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**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

Contested Case No. CV6417-300

**ARIZONA DEPARTMENT OF WATER
RESOURCES' STATUS REPORT**

(Special Master Susan Ward-Harris)

CONTESTED CASE NAME: *In re Navajo Nation*

DESCRIPTIVE SUMMARY: The Arizona Department of Water Resources ("ADWR") hereby reports on the feasibility of a *de minimis* calculation for domestic wells on the Navajo Reservation as requested by the Court in the Minute Entry filed April 24, 2018.

NUMBER OF PAGES: Five

DATE OF FILING: August 31, 2018

In the Order filed December 28, 2016, the Court ordered the Navajo Nation and the United States to file amended statements of claimant ("SOCs") and supporting data for historic, present, and future stock ponds, stock and wildlife watering, and domestic, commercial,

1 municipal, and industrial (collectively “DCMI”) water uses on the Navajo Reservation by June 1,
2 2018. During the April 12, 2018 Status Conference in this matter, counsel for the Navajo Nation
3 requested the Court to allow stock and domestic wells with the capacity to pump 35 gallons per
4 minute or less¹ to be considered as *de minimis* uses within the Navajo Nation Hydrographic
5 Survey Report (“HSR”). See Minute Entry, April 24, 2018, p. 2. The Special Master ordered
6 ADWR to file a status report addressing the feasibility of a *de minimis* calculation for domestic
7 wells on the Navajo Reservation based on the data provided by the Navajo Nation and the United
8 States within 90 days of receipt of the data. *Id.*

9 **DE MINIMIS STANDARD FOR DOMESTIC USES**

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11 In the *Little Colorado River* adjudication, stockponds of a certain size, stockwatering, and
12 wildlife watering water uses have been determined to be *de minimis* within the Silver Creek
13 subwatershed. See Special Master John E. Thorson’s Memorandum Decision, Findings of Fact,
14 and Conclusions of Law for Group I Cases Involving Stockponds, Stockwatering, and Wildlife
15 Uses, filed April 20, 1994. In that decision, the Special Master set forth *de minimis* quantities
16 and procedures for summary adjudication of these small water uses; however, the Special Master
17 did not address a *de minimis* standard for domestic uses. *Id.*

18 In the *Gila River* adjudication, Special Master Thorson provided the following definition
19 for *de minimis* domestic uses within the San Pedro watershed:

20 “Domestic Use” means the use of privately supplied water by persons in a
21 permanent dwelling; the watering of pets and farmyard animals; and the irrigation
22 of lawns, gardens, and orchards on land adjoining the dwelling. However, the
23 domestic uses determined to be *de minimis* in this proceeding are those supplied
24 by the landowner or occupant from a well or surface water source (“self-supplied”) providing water for a single family household and associated outdoor activities on adjoining land not exceeding (<) 0.2 acres(ac.).

25
26 ¹ The definition of “small water use claim” in A.R.S. § 45-251(9) includes “any well that is equipped so that it has a maximum pumping capacity of not more than thirty-five gallons per minute.”

1 See Special Master John E. Thorson's Memorandum Decision, Findings of Fact, and Conclusions
2 of Law for Group I Cases Involving Stockwatering, Stockponds, and Domestic Uses, filed
3 November 14, 1994, as modified by Order dated February 23, 1995 (collectively referred to as
4 "Special Master's *De Minimis* Report"). The Special Master held that "remaining domestic uses
5 will be adjudicated during the normal course of the adjudication." *Id.* at 39. This definition of *de*
6 *minimis* domestic uses in the Special Master's *De Minimis* Report was adopted by Judge
7 Ballinger on September 27, 2002.

8 A domestic use is currently defined in statute as:

9 "Domestic use" means a single appropriative water right serving a residence, or
10 multiple residences up to a maximum of three residential connections, for
11 household purposes with associated irrigation of lawns, gardens or landscape in an
12 amount of not more than one-half acre per residence. Domestic use does not
13 include the use of water delivered to a residence or multiple residences by a city,
town, private water company, irrigation provider or special taxing district
established pursuant to title 48.

14 See A.R.S. § 45-251(1). This definition was added in 1995 after the *de minimis* decisions by
15 Special Master Thorson and Judge Ballinger cited above.

16 DOMESTIC USES ON THE NAVAJO RESERVATION

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18 In its Amended SOCs, the Navajo Nation claims 4,662 acre-feet per year (AFA) for past
19 and present DCMI uses. The total claim is based on tribal-wide DCMI demands, rather than
20 village-by-village water demands, using a per capita estimated water use. The United States on
21 behalf of the Navajo Nation claims 42,097 AFA for present and future DCMI water uses on the
22 reservation and up to 5 AFA for each allotment.

23 As is the case throughout much of the Little Colorado River basin, metering data or other
24 similar evidence concerning the quantities of past or present diversions from domestic wells is
25 often unavailable. In the Amended SOCs submitted by the Navajo Nation, 1465 wells have a
26 pump horsepower ("HP") and a yield value of zero, giving ADWR no information on the amount

1 of water that can be claimed from these wells; 182 wells have an associated use listed as “UNK”,
2 meaning that the usage of the well is unknown. No pump HPs or annual volumes for wells or
3 springs has been provided in the Amended SOCs submitted by the United States on behalf of the
4 Navajo Nation. Additionally, wells and springs on the Navajo reservation are often claimed for
5 multiple uses, and there is no way to separate quantities for specific uses. *See* Navajo Nation’s
6 First Amended Statement of Claimant- Phase I Claims (Stockponds, Stock/Wildlife Watering, &
7 DCMI), Exhibit 4, LCR Wells and Springs Inventory, filed June 1, 2018.

8 Based on the information provided in the amended SOCs filed by both the Navajo Nation
9 and the United States on behalf of the Navajo Nation, it is clear that water being used for
10 domestic purposes on the reservation does not fit the statutory definition of “domestic use.” In its
11 letter to ADWR dated August 17, 2018, counsel for the Navajo Nation stated “virtually every
12 water source- be it a spring, well, or municipal source- is used by Navajo people who lack in-
13 home plumbing facilities to haul water for domestic use. As a consequence, the Nation cannot
14 comply with ADWR’s request to associate domestic uses from wells and springs with specific
15 residences.” ADWR accepts the Navajo Nation’s representation that wells and springs are being
16 used by tribal members for domestic purposes both inside and outside of individual residences;
17 however, due to the nature of domestic uses on the reservation, ADWR has no current
18 methodology to determine whether these uses are *de minimis* as described by the Special Master’s
19 *De Minimis* Report.

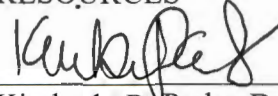
20 CONCLUSION

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22 Based on the information that has been provided, ADWR is unable to perform a *de*
23 *minimis* calculation for domestic wells within the Navajo Reservation.
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DATED this 31st day of August 2018.

ARIZONA DEPARTMENT OF WATER
RESOURCES



Kimberly R. Parks, Deputy Counsel
Janet L. Miller, Deputy Counsel

ORIGINAL of the foregoing sent by first-class
mail on August 31, 2018, to:

Clerk of the Apache Superior Court
Attn: Water Case
70 West Third South
St. Johns, AZ 85936

COPY of the foregoing sent by first-class
mail on August 31, 2018, to:

Special Master Susan Ward-Harris
Maricopa County Superior Court
Central Court Building
201 West Jefferson Street, Suite 3A
Phoenix, AZ 85003-2205

COPIES of the foregoing sent by first-class
mail on August 31, 2018 to all parties on the
court-approved mailing list for Contested
Case No. CV6417-300.

