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

12 IN THE GENERAL ADJUDICATION
13 OF ALL RIGHTS TO USE WATER IN
14 THE LITTLE COLORADO RIVER
15 SYSTEM AND SOURCE

CV 6417

**ARIZONA DEPARTMENT OF WATER
RESOURCES' REPLY RE: ADWR'S
REQUEST FOR EXPEDITED
CONSIDERATION OF FORM OF
VERIFICATION**

Special Master Susan Ward Harris

16 **CONTESTED CASE NAME:** None

17 **HSR INVOLVED:** None

18 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources ("ADWR")
19 hereby replies to SRP's Response to ADWR's request for expedited consideration of a
20 change in verification for Statement of Claimant forms.

21 **NUMBER OF PAGES:** Seven

22 **DATE OF FILING:** February 3, 2023

23 As directed in the Court's Order filed January 23, 2023, ADWR hereby replies to
24 SRP's Response to ADWR's Request for Expedited Consideration of Form of
25 Verification ("Request"). ADWR's Request is hereby incorporated by reference in
26

1 support of this Reply.

2 **I. Background**

3
4 On January 13, 2023, ADWR filed a Request seeking the Court’s approval to
5 amend the verification requirement on the Statement of Claimant (“SOC”) forms and to
6 also allow ADWR to accept electronic submission of SOC forms. Currently, the court-
7 approved SOC, assignment, and amendment forms contain language requiring
8 notarization of each document to satisfy the verification requirement in Arizona Revised
9 Statutes (“A.R.S.”) § 45-254. ADWR believes that although notarization is an acceptable
10 form of verification, there are other acceptable means of verification as exhibited in the
11 Rules of Civil Procedure for the Superior Courts of Arizona (“Rules of Civil Procedure”)
12 which will be less burdensome for claimants.¹ Specifically, ADWR proposes an
13 amendment to each of the hard copy SOC forms to remove the language requiring
14 notarization and to include the following language with a signature line:

15 I certify under penalty of perjury that to the best of my knowledge, information,
16 and belief, the facts set forth in this form are true and accurate.²

17
18 ADWR also seeks approval to incorporate electronic submission and electronic
19 verification of SOC forms through ADWR’s website by allowing claimants to click a box
20

21 _____
22 ¹ 16 A.R.S. Rules of Civil Procedure, Rule 80(c), which provides: “when these rules
23 require or allow a matter to be supported, evidenced, established, or proved by a sworn
24 written declaration, verification, certificate, statement, oath, or affidavit, the same may be
25 unsworn--and have the same force and effect--if it is: (1) signed by the person as true
26 [or certify, verify or state] under penalty of perjury that the foregoing is true and correct.
Executed on [date].”

² ADWR’s Request at 3.

1 that contains the same or substantially similar verification language during the electronic
2 SOC submission process.³

3 On January 20, 2023, The Salt River Project Agricultural Improvement and Power
4 District and the Salt River Valley Water Users' Association (collectively "SRP") filed a
5 Response to ADWR's Request.⁴ In its Response, SRP indicated that although SRP
6 generally agrees with ADWR's proposal, SRP had concerns that ADWR's proposal "does
7 not comply with applicable statutes."⁵ Specifically, SRP raised concerns that 1) the Rules
8 of Civil Procedure do not apply to SOCs, and therefore the rules cited by ADWR do not
9 permit electronic signatures for SOCs, and 2) that electronic signature and verification for
10 SOCs must comply with the rules governing electronic signatures for "documents filed
11 with and by all state agencies" under A.R.S. §§ 44-7042⁶ and 18-106 (A). SRP requests
12 that the Court direct ADWR to comply with these statutes and to ensure that "such
13 signature is unique to the person using it, capable of reliable verification, and linked to the
14 SOC record."⁷

15 ADWR hereby replies to the issues raised in SRP's Response.

16 **II. SOCs are court filings governed by the Arizona Rules of Civil Procedure.**

17
18 In its Response, SRP appears to take the position that SOCs are not court documents,
19 but rather administrative agency documents and argues that SOCs are not "pleadings"
20
21

22 ³ *Id.* at 3-4.

23 ⁴ Salt River Project's Response to Arizona Department of Water Resources' Request for
24 Expedited Consideration of Form of Verification filed January 20, 2023.

25 ⁵ *Id.* at 2-4.

26 ⁶ In its Response, SRP references A.R.S. § 44-4072(A); however, ADWR was unable to
locate this statute and believes the citation to be a typographical error.

⁷ *Id.* at 4.

1 under the Arizona Rules of Civil Procedure.⁸ ADWR respectfully disagrees with SRP's
2 assertion.

3 SOC's are court filings, as recognized by A.R.S. § 45-254(A), which states "Each
4 potential claimant who is served shall present in writing the particulars of his claim on the
5 court-approved statement of claimant form **and shall file the statement of claimant form**
6 **with the court** within ninety days of the date of service, unless otherwise ordered by the
7 court. The court may extend the time for good cause. **A duplicate of each statement of**
8 **claimant shall be made available by the clerk of the court to the director**" (emphasis
9 added). The plain language of the statute demonstrates that the Arizona Legislature
10 recognizes SOC forms as court filings and anticipated that the Court would accept SOC
11 submissions by claimants in the adjudication. The fact that ADWR assists the Court in
12 accepting and processing the thousands of SOC forms that have been filed in the general
13 stream adjudications does not change the nature of those documents.

14 Second, an SOC is akin to a pleading as it is the document that brings a party into
15 the general stream adjudication. As cited by SRP, Arizona Rules of Civil Procedure
16 4(a)(1) defines pleadings as "any of the pleadings authorized by Rule 7 that bring a party
17 into an action- a complaint, third-party complaint, counterclaim, or crossclaim."⁹
18 Although an SOC does not share the same title as the specific documents referenced in
19 Rule 4, it is the functional equivalent of a pleading as it evidences a party's claim and
20 details the attributes of water right that person is seeking, making them a party to the
21 adjudication and allowing other parties the opportunity to respond to those claims. For
22 example, The Rules for Proceedings Before the Special Master defines the term "Parties"
23 as follows:

24
25 ⁸ *Id.* at 2.

26 ⁹ *Id.*

1 § 1.16 “Parties” means those persons or the successors- in- interest of such persons
2 who were served, whether by mail or publication, pursuant to Arizona Revised
3 Statutes Annotated Section 45-253, with the original or subsequent summons
4 notifying them of the general stream adjudication and requiring them to file a
5 Statement of Claimant form if they claimed a water use in the river system under
6 adjudication. Parties who filed a Statement of Claimant form are “claimants.”

6 Only claimants can be granted a water right by the Court¹⁰ and only claimants may file
7 objections to technical reports and present evidence in support of claims.¹¹ Just as the
8 failure to file an answer or response can result in a default judgment in other cases, failure
9 to file an SOC can result in a water right being forfeited in the general stream
10 adjudication.¹² Thus, to participate as a party claiming a water right in the general stream
11 adjudications, a person must file an SOC.

12 For the reasons outlined above, the Rules of Civil Procedure apply to SOCs.

13
14 **III. A.R.S. § 44-7042 specifically excludes court documents from the described**
15 **electronic verification requirements.**

16 In its Response, SRP argues that the rules for electronic signatures and verification
17 found in A.R.S. § 44-7042 should apply to SOCs. However, A.R.S. § 44-7042(C) states,

18 _____
19 ¹⁰ See, Rules for Proceedings Before the Special Master § 15.01 General; Report of the
20 Special Master on Summary Proceedings in the Lower Little Colorado River.
21 Subwatershed, filed October 30, 2020 in Contested Case No. CV 6417-400, *In re Lower*
22 *Little Colorado River Subwatershed* at 20.

21 ¹¹ See A.R.S. § 45-256(B).

22 ¹² A.R.S. § 45-254 (F) which states, “On entry of the final decree pursuant to section 45-
23 257, any potential claimant who is properly served and who failed to file a statement of
24 claimant as prescribed by this article for any water right or whose motion for permissive
25 intervention was finally denied by the court is barred and estopped from subsequently
26 asserting any right that was previously acquired on the river system and source and that
was not included in a statement of claimant and forfeits any rights to the use of water in
the river system and source that were not included in a properly filed statement of
claimant.”

1 “This section does not apply to the judicial branch;” therefore, the rules in A.R.S. § 44-
2 7042 and referenced in A.R.S. § 18-106 (A) do not apply to court filings, such as SOCs.

3 The rules for electronic signatures and verification that should apply to SOCs are
4 the same as the rules for other court documents, which are found in the Rules of Civil
5 Procedure and described in ADWR’s Request.

6 **IV. CONCLUSION**

7
8 ADWR respectfully requests that the Court deny SRP’s request to compel ADWR
9 to comply with the requirements for agency documents described Title 18 and 44 of the
10 Arizona Revised Statutes. ADWR believes that its proposal is permitted under the Rules
11 of Civil Procedure and satisfies the verification requirement of A.R.S. § 45-254 (D).
12 ADWR anticipates that there will be some additional level of verification implemented
13 into its electronic filing process, such as the requirement that a claimant create an online
14 account and login in order to file documents; however, it is too soon in the process to
15 know what the additional level of verification will be. ADWR also anticipates that
16 interested parties will have the same or improved access to electronically filed SOCs
17 through ADWR’s database once these changes are implemented, if approved by the Court.

18 **RESPECTFULLY SUBMITTED** this 3rd day of February 2023.

19 ARIZONA DEPARTMENT OF WATER
20 RESOURCES

21 

22 _____
23 Kimberly R. Parks, Deputy Counsel
Kome O. Akpolo, Deputy Counsel

24 ORIGINAL of the foregoing sent by first-class
25 mail on February 3, 2023, to:

26

1 Clerk of the Apache County Superior Court
2 P.O. Box 365
3 St. Johns, Arizona 85936

4 COPY of the foregoing sent by
5 first-class mail on February 3, 2023 to:

6 Special Master Susan Ward Harris
7 Maricopa County Superior Court
8 Central Court Building
9 201 West Jefferson Street, Suite 3A
10 Phoenix, AZ 85003-2205

11 COPIES of the foregoing sent by first-class
12 mail on February 3, 2023 to all parties
13 on the court-approved mailing list for the
14 Little Colorado River Adjudication, CV 6417.

15 *Lizette Fuentes*
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