

1 Kimberly R. Parks (Bar No. 032828)
2 Karen J. Nielsen (Bar No. 034648)
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 knielsen@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)

Case No. W1-106

**ARIZONA DEPARTMENT OF
WATER RESOURCES' REQUEST TO
CONSOLIDATE THE DEADLINES
FOR REVISIONS TO THE SUBFLOW
ZONE DELINEATION REPORTS**

Special Master Sherri Zendri

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

DESCRIPTIVE SUMMARY: The Arizona Department of Water Resources hereby requests that the Court consolidate the deadlines for issuance of its revisions to the Subflow Zone Delineation Reports for the Verde River Watershed.

NUMBER OF PAGES: Seven

DATE OF FILING: January 3, 2024

1 On December 30, 2021, the Arizona Department of Water Resources (“ADWR”)
2 filed its proposed subflow zone delineation report for the Verde River mainstem and
3 Sycamore Canyon subwatershed (“Mainstem Report”).¹ Several parties, including the
4 Salt River Valley Water Users’ Association and the Salt River Project Agricultural
5 Improvement and Power District (collectively, “SRP”), Freeport Minerals Corporation,
6 and the Arizona State Land Department (“ASLD”), objected to ADWR’s delineation of
7 the proposed subflow zone in the vicinity of two large reservoirs operated by SRP:
8 Horseshoe Reservoir and Bartlett Reservoir.² As a result of those objections, the Court
9 requested that ADWR revise the portions of its report relating to the reaches in the
10 vicinity of Horseshoe and Bartlett Reservoirs between miles 24 and 55 of the Verde
11 mainstem by February 23, 2024.³

12 On April 28, 2023, ADWR filed its proposed subflow zone delineation report for
13 the remainder of the Verde River watershed (“Tributary Report”).⁴ On October 27, 2023,
14 similar objections regarding ADWR’s delineation of the proposed subflow zone in the
15 vicinity of Watson Lake, Granite Basin Lake, Sullivan Lake, and Willow Creek Reservoir
16

17 ¹ ADWR’s “Subflow Zone Delineation Report for the Verde River Mainstem and
18 Sycamore Canyon Subwatershed” filed December 30, 2021
19 (<https://infoshare.azwater.gov/docushare/dsweb/View/Collection-20841>).

20 ² See Salt River Project’s Objections to the Subflow Zone Delineation Report for the
21 Verde River Mainstem and Sycamore Canyon Subwatershed filed May 2, 2022; Freeport
22 Minerals Corporation’s Objections to Subflow Technical Report for the Verde River
23 Mainstem and Sycamore Canyon Subwatershed filed May 2, 2022; and Arizona State
24 Land Department’s Objection to the Subflow Zone Delineation Report for the Verde
25 River Mainstem and Sycamore Canyon Subwatershed filed May 2, 2022.

26 ³ Order Granting Partial Summary Judgment Re Objections to Subflow Delineation
Report For Verde Mainstem and Sycamore Canyon Subwatershed filed October 24, 2023
at 12.

⁴ ADWR’s “Subflow Zone Delineation For the Remainder of the Verde River Watershed”
filed April 28, 2023 ([https://infoshare.azwater.gov/docushare/dsweb/View/Collection-
21851](https://infoshare.azwater.gov/docushare/dsweb/View/Collection-21851)).

1 were filed.⁵ Certain parties also filed objections to ADWR’s stream classification analysis
2 in the area of Big Chino Wash, Patridge Creek, and Williamson Valley Wash and the
3 length of the proposed delineation for certain tributaries.⁶

4 As described further below, ADWR respectfully requests that the Court vacate the
5 February 23, 2024 deadline for ADWR to submit revisions to the first portion of its
6 subflow zone delineation report and allow ADWR to file a single set of revisions once all
7 objections have been resolved.

8 **ARGUMENT**

9 **I. Issuing two separate sets of revisions to the subflow zone delineation reports**
10 **for the Verde River watershed creates unnecessary duplication of ADWR’s**
11 **work and litigation efforts of the parties.**

12 In July 2021, based on the objections of many of the same parties who have filed
13 objections to the subflow reports, the Court requested that ADWR issue its subflow zone
14 delineation report for the Verde River watershed in two parts: the Mainstem Report filed
15 in 2021 and the Tributary Report filed in 2023.⁷ At that time, ADWR raised concerns
16 about splitting the report into two portions and proceeding with two separate litigation
17

18 ⁵ See Arizona State Land Department’s Objection to the Subflow Zone Delineation Report
19 for the Remainder of the Verde River Watershed filed October 25, 2023; Arizona Water
20 Company’s Objection to the Subflow Zone Delineation Report for the Remainder of the
21 Verde River Watershed filed October 25, 2023; Freeport Minerals Corporation’s
22 Objections to ADWR’s April 2023 Subflow Zone Delineation Report for the Remainder
23 of the Verde River Subwatershed filed October 27, 2023; Salt River Project’s Objections
24 to the Subflow Zone Delineation for the Remainder of the Verde River Watershed filed
25 October 27, 2023; and Yavapai-Apache Nation’s Objections to the Arizona Department of
26 Water Resources’ Subflow Zone Delineation Report for the Remainder of the Verde River
Watershed filed October 27, 2023.

⁶ See, *id.*, Salt River Project’s Objections at 3-12 and 13-14, and Yavapai-Apache
Nation’s Objections at 3-5.

⁷ Order Granting Request for Extension of Time in Part and Denying Request in Part and
Order Setting Schedule filed July 30, 2021 at 2.

1 schedules to resolve any objections filed to the reports.⁸ As expected, many of the
2 objections to the Mainstem Report are the same as the objections that have been filed for
3 the Tributary Report, and at least some of those objections have already been resolved by
4 the Court.⁹ The Court recognized this issue in the December 1, 2023 Order setting oral
5 argument.¹⁰ ADWR expects to abide by the parameters set by the Court for delineating the
6 subflow zone in the vicinity of large reservoirs addressed in both the Mainstem Report
7 and the Tributary Report, thus it would be duplicative for ADWR to issue those revisions
8 separately. Given that the remaining substantive objections are minimal, it makes practical
9 sense to allow ADWR to issue one set of revisions for both reports once all objections are
10 resolved.

11 **II. Issuing two separate sets of revisions to the subflow zone delineation reports**
12 **for the Verde River watershed creates unnecessary confusion for claimants at**
13 **a substantial cost to the State of Arizona.**

14 In 2021, ADWR also raised concerns about the extensive notice required for each
15 report if the report was to be split into two parts and the confusion caused to
16 unrepresented claimants receiving what appears to be duplicative notices of ADWR's
17 technical reports.¹¹ For the Tributary Report alone, ADWR sent notice of its reports to
18 nearly 10,000 claimants at a cost of approximately \$7000.00 in postage, copying, and
19 printing. Each time ADWR issues notice of a technical report such as these, ADWR
20 receives hundreds of calls from unrepresented claimants who do not understand why they

21 _____
22 ⁸ Arizona Department of Water Resources' Response to Proposals Made by the Salt River
23 Project and the United States in Open Court on June 10, 2021 Re Subflow Zone Report
Deadlines filed July 2, 2021 at 7-9.

24 ⁹ Order, *supra* note 3 at 11-13.

25 ¹⁰ Order Scheduling Oral Arguments Regarding the Arizona Department of Water
Resources' Subflow Zone Delineation and Report for the Remainder of the Verde River
Watershed filed December 1, 2023 at 2.

26 ¹¹ ADWR's Response, *supra* note 8, at 7-10.

1 received the notice. As expected, ADWR has received nearly 300 voicemails regarding
2 the Mainstem Report and Tributary Report, and that number does not include the number
3 of live calls received during operating hours. ADWR has already issued notice of the
4 Mainstem Report and separate notice of the Tributary Report to this group of recipients; if
5 required to issue two (or more) separate sets of revisions to those reports, ADWR will end
6 up sending at least four separate notices for subflow delineation reports to the same
7 recipients which will heighten the general confusion. Duplicative notice will also
8 unnecessarily and substantially increase the notice costs the State incurs.

9
10 **III. There is no real benefit gained by requiring ADWR to issue two separate**
11 **sets of revisions to the subflow zone delineation reports for the Verde River**
12 **watershed.**

12 ADWR's delineation of a subflow zone is only a first step. The delineation must be
13 approved not only by the Special Master, but also by the Superior Court Judge presiding
14 over the Gila River adjudication. Contested cases in the adjudication cannot be resolved
15 until after the issuance of a final Hydrographic Survey Report ("HSR"). ADWR's first
16 hydrographic survey report for the Verde River watershed is scheduled to be published on
17 March 6, 2026. ADWR assumes that the few objections that have not been resolved by
18 the Court will likely be resolved by the Special Master within the first half of 2024 and by
19 the Superior Court Judge shortly thereafter, which should allow ADWR sufficient time to
20 incorporate the approved delineation into its first preliminary HSR for Sycamore Canyon
21 subwatershed. Issuing two (or more) separate sets of revisions to the subflow zone
22 delineation report would not accelerate the speed at which the other steps in this process
23 can occur. On the contrary, issuing separate sets of revisions to the subflow zone
24 delineation report pulls ADWR's resources away from other projects in order to draft,
25 finalize, and notice each of those revisions, and pulls resources from the Court to evaluate
26 and approve each set of revisions separately.

1 **CONCLUSION**

2 For all of the reasons stated herein, it makes practical sense to allow ADWR to file
3 a single set of revisions once objections to both the Mainstem Report and the Tributary
4 Report have been resolved. ADWR respectfully requests that the Court vacate the
5 February 23, 2024 deadline for ADWR to submit revisions to the Mainstem Report and
6 allow ADWR to combine its revisions to both reports in a single filing at a date to be set
7 by the Court following the resolution of the remaining objections.

8 ADWR further requests that the parties who have filed objections regarding
9 ADWR’s delineation of the proposed subflow zone in the vicinity of Watson Lake,
10 Granite Basin Lake, Sullivan Lake, and Willow Creek Reservoir¹² in the Tributary Report
11 provide ADWR with additional documentation and/or aerial imagery pertaining to
12 predevelopment hydrologic or geologic conditions in those areas. ADWR does not
13 currently possess predevelopment aerial imagery and is unaware that accurate and reliable
14 predevelopment data exists for these areas.¹³ The earliest aerial images ADWR was able
15 to find for these areas were taken in the 1940s, however many of the reservoirs were
16 completed in the 1930s and earlier. The materials provided as attachments to the

17
18 ¹² The water source for Willow Creek Reservoir is Willow Creek, an ephemeral
19 watercourse as shown in Figure 6 of the Tributary Report; therefore ADWR did not
20 previously map a proposed subflow zone in the vicinity of Willow Creek Reservoir.
21 Should the Court find that Willow Creek is not an ephemeral watercourse and require
22 ADWR to propose a subflow zone delineation in that area, ADWR requests that the
23 parties provide relevant data or information on predevelopment hydrologic or geologic
24 conditions in that area.

25 ¹³ Order Re: Report of the Special Master on the Arizona Department of Water Resources’
26 Subflow Technical Report, San Pedro River Watershed and Motion for Approval of
Report filed September 28, 2005 at 21 (“The Court agrees with those suggesting ADWR
should take a practical approach and adopt the earliest predevelopment timeframe for
which accurate and reliable data is available. The Department may find the appropriate
predevelopment period differs even within various watersheds due to the quantity and
quality of available data.”).

1 objections do not contain aerial imagery. Early land survey and geology maps were
2 provided for Watson Lake, but it is unclear if these can be used to revise the proposed
3 subflow zone delineation in this area due to the poor resolution of the scans. High
4 resolution (600 dpi) digital copies of any geology maps, photos, and/or aerial imagery
5 predating the construction of the above-referenced reservoirs is necessary for ADWR's
6 review of the geologic mapping done in these areas.

7 RESPECTFULLY SUBMITTED this 3rd day of January, 2024.

8 ARIZONA DEPARTMENT OF WATER
9 RESOURCES

10 

11 _____
12 Kimberly R. Parks, Deputy Counsel
13 Karen J. Nielsen, Deputy Counsel

14 ORIGINAL of the foregoing sent by first-class
15 mail on January 3, 2024, to:

16 Clerk of the Maricopa Superior Court
17 Attn: Water Case
18 601 W. Jackson Street
19 Phoenix, Arizona 85003

20 COPY of the foregoing sent by
21 first-class mail on January 3, 2024, to:

22 Special Master Sherri Zendri
23 Maricopa County Superior Court
24 Central Court Building
25 201 West Jefferson Street, Suite 3A
26 Phoenix, AZ 85003-2205

COPIES of the foregoing sent by first-class
mail on January 3, 2024 to all parties
on the court-approved mailing list for Contested
Case No. W1-106.

