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JUN 24 2016

DEPT OF WATER RESOURCES  
LEGAL

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 Arizona Public Service Company<sup>1</sup>  
Address P.O. Box 52034, Mail Station 9424, Phoenix, Arizona 85076-2034  
Telephone No. 602-250-3905  
Statement of Claimant No. 39-03-87225 through 39-03-87236

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: **APS objects to the Final Hydrographic Survey Report for the Hopi Reservation as set forth in Attachment A, attached hereto and incorporated herein by this reference.**

1. Type of Use See objections 2, 3, and 6 on Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_
2. Legal Basis See objections 4, 5, and 6 on Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_
3. Water Sources See objections 4, 5, and 6 on Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_
4. Point of Diversion \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Place of Use See objection 6 on Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_
6. Date of Priority See objection 1 on Attachment A.  
\_\_\_\_\_  
\_\_\_\_\_
7. Quantity of Water Use \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTACH ANY ADDITIONAL COMMENTS, INFORMATION OR DOCUMENTATION

<sup>1</sup> Counsel of Record for Arizona Public Service Company is identified in **Attachment B**. All communication regarding these objections should be directed to Counsel of Record as specified in **Attachment B**.

VERIFICATION

STATE OF Arizona

County of Maricopa

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

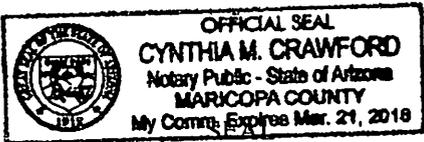
*[Handwritten Signature]*

Name

400 N 5<sup>TH</sup> ST PHX AZ 85004

Address

SUBSCRIBED AND SWORN to before me this 14<sup>th</sup> day of June, 2016.



*Cynthia M. Crawford*

Notary Public for the State of ARIZONA

My Commission Expires MARCH 21, 2018

CERTIFICATE OF SERVICE

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, 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

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, 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*

Vanessa Boyd Willard  
Indian Recourses Section, ENRD  
United States Department of Justice  
Denver Field Office  
999 18<sup>th</sup> South Terrace, Suite 370  
Denver, Colorado 80202  
*Counsel for the United States*

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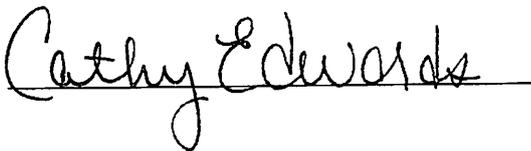
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Vanessa Boyd Willard  
Indian Recourses Section, ENRD  
United States Department of Justice  
Denver Field Office  
999 18th South Terrace, Suite 370  
Denver, Colorado 80202  
*Counsel for the United States*

COPY of the forgoing mailed this 14th day of June, 2016 to:

All parties on the Little Colorado River  
Adjudication, CV 6417 Court Approved  
Mailing List dated May 5, 2016



MEMORANDUM FOR THE RECORD

Subject: [Illegible]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

# ATTACHMENT A

## TO ARIZONA PUBLIC SERVICE COMPANY'S OBJECTIONS TO THE FINAL HYDROGRAPHIC SURVEY REPORT FOR THE HOPI TRIBE

Arizona Public Service Company ("APS") hereby asserts the following objections to the Final Hydrographic Survey Report for the Hopi Reservation (the "Hopi Reservation HSR"):

1. APS objects to any priority date asserted by the Hopi Tribe, or by the United States as trustee for the Tribe, its members and allottees (collectively, the "United States"), that is inconsistent with the decision issued by the Little Colorado River Adjudication Trial Court on January 21, 2016. That order determines the priority dates for water right claims asserted by the Hopi Tribe and the United States until and unless the order is overturned or modified on appeal. Accordingly, any asserted priority date that is inconsistent with this order must be rejected.
2. APS objects to the United States' claim for water to support a future coal mine and mine-mouth coal-fired power plant (as described at page 4-31 of the Hopi Reservation HSR). The United States bears the burden of proving that such a coal mine and power plant satisfy the standards established by the Arizona Supreme Court in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 320, ¶¶ 22-23 (2001) ("*Gila V*"), including the economic viability and soundness of any such project.
3. APS objects to the Hopi Tribe's claim for water to support future "Energy Resource Development" projects (as described at pages 4-32 and 4-33 of the Hopi Reservation HSR), including a solar thermal power plant and a coal liquefaction/gasification facility. The Hopi Tribe bears the burden of proving that any such projects satisfy the standards established by the Arizona Supreme Court in *Gila V*, including the economic viability and soundness of any such projects.
4. APS objects to the Hopi Tribe's claim for water rights to a portion of the outflow of the "Blue Springs complex" under a theory of "subsurface mineral rights" (as described at pages 4-36 to 4-38 of the Hopi Reservation HSR). This theory is not supported by case law and is inconsistent with the reserved water rights doctrine as defined and applied by the Arizona Supreme Court in *Gila V*.
5. APS objects to the Hopi Tribe's and the United States' claims for reserved water rights to groundwater. The Tribe and the United States bear the burden of proving that "other waters are inadequate" before a reserved right to groundwater can be obtained. *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 420, ¶ 30 ("*Gila III*").
6. APS objects to the Hopi Tribe's claim for an instream flow water right in the mainstem of the Little Colorado River (as described at page 5-8 of the Hopi Reservation HSR). This claim is inconsistent with the Little Colorado River Adjudication Trial Court's decision filed March 2, 2009.

## ATTACHMENT B

### **Counsel of Record for Arizona Public Service Company:**

L. William Staudenmaier (#012365)  
wstaudenmaier@swlaw.com  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 East Van Buren Street, Suite 1900  
Phoenix, Arizona 85004-2202  
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