

1 Kimberly R. Parks (Bar No. 032828)
2 Janet L. Miller (Bar No. 011963)
3 Arizona Department of Water Resources
4 Legal Division
5 P.O. Box 36020
6 Phoenix, Arizona 85067
7 Telephone: 602-771-8472
8 Fax: 602-771-8687
9 krparks@azwater.gov
10 jlmiller@azwater.gov

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**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. W1-103

**ARIZONA DEPARTMENT OF WATER
RESOURCES' RESPONSE TO
FREEPORT MINERALS
CORPORATION'S MOTION TO
STRIKE ADWR'S OBJECTIONS**

Assigned to Hon. Mark H. Brain

CONTESTED CASE NAME: *In re Subflow Technical Report, San Pedro River Watershed*

DESCRIPTIVE SUMMARY: The Arizona Department of Water Resources ("ADWR") hereby responds to Freeport Minerals Corporation's ("Freeport") Motion to Strike ADWR's Objections filed May 28, 2019.

NUMBER OF PAGES: Four

DATE OF FILING: June 03, 2019

1 On May 11, 2018, the Special Master issued the Draft Report on Arizona
2 Department of Water Resources' Demonstration Project Report: Cone of Depression Test
3 Methodology ("Draft Report"). Pursuant to the instructions contained in the Draft Report,
4 ADWR filed objections on May 31, 2018 without protest from any party.

5 On November 14, 2018, the Report of the Special Master on Methodology for
6 Determination of Cone of Depression ("Report") was issued. The instructions contained
7 in the Report state, "Written objections to this Report may be filed on or before January
8 14, 2019." (See Report, at 26). This deadline was later extended until May 13, 2019 due
9 to the United States' government workers furlough.¹ On May 13, 2019 and pursuant to the
10 Court's Order, ADWR filed its objections to the Report. On May 28, 2019, Freeport
11 Minerals Corporation filed a Motion to Strike ADWR's Objections claiming that
12 ADWR's objections are not authorized by statute because ADWR is not a claimant in the
13 adjudication.

14 As an initial matter, Freeport's Motion is not properly before this Court under
15 Arizona Civil Rule of Procedure 7.1(F) because it is not expressly authorized by statute or
16 other rule, and it does not seek to strike ADWR's objections on the grounds that ADWR's
17 objections are prohibited by a specific statute, rule, or court order. Rather, Freeport cites
18 several statutes focusing on ADWR's role as technical advisor to the court and drawing a
19 distinction between ADWR's role in the adjudication and that of claimant-parties to the
20 adjudication. Freeport also cites *United States v. Superior Court* in support of its position
21 that ADWR may not engage in activities that are reserved for claimants.² In that case, the
22 Court was addressing a specific issue: whether ADWR's recommendations to the Special
23 Master regarding various water rights are tantamount to an unconstitutional resolution of
24

25 ¹ See Order Granting United States' Request for an Extension of Time filed January 7, 2019.

26 ² See Freeport's Motion to Strike at 2-3, citing *United States v. Superior Court In & For Maricopa Cty.*, 144 Ariz.
265, 279 (1985).

1 the claims presented. The Arizona Supreme Court ruled that ADWR's role was not an
2 adjudicatory role because ADWR's recommendations are not the final resolution of any
3 claim; this holding is a far cry from Freeport's assertion that *United States v. Superior*
4 *Court* should be read as prohibiting ADWR from weighing in on its own technical report.

5 While Freeport is correct that ADWR is not a claimant in the adjudication, ADWR
6 is permitted to file documents, including objections, in the general stream adjudications at
7 the request of the court. The scope of ADWR's role in the adjudications was addressed
8 by Judge Goodfarb in his July 27, 1989 Order in the Gila River adjudication.³ In the 1989
9 Order, Judge Goodfarb found "As long as this Court retains the adjudicatory role, and
10 *DWR acts at the Court's request*, limits [on DWR's role] should be few and far
11 between."⁴

12 At the Court's request, ADWR prepared and filed its technical report regarding
13 cone of depression methodology. The Court then held a multi-day hearing with testimony
14 from numerous experts both in favor of and opposed to the findings in ADWR's technical
15 report after which the Special Master's final Report was issued. The instructions
16 contained in the Special Master's Report state, "Written objections to this Report may be
17 filed on or before January 14, 2019." (*See Report*, at 26). The instructions did not say that
18 objections may only be filed by claimants.

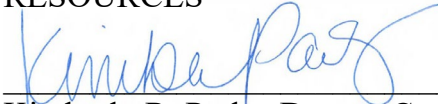
19 ADWR believes that as technical advisor to the court, it is appropriate for ADWR
20 to provide comments and objections on the court's proposed methodology, as ADWR will
21 be asked to implement such methodology in future proceedings. ADWR respectfully
22 requests the Court to consider ADWR's Objections and to deny Freeport's Motion.
23
24

25 ³ See Order With Regard To The Fifth Set of Issues Submitted for Decision filed in the Gila River adjudication on
26 July 27, 1989, W-1, W-2, W-3, W-4 (emphasis added).

⁴ *Id.* at 10.

1 **DATED** this 03rd day of June, 2019.

2 ARIZONA DEPARTMENT OF WATER
3 RESOURCES

4 
5 _____
6 Kimberly R. Parks, Deputy Counsel
7 Janet L. Miller, Deputy Counsel

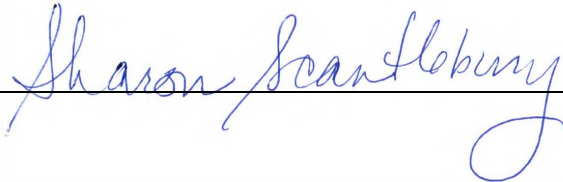
8 **ORIGINAL** of the foregoing sent by
9 first-class mail on June 03, 2019, to:

10 Clerk of the Maricopa Superior Court
11 Attn: Water Case
12 601 W. Jackson Street
13 Phoenix, Arizona 85003

14 **COPIES** of the foregoing sent by
15 first-class mail on June 03, 2019, to:

16 Special Master Susan Ward-Harris
17 Maricopa County Superior Court
18 Central Court Building
19 201 West Jefferson Street, Suite 3A
20 Phoenix, AZ 85003-2205

21 **COPIES** of the foregoing sent by first-class
22 mail on June 03, 2019 to all parties on the
23 court-approved mailing list for Contested Case
24 No. W1-103.

25 
26 _____