

2016 JUN 14 PM 3: 15

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

ANNETT J. [unclear], CLERK
APACHE CO. SUPERIOR COURT

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 LCR Coalition Represented by Brown & Brown Law Offices, P.C.
Address P.O. Box 1890 128 E. Commercial St. St. Johns, AZ 85936
Telephone No. (928)337 4225
Statement of Claimant No. 39- See Exhibit A

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 Exhibit B for objections and comments.

2. Legal Basis See Exhibit B

3. Water Sources See Exhibit B

4. Point of Diversion See Exhibit B

5. Place of Use See Exhibit B

6. Date of Priority See Exhibit B

7. Quantity of Water Use See Exhibit B

ATTACH ANY ADDITIONAL COMMENTS, INFORMATION OR DOCUMENTATION

VERIFICATION

STATE OF Arizona
County of Apache

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

[Signature]
Name

PO Box 1890 128 E. Commercial St. St. Johns, AZ 85936
Address

Address

SUBSCRIBED AND SWORN to before me this 14th day of June, 2016.



[Signature]
Notary Public for the State of Arizona

My Commission Expires Nov. 12th, 2019

CERTIFICATE OF SERVICE

On this 14th 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

On this 14th 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

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

EXHIBIT A

**LCR COALITION REPRESENTED BY
BROWN & BROWN LAW OFFICES, P.C.**

1. Town of Eagar 39-84465, 39-84466, 39-84467, 39-84468, 39-84469, 39-84470, 39-84471
2. City of Holbrook 39-82029, 39-82078, 39-82079, 39-82080, 39-82081, 39-85030
3. City of Show Low 39-84279, 39-84280, 39-84281, 39-84282, 39-84283, 39-84284, 39-84285
4. Town of Springerville 39-84149
5. Town of Snowflake 39-83792, 39-84000
6. Town of Taylor 39-80823
7. City of Winslow 39-84979, 39-84980
8. City of St. Johns 39-89123, 39-89124, 39-89125, 39-89126, 39-91702, 39-91703, 39-91704, 39-91705, 39-91706, 39-951532
9. Forest Lakes Domestic Water Improvement District 39-93509, *et al.*
10. Silver Creek Irrigation District 39-88816
11. Show Low/Pinetop-Woodland Irrigation Company 39-83105, 39-83786, 39-83787, *et al.*
12. Lakeside Irrigation Company 39-84141
13. Little Colorado Water Conservation District Pending.
14. Round Valley Water Users Association (now Pioneer Irrigation Company) 39-89112
15. Lyman Water Company 39-89196
16. Bar T Bar Ranch, Inc. 39-87546, 39-87520, 39-87524, *et al.*
17. Barnes, Euell Pending
18. Flying M Ranch 39-88420, 39-88441, 39-88474, *et al.*
19. Aztec Land & Cattle Company, Ltd.; Aztec Land Company, LLC 39-63081, *et al.*
20. Pinetop-Lakeside Sanitary District 39-80300
21. West Snowflake Land Company, LLC 39-83019, 39-83020, *et al.*
22. Dobson Limited Partnership, LLC 39-88988, 39-88989, 39-88990, 39-88991, 39-88992

EXHIBIT B

The following are the LCR Coalition's Comments and Objections to the Final Hopi Hydrographic Survey Report ("HSR").

A. Comments:

The LCR Coalition joins and adopts the Salt River Project Agricultural Improvement and Power District's comments and objections to the HSR dated June 9, 2016.

When the HSR does not include complete attributes for a water right it is difficult to understand the full effect of each particular proposed water right in Chapter 5 of the HSR and the relevant tables.¹ Table 5-1, titled "Proposed Water Right Attributes for Past and Present Water Uses on the Hopi Indian Reservation," is practically useless, because there are almost as many boxes with incomplete information as those that are completed. Without the full context of the legal basis and the priority date for each past or present use, the LCR Coalition is compelled to object to each water right lacking all relevant attributes.

The LCR Coalition reserves the right to contest or challenge any information in the Tables, Figures, and Appendices attached to the HSR in any litigation regarding the potential water rights.

The LCR Coalition reserves the right to participate in a determination of all future issues stemming from this HSR.

B. Objections:

The LCR Coalition asserts the following general objections to the entirety of the HSR:

1. None of the proposed water rights have a stated legal basis.
2. None of the proposed water rights has a stated priority date. The LCR Coalition understands that ADWR issued the HSR before the Adjudication Court issued the January 16, 2016, Minute Entry, largely adopting the Special Master's recommended priority dates for various portions of Hopi lands. Thus, the Hopi Tribe priority dates should be incorporated in any supplemental Hopi Final HSR, and until each proposed water right in the tables has a stated priority date, the LCR Coalition objects to all proposed water rights in the HSR.

¹ The LCR Coalition acknowledges that the Arizona Department of Water Resources (ADWR) was instructed by the Court not to address future uses. The LCR Coalition's objections and comments are not intended to be critical of ADWR's efforts, especially given the constraints imposed on it.

3. The HSR does not apply the standard of “minimal need to serve the purpose of the reservation” as required by *Gila V*.
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The LCR Coalition asserts the following specific objections to the HSR:

1. Types of Uses:

The HSR does not give a legal basis for any of the types of uses.

2. Water Source:

The description of water sources in Chapter 5.1.4 and in the Proposed Water Right Attributes Table 5-1 is inadequate for the following reasons:

- i. The Hopi Tribe’s right to off-reservation water sources is not an “unresolved legal matter.” ADWR should have followed the direction from Judge Eddward Ballinger’s ruling precluding the Hopi Tribe “from asserting water right claims in this adjudication to the extent such claims seek the right to water sources located within the Little Colorado River Basin that neither abut nor traverse Hopi lands.” Minute Entry filed March 2, 2009 at 2.
- ii. ADWR did not identify the water source to be used to supply each use.
- iii. All the other water source issues are left undetermined because ADWR deemed such issues to be beyond the scope of the report.

3. Points of Diversion:

The description for the points of diversion is too vague when described as “throughout the reservation.”

4. Places of Use:

The described places of use are generally too vague to ascertain their location. Also, without the complete listing of all the attributes of a given water right, it is difficult to know whether the place of use is correct.

5. Quantity of Use:

- i. Agricultural (Irrigation Uses):

The proposed quantities of dry land farming acreage where there are no diversions or conveyance structures should not result in a water right.

- ii. Livestock and Water Storage for Stock:

The LCR Coalition objects to the quantity of water right for livestock to the extent that there is an overlap with storage for other uses. All the other objections set forth in this Objection would generally apply to this use also.

iii. Mining:

The LCR Coalition does not object to the quantity for past and present mining. However, all other objections set forth generally apply to this use also.

iv. Recreation:

The LCR Coalition objects to ADWR's proposed water right attribute of 13 AFA for recreation use at Keams Lake. The Hopi Tribe stated that the surface area of Keams Lake is 3.2 acres. The Tribe did not provide any documentation to establish the lake's surface area. However, the United States has provided documentation to assert the figure of 2.94 acres.

v. Subsurface Mineral Rights:

The LCR Coalition objects to any reference to subsurface mineral rights for the Blue Springs Complex. As noted above, Judge Ballinger ruled that the Hopi Tribe is precluded "from asserting water right claims in this adjudication to the extent such claims seek the right to water sources located within the Little Colorado River Basin that neither abut nor traverse Hopi lands." Minute Entry filed March 2, 2009 at 2. Moreover, the Tribe articulates no basis for its "proportional share" quantification methodology, or its alleged "right to transfer this claimed use for consumptive or non-consumptive purposes." Absent a plausible basis for these asserted rights, ADWR should have recommended a finding of no water right rather than declare the topic beyond the scope of the HSR.

vi. Aesthetic, Cultural and Ecological Flows:

All of the general objections also apply to the aesthetic, cultural and ecological flows set forth in 5.1.7.7. In addition,

a. The LCR Coalition objects to ADWR's acceptance of 294 AFA as the average annual depletion within Pasture Canyon. Neither the Hopi Tribe nor the United States provided any information or documentation establishing the claimed volume for depletion within Pasture Canyon.

b. The Hopi Tribe's claim to instream flows in the lower Little Colorado River for aesthetic, cultural and ecological flows is not an unresolved legal matter. As noted above, Judge Ballinger ruled that the Hopi Tribe is precluded "from asserting water right claims in this

adjudication to the extent such claims seek the right to water sources located within the Little Colorado River Basin that neither abut nor traverse Hopi lands.” Minute Entry filed March 2, 2009 at 2.

6. Future Uses:

The HSR provides descriptive and technical information related to future water uses in Chapters 2 and 4. This information, including the estimated quantity of water to be used for such future uses, was based on information provided to ADWR by the Hopi Tribe and the United States. However, throughout Chapters 2 and 4 there are references to particular uses where the Hopi Tribe and the United States did not respond to ADWR’s request for further information. Accordingly, the LCR Coalition objects to any information in the HSR with reference to future uses because it is incomplete and was not verified with sufficient documentation.