minimis* summary adjudication
11 procedure. *See De Minimis* Report, at 44 n.16. None of the claimed sources exceeds 15 acre-
12 feet of flow per annum, and all of the sources are located within the boundaries of the
13 RCWA.⁴ The sources, therefore, are extremely small and are not capable of being used by any
14 other parties given their location within the RCWA. Further, the United States’ claim to these
15 sources poses no risk to downstream appropriators because uses other than instream flows are
16 prohibited in wilderness areas. As the Special Master noted, “[i]f these water uses do not
17 interfere with the water available for other users, the amount of judicial resources necessary to
18 determine with exactitude such characteristics as priority date and quantity can be reduced
19 through the use of summary procedures and proposed water right characteristics.” *De*
20 *Minimis* Report, at 11. Here, conserving judicial resources by applying the *de minimis*
21 procedure to summarily adjudicate the several dozen small sources set forth in the Claim is
22 preferable to individually adjudicating each of the sources. The policy in favor of the *de*
23 *minimis* procedure applies with particular force in this contested case given the large number
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25 _____
26 ⁴ The boundaries of the RCWA include certain Arizona State Trust Land inholdings. As set
27 forth in SRP’s Partial Joinder in and Response to Freeport Minerals Corporation’s Motion for
Partial Summary Judgment dated October 26, 2015, the United States is not entitled to a
reserved water right for water sources located on land that the State Land Department owns.

1 of the claimed sources, their small size, and their inability to affect any other water users in
2 the San Pedro River watershed.

3
4 DATED this 23rd day of February, 2017.

5 Salmon, Lewis & Weldon, PLC

6
7 By: 

8 John B. Weldon, Jr.

9 Lisa M. McKnight

10 Michael K. Foy

11 2850 East Camelback Road, Suite 200

12 Phoenix, Arizona 85016

13 Attorneys for Salt River Project

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1 Original and one copy of the foregoing
2 hand-delivered this 23rd day of February, 2017 to:


3 Clerk of the Superior Court
4 Maricopa County
5 Attn: Water Case
6 601 West Jackson Street
7 Phoenix, AZ 85003

8 One copy of the foregoing hand-delivered
9 this 23rd day of February, 2017 to:

10 Hon. Mark H. Brain
11 Judge of the Superior Court
12 Central West Building, Suite 12A
13 201 West Jefferson Street
14 Phoenix, AZ 85003

15 Susan Ward Harris
16 Special Master
17 Central Court Building, Suite 3A
18 201 West Jefferson Street
19 Phoenix, AZ 85003

20 Copies of the foregoing mailed this 23rd day of
21 February, 2017 to all persons appearing on the
22 court-approved mailing list for W1-11-605
23 dated January 19, 2017

24 By: 

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