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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**

**ORDER DIRECTING THE ARIZONA
DEPARTMENT OF WATER
RESOURCES ON MAPPING
RESERVOIRS FOR THE SUBFLOW
DELINEATION REPORT**

CONTESTED CASE NAME: *In re Subflow Technical Report, Verde River Watershed*
TECHNICAL REPORTS INVOLVED: Arizona Department of Water Resources, *Subflow Zone Delineation Report for Verde River Mainstem & Sycamore Canyon, December 2021, Subflow Zone Delineation Technical Report for the Remainder of the Verde River Watershed, April 2023.*
DESCRIPTIVE SUMMARY: Order directing the Arizona Department of Water Resources to continue to refer to November 27, 2017, instructions on mapping subflow. Where data cannot be reasonably defended, no subflow zone can be drawn.
NUMBER OF PAGES: 9

In the Minute Entry filed on January 22, 2024, the Court requested that Arizona Department of Water Resources (“ADWR”), “revise the subflow mapping to consider predevelopment conditions for the following reservoirs: Watson Lake, Granite Basin Lake, Sullivan Lake, and Willow Creek Reservoir.” Minute Entry for Oral Arguments held January 9, 2024, In Re Subflow Technical Report, Verde River Watershed, Contested Case No. W1-106, January 22, 2024, p. 7. On July 10, 2024, ADWR

1 requested direction from the Court when, in the opinion of ADWR, 1) the data received
2 from the parties either does not reflect predevelopment conditions and/or 2) is not
3 reasonably usable. ADWR also requests clarification on whether it needs to map a
4 subflow zone in the area of Willow Creek and Willow Creek Reservoir. ADWR Request
5 for Directions and Clarification on Mapping Reservoirs for the Subflow Delineation
6 Report, July 10, 2024, p. 5.

7
8 **Mapping a subflow zone in the area of Willow Creek and Willow Creek Reservoir.**

9 ADWR should not map a subflow zone associated with Willow Creek and
10 Willow Creek Reservoir. ADWR determined that Willow Creek was ephemeral under
11 predevelopment conditions¹ and therefore there is nothing for ADWR to map in the area
12 of the reservoir. Willow Creek Reservoir was referenced in the January 222, 2024,
13 Order in error.

14
15 **Data received from the parties does not reflect predevelopment conditions or is not**
16 **reasonably usable**

17 It cannot be overstated that subflow is a legal construct, and it is well-accepted
18 within the General Stream Adjudication that there simply is not a single bright line that
19 can be drawn to determine the boundaries of where groundwater pumping does or does
20 not affect surface water. That said, all parties to the Adjudication are subject to the
21 approximation of such a line, the subflow zone, as delineated by this Court. Arizona
22 Revised Stutes §45-256(A) requires this Court to turn to ADWR for technical assistance
23 with the subflow zone delineation. Not, however, the reverse.

24 Neither ADWR nor the Court are *required* to use data received from any source,
25 including parties to the adjudication. ADWR is permitted to use whatever data is

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28 ¹ Arizona Department of Water Resources, *Subflow Zone Delineation Technical Report for the Remainder of the Verde River Watershed*, at11-12, App. E at Map 37, April 2023

1 reasonable, as well as the professional judgement of agency staff, when making
2 recommendations to the Court for subflow zone delineations. Where data is available,
3 but in the professional opinion of ADWR, not appropriate, there is no requirement for its
4 use. What is most important is a thorough review of all data available and a detailed
5 explanation of why data is on is not applicable.

6 The use of predevelopment conditions is predicated on reasonably complete and
7 reliable data. The Arizona Supreme Court established that “it is critical that any test used
8 for determining the boundaries of a subflow zone be as accurate and reliable as
9 possible.” *In re General Adjudication of All Rights to Use Water in the Gila River*
10 *System and Source*, 198 Ariz 330, at 335 (2000). Because wells within the subflow zone
11 are presumed to be pumping appropriable water, an indefensible delineation would
12 “improperly shift the burden to the groundwater user to show that its well is not pumping
13 subflow.” *Id.* Where the data ADWR received does not reflect predevelopment
14 conditions or provide any relevant insight into predevelopment conditions, that data
15 should not be used and ADWR should rely on appropriate surrogate information, such as
16 geologic mapping, or mining and agricultural data, to the extent defensible. Thus, where
17 there is insufficient information for ADWR to support a subflow zone delineation,
18 ADWR should not recommend a delineation.

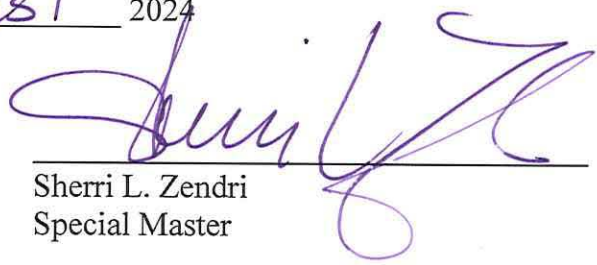
19
20 **IT IS ORDERED** that ADWR will not map a subflow zone associated with
21 Willow Creek and Willow Creek Reservoir.

22
23 **IT IS FURTHER ORDERED** that ADWR will refer to the November 27, 2017,
24 Order for Production of a Subflow Delineation Technical Report for the Verde River
25 Watershed for subflow zone delineation guidance. If, after comprehensive research,
26 ADWR finds there is no reliable data available regarding predevelopment conditions,
27 and no reasonable extrapolations may be made from available surrogate information, no
28 subflow zone delineation in the location shall be mapped.

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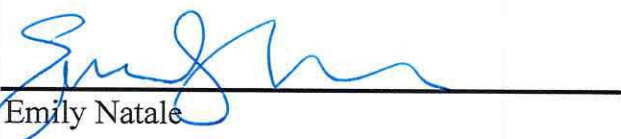
IT IS FURTHER ORDERED that deadlines regarding all subflow delineation revisions will be provided by the Court at the conclusion of the evidentiary hearing scheduled for late August 2024 regarding the Verde subflow delineation in the areas of Big Chino Wash and Partridge Creek.

Signed this 9th day of August 2024



Sherri L. Zendri
Special Master

The original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court on August 9, 2024 for filing and distributing a copy to all persons listed on the Court approved mailing list for this contested case.



Emily Natale

Court Approved Mailing List
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