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

ARWELL B. ARWELL, CLERK  
APACHE COUNTY SUPERIOR COURT

<p><b>IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE</b></p>	<p><b>NO. 6417</b></p> <p><b>OBJECTION TO THE FINAL HYDROGRAPHIC SURVEY REPORT FOR THE HOPI RESERVATION</b></p> <p><b>(Deadline to file: June 15, 2016)</b></p>
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**OBJECTOR**

Name: City of Flagstaff

Address: 211 W. Aspen Avenue, Flagstaff, Arizona 86001

Telephone No.: (928) 213-2000

Statement of Claimant No.: 39-03-83947 and 39-03-83948

**STATEMENT OF OBJECTIONS**

The water right attributes described in Chapter 5 of the Final Hopi Hydrographic Survey Report are listed below. The City of Flagstaff objects 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:

**5.1 WATER RIGHTS ATTRIBUTES FOR PAST AND PRESENT USES**

**5.1.1 Legal Basis**

The City of Flagstaff reserves the right to object to the legal basis of the water rights claimed by the Hopi Tribe or by the United States on their behalf.

**5.1.2 Priority Date**

The City of Flagstaff reserves the right to object to the priority date of the water rights claimed by the Hopi Tribe or by the United States on their behalf.

**5.1.3 Types of Use**

The Arizona Department of Water Resources (ADWR) fails to propose attributes pertaining to the Hopi Tribe or the United States past claims for domestic, commercial, municipal and industrial use (DCMI). Although ADWR indicates in Chapter 3 that the Hopi Tribe and the United States have made claims for present DCMI use, it does not propose attributes for these claims, indicating that it "requested information from the Hopi and the United States regarding past and present DCMI uses, but such information was not provided." Hopi Hydrographic Survey Report (HSR) pages 3-17, fn 4. In order to object, the parties must know if the proposed

attribute for past and present DCMI use is zero AFA or some other quantity. Because the proposed attribute for past and present DCMI is unknown, the City of Flagstaff reserves the right to object to all past and present DCMI uses claimed by the Hopi Tribe or the United States on their behalf.

#### 5.1.4 Water Source

The City of Flagstaff reserves the right to object to the water source of the water rights claimed by the Hopi Tribe or by the United States on their behalf. The Court has already determined that the Hopi Tribe may not claim rights to sources of water that do not abut or traverse the Hopi Reservation. *See*, LCR Adjudication Court Minute Entry order dated March 2, 2009. ADWR fails to specifically identify the water sources for claims in Table 5.1.

#### 5.1.5 Points of Diversion

ADWR does not specifically identify the points of diversion for claims in Table 5.1. Therefore, ADWR fails to investigate and show with substantial accuracy the points of diversion of the water rights claimed in the HSR.

#### 5.1.6 Places of Use

ADWR does not specifically identify the places of use for claims in Table 5.1. Therefore, ADWR fails to investigate and show with substantial accuracy the places of use of the water rights claimed in the HSR.

#### 5.1.7 Quantity of Use

##### 5.1.7.2 Evaporation from Irrigation Storage – Hopi Tribe

1. Type of Use – Evaporation from Irrigation Storage
2. Legal Basis – Unresolved legal matter – See section 5.1.1 above
3. Water Sources – See section 5.1.4 above
4. Points of Diversion – See section 5.1.5 above
5. Place of Use – See section 5.1.6 above
6. Date of Priority – Unresolved legal matter – See Section 5.1.2 above
7. Quantity of Water Use – 192 AFA. In Subsection 4.3.1, ADWR states: “Irrigation reservoirs are used to capture stream runoff and baseflow throughout the year so that greater volumes are available for irrigation use during the growing season. Water evaporates from the surface of such reservoirs resulting in a net loss to the system.” ADWR fails to propose a water right attribute for continuous fill of the Pasture Canyon and Lower Lagoon reservoirs.

#### 5.1.7.5 Recreation – Hopi Tribe

1. Type of Use – Recreation
2. Legal Basis – Unresolved legal matter – See section 5.1.1 above
3. Water Sources – See section 5.1.4 above
4. Point of Diversion – See section 5.1.5 above
5. Place of Use – See section 5.1.6 above
6. Date of Priority – Unresolved legal matter – See Section 5.1.2 above
7. Quantity of Water Use – 13 AFA. The Hopi Tribe claims the right to continuously fill Keams Lake to its maximum capacity of 27.8 AF. However, ADWR fails to propose a water right attribute for continuous fill of Keams Lake.

#### 5.1.7.6 Subsurface Mineral Rights – Hopi Tribe

1. Type of Use – Subsurface mineral rights
2. Legal Basis – Unresolved legal matter – See section 5.1.1 above
3. Water Sources – Unresolved legal matter. See section 5.1.4 above. Because the Blue Springs Complex is located off the Hopi Reservation in the lower Little Colorado River area, and the Little Colorado River does not cross Hopi Reservation lands, the Tribe is precluded from making this claim. The LCR adjudication court held in 2009 that the Hopi are precluded from claims to water from sources that do not abut or traverse Hopi lands. *See*, LCR Adjudication Court Minute Entry Order dated March 2, 2009.
4. Point of Diversion – Unresolved legal matter – See section 5.1.5 above
5. Place of Use – Unresolved legal matter – See section 5.1.6 above
6. Date of Priority – Unresolved legal matter – See section 5.1.2 above
7. Quantity of Water Use – Undetermined. The Hopi claim 40,295 AFA of water for the Tribe's proportional share of the Blue Springs Complex. The Tribe's claim is for both instream flows and consumptive use and it asserts the right to 'transfer' this claimed use for consumptive or non-consumptive purposes.

#### 5.1.7.7 Aesthetic, Cultural and Ecological Flows – Hopi Tribe and United States

1. Type of Use – Aesthetic, cultural and ecological flows
2. Legal Basis – Unresolved legal matter – See section 5.1.1 above
3. Water Sources – See section 5.1.4 above. Because the lower Little Colorado River is located off the Hopi Reservation, and the Little Colorado River does not cross Hopi Reservation lands, the Tribe is precluded from claiming a right to instream flows in the lower Little Colorado River. The LCR adjudication court held in 2009 that the Hopi are precluded from claims to water from sources that do not abut or traverse Hopi lands. *See*, LCR Adjudication Court Minute Entry Order dated March 2, 2009.
4. Point of Diversion – See section 5.1.5 above
5. Place of Use – See section 5.1.6 above. While ADWR describes three different riparian, wetland and instream flow claims in Chapter 5, it does not differentiate between the claims in Table 5-1, describing the attributes of the water rights. Therefore, the City of Flagstaff cannot object to one claim without objecting to the other two.
6. Date of Priority – Unresolved legal matter – See section 5.1.2 above
7. Quantity of Water Use – 294 AFA

## **5.2 SUMMARY OF FUTURE WATER USES**

ADWR provides descriptive and technical information related to claims for future water uses in the HSR, but it does not propose water right attributes for those future water uses. Therefore, the City of Flagstaff reserves the right to object to all future water uses claimed by the Hopi Tribe or the United States on their behalf.

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

The City of Flagstaff also reserves the right to object to any claims made by the Hopi Tribe or the United States on their behalf included in the HSR for uses that are located off the Hopi Reservation, and to any claims for on-reservation uses from water sources that do not abut or traverse the Hopi Reservation.

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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

Alexandra M. Arboleda

Lee A. Storey

Alexandra Arboleda, Of Counsel

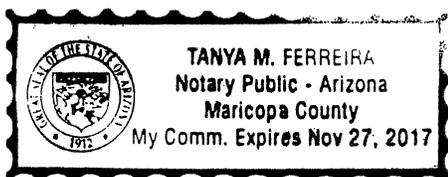
The Storey Lawyers, PLC

Attorneys for City of Flagstaff

6515 N. 12<sup>th</sup> Street, Suite C, Phoenix, Arizona 85014

Address

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



[Signature]

Notary Public for the State of

My Commission Expires 11-27-17

CERTIFICATE OF SERVICE

On this 14<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, Arizona 85936

On this 14<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:

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