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

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

19 W-1 (Salt)  
20 W-2 (Verde)  
21 W-3 (Upper Gila)  
22 W-4 (San Pedro)  
(Consolidated)

Contested Case No. W1-106

**ARIZONA DEPARTMENT OF WATER  
RESOURCES' REPLY TO ARIZONA  
STATE LAND DEPARTMENT'S  
MOTION FOR EXTENSION OF TIME  
FOR DISCLOSURE AND EXPERT  
REPORTS**

Special Master Sherri Zendri

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

24 **HSR INVOLVED:** None  
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1 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources (“ADWR”) respectfully requests that the Court deny Arizona State Land Department’s (“ASLD”) Motion for Extension of Time for Disclosure and Expert Report.

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3 **NUMBER OF PAGES:** Six

4 **DATE OF FILING:** June 23, 2023

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6 **BACKGROUND**

7 On December 12, 2022, a status conference was held by this Court to “determine a  
8 schedule for how to proceed with the objections and whether or not *de minimus* [sic]  
9 procedure can be used for certain water rights in the Verde Valley.”<sup>1</sup> At the status  
10 conference, various parties presented their proposed schedule. In particular, attorney for  
11 ASLD, Kevin Crestin, requested a longer period (8 months) for initial disclosure and  
12 expert reports.<sup>2</sup> The reason provided for the request for an extended period for initial  
13 disclosure and expert reports was because of a change in leadership at ASLD.<sup>3</sup> This Court,  
14 after hearing ASLD’s request and reasoning for its request, ordered the following  
15 schedule:<sup>4</sup>

- 16 - August 4, 2023 – Rule 26.1 disclosure statements shall be filed and expert  
17 reports disclosed.  
18 - October 6, 2023 – Rebuttal expert reports due.  
19 - December 15, 2023 – All discovery shall be completed.  
20 - February 17, 2024 – Dispositive motions shall be filed.  
21 - July 10, 2024 – Trial.  
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24 <sup>1</sup> Minute Entry Order, in re Subflow Technical Report, Verde River Watershed, Contested Case No. W1-106 (January 5, 2023).

25 <sup>2</sup> Id.

26 <sup>3</sup> ASLD Motion for Extension of Time for Disclosure and Expert Report, at 2.

<sup>4</sup> Minute Entry Order, in re Subflow Technical Report, Verde River Watershed, Contested Case No. W1-106 (January 5, 2023).

1 In response to the above order, on January 12, 2023, ADWR filed its Request to  
2 Modify Schedule for Issuance of Reports. The chief concern noted in the ADWR’s  
3 request was, given the constricted schedule for a determination of *de minimis* finding as it  
4 relates to the deadline for issuance of the Preliminary Hydrographic Survey Report  
5 (“HSR”), if this Court made a *de minimis* finding, ADWR would not have sufficient time  
6 to incorporate such findings into the Preliminary HSR for the Sycamore subwatershed and  
7 the Preliminary HSR for the Lower Verde Valley subwatershed.<sup>5</sup> Therefore, ADWR  
8 proposed “modifications to the existing schedule for issuance of the Preliminary HSRs  
9 and Final HSRs for both the Sycamore and Lower Verde Valley subwatersheds.”<sup>6</sup> On  
10 February 1, 2023, the Salt River Project (“SRP”) filed its objection to ADWR’s request  
11 for modifications.<sup>7</sup> ADWR filed its reply to SRP’s objection on February 7, 2023. On  
12 February, 27, 2023, upon receiving both ADWR’s and SRP’s filings on this matter, the  
13 Court issued an order modifying the deadline for the Preliminary and Final HSRs for both  
14 the Sycamore and Lower Verde Valley subwatersheds.<sup>8</sup> According to the Court’s order,  
15 for the Sycamore subwatershed, the deadline for the Preliminary HSR and the Final HSR  
16 is March 6, 2026, and March 12, 2027, respectively.<sup>9</sup> For the Lower Verde Valley  
17 subwatershed, the deadline for the Preliminary HSR and the Final HSR is September, 3,  
18 2027, and September 5, 2028, respectively.<sup>10</sup> In modifying the schedule for issuance of  
19 the above reports, this Court reasoned that ADWR’s proposal had “unquestionable merit”,  
20 it would be beneficial to claimants and “a reasonable delay in the issuance of the HSRs to  
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23 <sup>5</sup> ADWR’s Request to Modify Schedule for Issuance of Reports filed on January 12, 2023, at 3.

<sup>6</sup> Id. at 4.

24 <sup>7</sup> Salt River Project’s Response Re: ADWR’s Request to Modify Issuance of Reports

<sup>8</sup> Order Regarding ADWR’s Request to Modify Schedule for Issuance of Reports, (February 27, 2023).

25 <sup>9</sup> Id. at 5.

26 <sup>10</sup> Id. Initial deadline for the Sycamore Subwatershed was January 2, 2024, for the Preliminary HSR and the Final HSR is scheduled to be issued on January 10, 2025. For the Lower Verde Valley subwatershed, Preliminary HSR was due on June 6, 2025, with a Final HSR due on June 3, 2026.

1 allow the incorporation of the results of the *de minimis* decision in draft abstracts for  
2 proposed water rights is justified.”<sup>11</sup>

3 **I. Granting ASLD’s motion for extension would hinder ADWR’s ability to**  
4 **incorporate determination of *de minimis* uses into its HSRs which would**  
5 **deprive claimants an opportunity to receive complete report of available**  
6 **information gathered for their individual water uses and claims.**

7  
8 According to ADWR estimation there are over 1,200 self-supplied domestic uses  
9 and over 700 stockponds in the Sycamore subwatershed. In the Lower Verde Valley  
10 subwatershed, by ADWR estimation, there are over 6,000 self-supplied domestic uses and  
11 over 1,000 stockponds. If a determination that some of these uses constitute *de minimis*  
12 use, ADWR will need to incorporate that determination into its Preliminary HSR. If  
13 ADWR is unable to incorporate a *de minimis* determination into its Preliminary HSR the  
14 result will be an incomplete analysis and report which will later need to be modified,  
15 which may cause confusion to the thousands of water users in both of the subwatersheds.  
16 Accordingly, if this Court granted ASLD’s motion for an extension, it would delay the  
17 time for when a *de minimis* determination can be made. This delay will significantly  
18 hinder ADWR’s ability to incorporate the *de minimis* determination into its Preliminary  
19 HSR for both subwatersheds. As noted above, failure to incorporate the *de minimis*  
20 determination will lead to an incomplete analysis and report.

21 Additionally, ADWR contends that failure to incorporate a *de minimis*  
22 determination into its Preliminary HSR unduly burdens small claimants in both  
23 subwatersheds by requiring them to provide more details about their claims and uses that  
24 may not be necessary if summary procedures are implemented for any of those uses.

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<sup>11</sup> Id. at 3

1 **II. Granting ASLD’s motion for extension would negate the purpose of this**  
2 **Court’s order modifying the schedule for issuance of reports.**

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4 As correctly stated by this Court in its February 27, 2023, order, affording ADWR  
5 the time necessary to incorporate a *de minimis* determination into its Preliminary HSR  
6 will be beneficial to claimants in both subwatersheds.<sup>12</sup> Granting ASLD’s request for an  
7 extension will further delay the time for when a *de minimis* determination can be made.  
8 This delay will have the impact of negating the intended purpose of this Court’s February  
9 27, 2023, which was to give ADWR the time needed to incorporate a *de minimis*  
10 determination into its Preliminary HSR, which would give the public a more complete  
11 analysis and report of the various water rights in both subwatersheds.

12 **CONCLUSION**

13 ADWR believes that to produce a complete analysis and report it is important to  
14 incorporate the Court’s *de minimis* determination into its Preliminary HSR; thus, granting  
15 ASLD’s motion for an extension will hinder ADWR’s ability to make such incorporation.  
16 Wherefore, for the reasons stated above, ADWR respectfully requests that this Court deny  
17 ASLD’s motion for an extension.

18 **RESPECTFULLY SUBMITTED** this 23rd day of June 2023.

19  
20 ARIZONA DEPARTMENT OF WATER  
21 RESOURCES

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23 \_\_\_\_\_  
24 Kimberly R. Parks, Deputy Counsel  
25 Kome Akpolo, Deputy Counsel

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<sup>12</sup> ADWR’s Request to Modify Schedule for Issuance of Reports filed on January 12, 2023, at 4.

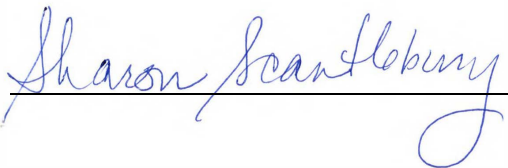
1 **ORIGINAL** of the foregoing sent by  
2 first-class mail on June 23, 2023, to:

3 Clerk of the Maricopa Superior Court  
4 Attn: Water Case  
5 601 W. Jackson Street  
6 Phoenix, Arizona 85003

7 **COPIES** of the foregoing sent by  
8 first-class mail on June 23, 2023, to:

9 Special Master Sherri Zendri  
10 Maricopa County Superior Court  
11 Central Court Building  
12 201 West Jefferson Street, Suite 3A  
13 Phoenix, AZ 85003-2205

14 **COPIES** of the foregoing sent by first-class mail  
15 on June 23, 2023 to all parties on the court-approved  
16 mailing list for Contested Case No. W1-106.

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