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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA
7

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

DATE: December 7, 2011

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

11 In re Subflow Technical Report, San Pedro River
12 Watershed (Special Master)

Contested Case No. W1-103

13 REPORT OF THE SPECIAL MASTER;
NOTICE FOR FILING OBJECTIONS TO
14 THE REPORT; AND MOTION FOR
ADOPTION OF REPORT

15
16 CONTESTED CASE NAME: *In re Subflow Technical Report, San Pedro River Watershed*

17 HSR INVOLVED: None.

18 DESCRIPTIVE SUMMARY: The Special Master files a report concerning the determination of
19 seventeen objections filed to the Subflow Zone Delineation Report for the San Pedro River
20 Watershed (June 2009) prepared by the Arizona Department of Water Resources. This report
21 contains findings of fact, conclusions of law, a recommendation, and deadlines for filing objections
to the report and responses to objections. Objections must be filed with the Clerk of the Superior
Court of Maricopa County on or before **Friday, February 10, 2012**. Responses to objections shall
be filed on or before **March 16, 2012**. The Special Master moves the Court for adoption of the
report.

22 NUMBER OF PAGES: 16.

23 DATE OF FILING: December 7, 2011.
24

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19 **I. INTRODUCTION**

20 This report addresses seventeen objections that claimants in the San Pedro River Watershed
21 filed to the Subflow Zone Delineation Report for the San Pedro River Watershed (June 2009)
22 prepared by the Arizona Department of Water Resources (“ADWR”). The Court referred the
23 objections to the Special Master for determination.

24

1 This report contains a chronology of the proceedings, findings of fact, conclusions of law, a
2 recommendation, and deadlines for filing objections to the report and responses. The Special Master
3 recommends that the Court dismiss the seventeen objections because the objections either raise
4 issues already determined or do not address ADWR's findings regarding the lateral extent of the
5 delineated subflow zone.

6 **II. CHRONOLOGY OF PROCEEDINGS**

7 On June 30, 2009, ADWR filed its Subflow Zone Delineation Report for the San Pedro River
8 Watershed. The report was prepared pursuant to the Court's order dated September 28, 2005.¹ The
9 order allowed claimants to file objections to ADWR's report and directed that "[o]bjections shall be
10 limited to ADWR's findings regarding the lateral extent of the subflow zone."²

11 The order provided claimants 180 days to file objections and comments to the report.
12 Twenty-six objections, joinders, and comments were filed by the deadline of December 28, 2009.

13 On October 2, 2009, "at the request of Cochise County and local water users," ADWR made
14 two public presentations about its report in Sierra Vista, Arizona.³ The presentations included a:

15 (1) background on the issue of subflow; (2) noticing and availability of the Subflow
16 Report; (3) the procedure for filing objections to the Subflow Report; (4) a summary
17 of subflow zone criteria analyzed by ADWR in its Subflow Report; (5) subflow zone
18 maps for the San Pedro River Watershed, which are presented in Appendix E of the
19 Subflow Report; and (6) future steps to be taken in the Gila River Adjudication
regarding the subflow zone for the San Pedro River Watershed.⁴

On October 24, 2010, the Hon. Eddward P. Ballinger, Jr. selected eighteen objections,

20 ¹ See Court's order (Sept. 28, 2005). The text is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_ballinger/Subfloword92805.pdf.

21 ² The directive is part of Recommendation No. 36 made by the Special Master in a report filed in an earlier
22 phase of this contested case. See Rept. of the Special Master on ADWR's Subflow Technical Report, San
Pedro River Watershed at 97, sec. C (July 16, 2004). The text of the report is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/W1-103FinalRep071604.pdf.

23 ³ ADWR's Notice of Public Presentations Regarding the "Subflow Zone Delineation Report for the San Pedro
River Watershed" at 1 (Sept. 24, 2009).

24 ⁴ *Id.* at 2.

1 joinders, and comments that the Court would determine. Later, he added the comments of the Gila
2 River Indian Community to the matters the Court would consider.⁵ Judge Ballinger referred “to the
3 Special Master the task of proceeding in the best manner possible to organize and determine the
4 remaining objections and comments.”⁶ The objections referred to the Special Master were filed by
5 Richard Donahue, Howard L. Judd, Paul B. Kartchner, Quentin H. Miller and Carmen J. Miller
6 jointly, Marsha L. Thompson, Kevin J. Trejo, and George L. White and Richard B. White jointly.

7 **A. Administration of Contested Case**

8 The contested case *In re Subflow Technical Report, San Pedro River Watershed*, begun in
9 February 2003, addresses all matters concerning subflow in the Gila River Adjudication.⁷ Currently,
10 the case involves proceedings before both the Court and Special Master.

11 On September 3, 2010, the Special Master organized his portion of the case. All the claimants
12 who filed objections and comments to ADWR’s Subflow Zone Delineation Report for the San Pedro
13 River Watershed were listed as litigants, a deadline for filing motions to intervene was set, a Court
14 approved mailing list was prepared, and a conference was scheduled for December 14, 2010, in
15 Sierra Vista.⁸

16 The order setting the conference stated that:

17 Objectors may wish to obtain additional information from ADWR in order to
18 understand the report and their situation. The Special Master encourages all the
19 objectors to contact Mr. Richard T. Burtell prior to December 7, 2010, to obtain
information. ADWR cannot give legal advice or opinions. Objectors may call or visit

20 ⁵ See Court’s order (Dec. 8, 2010). The text is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_ballinger/W1-103ord120810.pdf.

21 ⁶ Court’s order at 2 (Aug. 24, 2010). The text is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_ballinger/W1-103ord082410.pdf.

22 ⁷ The Special Master informed the litigants that the docket number W1-103 “will apply to the proceedings
before both the Court and the Special Master” as the “Clerk of the Maricopa County Superior Court will file
all pleadings under this docket number.” Special Master’s order at 1 (Oct. 14, 2010). The text is available at
23 http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/W1-103not101410.pdf.

24 ⁸ See Special Master’s order (Sept. 3, 2010). The text is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/W1-103ord090310.pdf.

1 ADWR. In light of ADWR's current budget situation, the Special Master will not
2 request ADWR to travel in order to meet with objectors. Telephonic conferences are
encouraged as well as personal visits if agreeable to ADWR and the objectors.⁹

3 On December 1, 2010, the San Carlos Apache Tribe moved to intervene in the Special
4 Master's case. Arizona Public Service requested to be added to the Special Master's Court approved
5 mailing list. At the conference several parties orally requested to be added to the mailing list.

6 **B. December 14, 2010 Conference**

7 The conference was held in Sierra Vista to accommodate the travel time of the objectors who
8 reside in Southern Arizona, specifically, Benson, Huachuca City, Sahuarita, and St. David. The
9 conference was noticed three months in advance; telephonic access was provided. The conference
10 was well attended, but none of the objectors named above except Mrs. Carmen J. Miller attended.

11 The Special Master was unable to set case management procedures and timelines. However,
12 he allowed the objectors to supplement their objections by January 31, 2011, and directed that
13 "[o]bjections shall be limited to ADWR's findings regarding the lateral extent of the subflow
14 zone."¹⁰ The Special Master granted the motion of the San Carlos Apache Tribe to intervene and the
15 requests of Arizona Public Service Company; BHP Copper Inc.; Cities of Chandler, Flagstaff,
16 Glendale, Mesa, and Scottsdale; Pascua Yaqui Tribe; Pima County, Arizona; Yavapai-Apache
17 Nation; and the claimants represented by Brown & Brown Law Offices, P. C. to be added to the
18 Court approved mailing list.

19 On February 16, 2011, the Special Master informed the parties that the Court's
20 determinations of the objections the Court was hearing "may influence the outcome of the Miller
21 objections," and "the Special Master will wait until the Court's ruling on those objections is final
22

23 ⁹ *Id.* at 2.

24 ¹⁰ Special Master's order at 5, no. 1 (Dec. 20, 2010). The text is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/W1-103ord122010.pdf.

1 before determining the Miller objections.”¹¹ However, he “reserve[d] the option to determine the
2 Miller objections at an appropriate time depending on how the Court’s ruling proceeds.”¹²

3 The Special Master has reviewed all the papers filed to date in the Court’s proceeding and
4 does not find reasons to delay the filing of a report.

5 The February 16, 2011, notice stated that “[i]n a report to be prepared later, the Special
6 Master will recommend the dismissal of the objections filed by Richard Donahue, Howard L. Judd,
7 Paul B. Kartchner, Marsha L. Thompson, Kevin J. Trejo, George L. White, and Richard B. White” as
8 those objections do not address ADWR’s findings regarding the lateral extent of the subflow zone.¹³

9 **III. THE MILLER OBJECTIONS**

10 Mrs. Miller filed nine objections - three objections jointly with Quentin H. Miller, one
11 objection jointly with William Miller, one objection on behalf of the Miller Family Trust, three
12 objections on behalf of the Miller Brothers Ranch, and one objection on behalf of Apache Powder
13 Company. In this report, the nine objections are collectively designated the “Miller objections.”

14 **A. The Reasons for the Objections**

15 The form for filing an objection asked an objector to answer the following request: “[t]he
16 objection is based on the following reasons (attach additional pages if necessary).”

17 Finding of Fact No. 1. In answer to the request for the reasons for the objections, Mrs. Miller
18 provided the same statement in each objection, namely:

19 Property & wells are passed down generationally, beginning in the 1800’s with
20 domestic, livestock & crop uses. The new mapping & assumptions/extrapolations
21 based upon this mapping is in error. The first false premise to state that the alluvium,
22 approximately one mile, on each side of the river is “saturated” ground is ludicrous.
Why would such ground require irrigation to establish & maintain even native
grasses? Second, the proposed interpretation neglects the fact that artesian wells in the

23 ¹¹ Special Master’s order at 2 (Feb. 16, 2011). The text is available at
http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/W1-103ord021611.pdf.

24 ¹² *Id.*

¹³ *Id.* at 3.

1 valley originate in an entirely different strata. These wells have no bearing on the
2 proposed assumptions. Third, this mapping, while interesting, grossly oversteps in
3 actual ability to address watershed concerns & appears to be in use as a tool to gain
4 access to water rights through manipulation of definitions & the system. Fourth, water
& watershed issues & remedies must be addressed through the actual facts & honest
science. Such factual assessment must recognize expansion of urban environments is
at the root of overdraft not rural or agricultural use.

5 Finding of Fact No. 2. The nine objections list thirty wells. Twenty wells are described as
6 exempt wells, seven as being non-exempt; two wells are unspecified; and one is a monitoring well.

7 The form for filing an objection asked for an avowal that the objector is a claimant in the Gila
8 River Adjudication and requested a listing of the objector's statement(s) of claimant.

9 Finding of Fact No. 3. The Miller objections do not identify the objectors' statement(s) of
10 claimant, but the objections provide an ADWR well registration number for each well listed.

11 The Special Master will give primary weight to the substance of the Miller objections in order
12 to determine their merit. The lack of a statement of claimant number will not by itself be sufficient to
13 reject these objections. Potential claimants can file a statement of claimant at a later time in
14 accordance with the requirements set forth in A.R.S. § 45-254(E). However, it is made clear that a
15 statement of claimant is required to obtain an adjudicated water right.¹⁴

16 Mrs. Miller attended the conference held on December 14, 2010, where she orally provided
17 some information about the wells. Thereafter she supplemented the objections.

18 **B. The Supplement**

19 The supplement to the Miller objections presents three main comments. The first comment
20 claims that it is a "flawed supposition that the Holocene alluvium is saturated" because the delineated
21 subflow zone "from 10 feet to 5,280 feet on either side of the [San Pedro] river ... is most definitely

22 ¹⁴ A.R.S. § 45-254(F) states in part that, "[o]n entry of the final decree ... any potential claimant who is
23 properly served and who failed to file a statement of claimant ... for any water right or whose motion for
24 permissive intervention was finally denied by the court is barred and estopped from subsequently asserting
any right that was previously acquired on the river ... and that was not included in a statement of claimant and

1 NOT saturated (capitalized emphasis in statement).¹⁵ “Supplemental irrigation is required even to
2 have a stand of native drought tolerant grasses.”¹⁶

3 In order to delineate the subflow zone, ADWR assumed “the entire lateral extent of the
4 floodplain Holocene alluvium is saturated.”¹⁷ In its September 28, 2005, order, the Court approved
5 ADWR’s proposal that ADWR “assume that the entire extent of the floodplain Holocene alluvium is
6 saturated.”¹⁸ The Court did not adopt the Special Master’s recommendations that the Court “should
7 not adopt [ADWR’s proposal] that the entire lateral extent of the floodplain Holocene alluvium be
8 assumed to be saturated for the purpose of delineating the subflow zone,” and the Court “should
9 direct ADWR to determine the saturated portion of the floodplain Holocene alluvium as accurately
10 and reliably as possible.”¹⁹ The Arizona Supreme Court denied three petitions that requested
11 appellate review of the Court’s ruling.²⁰ The Miller objections raise an issue argued and determined.

12 The second comment claims that the “predevelopment suppositions” do not “acknowledge
13 multiple impacts that precipitated fundamental change to the San Pedro watershed,” such as
14 prehistoric “natural evolving change,” “seismic and climactic occurrences,” an 1877 earthquake, and
15 recent drought conditions.²¹ According to Mrs. Miller, a “variety of factors” has contributed to “a
16 drying trend for many thousands of years.”²² The “concept that this present state in which we find
17 ourselves is the result of over exploitation of surface water starting in the mid 1800’s is flawed.”²³

18 forfeits any rights to the use of water ... that were not included in a properly filed statement of claimant.”

19 ¹⁵ Millers’ Supp. Info. at 1 (Feb. 1, 2011).

20 ¹⁶ *Id.*

21 ¹⁷ ADWR Subflow Zone Delineation Report for the San Pedro River Watershed at p. 2-4 (2009).

22 ¹⁸ Court’s order, *supra* n.1, at 11-12 and 42, no. 5 (not approving the Special Master’s Recommendations Nos. 16 and 17).

23 ¹⁹ *Id.* at 41. The recommendations were the Special Master’s Recommendations Nos. 16 and 17 discussed on pp. 52-58 of the Special Master’s report cited in footnote 2, *supra*.

24 ²⁰ See Ariz. Sup. Ct. order (May 22, 2007). The text is available at http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_pdfs/WC_05_0001_IR52207.pdf.

²¹ Millers’ Supp. Info. at 1-2, *supra*.

²² *Id.* at 2.

²³ *Id.*

1 ADWR's Subflow Zone Delineation Report discusses anthropogenic and natural factors that
2 are part of the geologic history of the San Pedro River basin. The report notes the past and future
3 influence of the natural events mentioned in the Millers' supplement. The report states that:

4 Prior to the late 1800s, the San Pedro River that European explorers and
5 settlers encountered was a relatively low-energy, unentrenched stream with frequent
6 marshy reaches....

7 In the 1870s, the river began to entrench. The active channel became more
8 incised and its floodplain widened due to bank cutting and collapse. By the 1930s,
9 most of the San Pedro River had been transformed into a high-energy and, in some
10 places, deeply entrenched stream.

11 Several factors have been cited to explain this recent entrenchment of the San
12 Pedro River. The factors fall into two groups:

13 *Anthropogenic -*

- 14 • Increased runoff from the introduction of livestock in the watershed and
15 subsequent overgrazing of rangelands;
- 16 • Increased runoff from logging of forest lands to support mines in the region;
- 17 • Drainage of beaver ponds and cienegas to reduce the mosquito population and
18 prevent the spread of malaria; and
- 19 • Channel disturbance from construction of railroads and diversion ditches.

20 *Natural -*

- 21 • **Climate change** resulting in flood flows of greater magnitude and frequency
22 (Thomas and Pool, 2006);
- 23 • **Drought and accompanying wild fires;** and
- 24 • An estimated 7.2 magnitude earthquake **centered in Sonora, Mexico during May
1877** that resulted in land disturbance, changes in spring flow and water table levels,
and more wildfires (DuBois and Smith, 1980).

As indicated above, repeated cycles of channel entrenchment and aggradation
occurred along the San Pedro River prior to substantial human activity. **This suggests
that, although one or more of the anthropogenic factors listed may have
contributed to the recent entrenchment of the San Pedro River, natural factors
probably also played some role and will do so again in the future.** (Emphasis
added.)²⁴

The third comment asserts that Arizona's arid environment compels a more enlightened
public policy and management of scarce water resources. A comprehensive approach to water
management should implement various actions aimed at eliminating wasteful water uses and

1 promoting conservation. Water management should not involve the involuntary transfer of water
2 rights from good water stewards to misinformed or scheming administrators.

3 The Special Master does not disagree with the salutary sentiments of this position, but
4 disagrees that this adjudication somehow involves the unlawful taking of water rights. The Gila
5 River Adjudication is “an action for the judicial determination or establishment of the extent and
6 priority of the rights of all persons to use water in any river system and source.”²⁵ From its inception,
7 this adjudication has preserved the due process and property rights of all claimants to assert legal and
8 technical positions and protect water rights.²⁶ The Special Master has neither seen nor perceived any
9 evidence that shows “legal maneuvering to gain control of” water resources or rights by
10 “administrators” attempting to “dictate and control” our water resources. If such a situation is even
11 perceived, the Special Master is certain that the Court and claimants will end it quickly.

12 Conclusion of Law No. 1. The positions of the Miller objections have either been previously
13 determined or do not address ADWR’s findings regarding the lateral extent of the subflow zone.

14 These objections show a good faith effort to raise issues of concern to the Millers. Active
15 participation by claimants is important for the success of this adjudication. Although he recommends
16 the dismissal of their objections, the Special Master appreciates the Millers’ participation.

17 **IV. THE DONAHUE, JUDD, KARTCHNER, THOMPSON, TREJO, AND WHITE**
18 **OBJECTIONS**

19 The objections filed by Richard Donahue, Howard L. Judd, Paul B. Kartchner, Marsha L.
20 Thompson, Kevin J. Trejo, and George L. White and Richard B. White jointly are considered as a

21 ²⁴ ADWR Subflow Zone Delineation Report for the San Pedro River Watershed at pp. 4-2 to 4-3, *supra*.

22 ²⁵ A.R.S. § 45-251(2); *see also* A.R.S. § 45-252(A) (“One or more water users upon a river system and source,
23 the water rights of which have not been previously adjudicated under this article ... may file a petition to have
determined in a general adjudication the nature, extent and relative priority of the water rights of all persons in
the river system and source.”).

24 ²⁶ *See In the Matter of the Rights to the Use of the Gila River*, 171 Ariz. 230, 830 P.2d 442 (1992), and *San*

1 group due to their contents.

2 **A. The Reasons for the Objections**

3 Each of these objectors provided the reasons for their objection.

4 Finding of Fact No. 4. In answer to the request for the reasons for the objection, Mr. Richard
5 Donahue's objection states as follows:

6 Respectfully request an Environmental Impact Study of the "Bruce Babbitt"
7 commercial well located on Oak Street, Whetstone, Arizona - for inclusion in this
8 report. ... As a footnote: I trust that this is the correct forum in which to raise the issue
9 of the inclusion of an environmental impact study. If not - I apologize for
10 unnecessarily having taken the court's time.

11 Finding of Fact No. 5. In answer to the same question, Mr. Judd's objection states as follows:

12 My domestic well should be exempt from adjudication because it is artesian and does
13 not interact with or impact the San Pedro subflow in any way. It draws water from a
14 self contained artesian lense at a depth of 565 feet and is lined with steel pipe and
15 concrete all the way down. Our well does not remove water from the San Pedro
16 subflow.

17 Finding of Fact No. 6. In answer to the question, Mr. Kartchner's objection states that:

18 I object to any "taking" of water rights necessary for ongoing use & production on
19 land purchased by myself. We utilize conservation based principles to irrigate and
20 care for the water resources. Any "taking" of this resource would make our property
21 of minimal economic value.

22 Finding of Fact No. 7. Mrs. Marsha L. Thompson filed two objections based on two wells. In
23 answer to the same question, Mrs. Thompson states in one objection as follows:

24 I have 21 pecan trees that were planted 20 years ago. They need water every week. I
also have 3½ acres that I occasionally plant in corn and other vegetables - they need
watering throughout the growing season. I also have 15 apricot trees that need
watering every two weeks. Other watering needs [are] for pomegranate bushes, apple
trees, and various other plants. The water is used to raise feed for cattle, milk cows,
and other farm animals.

Finding of Fact No. 8. Mrs. Thompson states in her other objection as follows:

We use this well to keep our fish pond filled up. We eat the catfish in our pond. We
need this well for watering the yard and garden - ½ acre - surrounding our home. We

Carlos Apache Tribe v. Superior Court, 193 Ariz. 195, 972 P.2d 179 (1999).

1 need this water for household uses.

2 Finding of Fact No. 9. Mr. Kevin J. Trejo filed two objections. In answer to the same
3 question, Mr. Trejo states in one objection as follows:

4 This property was purchased in 1993. We have decided to build a new home on the
5 back section of our acreage. Of course we must have water rights on our own property
6 to build and have this home. Our well also waters a small orchard. I believe this
artesian well is outside of the Adjudication area of 5,000 ft (from the San Pedro River
bed).

7 Finding of Fact No. 10. Mr. Trejo states in his other objection that the:

8 Property was purchased in 1993 for use as a single family residence with all water
9 rights to sustain life. I believe that our 610 ft. deep artesian well is outside the one
10 mile or 5,000 ft. from the San Pedro River bed making it outside of the adjudication
area. We are very concerned about the future of our water table in the San Pedro
Valley, and we are extremely conservative with its use.

11 Finding of Fact No. 11. In answer to the same question, Messrs. George L. White and
12 Richard B. White state in their objection as follows:

13 Property & wells passed down generational beginning late 1800's domestic, livestock
14 & gardening use. As a family we strongly object to the realignment suggested by the
15 newly proposed mapping. Historically the San Pedro Valley has had many different
16 looks from a watershed perspective, to include being an inland sea or vast lake. We
believe that the current watershed is the only reasonable starting point for what is
already redundant litigation. It is our contention that any watershed litigation should
focus on the urban sprawl of the Sierra Vista area and not the small farming &
ranching operations that practice natural harmony with the San Pedro River Valley.

17 The objections filed by Mr. Donahue, Mr. Kartchner, Mr. Trejo, and Messrs. George L.
18 White and Richard B. White do not list the objector's statement(s) of claimant. Furthermore, only the
19 Whites' objection provides well registration numbers. The Special Master will not make findings of
20 fact concerning these omissions because he does not have any information showing if these objectors
21 have or have not filed statements of claimant or registered their wells. However, the omissions
22 exemplify the insufficiency of the information provided in these objections.

23 These objections describe existing wells, some historical background, and current or planned
24 water uses. The efforts of these objectors to participate in this matter are appreciated. However, the

1 objections do not meet the elemental requisite for further consideration.

2 Conclusion of Law No. 2. The objections filed by Richard Donahue, Howard L. Judd, Paul B.
3 Kartchner, Marsha L. Thompson, Kevin J. Trejo, and George L. White and Richard B. White jointly
4 do not address ADWR's findings regarding the lateral extent of the subflow zone. Accordingly, they
5 do not satisfy the Court's requisite for an objection entitled to further consideration.

6 **B. The Presentation of the Objections**

7 None of these objectors attended the conference held on December 14, 2010, in Sierra Vista,
8 supplemented their objections, or has otherwise participated in the resolution of their objections. On
9 December 27, 2010, ADWR reported that only Mr. Trejo, pursuant to the Special Master's invitation,
10 had contacted the department prior to the December 14, 2010, conference seeking information.

11 These objectors had the opportunity to present their positions directly to the Special Master
12 and to supplement their objections. Possibly they decided not to participate in this proceeding after
13 filing their objections. Without more information, the Special Master cannot find that these
14 objections merit further consideration.

15 **C. Filing Objections in Future Proceedings**

16 Previously, the Special Master noted that these objectors will have an opportunity at a future
17 time to file objections that relate to the specific water right attributes of their wells and water
18 sources.²⁷ That opportunity will come when ADWR publishes a Supplemental Final San Pedro River
19 Watershed Hydrographic Survey Report.

20 In its September 28, 2005, order, the Court approved the Special Master's Recommendation
21 No. 36 concerning the implementation of a schedule. Sections F and G of Recommendation No. 36
22 state as follows:

23 F. ADWR will publish a Supplemental Final San Pedro River Watershed HSR

24 ²⁷ See Special Master's Dec. 20, 2010, order at 2-4, *supra*.

1 reporting its findings and proposed water right attributes on a claim by claim basis, in
2 accordance with A.R.S. § 45-256(B), including wells withdrawing subflow, cone of
depression analyses, *de minimis* water rights, and all other new or updated
information.

3 G. ADWR shall send a notice of the filing of the Supplemental Final San Pedro River
4 Watershed HSR to all claimants in the Gila River Adjudication, who may file
objections within one hundred and eighty days of the date on which the report was
5 filed.²⁸

6 ADWR's Subflow Zone Delineation Report describes the schedule in chapter 1, section 1.4,
7 page 1-7.

8 **V. RECOMMENDATION**

9 The Special Master recommends that the Court dismiss the objections filed by Richard
10 Donahue, Howard L. Judd, Paul B. Kartchner, Quentin H. Miller, Carmen J. Miller, Marsha L.
11 Thompson, Kevin J. Trejo, George L. White, and Richard B. White to ADWR's Subflow Zone
12 Delineation Report for the San Pedro River Watershed (June 2009).

13 **VI. AVAILABILITY OF THE REPORT**

14 This report will be filed with the Clerk of the Superior Court of Maricopa County. A copy of
15 the report will be distributed to all persons listed on the Court approved mailing list dated July 25,
16 2011, for the phase of this case referred to the Special Master that is posted at
17 <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/maillingLists.asp>.

18 All papers and orders are available for review at the Clerk of the Maricopa County Superior
19 Court, 601 West Jackson Street, Phoenix, Arizona 85003, under Civil No. W1-103. The contact
20 person is Deputy Clerk Kenneth Shipley, whose telephone is 602-506-3369. Electronic copies of all
21 orders entered in this case are posted online on the page titled *Gila River Adjudication* under the
22 heading *In re Subflow Technical Report, San Pedro River Watershed* at
23 <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/>.

1 **VII. TIME TO FILE OBJECTIONS TO THE REPORT**

2 A.R.S. § 45-257(A)(1 and 2) state in pertinent part that the “master shall:”

3 1. After due notice, conduct such hearings and take such testimony as shall be
4 necessary to determine the relative water rights of each claimant.

5 2. For all determinations, recommendations, findings of fact or conclusions of law
6 issued, prepare and file with the court a report in accordance with rule 53(g) of the
7 Arizona rules of civil procedure, which shall contain those determinations,
8 recommendations, findings of fact and conclusions of law. Each claimant may file
9 written objections with the court to any rule 53(g) report within ... sixty days after the
10 report is filed with the court If the report covers an entire subwatershed ... each
11 claimant may file with the court written objections to the report within one hundred
12 eighty days of the date on which the report was filed with the court.

13 This report does not determine the relative water rights of any claimant or objector involved
14 in this proceeding. Accordingly, the Special Master finds that the period of time to file objections to
15 this report is sixty days after the report is filed with the Court, and not 180 days. The Special Master
16 will provide a period of thirty days to file responses to objections. The five day period for service by
17 mail specified in Arizona Rule of Civil Procedure 6(e) will be added to each of these periods.

18 Any claimant in the Gila River Adjudication may file a written objection to this report on or
19 before **Friday, February 10, 2012**. Responses to objections shall be filed by **Friday, March 16,**
20 **2012. All papers must be filed with the Clerk of the Maricopa County Superior Court, Attn: Water**
21 **Case, 601 West Jackson Street, Phoenix, Arizona 85003.**

22 A copy of all papers filed must be served on all persons listed on the Court approved mailing
23 list (Special Master) for this contested case dated July 25, 2011, that is posted online at
24 <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/maillingLists.asp>.

21 **VIII. MOTION FOR ADOPTION OF REPORT**

22 The Special Master moves the Court under Arizona Rule of Civil Procedure 53(h) to adopt
23 the findings of fact, conclusions of law, and recommendation contained in this report. A proposed

24 ²⁸ *Id.* at 4.

1 order will be lodged as the Court may direct upon consideration of the report.

2 **IX. NOTICE OF SUBSEQUENT PROCEEDINGS**

3 Rule 53(h)(5) states that in acting on a master's report, the Court "shall consider and rule
4 upon any objections and motions filed by the parties, and may adopt or affirm, modify, wholly or
5 partly reject or reverse, or resubmit to the master with instructions." The Special Master's motion to
6 adopt the report and any objections will be taken up as ordered by the Court.

7 Submitted this 7th day of December, 2011.

8
9 /s/ George A. Schade, Jr.
10 GEORGE A. SCHADE, JR.
Special Master

11
12 On December 7, 2011, the original report
13 was delivered to the Clerk of the Maricopa
14 County Superior Court for filing and
15 distributing a copy to all persons listed on
the Court approved mailing list (Special
Master) for Contested Case No. W1-103
dated July 25, 2011.

16 /s/ Barbara K. Brown
17 Barbara K. Brown