

1
2
3
4
5
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA
8

9 IN RE THE GENERAL
10 ADJUDICATION OF ALL RIGHTS TO
11 USE WATER IN THE GILA RIVER
12 SYSTEM AND SOURCE

W1-00-001234 (Consolidated)

Contested Case No. W1-00-000106

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

**ORDER APPROVING THE SPECIAL
MASTER'S REPORT CONCERNING
SUMMARY ADJUDICATION
PROCEEDINGS IN THE VERDE
RIVER WATERSHED**

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

19 **REPORT INVOLVED:** *De Minimis Domestic, Stockpond, and Stock and Wildlife
Watering Uses in the Verde River Watershed*

20 **DESCRIPTIVE SUMMARY:** The Special Master's February 13, 2025, report,
21 concerning *de minimis* procedures for the Verde River Watershed is adopted with certain
22 modifications.

23 **DATE OF FILING:** December 9, 2025

24 The Court has reviewed and considered the following:

- 25 1. Final Report of the Special Master Concerning Summary Adjudication
26 Proceedings in the Verde River Watershed ("Special Master Report"), dated
27 February 13, 2025
28 2. Arizona State Land Department's Objections to the Special Master's Final Report
Concerning Summary Adjudication Proceedings in the Verde River Watershed
("ASLD Objections"), filed April 14, 2025
3. Salt River Project's Objections to Final Report of Special Master Concerning

1 Summary Adjudication Proceedings in Verde River Watershed (“SRP
2 Objections”), filed April 14, 2025

3 4. Arizona State Land Department’s Response to SRP Objections (“ASLD
4 Response”), filed May 14, 2025

5 5. Salt River Project’s Partial Joinder in and Response to ASLD Objections (“SRP
6 Response”), filed May 14, 2025

7 6. Yavapai-Apache Nation’s Joinder in SRP Objections (“Yavapai-Apache Nation
8 Joinder”), filed April 14, 2025.

9 7. City of Phoenix’s Partial Joinder in SRP Objections (“Phoenix Joinder”), filed
10 April 14, 2025

11 The goal of this proceeding is to determine whether, given the impacts of domestic,
12 stockpond, and stock and wildlife watering uses in the Verde River Watershed, “the
13 public and private benefits of [summary] adjudication outweigh the costs.”¹ In her report,
14 the Special Master reviewed ADWR’s analysis of the impacts of the above uses and
15 approved objectors’ stipulations regarding application of summary adjudication
16 procedures to those uses.² To implement that conclusion, the Special Master proposed
17 summary adjudication procedures for domestic, stockpond, and stock and wildlife
18 watering uses. As discussed below, the Court adopts the Special Master’s
19 recommendations with certain modifications.

20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 Pursuant to the Special Master’s June 14, 2022, case management order (“*De*
22 *Minimis* Order”), the Arizona Department of Water Resources (“ADWR”) prepared a
23 technical assessment of domestic, stockpond, and stock and wildlife watering uses in the
24 Verde River Watershed. On August 29, 2022, ADWR filed its technical report, titled *De*
25 *Minimis* Adjudication of Stockpond and Stockwatering Uses in the Verde River
26 Watershed (“*De Minimis* Report”). Various individuals and entities filed timely
27 comments and objections to the *De Minimis* Report.

28 ¹ W1-11-19, Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1
Cases Involving Stockwatering, Stockponds, and Domestic Uses at 26 (Nov. 14, 1994).

² W1-106, Special Master Report at 30 (Feb. 13, 2025).

1 On February 23, 2024, the Salt River Project (“SRP”) filed a Motion for Partial
2 Summary Judgment Regarding Enforcement of Summarily Adjudicated Uses
3 (“Enforcement MPSJ”) requesting that the Special Master enter a ruling that summarily
4 adjudicated rights for *de minimis* water uses remain subject to possible future
5 administration by the Court and calls by holders of senior water rights. No party objected
6 to the motion, and the Special Master granted the Enforcement MPSJ on April 24, 2024.³

7 In response to ADWR’s *De Minimis* Report, SRP filed three separate motions
8 seeking partial summary judgment regarding impacts of domestic, stockpond, and stock
9 watering uses in the Verde River Watershed. SRP requested that the Special Master enter
10 a ruling in favor of SRP’s methodologies for calculating the amount of water available in
11 the watershed;⁴ the number of potential uses under consideration for domestic, stock and
12 wildlife watering, and stockpond uses;⁵ and the scope and impact of these uses on the
13 available water supply.⁶

14 All objectors to ADWR’s *De Minimis* Report subsequently filed three separate
15 stipulations agreeing to the application of summary adjudication procedures to domestic,
16 stock and wildlife watering, and stockpond uses in the Verde River Watershed.⁷ The
17 Special Master then stayed further consideration of the motions for partial summary
18 judgment and issued orders preliminarily approving those stipulations.⁸ On February 13,
19

20 ³ W1-106, Order Granting Salt River Project’s Enforcement MPSJ at 2 (Apr. 24, 2024).

21 ⁴ See W1-106, Salt River Project’s Motion for Partial Summary Judgment Regarding Water
22 Availability for Summary Adjudication Determination (“Factor 1 Motion”) (Apr. 12, 2024).

23 ⁵ See W1-106, Salt River Project’s Motion for Partial Summary Judgment on Number of Uses
24 for Summary Adjudication Determination (“Factor 2 Motion”) (Apr. 12, 2024).

25 ⁶ See W1-106, Salt River Project’s Motion for Partial Summary Judgment Regarding Impact of
26 Uses for Summary Adjudication Determination (“Factor 3 Motion”) (Apr. 12, 2024).

27 ⁷ W1-106, Stipulation Regarding Summary Adjudication of Claims to Water Rights for *De*
28 *Minimis* Domestic Uses in the Verde River Watershed (“Domestic Stipulation”) (May 29, 2024);
W1-106, Stipulation Regarding Summary Adjudication of Claims to Water Rights for Stock and
Wildlife Watering Uses in the Verde River Watershed (“Stock and Wildlife Watering
Stipulation”) (June 19, 2024); W1-106, Stipulation Regarding Summary Adjudication of Claims
to Water Rights for Stockpond Uses in the Verde River Watershed (“Stockpond Stipulation”)
(Aug. 2, 2024).

⁸ W1-106, Order Granting Domestic Stipulation and Granting Stay of Consideration of Pending
Motions for Summary Judgment (June 4, 2024); W1-106, Order Granting *De Minimis* Stock and

1 2025, the Special Master issued the Report of the Special Master Concerning Summary
2 Adjudication Proceedings in the Verde River Watershed (“Special Master Report”),
3 which reviewed the three stipulations in detail. Finding that the benefits of summary
4 adjudication of domestic, stockpond, and stock watering uses outweigh the costs, the
5 Special Master ultimately concluded that summary adjudication procedures may be
6 applied to those uses.⁹

7 8 **II. THE SPECIAL MASTER’S *DE MINIMIS* FINDINGS.**

9 In a 1994 decision pertaining to the San Pedro Watershed, Special Master Thorson
10 laid the framework for determining whether summary adjudication procedures should
11 apply to a class of uses. The Special Master characterized the determination of whether
12 to adopt summary adjudication proceedings as “a balance between the private and public
13 needs for a specification of these rights and resources appropriate for making this
14 determination.”¹⁰ Special Master Thorson’s 1994 decision set out four factors for
15 determining whether a particular type of water use should be summarily adjudicated:

- 16 1. Water availability in the watershed.
- 17 2. The specific number of uses.
- 18 3. The extent and impact of those uses.
- 19 4. The costs and benefits of a complete, rather than abbreviated, adjudication of
20 the uses.¹¹

21 On September 26, 2002, Judge Ballinger approved and adopted the 1994 decision, with
22 modifications.¹²

23 As described earlier, the parties to this proceeding stipulated to “impact” values
24

25 Wildlife Watering Stipulation at 2–3 (July 3, 2024); W1-106, Minute Entry (Aug. 9, 2024)
26 (corrected in Minute Entry (Dec. 9, 2024)).

27 ⁹ W1-106, Special Master Report at 30 (Feb. 13, 2025).

28 ¹⁰ W1-11-19, Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1
Cases Involving Stockwatering, Stockponds, and Domestic Uses (Nov. 14, 1994).

¹¹ *Id.* at 12.

¹² W1-11-19, Order Approving Special Master’s 1994 *De Minimis* Report (Sept. 27, 2002).

1 encompassing the first three factors. The Parties further reached agreement that, so long
2 as the Court determines a value for each of the first three Thorson Factors between values
3 provided in the *De Minimis* Report and the stipulated values, the cost-benefit analysis
4 would weigh in favor of adopting summary adjudication procedures. The Special Master
5 approved the parties' stipulations.

6 No party objects to the Special Master's conclusions regarding the application of
7 summary adjudication procedures to domestic, stockpond, and stock and wildlife
8 watering in the Verde River Watershed. In fact, the only party to address these
9 conclusions, SRP, stated that "[t]he Special Master correctly calculates the values for the
10 first three factors (many of which were stipulated to by the parties), and . . . appropriately
11 weighs the costs and benefits of summarily adjudicating the claims at issue based on the
12 inputs from the first three factors."¹³ As described below, parties filed objections only
13 with respect to the procedures proposed in the Special Master Report.

14 **IT IS ORDERED** accepting Finding of Fact Nos. 1–7 and Conclusions of Law
15 Nos. 1–19.

16 17 **III. THE SPECIAL MASTER'S PROPOSED PROCEDURES.**

18 In addition to determining that summary adjudication is applicable to certain small
19 water uses in the Verde River Watershed, the Special Master proposed procedures to
20 effectuate that determination.¹⁴ These procedures grew out of draft guidelines attached to
21 the Special Master's order approving the Stock and Wildlife Watering Stipulation¹⁵ and
22 comments to those guidelines filed by the Arizona State Land Department ("ASLD"), the
23 United States, and SRP.¹⁶

24
25 ¹³ SRP Objections at 2–3 (Apr. 14, 2025); *see also* Yavapai-Apache Nation Joinder at 2 ("The
26 Nation hereby joins in and adopts SRP's Objections as its own as if stated in full.").

27 ¹⁴ W1-106, Special Master Report at 30–40.

28 ¹⁵ W1-106, Attachment A to Order Granting *De Minimis* Stock and Wildlife Watering Stipulation
(July 3, 2024).

¹⁶ W1-106, Salt River Project's Comments on Draft Summary Adjudication Procedures for the
Verde River Watershed (Sept. 30, 2024); W1-106, Arizona State Land Department's Comments

1 Objections to the Special Master Report focused solely on the proposed
2 procedures. The objections, filed by ASLD, SRP, and the City of Phoenix,¹⁷ concerned
3 seven issues:

- 4 1. Eligibility and treatment of *de minimis* uses supplied by wells.
- 5 2. The procedure for filing objections to a *de minimis* use.
- 6 3. Whether a stockpond application may serve as a basis of right.
- 7 4. Eligibility of uses deviating from standard attributes.
- 8 5. Good faith requirements for Water Rights Registration Act filings.
- 9 6. The assignment of *de minimis* claims to contested cases.
- 10 7. Clarification of potentially ambiguous phrasing.

11 12 **1. Eligibility and Treatment of Wells**

13 a. Eligibility of Wells Outside the Subflow Zone

14 Section 1.3 of the proposed procedures states that that “[w]ells outside the subflow
15 zone are not eligible for summary adjudication.”¹⁸ ASLD and SRP object that wells both
16 inside and outside the lateral boundaries of the subflow zone should be eligible for
17 summary adjudication.¹⁹ SRP argues that “[a]llowing those numerous claims and uses to
18 be summarily adjudicated as *de minimis* if and when they are determined to be within the
19 Court's jurisdiction would further promote judicial efficiency and would help avoid the
20 unnecessary expenditure of public and private resources on fully adjudicating each of
21 those claims.”²⁰

22 The Special Master Report determined that approximately 20,149 domestic wells
23

24
25 on Proposed Summary Adjudication Procedures (Sept. 30, 2024); W1-106, United States’
Comments on Proposed *De Minimis* Procedures (Oct. 1, 2024).

26 ¹⁷ W1-106, ASLD Objections (Apr. 14, 2025); W1-106, SRP Objections (Apr. 14, 2025); W1-
27 106, W1-106, Phoenix Joinder (Apr. 14, 2025); W1-106, Yavapai-Apache Nation Joinder (Apr.
14, 2025).

28 ¹⁸ W1-106, Special Master Report at 33 (Feb. 13, 2025).

¹⁹ SRP Objections at 4–5; ASLD Objections at 2–4.

²⁰ SPR comments

1 exist in the Verde River Watershed, most of which are outside the subflow zone.²¹
2 Undoubtedly, a number of those wells will pump appropriable water from the subflow
3 zone at some time. Those water users should be able to take advantage of summary
4 adjudication procedures if they are determined to be pumping subflow and if they are
5 otherwise eligible.

6 However, because it will not be possible to determine the “subflow-pumping
7 status” of wells outside the subflow zone until the Court implements cone of depression
8 and subflow depletion tests for the Verde Watershed,²² wells outside the subflow zone
9 will not be subject to prioritized summary adjudication. Once cone of depression and
10 subflow depletion tests for the Verde Watershed have been completed and approved,
11 wells subject to the jurisdiction of this court may request summary adjudication.
12 Therefore, the summary adjudication procedures are amended to clarify that uses supplied
13 by wells outside the subflow zone will be eligible for non-prioritized summary
14 adjudication at a later date.

15 b. Waiver of Objections to Presumption of Subflow Pumping

16 The Special Master Report recommends at Section 1.3 that “[c]laimants who wish
17 to object to the presumption of pumping subflow are not eligible for summary
18 adjudication.”²³ Additionally, that section states that a well owner who participates in the
19 summary adjudication procedures “waive[s] their opportunity to object to pumping
20 subflow at a later date.” *Id.* ASLD comments that the Special Master Report is “unclear
21 whether the waiver described in Section 1.3 would bar a claimant who has summarily
22 adjudicated their claims from objecting to a jurisdictional determination based on their
23 well's cone of depression, a determination of whether their well is withdrawing subflow
24 and the amount withdrawn, or both.” Further, ASLD objects to a waiver barring a
25 claimant who summarily adjudicates a well from raising any defense regarding the
26

27 ²¹ Special Master Report, at 15.

28 ²² These tests are currently in development for the San Pedro River Watershed, but it will be some
time before a similar test is available for Verde River water uses.

²³ Special Master Report at 33.

1 amount of subflow that they are pumping at a future enforcement proceeding, asserting
2 that such a waiver would not speed up the adjudication, and may instead deter parties
3 from participating.²⁴

4 The waiver provision serves an important purpose; it seeks to prevent water users
5 from claiming that their well is pumping subflow in one instance and subsequently
6 disclaiming subflow pumping when expedient. Nonetheless, common law principles
7 adequately serve this purpose without creating the potential ambiguity or hesitation that
8 ASLD cites. For instance, the doctrine of judicial estoppel is a backstop against the
9 potential exploitation that the waiver provision sought to prevent. Specifically, the
10 doctrine of judicial estoppel holds that where “a party has gained an advantage . . . in one
11 action by asserting one position . . . he must accept the burdens of that position in any
12 subsequent litigation.”²⁵ The Court therefore amends Section 1.3 of the proposed
13 procedures to exclude the waiver provision.

14 **2. Filing and Consideration of *De Minimis* Objections and Corrections**

15 **a. Objections Regarding Ownership of Water Rights on Public Lands**

16 ASLD objects to footnote 144 in Section 2.3.2 of the proposed procedures, which
17 prohibits objections regarding ownership of water rights on state trust land during the
18 HSR objection period.²⁶ The agency asserts that allowing a lessee to file these objections
19 during the HSR objection period and pursue them during summary adjudication would
20 promote efficiency.²⁷ The Court agrees with ASLD and updates the final summary
21 adjudication procedures accordingly.

22 **b. Consideration of Objections and Corrections**

23 Section 3.1 of the proposed procedures lists the corrections and objections to a

24 ²⁴ W1-106, ASLD Comments fn. 1 (Apr. 14, 2025).

25 ²⁵ *State Farm Auto Ins. Co. v. Civil Service Emp. Ins. Co.*, 19 Ariz. App. 594, 600 (1973); *Colonia*
26 *Verde Homeowners Ass’n v. Kaufman*, 122 Ariz. 574, 578 (1979); *Bank of America Nat. Trust*
27 *and Sav. Ass’n v. Maricopa County*, 196 Ariz. 173, 175 (1999) (“Judicial estoppel is a doctrine
28 that protects the integrity of the judicial system by preventing a party from taking an inconsistent
position in successive or separate actions.”).

²⁶ W1-106, ASLD Objections at 8.

²⁷ *Id.*

1 draft abstract that the Special Master will consider directly following the HSR objection
2 period. SRP points out that the stage at which these corrections and objections will be
3 heard is ambiguous, stating that “[i]t is not clear whether the Section 3.1 objections
4 apply to the HSR stage, the catalog stage, or both.”²⁸ The Court clarifies that the
5 corrections and objections will be heard during the HSR stage.

6 c. No Separate Objection Forms

7 Section 3.1 of the proposed procedures included an instruction for ADWR to
8 create a separate form for objections and corrections to draft abstracts. In order to
9 reduce paperwork and prevent the filing of duplicate objections, the Court strikes this
10 provision.

11 d. Filing of Objections to the Special Master’s Final Report

12 Section 3.2 of the proposed procedures limits objections to *de minimis* rights within
13 a watershed-wide final report issued under A.R.S. § 45-257(A)(2). Section 3.2 limits
14 objections to “non-substantive corrections that could not have been suggested at the time
15 of the initial objection period” and objections regarding “ownership of water rights on
16 public lands.”²⁹ As suggested by SRP, this provision could affect the efficiency and
17 fairness of the appeal of a final decree.³⁰ Therefore, the Court amends the proposed
18 procedures to eliminate limitations on objections to watershed-wide final reports.

19 **3. Bases of Right Under the Stockpond Registration Act**

20 a. “Stockpond Filings” as Bases of Right

21 ASLD objects to the exclusion of “filings pursuant to the Stockpond Registration
22 Act” from section 2.3.4 of the proposed procedures, which lists the documents that may
23 serve as a basis of right for a *de minimis* right. SRP defends this exclusion, asserting that
24 an application under the Stockpond Registration Act (“SPRA”) may not serve as a basis
25 of right.³¹

26 ²⁸ W1-106, SRP Objections at 9 (Apr. 14, 2025).

27 ²⁹ W1-106, Special Master Report at 38–39 (Feb. 13, 2025).

28 ³⁰ W1-106, SRP Objections at 11.

³¹ W1-106, ASLD Objections at 5 (Apr. 14, 2025); W1-106, SRP Objections at 12 (Apr. 14, 2025).

1 In a basin-wide proceeding directly addressing this issue, the Special Master ruled
2 that a stockpond application under the SPRA is not a sufficient basis of right.³² The
3 Special Master specifically determined that, like a permit under the water code, an
4 application under the SPRA “represents only the partial fulfillment of multiple mandatory
5 steps toward the attainment of an appropriative right.”³³ The Special Master based this
6 conclusion on two grounds: first, that the SPRA imposes mandatory investigation and
7 certification duties on ADWR and, second, the statutory equivalence between a SPRA
8 certificate and a certificate under the water code.³⁴

9 The Court concurs with the reasoning and conclusion of the Special Master on this
10 issue. Accordingly, the Special Master did not err in excluding “filings pursuant to the
11 Stockpond Registration Act” from section 2.3.4 of the proposed procedures.

12 b. Hierarchy

13 Section 2.3.6 of the Special Master Report identifies a hierarchy that will be used
14 to determine the priority dates for summarily adjudicated uses.³⁵ SRP has identified two
15 ambiguities with respect to this list. First, the hierarchy lists “Certificate of Water Right”
16 as evidence of priority date but does not distinguish between stockpond certificates
17 obtained pursuant to A.R.S. § 45-275 and certificates obtained under A.R.S. § 45-162.³⁶
18 Moreover, the text of this provision does not strictly limit its application to summarily
19 adjudicated claims.³⁷ The Court amends section 2.3.6 to clarify both ambiguities.

20 **4. *De Minimis* Attributes**

21 Section 2.3 of the SM Report identifies how the Special Master will assign water
22 rights attributes to *de minimis* abstracts.³⁸ That section provides that “[i]f circumstances
23 necessitate a deviation from the listed attributes, the potential water right is not eligible

24 ³² W1-11-1511, Notice of Decision Regarding Issue of Broad Legal Importance (Sept. 16,
25 2025).

26 ³³ *Id.* at 6.

27 ³⁴ *Id.*

28 ³⁵ *See* SM Report, at 36.

³⁶ W1-106, SRP Objections at 13.

³⁷ *Id.*

³⁸ W1-106, Special Master Report at 34.

1 for summary adjudication procedures, and the water user must seek adjudication through
2 the standard process.”³⁹

3 SRP requests clarity as to the criteria and procedures that will govern decisions
4 whether “circumstances necessitate a deviation from the listed attributes.”⁴⁰ In the spirit
5 of ensuring *summary* adjudication and limiting litigation, the Court strikes this open-
6 ended provision.

7 **5. Good Faith Requirements**

8 a. Extrinsic Evidence

9 Section 2.3.6 of the proposed procedures states that a Water Rights Registration
10 Act filing, i.e. a statement of claim, may supply a priority date for a summarily adjudicated
11 right only if the filing is “made in good faith.”⁴¹ The provision goes on to define a filing
12 made in good faith as a “filing that includes some relevant evidence for the priority date
13 claimed in the filing.”⁴² Further, the proposed procedure permits parties to object to *de*
14 *minimis* claims on the ground that the claimant has not provided “extrinsic evidence
15 demonstrating the good faith basis of a statement of claim.”⁴³ ASLD’s objection contends
16 that a complete statement of claim filing, alone, should be sufficient to establish a priority
17 date through summary adjudication.⁴⁴

18 The Court affirms the Special Master’s recommendation that, to the extent a
19 statement of claim serves as the basis of right for a *de minimis* claim, the claimant must
20 be able to present credible extrinsic evidence showing that the statement of claim was
21 filed in good faith. This requirement is necessary to prevent the acquisition of pre-1919
22 appropriative rights, often the most valuable rights on a stream, from becoming a mere
23 formality.

24
25
26 ³⁹ *Id.*

27 ⁴⁰ W1-106, SRP Objections at 12.

28 ⁴¹ W1-106, Special Master Report at 36.

⁴² *Id.* at 36.

⁴³ W1-106, Special Master Report at 38

⁴⁴ W1-106, ASLD Objections at 7 (Apr. 14, 2025).

1 b. Procedures for Evaluating Good Faith

2 In its objection, SRP asserts that it is uncertain “what process will be followed to
3 address objections that are based on the lack of a good faith basis for a WRRRA
4 Filing.”⁴⁵ SRP inquires “whether those objections will be decided solely on the relevant
5 WRRRA filings and objections, or, conversely, whether additional procedures will apply,
6 such as motion practice, discovery, or evidentiary hearings.”⁴⁶

7 To start, claimants subject to summary adjudication are “Group 1” litigants in
8 adjudication proceedings, of whom “no formal discovery will be allowed.”⁴⁷ Moreover,
9 the Court envisions that minimal motion practice and hearings will accompany the
10 determination of the good faith basis of a statement of claim. The Special Master will
11 provide the claimant an opportunity at the outset of the contested case to append
12 extrinsic evidence of good faith to their Water Rights Registration Act filing. After an
13 opportunity for review, objectors will specify their objections regarding good faith
14 through the circulation of comments. After the filing of comments, the claimant will
15 have an opportunity to respond. The Special Master will generally determine whether
16 the claimant has made a sufficient showing of good faith based solely on the filings of
17 the parties. But the Water Master may, in the rare case and in his/her discretion, permit
18 oral argument or an evidentiary hearing if she finds that such a hearing would assist her
19 in making the determination of good faith. *See, e.g.* Rule 7.1(d), Ariz.R.Civ.P.

20 Following submission of comments and the claimant’s response, the Special
21 Master will evaluate the evidence. The Special Master will determine that the statement
22 of claim was filed in good faith if the evidence submitted is roughly contemporaneous
23 with the priority date claimed and is consistent with the location, type, and quantity of
24 the claimed water use. Contemporaneous evidence may include U.S. General Land
25 Office records, homestead documents, and U.S. Geological Survey data.

26 **6. Assigning *De Minimis* Claims to Cases**

27
28 ⁴⁵ W1-106, SRP Objections at 7–8 (Apr. 14, 2025).

⁴⁶ *Id.*

⁴⁷ Rules of Proceedings Before the Special Master § 9.02[1].

1 SRP seeks clarification as to “how . . . the adjudication of *de minimis* uses will fit
2 into the contested case process.”⁴⁸ The procedure for assigning adjudication claims to
3 contested cases in the Verde River Watershed will follow the guidelines outlined in
4 section 7.00 of the Rules of Proceedings Before the Special Master. A contested case
5 will be opened for every WFR to which an objection is filed. A *de minimis* claim will be
6 adjudicated under the heading of the contested case associated with the WFR in which
7 the claim is identified. The Court amends the proposed procedures to reflect this
8 clarification.

9 10 **IV. CONCLUSION**

11 The goal of including draft abstracts for summary adjudication where possible is
12 to limit intensive objection and resolution procedures such as motion practice and
13 evidentiary hearings. To achieve this goal, the following steps are adopted for the
14 summary adjudication objection process:⁴⁹

- 15 1. The Final HSR will include *de minimis* abstracts for potential water rights
16 ONLY for uses with a complete SOC and basis of right.
- 17 2. Objections to a WFR will be filed following the process in Rule 6.0 of the
18 Rules Before the Special Master.
- 19 3. The Special Master will prioritize WFRs with published *de minimis* draft
20 abstracts when initiating contested cases.

21 The foregoing discussion constitutes the Court’s findings with respect to the
22 Special Master’s Final Report on Verde River Watershed summary adjudication
23 procedures. Based upon these findings and conclusions:

24
25
26
27
28

⁴⁸ *Id.* at 8.

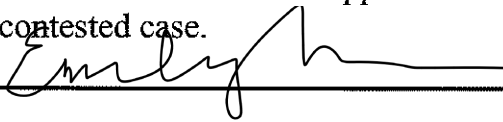
⁴⁹ This process will be repeated for each Verde subwatershed.

1
2 **IT IS ORDERED** approving the Summary Adjudication Procedures for the Verde
3 River Watershed attached as Attachment I to this order.
4

5
6
7 

8 The Honorable Scott A. Blaney
9 Judge, Arizona Superior Court
10 In Maricopa County

11 On December 9, 2025, the original of the foregoing
12 was delivered to the Clerk of the Maricopa County
13 Superior Court for filing and distributing a copy to all
14 persons listed on the Court-approved mailing list for
15 this contested case.

16
17
18
19
20
21
22
23
24
25
26
27
28 

1 **ATTACHMENT I**

2 **SUMMARY ADJUDICATION PROCEDURES FOR *DE MINIMIS* USES IN**
3 **THE VERDE RIVER WATERSHED**

4
5 The summary adjudication of state law claims for *de minimis* water uses in the
6 Verde River Watershed will be accomplished according to the following steps:

- 7 a. Identification of existing *de minimis* water uses.
- 8 b. Notice that water users must have proper SOC's and bases of right 60 days
9 before the issuance of the final HSR in order to be eligible for prioritized
10 summary adjudication.¹
- 11 c. Inclusion within the Final HSR of draft abstracts eligible for prioritized
12 summary adjudication.
- 13 d. A streamlined objection process.
- 14 e. Adjudication of draft abstracts before the adjudication of other water uses in
15 the Verde River Watershed.
- 16 f. Inclusion of approved abstracts in the Catalog of Proposed Water Rights.

17
18 **1.0 Eligibility for Prioritized Summary Adjudication**

19 Immediately after the deadline has passed for filing objections to the HSR, the
20 Special Master will prioritize the review of all potential water rights ripe for summary
21 adjudication. This prioritized review will resolve as many *de minimis* uses as possible, as
22 early as possible, and reduce the time and attention required of such *de minimis* users.

23 To be eligible for prioritized summary adjudication, the *de minimis* use must have
24 a matching statement of claimant and basis of right sixty days prior to the issuance of the
25

26
27 ¹ The 60-day deadline will permit ADWR sufficient time to include an additional information in the final published
28 HSR. As a general rule, ADWR anticipates 12 months between the publication of the preliminary HSR and the
issuance of the final HSR, specifically 6 months for the public to submit comments and then 6 months for ADWR to
incorporate the comments and finalize the report. W1–W4, Future Report Recommendations at Appendix B (May
25, 2023). Therefore, upon receipt of the notice, a water user would have approximately 10 months to obtain all
required filings.

Final HSR. Further, only uses supplied by wells within the subflow zone or surface water are eligible for prioritized summary adjudication. If a *de minimis* water use lacks the required documents, the Special Master will not prioritize the use.

1.1 Statement of Claimant

By the 60-day deadline stated above, the SOC must reflect the current landowner or lessee's name and contact information. If the SOC does not list current property owners or lessees, the use will not be eligible for prioritized summary adjudication.

1.2 Pre-Adjudication Documents

For the purpose of establishing eligibility for prioritized summary adjudication, the water use must have a matching basis of right, i.e. a prior decree, a statement of claim,² a water right certificate under A.R.S. § 45-162, or a stockpond certificate under A.R.S. § 45-275.³

1.3 De Minimis Uses

The following categories of water uses are eligible for summary adjudication in the Verde River Watershed. Eligible claimants may, but are not required to summarily adjudicate their claims.

- a. Domestic uses less than or equal to one acre-foot per year, where a domestic use is a single self-supplied use serving a residence, or multiple residences up to a maximum of three residential connections, for household purposes with associated irrigation of lawns, gardens or landscape in an amount of not more than one-half acre per residence.
- b. Stockponds with a maximum capacity less than or equal to four acre-feet, where a stockpond is an on-channel or off-channel impoundment of any size that stores water that is appropriable and that is for the sole purpose of watering livestock and wildlife.

² Note that a statement of claim may serve as a basis of right only for pre-1919 water right claims.

³ Stockpond certificates are valid only for stockponds that were "constructed after June 12, 1919 and prior to August 27, 1977." See A.R.S. § 45-272(A).

- 1 c. Stock and wildlife watering, defined as the consumption of water by
2 livestock and wildlife directly from a naturally occurring body of water, such
3 as an undeveloped spring, cienega, bog, lake, depression, sink, or stream or
4 from a small facility, other than a stockpond, that is served by a diversion of
5 water that is appropriable.

6 **1.4 Groundwater Uses**

7 Wells within the subflow zone are eligible for summary adjudication following
8 publication of the final HSR. Wells outside the subflow zone are eligible for summary
9 adjudication only after a determination that the well is pumping subflow.

11 **2.0 Issuance of Abstracts**

12 **2.1 Screening and Curing *De Minimis* Uses**

13 ADWR shall identify all known *de minimis* uses in a searchable index attached to
14 the preliminary and final HSRs and note all uses lacking a matching statement of
15 claimant or basis of right. Individual notices to potential water rights holders will not be
16 distributed. The deadline to provide additional documentation so that a *de minimis* use
17 may be eligible for prioritized review is 60 days prior to the publication of the Final HSR.

18 In the notice for the preliminary HSR and the 120-day notice issued pursuant to
19 section 45-256(H), ADWR shall advise water users to check the attached index and
20 remind them to file all documents necessary for prioritized summary adjudication
21 eligibility.

22 **2.2 Inclusion of Abstracts in the HSR.**

23 ADWR shall include in the Final HSR a draft abstract, as described below, for
24 each *de minimis* use with a matching statement of claimant and basis of right. Draft
25 abstracts will be linked to their associated watershed file report (“WFR”).

26 **2.3 Abstract Attributes**

27 Summary adjudication does not create a legal basis for an appropriable water
28 right. A claimant seeking summary adjudication of their *de minimis* claim must provide a

legally sufficient basis for their water right.⁴ A draft abstract for a proposed water right for a *de minimis* use shall be defined by the specific attributes that follow.

2.3.1 Proposed Water Right Number

A proposed water right number (“PWR No.”) will be created for each water right to be included in the Catalog of Proposed Water Rights. Generally, the PWR No. will be the same as the potential water right reported in the WFR. For each use recommended for inclusion in the final decree, the number will be assigned as follows:

WFR in which the water use is described	+	Abbreviation of the type of beneficial use	+	Unique numerical identifier.
--------------------------------------------	---	-----------------------------------------------	---	---------------------------------

2.3.2 Ownership of the Water Right

The draft abstract for the water use shall identify the name of the owner of the land on which the *de minimis* use occurs as the owner of the water right. In accordance with Arizona Revised Statutes section 37-321.01, the Court will presume that ASLD owns water rights on Arizona State Trust Land. Accordingly, draft abstracts associated with Arizona State Trust Land will name ASLD as the owner. Because water rights on federal lands are presumed to be owned by the United States, draft abstracts associated with federal lands will name the United States as the owner.

2.3.3 Statement of Claimant Associated with Potential Water Right

The statement(s) of claimant (“SOC”) associated with the proposed water right must be listed. A potential water right must be matched to an SOC irrespective of whether a potential water right is adjudicated through the standard process or through summary procedures.

2.3.4 Basis of Water Right

A valid basis of right is necessary irrespective of whether a potential water right is adjudicated through the standard process or through summary procedures. The draft abstract must include the legal basis of right. A well registration number (“55-”) is not a valid basis of right. The list of acceptable legal bases of right is as follows:

⁴ Minute Entry at 6 (June 14, 2022)

- a. Prior judicial decrees.
- b. Water Rights Registration Act filings.⁵
- c. Certificates of Water Right.⁶
- d. Stockpond Registration Act Certificates.⁷

2.3.5 Beneficial Use

A “domestic,” “stockpond,” “wildlife,” or “stock watering and wildlife” beneficial use will be assigned according to the definitions found in section 1.3 of these procedures.

2.3.6 Priority Date

Priority dates for *de minimis* claims must have supporting evidence and will be established through the following hierarchy:

- a. The earliest date set forth in an applicable judicial decree.
- b. The earliest date set forth in a Certificate of Water Right. If there is a conflict between a decree and a certificate of water right, the priority date in the decree will subordinate the priority date in the certificate.
- c. The earliest date set forth in a Stockpond Registration Act Certificate.
- d. The earliest date set forth in a Water Rights Registration Act filing made in good faith. A filing “made in good faith” means a filing that includes some relevant evidence for the priority date claimed in the filing.

2.3.7 Quantity

The following quantities will be assigned to summarily adjudicated uses.

a. Domestic Uses

The quantity assigned to a *de minimis* domestic right is the claimed quantity, not to exceed (\leq) 1 acre-foot per year.

b. Stockponds

⁵ Arizona Revised Statutes §§ 45-181 to 190. Note that these filings, Statements of Claim, may serve as a basis of right for only pre-1919 water right claims.

⁶ Arizona Revised Statutes §§ 45-162.

⁷ Ariz. Rev. Stat. § 45-275(C).

1 The quantity assigned to a *de minimis* stockpond is “a volume not to exceed (\leq) 4
2 acre-feet with continuous fill.”

3 **c. Stock and Wildlife Watering**

4 The quantity assigned to a *de minimis* stock and wildlife watering right is
5 "reasonable use."

6 **2.3.8 Place of Use and Point of Diversion**

7 For domestic and stock and wildlife watering uses, the information set forth in the
8 WFR under the "uses" section will be utilized for determining these characteristics. The
9 place of use will be described to at least the quarter-quarter section in which the use
10 occurs. In cases of two or more stock and wildlife watering uses within the same quarter-
11 quarter section, the rights will be described to the nearest quarter-quarter-quarter section.
12 For Arizona State Trust Land, the place of use and the point of diversion shall be the
13 location where the stream channel enters the WFR on the State Trust Land parcel. A
14 corresponding map should indicate the full reach of the stream channel within the WFR
15 investigation area.

16 For stockponds, the information set forth in the "reservoir" section of the WFR
17 will be utilized to provide the legal description for the place of use. At least the quarter-
18 quarter section in which the surface area of the stockpond extends will be utilized for the
19 legal description unless more precise location information, such as GPS coordinates, is
20 readily available to ADWR. In the case of two or more stockponds in the same quarter-
21 quarter section, each stockpond will be located to the nearest quarter-quarter-quarter
22 section. ADWR shall prepare a map for each abstract that identifies the place of use and
23 point of diversion.

24 Where GPS coordinates can be reasonably identified, the coordinates shall also be
25 included in the draft abstract. Unless the WFR provides evidence otherwise, the place of
26 use for a stockpond shall also be the point of diversion.

27 **2.3.9 Source of the Water**

28 The "drainage area/water source name" information listed in a WFR will be the

description of the source in the abstract. The description must state whether the use is supplied from a surface diversion or from subflow. If possible, the abstract must state the stream from which the subflow is diverted.

2.3.10 Map

ADWR shall include with each draft abstract a map that identifies the place of use and point of diversion. For stock and wildlife watering draft abstracts, ADWR will indicate the full reach of the stream that intersects the WFR. Maps must be of sufficient scale to reasonably depict the shape of any stockponds and to allow viewers to identify other pertinent features.

3.0 Corrections and Objections

3.1 Assignment of *De Minimis* Uses to Contested Cases

A contested case will be opened for every WFR to which an objection is filed. *De minimis* claims will be adjudicated under the heading of the contested case for the WFR in which the claim is identified. Draft abstracts without objections may be combined by the Special Master into a single case.

De minimis uses not included as draft abstracts in the final HSR may undergo summary adjudication when the Special Master initiates the appropriate contested case.

3.2 Scope of Corrections and Objections

The Special Master will consider the following objections and corrections concerning a *de minimis* potential water right:

- a. Non-substantive corrections to a draft abstract, e.g. corrections to typographical or clerical errors.
- b. Objections regarding absence of extrinsic evidence demonstrating the good faith basis of a statement of claim.
- c. Objections regarding ownership of water rights on public lands.

Because the quantification values proposed in this report are the result of stipulated agreements among the parties, no objections concerning quantity will be considered for

1 summarily adjudicated water rights. With respect to objections regarding ownership of
2 water rights on public lands, non-governmental entities bear the burden of proving
3 ownership. The procedures here do not limit objections that may be filed to a WFR.

4 **3.3 Objections Regarding Good Faith of Statements of Claim**

5 **3.3.1 Filing of Evidence and Opportunity for Comment**

6 A claimant relying on a statement of claim as a basis of right must present some
7 extrinsic evidence showing that the filing was made in good faith.

8 At the outset of the contested case, the claimant will have an opportunity to append
9 extrinsic evidence of their claimed right to their statement of claim. After an opportunity
10 for review of the appended evidence, objectors will detail their objections regarding good
11 faith through the circulation of comments. After the circulation of comments, the claimant
12 will have an opportunity to respond.

13 **3.3.2 Evaluation of Evidence**

14 After the comment and response period has elapsed, the Special Master will
15 determine that the statement of claim was filed in good faith if the evidence presented (1)
16 is consistent with the location, type, and quantity of the claimed water use and (2) is
17 roughly contemporaneous with the priority date claimed. Contemporaneous evidence
18 may include U.S. General Land Office records, homestead documents, and U.S.
19 Geological Survey data.

20 **3.4 Objections to Final Report**

21 Claimants may file corrections and objections to abstracts contained within a
22 subwatershed final report in accordance with the Rules of Proceedings Before the Special
23 Master section 16.00 and Arizona Revised Statutes section 45-257(A)(2).
24

25 **4.0 Post-Decree Administration**

26 Once a proposed water right is included in a final decree, the right may be subject to
27 enforcement by the holders of senior water rights in the same manner as rights that are not
28 summarily adjudicated. In the event that a *de minimis* right holder seeks to enforce their

1 right or another user seeks to enforce against a *de minimis* right holder, the right holder may
2 be required to provide complete, detailed evidence of their right. However, holders of
3 summarily adjudicated water rights will be permitted to assert the futile call doctrine in an
4 enforcement action to the extent that such doctrine would be otherwise applicable.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28