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**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. W1-106

**ARIZONA DEPARTMENT OF WATER
RESOURCES' REPLY TO SALT
RIVER PROJECT'S RESPONSE RE:
ADWR'S REQUEST TO MODIFY
SCHEDULE FOR ISSUANCE OF
REPORTS**

Special Master Susan Ward Harris

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

HSR INVOLVED: None

DESCRIPTIVE SUMMARY: The Arizona Department of Water Resources hereby submits its reply to the Salt River Project's Response to ADWR's Request to Modify Schedule for Issuance of Reports filed January 12, 2023.

1 **NUMBER OF PAGES:** Eight

2 **DATE OF FILING:** February 7, 2023

3

4 **BACKGROUND**

5 On January 12, 2023, ADWR filed a request¹ to modify the existing schedule for
6 the issuance of certain reports for the Verde River watershed to accommodate the
7 schedule for resolution of objections to ADWR’s Technical Report Concerning *De*
8 *Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in the Verde River
9 Watershed (“*De Minimis* Report”).² Specifically, ADWR requested that the Court modify
10 the existing schedule for issuance of the Preliminary and Final Hydrographic Survey
11 Reports (“HSRs”) for the Sycamore subwatershed and the Lower Verde Valley
12 subwatershed to allow time for ADWR to incorporate the Court’s *de minimis* findings, if
13 any, into its reports. Under the current schedule,³ ADWR would be expected to issue its
14 Preliminary Hydrographic Survey Report for the Sycamore subwatershed in January
15 2024, which will be prior to the evidentiary hearing on objections to the *De Minimis*
16 Report currently scheduled to begin in July 2024. Under the current schedule, ADWR
17 would also be expected to issue its Preliminary HSR for the Lower Verde Valley
18 subwatershed in June 2025, which will likely give ADWR less than twelve months to
19 incorporate any of the Court’s findings into its reports. For these reasons, ADWR
20 proposed to modify the existing schedule for issuance of its technical reports as follows:

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- 22 Sycamore Preliminary HSR: to be issued concurrently with Big Chino Preliminary HSR
- 23 Sycamore Final HSR: to be issued concurrently with Big Chino Final HSR
- 24 Lower Verde Valley Preliminary HSR: to be issued June 2026

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¹ Arizona Department of Water Resources’ Request to Modify Schedule for Issuance of Reports filed January 12, 2023.

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² Minute Entry Order filed January 5, 2023 at 3.

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³ Minute Entry Order filed March 4, 2020 at 7.

1 Lower Verde Valley Final HSR: to be issued September 2027⁴

2 On February 1, 2023, the Salt River Project Agricultural Improvement and Power
3 District and Salt River Valley Water Users' Association (collectively "SRP") filed a
4 Response⁵ to ADWR's Request arguing that the Court should not grant ADWR's Request
5 for various reasons. ADWR hereby replies to each of SRP's arguments in the sections
6 below. ADWR's Request is hereby incorporated by reference in support of this Reply.

7
8 **I. ADWR's proposed modifications to the current schedule are based on**
9 **consideration of several significant factors.**

10 SRP indicates in its Response that it agrees with ADWR and "does not contest that
11 some modification of the Verde Schedule is appropriate to accommodate the ongoing
12 proceedings regarding potential summary adjudication procedures in the Verde River
13 Watershed."⁶ Nevertheless, SRP urges the Court to require ADWR to issue its
14 Preliminary HSR for the Lower Verde Valley subwatershed approximately four months
15 sooner than the deadline proposed by ADWR.⁷ SRP gives no basis for its proposal, other
16 than to say, "ADWR may need up to a year to incorporate the results of the *de minimis*
17 proceedings into its Preliminary HSR, but it should not need more than a year to do so."⁸

18 To ADWR's knowledge, SRP has never investigated or drafted a hydrographic
19 survey report covering thousands of water uses, nor has it provided notice of such reports
20 to thousands of water users; therefore, SRP has no basis for suggesting how much time
21 ADWR may need to complete its technical work. ADWR's proposed modifications to the

22 _____
23 ⁴ ADWR's Request, *supra* note 1, at 6.

24 ⁵ Salt River Project's Response to Arizona Department of Water Resources' Request to
25 Modify Schedule for Issuance of Reports filed February 1, 2023.

26 ⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 3.

1 schedule for issuing the Preliminary and Final HSRs for the Lower Verde Valley
2 subwatershed are based on multiple factors, including the amount of time necessary to
3 incorporate the Court's findings on *de minimis* uses, if any, into its technical reports, and
4 also the amount of time that may be necessary to fully investigate thousands of small
5 water uses should the Court decide that those uses are *not* eligible for summary
6 adjudication, which is a position SRP has suggested should be taken in various
7 subwatersheds.⁹

8 ADWR's proposals also take into account the existing schedule for the issuance of
9 other technical reports which was referenced in ADWR's Request.¹⁰ The Court has
10 requested that ADWR issue more than ten technical reports from April 2023 through
11 2030, often with multiple technical reports due in the same calendar year. ADWR's
12 proposed modifications to the schedule were made in an effort to avoid disruption of the
13 existing deadlines for issuance of other technical reports. For that reason, ADWR's
14 proposals necessarily require adjustments to the months between the issuance of the
15 Preliminary and Final versions of certain HSRs, another factor with which SRP took
16 issue.¹¹ However, strict adherence to the months allotted for the issuance of certain
17 technical reports under the current schedule does not make practical sense if that
18 adherence may disrupt the existing schedule for other technical reports.

19 It is important to note that even if the Court were to issue a decision on the objections
20 to the *De Minimis* Report in early 2025, as SRP suggests, it is possible that one or more
21 parties may appeal the decision which may further delay ADWR's ability to incorporate
22

23
24 ⁹ SRP's Comment or Objection to Technical Report Concerning *De Minimis* Domestic,
25 Stockpond, and Stock and Wildlife Watering Uses in the Verde River Watershed filed
26 October 28, 2022 at 22.

¹⁰ See Major Reports Timeline chart included in ADWR's Request at 5.

¹¹ SRP's Response, *supra* note 5, at 3.

1 any such findings into its technical reports, a factor which SRP did not address in its
2 Response.

3 SRP also argues that ADWR should issue its Preliminary and Final HSRs for the
4 Sycamore subwatershed concurrently with the Preliminary and Final HSRs for the Lower
5 Verde Valley subwatershed.¹² Again, SRP offers no basis for its presumption that ADWR
6 has the ability to issue those two hydrographic survey reports simultaneously, but rather
7 bases this argument on its assertion that the Court should strictly adhere to the original
8 sequence in which the Court determined that the subwatersheds should be investigated
9 and adjudicated.¹³ SRP is correct that ADWR originally advocated for the Court to
10 prioritize the Sycamore subwatershed; ADWR also advocated for the Court to prioritize
11 the Big Chino subwatershed, a position that was rejected by the Court.¹⁴ SRP originally
12 advocated for the Court to proceed contemporaneously on the Sycamore subwatershed
13 and the Lower Verde Valley subwatershed, a position that was also rejected by the Court
14 but which SRP is renewing in its current Response.¹⁵

15 ADWR's proposal to issue the Preliminary and Final HSRs for the Sycamore
16 subwatershed concurrently with the Big Chino subwatershed is based on both the existing
17 schedule for issuance of other technical reports in addition to the fact that both the
18 Sycamore and Big Chino reports are expected to be significantly smaller than the Lower
19 Verde Valley subwatershed reports, thus enabling ADWR to issue the two smaller reports
20 simultaneously. ADWR anticipates that a significant number of small water uses in the
21 Lower Verde Valley subwatershed may be affected by the Court's ruling on summary
22 adjudication procedures and will require a substantial amount of time to incorporate any
23

24 ¹² *Id.* at 5.

25 ¹³ *Id.* at 4-5.

26 ¹⁴ Minute Entry, *supra* note 3, at 4.

¹⁵ *Id.*

1 such findings into the Preliminary HSR for the Lower Verde Valley; thus, it is unlikely
2 that ADWR will have the resources to issue a second HSR simultaneously with the Lower
3 Verde Valley subwatershed reports.

4 For these reasons, ADWR requests that the Court deny SRP's proposed schedule.

5
6 **II. Requiring ADWR to issue separate hydrographic survey reports for federal**
7 **reservations within a subwatershed would be an inefficient use of resources for**
8 **both the Court and ADWR.**

9 In its Response, SRP asks the Court to consider directing ADWR to prepare
10 separate HSRs for non-tribal federal reservations within the Sycamore and Lower Verde
11 Valley subwatersheds. SRP has previously argued that issuing more than one HSR per
12 subwatershed is an inefficient process¹⁶ and acknowledges in its Response that it would
13 prefer "to avoid piecemeal HSRs in the Verde Watershed;"¹⁷ nevertheless, SRP now takes
14 the position that under these circumstances, it would be "prudent and efficient" for
15 ADWR to issue multiple HSRs for a single subwatershed in an effort to adjudicate some
16 claims more quickly.¹⁸ SRP offers no basis for its assertion that issuing multiple HSRs in
17 a single watershed would be more "prudent and efficient" and does not address when it
18 would propose to have ADWR investigate, draft and issue notice of such HSRs to
19 thousands of water users without disrupting existing deadlines for issuance of other
20 technical reports.

21 ADWR believes that issuing multiple HSRs in a single watershed would be an
22 inefficient use of the Court and ADWR's resources. Investigating, drafting, and noticing
23 hydrographic survey reports is a significant undertaking, even when the report concerns a
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25 ¹⁶ Minute Entry, *supra* note 3, at 4.

¹⁷ SRP's Response, *supra* note 5, at 7.

26 ¹⁸ *Id.*

1 relatively small number of uses. ADWR staff would waste valuable time and resources
2 drafting multiple complete reports for specific groups of water uses and claims rather than
3 one complete report which encompasses all water uses and claims in the same
4 subwatershed; each report would require separate introductions, separate explanations of
5 the methodology used as it pertains to the specific claims in the report, and would require
6 multiple reproductions of appendices and attachments, such as maps and data, which
7 would be avoided if all claims and uses were included in a single report. ADWR is also
8 required to provide wide notice of its hydrographic survey reports, including providing
9 copies of its reports to the clerk of court and local libraries and press releases in addition
10 to the required notice to claimants and other water users; this entire process would be
11 unnecessarily duplicated if ADWR were required to issue multiple reports for the same
12 subwatershed. The Court and ADWR would also be expected to field more frequent
13 inquiries from claimants or water users after the issuance of each separate report.

14 For all of these reasons, ADWR does not believe that it would be efficient or
15 prudent to issue separate HSRs for areas within a single subwatershed and respectfully
16 requests that the Court deny SRP's proposal on this issue.

17
18 **CONCLUSION**

19 ADWR respectfully requests that the Court deny SRP's proposals for modifications to
20 the existing schedule and deny SRP's proposal that ADWR issue separate HSRs for
21 federal reservations within the Sycamore and Lower Verde Valley subwatersheds.
22 ADWR asks that the Court implement ADWR's proposed modifications to the existing
23 schedule for issuance of its technical reports, as detailed in its Request.

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RESPECTFULLY SUBMITTED this 7th day of February 2023.

ARIZONA DEPARTMENT OF WATER
RESOURCES



Kimberly R. Parks, Deputy Counsel
Kome O. Akpolo, Deputy Counsel

ORIGINAL of the foregoing sent by
first-class mail on February 7, 2023, to:

Clerk of the Maricopa Superior Court
Attn: Water Case
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COPIES of the foregoing sent by
first-class mail on February 7, 2023, to:

Special Master Susan Ward Harris
Maricopa County Superior Court
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Phoenix, AZ 85003-2205

COPIES of the foregoing sent by
first-class mail on February 7, 2023 to all
parties on the court-approved mailing list for
Contested Case No. W1-106.


