

OFFICE OF THE SPECIAL MASTER
Arizona General Stream Adjudication

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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. W1-106

**OBJECTIONS TO ADWR
TECHICAL REPORT ON *DE*
MINIMIS DOMESTIC,
STOCKPOND, AND STOCK AND
WILDLIFE WATERING USES IN
THE VERDE RIVER WATERSHED**

(Special Master Susan Ward Harris)

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

DESCRIPTIVE SUMMARY: The Town of Chino Valley submits its Objections to ADWR's Technical Report on *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in the Verde River Watershed.

STATEMENT OF CLAIMANT NOS.: 39-46346, 39-46347, 39-54234, 39-54235, 39-58388

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I. Introduction.

The Town of Chino Valley submits these objections to the Arizona Department of Water Resources' Technical Report on *De Minimis* Domestic, Stockpond, and Stock and

Wildlife Watering Uses in the Verde River Watershed (“Technical Report”). As the Town noted in its prior filing on this issue¹, the Town does not itself have *de minimis* water uses addressed in the Technical Report. However, hundreds or thousands of the Town’s residents own small wells that they use to supply their personal domestic water needs. As a result, these residents are directly affected by the Technical Report’s analysis and conclusions regarding *de minimis* domestic water uses. Because the Technical Report used a methodology that vastly overstates the actual impact of *de minimis* water uses served by wells, the Town submits these objections and urges the Special Master to adopt a reasonable domestic *de minimis* standard that applies to the portions of the Verde River watershed above the Paulden gage.

II. The assumptions used by ADWR to estimate self-served domestic water use in the Verde River watershed vastly overstate the amount of appropriable water being used by domestic well owners.

In its analysis of domestic water uses, ADWR employed two assumptions that had the collective effect of greatly overstating the amount of appropriable water that could conceivably be diverted by those uses. This overstatement of impacts is particularly significant in the Big and Little Chino sub-basins above the Paulden gage.

First, ADWR included in its analysis every identifiable housing unit in both the Big and Little Chino sub-basins that is not served by a municipal water provider (identified in the Technical Report as “self-served households”). Technical Analysis at 11 (self-served households determined by subtracting population served by municipal systems from the total population). As ADWR acknowledged in the Summary and Conclusions section of the Technical Report, this results in a “**gross overestimate** of the true impact that self-supplied domestic users have on the available surface water within the Verde River watershed.” *Id.*, at 34 (emphasis added). As ADWR explained:

A major assumption of this impact analysis is that all domestic users are pumping appropriable water regardless of distance from a surface water

¹ Town of Chino Valley’s Response to SRP Proposal for Determining *De Minimis* Domestic Uses, March 28, 2022 (“Town’s Response to SRP Proposal”). Chino Valley incorporates by reference that response in these objections.

1 source. This assumption is **very extreme**, especially considering there are
2 census blocks with domestic water users as far as 27 miles away from the
3 major perennial tributaries to the Verde River. In fact, 71.8% of the
4 population recorded in the 2020 Census were in census blocks of the Verde
5 River watershed that were at least 0.5 miles from any of the major perennial
6 tributaries to the Verde River.

7 *Id.* (emphasis added). This “gross overestimate” is easily illustrated by the numerous
8 domestic wells located in Chino Valley. *See* Town’s Response to SRP Proposal at 4-7 and
9 Exhibit A (documenting locations of hundreds of domestic wells and relative distance from
10 nearest streambed, along with lack of perennial or intermittent streams in most of the Big
11 and Little Chino sub-basins). The vast majority of domestic wells in these sub-basins are
12 not pumping any appropriable water, much less a full acre-foot of appropriable water each
13 year.

14 Second, ADWR further assumes that every one of these wells withdraws a full acre-
15 foot of water per year despite acknowledging that this is “likely a significant overestimate.”
16 Technical Report at 16. ADWR notes that the Bureau of Reclamation, the United States
17 Geological Survey, and the Environmental Protection Agency all have published estimates
18 of household water demand far lower than 1 acre-foot per year (ranging from 0.36 to 0.54
19 acre-feet per year). This additional “significant overestimate” compounds the already
20 severe overestimate caused by including households that are nowhere near a perennial or
21 intermittent stream.

22 By using these two assumptions in its analysis, ADWR undermined two of the
23 criteria the Special Master identified as critical to her analysis of whether a beneficial use
24 is *de minimis*: (i) “the number of beneficial uses [being considered for *de minimis* status]”;
25 and (ii) “the scope and impact of those uses on the appropriable water supply” (both of
26 which the Special Master indicated “require technical assistance from ADWR”). Minute
27 Entry dated May 6, 2022, at 7.

28 ADWR’s assumptions greatly overstate both the number of beneficial uses (i.e., the
number of self-served domestic uses) drawing appropriable water and the impact of those
beneficial uses on the appropriable water supply. As a result, ADWR failed to provide

1 accurate technical assistance to the Special Master on two of the essential criteria for
2 determining whether to establish a *de minimis* standard for self-served domestic water uses.

3 **III. ADWR cites statistics in the Technical Report that should have been used to**
4 **generate a more accurate estimate of *de minimis* impacts to appropriable water**
5 **in the Verde River Watershed.**

6 ADWR could have avoided the deficiencies in the Technical Report by more
7 accurately characterizing the likely impacts to appropriable water from self-served domestic
8 water uses. In fact, the information to do so is contained in the Technical Report.
9 Specifically, the statistics that ADWR cites while acknowledging that its calculations are
10 “gross overestimates” can be used to estimate more realistically (but still conservatively)
11 potential impacts to appropriable water from these water uses.

12 As ADWR notes, 71.8% of the self-served population in the Verde River watershed
13 is more than 0.5 miles away from the nearest surface stream, with some as far as 27 miles
14 away. Technical Report, at 34. If these water uses are excluded from ADWR’s calculation,
15 the estimated number of self-served domestic water uses that have any realistic chance of
16 impacting appropriable water supplies would be reduced from 20,972 to 5,914 ($20,972 \times$
17 $.282$). Although ADWR does not separately break down the percentage of self-served
18 domestic water uses within 0.5 miles of a perennial stream in the Big and Little Chino sub-
19 basins, applying the 71.8% figure to these sub-basins (likely a substantial overestimate
20 given the general lack of perennial or intermittent streams there), would yield a total of
21 2,973 self-served domestic uses rather than ADWR’s calculation of 10,542.

22 Similarly, rather than assuming every one of these households pumps a full acre-foot
23 of water each year, the estimates published by multiple federal agencies of actual water use
24 should be used to calculate a more realistic quantity for self-served domestic water uses.
25 Even using the highest of these estimates – 0.54 acre-feet per year – would result in a more
26 realistic overall pumping quantity of 3,194 acre-feet per year ($5,914$ self-served domestic
27 uses $\times 0.54$ acre-feet per year).² This is more than 17,000 acre-feet less than the quantity

28 ² The calculated total for the Big and Little Chino sub-basins would be 1,605 acre-feet per
year ($2,973 \times 0.54$).

1 ADWR calculated by using its unrealistically high estimates of appropriable water
2 withdrawals by self-served water users. See Technical Report at 16, Table 4.

3 This approach is not inconsistent with the Special Master's determination that if a *de*
4 *minimis* standard is adopted for self-served domestic water uses the assigned quantity for
5 each such use should be 1 acre-foot per year. The purpose of assigning a standard quantity
6 (whether 1 acre-foot or any other amount) is to avoid having to individually determine a
7 quantity of beneficial use for numerous *de minimis* water users. However, when evaluating
8 in the first instance whether to establish a *de minimis* standard for self-served domestic
9 water uses, realistic estimates of **actual** water use should be used to calculate potential
10 impacts on appropriable water in the Verde River watershed. Based on the published
11 estimates from multiple federal agencies cited by ADWR in the Technical Report, a number
12 substantially below 1 acre-foot per year should be used for this purpose.

13 Even this lower calculated quantity of water withdrawn by self-served domestic
14 users is still conservative. Given the very small volumes of water withdrawn by such users,
15 a substantial portion of the water they withdraw will very likely be percolating groundwater
16 rather than subflow, even for owners of wells within half a mile of a stream. Rather than
17 expending limited resources to conduct depletion tests on all these small wells, the Court,
18 ADWR, and the parties would all be better served by adoption of a *de minimis* standard for
19 these water uses.

20 In the absence of such a standard, the Special Master would face the prospect of
21 individually adjudicating thousands of domestic water uses in the Verde River watershed.
22 As Chino Valley noted in its Response to SRP's Proposal, doing so would take decades
23 without achieving any meaningful benefit to the Verde River watershed or downstream
24 surface water claimants. As a practical matter, it is impossible to address self-served
25 domestic uses in any way other than a streamlined *de minimis* process.

26 IV. Conclusion.

27 As the Special Master has noted, "[a] *de minimis* determination is fundamentally a
28 case management decision by the court that the benefits of fully adjudicating all attributes

1 of certain types of claims are substantially outweighed by the costs that must be incurred
2 by the parties and the court.” Minute Entry dated May 6, 2022, at 6. ADWR’s “gross
3 overestimate” of potential impacts from self-served domestic water uses throughout the
4 Verde River watershed threatens to undermine the beneficial effects of a *de minimis*
5 determination for this category of water use. To avoid this outcome, Chino Valley urges
6 the Special Master to employ much more realistic estimates of potential impacts from these
7 water uses and adopt an appropriate *de minimis* standard for domestic uses, including in the
8 Big and Little Chino sub-basins above the Paulden gage.

9 DATED this 28th day of October 2022.

10 SNELL & WILMER L.L.P.

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12 By: _____

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21 ORIGINAL of the foregoing FILED
22 this 28th day of October 2022, to:

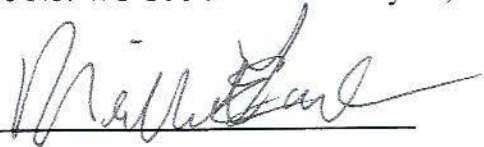
23 Clerk of the Court
24 Maricopa County Superior Court
25 Attention: Water Case
26 601 West Jackson Street
27 Phoenix, Arizona 85003

28 One COPY hand-delivered to:

Honorable Mark H. Brain
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Phoenix, AZ 85003
Susan Ward Harris
Special Master
Central Court Building, Ste 3A
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Phoenix, AZ 85003

1 AND COPIES mailed this 28th day of
2 October 2022, to all persons appearing
3 on the Court Approved Mailing List for
4 Case No. W1-106 dated February 11, 2022.
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ATTORNEYS FOR THE CITY OF PHOENIX

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

Case Nos.: W-1, W-2, W-3, and W-4
(Consolidated) (Gila)

Contested Case No. W1-106

**CITY OF PHOENIX'S COMMENTS
ON AND OBJECTIONS TO THE
ARIZONA DEPARTMENT OF
WATER RESOURCES' TECHNICAL
REPORT CONCERNING *DE*
MINIMIS DOMESTIC,
STOCKPOND, AND STOCK AND
WILDLIFE WATERING USES IN
THE VERDE RIVER WATERSHED**

(Assigned to the Hon. Mark H. Brain)

(Referred to Special Master Susan Ward
Harris)

CONTESTED CASE NAME: *In re Subflow Technical Report, Verde River Watershed,*
Contested Case No. W1-106

DESCRIPTIVE SUMMARY: The City of Phoenix files its Comments on and Objections to
the Arizona Department of Water Resources' Technical Report Concerning *De Minimis*
Domestic, Stockpond, and Stock and Wildlife Watering Uses in the Verde River Watershed.

STATEMENT OF CLAIMANT NOS.: Phoenix 39-07-7927, 39-05-50153 through 39-05-
50155, inclusive, and 39-L8-37666 through 39-L8-37691, inclusive.

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M. ANTELO
DEPUTY CLERK

OFFICE OF THE SPECIAL MASTER
Arizona General Stream Adjudication

OCT 31 2022

1 **I. Introduction.**

2 In accordance with the Special Master's Minute Entry, filed June 14, 2022 ("June 14
3 Minute Entry"), the City of Phoenix ("City" or "Phoenix") submits the following comments
4 on and objections to the Arizona Department of Water Resources' Technical Report
5 Concerning *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in the
6 Verde River Watershed, August 2022. ("Technical Report").

7 **II. While the Technical Information Provided by ADWR in its Technical Report**
8 **Appears Sound, its Recommendations and Conclusions Should Be Rejected by the**
9 **Special Master.**

10 ADWR's Technical Report "inventories claimed domestic uses, stockpond uses, and
11 stock and wildlife watering uses in the Verde River watershed and assesses the impact of
12 those uses on surface water supplies in the watershed." Technical Report, p. 1. "The purpose
13 of a technical report is to provide data relevant to the issue of the current impact that one
14 group of users of appropriable water in a watershed has on the downstream users of
15 appropriable water currently available" to assist the Court in making a determination of
16 whether certain small water uses are *de minimis*. June 14 Minute Entry, p. 7.

17 As the Special Master has noted, "[a] *de minimis* determination is fundamentally a case
18 management decision by the court that the benefits of fully adjudicating all attributes of
19 certain types of claims are substantially outweighed by the costs that must be incurred by the
20 parties and the court." June 14 Minute Entry, p. 6. "Summary procedures are warranted for
21 water uses that have such a small impact on other water users that administration of those uses
22 in the future is not likely." *Id.* In addition to the information provided in the Technical Report
23 regarding water availability, the number of small uses, and the extent and impact of small
24 uses, the Special Master will consider the "costs and benefits of a complete, rather than
25 summary, adjudication" of these small uses in making a *de minimis* determination. June 14
26 Minute Entry, p. 7.

1 ADWR's Technical Report in Tables 1 through 14 includes data and calculations of
2 water flows in the Verde River watershed, domestic use demands,¹ stockpond use demands,
3 stock and wildlife use demands, and the impacts of those uses on the water flows. It includes
4 the median monthly flows for low-flow months, as well as the median annual flows, as
5 measured at the Paulden, Chino Valley, and Tangle Creek gages, as was ordered by the June
6 14 Minute Entry. It provides the Court with the information necessary to determine whether
7 the impacts of these water uses are sufficiently minimal as to warrant a summary procedure to
8 adjudicate the rights associated with the uses. The City has no objections to the data and
9 information as summarized in Tables 1 through 14.

10 ADWR, however, went beyond merely providing technical information to the Court. It
11 also interpreted that data and recommends a *de minimis* determination for domestic,
12 stockpond, and stock and wildlife uses. It also asserted that the Special Master was incorrect
13 in finding in the June 14 Minute Entry that water flow data from the Paulden and Chino
14 Valley water gages would be relevant to the determination and that she also erred in finding
15 that flow data from the low-flow months of May through July would be relevant to the
16 determinations.

17 The City objects to ADWR's recommended determinations and to its assertions that
18 that information requested by the Special Master should not be considered in making those
19 determinations. Given that the *de minimis* determination is "fundamentally a case
20 management decision by the court," it is beyond the "technical assistance" which ADWR is
21 charged with providing the adjudication court. *See* A.R.S. § 45-256. ADWR's
22 recommendations to the Court as to the ultimate question of whether the Court should adopt a
23 summary procedure for dealing with small water uses should carry little, if any, weight.
24
25

26
27 ¹ The City does not object to the use of 1 AFA per household to estimate domestic demand in the Verde watershed.

1 **III. Contrary to ADWR's Assertions, the Special Master should Consider the Flow**
2 **Data from Additional Gages and for Low-Flow Months in Making *De Minimis***
3 **Determinations.**

4 Although ADWR has provided the information ordered by the Special Master in the
5 June 14 Minute Entry to assist the Court in making *de minimis* determinations, ADWR now
6 asserts that the Special Master should ignore that information. ADWR contends that, in
7 making her determinations, the Special Master should consider only the median annual water
8 flows recorded at the Tangle Creek gage. That gage is located near the end of the Verde
9 River, but upstream of the major dams and reservoirs on the Verde. Its measurements are
10 "indicative of the amount of water available within the Verde Canyon, Lower Verde Valley,
11 Sycamore, Big Chino and Little Chino subwatersheds," that is, all of the Verde watershed.
12 Technical Report, p. 6.

13 ADWR would have the Special Master ignore the information it was ordered to
14 provide regarding stream flows at the Paulden gage, which is located at the lowest point of the
15 Big Chino subwatershed and is "indicative of the amount of water available within the Big
16 Chino and Little Chino subwatersheds," and the Camp Verde gage, which is located where
17 the Verde Canyon subwatershed meets the Lower Verde Valley subwatershed and is
18 "indicative of the amount of water available within the Lower Verde Valley, Sycamore, Big
19 Chino and Little Chino subwatersheds." Technical Report, pp. 6-7.

20 ADWR's approach would result in the Special Master ignoring the potential impact
21 caused by small water uses to other water users in the Lower Verde Valley, Sycamore, Big
22 Chino and Little Chino subwatersheds. The Tangle Creek gage measures available water
23 flows at a point that may be over 75 miles downstream from a water user in the Big Chino or
24 Little Chino subwatersheds and that may be over 40 miles downstream from a water user in
25 the Lower Verde Valley or Sycamore subwatersheds.² The availability of water flows miles
26

27 ² See, generally, Technical Report, Figure 2.

1 downstream from the diversion point of a water user in one of the upper subwatersheds
2 provides little information on whether that water user may be impacted by small water users
3 upstream of the water user's point of diversion.

4 Further, the information on water flows provided by ADWR in Table 1 shows that
5 Verde flows significantly increase as the river flows downstream. The Paulden gage, which is
6 the upper most gage for which flow data has been provided, reflects a median annual flow of
7 20,411.02 AFA as compared to a median annual flow of 281,336.15 AFA at the farthest
8 downstream Tangle Creek gage. Technical Report, Table 1, p. 8. This significant increase in
9 flows again demonstrates that water measurements at Tangle Creek, in themselves, will
10 provide little information on whether diverters much farther upstream, where flows are
11 substantially lower, will be impacted by small water users upstream of them.

12 ADWR asserts that using the stream flow data from the Tangle Creek gage is
13 "appropriate" but that using stream flow data from the other two gages "introduces additional
14 bias." Technical Report, p. 32. ADWR fails to explain clearly why the data from one gage is
15 appropriate but that the data from the other two gages is not—except to note that using the
16 stream flow data from the Paulden gage would indicate that small domestic uses within the
17 Little Chino and Big Chino subwatersheds "appear to have an extremely large percent
18 impact" on water availability. *Id.* To the contrary, this potential "extremely large impact" on
19 other water users is why the Special Master should consider this data in determining whether
20 a summary proceeding is appropriate for small water uses in the Big Chino and Little Chino
21 subwatersheds. This potential significant impact cannot be ignored.

22 Similarly, ADWR urges the Special Master to reject the information which the Special
23 Master specifically requested on monthly stream flow data from the gages for the low-flow
24 months of May, June, and July. ADWR recommends that the Special Master use only the data
25 for the median annual flow. Again, ADWR would have the Special Master ignore "real
26 world" potential impacts on water users from small domestic, stockpond, and stock and
27 wildlife uses.

1 The Special Master has already declared that, in determining the impact to other water
2 users, "the relevant water supply, or the amount of water available in the watershed, is the
3 water supply during the period when there is a greater likelihood that domestic water use will
4 impact other claimants' use of the water supply" and that, therefore, "consideration should
5 also be given to the median flows for May through July at each of the three gauges." June 14
6 Minute Entry, p. 8. Thus, the Special Master has already decided against artificially
7 minimizing potential impacts to water users that would result from looking only at data from
8 a median annual flow measurement. The Special Master was correct originally to request
9 median monthly flow measurements for the low-flow months of the year, and she should
10 reject ADWR's contention that she erred on this point in the June 14 Minute Entry.

11 In accordance with the Special Master's June 14 Minute Entry, ADWR has gathered
12 and calculated flow data from the Paulden, Camp Verde, and Tangle Creek gages. Technical
13 Report, Table 1, p. 8. It has provided a median annual flow and the median monthly flows for
14 the months of May, June, and July for each gage. *Id.* All of this information should educate
15 the Court's determination of whether to establish a summary procedure for small water uses
16 in the Verde watershed or in the individual subwatersheds of the Verde. There is no reason to
17 ignore any of the relevant information provided to the Court by the Technical Report.

18 **IV. The Technical Information Demonstrates that Domestic Uses Significantly Impact**
19 **Water Flows throughout the Verde Watershed.**

20 Contrary to ADWR's analysis, the totality of the information provided by the
21 Technical Report establishes that domestic water uses significantly impact the water flows in
22 the Verde watershed. Calculated impacts of domestic water uses at the Paulden Gage for the
23 Little Chino and Big Chino subwatersheds exceed 60% during each of the months of May-
24 July and exceed 50% for the year. Technical Report, Table 4, p. 16. During the low-flow
25 months of May-July, the impact on the median monthly flows at the Camp Verde gage
26 exceeds 25% each month. *Id.* Even at the Tangle Creek gage, where flows are greatest,
27 impacts of domestic users on the median monthly flow for June exceed 25%. *Id.*

1 The Special Master should consider the significant impacts of domestic uses on the
2 water flows in the Verde, and the potential impacts of those domestic uses on other water
3 users, in determining whether a *de minimis* summary procedure is appropriate for domestic
4 uses in the Verde watershed.

5 **V. The Technical Information Demonstrates that Stockpond Uses Significantly**
6 **Impact Water Flows throughout the Verde Watershed, Particularly in the Upper**
7 **Subwatersheds.**

8 Similarly, the totality of the information provided by the Technical Report establishes
9 that stockpond uses significantly impact the water flows in the Verde watershed. The percent
10 impacts of stockpond uses as reflected on Table 8 show an impact of over 25% on the median
11 monthly flows in all three of the dry months of May through July and median annual flows of
12 almost 24% for the Little Chino and Big Chino subwatershed. Technical Report, p. 22. The
13 impacts reflected at the Camp Verde gage for the four upper subwatersheds range from
14 15.51% to 22.22% for those dry months. *Id.* Even at the farthest downstream gage, Tangle
15 Creek, where flows are heaviest, the impact exceeds 15% for the dry month of June. *Id.*
16 Again, contrary to ADWR's analysis, the Special Master should consider these significant
17 impacts in determining whether a summary adjudication is appropriate for stockpond uses in
18 the Verde watershed.

19 **VI. The Technical Information Demonstrates that Stock and Wildlife Uses Cause a**
20 **De Minimis Impact on Water Flows throughout the Verde Watershed.**

21 The impacts of stock and wildlife uses on the median monthly and median annual
22 flows of all the gages range from 0.62% to 3.53%. Technical Report, Table 14, p. 31. These
23 impacts seem to be sufficiently *de minimis* so as to be appropriate for summary adjudication.

24 **VII. Conclusion.**

25 In the June 14 Minute Entry, the Special Master correctly held that water flows as
26 measured by the Paulden and Chino Valley gages, as well as the Tangle Creek gage, and that
27 median monthly flow values for the low flow months of May, June, and July, in addition to

1 median annual flow values, would be relevant in analyzing the impacts of small water uses in
2 the Verde watershed on downstream water users. ADWR has appropriately provided that
3 technical information, as ordered by the Special Master. The totality of the information
4 provided in the Technical Report evidences that domestic uses and stockpond uses
5 significantly impact the flows in the Verde watershed. The Special Master should reject
6 ADWR's recommendations and should weigh all of the information provided carefully in
7 determining whether a summary adjudication of domestic uses and stockpond uses is
8 appropriate in the Verde watershed.

9 RESPECTFULLY SUBMITTED this 28th day of October, 2022.

10
11 Cris Meyer, City Attorney

12
13 By 

14 CHARLES L. CAHOY

15 Assistant City Attorney

16 200 West Washington, Suite 1300

17 Phoenix, Arizona 85003-1611

18 Attorney for the City of Phoenix

19
20 ORIGINAL of the foregoing hand-delivered
for filing this 28th day of October, 2022, with:

21 Clerk of the Superior Court
22 Maricopa County
23 Attn: Water Case
601 West Jackson Street
Phoenix, Arizona 85003

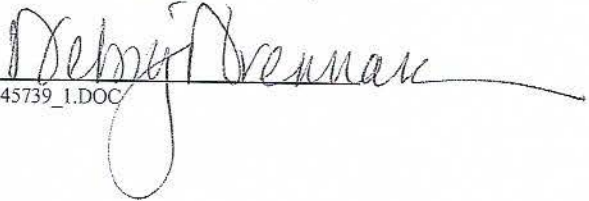
24 AND COPY hand-delivered this
28th day of October, 2022, to:

25 Susan Ward Harris
26 Special Master
27 Central Court Building, Ste. 3A
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COPIES of the foregoing sent
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on the Court-Approved Mailing Lists
for Contested Case W1-106, dated 7/28/2022

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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
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SOURCE

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

Contested Case No. W1-106

**NOTICE OF ERRATA REGARDING
OBJECTIONS TO ADWR
TECHNICAL REPORT ON *DE
MINIMIS* DOMESTIC,
STOCKPOND, AND STOCK AND
WILDLIFE WATERING USES IN
THE VERDE RIVER WATERSHED**

(Special Master Susan Ward Harris)

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

DESCRIPTIVE SUMMARY: The Town of Chino Valley submits its Notice of Errata Regarding its Objections to ADWR's Technical Report on *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in the Verde River Watershed.

STATEMENT OF CLAIMANT NOS.: 39-46346, 39-46347, 39-54234, 39-54235, 39-58388

NUMBER OF PAGES: 3 + 7 pages (including attachment)

DATE OF FILING: October 31, 2022

The Town of Chino Valley files this Notice of Errata to submit a signed duplicate original of Objections the Town filed regarding the Arizona Department of Water Resources' Technical Report on *De Minimis* Domestic, Stockpond, and Stock and Wildlife

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

Watering Uses in the Verde River Watershed. The Town originally filed its Objections on October 28, 2022, but the Objections were inadvertently filed without an attorney's signature. The attached signed duplicate original of the Town's objections is identical to the Objections filed on October 28, 2022 other than the signature of undersigned counsel.

RESPECTFULLY SUBMITTED this 31st day of October 2022.

SNELL & WILMER L.L.P.

By:



L. William Staudenmaier
John D. Burnside
One East Washington Street
Suite 2700
Phoenix, Arizona 85004-2556
Telephone: 602.382.6000
Facsimile: 602.382.6070
Attorneys for Town of Chino Valley

ORIGINAL of the foregoing FILED
this 31st day of October 2022, to:

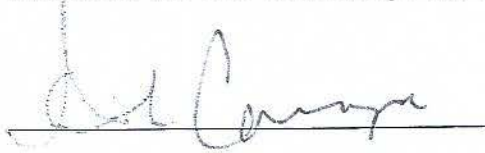
Clerk of the Court
Maricopa County Superior Court
Attention: Water Case
601 West Jackson Street
Phoenix, Arizona 85003

One COPY hand-delivered to:

Honorable Mark H. Brain
Judge of the Superior Court
Central Court Building, Suite 12A
201 West Jefferson
Phoenix, AZ 85003

Susan Ward Harris
Special Master
Central Court Building, Ste 3A
201 West Jefferson
Phoenix, AZ 85003

1 AND COPIES mailed this 31st day of
2 October 2022, to all persons appearing
3 on the Court Approved Mailing List for
4 Case No. W1-106 dated July 28, 2022.
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L. William Staudenmaier (ASB #012365)
wstaudenmaier@swlaw.com
John D. Burnside (ASB #018260)
jburnside@swlaw.com
SNELL & WILMER L.L.P.
One East Washington Street
Suite 2700
Phoenix, Arizona 85004-2556
Telephone: 602.382.6000
Attorneys for Town of Chino Valley

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. W1-106

**OBJECTIONS TO ADWR
TECHICAL REPORT ON *DE
MINIMIS DOMESTIC,
STOCKPOND, AND STOCK AND
WILDLIFE WATERING USES IN
THE VERDE RIVER WATERSHED***

(Special Master Susan Ward Harris)

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

DESCRIPTIVE SUMMARY: The Town of Chino Valley submits its Objections to ADWR's Technical Report on *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in the Verde River Watershed.

STATEMENT OF CLAIMANT NOS.: 39-46346, 39-46347, 39-54234, 39-54235, 39-58388

NUMBER OF PAGES: 7

DATE OF FILING: October 28, 2022

I. Introduction.

The Town of Chino Valley submits these objections to the Arizona Department of Water Resources' Technical Report on *De Minimis* Domestic, Stockpond, and Stock and

1 Wildlife Watering Uses in the Verde River Watershed (“Technical Report”). As the Town
2 noted in its prior filing on this issue¹, the Town does not itself have *de minimis* water uses
3 addressed in the Technical Report. However, hundreds or thousands of the Town’s
4 residents own small wells that they use to supply their personal domestic water needs. As
5 a result, these residents are directly affected by the Technical Report’s analysis and
6 conclusions regarding *de minimis* domestic water uses. Because the Technical Report used
7 a methodology that vastly overstates the actual impact of *de minimis* water uses served by
8 wells, the Town submits these objections and urges the Special Master to adopt a reasonable
9 domestic *de minimis* standard that applies to the portions of the Verde River watershed
10 above the Paulden gage.

11 **II. The assumptions used by ADWR to estimate self-served domestic water use in**
12 **the Verde River watershed vastly overstate the amount of appropriable water**
13 **being used by domestic well owners.**

14 In its analysis of domestic water uses, ADWR employed two assumptions that had
15 the collective effect of greatly overstating the amount of appropriable water that could
16 conceivably be diverted by those uses. This overstatement of impacts is particularly
17 significant in the Big and Little Chino sub-basins above the Paulden gage.

18 First, ADWR included in its analysis every identifiable housing unit in both the Big
19 and Little Chino sub-basins that is not served by a municipal water provider (identified in
20 the Technical Report as “self-served households”). Technical Analysis at 11 (self-served
21 households determined by subtracting population served by municipal systems from the
22 total population). As ADWR acknowledged in the Summary and Conclusions section of
23 the Technical Report, this results in a “**gross overestimate** of the true impact that self-
24 supplied domestic users have on the available surface water within the Verde River
25 watershed.” *Id.*, at 34 (emphasis added). As ADWR explained:

26 A major assumption of this impact analysis is that all domestic users are
27 pumping appropriable water regardless of distance from a surface water

28 ¹ Town of Chino Valley’s Response to SRP Proposal for Determining *De Minimis* Domestic
Uses, March 28, 2022 (“Town’s Response to SRP Proposal”). Chino Valley incorporates
by reference that response in these objections.

1 source. This assumption is **very extreme**, especially considering there are
2 census blocks with domestic water users as far as 27 miles away from the
3 major perennial tributaries to the Verde River. In fact, 71.8% of the
4 population recorded in the 2020 Census were in census blocks of the Verde
5 River watershed that were at least 0.5 miles from any of the major perennial
6 tributaries to the Verde River.

7 *Id.* (emphasis added). This “gross overestimate” is easily illustrated by the numerous
8 domestic wells located in Chino Valley. *See* Town’s Response to SRP Proposal at 4-7 and
9 Exhibit A (documenting locations of hundreds of domestic wells and relative distance from
10 nearest streambed, along with lack of perennial or intermittent streams in most of the Big
11 and Little Chino sub-basins). The vast majority of domestic wells in these sub-basins are
12 not pumping any appropriable water, much less a full acre-foot of appropriable water each
13 year.

14 Second, ADWR further assumes that every one of these wells withdraws a full acre-
15 foot of water per year despite acknowledging that this is “likely a significant overestimate.”
16 Technical Report at 16. ADWR notes that the Bureau of Reclamation, the United States
17 Geological Survey, and the Environmental Protection Agency all have published estimates
18 of household water demand far lower than 1 acre-foot per year (ranging from 0.36 to 0.54
19 acre-feet per year). This additional “significant overestimate” compounds the already
20 severe overestimate caused by including households that are nowhere near a perennial or
21 intermittent stream.

22 By using these two assumptions in its analysis, ADWR undermined two of the
23 criteria the Special Master identified as critical to her analysis of whether a beneficial use
24 is *de minimis*: (i) “the number of beneficial uses [being considered for *de minimis* status]”;
25 and (ii) “the scope and impact of those uses on the appropriable water supply” (both of
26 which the Special Master indicated “require technical assistance from ADWR”). Minute
27 Entry dated May 6, 2022, at 7.

28 ADWR’s assumptions greatly overstate both the number of beneficial uses (i.e., the
number of self-served domestic uses) drawing appropriable water and the impact of those
beneficial uses on the appropriable water supply. As a result, ADWR failed to provide

1 accurate technical assistance to the Special Master on two of the essential criteria for
2 determining whether to establish a *de minimis* standard for self-served domestic water uses.

3 **III. ADWR cites statistics in the Technical Report that should have been used to**
4 **generate a more accurate estimate of *de minimis* impacts to appropriable water**
5 **in the Verde River Watershed.**

6 ADWR could have avoided the deficiencies in the Technical Report by more
7 accurately characterizing the likely impacts to appropriable water from self-served domestic
8 water uses. In fact, the information to do so is contained in the Technical Report.
9 Specifically, the statistics that ADWR cites while acknowledging that its calculations are
10 “gross overestimates” can be used to estimate more realistically (but still conservatively)
11 potential impacts to appropriable water from these water uses.

12 As ADWR notes, 71.8% of the self-served population in the Verde River watershed
13 is more than 0.5 miles away from the nearest surface stream, with some as far as 27 miles
14 away. Technical Report, at 34. If these water uses are excluded from ADWR’s calculation,
15 the estimated number of self-served domestic water uses that have any realistic chance of
16 impacting appropriable water supplies would be reduced from 20,972 to 5,914 ($20,972 \times$
17 $.282$). Although ADWR does not separately break down the percentage of self-served
18 domestic water uses within 0.5 miles of a perennial stream in the Big and Little Chino sub-
19 basins, applying the 71.8% figure to these sub-basins (likely a substantial overestimate
20 given the general lack of perennial or intermittent streams there), would yield a total of
21 2,973 self-served domestic uses rather than ADWR’s calculation of 10,542.

22 Similarly, rather than assuming every one of these households pumps a full acre-foot
23 of water each year, the estimates published by multiple federal agencies of actual water use
24 should be used to calculate a more realistic quantity for self-served domestic water uses.
25 Even using the highest of these estimates – 0.54 acre-feet per year – would result in a more
26 realistic overall pumping quantity of 3,194 acre-feet per year ($5,914$ self-served domestic
27 uses $\times 0.54$ acre-feet per year).² This is more than 17,000 acre-feet less than the quantity

28 ² The calculated total for the Big and Little Chino sub-basins would be 1,605 acre-feet per
year ($2,973 \times 0.54$).

ADWR calculated by using its unrealistically high estimates of appropriable water withdrawals by self-served water users. See Technical Report at 16, Table 4.

This approach is not inconsistent with the Special Master's determination that if a *de minimis* standard is adopted for self-served domestic water uses the assigned quantity for each such use should be 1 acre-foot per year. The purpose of assigning a standard quantity (whether 1 acre-foot or any other amount) is to avoid having to individually determine a quantity of beneficial use for numerous *de minimis* water users. However, when evaluating in the first instance whether to establish a *de minimis* standard for self-served domestic water uses, realistic estimates of **actual** water use should be used to calculate potential impacts on appropriable water in the Verde River watershed. Based on the published estimates from multiple federal agencies cited by ADWR in the Technical Report, a number substantially below 1 acre-foot per year should be used for this purpose.

Even this lower calculated quantity of water withdrawn by self-served domestic users is still conservative. Given the very small volumes of water withdrawn by such users, a substantial portion of the water they withdraw will very likely be percolating groundwater rather than subflow, even for owners of wells within half a mile of a stream. Rather than expending limited resources to conduct depletion tests on all these small wells, the Court, ADWR, and the parties would all be better served by adoption of a *de minimis* standard for these water uses.

In the absence of such a standard, the Special Master would face the prospect of individually adjudicating thousands of domestic water uses in the Verde River watershed. As Chino Valley noted in its Response to SRP's Proposal, doing so would take decades without achieving any meaningful benefit to the Verde River watershed or downstream surface water claimants. As a practical matter, it is impossible to address self-served domestic uses in any way other than a streamlined *de minimis* process.

IV. Conclusion.

As the Special Master has noted, "[a] *de minimis* determination is fundamentally a case management decision by the court that the benefits of fully adjudicating all attributes

1 of certain types of claims are substantially outweighed by the costs that must be incurred
2 by the parties and the court.” Minute Entry dated May 6, 2022, at 6. ADWR’s “gross
3 overestimate” of potential impacts from self-served domestic water uses throughout the
4 Verde River watershed threatens to undermine the beneficial effects of a *de minimis*
5 determination for this category of water use. To avoid this outcome, Chino Valley urges
6 the Special Master to employ much more realistic estimates of potential impacts from these
7 water uses and adopt an appropriate *de minimis* standard for domestic uses, including in the
8 Big and Little Chino sub-basins above the Paulden gage.

9 DATED this 28th day of October 2022.

10 SNELL & WILMER L.L.P.

11
12 By: 

13 L. William Staudenmaier
14 John D. Burnside
15 One East Washington Street
16 Suite 2700
17 Phoenix, Arizona 85004-2556
18 Telephone: 602.382.6000
19 Facsimile: 602.382.6070
20 Attorneys for Town of Chino Valley

21 ORIGINAL of the foregoing FILED
22 this 28th day of October 2022, to:

23 Clerk of the Court
24 Maricopa County Superior Court
25 Attention: Water Case
26 601 West Jackson Street
27 Phoenix, Arizona 85003

28 One COPY hand-delivered to:

Honorable Mark H. Brain
Judge of the Superior Court
Central Court Building, Suite 12A
201 West Jefferson
Phoenix, AZ 85003
Susan Ward Harris
Special Master
Central Court Building, Ste 3A
201 West Jefferson
Phoenix, AZ 85003

1 AND COPIES mailed this 28th day of
2 October 2022, to all persons appearing
3 on the Court Approved Mailing List for
4 Case No. W1-106 dated February 11, 2022.

5 /s/ Michelle Langel

OCT 31 2022

CLERK OF THE SUPERIOR COURT

FILED

10/28/2022 8:00am

M. Antelo, Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Brian Murphy

Mailing Address 3325 N. Runningwolf Ln. Rimrock AZ 86335 property

PO Box 2 Sed Az 86339

Telephone No. 928 282 2424

Statement of Claimant No. (if filed) Filing soon

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

Please see the Attachment for comments and objections.

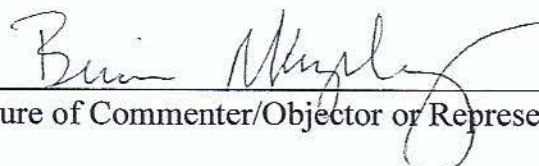
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CERTIFICATE OF SERVICE

On this 24 day of oct., 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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

If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022.**



Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed)_____

Mailing Address_____

Telephone Number_____

Comments and Objections to Case No. W1-106

I, Brian Murphy, Object Case No. W1-106. I already have water rights with a registered well on the deed. Just renaming something "de minimis" to steal my water or try to make me pay for something that is already my property is Absurd. I am extremely careful of my use of water. I use only a reasonable amount of water from my well.

If you are going to steal my water. then by the law of land, the arizona state constitution. you will have to properly and fairly compensate me. If you steal, cap my well, or meter, it is unacceptable to me. You will have to pay me for that, not me paying you.

I do beleive that this civil rights issue as you are targeting the poor area of yavapai county that does not have the financial resources to defend its property rights.

The salt river project, Maricopa county and the State of Arizona have mismanaged the water in the State of Arizona for decades. For one they are allowing continued building on massive projects when there is no water to support it. For instance Bill Gates, Belmont Super City, which is over 20000 acres, 80000 homes and 250000 people. This is insanity. There is also Foriegn powers stealing our water for thier farms throughout the state.

I have heard of many real estate projects in maricopa with zero planning for water. Maricopa county thinks it can just keep building, because they want growth and the Taxes, This is kind of attitude is unsustainable and elitist and has zero regard for the current population of northern Arizona or myself.

I reject The Salt River projects claim to water rights because they think they have those rights before Arizona was a state. They are running a monopoly that must be broken up by the State of Arizona. The Water belongs to the People of Arizona not the Salt River Project.

I also believe the Arizona State Legislature appointing their own judge is illegal. Judges in the State are voted in by the People of Arizona not by the Lesiglature. This is not the EU or Russia. My State Rep will not even return my phone calls in this matter. So basically I have no Representation in this matter. The Arizona Attorney General also appears to not be defending my rights in this matter as well. This is just Organized Theft plain and simple.

OCT 31 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTION INFORMATION

Name (printed) Frances Scurei

Mailing Address 32015 N. 168th Street
Rio Verde, Arizona 85263

Telephone No. (602) 920-3898

Statement of Claimant No. (if filed) No number received as yet.

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

I do not have enough personal information to object
to the technical report. However, I am in favor
of granting all DE MINIMIS domestic, stockpond and stock

1 and wildlife watering users the right to use water in the
2 Rio Verde watershed.

3 Please notify me with any further information on this issue.
4

5 CERTIFICATE OF SERVICE

6 On this 21 day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13 

14 Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) Frances Scurei

18 Mailing Address 32015 N. 168th St.

19 Rio Verde, Arizona 85263

20 Telephone Number (602) 920-3898
21
22
23
24
25
26

OCT 31 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Justine Schlaible

Mailing Address 4001 E Perkinsville Road
Chino Valley AZ 86323

Telephone No. 928-710-4111

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

I/we are in objection to technical report concerning
de Minimis, stockpond and stock and wildlife
watering uses in the Verde River Watershed.

1 I highly object to any means of action against our
2 Well, ground water or Surface water rights. The
3 stockpends we have secured are specific to the watering
4 of livestock pursuant to ARS 45-151

5 **CERTIFICATE OF SERVICE**

6 On this 25 day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13 
14 _____
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____

19 _____
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21 Telephone Number _____
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UCL 31 2022

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

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Wolfgang Koehler

Mailing Address 275 W Eleanor Rd, Paulden, AZ 86334

Telephone No. (928) 592 3372

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

My concern and objection for the water situation is the increase of population in
Prescott and overall Yavapai County and the increase in water usage coming
along with the higher number of people living in the area. I don't see how the

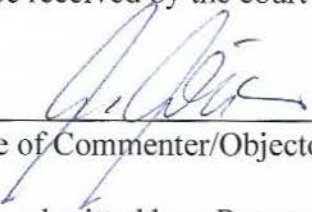
1 report and the offered de minimis procedure create awareness for the
2 actual water situation and measures to protect the water resources.
3
4

5 **CERTIFICATE OF SERVICE**

6 On this 24th day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
10 601 W. Jackson Street
Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13
14 
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
19 _____
20 _____

21 Telephone Number _____
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1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
2 **IN AND FOR THE COUNTY OF MARICOPA**

3 IN THE GENERAL ADJUDICATION
4 OF ALL RIGHTS TO USE WATER IN
5 THE GILA RIVER SYSTEM AND
6 SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

7 Contested Case No. W1-106

8 **COMMENT OR OBJECTION TO**
9 **TECHNICAL REPORT CONCERNING**
10 **DE MINIMIS DOMESTIC,**
11 **STOCKPOND AND STOCK AND**
12 **WILDLIFE WATERING USES IN THE**
13 **VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

14 **COMMENTER OR OBJECTOR INFORMATION**

15 Name (printed) Brandon and Natasha Pacheco and the Pacheco Brandon R and Natasha M Living Trust

16 Mailing Address c/o Copeland Law Offices PLLC,
17 P.O. Box AT, Bisbee, Arizona 85603

18 Telephone No. 520.432.2279

19 Statement of Claimant No. (if filed) 39-160279, 39-14156, and 39-141957

20 **STATEMENT OF COMMENT OR OBJECTION**

21 Please provide your comments or reasons for the objection below (or in a separate
22 attachment) and complete the next page.

23 Please see attached Objections
24 _____
25 _____
26 _____

CERTIFICATE OF SERVICE

On this 28 day of October, 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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

If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022**.

/s/ Sara V. Ransom

Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed) Sara V. Ransom, Esq.

Mailing Address Copeland Law Office, PLLC

P.O. Box AT, Bisbee, Arizona 85603

Telephone Number 520.432.2279

NOV 01 2022

Kirsten Copeland, No. 021721
Sara V. Ransom (Of Counsel), No. 024099
COPELAND LAW OFFICES, PLLC
PO BOX AT
Bisbee, Arizona 85603
PHN: 520-432-2279
kcopeland@copelandlawaz.com
sransom@copelandlawaz.com
*Attorneys for Brandon and Natasha Pacheco
and the Pacheco Brandon R and Natasha M Living Trust*

**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**

No.: W-1 (Salt)
No.: W-2 (Verde)
No.: W-3 (Upper Gila)
No.: W-4 (San Pedro)

Contested Case No.: W1-106

**COMMENTS AND OBJECTIONS ON
THE ARIZONA DEPARTMENT OF
WATER RESOURCE'S AUGUST 29,
2022 TECHNICAL REPORT ON *DE*
MINIMIS USES IN THE VERDE
RIVER WATERSHED**

Assigned to Special Master Susan Ward
Harris

**Contested Case
Names:**

In re Subflow Technical Report, Verde River Watershed, W1-106

**Descriptive
Summary:**

Brandon and Natasha Pacheco and the Pacheco Brandon R and Natasha M Living Trust's Comments and Objections on the Arizona Department of Water Resource's August 29, 2022 Technical Report on *de minimis* uses in the Verde River Watershed

**Statement Of
Claimant Nos.**

39-160279, 39-14156, and 39-141957

Number of Pages:

8 (including ADWR Comment Submittal Form cover page)

Date of Filing:

Original mailed to the Clerk of the Court on October 28, 2022

Pursuant to this Court's June 14, 2022 Minute Entry, Brandon Pacheco, Natasha Pacheco, and the Pacheco Brandon R and Natasha M Living Trust (collectively, "the Pachecos") hereby submit their comments on the Arizona Department of Water Resource's ("ADWR") August 29, 2022 Technical Report on *de minimis* uses in the Verde River Watershed ("Technical Report").

I. Comments On Technical Report.

The Pachecos agree with the introductory conclusions of the Technical Report that:

domestic uses of less than or equal to one acre-foot per annum (< 1.00 AFA) and stockponds with a capacity of less than or equal to four acre-feet per annum (< 4.00 AFA) have a negligible impact on the surface water resources of the watershed and should be eligible for *de minimis* adjudication. ADWR also has found that stock and wildlife watering uses constitute a minimal impact to the surface water outflow from the watershed and that a quantification of "reasonable use" is appropriate for these uses.

Technical Report at Section 1.0 Introduction (footnotes omitted).

The Pachecos support ADWR's suggestion that the Special Master apply an annual median flow analysis over the entire Verde River watershed and adopt *de minimis* domestic use proceedings throughout the entire Verde River watershed (not on a subwatershed basis) in accordance with ADWR's recommendations.

II. Objections To Use Of Certain Technical Report Information.

As noted by the Special Master in the June 14, 2022 Minute Entry, "[t]he proceedings reflected by this minute entry do not impose any restriction on any party's right to file any objection to the Technical Report" June 14, 2022 Minute Entry at p. 5 (emphasis supplied). In addition to the objections detailed herein, the Pachecos incorporate and re-assert all objections previously raised in their *Response to Salt River Project's Proposal for Analyzing a Potential Domestic de minimis Designation in the Verde River Subwatershed*, filed March 28, 2022 ("March 2022 Objections"), as well as arguments and objections made on the record during the May 6, 2022 hearing.¹

¹ Subwatershed (or "telescoping") analysis as well as reliance upon data from months of water scarcity were the subject of the Pachecos' objections or the objections of the Arizona State Land Department, which the Pachecos joined.

- 3 1. Complete a water availability analysis on a subwatershed-by-subwatershed basis,
4 and
- 5 2. Evaluate hydrologic impact of estimated domestic use at all three gages using an
6 annual median flow and using median flows for May, June and July.

7 June 14, 2022 Minute Entry at pp. 6-9, 12.

8 As to the subwatershed-by-subwatershed analysis, the Pachecos object to a
9 subwatershed-by-subwatershed analysis by the Special Master before establishing *de*
10 *minimis* proceedings in the Verde River watershed due to the absence of data and
11 deficiencies in available data that are identified in the Technical Report. The Technical
12 Report acknowledges that water availability “for each subwatershed requires a gage at both
13 the upstream and downstream boundaries of the subwatershed. The Verde River watershed
14 does not have gages located appropriately to complete a water availability analysis for each
15 subwatershed.” Technical Report at p. 6. ADWR noted that the absence of sufficient gage
16 data “introduces additional bias that will skew the results for certain watersheds.” *Id.* at p.
17 7, note 21. The Pachecos also note multiple, varied years of data measurements are missing
18 from each gage, and several years were excluded due to “incomplete data[.]” *Id.* at p. 8,
19 Notes d-f. As to the Paulden gage in particular, ADWR observed that “the dry channel of
20 the Big Chino Wash may attenuate much of the storm runoff before it reaches the Paulden
21 gage.” *Id.* at p. 9. The failure of the Paulden gage to reflect that flow further compounds
22 data errors or deficiencies in evaluating domestic uses in the Big Chino and Little Chino
23 subwatersheds.

As ADWR acknowledges within the Technical Report, the deficiencies in gage placement, the gages available, and gage data available to ADWR are insufficient to fully evaluate water availability on a subwatershed-by-subwatershed basis, resulting in skewed or inconsistent treatment of landowners in certain subwatersheds. Technical Report at pp. 6-9, 33. The Pachecos support ADWR's continued recommendation to the Special Master

1 that “estimating domestic, stockpond, and stock and wildlife watering demand *for the entire*
2 *Verde River watershed, rather than each subwatershed, is the most appropriate method*
3 for evaluating potential *de minimis* uses.” *Id.* at p. 33 (emphasis supplied).

4 The Pachecos also object to the Special Master referencing flow data from low flow
5 months in determining whether to establish a *de minimis* proceeding within the Verde River
6 watershed. As noted in the Technical Report, analysis of median flows during the months
7 of May, June and July ignores seasonal fluctuations, including flooding, that is captured for
8 use within the Verde watershed. Technical Report at p. 9. The Technical Report observes
9 as well that:

10 Only looking at gage measurements during periods of low flow and drought
11 may introduce bias in certain geological areas because base flow at every
12 stream varies. Base flow measurements will appear significantly different in
13 certain areas depending on the characteristics of the rock material below the
14 land surface. High-flow events should be included in this analysis because
15 they are not lost to the Verde River watershed. In fact, they are captured and
16 stored in large reservoirs in order to make up for shortfalls.

15 *Id.*

16 The Technical Report indicates that ignoring annual data in favor of analyzing the
17 system during the three driest months of the year results in “bias in certain geological areas”
18 that is not reflective of actual conditions. Technical Report at p. 33. ADWR notes that the
19 median annual flow from the Tangle Creek gage reflects the total water availability of the
20 Verde River watershed “after all consumptive uses are removed” and is “an underestimate
21 of the amount of water available under natural conditions and an approximate amount
22 available under current conditions.” *Id.* at p. 10. For that reason, ADWR “does not
23 recommend using the median May, June or July flows measured at Tangle Creek” and
24 instead suggests that the Special Master review the “median annual flow measurement at
25 the Tangle Creek gage ... because it takes into consideration both seasonal flooding and
26 periods of low flow for the entire Verde River watershed and does not introduce unnecessary
27 bias.” *Id.* at p. 33. The Pachecos support ADWR’s suggested application of the annual
28 median flows.

1 The data deficiencies, errors and bias identified in ADWR's Technical Report
2 regarding subwatershed-by-subwatershed analysis and May-July only median flows are
3 further compounded by the over-estimation of domestic use in the watershed. The Technical
4 Report notes that ADWR's presumptions regarding domestic uses result in a significant
5 overstatement of use. Specifically, the presumed usage rate of 1.0 acre foot is likely higher
6 than actual use, and the population figures used by ADWR include seasonal residents and
7 vacant homes. Technical Report at pp. 15 (Table 3 note a), 16. And of course ADWR
8 presumed that all domestic users were pumping 100% subflow despite that nearly 72% of
9 domestic uses are located a half mile or more from the Verde River or major tributaries. *Id.*
10 at 34.

11 Given the significant over-estimate of domestic usage, and the data inaccuracies and
12 biases identified in ADWR's Technical Report, the Pachecos object to the Special Master's
13 reliance upon subwatershed-by-subwatershed analysis informed by partial data from only
14 three gages and the May-July median flow information in determining whether to establish
15 domestic *de minimis* proceedings. Applying those parameters does not reflect actual
16 conditions and biases the results in certain subwatersheds (particularly the Little Chino and
17 Big Chino), resulting in inequitable treatment of certain landowners.

18 The Pachecos reserve the right to join in comments or objections filed by other parties
19 in these proceedings.

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III. Conclusion

Based upon these considerations, the Pachecos ask that the Court adopt the recommendations of the Technical Report with respect to the "negligible impact" of domestic, stock pond and stock and wildlife watering uses throughout the Verde River watershed. The Pachecos further request that the Special Master adhere to the guidance of ADWR with regard to evaluating domestic water use on a full watershed basis as well as referencing median annual discharge in assessing the Verde River watershed's water availability when determining whether to establish *de minimis* proceedings for domestic use.

DATED this 28th day of October, 2022.

COPELAND LAW OFFICES, PLLC

By: *Sara V. Ransom*
Kirsten Copeland
Sara V. Ransom
PO Box AT
Bisbee, Arizona 85603
*Attorneys for Brandon and Natasha
Pacheco and the Pacheco Brandon R and
Natasha M Living Trust*

CERTIFICATE OF SERVICE

ORIGINAL of the foregoing mailed this 28th day of October, 2022 for filing with:

Clerk of the Maricopa County Superior Court
ATTN: Water Case
601 W. Jefferson Street
Phoenix, Arizona 85003

Copies of the foregoing were sent this 28th day of October, 2022 to those parties who appear on the Court-Approved Mailing List for Case No. W-1, W-2, W-3, W-4, Contested Case No.: W1-106

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

NOV 07 2022

Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Kathy Masters-Jaechel + Lawrence J. Jaechel

Mailing Address 30 Serendipity Trl.

Sedona, AZ 86336

Telephone No. 928-203-4178 - land line

Statement of Claimant No. (if filed) 39-141558

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

See 3 attached documents.

ATTACHMENT A

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CERTIFICATE OF SERVICE

On this 28 day of October, 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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Attn: Water Case
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If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022**.

Kathy Masters-Jackel
Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed)_____

Mailing Address_____

Telephone Number_____

ATTACHMENT B

Owners of Mailing address: 30 Serendipity Trail, Sedona, AZ, 86336
Land Patent owners: Kathy Masters-Jaeckel and Lawrence Jaeckel
Land Patent: 439328 Erwin Schuerman

GPs identification of my land: 34.8295839, -111.810574

N34° 49.775', W111° 48.6344'

This is additional objections to the adjudication of my water rights in Arizona, specifically in Yavapai County and for our .8 acre land, purchased in the year 2000. We are the grantee and heir assigned forever from the original patent owner Erwin Schuerman.

When we bought our property in 2000 at the former mailing address of 2130 Red Rock Loop Road, we were not informed by the Real Estate Company or the Title company that any water rights should and would be a part of our title. That is done on purpose giving people a warrantee Deed. However, since we are a part of the original Schuerman Homestead, we have those same homestead rights passed on to us, we are not a tenant. We fall under the law, "First in Time, First in Right". Riparian water rights are appurtenant to the land we purchased just like the original homesteaders that passed on their rights to us. They even had rights to Oak Creek water.

It would seem that since this adjudication has been going on for 4 decades and certain people in high places were the only ones that knew anything about the legalities of individual water rights that this has been an illegal set up to take home and land owners by surprise, hoping that they would not do research regarding the original land patents that include all the water rights for that property.

Erwin Schuerman owned 160 acres and homesteaded it and passed it on to his sons that grew crops for many years. I have sent pictures showing this in my previous documentation. When people came here and worked hard to make the land productive and improve the land, with fruit trees, grape vines and cattle, water rights were a part of the legal rights given to them. They were allowed to pass on those rights to whoever would purchase the subdivided original land. We are one of those people who purchased a portion of that original 160 acres. We own the well and water in it to support our lives here. We filed a Statement of Claimant and a Statement of Claim.

500 feet down is not surface water by any means and will never be. Our land is all rock and very little dirt. We are NOT in the flood plain. There is no way that surface water, including Oak Creek, could ever reach down to supply water to that 500 ft. aquifer. The thin little piece of Oak Creek that is fairly near us, has never been deeper than 6 feet. And water does not flow through rock to get that deep.

That same 500 foot aquifer supports thousands of people in this area that have rights to it from the moment they took possession of their land. How could any residential land be sold, ever,

cont.

page 2

without the right to drill and bring water to the home. Homeowners use a very small percentage of the water available. What really will make a difference is if you continue to stop farmers that are growing food for other countries. Have them grow our food only.

If you don't agree with this information, there is a law called Adverse Possession and Prescriptive Right. If Arizona really thinks they own our water, we are the only ones that have been drawing from that water and our well for many years. SRP and Maricopa County have never drawn from it and never said anything to me about not having the right to take this water. Therefore, we have legally earned the right to this water because we have been drawing from it for way more than ten years, which is the required amount of time for this law to take effect.

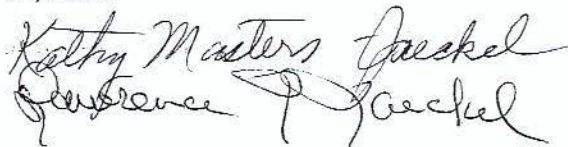
Restrictions on individual well owners should be implemented only as a last resort and supported by proof of depletion or contamination of groundwater source in our area. If water shortage is proven at the 500-foot level for our water then there must be a complete halt of large subdivisions that will certainly put everyone at risk and make all of Arizona a ghost town due solely to greed and power. Our water in the High Country is totally sufficient for our area. It simply will not help Maricopa county to put restrictions on our water usage. You have other solutions that are proven to work. Use them!

What will help Maricopa County is to put a stop to subdivisions like the Super subdivisions being planned by Bill Gates and Walmart. You will never be able to support that kind of growth. Those kinds of decisions will ruin everyone's lives.

Included is the official Patent for Erwin Schuerman's property stating the patent is valid for his heirs and assigns. It is signed by Woodrow Wilson. We purchased a section of his land in 2000. This Patent is long before SRP brought water to this State and before SRP even existed. First in Time, First in Right.

Submitted on: October 28, 2022

Kathy Masters-Jaeckel
Lawrence J. Jaeckel

Handwritten signatures of Kathy Masters-Jaeckel and Lawrence J. Jaeckel. The signature of Kathy Masters-Jaeckel is written above the signature of Lawrence J. Jaeckel.

cont.

Owners of Mailing address: 30 Serendipity Trail, Sedona, AZ, 86336
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Page 1

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Restrictions on individual well owners should be implemented only as a last resort and supported by proof of depletion or contamination of groundwater source in our area. If water shortage is proven at the 500-foot level for our water then there must be a complete halt of large subdivisions that will certainly put everyone at risk and make all of Arizona a ghost town due solely to greed and power. Our water in the High Country is totally sufficient for our area. It simply will not help Maricopa county to put restrictions on our water usage. You have other solutions that are proven to work. Use them!

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Submitted on: October 28, 2022

Kathy Masters-Jaeckel
Lawrence J. Jaeckel

Handwritten signatures of Kathy Masters-Jaeckel and Lawrence J. Jaeckel. The signatures are written in dark ink and are cursive. Kathy's signature is on top and Lawrence's is below it.

continued from page 1

page 2

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at

Phoenix, Arizona,

has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862,

"To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of

Erwin Schuerman

has been established and duly consummated, in conformity to law, for the northeast quarter of the northwest quarter of the southwest quarter, the south half of the northwest quarter of the northwest quarter of the southwest quarter, the northeast quarter of the northwest quarter of the southwest quarter, the north half of the southwest quarter of the northwest quarter of the southwest quarter, the southwest quarter of the southwest quarter of the northwest quarter of the southwest quarter, the south half of the northwest quarter of the northeast quarter of the southwest quarter, the north half of the northeast quarter of the northwest quarter, the southwest quarter of the northeast quarter of the northwest quarter, and the west half of the northwest quarter of Section twenty-six and the south half of the southeast quarter of the northeast quarter of Section twenty-seven in Township seventeen north of Range five east of the Gila and Salt River Meridian, Arizona, containing one hundred sixty acres,

according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I,

Woodrow Wilson

President of the United States of America, have caused these letters to be made

Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the

TWENTY-NINTH

(SEAL)

day of

OCTOBER

In the year of our Lord one thousand

nine hundred and

FOURTEEN

and of the Independence of the

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

NOV 07 2022

Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Joel P. Mc

Mailing Address 2825 N. Aztec Pl. Chino Valley AZ 86323

Telephone No. 928 830 1156

Statement of Claimant No. (if filed) Cadastral # B16002007BAD, Parcel 306-10-157

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

We have a well that produces 2 1/2 pints/min. but then the
well shuts off after 1 minute (pump saver set @ 3 hour intervals)
We harvest rain water for gardening and animals, we

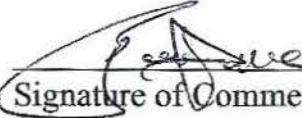
1 Write in buckets. This makes ranch life next to
2 impossible. Please go after hot climate large users
3 instead of those who are trying to produce sustenance.
4

5 **CERTIFICATE OF SERVICE**

6 On this 27 day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13
14 
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
19 _____
20 _____

21 Telephone Number _____
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OCT 31 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
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W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTION INFORMATION

Name (printed) Vito T Greco & Colleen Corrigan Greco

Mailing Address 1410 S Mullen Way, Prescott AZ 86303

Telephone No. 928-925-5996

Statement of Claimant No. (if filed) 39-141359 & 39-54913

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

Claimant access to information is limited at this time. Additional reports to be provided

by ADWR preparing several preliminary hydrographic survey reports that are to be filed by

Jan 5, 2024, including technical report and small water usage determined Di Minimis.

1 Notwithstanding the foregoing, Claimant reserves right to file comments or
2 object to ADWR's methodology, or any other methodology proposed in this proceeding,
3 and as applied to Subflow Zone Delineation Report, Verde River Watershed.
4

5 **CERTIFICATE OF SERVICE**

6 On this 24th day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13 
14 Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
19 _____
20 _____

21 Telephone Number _____
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OCT 31 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
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DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) The Yavapai-Apache Nation

Mailing Address c/o Montgomery & Interpreter, PLC

3301 E. Thunderbird Rd. Phoenix, Arizona 85032

Telephone No. (480) 513-6825

Statement of Claimant No. (if filed) numerous, see Attachment A.

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

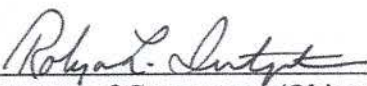
See Attachment A

CERTIFICATE OF SERVICE

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Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed) Robyn L. Interpreter

Mailing Address c/o Montgomery & Interpreter, PLC
3301 E. Thunderbird Rd. Phoenix, Arizona 85032

Telephone Number (480) 513-6825

ATTACHMENT A

MONTGOMERY & INTERPRETER, PLC

Susan B. Montgomery, AZ Bar No. 020595

Robyn L. Interpreter, AZ Bar No. 020864

Jay Tomkus, AZ Bar No. 029145

3301 E. Thunderbird Rd.

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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

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

Contested Case W1-106

**YAVAPAI-APACHE NATION'S
OBJECTIONS TO THE ARIZONA
DEPARTMENT OF WATER RESOURCES'
TECHNICAL REPORT RE *DE MINIMIS*
DOMESTIC, STOCKPOND, AND STOCK
AND WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

(Special Master Susan Ward Harris)

CONTESTED CASE NAME:

*In re Subflow Technical Report, Verde River
Watershed*

DESCRIPTIVE SUMMARY:

The Yavapai-Apache Nation submits its objections to
the Arizona Department of Water Resources' August
29, 2022, Technical Report re *De Minimis* Domestic,

1 Stockpond, and Stock and Wildlife Watering Uses in
2 the Verde River Watershed

3 STATEMENTS OF CLAIMANT: Yavapai-Apache Nation No. 39-50059, United States
4 No. 39-54025 for Yavapai-Apache Nation

5 NUMBER OF PAGES: 22 pages

6 DATE OF FILING: October 28, 2022

7 On August 29, 2022, the Arizona Department of Water Resources (ADWR) filed its
8 Technical Report re *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering
9 Uses in the Verde River Watershed (Technical Report) pursuant to the Special Master's
10 Minute Entry Order, dated June 14, 2022 (*De Minimis* Order).¹ In accordance with this same
11 *De Minimis* Order, the Yavapai-Apache Nation (Nation) submits its objections to the
12 ADWR Technical Report here.²

13 INTRODUCTION

14 Throughout these proceedings, the Nation has expressed support for the possible
15 entry of a case management order for the summary adjudication of certain *de minimis* uses
16 in the Verde Watershed if the process is supported by the facts and will "simplify and

17 ¹ ADWR Technical Report *De Minimis* Domestic, Stockpond, and Stock and Wildlife
18 Watering Uses in the Verde River Watershed, In re the General Adjudication of the Gila
19 River System and Source, August 2022.

20 ² Under A.R.S. § 45-251(7) and principles of federal law, this Court's jurisdiction extends
21 to "all water subject to claims based on federal law." *See also Winters v. United States*, 207
22 U.S. 564 (1908); *Cappaert v. United States*, 426 U.S. 128 (1976). Accordingly, should the
Court adopt a state law *de minimis* process for the Verde River Watershed, this process does
not preclude the Nation, or the United States on behalf of the Nation, from objecting to *de*
minimis uses under these well-established principles of federal water law, as well as state
law.

1 accelerate the adjudication by reducing the work involved in preparing the hydrographic
2 survey reports and by reducing the number of contested cases before the special master.”
3 *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 175 Ariz.
4 382, 394, 857 P.2d 1236, 1248 (1993) (*Gila II*).

5 As noted by the Special Master in the *De Minimis* Order, “no presumption exists in
6 favor of the adoption of a *de minimis* finding and the implementation of summary
7 proceedings.” *De Minimis* Order at 10. Rather, “summary proceedings should only be
8 adopted by the court in those situations where the court can determine the potential impact
9 of a particular group of beneficial uses on the other uses from the same water supply and
10 apply a cost-benefit analysis to the adjudication process.” *Id.* In 1994, Special Master
11 Thorson explained: “If a single use, or a category of similar uses, utilizes only small
12 amounts of water, a detailed adjudication of these rights may not be needed. If these uses
13 consume only small amounts of water, or the captured water would otherwise not reach
14 downstream appropriators, these uses do not likely impermissibly interfere with other water
15 users.”³

16 In conducting its *de minimis* analysis, the Court must, in the context of the unique
17 characteristics of each watershed (here the Verde River Watershed), consider (1) the amount
18 of water available in the watershed; (2) the number of stock watering, stockpond, and
19 domestic uses; (3) the extent and impact of these uses on the available water supply; and (4)
20

21 ³ See Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1 Cases
22 Involving Stockwatering, Stockponds, and Domestic Uses, Maricopa County Superior
Court Case No. W1-11-19 (Nov. 14, 1994) (Thorson Decision) at 11; see also *De Minimis*
Order at 6.

1 the costs and benefits of a complete, rather than abbreviated, adjudication of these small
2 uses. *See* Thorson Decision at 12; *see also De Minimis* Order at 7. These four factors are
3 commonly referred to as the “Thorson Factors.”

4 While “[t]he first three factors require technical assistance from ADWR pursuant to
5 A.R.S. § 45-256”, *De Minimis* Order at 7, the cost-benefit analysis outlined in factor four –
6 which requires a consideration of contested facts and the application of law to these facts –
7 rests in the **exclusive** province of the Court. *Id.*

8 As discussed in greater detail below, the Nation generally concurs with the results of
9 ADWR’s factual investigation of the stockpond, stock and wildlife, and domestic uses in
10 the Verde River Watershed (Thorson Factors 1-3) as set forth in its Technical Report.⁴ The
11 Nation, however, objects to the *de minimis* recommendations found in Chapter 6 of
12 ADWR’s Technical Report to the extent ADWR (without invitation or any evidence of
13 performing a cost-benefit analysis) determined: (a) “that domestic uses of less than or equal
14 to one acre-foot per annum (≤ 1.00 AFA) and stockponds with a capacity of less than or
15 equal to four acre-feet per annum (≤ 4.00 AFA) do not have a major impact on the surface
16 water resources of the Verde River watershed and **should be eligible for de minimis**
17 **adjudication**”; and (b) “reasonable use” is appropriate for stock and wildlife watering uses.
18 Technical Report at 34 (emphasis added).

20
21 ⁴ The Nation’s objections primarily focus on ADWR’s calculations and recommendations
22 related to domestic *de minimis* uses. The Nation does not disagree with ADWR’s
methodology for calculating stockwater and wildlife uses in its Technical Report. The
Nation’s concerns regarding ADWR’s methodology and recommendations for stockponds
is discussed in Section IV, below.

1 ADWR's conclusion that these uses "should be eligible for *de minimis* adjudication"
2 invades the exclusive province of the Court to consider the facts and apply the law as part
3 of a cost-benefit analysis required by Thorson Factor 4. ADWR's *de minimis* conclusions
4 are also outside the scope of ADWR's role as the technical advisor to the Court under A.R.S.
5 § 45-256.

6 In addition, the Nation objects to ADWR's disregard of the Court's express direction
7 that, "[g]iven that the concern is the availability of water flow during the irrigation season
8 prior to monsoon rains, consideration should be given to the median flows for May through
9 July at each of the three gages." *De Minimis* Order at 8. While ADWR provides data related
10 to flows at these three gages in May, June, and July, ADWR uses its Technical Report to
11 attempt to relitigate the Court's direction to consider median flows in May, June, and July
12 **at each of** the Paulden, Camp Verde, and Tangle Creek gages to calculate the **available**
13 water supply at these gages and the **hydrologic impact** of stockponds and domestic uses at
14 these gages.

15 ADWR's commentary in its Report regarding the Court's direction is improper and
16 nonresponsive to the Court's *De Minimis* Order.

17 DISCUSSION

18 I. Available Water Supply (Thorson Factor 1)

19 In Section 2.3 of its Technical Report, ADWR provides information necessary for
20 the Court to consider Thorson Factor 1 – that is, the amount of water "available" in the
21 Verde River Watershed. To do this, ADWR examined the "median flows for May, June,
22 and July at the Paulden, Camp Verde, and the Tangle Creek gauges in addition to the annual

1 median flows at Tangle Creek” in conformance with the Court’s *De Minimis* Order at 12.
2 ADWR’s results are reflected in Table 1 of the Technical Report.

3 The Nation generally agrees with the information set forth in Table 1 and appreciates
4 the Special Master’s decision to require that ADWR use **all three gages** in its water
5 availability analysis. The Nation also supports the Special Master’s conclusions that, for
6 purposes of the Court’s *de minimis* analysis, “the relevant water supply, or the amount of
7 water available in the watershed, is the water supply during the period when there is a
8 greater likelihood that domestic water use will impact other claimants’ use of the water
9 supply.” *De Minimis* Order at 8. As the Special Master correctly determined, this means
10 that particular attention should be given to the irrigation season and “the median flows for
11 May through July at each of the three gages [Paulden, Camp Verde, and Tangle Creek].”
12 *Id.*

13 Yet, rather than accepting the Court’s direction, ADWR uses its Technical Report to
14 reargue its position that there is insufficient gage data to conduct a “proper water availability
15 analysis” at the three gages and thus, in ADWR’s view, the Special Master’s decision to
16 examine water availability and impacts by focusing on the median flows at the Paulden,
17 Camp Verde, and Tangle Creek gages “introduces additional bias that will skew the results
18 for certain subwatersheds.” Technical Report at 7, n.21.

19 ADWR offers little explanation or support for this position, other than merely
20 restating its view – previously presented and rejected by the Special Master – that the “most
21 reasonable estimate of available water can be obtained by calculating the median annual
22 discharge from the Tangle Creek gage....” Technical Report at 9; *see also id.* at 10, n.25

1 (ADWR again concluding “annual median flows obtained from the Tangle Creek gage are
2 likely indicative of the actual amount of water available in the Verde River watershed.”).

3 The Special Master has already rejected ADWR’s focus on median annual flows at
4 the Tangle Creek gage as the exclusive point for calculating available water in the Verde
5 River Watershed, *see, e.g., De Minimis* Order at 12, and the Court should reject ADWR’s
6 attempt to relitigate the issue here.

7 The many reasons for using all three gages to provide a factual basis for the Court’s
8 *de minimis* determination have already been outlined by the Nation in its prior filings with
9 the Court,⁵ which are incorporated herein by reference as if stated in full.⁶ These include
10 the fact that median annual flows reflected at the Tangle Creek gage (located **at the bottom**
11 **of the watershed**) have little bearing on the physical availability of flows in the
12 subwatersheds **upstream** of the Camp Verde and Paulden gages (particularly during the
13 crucial low-flow periods of May, June, and July). This is due in part to the gaining nature
14 of the Verde River system, as well as the importation of water supplies by Salt River Project

17 ⁵ See Yavapai-Apache Nation’s Joinder in Salt River Project’s Comments on ADWR’s
18 Technical Report Re *De Minimis* Domestic Water Use in the Verde River Watershed and
19 Supplemental Comments by the Nation (January 7, 2022); Yavapai-Apache Nation’s Partial
Joinder in Salt River Project’s Proposal for Analyzing a Potential Domestic *De Minimis*
Designation in the Verde River Watershed and Supplemental Response (March 28, 2022).

20 ⁶The Salt River Project Agricultural Improvement and Power District and the Salt River
21 Valley Water Users’ Association Salt River Project (SRP) put a finer point on the issue in
22 its Proposal for Analyzing a Potential Domestic *De Minimis* Designation in the Verde River
Watershed (March 14, 2022) (SRP Proposal), at 4-5, which suggested a “telescoping”
approach for using **all three gages**, which the Court ultimately adopted in its *De Minimis*
Order.

1 via the East Verde River, as well as the inability of upstream irrigators to capture large
2 seasonal flood flows during snowmelt and monsoon seasons.

3 Indeed, this last factor makes ADWR's decision to include significant flood flows as
4 a source of water "available" to upstream users (as reflected in the median annual flow at
5 Tangle Creek) particularly inappropriate. Since upstream users do not have a means to
6 divert, capture, or store these flood flows for their use, and these flows are only captured
7 and stored in Horseshoe and Bartlett Reservoirs at the bottom of the watershed, ADWR's
8 heavy focus on median annual flows at Tangle Creek distorts its water availability analysis.
9 This distortion is minimized, if not obviated, by analyzing water availability at all three
10 gages, as the Special Master directed.

11 ADWR points to Special Master Thorson's reliance on the USGS gage closest to the
12 mouth of the San Pedro River Watershed in support of its position that median annual flows
13 at the Tangle Creek gage are the "most reasonable estimate of available water" in the Verde
14 River Watershed. Technical Report at 9. ADWR fails, however, to acknowledge the clear
15 differences between the San Pedro River Watershed and the Verde River Watershed,
16 including the numerous intervening users throughout the Verde watershed and the high
17 likelihood of numerous objections to neighboring water claims in each of the Verde's
18 subwatersheds – a point that the Special Master has already acknowledged. *See De Minimis*
19 *Order* at 8 (concluding that a focus on a single downstream location for calculating available
20 water under the Thorson Decision will not work in the Verde River Watershed since "the
21 relevant downstream users for the determination of *de minimis* use are not limited to the
22 water users located downstream of the Verde River Watershed.").

II. Number of Uses (Thorson Factor 2)

Under Thorson Factor 2, ADWR was required to analyze the number of self-supplied domestic and other uses in the Verde River Watershed. Specifically, the Special Master directed ADWR to “apply the same methodology that ADWR used in its Technical Report [for domestic *de minimis* uses] dated December 2021 to calculate the total self-supplied domestic population for the Verde River Watershed.” *De Minimis* Order at 12.

ADWR encountered several difficulties in its original U.S. Census-based methodology used for estimating the total number of self-supplied domestic users. ADWR explains its challenges with using Census data and its workaround for these challenges (that included an examination of the number of occupied and unoccupied or vacant housing units reported in the 2020 Census) in Section 3.2 of its Technical Report. *See* Report at 11-15. The results of these efforts, broken down by each subwatershed, are illustrated in Table 3 of the Technical Report at 15. Specifically, ADWR estimates that there are 20,972 self-supplied households in the Verde River Watershed. *See id.*

For the most part, the Nation does not disagree with ADWR’s estimate of 20,972 self-supplied households for the Verde River Watershed, even if the methodology used by ADWR is not entirely responsive to the Court’s *De Minimis* Order. It should be noted, however, that another more direct option for calculating self-supplied households was proposed by SRP in its March 14, 2022, filing. *See* SRP Proposal at 9-11. Under this option, ADWR would use the Wells 55 database to identify the number of domestic wells in the Verde River Watershed – a process that allows domestic wells to be separated on a subwatershed-by-subwatershed basis. Using this process, SRP identified 21,023 domestic

1 uses in Verde River Watershed.⁷ While the ADWR and SRP estimates are relatively close,
2 SRP's proposal to use the Wells 55 database is the most straightforward and defensible
3 approach. Accordingly, the Nation suggests the Wells 55 approach is the better option for
4 estimating self-supplied domestic uses.

5 **III. The Extent and Impact of Uses (Thorson Factor 3)**

6 Under Thorson Factor 3, ADWR was asked to analyze the extent and impact of stock
7 and wildlife watering, stockpond, and domestic uses on the available water supply in the
8 Verde River Watershed, including at the Paulden, Camp Verde, and Tangle Creek gages
9 during May, June, and July. *See De Minimis* Order at 12. To determine the impact of self-
10 supplied domestic uses, ADWR took its estimate of total self-supplied households and
11 multiplied the number of households by 1 AFA, which ADWR believes is a "comfortable
12 overestimate" of actual use. Technical Report at 11; *see also* 15 (Table 3).

13 The Nation does not oppose ADWR's use of 1 AFA to **estimate** the impact on
14 available water supplies at each of the three gages, both on an annual basis and during
15 seasonal low flow period (May, June, and July) as prescribed by the Court in the *De Minimis*
16 Order and illustrated in Table 4 of ADWR's Technical Report at 16. However, as discussed
17 in greater detail in Section IV, below, the Nation renews its objection to ADWR's
18 recommendation that 1 AFA should **be summarily decreed** to every *de minimis* domestic
19 user, even if the 1 AFA amount is not reflective of a domestic water user's claimed or actual
20 use.

21
22

⁷ *See* SRP's Notice of Serving Requested Information (February 11, 2022).

1 The Nation also does not oppose ADWR's calculations related to the extent and
2 impact of stock and wildlife watering uses discussed in Chapter 5 of the Report. *See*
3 Technical Report at 23-31. However, the Nation remains perplexed by ADWR's
4 calculations regarding the extent and impact of stockponds in the Verde Watershed outlined
5 in Chapter 4 of the Technical Report at 20-22. Specifically, the Nation objects to ADWR's
6 use of a "maximum field-verified depth" of 15 feet to estimate the extent and impact of
7 stockponds in the Verde River Watershed. *See id.*

8 To arrive at the maximum depth of 15 feet, "ADWR analyzed a random sample of
9 50 stockponds that were field-verified and measured by ADWR's Surface Water Permitting
10 Section in the Verde River Watershed." Technical Report at 20. ADWR's decision to use
11 a depth of 15 feet to calculate the extent and impact of stockponds in the Verde River
12 Watershed results in an estimated average stockpond capacity ranging from 2 acre-feet in
13 the Verde Canyon subwatershed to up to 6 acre-feet in the Big Chino subwatershed, with 4
14 acre-feet estimated as the average stockpond capacity in the Lower Verde Valley and
15 Sycamore subwatersheds. *Id.* at 21 (Table 6).

16 However, while 15 feet was the **maximum** depth measured in at least one out of the
17 50 stockponds ADWR inspected, the **median** field depth for the inspected stockponds was
18 no more than 4.20 feet, and the average capacity of the inspected stockponds was 2.31 acre-
19 feet, with the median capacity measured at 0.77 acre-feet. Technical Report at 20. Based
20 on the foregoing, it is difficult to understand how ADWR arrived at its decision to use a
21 maximum depth of 15 feet to calculate the extent and impact of stockponds in its Report.
22

IV. ADWR's Recommendations on *De Minimis*

The Special Master has correctly observed, “[a] finding **by the court** that a beneficial use constitutes a *de minimis* use requires consideration of [the] four [Thorson] factors.” Order at 7 (emphasis added). To this end, “[t]he first three factors require technical assistance from ADWR pursuant to § 45-256.” *Id.* However, the cost-benefit analysis required by Thorson Factor 4 – which involves a final determination as a case management matter as to whether any particular use is *de minimis* – is a matter exclusively within the province of the Adjudication Court.

Accordingly, the Nation objects to ADWR's unsolicited *de minimis* recommendations outlined in Chapter 6 of its Report where ADWR “determined that domestic uses of less than or equal to one acre-foot per annum (≤ 1.00 AFA) and stockponds with a capacity of less than or equal to four acre-feet per annum (≤ 4.00 AFA) do not have a major impact on the surface water resources of the Verde River watershed and **should be eligible for *de minimis* adjudication.**” Technical Report at 34 (emphasis added).⁸

ADWR's unsolicited recommendations go beyond its role as the technical advisor to the Court under A.R.S. § 45-256, which calls for ADWR to “render technical assistance” and provide “hydrological or other expertise” to the Adjudication Court. ADWR's recommendations also invade the exclusive province of the Adjudication Court to weigh

⁸ For these same reasons, the Nation also objects to ADWR's decision to recommend stock watering and wildlife uses as *de minimis*, Report at 34, although the Nation does not disagree that a quantification of “reasonable use” may be appropriate for stock and wildlife watering uses in the Verde River Watershed.

1 the facts and law as part of a cost-benefit analysis under Thorson Factor 4,⁹ and they are
2 contrary to the directions of the Special Master in the *De Minimis* Order, which made clear
3 that ADWR's role in preparing the Technical Report was to gather and analyze data relative
4 to Thorson Factors 1-3, and **not** Factor 4, *see De Minimis* Order at 7.

5 In addition, as noted in prior filings with the Court, while the Nation agrees with
6 ADWR that a conservative estimate of 1 AFA should be used to examine the extent and
7 impact of domestic *de minimis* uses under the Thorson Factors, the Nation objects to
8 ADWR's recommendation that ≤ 1.00 AFA should summarily be **decreed** to domestic
9 users as a *de minimis* use. While it is true that "[w]hen the court determines that a particular
10 type of beneficial use is *de minimis*, it adopts an expedited adjudication process to
11 determine certain attributes of a water right", *De Minimis* Order at 6, this Court has also
12 acknowledged that "[a] determination must still be made that a legal basis exists for a
13 claimed right and that the claimant is entitled to legal ownership of the right." *Id.*

14 Under Arizona law, "[b]eneficial use shall be the basis, measure and limit to the use
15 of water" for state-based water rights. A.R.S. § 45-141(B). Thus, in circumstances where
16 a claim, pump capacity, or other evidence shows that a domestic user is in fact beneficially
17 using **less** than 1 AFA, that decreed water right should reflect **actual use**, not simply 1
18 AFA. ADWR can make this determination on a case-by-case when it prepares the abstract
19 of the proposed water rights in accordance with the summary adjudication procedures
20

21 ⁹ As this Court has already noted, "[t]he decision that a particular beneficial use is or is not
22 a *de minimis* use will be made **after** the issuance of ADWR's technical report, the parties
have had the opportunity to file objections to the technical report, and, if necessary, an
evidentiary hearing is held on objections." *De Minimis* Order at 5 (emphasis added).

1 outlined at Parts VI-VII of the Thorson Decision. In the event there is insufficient
2 information available to ADWR to determine a domestic *de minimis* user's current
3 beneficial use, the well owner could be required to update their claim or submit an affidavit
4 of water use to ADWR. This approach would not upset the summary adjudication process
5 envisioned by the Court, and it is consistent with Special Master Thorson's own reasoning,
6 where he observed:

7 It may be impossible to complete abstracts of water right for all these *de*
8 *minimis* uses since some are supported by incomplete statements of claimant
9 or watershed file reports. In the event necessary information is lacking or
10 missing, the Special Master may require the claimants and objectors to submit
11 sufficient affidavits, testimony, or other evidence upon which to determine
12 the missing characteristics.

13 Thorson Decision, Part VII at 39.

14 The Nation also objects to ADWR's repeated attempt to relitigate the Special
15 Master's decision to consider, as part of its *de minimis* analysis, the median flows for May,
16 June, and July at the Paulden, Camp Verde, and Tangle Creek gages to accurately account
17 for available water during the irrigation season. *See De Minimis* Order at 8, 12. In Chapter
18 6 of its Technical Report, ADWR completely abandons any consideration of the median
19 flows as measured at the three gages during the irrigation months of May, June, and July.
20 Instead, ADWR's *de minimis* recommendations are based exclusively on its assessment of
21 the impact of uses on the median **annual** flow at the Tangle Creek gage.

22 Ignoring the Special Master's Order, ADWR avers that the use of median annual
flows at Tangle Creek is the "ideal" way of measuring flows "because it takes into
consideration both seasonal flooding and the periods of low flow for the entire Verde River

watershed...”. Technical Report at 33. But, as discussed in Section I above, the fact that the Tangle Creek gage captures seasonal flooding or low flow conditions at the **bottom of the watershed** is precisely why using only median annual flows at Tangle Creek is of little value in measuring *de minimis* impacts **upstream**, such as in the Lower Verde Valley, Sycamore, and Big Chino subwatersheds. A quick glance at Table 4 in ADWR’s Technical Report bears this out:

Table 4: Percent Impact of Self-Supplied Domestic Uses on Each Gage^a

Subwatersheds Above Each Gage	Max Volume (AFA)	Impact on Median Flow (%)			Impact on Median Annual (%)
		May	June	July	
Little Chino Big Chino Sycamore Lower Verde Valley Verde Canyon ^b	20,972	17.88%	26.46%	18.04%	7.45%
Little Chino Big Chino Sycamore Lower Verde Valley ^c	18,236	25.02%	35.84%	26.49%	9.15%
Little Chino Big Chino ^d	10,542	61.70%	65.92%	60.57%	51.65%

Notes:

^a Percent impact is calculated by dividing the estimated domestic demand by the water availability determined in **Section 2.3**.

^b Median May, June, July and annual flow calculated from the Tangle Creek gage.

^c Median May, June, July and annual flow calculated from the Camp Verde gage.

^d Median May, June, July and annual flow calculated from the Paulden gage.

In Table 4, ADWR estimates the impact of “self-supplied domestic users” as measured at the three gages as directed by the Court.¹⁰ Depending on the gage, the cumulative impact of self-supplied domestic uses on median flows during the May, June, and July irrigation season is **substantial**, ranging from 17.88% of the available flow at the

¹⁰ ADWR Technical Report at 16.

1 Tangle Creek gage to 65.92% of the available flow at the Paulden gage during these same
2 months. At the Camp Verde gage, the impact on the median flow during May, June, and
3 July is never less than 25.02%.

4 In contrast, Table 4 plainly shows ADWR's proposal to focus **solely** on the **median**
5 **annual flows at the Tangle Creek gage** masks the actual cumulative impact that self-
6 supplied domestic uses have on the vast majority of surface water users in the Verde River
7 Watershed – users who are primarily located well upstream of the Tangle Creek gage, in
8 the Lower Verde Valley and Big and Little Chino subwatersheds. Indeed, under ADWR's
9 approach, the cumulative impact of self-supplied domestic users in the subwatersheds above
10 the Tangle Creek gage is estimated to be no more than 7.45% of flows, while the impact to
11 the subwatersheds above the Camp Verde gage is estimated to be no more than 9.15% of
12 available flows. It is noteworthy, however, that even under ADWR's approach, Table 4
13 shows that the cumulative impact from self-supplied domestic users on the median annual
14 flow in the subwatersheds above the Paulden gage is **still 51.65%**.

15 In sum, Table 4 demonstrates the fundamental flaw in ADWR's position that the
16 Court should use median annual flows at the Tangle Creek gage as the best measure of
17 available flows in the Verde River Watershed. What Table 4 demonstrates is that the best
18 measure of available flows is achieved by looking at **all three gages** during the irrigation
19 season (May, June, and July) – which is the time of year when the need for water is the
20 greatest throughout the watershed. *See De Minimis Order at 8.*

21 This problem also exists with ADWR's analysis of stockponds. Like with domestic
22 uses, ADWR disregards the Court's direction to consider median flows for May, June, and

July at the Paulden, Camp Verde, and Tangle Creek gages as part of the *de minimis* analysis. Instead, ADWR determined that stockponds with a capacity of less than or equal to 4 acre-feet, when calculated solely against the median annual flow measured at the Tangle Creek gage, *id.* at 23, “would *still* only have a cumulative impact of 4.33% on the available water within the Verde River watershed”, *id.* at 35 (italics in original). Consequently, ADWR concludes for itself that “there is enough data to support a *de minimis* classification for stockponds with capacities of ≤ 4.00 AF because these stockpond uses do not have a major impact on the available water within the Verde River watershed.” *Id.* at 35.

Once again, ADWR’s conclusion is not supported by Table 8 of its own Report. Even a quick glance at Table 8 shows that the combined total capacity of stockponds has a significant impact on flows at the Paulden, Camp Verde, and Tangle Creek gages during the critical low flow months of May, June, and July. See Technical Report at 22 (Table 8).

Table 8: Percent Impact of Stockpond Uses on Each Gage

Subwatersheds Above Each Gage	Combined Total Capacity (AF)	Average Capacity (AF) ^a	Impact on Median Flow (%)			Impact on Median Annual (%)
			May	June	July	
Little Chino Big Chino Sycamore Lower Verde Valley Verde Canyon ^b	12,180	4	10.38%	15.37%	10.48%	4.33%
Little Chino Big Chino Sycamore Lower Verde Valley ^c	11,304	4	15.51%	22.22%	16.42%	5.67%
Little Chino Big Chino ^d	4,818	5	28.20%	30.13%	27.68%	23.60%

Notes:

^a Average Capacity was rounded up to nearest whole number.

^b Median May, June, July and annual flow calculated from the Tangle Creek gage.

^c Median May, June, July and annual flow calculated from the Camp Verde gage.

^d Median May, June, July and annual flow calculated from the Paulden gage.

1 For example, Table 8 shows the combined capacity of stockponds in the Verde River
2 Watershed represent only 4.33% of median annual flows at the Tangle Creek gage, but when
3 the combined capacity of stockponds is measured at the Camp Verde gage during the
4 months of May, June, and July their impact is much more – ranging from 15.51% of the
5 median flow in May to as much as 22.22% in June. *Id.* These impacts increase even more
6 when the combined capacity of stockponds is examined in the context of the Paulden gage,
7 which shows impacts to median flows as high at 30.13%. *See id.*

8 In short, the Court should reject ADWR's efforts to weigh in on Thorson Factor 4 as
9 both improper and unhelpful, particularly given ADWR's exclusive focus on examining the
10 extent and impact of stockpond and domestic uses based solely upon the median annual
11 flows measured at the downstream Tangle Creek gage.

12 **V. The Practical Value of Adopting *De Minimis* Uses Must be Carefully**
13 **Considered Under Thorson Factor 4**

14 The Nation supports the Court's examination of whether a streamlined *de minimis*
15 process can be used in the Verde River Watershed. After all, the Nation, like the Court and
16 the parties, wants to avoid the delays experienced in the San Pedro River Watershed, if at
17 all possible. However, it bears repeating that a *de minimis* determination "is fundamentally
18 a case management decision by the court that the benefits of fully adjudicating all attributes
19 of certain types of claims are substantially outweighed by the costs that must be incurred by
20 the parties and the court." *De Minimis* Order at 6. It does not create a legal basis for a water
21 right or even characterize whether water pumped from a well is appropriable water or
22 percolating groundwater. *Id.* The *de minimis* process also does not exclude any class of

1 water users from the Adjudication. *Id.* And, of course, *de minimis* procedures are only
2 warranted for water users that have “such a small impact on other water users that the
3 administration of those uses in the future is not likely.” *Id.*

4 Considering these points, the appropriateness and practical value of applying the *de*
5 *minimis* process to domestic uses and stockponds in the unique context of the Verde River
6 Watershed should be carefully considered by the Court. While Special Master Thorson
7 determined that a cumulative impact of 12% on the available water supply in the San Pedro
8 River Watershed was, as a factual matter, **not** *de minimis*, he nevertheless decided that, from
9 a case management standpoint, the summary adjudication of these uses was appropriate.
10 Thorson Decision at 30. But, as underscored by the data presented in ADWR’s Technical
11 Report, the Verde River Watershed is not the San Pedro and the same cost-benefit analysis
12 performed by Special Master Thorson for *de minimis* uses in the San Pedro may have a very
13 different outcome when applied in the Verde.

14 In fact, it is difficult to conclude that the cumulative impact of domestic uses or
15 stockponds in the Verde River Watershed will only have a “small impact” on other water
16 users in the watershed such that their future administration is unlikely. This is particularly
17 true when one considers their cumulative impact as measured against all three gages during
18 the critical low flow periods of May, June, and July. As discussed above, the Court need
19 only refer to Table 4 and Table 8 of ADWR’s Technical Report to see that the cumulative
20 impact of domestic uses and stockponds, as a factual matter, far exceeds the 12% range
21 considered by Special Master Thorson in the San Pedro River Watershed.

Moreover, the **practical value** of using a *de minimis* process to summarily adjudicate domestic uses and stockponds in the Verde River Watershed is also suspect. Even if the Court adopts a *de minimis* process, the Court and parties will still need to determine if, among other things, each *de minimis* user has a legal basis for its claimed right and, in the case of domestic users, whether their well is taking appropriable subflow.¹¹ Citing the requirement of A.R.S. § 45-257¹² and the Special Master's experience regarding domestic uses in the San Pedro River Watershed, the Special Master has already observed that "as a practical matter, the adoption of summary adjudication proceedings for domestic uses **may not** result in a notably reduced burden on the court." *De Minimis* Order at 10 (emphasis added).

Accordingly, moving forward the Court should carefully consider whether there is any real benefit to using *de minimis* proceeding in the Verde River Watershed and whether, under the unique circumstances in the Verde, the *de minimis* process – once all is said and done – might ultimately **delay** the Court's goal of streamlining the Adjudication process in the first place.

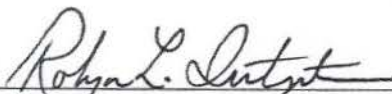
¹¹ Should the Court adopt a state law *de minimis process* for the Verde River, despite the demonstrated cumulative impact of stockpond and domestic uses on available water supplies, the Court should expressly confirm in its decision that (a) the *de minimis* process does not create a water right where none would otherwise exist; and (b) any uses summarily adjudicated using the *de minimis* process are not excluded from the jurisdiction of the Adjudication Court, but rather, remain enforceable under principles of state and federal law.

¹² A.R.S. § 45-257 requires that a claimant's small water use claims be determined in the Adjudication "in conjunction with the determination of that claimant's other claims" in the same subwatershed.

1 Based on the foregoing, the Nation respectfully requests that the Court direct ADWR
2 to revise its Technical Report to address the deficiencies noted here. In addition, because
3 ADWR went well beyond its role as the technical advisor to the Court in its
4 recommendations found in Chapter 6 of the Report, these recommendations should be
5 rejected, and the Court should perform its own cost-benefit analysis under Thorson Factor
6 4. Finally, the Nation urges the Court to carefully consider whether, under the unique
7 circumstances of the Verde, a *de minimis* process is appropriate or helpful, particularly in
8 light of the substantial impact that stockpond and domestic *de minimis* have on the median
9 flow in the subwatersheds upstream of the Tangle Creek gage.

10 DATED this 28th day of October, 2022.

11 MONTGOMERY & INTERPRETER, PLC

12 By 
13 Susan B. Montgomery, Esq.
14 Robyn L. Interpreter, Esq.
15 Jay Tomkus, Esq.
16 Attorneys for the Yavapai-Apache Nation
17
18
19
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21
22

1 ORIGINAL AND TWO COPIES of the
2 foregoing hand-delivered this 28th day of
3 October, 2022, to:

4 Clerk of the Superior Court
5 Maricopa County Superior Court
6 Attn: Water Case
7 601 W. Jackson St.
8 Phoenix, AZ 85003

9 AND COPIES of the foregoing mailed this 28th
10 day of October, 2022, to:

11 Susan Ward Harris
12 Special Master
13 Central Court Building, Ste. 3A
14 201 W. Jefferson St.
15 Phoenix, AZ 85003-2205

16 Hon. Mark H. Brain
17 Judge of the Superior Court
18 Old Courthouse
19 125 W. Washington, Ste. 002
20 Phoenix, AZ 85003

21 AND COPIES of the foregoing sent via U.S.
22 Mail this 28th day of October, 2022 to all persons
appearing on the CAML for Case No. W1-106
dated July 28, 2022.

RLD

OCT 28 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Salt River Project (see Attachment A for full name of objector)

Mailing Address c/o Salmon, Lewis & Weldon, PLC

2850 E. Camelback Road, Suite 200, Phoenix, AZ 85016

Telephone No. (602) 801-9060

Statement of Claimant No. (if filed) Numerous. See Attachment A

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

See Attachment A

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CERTIFICATE OF SERVICE

On this 28th day of October, 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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

If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022**.



Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed) Lucas Shaw

Mailing Address c/o Salmon, Lewis & Weldon, PLC
2850 E. Camelback Road, Suite 200, Phoenix, AZ 85016

Telephone Number (602) 801-9060

1 John B. Weldon, Jr., 003701
2 Mark A. McGinnis, 013958
3 Michael K. Foy, 032736
4 **SALMON, LEWIS & WELDON, P.L.C.**
5 2850 East Camelback Road, Suite 200
6 Phoenix, Arizona 85016
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11 *Attorneys for Salt River Project Agricultural*
12 *Improvement and Power District and Salt River*
13 *Valley Water Users' Association*

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF MARICOPA**

16 IN RE: THE GENERAL
17 ADJUDICATION OF ALL RIGHTS
18 TO USE WATER IN THE GILA
19 RIVER SYSTEM AND SOURCE

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

Contested Case No. W1-106

**ATTACHMENT "A" TO SALT
RIVER PROJECT'S OBJECTIONS
TO AND COMMENTS ON ARIZONA
DEPARTMENT OF WATER
RESOURCES' TECHNICAL REPORT
CONCERNING *DE MINIMIS*
DOMESTIC, STOCKPOND AND
STOCK AND WILDLIFE WATERING
USES IN THE VERDE RIVER
WATERSHED**

(Assigned to the Hon. Mark H. Brain)

(Referred to Special Master Susan Ward
Harris)

1 Contested Case Name: *In re Subflow Technical Report, Verde River Watershed.*

2 Descriptive Summary: SRP submits its comments on ADWR's report filed August 29,
3 2022 regarding potential summary adjudication procedures for domestic, stockpond
4 and stock and wildlife watering uses in the Verde River Watershed.

5 Statement of Claimant Nos.: 39-05-50053 through -50055; 39-07-1040, -1041, -1206,
6 -1207, -1998, -11951 through -11955; 39-11-1976, -1977, -1978, -2217, -2219 through
7 -2223, -2225, -4844 through -4846, -17557; 39-L8-35152, -35157, -35158, -35212,
8 -35213, -35216 through -35218, -132301 through -132309, and -133295.0

9 Date of Filing: October 28, 2022.

10 Number of Pages: 21.

11 As directed by the Special Master's minute entry filed June 14, 2022,¹ the Arizona
12 Department of Water Resources ("ADWR") filed a technical report on August 29, 2022 that
13 sets forth the results of its investigation into domestic, stockpond, and stock and wildlife
14 watering uses in the Verde River Watershed ("Technical Report"). The *De Minimis* Order
15 directed parties to file objections to or comments on the Technical Report by no later than
16 October 28, 2022. Pursuant to that minute entry, the Salt River Valley Water Users'
17 Association and the Salt River Project Agricultural Improvement and Power District
18 (collectively, "SRP") hereby submit their objections and comments regarding the Technical
19 Report.

20 In general, SRP agrees with much of the Technical Report. Other portions of that
21 report are, in effect, a *de facto* motion for reconsideration by ADWR of the Special Master's
22 rejection of ADWR's previously proposed methodology. On some issues, ADWR performed
23 the analysis that the Special Master directed it to do, but then went on and reargued why
24 ADWR was right and the Special Master was wrong. SRP suggests that, for the most part, the
25 Special Master was correct in the *De Minimis* Order and that no reason exists to deviate from
26 those findings based upon ADWR's rehash of its prior positions.

27 ¹ See Minute Entry (June 14, 2022) ("*De Minimis* Order").

1 **I. Scope of Technical Report**

2 In 1994, the Special Master in this Adjudication prepared a report that analyzed a
3 potential *de minimis* classification for certain stock watering, stockpond, and domestic uses in
4 the San Pedro River Watershed.² The Thorson Decision began by discussing the concept of
5 *de minimis* uses, explaining that a *de minimis* classification “is fundamentally a case
6 management determination by a court that the benefits of resolving certain types of disputes
7 are substantially outweighed by the costs of doing so.” Thorson Decision, at 8. To guide this
8 *de minimis* analysis, the Thorson Decision identified four relevant factors (the “Thorson
9 Factors”): (1) Water availability in the watershed; (2) the number of stock watering,
10 stockpond, and domestic uses; (3) the extent and impact of these uses; and (4) the costs and
11 benefits of a complete, rather than abbreviated, adjudication of these small uses. *Id.* at 12.³
12 As Special Master Harris explained in directing ADWR to prepare the Technical Report, “the
13 first three [Thorson Factors] require technical assistance from ADWR pursuant to A.R.S. §
14 45-256. The purpose of a technical report is to provide data relevant to the issue of the
15 current impact that one group of users of appropriable water in a watershed has on the
16 downstream users of appropriable water currently available.” *De Minimis* Order, at 7. Thus,
17 the Technical Report was intended only to provide data for the first three Thorson Factors.

18 ADWR states in its Technical Report that it intends to address only “the first three” of
19 the four Thorson Factors—i.e., water availability, the number of uses, and the extent and
20 impact of the uses. *See* Technical Report, at 3. ADWR’s Technical Report does not address
21 or purport to address Thorson Factor No. 4, which entails an analysis of the costs and benefits

23 ² *See* Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1 Cases
24 Involving Stockwatering, Stockponds, and Domestic Uses, Maricopa County Superior Court
Case No. W1-11-19 (Nov. 14, 1994) (“Thorson Decision”).

25 ³ In 2002, the Adjudication Court (Judge Eddward P. Ballinger, Jr.) reviewed and approved
26 the Thorson Decision, with some minor modifications. *See* Order, Maricopa County Superior
27 Court Contested Case No. W1-11-19 (Sept. 26, 2002) (“Ballinger Order”). The Ballinger
Order recites the four Thorson Factors that were applied in the Thorson Decision and does not
modify or otherwise criticize those factors.

1 of a complete, rather than abbreviated, adjudication of the uses. *See id.*; *see also* Thorson
2 Decision, at 12. ADWR’s decision to omit the cost-benefit analysis was appropriate, as
3 ADWR was not directed by the Special Master to perform that analysis, which is an issue
4 properly left to the Special Master and the Adjudication Court. *See De Minimis* Order, at 5
5 (“The technical report from ADWR provides relevant data necessary for the court to make the
6 determination. The decision that a particular beneficial use is or is not a *de minimis* use will
7 be made [by the Court] after the issuance of ADWR’s technical report . . .”). Determining
8 whether a particular category of uses will be summarily adjudicated “must be made after
9 determining contested facts and applying the law to those facts, which is **strictly a judicial**
10 **function**” that falls outside the ambit of ADWR. *San Carlos Apache Tribe v. Superior Ct.*,
11 193 Ariz. 195, 212, 972 P.2d 179, 196 (1999) (emphasis added).

12 Though it did not conduct the cost-benefit analysis that is required in order to
13 determine whether summary adjudication procedures are appropriate, ADWR nevertheless
14 weighed in on that ultimate question and concluded that certain domestic, stockpond, stock
15 watering, and wildlife watering uses “should be eligible for *de minimis* adjudication.” *See*
16 Technical Report, at 34. This opinion from ADWR is outside the scope of ADWR’s technical
17 expertise and outside the proper scope of the Technical Report. *See San Carlos Apache*
18 *Tribe*, 193 Ariz. at 212, 972 P.2d at 196.

19 By ADWR’s own acknowledgement, it did not analyze all four of the Thorson Factors
20 that are necessary to answer the ultimate question of whether summary adjudication should be
21 applied to a particular category of uses. Even more importantly, ADWR ignored the Special
22 Master’s clear direction that the purpose of the Technical Report is “to provide data relevant
23 to the issue of the current impact that one group of users of appropriable water in a watershed
24 has on the downstream users of appropriable water currently available.” *De Minimis* Order, at
25 7. Rather than accept ADWR’s incomplete analysis, the Special Master should apply
26 Thorson Factor No. 4—i.e., a cost-benefit analysis—prior to determining whether some or all
27

1 of the uses analyzed in the Technical Report should be subject to summary adjudication in the
2 Verde Watershed.

3 As discussed during the oral argument that was held on May 6, 2022 regarding
4 ADWR's original proposal for evaluating domestic uses in the Verde Watershed, there are
5 two overarching factors that should inform the Special Master's cost-benefit analysis. *See De*
6 *Minimis* Order, at 2. First, whether summarily adjudicated uses will remain subject to
7 enforcement by senior appropriators has a significant impact on the cost-benefit analysis. As
8 the Special Master has previously recognized, summary adjudication "does not exclude any
9 class of water users from the adjudication." *Id.* at 6. The importance of including summarily
10 adjudicated uses in the water right enforcement process is well illustrated by Table 4 of the
11 Technical Report, which shows the impact that the domestic uses ADWR proposes for
12 summary adjudication is expected to have on water availability. *See* Technical Report, at 16.
13 Based on ADWR's calculations, these domestic uses are expected to consume 26.46% of the
14 June streamflows at the Tangle Creek gage, 35.84% of June streamflows at the Camp Verde
15 gage, and 65.92% of the June streamflows at the Paulden gage. *See id.* If summarily
16 adjudicated uses were exempt from enforcement, this would mean that, at the time of year in
17 which that water is most needed for irrigation and other uses, the majority of available water
18 in the portion of the Verde Watershed upstream from the Paulden Gage would be excluded
19 from Arizona's "first in time, first in right"⁴ system. Likewise, over a quarter of the overall

20
21 ⁴ *See* A.R.S. §§ 45-151(A), -175. "This state has always followed the doctrine of prior
22 appropriation of surface waters—first in time, first in right." *San Carlos Apache Tribe*, 193
23 *Ariz.* at 205, 972 P.2d at 189 (1999). Under this system, "[a] party's priority right allows that
24 person to make a 'first and prior call' to the extent of that right as against all junior
25 appropriators." *United States v. Gila Valley Irr. Dist.*, 804 F. Supp. 1, 13 (D. Ariz. 1992),
26 *aff'd in part, vacated in part on other grounds*, 31 F.3d 1428 (9th Cir. 1994). Under the "first
27 call" rule, "in time[s] of shortage, junior appropriators must shut down (or be shut down),
with the last to appropriate being the first shut down and so on, until there is enough water at
the senior's point of diversion to satisfy the senior's needs. The basic idea is that no junior
appropriator may impair the rights of a more senior appropriator." A. Dan Tarlock et al., *Law*
of Water Rights and Resources, § 12.02(e) (Feb. 2020) (footnotes omitted).

1 water available in the entire Verde Watershed at that time of year as measured at Tangle
2 Creek gage would be excluded.

3 The costs of exempting over a quarter of the water available in the Verde Watershed
4 from Arizona's prior appropriation system would be enormously detrimental and would dwarf
5 any benefits of summary adjudication. Conversely, application of summary adjudication
6 procedures to a category of uses that clearly is not *de minimis* when considered cumulatively
7 (e.g., domestic uses in the Verde Watershed) would be more defensible if summary
8 adjudication was used only as a procedural vehicle for adjudicating water rights rather than a
9 substantive vehicle for exempting those rights from other aspects of Arizona's prior
10 appropriation doctrine, such as enforcement.

11 Second, the cost-benefit analysis must recognize that "[t]he *de minimis* process does
12 not create a legal basis for an appropriable water right" and that "[a] determination must still
13 be made that a legal basis exists for a claimed right." *De Minimis* Order, at 6. Rather, the
14 summary adjudication process creates an expedited procedure for recognizing **existing** water
15 rights. *See* Thorson Decision, at 41 (explaining that a water right abstract will be issued under
16 the summary adjudication process only if the water use is matched to "a preadjudication filing
17 or other legal basis for use" because the Adjudication "is a confirmation of valid pre-existing
18 water rights."). For uses of appropriable water that were commenced after the June 12, 1919
19 effective date of Arizona's 1919 Water Code, compliance with the statutory permitting
20 process is the only way to obtain an appropriative water right. *See, e.g., In re Determination*
21 *of Relative Rights to Use of Waters of Pantano Creek*, 45 Ariz. 156, 174, 41 P.2d 228, 235-36
22 (1935). For instance, a "36" filing under the Water Rights Registration Act is **not** a valid
23 basis of right for a use that began after June 12, 1919.

24 As the Special Master has previously held, the exclusivity of the statutory permitting
25 process applies to all appropriable water, including subflow. *See* Decision on Issues of Broad
26 Legal Importance, Contested Case No. W1-11-0245, at 14 (Aug. 2, 2021). If the summary
27 adjudication process was to provide a way around the requirement of a valid, pre-existing

1 water right—such as by providing a means for those who drilled wells in the subflow zone
2 after 1919 to have an appropriative water right without applying for and obtaining a permit to
3 appropriate or a certificate—then the costs of summary adjudication would be enormous and
4 would dwarf the benefits of any time savings that resulted from the process. Conversely,
5 summary adjudication for a category of uses that has more than a *de minimis* cumulative
6 impact on other users in the Verde Watershed and downstream would be more defensible if
7 there is rigid adherence to the rule that the summary adjudication process cannot create a
8 valid water right where none previously existed.

9 **II. Thorson Factor No. 1: Water Availability**

10 The first Thorson Factor that ADWR was directed to analyze in its Technical Report is
11 the water availability in the Verde Watershed. *See* Thorson Decision, at 12; *De Minimis*
12 Order, at 7, 12. Application of this factor requires a determination of which gages should be
13 used to measure available water and what data should be used to assess water availability at
14 those gages.

15 ADWR originally proposed to evaluate the impacts of domestic uses in the Verde
16 Watershed based on median annual flows at a single stream gage. *See generally* ADWR,
17 Technical Report re *De Minimis* Domestic Water Use in the Verde River Watershed (Dec. 3,
18 2021) (“Original ADWR Report”). SRP objected to that proposal for two primary reasons.
19 First, the focus on a single gage near the downstream end of the Verde Watershed would
20 reveal the impacts of these uses only as they relate to uses downstream from that gage, while
21 masking the impacts that the uses would have on other water users located throughout the
22 Verde Watershed. *See* SRP’s Proposal for Analyzing a Potential Domestic *De Minimis*
23 Designation in the Verde River Watershed, at 4-5 (March 14, 2022) (“SRP Proposal”).
24 Second, the focus on median annual flows rather than more granular data from low-flow
25 periods would mask the impacts that the uses being analyzed would have on other water users
26 during the relatively dry period of the year when water is most needed for irrigation and other
27 non-domestic uses. *See id.* at 5-8. In her order directing ADWR to prepare the Technical

1 Report, the Special Master addressed SRP's objections by directing ADWR to include in its
2 analysis "the median flows for May, June, and July at the Paulden, Camp Verde, and the
3 Tangle Creek gauges and the annual median flows at Tangle Creek." *De Minimis* Order, at
4 12.

5 In the Technical Report, ADWR has calculated water availability at each of Paulden,
6 Camp Verde, and Tangle Creek gages and has done so using median flows for May, June, and
7 July. The results of that analysis are depicted in Table 1 of the Technical Report. *See*
8 Technical Report, at 8. SRP believes that Table 1 accurately reflects the water availability
9 data that the Special Master directed ADWR to provide. *See De Minimis* Order, at 12.

10 Although the Special Master directed ADWR to provide median streamflow data for all three
11 gages for each of May, June, and July, the Special Master should select a single month of data
12 to rely upon for purposes of evaluating whether certain uses in the Verde Watershed are in
13 fact *de minimis*. As the Special Master correctly noted in the *De Minimis* Order, "the relevant
14 water supply, or the amount of water available in the watershed, is the water supply during the
15 period when there is a greater likelihood that domestic water use will impact other claimants'
16 use of the water supply." *Id.* at 8. At all three gages that were included in ADWR's water
17 availability analysis in the Technical Report, the median streamflows are lowest in June.
18 Because June includes the lowest streamflows, June streamflows represent the period when
19 the uses analyzed in the Technical Report are most likely to impact the amount of water
20 available to other users. This is likely because streamflows in early May could include water
21 produced by snowmelt, while streamflows in late July could include water produced by
22 monsoon storms. Accordingly, June flows best represent the period during which the uses
23 being considered for summary adjudication will have the greatest potential to impact the
24 water that is available to other users. For this reason, the Special Master should evaluate the
25 costs and benefits of summary adjudication based on June streamflow data.

26 In Section 2.3.2 of the Technical Report, ADWR resurrects its prior argument by
27 urging the Special Master to rely upon median annual flows at Tangle Creek gage rather than

1 using monthly flow data at the three relevant gages. *See* Technical Report, at 9-10. ADWR
2 bases this theory on the fact that a single gage was used in the Thorson Decision to determine
3 water availability in the San Pedro Watershed and on its contention that “[t]he median takes
4 into consideration both seasonal flooding and periods of no flow.” *Id.* at 9. The Special
5 Master should reject ADWR’s request for reconsideration of her prior decision regarding the
6 methodology for calculating water availability.

7 The use of a single, downstream gage was deemed appropriate in the San Pedro
8 Watershed because “there ha[d] been no objections by users in the San Pedro River watershed
9 to neighboring stockwatering, stockponds, or domestic uses.” Thorson Decision, at 19. Thus,
10 the relevant inquiry was the impact of the uses on downstream watersheds. In contrast, “the
11 relevant downstream users for the determination of *de minimis* use are not limited to the water
12 users located downstream of the Verde River Watershed.” *De Minimis* Order, at 8. Likewise,
13 ADWR’s statement that its preferred measurement (median annual streamflows) captures
14 flood flow conditions in addition to low-flow conditions underscores the fundamental reason
15 that it is **not** a useful measurement for conducting a *de minimis* analysis in the Verde
16 Watershed. The inclusion of “seasonal flooding” data from winter and monsoon storms
17 prevents a reliable assessment of the water that would be available during the period in which
18 the uses under consideration are most likely to affect irrigators and other water users holding
19 senior diversion rights, which is during the low-flow period typified by June streamflow
20 conditions.

21 **III. Thorson Factor No. 2: The Number of Uses**

22 The second Thorson Factor that ADWR was directed to analyze in its Technical
23 Report is the number of domestic uses in the Verde Watershed and its five subwatersheds.
24 *See* Thorson Decision, at 12; *De Minimis* Order, at 7, 12. In the SRP Proposal, SRP urged the
25 Special Master to direct ADWR to calculate the number of domestic water uses in the Verde
26 Watershed based on the number of wells, as reflected in ADWR’s “Wells 55” database of
27 well registry filings. *See* SRP Proposal, at 9-11. ADWR proposed to determine the number

1 of self-supplied domestic water users in the Verde Watershed by using census data, and then
2 divide that number by three on the assumption that an average domestic use provides water to
3 three residents. *See* Original ADWR Report, at 13-14. After hearing oral argument on the
4 competing proposals, the Special Master determined “that the population size and not number
5 of wells should be used to quantify domestic use.” *De Minimis* Order, at 5. The Special
6 Master therefore directed ADWR to “apply the same methodology that ADWR used in its
7 [Original ADWR Report] to calculate the total self-supplied domestic population for the
8 Verde River Watershed to calculate the self-supplied domestic population for each
9 subwatershed in the Verde River Watershed.” *Id.* at 12.

10 SRP recognizes that the Special Master has approved the population-based
11 methodology that ADWR presented in the Original ADWR Report. As described in the
12 Technical Report and outlined below, however, ADWR determined that gaps in the available
13 data prevent it from applying its original methodology to each of the Verde subwatersheds, as
14 directed by the Special Master. *See* Technical Report, at 11-14. Thus, it is not possible to
15 comply with the Special Master’s directive to “apply the same methodology that ADWR
16 used” in the Original ADWR Report. *De Minimis* Order, at 12. Some other methodology
17 will need to be selected and applied. As stated below, SRP believes that its Wells 55
18 approach provides a more rational basis for analyzing the number of domestic uses in each
19 subwatershed.

20 In the Technical Report, ADWR acknowledges that it is unable to verify the water
21 system-served population and determine the self-supplied domestic population for each
22 subwatershed within the Verde Watershed using its original methodology. To apply
23 ADWR’s original methodology for calculating the self-supplied domestic population, several
24 steps are required. First, one must determine the total population of each subwatershed within
25 the Verde Watershed. *See* Original ADWR Report, at 13. Second, one must determine how
26 many of those users are serviced by community water systems, rather than through self-
27 supply. *See id.* Third, one must deduct the self-supplied population of the subwatershed from

1 the total population. *See id.* And fourth, one must divide that number by three to
2 approximate the total number of uses. *See id.* at 13-14.

3 Here, ADWR could not determine with confidence the population of the Verde
4 Watershed (much less each subwatershed within it) because “[t]he census blocks do not . . .
5 conform perfectly to the Verde River watershed as many census blocks span multiple
6 watersheds and/or subwatersheds.” Technical Report, at 11. ADWR sidestepped this issue in
7 the Original ADWR Report by “including any census block that intersected the Verde River
8 watershed boundary to avoid splitting census blocks.” *Id.* at 12. ADWR was unable to use
9 this same approach for calculating the population of each subwatershed “because it would
10 result in double-counting census blocks that fall within multiple subwatersheds.” *Id.* ADWR
11 also encountered problems when attempting to estimate the number of users served by
12 community water systems within the Verde Watershed, as water system data routinely
13 showed higher numbers of users than would be expected based on census results. *See id.* at
14 13. This problem likely stems from the fact the Verde Watershed includes areas that have
15 large concentrations of vacation homes, while the census is intended to measure only
16 permanent residents.⁵

17 ADWR attempted to develop and apply workarounds for the problems it encountered
18 in applying Steps 1 and 2 of its proposed methodology, but the workarounds inject additional
19 uncertainty into the estimates and prevent ADWR from complying with the Special Master’s
20 direction that it calculate the number of uses by applying the population-based approach it
21 used in the Original ADWR Report. Rather than begin by estimating the number of **people**
22 within the Verde Watershed and its subwatersheds as directed by the Special Master, ADWR
23 instead used census data to estimate the number of **housing units** within each subwatershed.
24 *See* Technical Report, at 13 (Table 2). Because census blocks do not track the boundaries of
25

26 ⁵ For example, “Arizona Water Company–Pinewood, which serves Munds Park, Arizona,
27 claims to serve a population of 6,250 people despite the Munds Park population reported in
the 2020 Census being 1,096.” Technical Report, at 13.

1 the Verde Watershed or its various subwatersheds, “ADWR selected census blocks with their
2 center point within each subwatershed boundary to determine the number of housing units for
3 each subwatershed.” *Id.* The housing units included in this estimate include both self-
4 supplied housing and those that were served by community water systems, so ADWR
5 attempted to back out the self-supplied units by overlaying reported community water system
6 and municipal boundaries and “assum[ing] that every housing unit within these boundaries
7 was being served by a municipality.” *Id.* at 13-14.⁶ Like subwatershed boundaries,
8 community water system boundaries are not fully coterminous with census tracts. Thus,
9 “[t]he number of housing units that fell within a CWS boundary or municipal service area
10 boundary was also calculated by using any census block’s center point that intersected these
11 boundaries.” *Id.* at 14. This analysis culminated in Table 3 of the Technical Report, which
12 purports to identify (1) the total number of households in each subwatershed, (2) the number
13 of those households that are within the service boundaries of community water systems, and
14 (3) the total number of self-supplied households (which is the difference between the first two
15 figures). *See id.* at 15.

16 As the foregoing illustrates, ADWR was not able to follow the Special Master’s
17 directive that it “apply the same methodology that ADWR used in its Technical Report dated
18 December 2021 to calculate the total self-supplied domestic population for the Verde River
19 Watershed to calculate the self-supplied domestic population for each subwatershed in the
20 Verde River Watershed.” *De Minimis* Order, at 12; *see also id.* at 5 (“The Court believes that
21 the population size . . . should be used to quantify domestic use.”). Rather than determine the
22 total self-supplied population and then calculate uses based on that population, shortcomings
23 in the available data forced ADWR to instead attempt to calculate domestic uses based on the
24 number of households within each subwatershed that do not receive water from a community
25 water system.

26
27 ⁶ The community water system and municipal boundaries “have not been field-verified.”
Technical Report, at 14 n.30.

Given that limitations in the available data prevent ADWR from following the Special Master's directive for calculating the number of domestic uses, SRP suggests that SRP's original proposal of calculating uses based on data in ADWR's Wells 55 database provides a simpler and more accurate method for estimating the number of domestic uses given the available data. *See* SRP Proposal, at 9-11. As stated above, ADWR's revised methodology required it to estimate the number of households within each subwatershed using census data and estimate the number of those households that receive water from community water systems using data from community water system and municipal boundaries. ADWR acknowledges that neither the census data nor the water system data tracks the boundaries of the Verde Watershed or the five subwatersheds that are located within the Verde Watershed. In contrast, the data available in ADWR's Wells 55 database enables wells to be separated by watershed or subwatershed. Indeed, this work already was performed by SRP when, at the Special Master's direction, it determined the number of domestic wells that exist in each subwatershed within the Verde Watershed and provided that data to the Court and the parties.⁷

For the reasons stated above and in the SRP Proposal, the Wells 55 methodology is more logical, more direct, less reliant upon unsupported assumptions, and a better fit for the available data. Therefore, SRP suggests that adoption of the Wells 55 approach to calculating

⁷ *See* SRP's Notice of Serving Requested Information (Feb. 11, 2022). The summary table that was included with the data that SRP provided to the Court and the parties is reproduced as follows:

Wells 55 Query	
Subwatershed	Total
BIG CHINO	2,780
LITTLE CHINO	8,870
LOWER VERDE VALLEY	6,874
SYCAMORE	496
VERDE CANYON	2,003
Grand Total	21,023

the number of domestic uses in the Verde Watershed and its five subwatersheds would ensure compliance with the requirement that any summary adjudication process must be rationally based. *See, e.g., De Minimis Order*, at 9 (noting “the importance of a rational factual basis for a *de minimis* determination”). Because the information needed to apply the Wells 55 approach already has been provided by SRP, no additional technical work would be necessary. Data based on the Wells 55 approach could be evaluated and applied by the Special Master as part of her cost-benefit analysis without further delaying these proceedings.

Although the number of **total** domestic uses that SRP identified using its Wells 55 methodology (21,023) is generally consistent with the number of uses that ADWR identified using its methodology (20,972),⁸ the two methodologies produce appreciably different results in some subwatersheds. For instance, the table below shows the estimated number of domestic uses in each subwatershed applying the ADWR and SRP approaches.

Comparison of Estimates of Number of Self-Supplied Domestic Uses

Subwatershed	ADWR Estimate Based Upon Number of Households	SRP Estimate Based Upon Number of Wells	Difference (SRP – ADWR)
Little Chino	7,425	8,870	+1,445
Big Chino	3,117	2,780	-337
Sycamore	1,223	496	-727
Lower Verde Valley	6,471	6,874	+403
Verde Canyon	2,736	2,003	-733
	20,972	21,023	+51

As shown in this table, although the difference in the estimated number of domestic uses for the entire watershed is relatively small (51, or 0.2% of the number of uses), the differences in specific subwatersheds are more significant. In the Little Chino Subwatershed, for example,

⁸ See Note 7, *supra*; Technical Report, at 15.

SRP's estimate based upon the number of wells is almost twenty percent higher than ADWR's estimate based upon the number of households.

Those same differences carry over into the calculation of the impacts of such uses. Presented below is a revised version of ADWR's Table 4 from page 16 of the Technical Report. That revised table demonstrates the differences between SRP's calculations based upon the number of wells and the calculations that ADWR performed based upon the number of households. The numbers from ADWR's Table 4 are shown in brackets and italics for comparison purposes.

REVISED Table 4: Percent Impact of Self-Supplied Domestic Uses on Each Gage (Using Number of Wells as Estimate of Number of Self-Supplied Domestic Uses)^{a, b}

Subwatersheds Above Each Gage	Max Volume (AFA)	Impact on Median Flow (%)			Impact on Median Annual (%)
		May	June	July	
Little Chino Big Chino Lower Vere Valley Verde Canyon	21,023 [20,972]	17.92% [17.88%]	26.52% [26.46%]	18.08% [18.04%]	7.47% [7.45%]
Little Chino Big Chino Sycamore Lower Verde Valley	19,020 [18,236]	26.1% [25.02%]	37.38% [35.84%]	27.63% [26.49%]	9.54% [9.15%]
Little Chino Big Chino	11,650 [10,542]	68.19% [61.70%]	72.85% [65.92%]	66.94% [60.57%]	57.08% [51.65%]

^aAll other assumptions in ADWR Table 4 held constant.

^bADWR numbers shown in brackets and italics for comparison purposes.

The revised Table 4 shows that, although calculating the impact based upon the number of wells versus the number of households has a relatively small effect at the Tangle Creek gage, the effects at the Verde Valley and Paulden gages are more substantial. At the Paulden gage, the calculated impact based upon the number of wells is 6-7% higher than the impact based upon the number of households, regardless of which flow period is considered.

1 In addition to calculating the number of self-supplied domestic uses, ADWR also has
2 attempted to calculate the number of stockpond, stock watering, and wildlife watering uses in
3 the Verde Watershed and its subwatersheds. *See* Technical Report, at 17-18, 24-28. SRP has
4 no objections to or comments on the manner in which ADWR has estimated the numbers of
5 each of these uses.

6 **IV. Thorson Factor No. 3: The Extent and Impact of Uses**

7 The Technical Report also analyzes the third Thorson Factor, which is the extent and
8 impact of the uses that are being considered for summary adjudication. *See* Thorson
9 Decision, at 12; Technical Report, at 15-16, 22-23, 31. For domestic uses, ADWR assumed
10 that each use would result in the consumption of one acre-foot of water per annum and opined
11 that “1.00 AFA is a reasonable allotment of domestic water use per household.” *See*
12 Technical Report, at 16. ADWR then multiplied one acre-foot per year by the total number of
13 domestic uses it identified in each subwatershed to develop a total domestic demand estimate
14 for each subwatershed. ADWR compared that total demand to median streamflows during
15 May, June, and July at the relevant gages to determine what percentage of the available water
16 would likely be consumed by the category of domestic uses that is being considered for
17 summary adjudication. *See id.* (Table 4).

18 SRP agrees with ADWR’s selection of one acre-foot per annum as the projected
19 demand for each domestic use. No party has disputed that, to the extent that a summary
20 adjudication process is applied to self-supplied domestic uses, the appropriate quantification
21 standard for those uses would be one acre-foot per annum. *See* Minute Entry, at 5 (March 10,
22 2022). Given that any right awarded for a domestic use under a summary adjudication
23 process would be one acre-foot per annum, the projection of one-acre foot per use per annum
24 is the only logical and appropriate assumption for the amount of water associated with each
25 domestic use in the Verde Watershed.

26 In Table 4 of the Technical Report, ADWR has calculated the percentage of available
27 streamflows that are anticipated to be consumed by self-supplied domestic uses as measured

1 at the Paulden, Camp Verde, and Tangle Creek gages. ADWR has included separate
2 calculations at each gage based on median May, June, July, and annual streamflows. ADWR
3 appears to have correctly calculated the percentages based on the data it used for number of
4 uses and median streamflows. However, for the reasons stated in Section III above, the
5 number of uses within each subwatershed should be calculated based on the number of
6 registered wells in the subwatershed rather than the methodology ADWR used to estimate the
7 number of uses.⁹ Further, for the reasons stated in Section II above, the relevant data points
8 in Table 4 of the Technical Report are those that address the impact of the projected uses as
9 measured against median June streamflows, as opposed to median May, July, or annual
10 median streamflows.

11 In its Technical Report, ADWR also has applied Thorson Factor No. 3 in the context
12 of stockpond, stock watering, and wildlife watering uses. *See* Technical Report, at 22-23, 31.
13 SRP does not have any comments on ADWR's application of Thorson Factor No. 3 in the
14 context of those categories of uses.

15 **V. Chapter 6 of Technical Report (ADWR's "Summary and Conclusions")**

16 ADWR concludes its Technical Report with a "summary and conclusions" section.
17 *See* Technical Report, at 32-36. That section includes recommendations that "domestic uses
18 of less than or equal to one acre-foot per annum . . . and stockponds with a capacity of less
19 than or equal to four acre-feet per annum . . . do not have a major impact on the surface water
20 resources of the Verde River watershed and should be eligible for *de minimis* adjudication."
21 *Id.* at 34. For the reasons explained in Section I above, these conclusions are outside the
22 scope of ADWR's technical expertise, are also outside scope of the Special Master's direction
23 to ADWR, and are not based on the cost-benefit analysis that must occur before eligibility of
24 a particular category of water uses for summary adjudication can properly be determined. *See*
25 *De Minimis* Order, at 5, 7; Thorson Decision, at 12.

26
27 ⁹ A revised Table 4 that shows the impact on median flows at the three relevant gages
measured based on the Wells 55 approach is included above in Section III.

1 In addition to being outside the proper scope of the Technical Report, the statement
2 that these uses “do not have a major impact on the surface water resources of the Verde River
3 watershed” is facially incorrect as to domestic and stockpond uses. *See* Technical Report, at
4 34. Table 4 of the Technical Report confirms that the domestic uses ADWR recommends for
5 summary adjudication are estimated to cumulatively account for 26.46% of median June
6 streamflows in the entire Verde Watershed. This includes 35.84% of the streamflows
7 available to the Little Chino, Big Chino, Sycamore, and Lower Verde Valley Subwatersheds
8 (as measured at Camp Verde gage)¹⁰ and 65.92% of streamflows available to the Little Chino
9 and Big Chino Subwatersheds (as measured at Paulden gage). *Id.* at 16; *see also id.* at 22
10 (demonstrating that stockponds are expected to consume 15.37%, 22.22%, and 30.13% of
11 June streamflows at Tangle Creek, Camp Verde, and Paulden gages, respectively). Even
12 under ADWR’s preferred measurement of median annual streamflows—which, as discussed
13 above, is inconsistent with the Special Master’s recognition that water availability is based on
14 “the water supply during the period when there is a greater likelihood that domestic water use
15 will impact other claimants’ use of the water supply”—more than half (51.65%) of the water
16 at Paulden Gage would be consumed by domestic uses proposed for summary adjudication.
17 *See* Technical Report, at 16 (Table 4); *see also id.* at 22 (23.60% of median annual
18 streamflows at Paulden gage are expected to be consumed by stockpond uses proposed for
19 summary adjudication, making the total impacts of domestic and stockpond uses over 75% of
20 median annual flows as measured at Paulden Gage); *De Minimis* Order, at 8.

21 In the Thorson Decision, Special Master Thorson stated that a category of uses that
22 was anticipated to consume 12% of water available in the San Pedro Watershed was “not *de*
23 *minimis*,” but that “when the costs and benefits of a detailed adjudication of stockpond and
24 domestic uses are considered, the summary adjudication of individual uses is warranted.” *See*

25
26 ¹⁰ All percentages listed in this paragraph are based on Table 4 of the Technical Report. As
27 explained above in Section IV, application of the Wells 55 approach results in somewhat
different impact percentages.

1 Thorson Decision, at 30. Like in the San Pedro Watershed, domestic and stockpond uses are
2 not factually *de minimis* in the Verde Watershed on a cumulative basis. If there is to be
3 summary adjudication of domestic or stockpond uses in the Verde Watershed or any of its
4 subwatersheds, that conclusion must be based on a cost-benefit analysis performed by the
5 Special Master and not upon ADWR's insupportable conclusion that these uses are factually
6 "*de minimis*." As set forth in Section I above, it would be possible for summary adjudication
7 of these non-*de minimis* uses to survive a cost-benefit analysis **only if** (1) all summarily
8 adjudicated uses are subject to enforcement and (2) safeguards are maintained to ensure that
9 claimants cannot use the summary adjudication process to fabricate a water right where none
10 would otherwise exist.

11 Aside from making a *de minimis* recommendation, ADWR also includes in Chapter 6
12 of its Technical Report an argument that the Special Master should make a single *de minimis*
13 determination for the entire Verde Watershed by analyzing impacts as measured at a single
14 downstream gage (Tangle Creek). *See* Technical Report, at 32-33. This issue already was
15 subject to extensive briefing and argument. In the *De Minimis* Order, the Special Master
16 explained that the three-gage "telescoping" approach described in the SRP Proposal "is a
17 reasonable approach to the collection of data needed in a *de minimis* determination" in light of
18 "the importance of a rational factual basis for a *de minimis* determination." *De Minimis*
19 Order, at 9. Pursuant to that finding, the Special Master directed ADWR to include data for
20 the "Paulden, Camp Verde, and the Tangle Creek gauges" in the Technical Report and further
21 directed ADWR to prepare domestic population data for "each subwatershed in the Verde
22 River Watershed" to facilitate application of the three-gage telescoping approach. *See id.* at
23 12. The Special Master should reject ADWR's attempt to relitigate the application of the
24 three-gage telescoping approach. Rather than further rehash this issue, SRP hereby
25 incorporates by reference the arguments against ADWR's single-gage approach that it
26 provided in the SRP Proposal and at the oral argument that was held on June 14, 2022.

1 **VI. Summary and Requested Action**

2 The purpose of the Technical Report is to provide the data that the Special Master
3 needs in order to apply a cost-benefit analysis and make a decision on whether certain
4 categories of water use in one or more of the subwatersheds within the Verde Watershed
5 should be subject to summary adjudication. ADWR exceeded the intended scope of the
6 Technical Report by opining on whether summary adjudication should be applied in the
7 Verde Watershed and including several pages of argument in opposition to the Special
8 Master's prior decisions that the Technical Report should include monthly flow data at three
9 different gages. Those portions of the Technical Report should be disregarded.

10 The data presented in the Technical Report plainly demonstrate that domestic and
11 stockpond uses in the Verde Watershed and each of its subwatersheds are not factually *de*
12 *minimis* when considered cumulatively. If the Special Master opts to apply summary
13 adjudication procedures to these categories of uses despite their relatively large cumulative
14 impacts on the available water supply, it is crucial that the order governing the summary
15 adjudication process make clear that (1) summarily adjudicated uses are subject to
16 enforcement and (2) summary adjudication cannot create a water right where none would
17 otherwise exist. Without these two safeguards, the costs of summary adjudication of the uses
18 would outweigh any efficiency benefit to summary adjudication.

19 DATED this 28th day of October, 2022.

20 SALMON, LEWIS & WELDON, P.L.C.

21
22 By: 

23 John B. Weldon, Jr.

24 Mark A. McGinnis

25 Michael K. Foy

26 2850 East Camelback Road, Suite 200

27 Phoenix, Arizona 85016

Attorneys for SRP

1 ORIGINAL and two copies of the foregoing
2 hand-delivered this 28th day of October, 2022 to:

3 Clerk of the Superior Court
4 Maricopa County
5 Attn: Water Case
6 601 West Jackson Street
7 Phoenix, AZ 85003

8 AND COPY hand-delivered this 28th day of
9 October, 2022 to:

10 Susan Ward Harris
11 Special Master
12 Central Court Building, Ste. 3A
13 201 West Jefferson
14 Phoenix, AZ 85003-2205

15 Arizona Department of Water Resources
16 Legal Division
17 Kimberly P. Parks
18 Janet L. Miller
19 1110 W. Washington Street, Suite 310
20 Phoenix, AZ 85007

21 AND COPY mailed to all persons appearing on
22 the Court-approved mailing list in Case No.
23 W1-106, dated July 28, 2022.

24
25
26
27


1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
2 **IN AND FOR THE COUNTY OF MARICOPA**

3
4 IN THE GENERAL ADJUDICATION
5 OF ALL RIGHTS TO USE WATER IN
6 THE GILA RIVER SYSTEM AND
7 SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

8
9
10 Contested Case No. W1-106

11 **COMMENT OR OBJECTION TO**
12 **TECHNICAL REPORT CONCERNING**
13 ***DE MINIMIS* DOMESTIC,**
14 **STOCKPOND AND STOCK AND**
15 **WILDLIFE WATERING USES IN THE**
16 **VERDE RIVER WATERSHED**

17 Special Master Susan Ward Harris

18 **COMMENTS OR OBJECTOR INFORMATION**

19 Name (printed) United States

20 Mailing Address 999 18th Street, suite 340 So.Terr., Denver CO 80202

21 Telephone No. 303-844-1349

22 Statement of Claimant No. (if filed) _____

23 **STATEMENT OF COMMENT OR OBJECTION**

24 Please provide your comments or reasons for the objection below (or in a separate
25 attachment) and complete the next page.

26 See Attachment A

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CERTIFICATE OF SERVICE

On this 26 day of October, 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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

If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022**.



Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed) Dan McCarl, Trial Attorney USDOJ/ENRD/IRS

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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

) Nos. W-1 - W-4
) Contested Case Nos. W1-106
) **ATTACHMENT "A" TO THE UNITED**
) **STATES' COMMENTS AND**
) **OBJECTIONS TO TECHNICAL REPORT**
) **CONCERNING *DE MINIMIS***
) **DOMESTIC, STOCKPOND AND STOCK**
) **AND WILDLIFE WATERING USES IN**
) **THE VERDE RIVER WATERSHED**

(Special Master Susan Ward Harris)

Contested Case Name: *In re Subflow Technical Report, Verde River Watershed*

Descriptive Summary: Attachment "A" to the United States' Comments and Objections to the Technical Report Concerning *De Minimis* Domestic, Stockpond and Stock and Wildlife Watering Uses in the Verde River Watershed.

Date of Filing: October 26, 2022.

Number of Pages: 4

1
2 On September 30, 2022, the Arizona Department of Water Resources ("ADWR") filed its
3 Technical Report re *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in
4 the Verde River Watershed ("Report"). ADWR filed its Report pursuant to this Court's Minute
5 Entry Order filed on July 14, 2022 ("Order"). The United States of America ("United States")
6 makes only brief objection to the Report as expressed in the following paragraphs.
7

8 The United States objects to the legal opinions expressed in the Report regarding whether
9 the water uses constitute *de minimis* use.¹ ADWR was charged with presenting data and the
10 quantitative results of its technical investigation into the potential physical impact of a class of
11 uses on the Verde watershed. ADWR was not charged with opining as to whether a standard is
12 achieved or a summary adjudication of water uses is appropriate.² The purpose of the Report, as
13 described in the Order, is to allow the Court:
14

15 to determine whether domestic uses, stockponds, and stock and wildlife watering uses in
16 the Verde River Watershed are *de minimis* uses. The technical report from ADWR
17 provides relevant data necessary for the court to make the determination. The decision
18 that a particular beneficial use is or is not a *de minimis* use will be made after the issuance
19 of ADWR's technical report, the parties have had the opportunity to file objections to the
20 technical report, and, if necessary, an evidentiary hearing is held on the objections.

21
22 ¹ See, e.g., Report at 1 ("ADWR determined that domestic uses of less than or equal to one acre-
23 foot per annum (≤ 1.00 AFA) and stockponds with a capacity of less than or equal to four acre-
24 feet per annum (≤ 4.00 AFA) have a negligible impact on the surface water resources on the
25 watershed and should be eligible for *de minimis* adjudication."), 35 ("ADWR believes that there
26 is enough data to support a *de minimis* classification for stockponds with capacities of ≤ 4.00 AF
27 because these stockponds do not have a major impact on the available water within the Verde
28 River watershed.").

29
30 ² See Order at 7 ("The first three factors require technical assistance from ADWR pursuant to
31 A.R.S. § 45-256. The purpose of the technical report is to provide data relevant to the issue of the
32 current impact that one group of users of appropriable water in a watershed has on the
33 downstream users of appropriable water currently available."), 12 ("IT IS ORDERED that
34 ADWR shall file a Technical Report on or before August 29, 2022, with the results of its
35 investigation of stock and wildlife watering, stockponds and domestic uses in the Verde River
36 Watershed.").

1
2 Order at 5 (emphasis added).

3 It is not ADWR's role at this time or for any party to say whether the uses analyzed in the
4 Report constitute *de minimis* use under Arizona law. Technical objections to the Report have not
5 been heard, much less resolved, and the Court has yet to determine whether ADWR accurately
6 measured the scope and potential impact of the class of uses under consideration.
7

8 For these reasons, the United States objects to the legal opinions/conclusions presented
9 in the Report. Further, the United States expressly reserves the right to participate in future
10 proceedings devoted to determining whether a *de minimis* classification is appropriate for the
11 class of uses under consideration.
12

13 RESPECTFULLY SUBMITTED this 26th day of October 2022.

14
15 
16

17
18 _____
19 Daniel F. McCarl
20 Attorney for the United States
21
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26
27
28

1
2 CERTIFICATE OF SERVICE

3 One Copy of the foregoing sent via Federal Express this 26th day of October 2022 to:

4 Clerk of the Superior Court
5 Maricopa County
6 Attn: Water Case
7 601 West Jackson Street
8 Phoenix AZ, 85003

9 The Honorable Mark H. Brain
10 Judge of the Superior Court
11 Old Court House
12 125 West Washington, Ste. 002
13 Phoenix, AZ 85003

14 Special Master Susan Ward Harris
15 Maricopa County Superior Court
16 201 West Jefferson Street
17 Central Court Building, Ste 3A
18 Phoenix, AZ 85003

19 Copies of the foregoing were sent via First Class U.S. Mail this 26th day of October 2022 to all
20 persons appearing on the Court Approved Mailing List for Contested Case Nos. W1-106, dated
21 July 28, 2022.

22
23
24
25
26
27
28


21 _____
Daniel F. McCarl

COPY

OCT 28

OCT 28 2022



CLERK OF THE SUPERIOR COURT
M. ANTELO
DEPUTY CLERK

Jeremiah D. Weiner 035456
Richard J. Palmer, Jr. 023749
Rosette, LLP
120 S. Ash Ave.
Suite 201
Tempe, AZ 85281
(480)899-8990
jweiner@rosettela.com
rpalmer@rosettela.com

Attorneys for the Tonto Apache Tribe

**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

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)
Consolidated

Contested Case No. W1-106

**TONTO APACHE TRIBE'S JOINDER IN
YAVAPAI-APACHE NATION'S
OBJECTIONS TO THE ARIZONA
DEPARTMENT OF WATER
RESOURCES' TECHNICAL REPORT RE
DE MINIMIS DOMESTIC, STOCKPOND,
AND STOCK AND WILDLIFE
WATERING USES IN THE VERDE
RIVER WATERSHED**

(Special Master Susan Ward Harris)

Contested Case Name: *In re Subflow Technical Report, Verde River Watershed*

Descriptive Summary: The Tonto Apache Tribe submits a motion to join the Yavapai-Apache Nation's objections to the Arizona Department of Water Resources' August 29, 2022, Technical

1 Report on *De Minimis* Domestic, Stockpond, and Stock and Wildlife Watering Uses in the Verde
2 River Watershed.

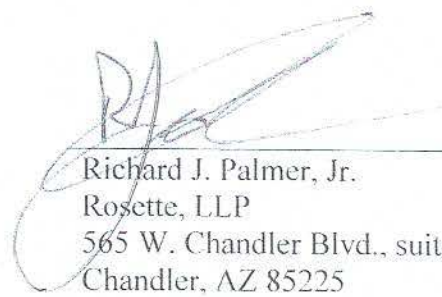
3 Statement of Claimant No.: 39-50058.

4 Date of Filing: October 28, 2022.

5 Number of Pages: 3

6
7 Pursuant to the Special Master's Order dated May 6, 2022, the Tonto Apache Tribe hereby
8 joins in the Yavapai-Apache Nation's objections, filed October 28, 2022, to the Arizona
9 Department of Water Resources' August 29, 2022, technical report on *De Minimis* Domestic
10 Stockpond, and Stock and Wildlife Watering Uses in the Verde River Watershed.
11

12 Dated this 28 of October, 2022.

13
14 
15 Richard J. Palmer, Jr.
16 Rosette, LLP
17 565 W. Chandler Blvd., suite 212
Chandler, AZ 85225
Attorneys for Tonto Apache Tribe

18 ORIGINAL of the foregoing hand-delivered
19 This 28 day of October, 2022 to:

20 Clerk of the Superior Court
21 Maricopa County
22 Attn: Water Case
601 W. Jackson Street
Phoenix, AZ 85003-2205

23 AND COPY hand-delivered this 28 day of
24 October, 2022 to:

25 Susan Ward Harris
26 Special Master
27 Central Court Building, Ste 3A
201 W. Jefferson
Phoenix, AZ 85003-2205

1
2 AND COPY mailed this 28 day of October, 2022 to all
3 persons appearing on the Court approved
4 mailing list in Case No. W1-106

5 
6 Mary Nielsen

OCT 26 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) KYRON D. FLEMING

Mailing Address P.O. BOX 26774

PRESCOTT VALLEY AZ 86312

Telephone No. 928 713 2642

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.


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CERTIFICATE OF SERVICE

On this 20 day of OCTOBER, 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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

If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022**.



Signature of Commenter/Objection or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objection, please provide the following information below or by attachment:

Name (printed)_____

Mailing Address_____

Telephone Number_____

Comment or objection to Technical Report Concerning

October 20, 2022

De Minimis Domestic Stockpond and stock and
wildlife watering uses in the Verde River Watershed

Byron Fleming

I wish to be heard on this matter due to the fact that I was unaware of any of the circumstances surrounding the situation until I received the form letter advising me. I attempted to read the information on line at the website provided but left more confused than when I started.

Basic facts of my situation:

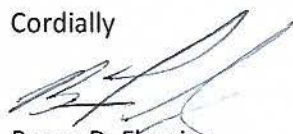
In 2002 4 entities purchased the Kimberly mine claim, Black Hills Mining District. Each of the four held one quarter of the claim but there was no designation of individual ownership. Going forward the claim was surveyed and divided into four separate parcels. Two of the original owners are deceased, one claimed bankruptcy, leaving me as the only original owner. I now own half of the original parcel, the other two parcels are owned by identified persons. There is a well (approximately 850 ft deep) on one parcel (401-02-013Q) that is jointly owned and accessed by each owner of the 4 parcels. There are no stock ponds, or stock and wildlife watering uses, or irrigation use on the entire claim. There are no full time residents on the entire claim even through there are permanent structures on three of the four parcels.

At the time the claim was purchased it was with the understanding that we had purchased full water and mineral rights to the claim. No mention of any state interest in water on our claim.

It appears from what I read on line that this has been an issue for quite some time and I have been unable to locate or even understand the original legislation. I do not feel that I should have to obtain the services of an attorney to wade through the legalese that make up the main of the articles that I was able to find regarding this subject. If there was a question regarding the water use should it not have been noted at the time of the purchase? Could whatever the state determines have an adverse impact on the sale price of any of the parcels in the future? What liability and recourse do the individual owners have regarding the settlement of the issue?

Please advise me of the steps the state is taking and any steps that I should be made aware of to protect my investment.

Cordially



Byron D. Fleming

Comment or objection to Technical Report Concerning

October 20, 2022

De Minimis Domestic Stockpond and stock and
wildlife watering uses in the Verde River Watershed

Byron Fleming

I wish to be heard on this matter due to the fact that I was unaware of any of the circumstances surrounding the situation until I received the form letter advising me. I attempted to read the information on line at the website provided but left more confused than when I started.

Basic facts of my situation:

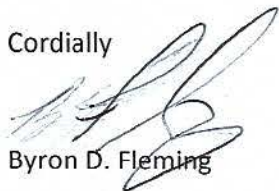
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Please advise me of the steps the state is taking and any steps that I should be made aware of to protect my investment.

Cordially



Byron D. Fleming

OCT 26 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Harold Cowles

Mailing Address P.O. Box 2800-177
Carefree, AZ 85377

Telephone No. 518-225-0315

Statement of Claimant No. (if filed) TBD - mailed to ADWR 10/21/2022

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

I have filed a Statement of Claim on APN 219-41-138E
This parcel claims de minimus water use at less than
1.0 acre-feet per year.

1 I would like to be informed of the progress
2 and outcome of this Adjudication. Thank you.
3
4

5 **CERTIFICATE OF SERVICE**

6 On this 21st day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13
14 
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) Michele Guy

18 Mailing Address P.O. Box 2800-177

19 Parafree, AZ 85377

20
21 Telephone Number 480-652-6698
22
23
24
25
26

OCT 26 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
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W-1 (Salt)
W-2 (Verde)
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Contested Case No. W1-106

**COMMENT OR OBJECTION TO
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DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTION INFORMATION

Name (printed) Michele Guy

Mailing Address P.O. Box 2800-177
Carefree, AZ 85377

Telephone No. 480-652-6698

Statement of Claimant No. (if filed) TBD - mailed to ADWR 10/21/2022

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

I have filed Statements of Claims on APN 219-

219-41-145A and APN 219-41-145C. These both

claim de minimus water use at less than 1.0 acre-feet per year each.

1 I would like to be informed of the progress
2 and outcome of this Adjudication. Thank you.
3
4

5 **CERTIFICATE OF SERVICE**

6 On this 21st day of October, 2022, I certify that the original Comment or
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13
14 
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
19 _____

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21 Telephone Number _____
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OFFICE OF THE SPECIAL
Arizona General Stream Adjudication

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

Contested Case No. W1-106

Special Master Susan Ward Harris

Name (printed) Lewallen Family Trust - Gary W., and Katharine S. Lewallen

Mailing Address 110 South Crown Key Avenue

Gilbert, Arizona 85233-7804

Telephone No. (480) 231-1203

Statement of Claimant No. (if filed) NA

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

ADWR determined that domestic uses equal to one acre-foot per annum & have a negligible impact on the surface water resources of the watershed, they should be eligible for de minimis adjudication. I utilize an exempt well located in the Little Chino SubBasin (Well Registry: 55-502666 - Cadastral: B16002011BDC), that is used for domestic & drip irrigation for a 4 acre parcel. I believe that a de minimis request for a quantification of "reasonable use" for 4 acre feet per annum for this parcel is appropriate and necessary for these uses, as the 1994 Memorandum Decision specifically identified the benefits of a complete, rather than abbreviated adjudication of these small users.

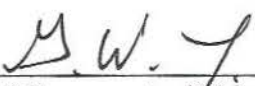
1 I do appreciate that comments have been requested by the Special Master
2 in the General Adjudication of the Gila River System in the Verde River
3 Watershed. It is good that the ADWR technical reports concerning Irrigation,
4 Domestic, Stockpond, and Wildlife Watering (De Minimis Report),
inventories the impact of those uses on surface water supplies in the
watershed.

5 **CERTIFICATE OF SERVICE**

6 On this 28 day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022.**

13 
14 _____
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____ NA

18 Mailing Address _____

19 _____
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21 Telephone Number _____
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SEP 20 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
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W-1 (Salt)
W-2 (Verde)
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Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Michael E. Giboney

Mailing Address 9391 Cloudberry Way

Manassas VA, 20110

Telephone No. 703-332-0466

Statement of Claimant No. (if filed) N/A

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

See Attachment

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5 **CERTIFICATE OF SERVICE**

6 On this 14 day of September, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
10 601 W. Jackson Street
Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13
14 

Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) N/A

18 Mailing Address _____
19 _____
20 _____

21 Telephone Number _____
22 _____
23 _____
24 _____
25 _____
26 _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Contested Case No. W1-106

I am the part owner of two undeveloped lots in Yavapai County, Parcel ID 30142056 and Parcel ID 30142057. I have never used any surface water or well water. I have never filed a Statement of Claimant (SOC). I have not retained an attorney.

My position is to preserve my water rights to the same extent as current users in this adjudication in the same geographical location in the event of future development of these two parcels including water well(s).

In this contested case, W1-106, the court should make clear the results reached and any effect upon property owners who have never filed a SOC.

Michael E Giboney

Yavapai County

Parcels 30142056; 30142057

OCT 19 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
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W-1 (Salt)
W-2 (Verde)
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(Consolidated)

Contested Case No. W1-106

COMMENT OR OBJECTION TO
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DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTER OR OBJECTOR INFORMATION

Name (printed)

Randall L. Russell

Mailing Address

26338 N. Cabernet LN.
Paulden, AZ. 86334

Telephone No.

Statement of Claimant No. (if filed)

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

I object to the adjudication if it reduces or monitors the
amount of water I historically used and by my priority date.
My small amount water use is for stock water, wildlife, irrigation

1 and domestic home use of .4 Acre/feet per year.

2 See ATTACHED sheet

3
4
5 **CERTIFICATE OF SERVICE**

6 On this 13 day of October, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13 Randall L. Russell
14 Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
19 _____
20 _____

21 Telephone Number _____
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The adjudication must limit the amount of water diverted from the Verde River Watershed to large metropolis areas such as Prescott, Prescott Valley and the entire Phoenix Valley. This diversion must stop. The uncontrolled use of water for business development, subdivision development and greedy businessmen and developers to make money must be stopped.

The available ground water is a limited resource and can not continue to be sucked dry to support big business and growth. The Colorado River is the perfect example for Arizona to face. This concept of unlimited available ground water propagated by government and developer greed must be stopped.

OCT 13 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
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IN THE GENERAL ADJUDICATION
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W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

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STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Alberta M. Kriese

Mailing Address P.O. Box 72

Camp Verde, AZ 86322

Telephone No. 602-702-1220

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

I am close to the line of subflow and ground water I believe the flow of the river has fallen alot since the well was drilled

and the well should be considered ground water. The well is 210 feet and the property is not in a sandy area of hard gray

limestone and hard crystalized lime stone. At 210 feet it is med hard lime stone.

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5 **CERTIFICATE OF SERVICE**

6 On this 4 day of Oct, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
10 601 W. Jackson Street
Phoenix, Arizona 85003

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12 mailing, so that your objection will be received by the court by **October 28, 2022**.

13
14 Alberta M. Keiso
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
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21 Telephone Number _____
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OCT 13 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
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WILDLIFE WATERING USES IN THE
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Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Alberta M. Kriese

Mailing Address P.O. Box 72

Camp Verde, AZ 86322

Telephone No. 602-702-1220

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

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I am close to the line of subflow and ground water I believe the flow of the river has fallen alot since the well was drilled

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13
14 Alberta M. Keise
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____
19 _____
20 _____

21 Telephone Number _____
22 _____
23 _____
24 _____
25 _____
26 _____

COPY

OCT 10 2022

OCT 04 2022



CLERK OF THE SUPERIOR COURT
MARICOPA COUNTY
DEPUTY CLERK

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

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

OFFICE OF THE SPECIAL MASTER

Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) WILLIAM SASSER

Mailing Address P.O. Box 793

SELIGMAN, AZ - 86337-0793

Telephone No. NOT APPLICABLE

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

MY WELL PUMP IS LESS THAN 150' FT BELOW THE SURROUNDING
ELEVATIONS AND MY WATER RIGHTS ARE SENIOR, GRANDFATHERED,
WATER RIGHTS INCLUDED IN MY DEED. ALL THIS, "NEW"

1 ENGINEERING SURVEY IS, IS ATTEMPT TO CONTROL, AND
2 EVENUALLY CHARGE USERS FOR THEIR WATER. REIMBURSE THE
3 COST OF THE WELL & GENERATOR WOULD NOT BE SUFFICIENT REIMBURSEMENT
4 IT'S NOT ABOUT WATER MANAGEMENT, IT IS ABOUT MONEY,

5 **CERTIFICATE OF SERVICE**

6 On this 29 day of SEPT., 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022.**

13 William Sasser

14 Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) _____

18 Mailing Address _____

20 _____
21 Telephone Number _____

OCT 10 2022

COPY

OCT 04 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA



SUPERIOR COURT
M. ANTELO
DEPUTY CLERK

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

Contested Case No. W1-106

COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) CARL HENDRICKSON
Mailing Address C/O 9015 MUMMYVIEW DR.
PRESCOTT VALLEY, AZ 86315
Telephone No. 248-425-7400
Statement of Claimant No. (if filed) NOT RELEVANT: NEW FILING

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

SEE ATTACHED

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CERTIFICATE OF SERVICE

On this 12th day of SEPTEMBER, 2022, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

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

If you mail your comment or objection to the court, please allow additional time for mailing, so that your objection will be received by the court by **October 28, 2022**.



Signature of Commenter/Objector or Representative

If this comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed) _____

Mailing Address _____

Telephone Number _____

**COMMENTS/OBJECTIONS TO THE TECHNICAL REPORT CONCERNING DE
MINIMIS DOMESTIC, STOCKPOND AND STOCK AND WILDLIFE WATERING
USES IN THE VERDE RIVER WATERSHED**

September 12, 2022

Carl Hendrickson
c/o 9015 Mummyview Dr.
Prescott Valley, AZ 86315
Mobile: 248-425-7400

Statement of Claimant No. – Not relevant – New filing

There can be little doubt that Arizona, in general, and the Little Chino Watershed Basin, specifically, are facing a water crisis that will almost certainly continue to worsen. With this in mind, we strongly oppose any new multi-/high-density housing construction projects that will further tax the existing water availability.

While Arizona has benefited greatly from a long history of rapid population growth, we are clearly at, if not beyond, the point at which the "costs" of rapid population growth far outweigh the benefits. Ignoring the crucial need to stem the tide of uncontrolled population growth, primarily through multi-/high-density housing will clearly jeopardize the health and livelihoods of the current residents of our state, as well as our economy.

Please be pragmatic and empathetic regarding the water crisis challenges we all face now, and which will only worsen if new construction of multi-/high-density housing is not controlled. Thank you.

Name: _____



Date: _____ September 12, 2022

COPY

SEP 15 2022

SEP 14 2022



CLERK OF THE SUPERIOR COURT

DEPUTY CLERK *K. S. [Signature]*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
SOURCE

W-1 (Salt)
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Contested Case No. W1-106

**COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED**

Special Master Susan Ward Harris

COMMENTS OR OBJECTION INFORMATION

Name (printed) Toni M. Brown

Mailing Address 9015 W. Mummyview Drive, Prescott Valley, AZ 86315

Telephone No. 602-931-2171

Statement of Claimant No. (if filed) 39-141929

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

Arizona, in general, and the Little Chino Watershed Basin, are facing a water crisis that

will almost certainly continue to worsen. With this in mind, we strongly oppose any new

multi-/high-density housing construction projects that will further tax the existing water
availability.

COPY


1 While Arizona has benefited greatly from a long history of rapid population growth, we are clearly
2 at, if not beyond, the point at which the "costs" of rapid population growth far outweigh the benefits.
3 Ignoring the crucial need to stem the tide of uncontrolled population growth, primarily through
4 multi-/high-density housing will clearly jeopardize the health and livelihoods of the current residents
5 of our state, as well as our economy.
6 Please be sensitive to the water crisis challenges we all face now, and which will only worsen if new
7 construction of multi-/high-density housing is not controlled. Thank you.

8 CERTIFICATE OF SERVICE

9 On this 14TH day of September, 2022, I certify that the original Comment or
10 Objection and two copies were sent by first class mail (or hand delivered) to:

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

15 If you mail your comment or objection to the court, please allow additional time for
16 mailing, so that your objection will be received by the court by **October 28, 2022.**

17 
18 Signature of Commenter/Objector or Representative

19 If this comment or objection is being submitted by a Representative of the
20 Commenter/Objector, please provide the following information below or by attachment:

21 Name (printed) _____
22 Mailing Address _____
23 _____
24 Telephone Number _____
25 _____
26 _____

SEP 15 2022

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
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Contested Case No. W1-106

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DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Casey J. Smith

Mailing Address 13631 E. Brookhart Way Scottsdale, AZ 85262

Telephone No. 734-216-5863

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

The current delineation map does not include the domestic well utilized at this residence. This well should not be considered to withdraw the Verde River Subflow.

The domestic well at this address is over 7 miles lateral from the SF delineation line Verde River. This distance is well over the 200 ft stream channel noted for delineating subflow contributions.

The cone of depression for this well could not reach the SF delineation line. Even if the (cone) of depression was flat the elevation change from the river channel to this address is about a 500 ft rise in elevation.

1 The well is not recharged by a perennial or ephemeral stream, impediment or catchment identified by ADWR in the Verde River Technical Report.

2 The well use is only domestic use and could not measurably impact stream flow and is should not be part of this litigation.

3 There is no impoundment of water or disruption of surface water flow on this or adjacent properties

4
5 **CERTIFICATE OF SERVICE**

6 On this 6th day of September, 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022**.

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14 
Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed)_____

18 Mailing Address_____

19 _____

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21 Telephone Number_____

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OFFICE OF THE SPECIAL MASTER
Arizona General Stream Adjudication

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE GILA RIVER SYSTEM AND
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COMMENT OR OBJECTION TO
TECHNICAL REPORT CONCERNING
DE MINIMIS DOMESTIC,
STOCKPOND AND STOCK AND
WILDLIFE WATERING USES IN THE
VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) **Rhonda Lynn Rhodes**
Mailing Address **640 S Page Springs Road**
Cornville, AZ 86325
Telephone No **928.649.6070**
Statement of Claimant No. (if filed) **Not applicable**

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below
(or in a separate attachment) and complete the next page.

Please see the attached pages

Please see the attached page 3

CERTIFICATE OF SERVICE

On this **26th day of October 2022**, I certify that the original Comment or Objection and two copies were sent by first class mail (or hand delivered) to:

Clerk of the Maricopa Superior Court
Attn: Water Case
601 W. Jackson Street
Phoenix Arizona 85003

If you mail your comment or objection to the court, please allow additional time for mailing so that your objection will be receive by the court by October 28, 2022.

Phonda L. Rhodes

Signature of Commenter/Objector or Representative

The comment or objection is being submitted by a Representative of the Commenter/Objector, please provide the following information below or by attachment:

Name (printed) **Filed by the Commenter/Objector**

Mailing Address **Filed by the Commenter/Objector**

Telephone No. **Filed by the Commenter/Objector**

STATEMENT OF COMMENTS

By
Rhonda Lynn Rhodes

640 S Page Springs Road
Cornville, AZ 86325
928.649.6070

Comments concerning ADWR TECHNICAL REPORT *DE MINIMIS* DOMESTIC, STOCKPOND, AND STOCK AND WILDLIFE WATERING USES IN THE VERDE RIVER WATERSHED in re The General Adjudication of the Gila River System and Source dated August 2022.

ADWR states "this technical report is based on the best possible data, including publicly available data and information from internal databases, gathered by ADWR prior to completing the more in-depth assessment of water uses and documentation of PWRs required for the HSRs. They also state that the "data was evaluated in order to develop a representative understanding of claimed watering uses... (*De Minimis* Domestic, Stockpond, And Stock and Wildlife Watering Uses in The Verde River Watershed, August 2022, p32)."

Comments:

1. I totally support the De Minimis Recommendations of this report.

- a. Recommendation 6.1.1 -De Minimis Recommendation for Domestic Uses states that domestic uses do not have a major impact on the surface water resources of the Verde River watershed and should be eligible for *de minimis* adjudication.
 - b. Recommendation 6.1.2 -De Minimis Recommendation for Stockpond Uses states that stockpond uses have a negligible impact on the surface water resources of the Verde River watershed and should be eligible for *de minimis* adjudication.
 - c. Recommendation 6.1.3 -De Minimis Recommendation for Stock and Wildlife Watering Uses states that *de minimis* classification is supported for all claimed stock and wildlife watering uses in the Verde River Watershed.
2. While words such as "best possible" and "representative understanding" tend to worry me when used in a research report, they really worry me when it comes to water in Arizona. One would hope that more definitive methodologies and recommendations will be used when documenting the PWRs required for the HSRs.

10/25/2022 12:43pm
M. Antelo, Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
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VERDE RIVER WATERSHED

Special Master Susan Ward Harris

COMMENTS OR OBJECTOR INFORMATION

Name (printed) Resolution Copper Mining LLC ("Resolution Copper")

Mailing Address One Gateway, 426 N. 44th Street, Suite 320, Phoenix, AZ 85008

Telephone No. Karlene Martorana, 520-827-0694

Statement of Claimant No. (if filed) _____

STATEMENT OF COMMENT OR OBJECTION

Please provide your comments or reasons for the objection below (or in a separate attachment) and complete the next page.

Resolution Copper wishes to be notified of further
Court proceedings concerning the technical report.

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5 **CERTIFICATE OF SERVICE**

6 On this 25th day of Oct., 2022, I certify that the original Comment or
7 Objection and two copies were sent by first class mail (or hand delivered) to:

8 Clerk of the Maricopa Superior Court
9 Attn: Water Case
601 W. Jackson Street
10 Phoenix, Arizona 85003

11 If you mail your comment or objection to the court, please allow additional time for
12 mailing, so that your objection will be received by the court by **October 28, 2022.**

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Signature of Commenter/Objector or Representative

15 If this comment or objection is being submitted by a Representative of the
16 Commenter/Objector, please provide the following information below or by attachment:

17 Name (printed) Sheryl A. Sweeney, Attorney for Resolution Copper

18 Mailing Address Clark Hill, 3200 N. Central Avenue,
19 Suite 1600, Phoenix, AZ 85012

20
21 Telephone Number 602-440-4824