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

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

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

22 Contested Case No. W1-103

23 **ARIZONA DEPARTMENT OF WATER**  
24 **RESOURCES' COMMENTS IN**  
25 **OPPOSITION TO STIPULATED**  
26 **MOTION CONCERNING**  
**PARTICIPATION BY THE PARTIES'**  
**CONSULTANTS ON THE**  
**GROUNDWATER FLOW MODEL**  
**TECHNICAL COMMITTEE**

Special Master Sherri Zendri

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

29 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources ("ADWR")  
30 files comments in opposition to the parties' Stipulated Motion Concerning Participation

1 by the Parties’ Consultants on the Groundwater Flow Model Technical Committee  
2 (“Stipulated Motion”).

3 **NUMBER OF PAGES:** Seven

4 **DATE OF FILING:** September 9, 2025

5 On March 24, 2025, the Special Master established the Groundwater Flow Model  
6 Technical Committee (“Committee”).<sup>1</sup> In the order establishing the Committee, the  
7 Special Master clearly stated the purposes for the Committee and outlined a procedure for  
8 redress should a party have legal or technical issues with how the Committee is  
9 proceeding. Despite this, the parties are seeking an order from the Court “confirming that  
10 participation by the Parties’...will not in any way limit or otherwise impact any Party’s  
11 ability to assert objections to...[the Model]...or its development at any phase of the  
12 development and approval process, including on any potential appeal.”<sup>2</sup> ADWR does not  
13 take issue with this portion of the Stipulated Motion, as it only asks the Court to confirm  
14 their existing rights. However, the parties’ Stipulated Motion goes even further to request  
15 that:

16 “[p]articipation in the Committee process should not be construed as acquiescence  
17 with the Model or its development, nor should it carry any negative ramifications  
18 with respect to a Party’s ability to assert objections, the weight to be given to those  
19 objections, or the credibility or weight to be afforded to testimony by any  
20 consultant who participated on the Committee.”<sup>3</sup>

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20 <sup>1</sup> Order Establishing Groundwater Flow Model Technical Committee, *In re Subflow*  
21 *Technical Report, San Pedro Watershed*, Contested Case No. W1-103, March 24, 2025,  
[https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/  
22 W1-103-OR-establish-tech-comm-3-24-25.pdf](https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-103-OR-establish-tech-comm-3-24-25.pdf).

23 <sup>2</sup> Stipulated Motion Concerning Participation by the Parties’ Consultants on the  
24 Groundwater Flow Model Technical Committee, *In re Subflow Technical Report, San*  
*Pedro River Watershed*, Contested Case No. W1-103, filed September 5, 2025, at 2 ln. 17-  
25 21. *See also* [Proposed] Order Granting Stipulated Motion Concerning Participation by  
the Parties’ Consultants on the Groundwater Flow Model Technical Committee filed  
concurrently and separately with aforementioned Stipulated Motion at 2, ln.1-6.

26 <sup>3</sup> *Id.* at 2 ln. 18-22.

1 This second request goes against the explicitly stated purposes of the Committee, is  
2 unnecessary given the parties' ability to raise legal and technical concerns during each  
3 Progress Consultation Status Conference and would be against the fact-finding interest of  
4 the Court should a trial be held on the Model. Furthermore, as expressed at the September  
5 3, 2025 Progress Consultation Status Conference by Mr. Dave Colvin (LRE), Dr. Colin  
6 Kikuchi (Montgomery & Associates), and Ms. Emily LoDolce (ADWR) the Committee  
7 has been a collaborative and generative forum, further evidencing that granting the  
8 Stipulated Motion is unnecessary to achieve its stated ends.

9 **1. The Court should deny the Stipulated Motion because the requests found**  
10 **therein undermine the purposes of the Committee.**

11 The Special Master established the Committee “[t]o minimize technical objections  
12 to the revised model recommendation, and to expedite the updates themselves”.<sup>4</sup> To this  
13 end, the Special Master specified in her March 24, 2025 Order that “[t]he fundamental  
14 reason for the Committee is to bring together a collection of qualified technical experts  
15 who will collaboratively work through the technical challenges associated with creating a  
16 complex groundwater analytical model.”<sup>5</sup> With this purpose in mind, the Special Master  
17 specified that “[t]he Committee will not be an adversarial forum” and that Committee  
18 members should not “participate as representatives for a client or a position, but rather as  
19 representatives for science and advocates for the most reasonable scientific solution given  
20 time and cost restraints.”<sup>6</sup> Later, at the first Progress Consultation with the Court on April  
21 21, 2025, the Court reiterated these purposes and in the Minute Entry specified that “[t]he  
22 Court’s intention of creating this Committee is the hope that if the experts have that level  
23 of involvement and agree upon the science behind the model, it will expedite the timeline

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25 <sup>4</sup> *Supra* n. 1 at 2 ln. 2-3.

26 <sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 3 ln. 5-8.

1 and result in less objections (and expense) to the model later on.”<sup>7</sup> The Court then  
2 clarified that it “expects the work to be distributed evenly between the Committee  
3 members (with the exception of ADWR as it is ultimately their model).”<sup>8</sup>

4 The Court clearly laid out that the Committee was meant as a space for scientists to  
5 meet and confer regarding areas of past dispute on the Model. By giving the parties’  
6 experts this level of involvement during the Model refinement and amendment process,  
7 the goal was to give all involved parties the opportunity to contribute to the Model and use  
8 valuable resources during its development, rather than using resources at the back end to  
9 challenge the Model after ADWR completed the refinements and amendments as  
10 proposed in ADWR’s February 2025 Groundwater Flow Model of the Upper San Pedro  
11 Groundwater Basin Addendum.<sup>9</sup> To allow the parties’ representatives to have both an  
12 active part in the refinement and addendum process *and* to object to even those  
13 components which they have worked on without any mention of that work in a trial  
14 setting is against the purpose of the Committee and the interests of justice.

15 **2. The Court should deny the Stipulated Motion because the Court has already**  
16 **provided the parties with an avenue to raise technical and legal concerns**  
17 **regarding the Committee’s work to the Court.**

18 The Court has established the quarterly Progress Consultation Status Conferences and  
19 specified that “[a]ny party concerned about the direction of the Committee may voice  
20 their opinion to the Special Water Master during any scheduled progress consultation.”<sup>10</sup>

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22 <sup>7</sup> Minute Entry for May 14, 2025 Status Conference, *In re: Subflow Technical Report, San*  
23 *Pedro River Watershed*, Contested Case No. W1-103, filed May 20, 2025 at PDF p.4,  
[https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/  
W1-103-5-14-2025-filed-5-20-2025.pdf](https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-103-5-14-2025-filed-5-20-2025.pdf).

24 <sup>8</sup> *Id.*

25 <sup>9</sup> Available to view at [https://infoshare.azwater.gov/docushare/dsweb/Get/Document-  
100274/2025\\_02-07\\_USP\\_GFM\\_ADDENDUM.pdf](https://infoshare.azwater.gov/docushare/dsweb/Get/Document-100274/2025_02-07_USP_GFM_ADDENDUM.pdf).

26 <sup>10</sup> *Supra* n. 1 at 3 ln.16-19.

1 ADWR expects Committee members are providing updates to their clients and for their  
2 clients' attorneys to timely voice their opinion to the Court.

3 Additionally, the Committee, at least in part, was created to give the parties a concrete  
4 financial investment in the Model and to expedite the Model's finalization. This, in turn,  
5 allows the Committee member to actively participate in the prioritization of Model  
6 amendments and refinements, including raising concerns to any prioritization or Model  
7 components during the Committee proceedings. Committee members can raise their own  
8 technical concerns during the Committee meetings and should do so. ADWR files  
9 Committee meeting summaries within five business days of each meeting and commits to  
10 documenting any areas of disagreement within those summaries. Indeed – ADWR has  
11 already provided the Court an update on issues subject to disagreement in the first  
12 Progress Consultation Status Conference and requested the Court's guidance on how to  
13 resolve areas of disagreement.<sup>11</sup> When a final decision must be made, and the Committee  
14 members are not in agreement regarding that decision, Committee members or their  
15 attorneys may bring it up at the next Progress Consultation Status Conference. As Dr.  
16 Peter Mock expressed during the first Progress Consultation Status Conference, should  
17 “the other members feel a decision is not backed by good science, they can reach out to  
18 the Court for further guidance.”<sup>12</sup>

19 Between the Committee members' opportunity to raise concerns during the meetings  
20 and the parties' opportunity to raise concerns at the quarterly Progress Consultation Status  
21 Conferences there is ample opportunity to voice concerns throughout. ADWR does not  
22 disagree that parties should be permitted to make objections to the Model at the  
23 culmination of this process. Rather, ADWR takes issue with no weight being given to any  
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25 <sup>11</sup> *Supra* n. 7 at PDF p.3.

26 <sup>12</sup> *Id.* at PDF p.4.

1 of the Committee members' work, opinions, concerns (or lack thereof) provided during  
2 the Committee meetings and Model development.

3 **3. The Court should deny the Stipulated Motion because, should a trial be held**  
4 **on the Model, the Court should have all relevant information to assist in**  
5 **“ascertaining the truth and securing a just determination.”<sup>13</sup>**  
6

7 The Rules of Evidence's purpose are “to administer every proceeding fairly, eliminate  
8 unjustifiable expense and delay, and promote the development of evidence law, to the end  
9 of ascertaining the truth and securing a just determination.”<sup>14</sup> Should the parties'  
10 Stipulated Motion be granted, the truth-seeking mission of the Court in a trial would be  
11 substantially hindered. Here, should a trial proceed on the Model, the work that a party's  
12 chosen Committee representative completed during the refinement and addendum process  
13 are clearly relevant to that representative's testimony regarding the Model at trial. ADWR  
14 understands that a Committee member's agreement on one decision point may later be  
15 affected by a subsequent decision point, but this does not negate the relevance of their  
16 decisions made while on the Committee. Rather, it only further requires that the Court  
17 have a full picture of what has formed an expert's opinion on the final Model as filed with  
18 the Court after the Committee has concluded. What any party's Committee representative  
19 did or said during the Committee goes directly to the credibility of that party's expert  
20 testimony at trial.

21 **4. Conclusion**

22 ADWR does not take issue with the Court confirming the parties' right to object to the  
23 final Model. However, ADWR urges the Court to not expand this right to an exclusion of  
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25 <sup>13</sup> Ariz. R. Evidence 102.

26 <sup>14</sup> *Id.*

1 relevant evidence for the Court to consider should a trial on the Model be held for the  
2 reasons stated above.

3 **RESPECTFULLY SUBMITTED** this 9th day of September, 2025.

4 ARIZONA DEPARTMENT OF WATER  
5 RESOURCES

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7 \_\_\_\_\_  
8 Kimberly R. Parks, Deputy Counsel  
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9 **ORIGINAL** of the foregoing sent by  
10 first-class mail on September 9, 2025, to:

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

15 **COPY** of the foregoing sent by  
16 electronic mail on September 9, 2025, to:

17 Special Master Sherri Zendri  
18 [water@jbazmc.maricopa.gov](mailto:water@jbazmc.maricopa.gov)

19 **COPIES** of the foregoing sent by first-class  
20 mail on September 9, 2025, to all parties on the  
21 court-approved mailing list for Contested Case  
22 No. W1-103.

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