

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

May 6, 2022

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN WARD HARRIS

M. Pritchard
Deputy

FILED: June 14, 2022

In Re: The General Adjudication
of All Rights to Use Water in the
Gila River System and Source
W-1, W-2, W-3 and W-4 (Consolidated)

In re: Subflow Technical Report, Verde River
Watershed
Contested Case Nos. W1-106

MINUTE ENTRY

Courtroom: CCB 301

2:15 p.m. This is the time set for Oral Argument before Special Water Master Susan Ward Harris.

The following attorneys and parties appear via Court Connect:

- Michael Roland on behalf of the Cities of Avondale, Scottsdale, Tempe, Glendale and Mesa
- Carrie Brennan and Kevin Crestin on behalf of Arizona State Land Development (ASLD)
- Charles Cahoy on behalf of the City of Phoenix
- Clyde Halstead on behalf of the City of Prescott
- Daniel McCarl on behalf of the United States
- Michael Foy, Mark McGinnis, Katrina Wilkinson on behalf of Salt River Project (“SRP”)
- Jenny Winkler on behalf of the City of Chandler

- Kimberly Parks and Kome Akpolo on behalf of the Arizona Department of Water Resources (“ADWR”)
- Sue Montgomery of behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaquai Tribe)
- William Staudenmaier on behalf of the City of Chino Valley
- Luke Erickson and Alexandra Arboleda on behalf of the Town of Prescott Valley
- J. Weiner on behalf of the Tonto Apache Tribe
- Carla Consoli on behalf of the Nature Conservancy
- David Brown on behalf of the City of Cottonwood
- Sarah Ransom on behalf of Brandon and Natasha Pacheco
- Sean Hood on behalf of Freeport Minerals Corporation
- David Gehlert on behalf of the United State proprietary agencies
- Meghan Grabel on behalf of AZ Water Company
- Joe Sparks and Laurel Herrmann observing on behalf of the San Carlos Apache Tribe

A record of the proceedings is made digitally in lieu of a court reporter.

The Court presents a summary of the issue. ADWR is preparing a technical report about *de minimis* uses in the Verde River Watershed that is due at the beginning of June. The question to be decided is whether ADWR should include an analysis of domestic uses in the technical report. The Court inquires as to SRP’s position.

SRP’s position is that at this time they are not asking for a determination about whether there should be a *de minimus* standard in the Verde River watershed. Mr. Foy believes that all parties agree that the four factors that Special Master Thorson identified in his 1994 order are relevant to the Verde Watershed. SRP’s position is that the fourth factor, cost-benefit analysis, cannot be determined without adequate data about the first three factors: water availability, number of uses, and impact of uses. In his view, there are two main issues. He wants to ensure that if domestic use is considered a *de minimis* use, that those uses are not immune to enforcement and administration by senior rights. The second issue concerns the ruling regarding the Town of Huachuca City and its effect on the cost-benefit analysis. He believes the issue of the *de minimis* process should be decided before the HSR is issued.

The Court inquires why SRP doesn’t agree with ADWR’s approach to measure domestic use based on population rather than number of wells.

Mr. Foy finds the number of wells to be more reliable. He wants to also make sure that not only permanent residents are captured. He also has concerns that some populations are not counted in the census that should be counted. He believes the wells 55- data is a much more direct approach.

The Court inquires about the telescoping approach Mr. Foy has proposed.

Mr. Foy explains his position about the telescoping approach which begins at Tangle Creek and, if not *de minimis* at that point, then not *de minimis* for the watershed. If it is *de minimis* at Tangle Creek, then the same analysis is done at the upstream gauges. SRP proposed that water availability should be based on seven day low-flows, or, in the alternative, the driest month, and not median annual flows. SRP also proposes that once the number of uses is calculated, then to find the total impact of the uses, it should be multiplied by 1 acre-foot per annum.

The Court inquires of Ms. Parks why ADWR cannot make a *de minimis* assessment at each of the three gauges on the Verde River.

Ms. Parks explains that a particular water usage of a particular well cannot be measured at a particular gauge due to the flow of underground water. ADWR uses the Tangle Creek gauge because they want to determine what they are starting with and ending with at the bottom of the river. Underground water flow doesn't always flow as surface water does, so one underground draw might not be impacting a certain gauge but would impact lower down the river. She feels that using the lower gauge measures the effects of underground water and the upstream uses.

Ms. Parks also raised a notice issue. She said that it was related to but not the same as ADWR's Request for Clarification filed April 27, 2022, about the bad addresses and returned mail. Ms. Parks said that ADWR has been planning to provide notice of the report to the court approved mailing list and the claimants in the Verde River watershed. ADWR would like to know if non-claimant water uses should be provided notice as well. Ms. Parks said the next issue is they would also like to know if the formal legal objection notice needs to be provided or if a simplified version would be appropriate. ADWR is considering a shorter, less formal notice.

The Court asks that ADWR file a copy of its proposed notice.

Ms. Parks also would like more time to provide notice of the report depending on the decisions about the class of recipients and the type of notice required.

Ms. Brennan states that ASLD would like to use ADWR's proposed methodology, and if so, do not believe that they would need to wait until the HSR came out to issue the report. They believe all wells are being taken into consideration with the current methodology being used. She asks a clarifying question regarding the notice issue.

Ms. Parks clarifies non-claimants that are not served by a municipal water system

Ms. Brennan believes notice of the technical report should be sent to non-claimants as a matter of due process.

Ms. Ransom agrees with Ms. Brennan's position regarding issuing the report before the HSR is issued assuming that ADWR uses the same methodology that ADWR has used to date. She also concurs that notice of the technical report should be provided to non-claimants.

Mr. Gehlert agrees with SRP and the Yavapai-Apache Nation's position about quantifying domestic use. He believes the technical report should be issued before the HSR.

Ms. Montgomery agrees with SRP's position. She believes that 1 acre-foot quantity is appropriate for domestic use calculation. She thinks that if there is insufficient information about quantity then Special Master can require additional information. Ms. Montgomery said that the claimant has an obligation to report the amount of domestic use. She thinks notice should be sent to non-claimants. She thinks the telescoping approach would measure all three gauges at 7-day low flow, or June flow. The problem with using June -August, is that time period will include flood flows. Ms. Montgomery is concerned about baseflow available for irrigation such as May and June.

Mr. Erickson states the Town of Prescott Valley is most concerned about the time it would take to adjudicate domestic uses less than 1 acre-foot.

Mr. Staudenmaier said we should focus on practical realities. In his view, SRP is overestimating the numerator, i.e., number of wells, and understates the denominator, i.e., using the 7-day low flow as the total amount of water in the system. He said that thousands of the wells are not pumping subflow. He agrees with ADWR's approach. He agrees that notice should be sent to non-claimants if they are at risk. The practical reality is that the court cannot adjudicate rights to 21,000 wells.

Mr. Hood joins with Mr. Staudenmaier's comments.

Ms. Winkler has no further comments and agrees that notice should be sent to non-claimants if at risk.

Mr. Staudenmaier thinks that individuals with wells inside the subflow zone need the *de minimus* process to be able to claim and preserve their water right.

Mr. Foy thinks notice under *Gila I* is only required to the watershed file mailing list, but as a practical matter should be sent to non-claimants. He does not think that the process enlarges a right that is not there. He thinks the report should not wait for subflow to be determined. He also brings to the court's attention that the United States can enforce federal reserved water rights whether the well is pumping subflow or not.

Mr. Halstead agrees with SRP's proposal. He believes that the *de minimus* process should be used. There are other gauges in the Little Chino and the Big Chino subwatersheds, but they are not used much.

Ms. Parks states that the problem with measuring all three gauges is that they would be guessing that those wells impact those gauges. And if that results in a larger impact than projected, then the *de minimis* process wouldn't make sense anymore. She would like to use the Tangle Creek gauge as they can be sure that all beneficial uses have occurred for that watershed. She does not agree that a different standard should be used for a different watershed as this would create an unfair process for people depending on where they are located in the watershed.

Ms. Ransom agrees with Mr. Staudenmaier that SRP's approach maximizes the numerator and minimizes the denominator, and the practical effect is that there will not be a *de minimis* approach. She believes that with SRP's approach very few uses would fall under the *de minimis* category and would also not follow the four-factor test. The water rights are vested and need to have the four factors applied equally across the state as a matter of due process. She believes that analyzing each subwatershed instead of the entire watershed compounds assumptions causing prejudice to the parties.

Ms. Parks states that ADWR would need three additional weeks if they do not change their approach but do send notice to non-claimants. Additionally, if they were to follow the same approach but do the analysis on all three gauges, they would need an additional thirty to sixty days.

The Court believes that the population size and not number of wells should be used to quantify domestic use.

There are no further comments.

3:57 p.m. Matter concludes.

LATER:

This immediate proceeding is to determine whether to request ADWR to prepare a technical report pursuant to A.R.S. §45-256 that can be used by the court to determine whether domestic uses, stockponds, and stock and wildlife watering uses in the Verde River Watershed are *de minimis* uses. The technical report from ADWR provides relevant data necessary for the court to make the determination. The decision that a particular beneficial use is or is not 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 the objections. The proceedings reflected by this minute entry do not impose any restriction on any party's right to file any objection to the Technical Report that would be permitted in the absence of these proceedings, which are limited to a determination of whether ADWR should include an investigation of domestic uses in its Technical Report.

De Minimis Determination

Summary procedures are warranted for water uses that have such a small impact on other water users that administration of those uses in the future is not likely. In 1994, the Special Master explained the underlying reason for adopting *de minimis* procedures, focusing on the likelihood that the uses will not interfere with other water uses:

If a single use, or a category of similar uses, utilizes only small amounts of water a detailed adjudication of these rights may not be needed. If these uses consume only small amounts of water or the captured water would otherwise not reach downstream appropriators, these uses do not likely impermissibly interfere with other water users. If these water uses do not interfere with the water available for other users, the amount of judicial resources necessary to determine with exactitude such characteristics as priority date and quantity can be reduced by summary procedures and proposed water right characteristics.

Memorandum Decision at 11 (filed in W1-11-19, November 14, 1994).

A *de minimis* determination is fundamentally a case management decision by the court that the benefits of fully adjudicating all attributes of certain types of claims are substantially outweighed by the costs that must be incurred by the parties and the court. As used in the San Pedro River Watershed, the *de minimis* determination affects the procedures followed in the adjudications of a class of beneficial uses. It does not exclude any class of water users from the adjudication.¹ The *de minimis* process does not create a legal basis for an appropriable water right. *Memorandum Decision* at 41. It does not characterize water pumped from a well as appropriable water or as percolating groundwater.

When the court determines that a particular type of beneficial use is *de minimis*, it adopts an expedited adjudication process to determine certain attributes of a water right. As a practical matter, *de minimis* proceedings for a domestic use only expedite the determination of two attributes of a water right: the priority date and quantity. A determination must still be made that a legal basis exists for a claimed right and that the claimant is entitled to legal ownership of the right. The other attributes, i.e., place of use,

¹ The arguments made by the Town of Chino Valley and the trustees of the Brandon R. and Natasha M. Pacheco Living Trust apply to a procedure envisioned by the Arizona Supreme Court that would exclude small wells from the adjudication if the wells had a *de minimis* impact on the river system. *In re General Adjudication of All Rights to Use Water in the Gila River System and Source*, 175 Ariz. 382, 394, 857 P.2d 1236, 1248 (1993) (*Gila II*). The *Gila II* Court suggested that its *de minimis* procedure would also lighten the burden on ADWR and reduce the number of contested cases. Town of Chino Valley's Response to SRP Proposal for Determining *De Minimis* Domestic Uses in the Verde River Watershed at 4-6 (March 28, 2022); Pacheco Response to Salt River Project's Proposal for Analyzing a Potential Domestic *De Minimis* Designation in the Verde River Watershed at 4 (March 28, 2022)

point of diversion, and source of water, have not appeared to be potential grounds for disputes among the parties in the cases that adjudicated domestic uses in the San Pedro watershed.

Summary procedures must be adopted and factually based on the unique character of each watershed. *De minimis* procedures for domestic uses were not considered for the Silver Creek or Lower Little Colorado Watersheds. *De minimis* procedures were approved by the court for domestic uses in the San Pedro Watershed. The *de minimis* determination for domestic uses was based on the specific facts and circumstances of that watershed. A finding by the court that a beneficial use constitutes a *de minimis* use requires consideration of four factors:

- (1) the amount of water available in the watershed;
- (2) the number of beneficial uses;
- (3) the scope and impact of these uses on the appropriable water supply; and,
- (4) the costs and benefits of a complete, rather than summary, adjudication of the claims for rights to appropriable water for these types of uses.

The first three factors require technical assistance from ADWR pursuant to A.R.S. §45-256. The purpose of a technical report is to provide data relevant to the issue of the current impact that one group of users of appropriable water in a watershed has on the downstream users of appropriable water currently available.

In the San Pedro River Watershed, ADWR prepared a technical report containing data relevant to a *de minimis* determination in that watershed after it had completed the hydrographic survey report (HSR). Arizona Department of Water Resources included separate water budgets for each of the five subwatersheds in the San Pedro HSR, which also contained a water budget for the entire watershed. Vol. 1 San Pedro HSR at 250, Table 4-12. Water budgets show the sources of water flowing in and out of the subwatersheds. Here, the *de minimis* proceeding was initiated and the Technical Report was requested before ADWR completed the Verde River HSR. The Technical Report does not have water budgets for each of the five subwatersheds in the Verde River Watershed with their respective inflows and outflows. In lieu of the water budgets, ADWR calculated the amount of surface water in the Verde River Watershed based on the difference between flows reported at two of the USGS gauges on the Verde River. It identified an upstream gauge in the Sycamore subwatershed known as the Paulden gauge, south of the Big Chino and Little Chino subwatersheds, and a downstream gauge, known as the Tangle Creek gauge, located in the north half of the Verde Canyon subwatershed. Arizona Department of Water Resources calculated the annual median flow at each gauge and subtracted the flow for the downstream gauge from the flow for the upstream gauge. It characterized the result as “Total Water Availability” for the watershed.

Salt River Project, joined by the City of Chandler, City of Phoenix, and joined in part by the United States and the Yavapai-Apache Nation, filed comments to the Technical

Report. No party disputes that the appropriate statistic to quantify the available water supply is the median flow as opposed to average flow. A dispute does exist as to the relevant time period to quantify the available water for the *de minimis* determination. A one-year time period will capture flood flows that recharge the aquifers and refill the reservoirs. It is undoubtedly true that those sources of water are important to an accurate quantification of water in the watershed, and it is also true that domestic water users benefit from those sources. The issue here, however, is whether the domestic uses of water “affect the water supply available to other claimants.” Order at 2 (filed in W1-11-19, Sept. 26, 2002. Accordingly, the relevant water supply, or the amount of water available in the watershed, is the water supply during the period when there is a greater likelihood that domestic water use will impact other claimants’ use of the water supply.

Salt River Project argues that the choice of annual flow is not appropriate because it does not permit an analysis of the amount of water available during low flow periods when there will be competing demands on the water for irrigation use. It suggests that an appropriate measure would be 7-day low flow or June flows. Arizona Department of Water Resources calculated the June monthly median flows. Arizona Department of Water Resources’ Response to Salt River Project’s Proposal for Analyzing a Potential Domestic *De Minimis* Designation in the Verde River Watershed at 7 (“ADWR Response”). Given that the concern is the availability of water flow during the irrigation season prior to monsoon rains, consideration should also be given to the median flows for May through July at each of the three gauges.

Disputes also exist about the proper locations at which to make a *de minimis* determination. In the San Pedro River Watershed, the Special Master found that the relevant location was a single downstream location based on a finding that “there have been no objections by users in the San Pedro River watershed to neighboring stockwatering, stockponds, or domestic uses.” *Memorandum Decision* at 19. Unlike the proceeding in the San Pedro River watershed, this proceeding was initiated before ADWR completed the Verde River HSR, so no objections from water users have been filed. Nevertheless, based on the papers filed in this proceeding, it is clear that there are water users in the Verde River Watershed that will file objections to watershed file reports prepared by ADWR for water users in that watershed. Accordingly, the relevant downstream users for the determination of *de minimis* use are not limited to the water users located downstream of the Verde River Watershed.

Arizona Department of Water Resources states that it has confidence that the Tangle Creek gauge located in the Verde Valley subwatershed and upstream of the reservoirs and dams “can account for the upstream pumping and other water uses in the Verde River watershed.” ADWR Response at 13-14. It concluded that domestic uses amounted to three to five percent of the Total Water Availability in the Verde River Watershed. Technical Report at 17. No party who filed comments to the Technical Report disputed that the Tangle Creek gauge is an appropriate location to assess the impact of domestic use in the Verde River Watershed. Using this approach, if the court were to determine that data about the quantity of streamflow measured by the difference between the Paulden and the Tangle Creek gauges does not support a *de minimis* determination,

then no domestic uses in the Verde River Watershed would be adjudicated using summary procedures. If, on the other hand, the Paulden/Tangle Creek data would support a *de minimis* determination, then a dispute exists among the parties about whether a *de minimis* determination should be made for the entire watershed or whether additional analysis is warranted at the subwatershed level to make a separate *de minimis* determination for those upstream subwatersheds.

Salt River Project proposes a three-part analysis to ascertain whether domestic uses are cumulatively *de minimis* in all or a portion of the Verde River Watershed. It argues that additional facts must be considered as part of the determination about the amount of water reasonably available in the watershed. It points to gaining reaches in the Verde River upstream of the Tangle Creek gauge. It also references the importation of 11,000 acre-feet of water into the watershed upstream of the Tangle Creek gauge. SRP's Comment on Arizona Department of Water Resources' Technical Report re *De Minimis* Domestic Water use in the Verde River Watershed at 6 (January 7, 2022). The first step in SRP's analysis is essentially the same as the method used by ADWR. It would test the downstream impact of domestic users at the Tangle Creek gauge. It would calculate the relevant median flow at the Tangle Creek gauge, calculate the upstream domestic use based on one-acre foot for the same time period used to determine flow and, calculate the percentage of the flow required for upstream domestic use. SRP Proposal at 12. Like ADWR, SRP expresses the opinion that Tangle Creek gauge measures "the cumulative effects of nearly all domestic uses in the Verde Watershed." SRP Proposal at 12. Unlike ADWR, SRP proposes additional tests if the first test supports a *de minimis* process. Arizona Department of Water Resources takes the position that if the Tangle Creek data supports a *de minimis* determination, no additional tests should be applied upstream to ascertain whether the domestic uses have a material impact on other water users. Arizona Department of Water Resources states that upstream gauges cannot account for available underground water, that wells may not be pumping from the aquifers that provide baseflow, and that underground water may be flowing perpendicular to the surface water drainage network and bypass the gauge. ADWR Response at 13-14. Setting aside the issue of whether a *de minimis* proceeding should properly consider reductions in streamflow due to the pumping of percolating groundwater, it appears that ADWR's concern is that the flow measurements from the upstream gauges do not capture the full impact of the domestic use upstream of those gauges.

The second step in SRP's analysis is to apply the same test at the Camp Verde gauge assuming that the data at the Tangle Creek gage supports a *de minimis* finding. The results at the Camp Verde gauge would affect the determination of whether domestic uses are *de minimis* in the Lower Verde Valley, Sycamore, Big Chino, and Little Chino subwatersheds. The third step, if the data supported a *de minimis* finding at the Camp Verde gauge, is to apply the test at the Paulden gauge. The results of the test would affect the procedures applied to the adjudication of claims for domestic water use in the Big Chino and Little Chino subwatersheds. Given the importance of a rational factual basis for a *de minimis* determination, the SRP proposal is a reasonable approach to the collection of data needed in a *de minimis* determination.

Arizona Department of Water Resources calculated domestic use based on population in the Verde River watershed. Salt River Project contends that the domestic use should be based on the well data. In its Response, ADWR lists several reasons that its well data base is not a suitable measure for domestic use, such as the fact that there may be duplicate well registrations. ADWR Response at 10. It states that even though wells may be listed in the database as “cancelled,” the wells may have been drilled. ADWR Response at 9. Completion reports have been filed for only about a third of the wells listed in the data base. ADWR Response at 10. And, finally, the well database is “not intended to be a catalog of wells.” *Id.* Given that ADWR does not consider its well database suitable for determining domestic use, ADWR’s approach using population census data to quantify domestic use is appropriate.

Two additional arguments have been raised to SRP’s proposal to make a *de minimis* determination based on the facts specific to each subwatershed or set of subwatersheds. One argument is that the application of summary procedures to adjudicate domestic water rights in less than all of the Verde River subwatersheds will create confusion among the domestic water users. The second argument is that the requirement that domestic water users must prove the attributes of a water right like other water users violates their due process rights if there are domestic water users in different subwatershed who have their rights adjudicated using summary procedures based on a factual determination made by the court that their uses are *de minimis*. Both arguments can be raised once the Technical Report is completed and any necessary evidentiary hearing is held. At that time, a decision can be made based on a complete factual record on whether *de minimis* procedures should be adopted for the entire watershed, only certain subwatersheds, or none of the subwatersheds.

No presumption exists in favor of the adoption of a *de minimis* finding and the implementation of summary proceedings. To the contrary, summary proceedings should only be adopted by the court in those situations where the court can determine the potential impact of a particular group of beneficial uses on the other uses from the same water supply and apply a cost-benefit analysis to the adjudication process. As a practical matter, the adoption of summary adjudication proceedings for domestic uses may not result in a notably reduced burden on the court. In the San Pedro River Watershed, the time lag between the date that ADWR issued its watershed file reports and the date the contested case was initiated has caused a much greater expenditure of court time and resources than the resolution of any disputes among the parties concerning a domestic use. Due to the restrictions imposed by A.R.S. §45-257, which defers the adjudication of the majority domestic uses, it can reasonably be assumed that a substantial amount of court time and resources that will be devoted to the adjudicating domestic uses in the Verde River Watershed will be spent dealing with the consequences arising from the adjudication of a claim for a domestic water right years or decades after ADWR has issued its watershed file report.

The remaining issue raised by ADWR concerns the scope of the distribution of the notice of the Technical Report.² It will distribute a copy of the Technical Report to all persons on the Court approved mailing list for W1-106 and the general mailing list for W-1 as well as to all claimants in the Verde River Watershed. Arizona Department of Water Resources questions whether non-claimants should be provided notice of the Technical Report as well. In Pre-Trial Order No. 1, the court defined a “party” as a claimant and successors-in-interest to claimants and directed ADWR to provide notice to each party of the issuance of a preliminary hydrographic survey report. Consistently, A.R.S. §45-256 only permits a claimant to file objections to technical reports prepared by ADWR. In 2000, the court issued Pretrial Order No. 5 that requires ADWR to provide notice of a preliminary and final hydrographic survey report to claimants and non-claimants in the geographic area covered by the hydrographic survey report. The Technical Report is not a hydrographic survey report.

Due process requires that a party receive adequate notice of a proceeding that could deprive a person of a protected property right and have the opportunity to be heard. *Emmett McLoughlin Realty, Inc. v. Pima County*, 212 Ariz. 315, 355 ¶17, 132 P. 3d 290, 294 (App. 2006), *as corrected* (March 9, 2006). The Court requires three factors to be considered in the resolution of procedural due process issues: (1) the private interests affected; (2) the risk of an erroneous deprivation ... through the procedures used, and the probable value, if any, of additional procedures; and (3) the governmental interests, including fiscal and administrative burdens, if other procedural safeguards are imposed. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Arizona Supreme Court has already determined that holders of water rights have due process rights in this adjudication. *Matter of Rights to Use of Gila River*, 171 Ariz. 230, 238, 830 P.2d 442, 450 (1992). The second set of considerations focus on the likelihood that water rights could erroneously be lost and the probable value, if any, of the notice of ADWR’s Technical Report. The proceedings that will follow the issuance of the Technical Report will affect the procedures to adjudicate claims investigated by the Verde River HSR. Pursuant to Pre-trial Order No. 5, non-claimants will receive notice of the preliminary and final HSR for the Verde River Watershed. It logically follows that non-claimants, who are entitled to receive copies of preliminary and final HSR, should receive notice of the technical reports that will result in a decision that will affect the procedures used to adjudicate their claims if they chose to file a Statement of Claimant that will be investigated as part of the HSR process. The third factor that must be considered is the fiscal and administrative burdens on ADWR. Notice to non-claimants does burden ADWR as evidenced by ADWR’s request for two to three weeks of additional time to submit the Technical Report if the notice to the class of non-claimants is required. The burden, however, is outweighed by the need to provide notice at the initial stages of the adjudication of water rights in the Verde River Watershed to non-claimants so that they can take the action they believe necessary to establish or protect their rights to appropriable water that will be adjudicated.

² At oral argument, ADWR indicated that it may want to change the form of its notice of the Technical Report. A copy of a proposed form of notice has not been filed, so no discussion is included about the form of notice or elements required in a form of notice.

IT IS ORDERED that ADWR shall file a Technical Report on or before August 29, 2022, with the results of its investigation of stock and wildlife watering, stockponds and domestic uses in the Verde River Watershed. The Technical Report shall include the median flows for May, June, and July at the Paulden, Camp Verde, and the Tangle Creek gauges and the annual median flows at Tangle Creek. The final Technical Report shall apply the same methodology that ADWR used in its Technical Report dated December 2021 to calculate the total self-supplied domestic population for the Verde River Watershed to calculate the self-supplied domestic population for each subwatershed in the Verde River Watershed. The Technical Report shall include the total self-supplied domestic population for the Verde River Watershed.

IT IS FURTHER ORDERED that ADWR shall provide notice of the issuance of the Technical Report by first-class mail to all persons listed on the Court-approved mailing list for this case, W1-106, for the Court-approved mailing list for the Gila River Adjudication, W-1, W-2, W-3, W-4 (Consolidated), to all persons who have filed claims for water rights in the Verde River watershed, and to all non-claimant water users who ADWR has identified as currently using water within the geographic area of the Verde River watershed that are not served by a municipal water system.

IT IS FURTHER ORDERED that objections to or comments on the Technical Report shall be filed with the Clerk of the Maricopa County Superior Court no later than **October 28, 2022**.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.