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9 The City of Sierra Vista

RECEIVED
AUG 21 2017
LEGAL
DEPT OF WATER RESOURCES

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MARICOPA

9 **IN THE GENERAL
10 ADJUDICATION OF ALL
11 RIGHTS TO USE WATER IN
12 THE GILA RIVER SYSTEM AND
13 SOURCE**

W-1 (Salt)
W-2 (Verde)
W-3 (San Pedro)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-103

**PUEBLO DEL SOL WATER COMPANY
AND CITY OF SIERRA VISTA INITIAL
DISCLOSURE STATEMENT**

(Special Master Susan Ward Harris)

17
18 **DESCRIPTIVE SUMMARY:** Pueblo Del Sol Water Company and the City of Sierra Vista
19 file their initial disclosure statement re: Cones of Depression test methodology.

20 **STATEMENT OF CLAIMANT NOs.:**

21 Pueblo Del Sol Water Co.: 39-11-4262 through 39-11-4264 and 39-11-12704
22 City of Sierra Vista: 39-1488-89; 39-2752; 39-5807; 39-7844-48; 39-2557-58 and 39-12469

23 **NUMBER OF PAGES:** 7 **DATE OF FILING:** August 18, 2017
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1 Pueblo Del Sol Water Company (“PDS”) and the City of Sierra Vista (“SV” or “City”),
2 through undersigned counsel, file this joint Initial Disclosure Statement, pursuant to Arizona
3 Rule of Civil Procedure 26.1 and the Case Management Order Regarding Cone of Depression
4 Test Methodology, dated April 6, 2017 (the “Order”).

5 INITIAL DISCLOSURE STATEMENT

6 The SV Parties submit this Initial Disclosure Statement in compliance with the Order.
7 Preparation for the evidentiary hearing is still at a preliminary stage. Ongoing and potentially
8 relevant facts and information may be discovered in the future. The SV Parties reserve the right
9 to revise, correct, or supplement this disclosure of information and will do so as required under
10 the Order and other applicable orders or rules as new and different information is discovered or
11 revealed, or as the SV Parties discover that additional information is relevant.

12 I. BACKGROUND

13 The Order establishes two distinct processes. The first process is intended to identify
14 one or more methods for evaluating the cone of depression created by a well for the purpose of
15 determining the well’s current or prospective depletive effect on the stream is measurable by
16 reasonably accurate means “to be used for the purpose of identifying which wells located
17 outside of the subflow zone will be included, under state law, within the adjudication and
18 subject to the court’s jurisdiction.” Order at 3. The Order sets a trial on the Cone of Depression
19 Test Methodology beginning March 5, 2018, requires the filing of an initial disclosure statement
20 by August 18, 2017, requires discovery, including depositions to be completed by January 31,
21 2017 and sets a pretrial conference for October 11, 2017 at 1:30 p.m. to address additional
22 scheduling and any procedural matters the parties desire to raise. Order at 4-5.

23 The second process established by the Order requires the parties to file by August 25,
24 2017, “proposals regarding procedures to establish an appropriate methodology required by the
25 *Gila IV* Court [198 Ariz. 330, 9 P.3d 1069 (2000)] that Arizona Department of Water Resources

1 may apply to determine and establish that a particular well is pumping subflow and the fraction
2 of the discharge attributable to subflow. Parties shall also identify issues that should be resolved
3 in connection with the approval of an appropriate test.” Order at 4. A conference is scheduled
4 for September 13, 2017 at 1:30 to consider the proposals and initiate a third stage of this subflow
5 process. Order at 5.

6 This initial disclosure statement is limited to the first process.

7 CLAIMS/DEFENSES

8 The issue in this matter is what Cone of Depression Methodology or Methodologies
9 satisfy the criteria set forth in *Gila IV* for identifying wells outside the subflow zone that are
10 subject to this Court’s jurisdiction, as further defined by Judge Ballinger’s 2005 Order.¹ PDS
11 and the City contend this issue includes the following:

- 12 1. The Cone of Depression Methodology should be limited to identifying “wells located
13 outside the lateral parameters of the defined ‘subflow zone’ . . . [where] its ‘cone of
14 depression’ caused by its pumping has now extended to a point where it reaches an
15 adjacent ‘subflow’ zone and by continual pumping will cause a loss of such ‘subflow’
16 as to affect the quantity of the stream.’ *Gila IV* 198 Ariz. at 343 ¶38 (*emphasis*
17 *added*).
- 18 2. ADWR (or any party advocating a particular methodology) has the burden of
19 demonstrating by clear and convincing evidence that its proposed methodology is
20 accurately depicting the wells cone of depression. *Gila IV* 198 Ariz. 343¶41-43.
- 21 3. Use of steady-state simulations are inconsistent with *Gila IV*, but are nevertheless
22 required by Judge Ballinger’s 2005 Order.

24
25 ¹ PDS and the City reserve all objections filed to the 2005 Order and any other court determination
impacting the appropriate Cone of Depression Methodology and do not intend to restate them or argue
them in this proceeding.

- 1 4. The Cone of Depression Methodology must be “realistically adaptable to the field”,
2 “least expensive and delay causing” but provide “a high degree of reliability” in order
3 to meet the clear and convincing burden necessary to overcome the presumption that
4 a well is pumping groundwater. *Gila IV* 198 Ariz. at 343 ¶39 and ¶40.
- 5 5. Where insufficient data is currently available to provide a high degree of reliability
6 related to the extent and impact of the cone of depression, such data must be
7 developed.
- 8 6. Inputs to models need to be clearly identified and shown to have a high degree of
9 reliability. This should be reflected in actual field results.
- 10 7. Analytical modeling analysis is a highly simplified representation of potentially
11 complex hydrogeologic conditions more likely to produce incorrect or misleading
12 results than numerical modeling analysis.
- 13 8. ADWR should be required to evaluate and state reasons for favoring one
14 methodology over another and for rejecting various modeling software codes, such
15 as GFLOW, TimSL, TimML, AnAqSim or Split.
- 16 9. The additional issues identified by PDS and the City in its March 6, 2017
17 Objections/Comments.

18 PDS and the City reserve the right to include issues/claims identified by other parties.

19
20 **II. THE FACTUAL BASIS OF A PARTY’S CLAIM CONCERNING EACH**
21 **DESIGNATED ISSUE.**

22 PDS and the City reassert the factual concerns set forth in their March 6, 2017
23 Objections/Comments.
24
25

1 **III. THE LEGAL THEORY UPON WHICH EACH CLAIM IS BASED**
2 **INCLUDING, WHERE NECESSARY FOR A REASONABLE**
3 **UNDERSTANDING OF THE CLAIM, CITATIONS OF PERTINENT**
4 **LEGAL OR CASE AUTHORITY.**

5 The Cones of Depression Methodology used to determine this Court's jurisdiction must
6 satisfy the criteria established by *Gila IV* 198 Ariz. 342-343 ¶38-43.

7 **IV. THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ANY**
8 **WITNESSES WHOM THE DISCLOSING PARTY EXPECTS TO CALL**
9 **TO SUBSTANTIATE ITS CLAIMS WITH A FAIR DESCRIPTION OF**
10 **THE SUBSTANCE OF EACH WITNESS' EXPECTED TESTIMONY.**

11 PDS and the City have not yet identified any persons it intends to call as a witness at this
12 time.

13 **V. THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ANY**
14 **WITNESSES WHOM THE DISCLOSING PARTY BELIEVES MAY**
15 **HAVE KNOWLEDGE OR INFORMATION RELEVANT TO THE**
16 **EVENTS, TRANSACTIONS, OR OCCURRENCES THAT GAVE RISE**
17 **TO EACH CLAIM, AND THE NATURE OF THE KNOWLEDGE OR**
18 **INFORMATION EACH SUCH INDIVIDUAL IS BELIEVED TO**
19 **POSSESS.**

20 PDS and the City have not yet identified any such persons, but acknowledges there are
21 numerous persons generally familiar with the hydrology in the San Pedro Watershed and/or
22 various Cone of Depression Methodologies.

23 **VI. THE NAMES AND ADDRESSES OF ALL PERSONS WHO HAVE**
24 **GIVEN STATEMENTS, WHETHER WRITTEN OR RECORDED,**
25 **SIGNED OR UNSIGNED, AND THE CUSTODIAN OF THE COPIES OF**
 THOSE STATEMENTS.

 PDS and the City have no present knowledge of any person within this category beyond
 the statements previously filed in this matter. PDS and the City acknowledge Brown and

1 Caldwell provided written material to assist in the preparation of their March 6, 2017
2 Comments/Objections and that such information is subject to Rule 26(b)(4)(B).

3 **VII. THE NAME AND ADDRESS OF EACH PERSON WHOM THE**
4 **DISCLOSING PARTY EXPECTS TO CALL AS AN EXPERT WITNESS,**
5 **THE SUBJECT MATTER ON WHICH THE EXPERT IS EXPECTED TO**
6 **TESTIFY, A SUMMARY OF THE GROUNDS FOR EACH OPINION,**
7 **THE QUALIFICATIONS OF THE WITNESS, AND THE NAME AND**
8 **ADDRESS OF THE CUSTODIAN OF COPIES OF ANY REPORTS**
9 **PREPARED BY THE EXPERT.**

10 PDS and the City have not identified any person that they intend to call as an expert
11 witness at this time.

12 **VIII. THE EXISTENCE, LOCATION CUSTODIAN, AND GENERAL**
13 **DESCRIPTION OF ANY TANGIBLE EVIDENCE OR RELEVANT**
14 **DOCUMENTS THAT THE DISCLOSING PARTY PLANS TO USE TO**
15 **SUPPORT ITS CLAIMS.**

16 PDS and the City are still developing their case and do not have any current knowledge
17 of such tangible evidence or relevant documents, other than information already filed in this
18 proceeding.

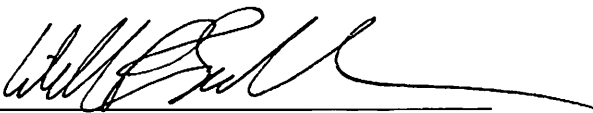
19 **IX. A LIST OF THE DOCUMENTS OR, IN THE CASE OF VOLUMINOUS**
20 **DOCUMENTARY INFORMATION, A LIST OF THE CATEGORIES OF**
21 **DOCUMENTS, KNOWN BY THE DISCLOSING PARTY TO EXIST**
22 **WHETHER OR NOT IN ITS POSSESSION, CUSTODY, OR CONTROL**
23 **AND WHICH IT BELIEVES MAY BE RELEVANT TO ANY OF ITS**
24 **CLAIMS CONCERNING THE DESIGNATED ISSUES, AND THOSE**
25 **WHICH APPEAR REASONABLY CALCULATED TO LEAD TO THE**
DISCOVERY OF ADMISSIBLE EVIDENCE, AND THE DATE(S) UPON
WHICH THOSE DOCUMENTS WILL BE MADE, OR HAVE BEEN
MADE, AVAILABLE FOR INSPECTION AND COPYING. IF
PRODUCTION IS NOT MADE, THE NAME AND ADDRESS OF THE

1 **CUSTODIAN OF THE DOCUMENT SHALL BE INDICATED. ANY**
2 **DOCUMENT PRODUCED FOR INSPECTION SHALL BE PRODUCED**
3 **AS IT IS KEPT IN THE USUAL COURSE OF BUSINESS.**

4 PDS and the City are still developing their case and have not yet identified any
5 documents subject to disclosure under this provision, other than those already filed in this
6 proceeding.

7 DATED this 18th day of August, 2017.

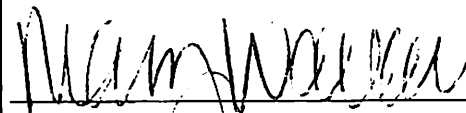
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10 By 
11 William P. Sullivan, Esq.
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 City of Sierra Vista

15 Original of the foregoing filed this
16 18th day of August, 2017 with:

17 Clerk of the Maricopa County Superior Court
18 601 West Jackson
19 Phoenix, Arizona 85003
 Attention: Water Case

20 Copies of the foregoing mailed this 18th
21 day of August, 2017 to those parties who
22 appear on the Court-approved mailing list
23 for Case No. W1-103 dated July 25, 2017.

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25 _____