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5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**
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8 IN RE THE GENERAL
9 ADJUDICATION OF ALL RIGHTS TO
10 USE WATER IN THE GILA RIVER
SYSTEM AND SOURCE

W-1, W-2, W-3, and W-4
(Consolidated)

Contested Case No. W1-106

11 **FINAL REPORT OF THE SPECIAL**
12 **MASTER CONCERNING SUMMARY**
13 **ADJUDICATION PROCEEDINGS IN**
THE VERDE RIVER WATERSHED

14 **CONTESTED CASE NAME:** *In re Subflow Technical Report, Verde River*
15 *Watershed.*

16 **DESCRIPTIVE SUMMARY:** The Special Master issues a report, pursuant to Rule
17 53 of the Arizona Rules of Civil Procedure, determining whether certain domestic,
18 stockwatering and wildlife, and stockpond uses within the Verde River Watershed
19 may be subject to summary adjudication procedures. The Special Master also proposes
20 specific summary adjudication procedures for the Verde River Watershed. Parties
shall file objections to the Report with the Clerk of Court for the Superior Court of
Maricopa County by **April 14, 2025**, and Response to Objections by **May 14, 2025**.

21 **NUMBER OF PAGES:** 40

22 **DATE OF FILING:** February 13, 2025

23 Under Arizona Revised Statutes section 45-151, domestic, stockpond, and stock and
24 wildlife watering uses are beneficial uses of appropriable water for which a person or
25 entity may obtain a water right. This Final Report recommends that water claims made
26 under state law for certain of these uses within the Verde River Watershed constitute *de*
27 *minimis* water uses and may be summarily adjudicated. The Special Master also
recommends specific summary adjudication procedures for the Verde River Watershed.

28 Summary adjudication procedures have been adopted for *de minimis* water uses in

1 the San Pedro River Watershed,¹ the Lower Little Colorado River Watershed,² and the
2 Silver Creek Watershed.³ The procedures adopted in these watersheds were based on
3 factual findings and legal conclusions that certain water uses within those watersheds
4 utilized such minor quantities of appropriable water that the benefits of summarily
5 resolving the claims pertaining to those water uses substantially outweighed the costs.

6 Summary adjudication does not exclude classes of potential water uses from the
7 adjudication process. Rather, the claims associated with those uses are adjudicated using
8 streamlined procedures that limit disputes concerning certain water right attributes, while
9 still ensuring that the owners of adjudicated water rights have complied with the
10 applicable state laws to obtain those rights and have made the necessary adjudication
11 filings. A summary adjudication procedure must assure that the adjudication of these
12 claims still appropriately addresses objections filed by other claimants while not
13 engaging all involved into a protracted litigation over a nominal amount of water.

14 Summary adjudication procedures are not mandatory; claimants may opt out of them.

15 Parties to these proceedings presented the Special Master with three separate
16 stipulations requesting summary adjudication procedures for domestic uses, stockpond
17 uses, and stock and wildlife watering uses. After an initial review, the Special Master
18 approved the stipulations. Here, the Special Master closely examined the data and
19 methods underlying ADWR's conclusions, the filings preceding the stipulations, and the
20 stipulations themselves.

21 **I. PROCEDURAL BACKGROUND**

22 Pursuant to the Special Master's June 14, 2022, Case Management Order ("*De*
23 *Minimis* Order"), the Arizona Department of Water Resources ("ADWR") prepared a
24 technical assessment of domestic, stockpond, and stock and wildlife watering uses in the
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26 ¹ 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).

27 ² CV6417-400, Report of the Special Master on Summary Proceedings in the Lower Little Colorado River
Subwatershed (Oct. 30, 2020).

28 ³ CV6417-33-9005, Report of the Special Master on Summary Proceedings in the Silver Creek Watershed (July 23,
2020).

1 Verde River Watershed. On August 29, 2022, ADWR filed its technical report, titled *De*
2 *Minimis* Adjudication of Stockpond and Stockwatering Uses in the Verde River
3 Watershed ("*De Minimis* Report"). The deadline for comments to the Report was
4 October 28, 2022.

5 Various individuals and entities filed timely comments and objections to the *De*
6 *Minimis* Report. Comments or objections that did not meet the specificity requirements of
7 Arizona Revised Statutes section 45-256(B) were dismissed through a series of case
8 management orders.⁴ The remaining objectors and approved intervenors are referred to
9 collectively as the "parties" throughout this report. The parties are the Arizona State Land
10 Department ("ASLD"); the City of Phoenix; Brandon and Natasha Pacheco; the Salt
11 River Project Agricultural Improvement and Power District and Salt River Valley Water
12 Users' Association (collectively "SRP"); the Tonto Apache Tribe; the Town of Chino
13 Valley; the United States of America; and the Yavapai-Apache Nation. ADWR is the
14 statutory technical adviser to the Court and is not a party to this contested case.

15 On February 23, 2024, SRP filed a Motion for Partial Summary Judgment
16 ("Enforcement MPSJ") requesting that the Special Master enter a ruling that summarily
17 adjudicated rights for *de minimis* water uses remain subject to possible future
18 administration by the Court and calls by holders of senior water rights. No Party opposed
19 the relief requested in the Enforcement MPSJ. On April 24, 2024, the Special Master
20 granted the Enforcement MPSJ.⁵

21 On April 12, 2024, SRP filed three separate motions seeking partial summary
22 judgment on three of the four "Thorson Factors" used to determine whether a particular
23 category of uses is *de minimis* and eligible for summary adjudication. SRP requested that
24 the Special Master enter a ruling in favor of SRP's methodologies for calculating the
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28 ⁴ Order Setting Scheduling Conference (Nov. 18, 2022); Order Adding Additional Parties to the CAML Who Filed
Objections to the *De Minimis* Report (July 7, 2023); Case Management Order (Jan. 31, 2024).

⁵ Order Granting Salt River Project's Enforcement MPSJ at 2 (Apr. 24, 2024).

1 amount of water available in the watershed;⁶ the number of potential uses under
2 consideration for domestic, stock and wildlife watering, and stockpond uses;⁷ and the
3 scope and impact of these uses on the available water supply.⁸ The Parties subsequently
4 filed three separate stipulations regarding summary adjudication of domestic, stock and
5 wildlife watering, and stockpond uses in the Verde River Watershed.⁹ The Special Master
6 then stayed further consideration of the Motions for Partial Summary Judgment and
7 issued orders granting those stipulations.¹⁰ In October 2024, the Special Master vacated
8 the trial for the determination of *de minimis* uses in the Verde River Watershed.¹¹
9 Complete copies of each stipulation can be found in Appendices A through C of this
10 Final Report.

11 As part of the July 3, 2024 Order approving the Stock and Wildlife Watering
12 Stipulation, the Special Master presented the Parties with draft summary adjudication
13 procedures for consideration and set an oral briefing regarding the specific summary
14 adjudication procedures to be adopted for *de minimis* domestic, stock and wildlife
15 watering, and stockpond uses.¹² During the August 6, 2024 oral briefing, the Parties
16 requested the opportunity to provide written comments to the Special Master regarding
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19 ⁶ See Salt River Project's Motion for Partial Summary Judgment Regarding Water Availability for Summary
20 Adjudication Determination ("Factor 1 Motion") (Apr. 12, 2024).

21 ⁷ See Salt River Project's Motion for Partial Summary Judgment on Number of Uses for Summary Adjudication
22 Determination ("Factor 2 Motion") (Apr. 12, 2024).

23 ⁸ See Salt River Project's Motion for Partial Summary Judgment Regarding Impact of Uses for Summary Adjudication
24 Determination ("Factor 3 Motion") (Apr. 12, 2024).

25 ⁹ Stipulation Regarding Summary Adjudication of Claims to Water Rights for *De Minimis* Domestic Uses in the
26 Verde River Watershed ("Domestic Stipulation") (May 29, 2024); Stipulation Regarding Summary Adjudication of
27 Claims to Water Rights for Stock and Wildlife Watering Uses in the Verde River Watershed ("Stock and Wildlife
28 Watering Stipulation") (June 19, 2024); Stipulation Regarding Summary Adjudication of Claims to Water Rights for
Stockpond Uses in the Verde River Watershed ("Stockpond Stipulation") (Aug. 2, 2024).

¹⁰ Order Granting Domestic Stipulation and Granting Stay of Consideration of Pending Motions for Summary
Judgment (June 4, 2024); Order Granting *De Minimis* Stock and Wildlife Watering Stipulation at 2–3 (July 3, 2024);
Minute Entry (Aug. 9, 2024) (corrected in Minute Entry (Dec. 9, 2024)).

¹¹ On January 5, 2023, the Special Master set an initial hearing date of July 10, 2024, to resolve the objections to the
De Minimis Report. At the request of the parties, the Special Master subsequently continued the hearing date to August
5, 2024. Minute Entry (Mar. 5, 2024). Following a status conference on June 14, 2024, the hearing was again
rescheduled to October 16, 2024. Ultimately, the Special Master vacated the hearing on October 3, 2024.

¹² Order Granting *De Minimis* Stock and Wildlife Watering Stipulation at 2–3 (July 3, 2024).

1 the proposed procedures.¹³ Comments were due September 29, 2024.¹⁴

3 **II. THE “THORSON FACTORS”**

4 In a 1994 decision pertaining to the San Pedro Watershed, Special Master Thorson
5 characterized the determination of whether to adopt summary adjudication proceedings as
6 "a balance between the private and public needs for a specification of these rights and
7 resources appropriate for making this determination."¹⁵ His 1994 decision set out four
8 factors, i.e. the “Thorson Factors,” for determining whether a particular type of water use
9 should be summarily adjudicated:

- 10 1. the amount of water available in the watershed;
- 11 2. the number of uses under consideration, e.g. the number of stockponds;
- 12 3. the scope and impact of these uses on the available water supply; and
- 13 4. the costs and benefits of a summary adjudication of the uses under
14 consideration.¹⁶

15 On September 26, 2002, Judge Ballinger approved and adopted the 1994 Thorson
16 Decision, with modifications.¹⁷

17 Despite geologic, hydrologic, and geomorphic differences between the San Pedro
18 River Watershed and the Verde River Watershed that might affect how one or more of
19 the four Thorson Factors are applied specifically in the Verde River Watershed, the
20 Parties have stipulated that the four Thorson Factors should be applied in the Verde
21 Watershed.

22 ADWR’s *De Minimis* Report provides the information for the first three factors:
23 (1) the amount of available water in the watershed; (2) the number of uses being
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25 ¹³ Minute Entry (Aug. 6, 2024).

26 ¹⁴ *Id.*

27 ¹⁵ 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).

28 ¹⁶ *Id.* at 12.

¹⁷ W1-11-19, Order Approving Special Master’s 1994 *De Minimis* Report (Sept. 27, 2002).

1 considered for summary adjudication; and (3) the impacts of the uses.¹⁸ These three
2 factors provide input to the cost-benefit analysis to be undertaken by the Court to
3 determine whether to adopt summary adjudication procedures.

4 ADWR had previously proposed evaluating the impacts of domestic uses in the
5 Verde River Watershed based on median annual flows at a single streamgage.¹⁹ However,
6 because median annual flow data does not account for impacts during dry summer
7 months, when water is also most needed, and because data from only a single streamgage
8 is a coarse representation of impacts on users throughout the watershed, Special Master
9 Harris directed ADWR to include in its analysis the median flows for the low-flow
10 months of May, June, and July at the Paulden, Camp Verde, and the Tangle Creek
11 streamgages, in addition to the median annual flows at the Tangle Creek streamgage.²⁰

12 In the *De Minimis* Report, ADWR calculated water availability as ordered by
13 Special Master Harris and renewed the agency's prior argument that only median annual
14 flows at Tangle Creek gage should be considered. The Parties disagree with ADWR, and
15 with each other in some cases, regarding the values ADWR reported and adopted for the
16 first three factors. Using the *De Minimis* Report, disclosure statements, expert reports,
17 and initial discovery, the Parties stipulated to values for Thorson Factors 1 through 3 for
18 each type of water use under consideration.

19 The Parties further reached agreement that, so long as the Court determines a value
20 for each of the first three Thorson Factors between values provided in the *De Minimis*
21 Report and the stipulated values, the cost-benefit analysis, i.e. Thorson Factor 4, would
22 weigh in favor of adopting summary adjudication procedures. After formally reviewing
23 the *De Minimis* Report, the stipulations, and the information supporting the stipulations,
24 the Special Master reiterates her approval of the Parties' stipulations.

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26 ¹⁸ *De Minimis* Report at 3 (Aug. 2022).

27 ¹⁹ See generally ADWR, Technical Report re *De Minimis* Domestic Water Use in the Verde River Watershed (Dec.
28 3, 2021) ("Original ADWR Report"). This report was a preliminary determination, in accordance with the Minute
Entry filed on March 4, 2020, that summary adjudication for certain domestic water uses in the Verde River
Watershed would be appropriate.

²⁰ *De Minimis* Order at 4 (June 14, 2022).

III. *DE MINIMIS* DETERMINATION

The Verde River begins at Sullivan Lake, south of Paulden, Arizona, and flows southeast through the Lower Verde Valley before draining into the Salt River near Scottsdale and Mesa, Arizona. The Verde River watershed covers approximately 6,266 square miles of land in Coconino, Gila, Maricopa, and Yavapai counties.²¹ The Verde River's base flow is fed by groundwater from the regional carbonate aquifer, as well as Big Chino and Little Chino basin-fill aquifers. Sullivan Lake is fed by spring water from the Little Chino sub-basin. The Upper Verde Springs near river mile 2.2 are the main contributors to perennial flow in the upper Verde River.²²

ADWR's *De Minimis* Report inventories claimed domestic uses, stockpond uses, and stock and wildlife watering uses within the Verde River watershed and assesses the impact of those uses on surface water supplies in the watershed.²³ In the *De Minimis* Order, Special Master Harris specified that ADWR should use particular data for its analysis: 1) the median monthly flows for May, June, and July and median annual flows at the Paulden, Camp Verde and the Tangle Creek streamgages and 2) 2020 Census data and municipal service systems data.²⁴ In the *De Minimis* Report, ADWR provided the data as ordered by the Special Master.

Solely for the purposes of this *de minimis* analysis, the Parties have stipulated to: 1) values representing the water availability, 2) the number of instances of each type of use under consideration, and 3) the impacts of these uses. The Special Master has found that a reasonable basis exists for each stipulated finding of fact and conclusion of law.

1.0 Domestic Uses

ADWR recommended that domestic uses²⁵ less than or equal to one acre-foot per

²¹ *De Minimis* Report at 5–6.

²² *Id.* at 6.

²³ *Id.* at 1.

²⁴ *De Minimis* Order at 20.

²⁵ ADWR adopted the statutory definition of “domestic use,” i.e. a self-supplied “appropriative water right serving a residence, or multiple residences up to a maximum of three residential connections, for household purposes with

1 annum (“AFA”) should be subject to summary adjudication, concluding that those uses
2 “do not have a major impact on the surface water resources of the Verde River
3 Watershed.”²⁶ Although all parties to this proceeding waived objections with respect to
4 ADWR’s domestic water use rate,²⁷ some parties objected to ADWR’s evaluation of
5 water availability in the Verde Watershed, ADWR’s method for estimating number of
6 domestic uses, and ADWR’s impact calculation. All parties to this proceeding resolved
7 by stipulation all disputed questions of fact and questions of law regarding ADWR’s
8 proposed *de minimis* domestic uses.

9 1.1. ADWR Determinations

10 1.1.1 Water Availability

11 ADWR asserts that the median annual flow at the United States Geological Survey
12 (“USGS”) Tangle Creek streamgage is the sole value that should be used for evaluating
13 the impacts of water use in the Verde River Watershed.²⁸ ADWR calculated this value by
14 summing the daily flow for each year in the period of record for the Tangle Creek
15 streamgage, i.e. 1945–2021, and then finding the median yearly value.²⁹

16 Further, as ordered by the Special Master, ADWR calculated median May, June,
17 and July flows at the Paulden, Camp Verde, and Tangle Creek streamgages,³⁰ as well as
18 median annual flows at the Paulden and Camp Verde streamgages.³¹

19 For purposes of its *De Minimis* Report, ADWR assumed that streamflow at the
20 Tangle Creek streamgage represented “the amount of water available within the Verde
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22 associated irrigation of lawns, gardens or landscape in an amount of not more than one-half acre per residence.” *De*
23 *Minimis* Report at 11; Ariz. Rev. Stat. § 45-251(1). “Self-supplied” means “not served by a city, town, private water
company, irrigation provider or special taxing district pursuant to Title 48.” *De Minimis* Report at 11; Ariz. Rev. Stat.
§ 45-251(1).

24 ²⁶ *De Minimis* Report at 34.

25 ²⁷ W1-106, Minute Entry at 5 (Mar. 10, 2022).

26 ²⁸ *De Minimis* Report at 10.

27 ²⁹ *Id.* at 8.

28 ³⁰ ADWR states that “[t]he median monthly flow is calculated by totaling the daily flow for the desired month in each
year, finding the median of that month across all available years, and converting the median value from acre-feet (AF)
per month to AFA.” *Id.*

³¹ *Id.*

Canyon, Lower Verde Valley, Sycamore, Big Chino and Little Chino subwatersheds.”³²

ADWR assumed that streamflow at the Camp Verde streamgage represented the same for the Lower Verde Valley, Sycamore, Big Chino, and Little Chino subwatersheds.³³

ADWR assumed that streamflow at the Paulden streamgage represented the same for the Big Chino and Little Chino subwatersheds.³⁴

1.1.2 Total Number of Uses

In accordance with the June 2022 Order, ADWR utilized 2020 Census data as well as Community Water System³⁵ boundaries in order to determine the domestic demand of self-supplied households in the Verde River watershed. For every Verde River subwatershed, ADWR determined the number of self-supplied households in the Verde River Watershed in three steps:³⁶

- a. ADWR selected all 2020 census blocks with centerpoints within the subwatershed boundary. ADWR estimated the total number of households in the subwatershed by summing the housing units³⁷ in the selected census blocks.
- b. ADWR estimated the total number of households served by utilities by selecting the census blocks in the subwatershed that had center points within Community Water System boundaries or municipal service areas.³⁸
- c. Third, to obtain the value for self-supplied households, ADWR

³² *Id.* at 6.

³³ *Id.* at 6–7.

³⁴ *Id.* at 7.

³⁵ *Id.* at 13. A “community water system” means a public water system that serves at least fifteen service connections used by year-round residents of the area served by the system or that regularly serves at least twenty-five year-round residents of the area served by the system. A person is a year-round resident of the area served by a system if the person’s primary residence is served water by that system. Ariz. Rev. Stat. § 45-341(1).

³⁶ *Id.* at 12–14.

³⁷ This value includes vacant houses, non-permanent residences, and secondary residences. *Id.*

³⁸ A “service boundary” means the areal extent to which a city, town, private water company or irrigation district will supply water for non-irrigation use. Municipalities and utilities report these boundaries to ADWR, and the coordinates are stored in internal geodatabases. The precise locations have not been field-verified by ADWR. *Id.* at 13–15.

1 subtracted housing units within Community Water System boundaries
2 or municipal service areas from total housing units in the
3 subwatershed.

4 ADWR concluded that 124,779 households exist within the Verde River
5 Watershed.³⁹ Using the community water system and municipal service area boundaries,
6 ADWR determined that 103,807 households in the Verde River Watershed were served
7 by a utility.⁴⁰ ADWR estimated that there were 20,972 self-supplied households.⁴¹

8 **1.1.3 Impact of Uses**

9 Using an undisputed one acre-foot per household per annum water use rate,
10 ADWR produced a conservative estimate of the total water demand of self-supplied
11 households in the Verde River Watershed.⁴² Taking the ratio of total estimated household
12 demand, 20,972 AFA, over median annual flow for the Verde Watershed, 281,336.14
13 AFA, ADWR concluded that domestic uses “do not significantly impact surface water
14 resources in the watershed, with an estimated impact of 7.45%.” Per the June 2022 Order,
15 ADWR also calculated the impacts of domestic uses on water availability on annual and
16 monthly bases at the Paulden and Camp Verde streamgages.⁴³

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18 **FINDING OF FACT 1.** The average annual domestic use rate in the Verde River
19 Watershed is no more than 1.00 acre-foot per household.

20 **1.2. Stipulations**

21 **1.2.1 Water Availability**

22 The Parties’ dispute regarding water availability centered on ADWR’s choice to
23 consider only median annual flows recorded at only the Tangle Creek streamgage and
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25 ³⁹ *Id.* at 15.

26 ⁴⁰ *Id.*

27 ⁴¹ *Id.*

28 ⁴² *Id.* at 16 (“ADWR’s estimated domestic demand for the entire Verde River Watershed is likely a significant overestimate because a per household use of 1.00 AFA was assumed. The United States Bureau of Reclamation (USBR) estimates that one person uses about 0.18 AFA of water, or approximately 0.54 AFA per household . . .”).

⁴³ *Id.* at 9 Table 4.

1 calculated using the entire period of record. The Yavapai-Apache Nation, Tonto Apache
2 Tribe, the City of Phoenix, and SRP assert that water availability should be measured
3 using median June streamflows at the Paulden, Camp Verde, and Tangle Creek
4 streamgages.⁴⁴ Further, SRP argues that ADWR should have used a more recent period of
5 record, i.e. 2006–2022, when evaluating water availability.⁴⁵ Conversely, Brandon and
6 Natasha Pachecho, as well as ASLD, supported ADWR’s approach to measuring water
7 availability.⁴⁶

8 In its Motion for Partial Summary Judgment Regarding Water Availability
9 (“Factor 1 Motion”), SRP argued that water availability should not be determined solely
10 at the Tangle Creek streamgage because, as the ADWR data depicts, quantity of
11 streamflow and the ratio of upstream demand to quantity of streamflow varies
12 significantly based on one’s location in the Verde River Watershed.⁴⁷ Using values from
13 the Tangle Creek, Paulden, and Camp Verde streamgages allows for a more granular
14 survey of the impacts of domestic, stockpond, and stock and wildlife watering uses in the
15 Verde River Watershed.⁴⁸

16 In its Factor 1 Motion, SRP also argued that median June streamflows would
17 better represent water availability because a substantial number of water users in the
18 Verde River Watershed are “direct diverters” who cannot store water for later use.⁴⁹ This
19 means that at any given time many water users in the Verde River Watershed have access
20 only to the water that is currently flowing. Therefore, to accurately measure impact on
21 these water users, SRP argued that water availability should be based on flows during
22 June, the driest month in the Verde River Watershed.⁵⁰

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24 ⁴⁴ Yavapai-Apache Nation Objections at 5–8 (Oct. 28, 2022); Tonto Apache Tribe Joinder in Yavapai-Apache Nation
Objections (Oct. 28, 2022); City of Phoenix Objections at 4–6 (Oct. 28, 2022); SRP Objections at 7–9 (Oct. 28, 2022).

25 ⁴⁵ Motion for Partial Summary Judgment Regarding Water Availability (“Factor 1 Motion”) at 6 (Apr. 12, 2024).

26 ⁴⁶ Objections of Brandon and Natasha Pachecho at 3–4 (Oct. 28, 2022); ASLD’s Response to SRP Proposal for Analyzing
a Potential Domestic *De Minimis* Designation in the Verde River Watershed at 2 (Mar. 28, 2022).

27 ⁴⁷ Factor 1 Motion at 12–13 (Apr. 12, 2024).

28 ⁴⁸ *Id.*

⁴⁹ *Id.* at 7–11.

⁵⁰ *Id.* at 11.

1 Finally, SRP argued in its Factor 1 Motion that water availability should be
2 calculated using the 2006–2022 period of record.⁵¹ Specifically, SRP asserted that
3 ADWR’s calculations, based on periods of record beginning in the early- to mid-
4 twentieth century, are unrepresentative of current drier conditions.⁵² By comparing 1946–
5 2022 median monthly discharges with 2006–2022 median monthly discharges, SRP
6 showed significant reductions in streamflow since records began.⁵³

7 Ultimately, for the purposes of determining whether the proposed *de minimis*
8 domestic uses should be subject to summary adjudication, the Parties stipulated to SRP’s
9 proposal that water availability should be calculated using median flow values for the
10 month of June at each of the Paulden, Camp Verde, and Tangle Creek streamgages and
11 using a 2006–2022 period of record. Table 1 describes the stipulated median June
12 streamflow values and compares them with ADWR’s estimates.

13 **Table 1–Water Availability Values for Domestic Use Analysis**

Streamgage	Stipulated Median June Flow Values (AF) ⁵⁴	ADWR Median June Flow Values (AF) ⁵⁵
Paulden	1,101	1,332.6
Camp Verde	3,015	4,240.5
Tangle Creek	4,813	6,605.7

19 **CONCLUSION OF LAW 1.** A reasonable basis exists to conclude that for the purpose
20 of investigating *de minimis* uses in the Verde River Watershed the optimal period of
21 record for determining water availability in the Verde River Watershed is 2006 through
22 2022, because of recent declines in streamflow.

24 ⁵¹ *Id.* at 6.

25 ⁵² *Id.* at 6–7. The Camp Verde, Tangle Creek, and Paulden streamgages have periods of record dating back to 1935,
26 1946, and 1964, respectively. Salt River Project’s Consolidated Statement of Facts in Support of Its Motions for Partial
Summary Judgment (“Statements of Fact”) at 4 ¶ 10 (Apr. 12, 2024).

27 ⁵³ Statements of Fact at 5 ¶ 13; Exhibit I to Statements of Fact at 7–9.

28 ⁵⁴ Factor 1 Motion at 4 (Apr. 12, 2024); Domestic Stipulation at 8 ¶¶ 36a–c (May 29, 2024); Factor 1 Motion at 4;
Statements of Fact at 11 ¶ 66; Exhibit I to Statements of Fact at 6.

⁵⁵ These values are calculated by dividing the “annualized” values reported by ADWR by 12. *De Minimis* Report at 8
Table 1.

1 **CONCLUSION OF LAW 2.** A reasonable basis exists to conclude that for the purpose
2 of investigating *de minimis* uses in the Verde River Watershed water availability in the
3 Verde River Watershed should be determined at the Paulden, Camp Verde, and Tangle
4 Creek streamgages in order to address the diverse range of impacts experienced
5 throughout the Verde River Watershed.

6 **CONCLUSION OF LAW 3.** A reasonable basis exists to conclude that for the purpose
7 of investigating *de minimis* uses in the Verde River Watershed, median June streamflow
8 values should be used to represent water availability, because many Verde River water
9 users' rely on direct flow.

10 **CONCLUSION OF LAW 4.** The Special Master approves the parties' stipulations
11 regarding the values of water availability to be used when evaluating proposed *de*
12 *minimis* domestic uses.

14 **1.2.2 Number of Uses**

15 The Parties originally differed as to the correct methodology for estimating the
16 number of domestic uses in the Verde River Watershed as well as whether to
17 automatically exclude wells beyond a certain distance from the stream. As described
18 above in Section 1.1.2, ADWR estimated the number of domestic uses by tabulating all
19 census housing units outside of Community Water System service areas. The Yavapai-
20 Apache Nation, Tonto Apache Tribe, and SRP assert that ADWR should have measured
21 the number of domestic uses by analyzing its own well registry database.⁵⁶ Brandon and
22 Natasha Pacheco, Chino Valley, and ASLD asserted that ADWR improperly included
23 many wells that are not likely pumping subflow.⁵⁷

24 SRP argued that the Court should approve SRP's proposed methodology over
25 ADWR's "centerpoint" methodology because (1) ADWR's methodology has the

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27 ⁵⁶ Yavapai-Apache Nation Objections at 9–11 (Oct. 28, 2022); Tonto Apache Tribe Joinder in Yavapai-Apache Nation
Objections (Oct. 28, 2022); SRP Objections at 10 (Oct. 28, 2022).

28 ⁵⁷ Objections of Brandon and Natasha Pacheco at 5 (Oct. 28, 2022); Chino Valley Objections at 5 (Oct. 28, 2022);
ASLD's Response to SRP Proposal for Analyzing a Potential Domestic *De Minimis* Designation in the Verde River
Watershed at 3 (Oct. 28, 2022).

1 potential to underestimate the number of self-supplied uses by assuming that no domestic
2 water user within a service area boundary is self-supplied and (2) because the centerpoint
3 methodology is overinclusive in some areas of the Verde River Watershed and
4 underinclusive in other areas.⁵⁸ As an alternative to the centerpoint methodology, SRP
5 proposed identifying domestic users with ADWR's "Wells-55" database, created to
6 record well registration data submitted to ADWR pursuant to Arizona Revised Statutes
7 section 45-593.⁵⁹

8 Entries in the "Wells-55" database contain data from well registration documents,
9 which must document each registered well's location and identify the type of use
10 associated with the well.⁶⁰ SRP's expert, Harvey Economics, first identified all wells
11 within the Verde River Watershed and the five Verde River subwatersheds.⁶¹ Harvey
12 Economics then eliminated well entries described as abandoned, cancelled, duplicative,
13 municipal, or commercial.⁶² Of the remaining wells, Harvey Economics tabulated those
14 labeled solely as "domestic."⁶³ Both ADWR and ASLD's expert, Mike Kellogg, testified
15 as to the efficacy of SRP's proposed method.⁶⁴

16 Ultimately, for the purposes of determining whether the proposed *de minimis*
17 domestic uses should be subject to summary adjudication, the Parties stipulated to SRP's
18 proposal for determining the number of domestic, self-supplied uses in the Verde River
19 Watershed. The table below describes the stipulated values and provides a comparison
20 with ADWR's estimates.
21
22
23

24 ⁵⁸ Factor 2 Motion at 7 (Apr. 12, 2024); Statements of Fact at 18 ¶ 122 (Apr. 12, 2024); *id.* at 19 ¶ 133.

25 ⁵⁹ Factor 2 Motion at 8.

26 ⁶⁰ Ariz. Rev. Stat. §§ 45-593, 45-596.

27 ⁶¹ *Id.*; Statements of Fact at 20 ¶ 138; Exhibit Y to Statements of Fact at 3-2.

28 ⁶² Factor 2 Motion at 9; Statements of Fact at 20 ¶ 142; Exhibit Y to Statements of Fact at 3-4.

⁶³ Factor 2 Motion at 9; Statements of Fact at 21 ¶ 144; Exhibit Y to Statements of Fact at 3-6.

⁶⁴ Factor 2 Motion at 9-10; Statements of Fact at 21 ¶¶ 150-152; Exhibit F to Statements of Fact at 67-68, 99-100, 122-123.

Table 2 –Number of Domestic Uses

Subwatershed	Stipulated Values ⁶⁵	ADWR Estimates ⁶⁶
Little Chino	8,755	7,425
Big Chino	2,453	3,117
Sycamore	459	1,223
Lower Verde Valley	6,556	6,471
Verde Canyon	1,926	2,736
Total	20,149	20,972

CONCLUSION OF LAW 5. A reasonable basis exists to conclude that for the purpose of investigating *de minimis* uses in the Verde River Watershed the number of domestic uses being considered for summary adjudication is no more than: 8,755 in Little Chino, 2,453 in Big Chino, 459 in Sycamore Canyon, 6,556 in Lower Verde Valley, and 1,926 in Verde Canyon, for a total of 20,149 in the Verde River Watershed.

CONCLUSION OF LAW 6. The Special Master approves the parties' stipulations regarding the number of proposed *de minimis* domestic uses in the Verde River Watershed and Verde River subwatersheds.

1.2.3 Impact of Uses

The impact of domestic uses on the Verde River Watershed was determined by (1) converting the number of uses to a water demand estimate and (2) finding the ratio of water demand to water supply. Any party who objected to ADWR's proposed water use rate of 1.00 AFA per household waived that objection in March 2022.⁶⁷

In its Motion for Partial Summary Judgment Regarding Impact of Uses ("Factor 3 Motion"), SRP proposed using modified streamflow values recorded at the Paulden,

⁶⁵ Factor 2 Motion at 4; Domestic Stipulation at 10 ¶¶ 47a–f (May 29, 2024).

⁶⁶ *De Minimis* Report at 16 (Aug. 2022).

⁶⁷ W1-106, Minute Entry at 5 (March 10, 2022).

Camp Verde, and Tangle Creek streamgages during June 2019 and June 2022.⁶⁸ SRP proposed using modified daily June flows at all three streamgages for those years in order to demonstrate peak impacts during a wet year (2019) against those during a dry year (2022).⁶⁹ SRP proposed modifying flow values by adding daily domestic demand to daily raw streamflow values.⁷⁰ SRP arrived at its final impact values by calculating the ratio of daily domestic demand and modified daily flows for each day of June, then averaging those values.⁷¹ ADWR stated that this approach provided “useful information.”⁷²

For the purpose of evaluating proposed *de minimis* domestic uses, the Parties stipulated to SRP’s approach. For each streamgage, the Parties adopted a range of values based on impacts estimated to have occurred during June 2019 and June 2022. Table 3 describes the stipulated values along with the values calculated by ADWR.

Table 3–Impacts of Domestic Uses

Streamgage	Demand (AFA)		ADWR Median June Flows (AF) ⁷³	Impact Values (%)	
	Stipulated ⁷⁴	ADWR ⁷⁵		Stipulated ⁷⁶	ADWR ⁷⁷
Paulden	11,208	10,542	1,332.6	48.2–50.4	65.92
Camp Verde	18,223	18,236	4,240.5	28.4–37	35.84
Tangle Creek	20,149	20,972	6,605.7	22–25.5	26.46

CONCLUSION OF LAW 7. A reasonable basis exists to conclude that for the purpose of investigating *de minimis* uses in the Verde River Watershed the impact of domestic

⁶⁸ Factor 3 Motion at 10 (Apr. 12, 2024).

⁶⁹ *Id.*; Statements of Fact at 28 ¶ 206; Exhibit I to Statements of Fact at 19-24.

⁷⁰ Exhibit I to Statements of Fact at 19.

⁷¹ *Id.* at 19–24.

⁷² Exhibit G to Statements of Fact at 291–292.

⁷³ *De Minimis* Report at 8 (Aug. 2022). ADWR annualized its median monthly flow figures by multiplying them by 12. The figures here are obtained by dividing ADWR’s figures by 12.

⁷⁴ Domestic Stipulation at 10 ¶¶ 47a–e (May 29, 2024). The demand above each streamgage is the sum of the demand in each subwatershed that ADWR assumed drains to the streamgage. For instance, in the *De Minimis* Report, ADWR assumed that the Big Chino and Little Chino Subwatersheds drain to the Paulden streamgage, that the Big Chino, Little Chino, Sycamore, and Lower Verde Valley Subwatersheds drain to the Camp Verde streamgage, and that all five Verde subwatersheds drain to the Tangle Creek streamgage.

⁷⁵ *De Minimis* Report at 16.

⁷⁶ Exhibit I to Statements of Fact at 19-24.

⁷⁷ *De Minimis* Report at 16.

1 uses on water availability is no more than: 50.4% at the Paulden streamgage, 37% at the
2 Camp Verde streamgage, and 25.5% at the Tangle Creek streamgage.

3 **CONCLUSION OF LAW 8.** The Special Master approves the parties' stipulations
4 regarding the impacts of proposed *de minimis* domestic uses on the Verde River
5 Watershed and the Verde River subwatersheds.

6 7 **2.0 Stockpond Uses**

8 ADWR recommended that stockponds⁷⁸ with a maximum capacity less than or
9 equal to four acre-feet should be subject to summary adjudication, concluding that those
10 uses "do not have a major impact on the surface water resources of the Verde River
11 Watershed."⁷⁹ Although no party to this proceeding objected to ADWR's estimate of the
12 number of stockpond uses in the Verde River Watershed and each of its subwatersheds,
13 some parties objected to ADWR's evaluation of water availability and impact of uses.⁸⁰
14 All parties to this proceeding resolved by stipulation all disputed questions of fact and
15 questions of law regarding ADWR's evaluation of proposed *de minimis* stockpond uses.

16 **2.1 ADWR Determinations**

17 **2.1.1 Water Availability**

18 ADWR adopted the same water availability estimate, i.e. median annual flows at
19 Tangle Creek streamgage, for evaluation of all proposed *de minimis* uses. Section
20 III.A.1.a above fully describes ADWR's method for determining water availability.

21 **2.1.2 Total Number of Uses**

22 For the purpose of the *de minimis* investigation, ADWR counted all
23 impoundments visible in aerial imagery, including impoundments that did not meet its
24 proposed definition for a stockpond *de minimis* use, and without evaluating whether

25 ⁷⁸ ADWR adopted the statutory definition of "stockpond," i.e. "an on-channel or off-channel impoundment of any size
26 that stores water that is appropriable . . . and that is for the sole purpose of watering livestock and wildlife." *De Minimis*
27 Report at 17; Ariz. Rev. Stat. § 45-251 (2024). ADWR clarified that "an impoundment is an enclosure built as a means
of collecting water for future use." *De Minimis* Report at 17.

28 ⁷⁹ *De Minimis* Report at 34.

⁸⁰ City of Phoenix Objections at 4, 6; SRP Objections at 7–9, 16–17; Yavapai-Apache Nation Objections at 5–8, 10–
11; Tonto Apache Tribe Joinder in Yavapai-Apache Nation Objections.

these uses have a legal basis for a water right or a Statement of Claimant on file with ADWR.⁸¹ This resulted in a conservative overestimate of the number of proposed *de minimis* stockponds in the Verde River Watershed. No party objected to this calculation. Table 4 describes ADWR's estimate of the number of stockponds in each subwatershed and total stockponds in the Verde River Watershed.

Table 4 – Number of Stockponds in the Verde River Watershed

Subwatershed or Watershed	Count ⁸²
Little Chino Subwatershed	194
Big Chino Subwatershed	819
Sycamore Subwatershed	728
Lower Verde Valley Subwatershed	1095
Verde Canyon Subwatershed	544
Verde River Watershed	3,380

FINDING OF FACT 2. Stockpond uses being considered for summary adjudication no more than: 194 in Little Chino, 819 in Big Chino, 728 in Sycamore, 1095 in Lower Verde Valley, and 544 in Verde Canyon.

FINDING OF FACT 3. There are no more than 3,380 stockpond uses being considered for summary adjudication in the Verde River Watershed.

2.1.3 Impact of Uses

Assuming that there is one complete fill of each stockpond per year, and that each stockpond has a depth of 15 feet, ADWR calculated demand of stockponds by summing the estimated capacities of all stockponds tabulated in the survey described above.⁸³ ADWR claims this is likely a “comfortable overestimate” since not all of the inventoried impoundments would actually meet the statutory criteria required to be classified as a

⁸¹ *De Minimis* Report at 17–18 (Aug. 2022).

⁸² *Id.* at 21.

⁸³ *Id.* at 17.

1 stockpond.⁸⁴ Further, the calculation is a conservative overestimate because the majority
2 of the presumed stockponds are shallower and, therefore, hold less water.⁸⁵

3 Pursuant to the Special Master's direction, ADWR then calculated the impacts of
4 stockpond uses by finding the ratio of stockpond demand to water availability at each of
5 the Paulden, Camp Verde, and Tangle Creek streamgages. Nonetheless, ADWR asserted
6 that Thorson Factor 3 for stockpond uses should be determined based upon median
7 annual flows at only the Tangle Creek streamgage using the full period of record for that
8 streamgage.⁸⁶

10 2.2 Stipulations

11 2.2.1 Water Availability

12 As described in Section III.1.2.1 above, the Parties disputed ADWR's decisions 1)
13 to define water availability in terms of median annual flows, 2) to measure flows at only
14 the Tangle Creek streamgage, and 3) to use the entire period of record at that streamgage.
15 For the purpose of evaluating proposed stockpond *de minimis* uses, the Parties ultimately
16 stipulated to a water availability figure based on median annual flows occurring between
17 2006 and 2022 at the Tangle Creek, Camp Verde, and Paulden streamgages. The Parties
18 stipulated to analyzing the impact of stockponds on median annual flows instead of
19 median June flows because, unlike stock and wildlife watering uses and domestic uses, it
20 is difficult to estimate the effects of stockpond uses on a monthly basis.⁸⁷ Specifically,
21 the Parties state that "the quantities of water captured by stockponds are not distributed
22 uniformly throughout the year."⁸⁸

23 /

24 /

26 ⁸⁴ *Id.*

27 ⁸⁵ *Id.*

28 ⁸⁶ *Id.* at 9 table 9.

⁸⁷ Stockpond Stipulation at 10 ¶ 40 (Aug. 2, 2024).

⁸⁸ *Id.*

Table 5–Water Availability Values for Stockpond Analysis

Streamgage	Stipulated Median Annual Flow Values (AFA)⁸⁹	ADWR Median Annual Flow Values (AFA)⁹⁰
Paulden	17,001	20,411.02
Camp Verde	152,195	199,276.23
Tangle Creek	219,695	281,336.14

CONCLUSION OF LAW 9. A reasonable basis exists to conclude that for the purpose of investigating *de minimis* uses in the Verde River Watershed the median annual streamflow values should be used to represent water availability in the Verde River because the quantity of water captured by stockponds is not uniform throughout the year.

CONCLUSION OF LAW 10. The Special Master approves the Parties’ stipulations regarding the values of water availability to be used when evaluating proposed *de minimis* stockpond uses.

2.2.2 Impact of Uses

The impact of stockpond uses on a watershed is the ratio of water demand to water supply in that watershed. Because no party objected to ADWR’s figures for the number of stockponds in the Verde River subwatersheds, those figures serve as the basis for the Parties’ stipulated water demand value. Further, despite objections to ADWR’s estimate of water demand per stockpond, the Parties ultimately stipulated to ADWR’s estimate. As discussed above, the Parties stipulated to water availability values based on median annual flows at the Paulden, Camp Verde, and Tangle Creek streamgages. Table 6 provides the stipulated impacts of stockpond uses at the Paulden, Camp Verde, and Tangle Creek streamgages.

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⁸⁹ *Id.* at 10 ¶¶ 41a–c.

⁹⁰ *De Minimis* Report at 8 (Aug. 2022).

Table 6 – Impacts of Stockpond Uses

Streamgage	Stipulated Demand (AFA) ⁹¹	Water Availability (AFA)		Impact of Uses (%)	
		Stipulated ⁹²	ADWR ⁹³	Stipulated ⁹⁴	ADWR ⁹⁵
Paulden	4,818	17,001	20,411.02	28.3	23.60
Camp Verde	11,304	152,195	199,276.23	7.4	5.67
Tangle Creek	12,180	219,695	281,336.14	5.5	4.33

CONCLUSION OF LAW 11. A reasonable basis exists to conclude that for the purpose of investigating *de minimis* uses in the Verde River Watershed, the impact of proposed stockpond *de minimis* uses is no more than: 28.3% at the Paulden streamgage, 7.4% at the Camp Verde streamgage, and 5.5% at the Tangle Creek streamgage.

CONCLUSION OF LAW 12. The Special Mater approves the Parties’ stipulations concerning the impacts of proposed stockpond *de minimis* uses on the Verde River Watershed and the Verde River subwatersheds.

3.0 Stock and Wildlife Watering

ADWR defines “stock and wildlife watering” in accordance with Arizona Revised Statutes section 45-251(10).⁹⁶ The agency recommended that all stock watering and wildlife watering uses should be subject to summary adjudication, concluding that “the cumulative impact of these uses . . . is negligible.”⁹⁷ No party to this proceeding objected to ADWR’s determinations of the number of stock and wildlife watering uses or stock and wildlife watering demand in the Verde River Watershed or Verde River

⁹¹ *De Minimis* Report at 22; Stockpond Stipulation at 13 ¶¶ 57a–e. The demand above each streamgage is the sum of the demand in each subwatershed that ADWR assumed drains to the streamgage. Footnote 66 provides the specific subwatersheds that ADWR assumed drain to each streamgage.

⁹² Stockpond Stipulation at 10 ¶¶ 41a–c; Exhibit I to Statements of Fact at 6.

⁹³ *De Minimis* Report at 8.

⁹⁴ Stockpond Stipulation at 13 ¶¶ 60a–c (Aug. 2, 2024).

⁹⁵ See Table 6 above.

⁹⁶ *De Minimis* Report at 24. Ariz. Rev. Stat. § 45-251(10) defines “stock watering use” as “the consumption of water by livestock and wildlife . . . [d]irectly from a naturally occurring body of water, such as an undeveloped spring, cienega, seep, bog, lake, depression, sink or stream [or] [f]rom small facilities, other than a stockpond, that are served by a diversion of water that is appropriable.” Ariz. Rev. Stat § 45-251(10) (2024).

⁹⁷ *De Minimis* Report at 36.

1 subwatersheds. Objections pertained solely to ADWR's water availability calculation
2 and, accordingly, ADWR's ultimate calculation of stock and wildlife watering impacts.⁹⁸

3 **3.1 ADWR Determinations**

4 **3.1.1 Water Availability**

5 ADWR used the same water availability estimate for evaluation of all proposed *de*
6 *minimis* uses: median annual flows for the entire period of record at the Tangle Creek
7 streamgage. Section III.1.1.1 above fully describes ADWR's method for determining
8 water availability.

9 **3.1.2 Total Number of Uses**

10 ADWR separately analyzed proposed stock watering and wildlife *de minimis* uses.
11 ADWR further divided its analysis of proposed stock watering *de minimis* uses into two
12 parts: uses on public lands, which account for 91.4% of the land within the Verde River
13 Watershed; and uses on private land, which is the remaining 8.6% of land within the
14 Verde River Watershed.⁹⁹ For its analysis of stock watering uses, ADWR primarily used
15 grazing lease information from ASLD's online Parcel Viewer and the United States
16 Forest Service's Annual Operating Instructions ("AOIs") for the Tonto, Coconino,
17 Prescott, and Kaibab National Forests.¹⁰⁰ ADWR's separate analysis of wildlife uses on
18 public and private lands relied primarily on wildlife density maps produced by the
19 Arizona Game and Fish Department and the Conservation Biology Institute.¹⁰¹ No party
20 objected to ADWR's counts of stock and wildlife watering uses.

21 As documented fully on page 25 of the *De Minimis* Report, ADWR began its
22 analysis of stock watering uses in the Verde River Watershed by investigating grazing
23 data for public lands within the Verde River Watershed. ADWR searched each available
24 document for the maximum number of animal units permitted on the pertinent land. If a
25

26 ⁹⁸ City of Phoenix Objections at 4, 6 (Oct. 28, 2022); SRP Objections at 7–9 (Oct. 28, 2022); Yavapai-Apache Nation
27 Objections at 5–8 (Oct. 28, 2022); Tonto Apache Tribe Joinder in Yavapai-Apache Nation Objections (Oct. 28, 2022).

⁹⁹ *De Minimis* Report at 24.

¹⁰⁰ *Id.* at 25.

¹⁰¹ *Id.* at 24.

1 lease document did not have any available grazing information, ADWR assumed that no
2 grazing was occurring on the land covered by the lease and confirmed this assumption by
3 evaluating aerial imagery of the leased land.¹⁰²

4 Next, for each grazing lease, ADWR used a GIS application and data from AZGeo
5 Data Hub to create a polygon for each leased area. Where the leased area extended
6 beyond the boundaries of the Verde River Watershed, ADWR multiplied the number of
7 animal units associated with the lease by the proportion of the land that is within the
8 watershed. To obtain a count of livestock for all *public lands* in the Verde River
9 Watershed, ADWR added the livestock counts represented by the GIS polygons.¹⁰³

10 ADWR investigated stock and wildlife watering uses on *private lands* by
11 calculating livestock species density rates for the Verde River Watershed, i.e. the ratio of
12 the total number of livestock on public lands to total public land acreage. To obtain a
13 conservative value for number of livestock species on private lands, ADWR then
14 multiplied the livestock species density value by the total acreage of private land.¹⁰⁴

15 ADWR investigated total wildlife uses in the Verde River Watershed by
16 consulting wildlife density maps published by Arizona Game and Fish Department as
17 well as the Conservation Biology Institute's "DataBasin."¹⁰⁵ ADWR estimated numbers
18 of the four most common big-game ungulates (elk, white-tailed deer, mule deer, and
19 pronghorn antelope) in the Verde River Watershed, because those are the animals for
20 which most wildlife uses are claimed.¹⁰⁶ To estimate the number of those species
21 throughout the Verde River Watershed, ADWR identified the maximum density for each
22 of the species at any point within the watershed using Arizona Game and Fish
23 Department's wildlife density map.¹⁰⁷ ADWR then assumed that the maximum density of
24

25 ¹⁰² *Id.* at 25.

26 ¹⁰³ *Id.*

27 ¹⁰⁴ *Id.* at 26–27

¹⁰⁵ *Id.* at 28

28 ¹⁰⁶ *Id.* at 27.

¹⁰⁷ *Id.* at 28.

each species (15 animals per square mile) was present throughout each species' range.¹⁰⁸

Table 7 describes ADWR's counts of stock and wildlife watering uses for each Verde River subwatershed and the Verde River Watershed.

Table 7—Stock and Wildlife Watering Use Counts

Subwatershed or Watershed	Number of SW/WL Uses¹⁰⁹
Little Chino	14,759
Big Chino	85,082
Sycamore	67,254
Lower Verde Valley	88,750
Verde Canyon	53,535
Total Verde River Watershed	309,380

FINDING OF FACT 4. Stock and wildlife uses being considered for summary adjudication number no more than: 14,759 in Little Chino, 85,082 in Big Chino, 67,254 in Sycamore, 88,750 in Lower Verde Valley, and 53,535 in Verde Canyon, for a total of no more than 309,380 stock and wildlife uses in the Verde River Watershed.

3.1.3 Impact of Uses

To estimate impacts of wildlife and stock watering uses, ADWR determined a consumptive use rate for each species of wildlife and livestock counted.¹¹⁰ ADWR then summed the demand attributable to each species and divided that value by water availability.¹¹¹ Although ADWR estimated impacts at the Paulden, Camp Verde, and Tangle Creek streamgages using both median annual flows and median monthly summer flows, ADWR concluded that only impacts at Tangle Creek streamgage are relevant.¹¹²

ADWR's analysis of demand contains a number of simplifying, conservative assumptions:

- 1) Each animal type exists in the Verde River Watershed at the same time, for a

¹⁰⁸ *Id.*

¹⁰⁹ Stock and Wildlife Watering Stipulation at 10 ¶¶ 47a–e (June 19, 2024).

¹¹⁰ ADWR reviewed recent scientific literature to determine the consumptive use rates for cattle, horses, pigs, sheep, goats, chickens, elk, mule deer, white tail deer, and pronghorn antelope. *De Minimis* Report at 28–29.

¹¹¹ *De Minimis* Report at 31.

¹¹² *Id.* at 36.

full year, and are drinking the maximum amount from streamside sources;¹¹³

2) All livestock and wildlife are fed exclusively by instream watering;¹¹⁴

3) Where lease documents specified separate maximum counts for cows, bulls, or yearlings, ADWR labeled all of them “cattle” and assigned each the highest estimated consumption rate for cattle;¹¹⁵

4) Where lease documents specified maximums for only generic animal units, ADWR considered each animal unit to be “cattle” and assigned each the “highest estimated” consumption rate for cattle.

Ultimately, ADWR produced significant overestimates of demand from stock and wildlife watering. Table 8 below describes ADWR’s estimates of stock watering and wildlife demand at the Paulden, Camp Verde, and Tangle Creek streamgages.

Table 8—Demand Above Each Streamgage from Stock and Wildlife Watering Uses

Streamgage	Demand Above Each Gage (AFA) ¹¹⁶
Paulden	565
Camp Verde	1,354
Tangle Creek	1,733

FINDING OF FACT 6. Proposed stock and wildlife watering *de minimis* uses consume no more than: 482.87 AFA in Big Chino, 82.39 AFA in Little Chino, 327.55 AFA in Sycamore, 461.25 AFA in Lower Verde Valley, and 379.24 AFA in Verde Canyon.

FINDING OF FACT 7. Proposed stock and wildlife watering *de minimis* uses consume no more than 1,733 AFA of water in the Verde River Watershed.

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¹¹³ *Id.* at 24.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 26.

¹¹⁶ *De Minimis* Report at 29, 31 tables 12, 14. ADWR derived total demand above Paulden by summing demand in Big Chino (482.87 AFA) and Little Chino (82.39 AFA). *De Minimis* Report at 31 Table 14. ADWR derived total demand above Camp Verde by summing demand in Big Chino, Little Chino, Sycamore (327.55), and Lower Verde Valley (461.25 AFA). *Id.* ADWR derived total demand above Tangle Creek by summing demand in Big Chino, Little Chino, Sycamore, Lower Verde Valley, and Verde Canyon (379.24 AFA). *Id.*

3.2 Stipulations

3.2.1 Water Availability

In the same manner as described in Section III.1.2.1 and shown on Table 1, the Parties stipulated that, for the purpose of evaluating proposed stock and wildlife watering *de minimis* uses, water availability should be based on median June flows recorded between 2006 and 2022 at the Paulden, Camp Verde, and Tangle Creek streamgages.

CONCLUSION OF LAW 13. The Special Master approves the Parties' stipulations regarding the values of water availability to be used when evaluating proposed *de minimis* stock and wildlife watering uses.

3.2.2 Impact of Uses

Because no party objected to either ADWR's figure for the number of proposed stock and wildlife *de minimis* uses or demand attributable to those uses, the Parties disputed only the value(s) for water availability that should be used for determining impacts.

In its Motion for Partial Summary Judgment Regarding Impact of Uses ("Factor 3 Motion"), SRP proposed using raw streamflow values recorded at the Paulden, Camp Verde, and Tangle Creek streamgages during June 2019 and June 2022.¹¹⁷ SRP proposed using monthly June flows at all three streamgages in those years in order to demonstrate peak impacts during a wet year, 2019, against those during a dry year, 2022.¹¹⁸

For the purpose of evaluating proposed *de minimis* domestic uses, the parties stipulated to SRP's approach.¹¹⁹ For each streamgage, the Parties stipulated to a range of

¹¹⁷ Factor 3 Motion at 11 (Apr. 12, 2024); Statements of Fact at 30–31 ¶¶ 226–28 (Apr. 12, 2024); Exhibit JJ to Statements of Fact at PDF 7, cells N195 and N198 (providing Paulden flows); Exhibit JJ to Statements of Fact at PDF 4, cells H150 and H153 (providing Camp Verde flows); Exhibit JJ to Statements of Fact at PDF 2, cells G66 and G69 (providing Tangle Creek flows).

¹¹⁸ Statements of Fact at 28 ¶ 206.

¹¹⁹ Stock and Wildlife Watering Stipulation at 12 ¶¶ 60a–c (June 19, 2024).

values based on impacts estimated to have occurred during June 2019 and June 2022.¹²⁰

Table 9 - Range of Values for Thorson Factors 1 – 3 for SW/WL Uses

Streamgage	Annual Demand (AFA) ¹²¹	Water Availability in June (AF)		Impact of Uses (%)	
		Stipulated June 2019/ 2022 Flows ¹²²	ADWR Median Flows ¹²³	Stipulated ¹²⁴	ADWR ¹²⁵
Paulden	565	989.52/905.24	1,332.6	4.8–5.2	2.77
Camp Verde	1,354	3896.60/2604.87	4,240.5	2.9–4.3	0.68
Tangle Creek	1,733	5963/4922	6,605.7	2.4–2.9	0.62

CONCLUSION OF LAW 14. A reasonable basis exists to conclude that for the purpose of investigating *de minimis* uses in the Verde River Watershed the impact of stock watering and wildlife uses is no more than 5.2 percent at the Paulden streamgage, 4.3 percent at the Camp Verde streamgage, and 2.9 percent at the Tangle Creek streamgage.

CONCLUSION OF LAW 15. The Special Mater approves the stipulations concerning the impacts of proposed *de minimis* stock and wildlife watering uses on the Verde River Watershed and Verde River subwatersheds.

IV. COST-BENEFIT ANALYSIS

The ultimate inquiry regarding whether a certain type of use may be subject to summary adjudication is whether the benefits of an abbreviated, rather than complete adjudication of the use outweigh the costs.¹²⁶ A key factor in this analysis is the impact of the proposed use on the watershed at issue.¹²⁷

¹²⁰ *Id.*

¹²¹ *Id.*; *De Minimis* Report at 31 (Aug. 2022).

¹²² Factor 3 Motion at 11 (Apr. 12, 2024); Statements of Fact at 30–31 ¶¶ 226–28 (Apr. 12, 2024); Exhibit JJ to Statements of Fact at PDF 7, cells N195 and N198 (providing Paulden flows); Exhibit JJ to Statements of Fact at PDF 4, cells H150 and H153 (providing Camp Verde flows); Exhibit JJ to Statements of Fact at PDF 2, cells G66 and G69 (providing Tangle Creek flows).

¹²³ Calculated by dividing the “annualized” values reported by ADWR by 12. *De Minimis* Report at 8 table 1.

¹²⁴ Stock and Wildlife Watering Stipulation at 13 ¶¶ 62a–c.

¹²⁵ *De Minimis* Report at 31.

¹²⁶ *Id.*

¹²⁷ W1-11-19, Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1 Cases Involving Stock watering, Stockponds, and Domestic Uses at 30 (Nov. 14, 1994)

ADWR's analysis in its *De Minimis* Report focused only on the impact of proposed *de minimis* uses on the watershed without considering the full costs and benefits of summary adjudication.¹²⁸ Further, no party's disclosure documents or motions for summary judgment fully addressed the costs and benefits of summary adjudication in the Verde River Watershed.¹²⁹ Nonetheless, the Parties ultimately stipulated to the conclusion that, as long as the outcomes of the first three factors fall within certain ranges of values, the benefits of summarily adjudicating ADWR's proposed *de minimis* stockpond, domestic, and stock watering and wildlife uses outweigh the costs.¹³⁰ The Parties stated two bases for their stipulation: 1) that summary adjudication of rights will not affect enforcement proceedings related to those rights, and 2) that summary adjudication will eliminate significant expenditures of time and money.¹³¹

To demonstrate that summary adjudication procedures will not affect enforcement proceedings, the Parties cited the Special Master's April 2024 order concerning the effect of summary adjudication procedures on enforcement proceedings.¹³² Specifically, the Parties cite the Special Master's conclusions that summarily adjudicated rights are not excluded from enforcement, that summarily adjudicated rights will be subject to enforcement in the same manner as rights that are not summarily adjudicated, and that the holder of a summarily adjudicated right is not relieved from providing a basis of right.¹³³

The stipulating parties explained the benefits of summary adjudication in the Verde River Watershed over the costs of full adjudication in terms of time, money, and

¹²⁸ *De Minimis* Report at 3.

¹²⁹ Statements of Fact at 14 ¶ 68.

¹³⁰ Domestic Stipulation at 15 ¶ 77 (; Stock and Wildlife Watering Stipulation at 17 ¶ 82; Stockpond Stipulation at 17 ¶ 80.

¹³¹ Domestic Stipulation at 7, 13 ¶¶ 31, 69 (May 29, 2024); Stock and Wildlife Watering Stipulation at 8, 14 ¶¶ 33, 74 (June 19, 2024); Stockpond Stipulation at 9, 15 ¶¶ 36, 72 (Aug. 2, 2024).

¹³² Order Granting Salt River Project's Motion for Partial Summary Judgment Regarding Enforcement Against Summarily Adjudicated Uses ("Enforcement Order") (Apr. 24, 2024)

¹³³ Enforcement Order at 13. The Enforcement Order also states that any summarily adjudicated right will be recommended for inclusion in the final decree as a fully adjudicated water right. Enforcement Order at 1. Therefore, summarily adjudicated rights may be enforced and subject to enforcement. To the extent that the futile call doctrine is otherwise applicable, owners of summarily adjudicated water rights may assert the doctrine in an enforcement action. *Id.* at 2.

1 community wellbeing by citing Special Master Thorson's findings that summary
2 adjudication avoids "the expenditure of public and private resources in litigating the
3 specific attributes of claimed rights for *de minimis* uses," and Special Master Thorson's
4 estimates of money, time, and community goodwill that would be saved by avoiding
5 protracted litigation.¹³⁴

6 Although additional litigation may be required for summarily adjudicated uses
7 during enforcement proceedings, the likelihood of enforcement against a *de minimis* uses
8 is unlikely. Thus the "costs" of summary adjudication are the additional time and
9 resources spent to determine the exact attributes of a water right in the event of
10 enforcement. On balance, the savings of summary procedures outweigh the costs of
11 additional litigation at the enforcement stage.

12 Given the substantial savings associated with summary adjudication, the Parties
13 stipulate that if the Court's impact findings are within the ranges of values described in
14 the following tables, the benefits of summary adjudication outweigh the costs. For
15 domestic uses, the minimum value of the range is the value to which the Parties
16 stipulated, and the maximum value of the range is ADWR's estimate. For stockpond uses
17 and stock watering and wildlife uses, the minimum value of the range is ADWR's
18 estimate, and the maximum value is the value to which the Parties stipulated.

19 The Parties further stipulate that the certain uniform quantities should be assigned
20 to the proposed *de minimis* domestic, stockpond, and stock and wildlife uses in the Verde
21 River Watershed. Specifically, the parties stipulate that *de minimis* domestic uses should
22 be assigned a quantity of "the claimed quantity of use, not to exceed (\leq) 1 AFA," *de minimis*
23 stockpond uses should be assigned a quantity of "not to exceed (\leq) 4 acre-feet in capacity
24 with continuous fill," and *de minimis* stock and wildlife watering uses should be assigned
25 a quantity of "reasonable use."¹³⁵

27 ¹³⁴ W1-11-19, Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1 Cases Involving Stock
watering, Stockponds, and Domestic Uses at 26-28 (Nov. 14, 1994)

28 ¹³⁵ Domestic Stipulation at 16 ¶ 82, Stockpond Stipulation at 18 ¶ 85; Stock and Wildlife Watering Stipulation at 17
¶ 87.

Table 10. Stipulated Ranges for Which Summary Adjudication is Acceptable

	Impact of Domestic Uses¹³⁶ (%)	Impact of SW/WL Uses¹³⁷ (%)	Impact of Stockpond Uses¹³⁸ (%)
Paulden	48.2–65.92	3.53–5.2	23.6–28.3
Camp Verde	28.4–35.84	2.66–4.3	5.67–7.4
Tangle Creek	22–26.46	2.19–2.9	4.33–5.5

CONCLUSION OF LAW 16. A reasonable basis exists for the Special Master to conclude that if the impacts of proposed *de minimis* domestic, stock watering and wildlife, and stockpond uses in the Verde River Watershed are within each above range, the benefits of summarily adjudicating those uses outweigh the costs.

CONCLUSION OF LAW 17. As described in Sections III.1.2.3, III.2.2.2, and III.3.2.2, the Special Master has approved stipulated impact values within each above range for proposed *de minimis* domestic, stock and wildlife watering, and stockpond uses.

CONCLUSION OF LAW 18. The Special Master approves the Parties’ stipulation that the proposed *de minimis* domestic, stock and wildlife watering, and stockpond uses in the Verde River Watershed should be subject to summary adjudication procedures.

CONCLUSION OF LAW 19. The Special Master approves the Parties’ stipulations regarding the quantities to be assigned to *de minimis* uses in the Verde River Watershed: the claimed quantity of use “not to exceed (\leq) 1 acre-foot per year” for *de minimis* domestic uses; a quantity “not to exceed (\leq) 4 acre-feet in capacity with continuous fill” for *de minimis* stockpond uses; and a quantity of “reasonable use” for *de minimis* stock and wildlife watering uses.

V. SUMMARY ADJUDICATION PROCEDURES FOR *DE MINIMIS* USES IN THE VERDE RIVER WATERSHED

The summary adjudication process is meant to expedite adjudication of water rights and save costs, while balancing the need for exactness regarding certain attributes.

¹³⁶ Domestic Stipulation at 11, 12 ¶¶ 55, 57; *De Minimis* Report at 16 (Aug. 2022).

¹³⁷ Stock and Wildlife Watering Stipulation at 12, 13 ¶¶ 60, 62; *De Minimis* Report at 31.

¹³⁸ Stockpond Stipulation at 13, 14 ¶¶ 60, 64; *De Minimis* Report at 22.

1 These summary procedures envision inclusion of abstracts in the catalog of proposed
2 rights after consideration of a limited set of objections. The Special Master will assign a
3 uniform beneficial use and quantity of water to each summarily adjudicated right. Priority
4 dates for summarily adjudicated rights will be established through a strict hierarchy, and
5 the Court will rely on ADWR to follow that hierarchy. Summary adjudication
6 procedures are not mandatory; claimants may opt out of them.

7 The Special Master notified the parties of draft summary adjudication procedures
8 and received timely written comments from ASLD, the United States, and SRP. Most
9 changes and clarifications to the procedures were adopted. The United States suggested
10 additional changes if the Court finds that ADWR has a proactive duty to notify potential
11 water rights holders of missing documentation. This Report does not recommend any
12 requirement for ADWR to proactively notify individual potential claimants beyond the
13 statutory requirement of providing a notice of the Verde River Watershed Draft
14 Hydrographic Survey Report (“HSR”) and the Verde River Watershed Final HSR with
15 the list of potential water rights included. As such, any requested changes by the United
16 States regarding such a duty were not adopted.

17 Additionally, suggestions by commenters to increase the list of permissible
18 objections available under summary adjudication procedures are also not recommended
19 for adoption. The process of resolving objections is the costliest aspect of a contested
20 case in terms of both time and money. By expanding the list of permitted objections, the
21 resource savings would vanish.

22 Therefore, this Final Report recommends that, for summary adjudication
23 procedures, most objections calling into question whether a claimant has appropriate
24 evidence to support a claim will not be considered until the use is the subject of an
25 enforcement action.

26 This Report recommends that the summary adjudication of state claims for *de*
27 *minimis* water uses in the Verde River Watershed should be accomplished according to
28 the following steps:

- a. Identification of existing *de minimis* water uses.
- b. Notice that water users must have SOC's and bases of right 60 days before the final HSR in order to be eligible for prioritized summary adjudication.¹³⁹
- c. Issuance, within the Final HSR, of draft abstracts for water uses eligible for prioritized summary adjudication.
- d. A streamlined objection process.
- e. Adjudication of the draft abstracts before other contested cases in the Verde River Watershed begin.
- f. Inclusion of approved abstracts in the Special Master's Catalog of Proposed Water Rights for final adjudication and administration.

1.0 Eligibility for Prioritized Summary Adjudication

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

To be eligible for prioritized summary adjudication, every *de minimis* use must have a matching statement of claimant and basis of right sixty days prior to the issuance of the Final HSR. If a *de minimis* water use lacks the required documents, the Special Master will not prioritize the use. After the water user has obtained the required documents, the Special Master will schedule the contested case, but only subject to the Special Master's timeline.

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, or is any other way inaccurate, the use will not be eligible for

¹³⁹ 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.

1 prioritized summary adjudication.

2 **1.2 Pre-Adjudication Documents**

3 For the purpose of establishing eligibility for prioritized summary adjudication, the
4 water use must have a matching basis of right, i.e. a prior decree, a statement of claim,¹⁴⁰
5 or a water right certificate.

6 **1.3 Groundwater Uses**

7 A well within the subflow zone is presumed to be pumping subflow.¹⁴¹
8 However, that presumption may be rebutted by demonstrating the well is pumping
9 percolating groundwater.¹⁴² Claimants who wish to object to the presumption of
10 pumping subflow are not eligible for summary adjudication. If a well-owner chooses to
11 participate in a summary adjudication process, they waive their opportunity to object to
12 pumping subflow at a later date. Wells outside of the subflow zone are not eligible for
13 summary adjudication.

15 **2.0 Issuance of Abstracts**

16 **2.1 Screening and Curing *De Minimis* Uses**

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

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

25 /

27 ¹⁴⁰ Note that a Statement of Claim may serve as a basis of right only for only pre-1919 water right claims.

28 ¹⁴¹ In re General Adjudication of All Rights to Use Water in Gila River System and Source, 175 Ariz. 382 (1993)

¹⁴² In re General Adjudication of All Rights to Use Water in Gila River System and Source, 198 Ariz. 330 (2000)

2.2 Inclusion of Abstracts in the HSR.

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

2.3 Abstract Attributes

Summary adjudication does not create a legal basis for an appropriable water right. A claimant seeking summary adjudication of their *de minimis* claim must provide a legally sufficient basis for their water right.¹⁴³ A draft abstract for a proposed water right for a *de minimis* use shall be defined by specific attributes. If circumstances necessitate a deviation from the listed attributes, the potential water right is not eligible for summary adjudication procedures, and the water user must seek adjudication through the standard process.

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 water right recommended to be included 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 for any Arizona State Trust Land produced by ADWR will name ASLD as the owner. If a party believes an exception listed in Arizona Revised Statutes section 37-321.01 applies, that party may object based upon the statute before entry of the Final Report concerning the relevant

¹⁴³ Minute Entry at 6 (June 14, 2022)

1 subwatershed.¹⁴⁴ Water rights on federal lands will be presumed to be owned by the
2 United States. Any permitted user, whether by permit, lease, or any other authorization,
3 bears the burden of showing ownership of any potential water right.

4 **2.3.3 Statement of Claimant Associated with Potential Water Right**

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

9 **2.3.4 Basis of Water Right**

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

- 15 a. Prior judicial decrees.
- 16 b. Water Rights Registration Act filings.¹⁴⁵
- 17 c. Certificates of Water Right.¹⁴⁶
- 18 d. Stockpond Registration Act Certificates.¹⁴⁷

19 **2.3.5 Beneficial Use**

- 20 a. A domestic (DM) beneficial use will be assigned to self-supplied
21 appropriative water rights serving a residence, or multiple residences up to a
22 maximum of three residential connections, for household purposes with
23 associated irrigation of lawns, gardens or landscape in an amount of not more
24 than one-half acre per residence.

25 ¹⁴⁴ This objection may not be filed during the HSR objection period.

26 ¹⁴⁵ Arizona Revised Statutes §§ 45-181 to 190. Note that these filings, Statements of Claim, may serve as a basis of
27 right for only pre-1919 water right claims.

28 ¹⁴⁶ Arizona Revised Statutes §§ 45-151 to 166.

¹⁴⁷ Ariz. Rev. Stat. § 45-275(C).

- b. A stockpond (SP) beneficial use will be assigned to an on-channel or off-channel impoundment that stores water that is appropriable and that is for the sole purpose of watering livestock and wildlife.
- c. A stock and wildlife watering (SW) beneficial use will be assigned to unimproved and improved instream watering, and watering from a small facility, other than a stockpond, that is used solely by stock and wildlife.
- d. A wildlife (WL) beneficial use will be summarily adjudicated for unimproved instream watering, improved instream watering, and watering at a pond or artificial facility.

2.3.6 Priority Date

Priority dates 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 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 will be the claimed quantity, not to exceed (\leq) 1 acre-foot per year.

b. Stock and Wildlife Ponds

The quantity assigned will be “a volume not to exceed (\leq) 4 acre-feet with continuous fill.”

1 **c. Stock and Wildlife Watering**

2 The quantity assigned will be "reasonable use."

3 **2.3.8 Place of Use and Point of Diversion**

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

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

20 Where GPS coordinates can be reasonably identified, the coordinates shall also be
21 included in the draft abstract. Unless the WFR provides evidence otherwise, the place of
22 use shall also be the point of diversion.

23 **2.3.9 Source of the Water**

24 The "drainage area/water source name" information listed in a WFR will be the
25 description of the source in the abstract. The description must state whether the use is
26 supplied from a surface diversion or from subflow. If possible, the abstract must state the
27 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 that will include the full reach of the stream or river pertinent to the right. The map must be of sufficient scale to reasonably depict the shape of any stockponds and provide sufficient context of the surrounding area to be able to find the locations indicated.

3.0 Corrections and Objections

3.1 Corrections and Objections to Draft Abstracts

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. typographical or clerical errors.
- b. Objections regarding absence of extrinsic evidence demonstrating the good faith basis of a statement of claim.

ADWR will prepare a form specifically for non-substantive corrections to proposed abstracts included in the Verde River HSRs.

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 summarily adjudicated water rights. The procedures here do not limit objections that may be filed to any potential water right identified in a WFR.

3.2 Objections to Final Report

Claimants may file the following corrections and objections to abstracts contained within a Subwatershed Final Report issued pursuant to the Rules of Proceedings Before the Special Master section 16.00 and Arizona Revised Statutes section 45-257(A)(2):

- a. Non-substantive corrections that could not have been suggested at the time of the initial objection period, e.g. corrections concerning change in ownership or place of use.

1 b. Corrections or objections to ownership of water rights on public lands.

2
3 **4.0 Post-Decree Administration**

4 Once a proposed water right is included in a final decree, the right may be subject to
5 enforcement by the holders of senior water rights in the same manner as rights that are not
6 summarily adjudicated. In the event that a *de minimis* right holder seeks to enforce their
7 right or another user seeks to enforce against a *de minimis* right holder, the right holder may
8 be required to provide complete, detailed evidence of their right. However, holders of
9 summarily adjudicated water rights will be permitted to assert the futile call doctrine in an
10 enforcement action to the extent that such doctrine would be otherwise applicable.

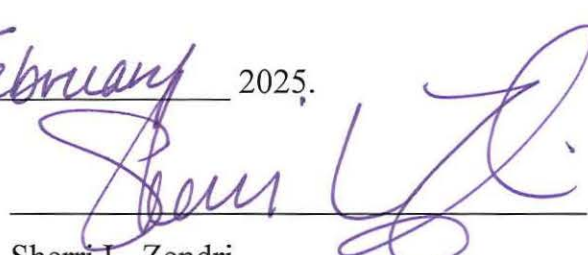
11
12 **VI. MOTION FOR ADOPTION OF SPECIAL MASTER'S REPORT**

13 If the Court declines to adopt summary adjudication procedures for *de minimis*
14 uses in the Verde River Watershed, parties claiming water rights for those uses will be
15 required to incur significant time and expense irrespective of whether their uses would
16 ever impact downstream senior rights holders. Therefore, under Rule 53(f) of the
17 Arizona Rules of Civil Procedure, the Special Master moves the Court to adopt the
18 findings of fact, conclusions of law, and procedural recommendations made in this
19 Report.

20
21 **VII. PROCEDURE TO FILE WRITTEN OBJECTIONS TO THE REPORT**

22 Written objections to this Report must be filed on or before **April 14, 2025**, with the
23 Clerk of the Maricopa County Superior Court. Written responses must be filed by **May 14,**
24 **2025**. No replies will be permitted.

25 DATED this 13th day of February 2025.

26
27 
28 Sherri L. Zendri
Special Water Master

1 On February 13, 2025, the
2 original of the foregoing was delivered to the
3 Clerk of the Apache County Superior Court
4 for filing and distributing a copy to all persons
5 listed on the Court-approved mailing lists for
6 and to the Clerk of the Maricopa County
7 Superior court for filing and distributing a
8 copy to all persons listed on the Court-
9 approved mailing list for Case No. **W1-106**

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Emily Natale