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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA
8

9 **IN RE THE GENERAL**
10 **ADJUDICATION OF ALL RIGHTS**
11 **TO USE WATER IN THE GILA**
12 **RIVER SYSTEM AND SOURCE**

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

Contested Case No. **W1-106**

ORDER DENYING MOTION TO STRIKE
and

GRANTING JOINT MOTION FOR
SUMMARY JUDGMENT REGARDING
REMAINING OBJECTIONS TO ADWR'S
SUBFLOW ZONE DELINEATION
REPORT FOR THE VERDE RIVER
MAINSTEM

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

19 **TECHNICAL REPORTS INVOLVED:** *Subflow Zone Delineation Report for Verde*
20 *River Mainstem & Sycamore Canyon, December 2021.*

21 **DESCRIPTIVE SUMMARY:** Order DENYING Motion to Strike and GRANTING
22 Joint Motion for Summary Judgement Regarding Remaining Objections to ADWR's
23 Subflow Zone Delineation Report for the Verde River Mainstem.

NUMBER OF PAGES: 12

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25 On December 30, 2021, the Arizona Department of Water Resources ("ADWR")
26 filed the *Subflow Zone Delineation Report for Verde River Mainstem & Sycamore*
27 *Canyon* ("Mainstem Report"), which delineated the proposed subflow zone for the
28 mainstem of the Verde River and Sycamore Canyon Subwatersheds. Pursuant to the

1 Special Master's Order dated July 30, 2021, objections to the Mainstem Report were
2 required to be filed by May 2, 2022

3 The objections of Cottonwood Ditch Association ("Cottonwood"), Desert Spice
4 Tea, LLC ("Desert Spice"), and Watercrest, Inc. ("Watercrest") were all timely filed. On
5 April 15, 2024, the Salt River Project Agricultural Improvement and Power District and
6 Salt River Valley Water Users' Association (collectively, "SRP") and Freeport Minerals
7 Corporation ("Freeport") jointly moved for summary judgment on the three objections
8 pursuant to Rule 56 of the Arizona Rules of Civil Procedure ("Motion"). Rule 56 permits
9 a party to move for summary judgment if the moving party can show there is no genuine
10 dispute as to any material fact. Movants claim the objections of Cottonwood, Desert
11 Spice, and Watercrest are "generally based on those parties' broad objection to ADWR's
12 subflow zone delineation and failed to provide specific critiques of the Mainstem
13 Report." Motion at 3.

14 On May 15, 2024, Counsel for Desert Spice and Watercrest requested an
15 extension until May 31, 2024, to respond to the Motion. That request was granted May
16 23, 2024. On May 31, 2024, Desert Spice and Watercrest filed a Motion to Strike Joint
17 Motion for Summary Judgment Regarding Remaining Objections to ADWR's Subflow
18 Zone Delineation Report for the Verde River Mainstem; and Response to Joint Motion
19 for Summary Judgement.

20 Under Arizona law, any person or entity who has filed a Statement of Claimant in
21 an adjudication may file an objection to a report prepared by ADWR for that
22 adjudication. Ariz. Rev. Stat. §45-256(B). Arizona law further requires that objections
23 "shall *specifically* address the director's recommendations regarding the particular water
24 right claim or use investigated." *Id.* (emphasis added).

25 26 COTTONWOOD

27 The Cottonwood Objection states on page 2 that ADWR's use of professional
28 judgment to determine the edge of the Holocene alluvium beneath the colluvium in the

1 Verde Valley "results in the decision making to be totally subjective and not based on
2 scientific facts."¹ Cottonwood provided none of its own "scientific facts" to support its
3 statement. Neither did Cottonwood provide any additional information or explanation as
4 a response to the Motion.

5 The Special Master instructed ADWR to use specific objective scientific criteria
6 when drafting the Mainstem Report.² In addition to the criteria specified in *Gila IV*³ to
7 accurately define the boundaries of the floodplain Holocene alluvium, the Special
8 Master instructed ADWR to use "appropriate geological and hydrological criteria,
9 vegetation patterns, aerial photography, topographic soil breaks and *its professional*
10 *judgment*."⁴

11 ADWR documented in the Mainstem Report that it reviewed Arizona Geological
12 Survey surficial geology and mapping, analyzed pre-Holocene bounding topography,
13 and applied the Court's directives to determine the lateral extent of the floodplain
14 Holocene alluvium ("FHA"). Mainstem Report, at 20. Ariz. Rev. Stat. §45-256(A)
15 instructs the Special Master to use the technical expertise of ADWR for the General
16 Stream Adjudication. Such expertise necessarily requires, as ordered here by the Special
17 Master, the use of professional judgment. ADWR's use of professional judgment in
18 conjunction with the appropriate *Gila IV* and other scientific criteria, is statutorily
19 authorized and acceptable.

20
21 **THE COURT FINDS** that no genuine issue of material fact exists with respect to
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24 ¹ See Cottonwood Ditch's Objections to the Subflow Zone Delineation Report for
the Verde River Mainstem and Sycamore Canyon Subwatershed (May 2, 2022)

25 ² See W1-106, Order for Production of a Subflow Zone Delineation Technical
26 Report for the Verde River Watershed at 3 (Nov. 27, 2017) ("Verde Subflow
Order").

27 ³ In re General Adjudication of All Rights to Use Water in Gila River System &
28 Source, 198 Ariz. 330, 344 (2000) ("Gila IV").

⁴ *Id.* (emphasis added).

1 Cottonwood's objections.

2 **THEREFORE, IT IS ORDERED** that because Cottonwood's objections are not
3 specific and do not point to a deficiency in ADWR's Mainstem Report, the objections
4 are dismissed with prejudice.

5
6 **DESERT SPICE and WATERCREST**

7 As pointed out in the Motion, Desert Spice and Watercrest filed objections that
8 are substantively identical; therefore, the Motion addressed these objections collectively.
9 Motion at 4 fn5. This Order will do the same.

10 **Motion to Strike**

11 Desert Spice and Watercrest moved to strike the Motion on grounds of deficient
12 service, claiming that the Motion was sent to the Court Approved Mailing List
13 ("CAML") for Contested Case W1-106, which did not include the most current address
14 of Desert Spice/Watercrest's counsel. Due to the number of potential parties to the
15 General Stream Adjudication, each contested case maintains a list of parties pertinent to
16 the specific case – the CAML. To keep the CAML up to date, the Court requires
17 litigants to "notify the Clerk of the Superior Court and the Special Master, in writing, of
18 any change of address."⁵ A review of the Court's records did not provide any evidence
19 that Desert Spice and Watercrest's counsel informed the Court of any new address.
20 Service of a document is proper if mailed "by US mail to the person's last known
21 address..." Ariz. R. Civ. Pro. 5(c)(2)(C). SRP and Freeport complied with Rule
22 5(c)(2)(C) by mailing the Joint Motion to Watercrest's last-known address as listed on
23 the CAML. If the Adjudication Court is not made aware of an address change, then the
24 CAML cannot be updated. The Joint Parties⁶ provided service to the best of their ability

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27 ⁵ See Pretrial Order No. 4, Case No. W-1, W-2, W-3, W-4, at 2 (Jan. 24, 2000)
28 (requiring any person who has filed a statement of claimant to notify ADWR of a change
in address).

⁶ SPR and Freeport.

1 given the information the Court, and thus they, were provided.
2

3 **IT IS ORDERED** the Desert Spice and Watercrest Motion to Strike Joint Motion
4 for Summary Judgment Regarding Remaining Objections to ADWR's Subflow Zone
5 Delineation Report for the Verde River Mainstem is DENIED.
6

7 **Cone of Depression Test**

8 The Desert Spice and Watercrest Objections asserted ADWR did not adequately
9 explain its methodology and objected to ADWR's purported failure to propose a
10 methodology for cone of depression testing and to define what wells within the subflow
11 zone may be excluded from the Adjudication. Furthermore, the Desert Spice and
12 Watercrest Objections assert that, contrary to *Gila IV* the Mainstem Report does not
13 adequately describe the "proper test" or the "appropriate criteria" ADWR used to
14 delineate the subflow zone for the Verde.⁷

15 As stated in the discussion regarding the Cottonwood Ditch objections, ADWR
16 clearly documented in the Mainstem Report the methodology used to delineate the
17 subflow zone, which complies with *Gila IV* and the the Special Master's Order. The
18 argument that ADWR did not develop a test for establishing a well's cone of depression
19 or define what constitutes "impermeable material" is misguided as ADWR was not
20 tasked with either of those determinations as part of the Verde River subflow zone
21 delineation.

22 Desert Spice and Watercrest are correct in that development by ADWR of a cone
23 of depression test is required. However, development of the cone of depression test is a
24 process separate from any subflow delineation. The lateral extent of a subflow zone for
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27 ⁷ See Desert Spice's Objections to the Subflow Zone Delineation Report for the
28 Verde River Mainstem and Sycamore Canyon Subwatershed (May 2, 2022);
Watercrest's Objections to the Subflow Technical Report for the Verde River Mainstem
and Sycamore Canyon Subwatershed (May 2, 2022).

1 any watershed must be based upon the geology, hydrogeology, and geomorphology of
2 that watershed, irrespective of the location of any wells and the potential intersection of
3 any cone of depression. Should Desert Spice and Watercrest care to engage in the
4 process of the cone of depression test they may do so at the appropriate time and within
5 the appropriate contested case..⁸ ADWR's February 20, 2024, Groundwater Flow Model
6 of the Upper San Pedro Groundwater Basin ("Model") can be found on the Agency's
7 website at <https://infoshare.azwater.gov/docushare/dsweb/View/Collection-22580>.
8 Comments were accepted by the Court through April 22, 2024. Additional proceedings
9 on the Model, and how it will be used for cone of depression and subflow depletion
10 testing in the San Pedro watershed will be heard in the future within the San Pedro case
11 no. W1-103.

12 13 **Impermeable Materials**

14 Desert Spice/Watercrest also objected to the lack of guidance by ADWR regarding what
15 is "impermeable material" with respect to a well's potential to be pumping subflow.
16 Within the context of groundwater, "impermeable material" refers to substrate that does
17 not allow water to penetrate the layer. Beyond that, because the analysis becomes case
18 specific and fact intensive, it is not appropriate for a basin-wide delineation of the
19 subflow zone. Further, ADWR was never ordered to make such a determination or
20 provide any guidance; therefore, the Subflow Delineation report is not lacking for not
21 including something that was never requested.

22
23 **THE COURT FINDS** that no genuine issue of material fact exists with respect to
24 Desert Spice and Watercrest's objections.

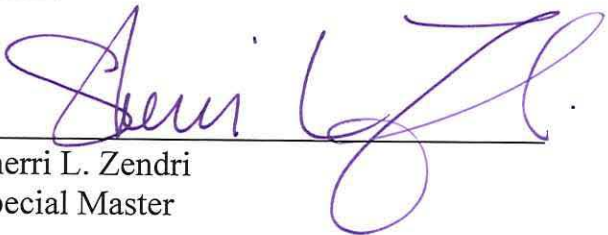
25 **THEREFORE, IT IS ORDERED** that because Desert Spice and Watercrest's
26 objections are not specific and do not point to a legal deficiency in ADWR's Mainstem
27

28 ⁸ See generally W1-W4, Order RE: Report of the Special Master on Methodology
for Determination of Cone of Depression (July 8, 2022).

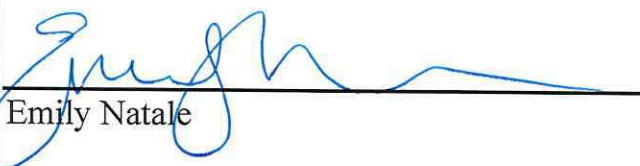
1 Report, those objections are dismissed with prejudice.

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3 **IT IS FURTHER ORDERED** that the Joint Motion for Summary Judgment
4 Regarding Remaining Objections to ADWR's Subflow Zone Delineation Report for the
5 Verde River Mainstem is GRANTED.

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9 Signed this 12th day of June 2024.

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13 Sherri L. Zendri
14 Special Master

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16 The original of the foregoing was delivered
17 to the Clerk of the Maricopa County Superior
18 Court on June 12, 2024 for
19 filing and distributing a copy to all persons
20 listed on the Court approved mailing list for
21 this contested case.

22 
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26
27
28 Emily Natale

Court Approved Mailing List
In re Subflow Technical Report, Verde River Watershed, Case No. W1-106
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6/12/2024

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