

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE**

IN RE THE GENERAL ADJUDICATION  
OF ALL RIGHTS TO USE WATER IN THE  
LITTLE COLORADO RIVER SYSTEM AND  
SOURCE

NO. 6417

OBJECTION TO THE FINAL  
HYDROGRAPHIC SURVEY REPORT  
FOR THE HOPI RESERVATION  
**(Deadline to file: June 15, 2016)**

**OBJECTOR**

Name Tri-State Generation and Transmission Association, Inc., Attn. Legal Department

Address 1100 West 116th Avenue, Westminster, CO 80234-2814

Telephone No. 303-452-6111

Statement of Claimant No. 39- 88961, 88963, 88964, 91893, 91894, 91895, 91897, 91898, 91899,  
88961, 91896, 88962, 88960

**STATEMENT OF OBJECTION**

The water right attributes described in Chapter 5 of the Final Hopi Hydrographic Survey Report are listed below. I object to one or more of the proposed water right attributes for the factual and/or legal reasons stated below. A description of the evidence to support those reasons is also provided:

1. Type of Use See Attached descriptive summary
2. Legal Basis \_\_\_\_\_
3. Water Sources \_\_\_\_\_
4. Point of Diversion \_\_\_\_\_
5. Place of Use \_\_\_\_\_
6. Date of Priority \_\_\_\_\_
7. Quantity of Water Use \_\_\_\_\_

**ATTACH ANY ADDITIONAL COMMENTS, INFORMATION OR DOCUMENTATION**

Tri-State Generation and Transmission Association, Inc. submits the following comments/objections to the water rights proposed by the Arizona Department of Water Resources (ADWR) in the Final Hopi Hydrographic Survey Report.

Legal Basis: The descriptive summary of the legal basis for the claims (§§ 3.2.1, 3.5.1) does not include the Arizona Supreme Court's findings in *Gila III*<sup>1</sup> where the court did allow the application of federal reserved rights to percolating groundwater, but stated "[a] reserved right to groundwater may only be found where other waters are inadequate to accomplish the purpose of a reservation." The Court further stated: "Accordingly, we reject the Arizona Tribes' assertion that the Indian tribes have a reserved right to all of the waters appurtenant to their reservations. In determining Indian treaty rights, the Supreme Court has rejected tribal claims to an 'untrammeled right' to exploit natural resources." "We do not, however, read the case law to require a zero-impact standard of protection for federal reserved rights. The Supreme Court has repeatedly acknowledged that the reserved rights doctrine 'reserves only that amount of water necessary to fulfill the purpose of the reservation, no more.'" 195 Ariz. at 421-22, 989 P.2d at 748-49, including n. 10. The impact of this legal standard should be addressed in the evaluation of the Hopi claims.

Agricultural Rights: In determining the attributes of an appropriative surface water right, the specific place of beneficial use and point of diversion is always included as a limiting factor on the exercise of the right. Here, the place of use is generally defined, and the points of diversion for the specific use are not listed, even though the water may theoretically be used anywhere on the reservation.

Consumptive use for dry land farming (without diversion from a water source) should not be included in the overall water right entitlement.

The past/present agricultural acreage as recommended by ADWR (maximum acreage irrigated in any single year) is the correct standard.

ADWR correctly determines that an additional water right for "storage" of water should not be included above evaporative loss of the reservoir.

Subsurface Mineral Rights: ADWR correctly notes that the claims for water from the Blue Springs complex is outside the reservation and accordingly outside the allowable claims under Judge Ballinger's March, 2008 minute entry.

Domestic, Commercial, Municipal and Industrial: To correctly apply the principles set out in *Gila V*<sup>2</sup> the past and present DCMI uses should be evaluated. While various factors make up the water entitlement for a cultural homeland under the *Gila V* analysis, all potential uses are not necessarily cumulative. Some balancing and evolution of water use must also be considered to comply with the minimalist approach adopted by the court. 201 Ariz. at 320, 35 P.3d at 81.

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<sup>1</sup> *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 989 P.2d 739 (1999).

<sup>2</sup> *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001).

VERIFICATION

STATE OF Colorado  
County of Adams

I declare under penalty of perjury that I am a claimant or the duly authorized representative of a claimant. I have read the Statement of Objection and verify, swear, and affirm that the information contained is true based on my personal knowledge, or is believed to be true based on information and belief.

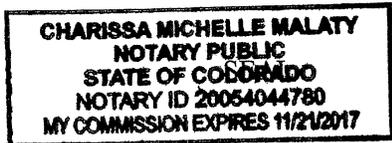
Signature of Objector or Representative:  
Tri-State Generation and Transmission Association, Inc.

By: Barry W. Ingold  
Name: Barry W. Ingold

Title: Senior Vice President, Generation

Address: 1100 W. 116th Avenue, Westminster, CO 80234

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of June, 2016.



Michelle Malaty  
Notary Public for the State of Colorado

My Commission Expires November 21, 2017

CERTIFICATE OF SERVICE

On this 13<sup>th</sup> day of June, 2016, I hereby certify that the **original** Objection and **two** copies were filed with:

Clerk of the Superior Court  
Apache County  
70 West Third South  
St. Johns, AZ 85936

Marina Reite  
Signature

Marina Reite  
Print Name

On this 13<sup>th</sup> day of June, 2016, I further certify that a true and correct copy of this Objection was sent by first class mail to:

Joseph P. Mentor, Jr.  
Bill Aloe  
Mentor Law Group, PLLC  
315 Fifth Avenue South, Suite 1000  
Seattle, Washington 98104  
Counsel for the Hopi Tribe

Marina Reite  
Signature

Marina Reite  
Print Name

Vanessa Boyd Willard  
Indian Recourses Section, ENRD  
United States Department of Justice  
Denver Field Office  
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Denver, Colorado 80202  
Counsel for the United States

Marina Reite  
Signature

Marina Reite  
Print Name