

GENERAL ADJUDICATION

GENERAL OVERVIEW

August 2013

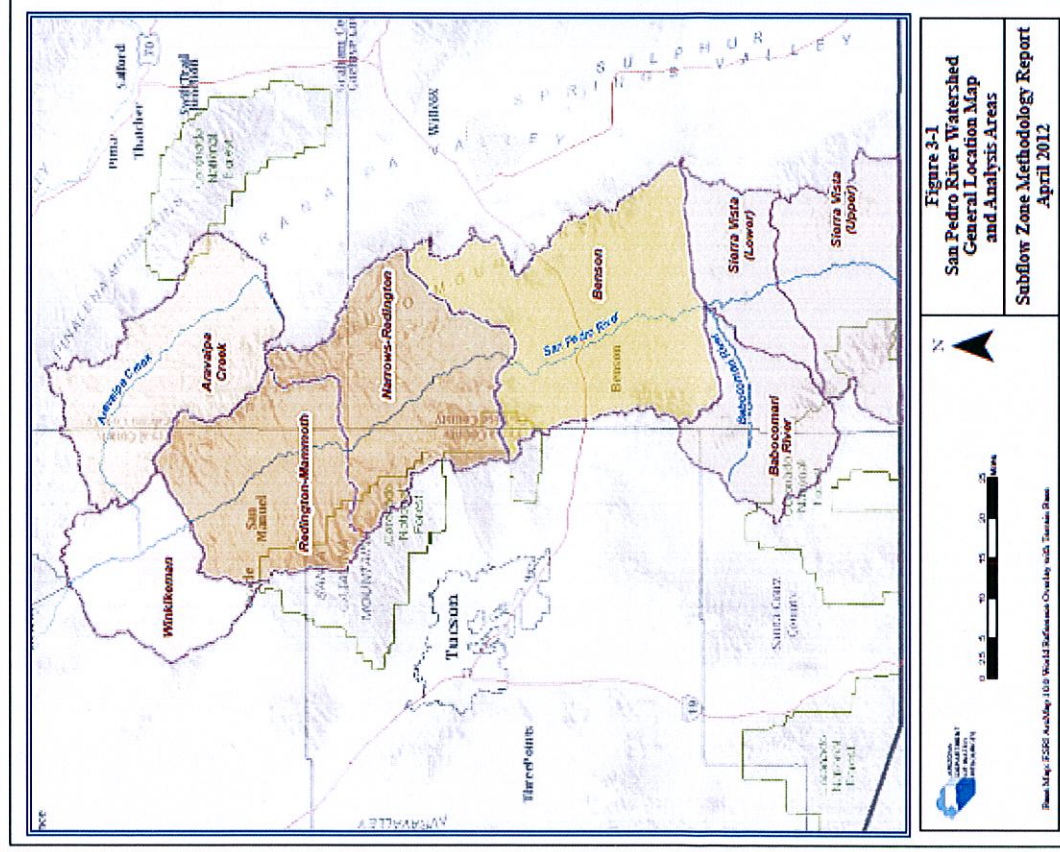
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WHAT IS A GENERAL ADJUDICATION?

- Statutorily Created Judicial Process
(A.R.S. §§45-251 et seq.)
- Objective - Determine Nature, Extent and Relative Priority of the Right to Use 'Appropriable Water' and 'Federal Claims' Within a Water System and Source
- All landowners in the Water System are included

- First Initiated in 1970s by SRP to resolve claims on the Verde River
- Supreme Court Consolidated all Gila River Tributaries into a single adjudication
- A decade after the Courts concluded federal and Indian water claims could be litigated in Arizona state court, ADWR issued multi-volume Hydrologic Survey Reports on the San Pedro River and Silver Creek Watersheds in the early 1990s, summarizing all known claims to water.

San Pedro River Watershed



What is Appropriable Water?

- Surface Water is Appropriable
 - Based on ‘First-in-Time, First-in-Right’ and ‘Beneficial Use’ Doctrines
 - Quantified based upon point of diversion, type and place of use and when first put to beneficial use.
- Groundwater is NOT Appropriable Water
- ‘Subflow’ IS part of the surface water

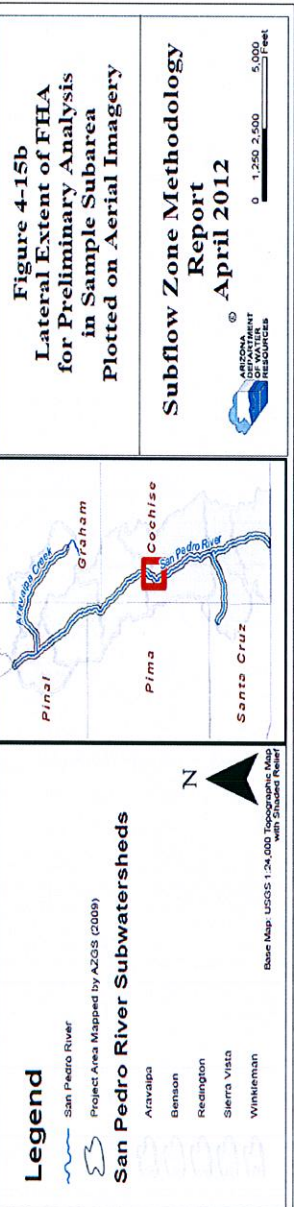
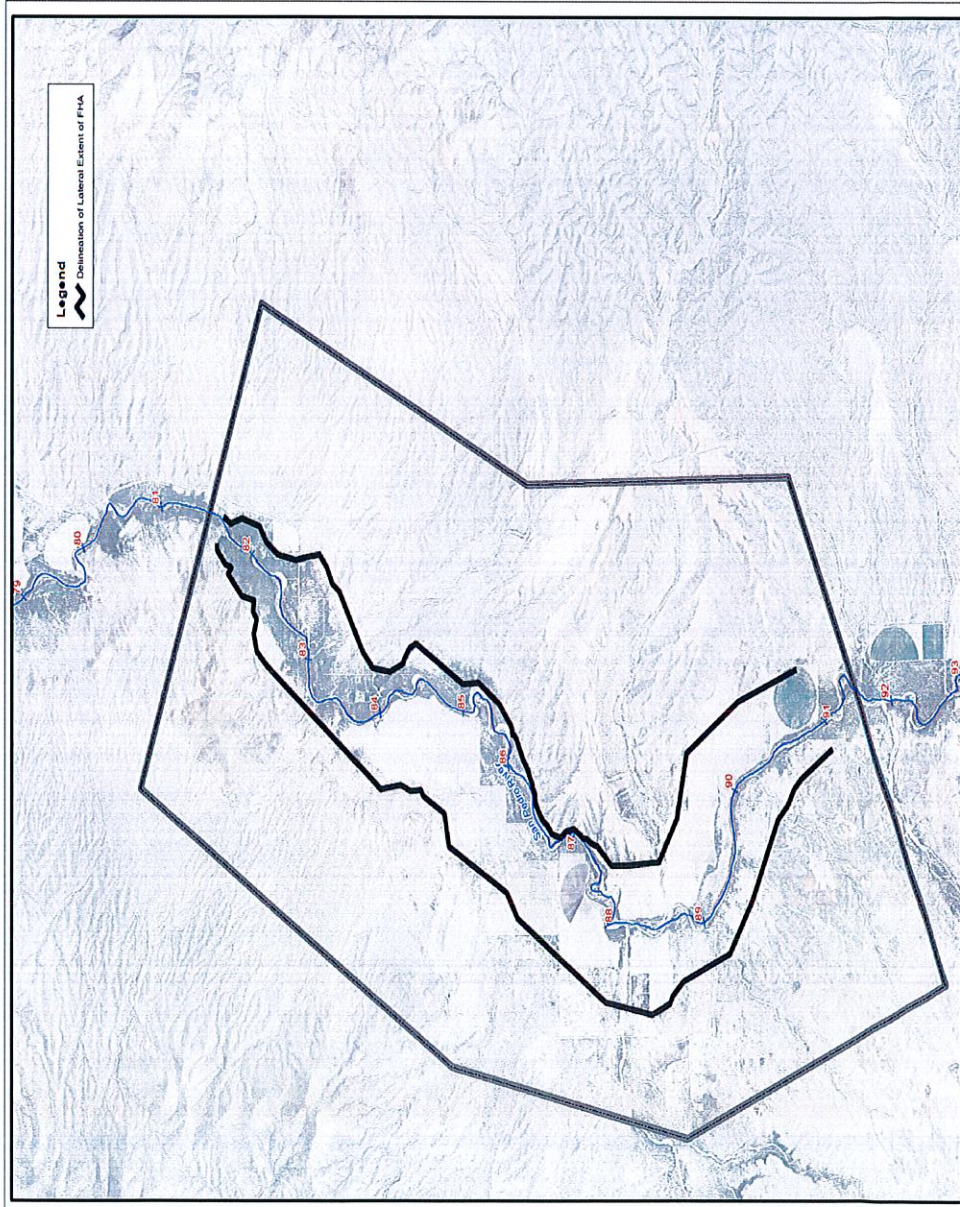
WHAT IS SUBFLOW?

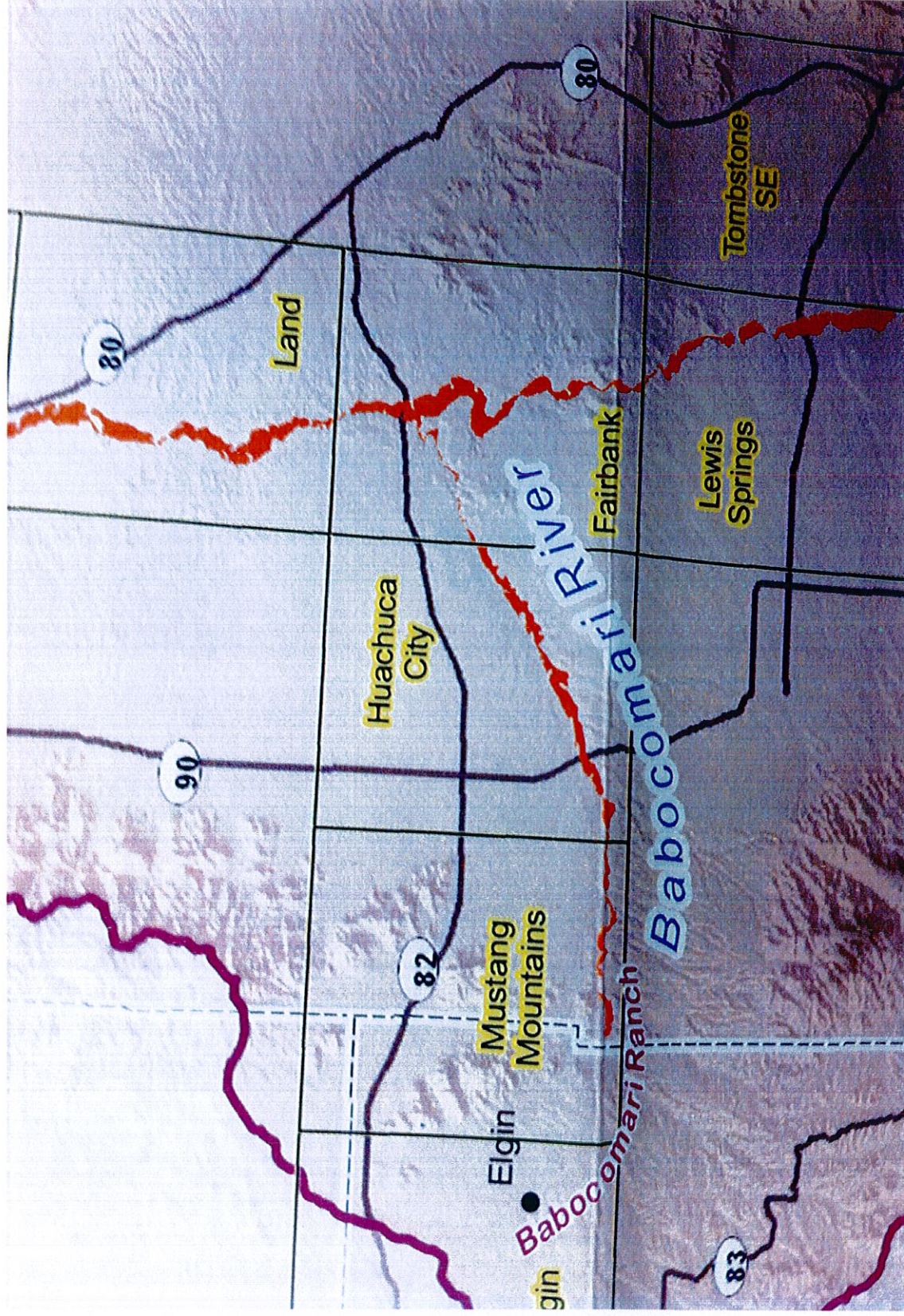
- Arizona courts define “Subflow” as water:
 - below the ground’s surface,
 - adjacent to ‘surface water,’ AND
 - having characteristics so similar to the surface water, including direction of flow and chemical constituents, to be deemed part of it.
- Saturated Floodplain Holocene Alluvium, with limitations

- Subflow must be established by clear and convincing evidence, otherwise water below the ground's surface is 'presumed' to be groundwater
- A 'Subflow Zone' delineated by ADWR using reliable methodology can satisfy the clear and convincing standard and reverse the presumption

Delineating Subflow Zones

- Various delineations of Subflow Zones within the San Pedro River Watershed have been debated since 1994.
- In 2002 the Supreme Court provided additional guidance, focusing on the Saturated Floodplain Holocene Alluvium.
- ADWR is to complete delineation of the subflow zones of the San Pedro, Babacomari, Aravaipa by April 2004, subject to the Court's review.





Preliminary Subflow Zone Delineation - 2009

General Adjudication - Overview of Status
August 2013

WHAT IS A FEDERAL CLAIM TO WATER?

- Water Reserved under federal law in order to meet the primary purpose of a federal reservation.
- The reservation of water may be express, but will also be implied where water is necessary to fulfill the primary purpose of a federal reservation – the Winters Doctrine

ELEMENTS OF A RESERVED RIGHT

- Lands must be withdrawn from the public domain to meet a federal purpose
 - Fort Huachuca – “Military Purposes”
 - SPRNCA - “the protection of the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area”
- The primary Federal Purpose(s) would be defeated without the reserved water (unless expressly reserved)

- There must be ‘Unappropriated’ water to reserve at the time the federal reservation is created.
- Only the minimal amount needed to meet the primary purpose of the federal reservation is reserved, no more.
- Groundwater can be reserved, but only to extent other sources, including state based water rights, are insufficient to meet the primary purpose of the federal reservation.

Arizona Supreme Court Rulings

- Subflow is a narrow concept (1993/2002)
- Primary purpose of Indian Reservations is to serve as a permanent home and abiding place; practically irrigable acreage is not the sole measure of their reserved water right; primary-secondary purposed does not apply (2001)

- Federal reserved water rights can include groundwater if necessary to accomplish the primary purpose of the reservation and may be afforded more protection than under state law if greater protection necessary to maintain sufficient water to accomplish the primary purpose of the reservation. (1999)
- State Trust Lands were not granted Federal reserve water rights (2012)

- Legislative changes to surface water code and general adjudication process that impact existing substantive rights, rights in the process of being adjudicated, were void and cannot be remedied by giving prospective operation (1999) (Note - the changes have never been repealed by the Legislature)

- Special approval process approved for federal water right settlements, followed to ratify settlements with several Indian Tribes
- Confirmed water rights settlements with the Tohono O’odham Tribe (2007) and the Gila River Indian Community (2010)
- Found the Globe Equity Decree precludes parties to the decree from claiming rights inconsistent with the decree (2006)

STATUS OF FORT HUACHUCA CLAIMS

- Superior Court has ruled the original Executive Orders issued Oct. 29, 1881 and May 14, 1883 creating Fort Huachuca intended to reserve water rights, to the extent necessary for military purposes.
- The Artillery range and other parcels added to the Fort during World War II do not have reserved water rights.

- ‘Military Purposes’ is not static and includes water rights required to satisfy contemporary, direct, indirect and quasi-municipal needs that arise in conducting military and military-related functions important to local and national security.
- Proceedings ongoing to: (i) define the scope of Military Purposes, (ii) quantify the amount of water needed to satisfy them and (iii) identify what sources of water are available to satisfy the water right.

STATUS OF THE SPRNCA CLAIMS

- The Special Master has ruled:
 - Congress intended to expressly reserve unappropriated water, if any, to the extent needed to accomplish the purposes of SPRNCA
- The Priority date is Nov. 18, 1988 for lands w/i SPRNCA and owned by the federal government on that date.
- After acquired lands have priority date(s) as of the date of reservation

- ADWR has prepared Reports on:
 - SPRNCA Land Ownership 6/30/10
 - Concerning Federal Reserved Water Rights Within SPRNCA 5/31/12
- Discovery and Evidentiary proceedings are being scheduled on Quantification with a trial anticipated at the end of 2014.

Other Pending Matters

- Redfield Canyon Wilderness Area
- Aravaipa Canyon Wilderness Area
- Powers Garden Administrative Claim
- PWR 107 Claims
- White Mountain Apache Tribe Water Rights Quantification Agreement
- Navajo & Hopi Water Rights Settlements
- De Minimus Uses
- Various SRP Injunction Actions on the Verde River
- Well Impact Analysis
- SRP Motion to Delineate Verde River Subflow Zone

IMPACTS ON REGION

- Future development dependent on water
- The Fort and SPRNCA hold or control significant claims to the remaining undeveloped local water resources, including groundwater
- The Fort and SPRNCA compete with each other over water supplies and their respective federal purposes

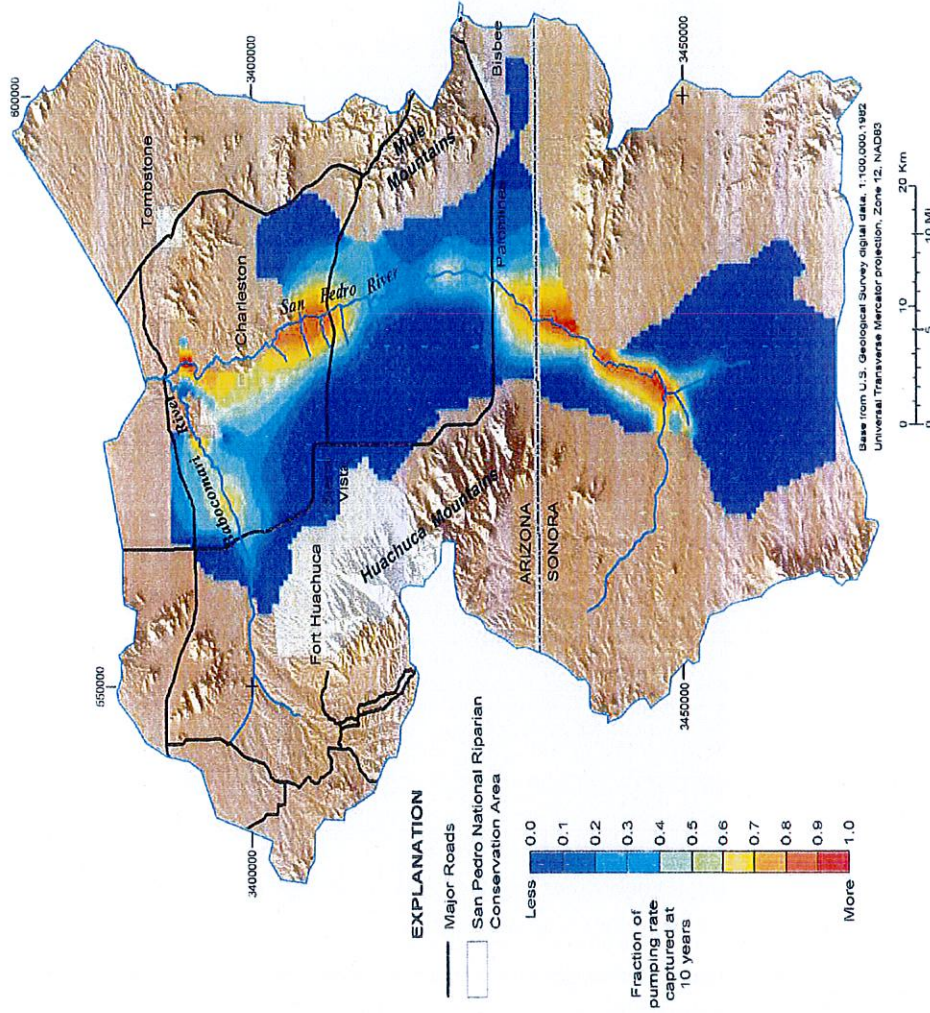


Figure 4A. Computed capture of streamflow, riparian evapotranspiration, and springflow that would result for withdrawal of water from model layer 4 at a constant rate for 10 years. The color at any location represents the fraction of the withdrawal rate by a well at that location that can be accounted for as changes in outflow from and or inflow to the aquifer for model boundaries representing streams, riparian vegetation, and springs.

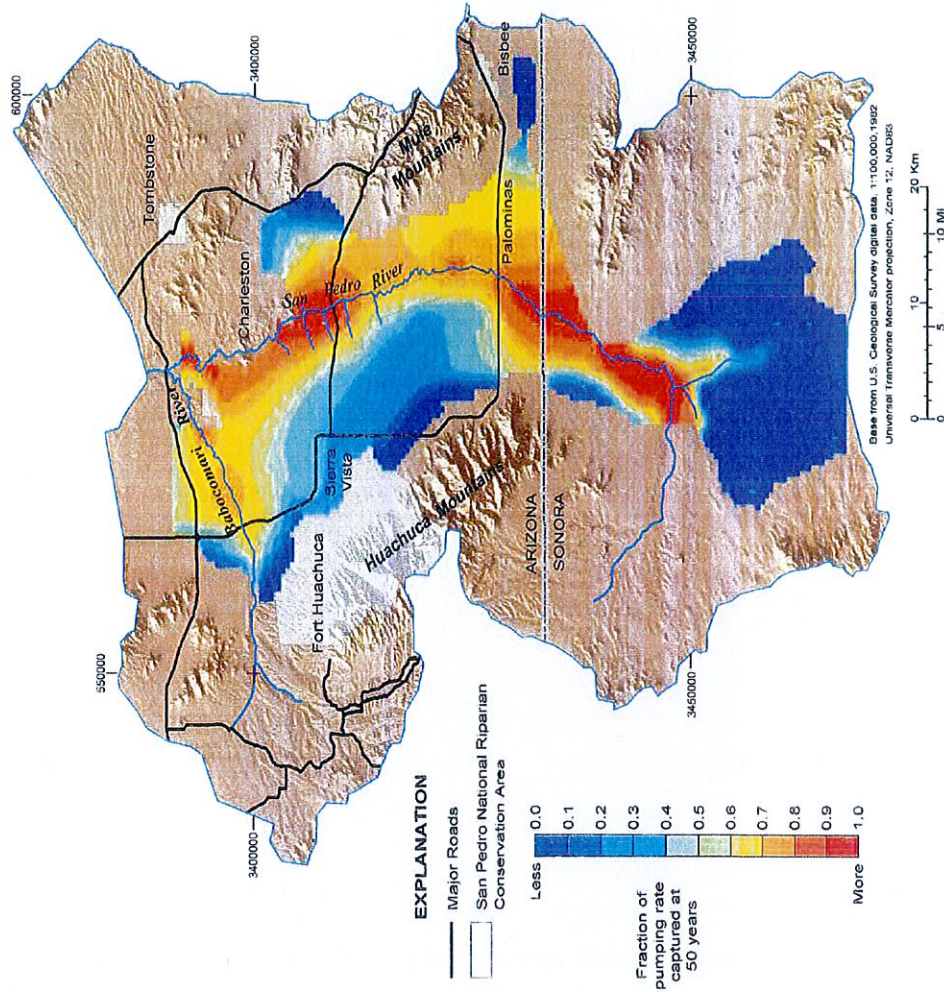


Figure 4E. Computed capture of streamflow, riparian evapotranspiration, and springflow that would result for withdrawal of water from model layer 4 at a constant rate for 50 years. The color at any location represents the fraction of the withdrawal rate by a well at that location that can be accounted for as changes in outflow from and or inflow to the aquifer for model boundaries representing streams, riparian vegetation, and springs.

RELATED ISSUES

- Endangered and Threatened Species
- Environmental Consultations
- San Pedro Partnership 301 Reports
- Update of SPNCA Management Plan

REGIONAL ACTIONS

- Critical for the region to mutually develop a comprehensive water management structure looking to equitably allocate existing water resources between competing uses
- Critical to identify and develop additional water supplies