

FILED
MICHAEL K. JEANES, Clerk
By Deputy

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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, W-2, W-3, W-4 (Consolidated)
Contested Case No. W1-103

**CASE MANAGEMENT ORDER
REGARDING CONE OF
DEPRESSION TEST
METHODOLOGY**

CONTESTED CASE NAME: *In re San Pedro Subflow Technical Report.*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.
DESCRIPTIVE SUMMARY: Case management order setting deadlines and a trial date
to consider the Cone of Depression Test Methodology proposed by the Arizona
Department of Water Resources.
NUMBER OF PAGES: 5.
DATE OF FILING: April 6, 2017.

1 A well located outside the subflow zone whose cone of depression reaches the
2 subflow zone and affects the streamflow may be subject to this adjudication. *In re the*
3 *General Adjudication of All Rights to Use Water in the Gila River System and Source*, 198
4 Ariz. 330, 9 P.3d 1069 (2000) (“*Gila IV*”). In 2005, Judge Ballinger issued an Order that
5 determined testing standards, techniques, modeling, and other criteria concerning the
6 measurement of cones of depression created by well pumping. Order filed September 28,
7 2005 (“2005 Order”). The Court also focused on the jurisdiction of the adjudication over
8 wells in the context of cones of depression and concluded that a well will “be subject to
9 adjudication if the extent of the well’s current or prospective depletive effect on the stream
10 is measurable by reasonably accurate means.” 2005 Order, p. 36. On January 27, 2017,
11 the Arizona Department of Water Resources (“ADWR”) filed a Demonstration Project
12 Report entitled “*De Minimis Assessment & Cone of Depression Test Methodology*” for
13 the San Pedro River Watershed (the “Report”). The parties filed comments and
14 preliminary objections to that portion of the Report concerning the Cone of Depression
15 Test Methodology and a conference was held on March 15, 2017.

16 Based on the oral statements at the conference, uncertainty appeared to exist as to
17 whether the purpose of the Cone of Depression Test was to:

- 18 1) determine which wells located outside of the subflow zone will be included
19 within the jurisdiction of this adjudication; or
- 20 2) evaluate individual wells to determine whether a particular well’s cone of
21 depression affected the subflow zone.

1 Salt River Project Agricultural Improvement and Power District and the Salt River Valley
2 Water Users Association ("SRP") argued that the Report was intended to identify the wells
3 subject to the adjudication and a separate proceeding would be necessary to establish the
4 test to determine whether a specific well's cone of depression depleted the subflow and the
5 amount of the well's production attributable to subflow. Counsel for the Arizona
6 Department of Water Resources stated that the Report was prepared to propose a
7 methodology to identify the wells to be included within the adjudication and not for the
8 purpose of determining whether a particular well has a cone of depression that intersects
9 the subflow zone. The logical corollary of this position is that the Report, in the form
10 ultimately adopted, will be used to exclude wells from this adjudication under state law.
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15 **IT IS ORDERED** that:

- 16 1. The Cone of Depression Test is intended to be used for the purpose of
17 identifying which wells located outside of the subflow zone will be included,
18 under state law, within the adjudication and subject to the court's jurisdiction.
19 This determination does not preclude the use of the same or similar
20 methodologies or variations thereof to be incorporated into future tests to be
21 used in the next phase of this process.
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23 2. Arizona Department of Water Resources shall file by May 12, 2017, its
24 response to the parties' objections and comments that were filed by March 6,
25 2017. The response shall include, but need not be limited to, a discussion of
26 the following issues:
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- a. The basis for adopting a conceptual model with hard rock barriers and a perennial stream instead of a model that provides for mountain front recharge;
 - b. The reasons to use or not use the Jacob Non-Equilibrium Equation with an Image Well in addition to other methodologies;
 - c. The basis for the use of the data and methodology selected to calculate pumping rates for irrigation and municipal wells;
 - d. The basis for the selection and calibration of the data to determine transmissivity values used in the modeling; and
 - e. The determination of the locations of the wells and the expected margin of error between the location of a well modelled in the Report and the physical location of the well determined using GIS coordinates.
3. The parties shall file objections, expert reports and initial Arizona Rule of Civil Procedure 26.1 disclosure statements concerning the Cone of Depression Test Methodology by August 18, 2017. All parties shall have a continuing duty to disclose as required by and in the manner provided in Rule 26.1(b) (2).
 4. The parties shall file by August 25, 2017, proposals regarding procedures to establish an appropriate methodology required by the *Gila IV* Court that Arizona Department of Water Resources may apply to determine and establish that a particular well is pumping subflow and the fraction of the discharge attributable to subflow. Parties shall also identify issues that should be resolved in connection with the approval of an appropriate test.

- 1 5. A conference shall be held on September 13, 2017, at 1:30 p.m. to consider the
2 proposals and initiate a third stage of this subflow process.
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4 6. A pretrial conference shall be held on October 11, 2017, at 1:30 p.m. to address
5 additional scheduling and any procedural matters the parties desire to raise.
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7 7. All discovery including depositions shall be completed by January 31, 2017.
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9 8. Trial on the Cone of Depression Test Methodology shall begin on March 5,
10 2018, from 10:00 a.m. to 4:00 p.m. each trial day. The conferences and trial
11 will be held in Maricopa County Superior Court Building, Courtroom 301, 201
12 West Jefferson Street, Phoenix, AZ 85003-2202.

13 Instructions for telephonic participation in conferences:

14 Dial: 602-506-9695 (local)

15 1-855-506-9695 (toll free long distance)

16 Dial Participant Pass Code 357264#
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19 Susan Ward Harris
20 Special Master

21 On April 6, 2017, the original of the
22 foregoing was delivered to the Clerk of the
23 Maricopa County Superior Court for filing
24 and distributing a copy to all persons listed
25 on the Court approved mailing list for W1-
26 103.
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