



Comments Colorado River Basin Water Supply Study and Demand Study

1 message

Thu, Mar 14, 2013 at 4:17 PM

To: Pam Adams <ColoradoRiverBasinStudy@usbr.gov>

March 14, 2013

Vincent H. Yazzie

U.S Bureau of Reclamation

Attention: Ms. Pam Adams, LC 2721

P.O. Box 61470

Boulder City, Nevada 89006-1470

e-mail: ColoradoRiverBasinStudy@usbr.gov

Subject: Colorado River Basin Water Supply and Demand Study

Dear Ms. Adams,

My comments are attached along with rosenblatt_order_extension.pdf, Navajo v. DOI, extension.pdf, and

NavajoWaterExport.xls.

Sincerely,

Vincent Yazzie

4 attachments

 **rosenblatt_order_extension.pdf**
38K

 **Navajo v. DOI, Extension of Time Motion.pdf**
226K

 **NavajoWaterExport.xls**
250K

 **Colorado_River_Study_comments.pdf**
668K

March 14, 2013

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U.S Bureau of Reclamation
Attention: Ms. Pam Adams, LC 2721
P.O. Box 61470
Boulder City, Nevada 89006-1470
e-mail: ColoradoRiverBasinStudy@usbr.gov

Subject: Colorado River Basin Water Supply and Demand Study

The Navajo Nation has not settled the Upper Basin Colorado River, Lower Colorado River Basin, Little Colorado River, and the Gila River. Judge Rosenblatt's Order is attached as [Rosenblatt_order_extension.pdf](#) which extends the time. In [Navajo v. DOI, Extension of Time Motion.pdf](#)(attached), Navajo Nation says

Since that time, the Parties have worked diligently to complete a settlement agreement that could be enacted by Congress, but those efforts have not succeeded. The proposed settlement agreement and draft legislation ultimately were not acceptable to the Navajo Nation. And although it is not a party in this case, the Hopi Tribe also ultimately found the proposed settlement agreement and draft legislation, as they pertained to its LCR claims, unacceptable.

The people of the Navajo Nation have shot down the settlement so any projections done by the Navajo Nation are no good which are shown in the Colorado River Basin Water Supply and Demand Study,¹ specifically in in Appendix C9, Tribal Water Demand Scenario Quantification,² Table C9-3, Upper Colorado River Basin Tribal Rights and Future Demands, page Appendix C9-5 and Appendix C9-6. The numbers are not set in stone as the Navajo Nation has not made a final settlement of the Upper and Lower Colorado River Basin. 508,000 acre-feet per year is for the Navajo Agricultural Products Industry (NAPI).³ 50,000 acre-feet per

¹ Colorado River Basin Water Supply and Demand Study, US. Department of the Interior, December, 2012.
http://www.usbr.gov/lc/region/programs/crbstudy/finalreport/Executive%20Summary/Executive_Summary_FINAL_Dec2012.pdf

² Colorado River Basin Water Supply and Demand Study, US. Department of the Interior, December, 2012.
Appendix C9, Tribal Water Demand Scenario Quantification, page

³ Navajo Agricultural Products Industry, NAPI Scholars Program, Navajo Nation Enterprise, page 1.
<http://www.navajopride.com/Images/NAPI%20Scholars%20Brochure.pdf>

year is for the Navajo Generating Station (NGS) to cool the power plant of which 34,100 acre-feet per year is used.⁴ The letter of Navajo Nation Council Delegate Dwight Witherspoon is attached as Exhibit 1. The projected demands of the Navajo Nation in Appendix C9-Tribal Water Demand Scenario Quantification leaves water for a NGS and NAPI. No fresh drinking water for the Navajo Nation. The projects for the Navajo Nation are here as pictures.

State	Tribe	Diversion Entitlement (Water Right) (afy)	Depletion Entitlement (Water Right) (afy)	Scenario	Diversion	Depletion	Diversion	Depletion	Diversion	Depletion
					2015 (afy)		2035 (afy)		2060 (afy)	
NM	Jicarilla Apache Nation	45,683	34,195	Current Projected (A)	36,932	27,650	44,841	33,295	45,683	34,195
				Slow Growth (B)	36,932	27,650	44,841	33,295	45,683	34,195
				Rapid Growth (C1)	36,932	27,650	45,683	34,195	45,683	34,195
				Rapid Growth (C2)	36,932	27,650	45,683	34,195	45,683	34,195
				Enhanced Environment (D1)	36,932	27,650	44,841	33,295	45,683	34,195
				Enhanced Environment (D2)	36,932	27,650	45,683	34,195	45,683	34,195
NM	Navajo Nation ¹	606,660	325,670	Current Projected (A)	506,348	271,820	608,085	326,435	612,863	329,000
				Slow Growth (B)	506,348	271,820	608,085	326,435	612,863	329,000
				Rapid Growth (C1)	517,972	278,060	699,633	375,580	915,756	491,600
				Rapid Growth (C2)	517,972	278,060	699,633	375,580	915,756	491,600
				Enhanced Environment (D1)	506,348	271,820	608,085	326,435	612,863	329,000
				Enhanced Environment (D2)	517,972	278,060	699,633	375,580	915,756	491,600
AZ	Navajo Nation (Upper Basin)	NA	NA	Current Projected (A)	49,125	47,987	49,207	47,707	49,207	47,707
				Slow Growth (B)	49,125	47,987	49,207	47,707	49,207	47,707
				Rapid Growth (C1)	43,437	42,431	61,088	59,226	77,621	75,255
				Rapid Growth (C2)	43,437	42,431	61,088	59,226	77,621	75,255
				Enhanced Environment (D1)	49,125	47,987	49,207	47,707	49,207	47,707
				Enhanced Environment (D2)	43,437	42,431	61,088	59,226	77,621	75,255
AZ	Navajo Nation (Lower Basin)	NA	NA	Current Projected (A)	0	0	0	0	0	0
				Slow Growth (B)	0	0	0	0	0	0
				Rapid Growth (C1)	16,456	16,075	74,055	71,798	126,767	122,903
				Rapid Growth (C2)	16,456	16,075	74,055	71,798	126,767	122,903
				Enhanced Environment (D1)	0	0	0	0	0	0
				Enhanced Environment (D2)	16,456	16,075	74,055	71,798	126,767	122,903

⁴ Witherspoon, Dwight. Navajo Nation Council Delegate, Black Mesa, Forest Lake, Hard Rock, Pinion, Whippoorwill. Navajo Times, February 28, 2013. <http://www.navajotimes.com/opinions/2013/0213/022813guest.php>

TABLE C9-3
Upper Colorado River Basin Tribal Rights and Future Demands

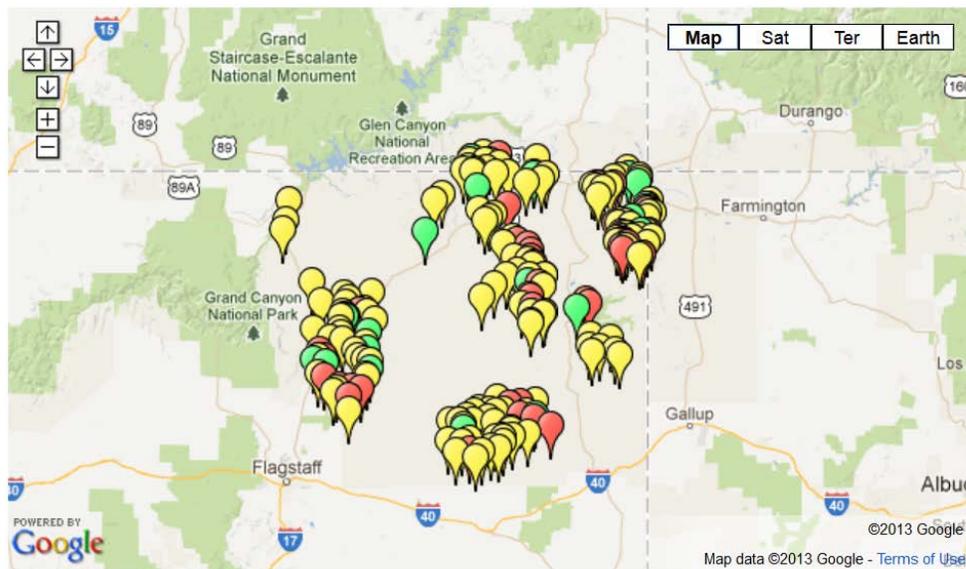
State	Tribe	Diversion Entitlement (Water Right) (afy)	Depletion Entitlement (Water Right) (afy)	Scenario	Diversion	Depletion	Diversion	Depletion	Diversion	Depletion
					2015 (afy)		2035 (afy)		2060 (afy)	
UT	Navajo Nation	NA	NA	Current Projected (A)	0	0	0	0	0	0
				Slow Growth (B)	0	0	0	0	0	0
				Rapid Growth (C1)	26,204	13,102	79,876	39,938	156,692	78,346
				Rapid Growth (C2)	26,204	13,102	79,876	39,938	156,692	78,346
				Enhanced Environment (D1)	0	0	0	0	0	0
				Enhanced Environment (D2)	26,204	13,102	79,876	39,938	156,692	78,346
CO	Southern Ute Indian Tribe	137,090	74,318	Tribal demand in Colorado is embedded in other demand categories within the state.						
UT	Ute Indian Tribe of the Uintah and Ouray Reservation ²	480,594	258,943	Current Projected (A)	480,594	258,943	480,594	258,943	480,594	258,943
				Slow Growth (B)	316,354	170,451	447,747	241,245	480,594	258,943
				Rapid Growth (C1)	480,594	258,943	480,594	258,943	480,594	258,943
				Rapid Growth (C2)	480,594	258,943	480,594	258,943	480,594	258,943
				Enhanced Environment (D1)	480,594	258,943	480,594	258,943	480,594	258,943
				Enhanced Environment (D2)	480,594	258,943	480,594	258,943	480,594	258,943
CO	Ute Mountain Ute Tribe	88,358	51,081	Tribal demand in Colorado is embedded in other demand categories within the state.						

¹ The diversion and depletion demands of the Navajo Nation from the Colorado River in the Upper Basin in New Mexico are not limited by the Navajo Nation San Juan River in New Mexico Water Rights Settlement; however, the Navajo Nation agrees to be bound by the terms of that settlement so long as the Settlement is effective. To the extent that the Navajo Nation demands exceed the amounts provided in the settlement, the Nation may seek to acquire water from other users or from sources other than the Colorado River to meet any unmet demands.

² The diversion and depletion associated with the demand for the Ute Indian Tribe of the Uintah and Ouray Reservation is dependent upon the re-ratification of the Revised Ute Indian Compact of 1990 by the tribe and the State of Utah.

The Navajo Nation has not allowed no plans to provide fresh drinking water for their people. What lawyer, Navajo Nation Stanley Pollack would not leave fresh drinking water for the Navajo people. One can say the Navajo can drink ground water, but a water quality report says the ground water does not meet drinking water standard. The map shows Navajo Nation has bad water quality.⁵

Navajo Nation Water Quality Project [\(Go back to the homepage\)](#)



⁵ Northwestern University Chemistry Department, Groundswell Educational Films, Navajo Nation Water Quality Project. <http://navajowater.org/>

Looking at some population areas that have ground water. One is Tuba City, Arizona.⁶

Navajo Nation Water Quality Project [\(Go back to the homepage\)](#)



Tuba City Chapter House

Test Date: 4/15/1999

US EPA Risk Rating: ▲ Some Risk

Overview Raw Data

Non-Radioactive Contaminants:

Thallium (Th): Above Limit

Radioactive Contaminants:

☠ *Lead210: Above Limit**

Possible Effects of Long-Term Exposure to Thallium (Th):

High levels of Thallium can lead to nerve damage, changes in blood chemistry, irritation and intestinal damage, testicular effects, hair loss, as well as damage to the kidney and liver damage if consumed in high doses of long periods of time. [Read more from the US EPA.](#)

Possible Effects of Long-Term Exposure to Lead210 Particles:

Increased risk of cancer. [Read more from the California EPA's Office of Environmental Health Hazard Assessment](#) (PDF).

Map of Tuba City Chapter House:



Longitude: -111 14 8.5193 Latitude: 36 7 32.77739

[View Larger Map](#)

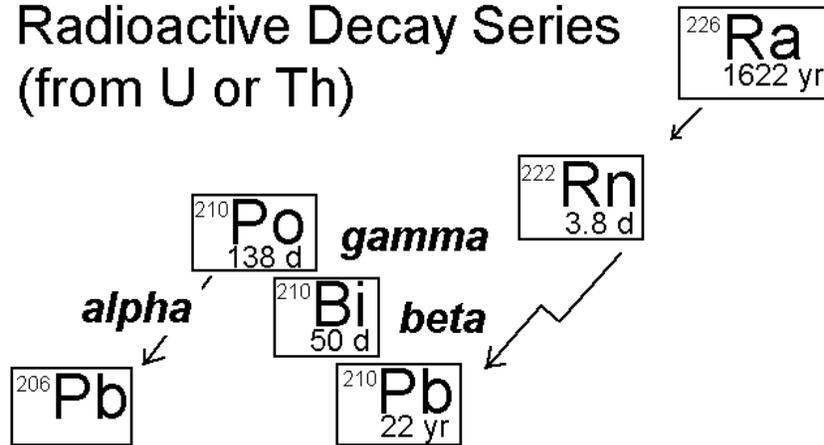
Image of Tuba City Chapter House:



Thallium is basically rat poison. Radioactive Lead 210 goes into the blood and straight to the bone. The diagram is the next page from the University of Arizona Palynology Department.

⁶ Northwestern University Chemistry Department, Groundswell Educational Films. Navajo Nation Water Quality Project, Tuba City Chapter House, Test Date 4/15/1999. <http://navajowater.org/tuba-city-chapter-house/>

Radioactive Decay Series (from U or Th)



7

Lead is eventually absorbed by the human body in the bones.⁸ Alpha particles are extremely nasty EPA describes the health effects of alpha particles

Health Effects

How can alpha particles affect peoples health?

The health effects of alpha particles depend heavily upon how exposure takes place. External exposure (external to the body) is of far less concern than internal exposure, because alpha particles lack the energy to penetrate the outer dead layer of skin.

However, if alpha emitters have been inhaled, ingested (swallowed), or absorbed into the blood stream, sensitive living tissue can be exposed to alpha radiation. The resulting biological damage increases the risk of cancer; in particular, alpha radiation is known to cause lung cancer in humans when alpha emitters are inhaled.

The greatest exposures to alpha radiation for average citizens comes from the inhalation of radon and its decay products, several of which also emit potent alpha radiation.⁹

This is just one report on the bad groundwater the Navajo Nation has. The main report can be downloaded at

<http://navajowater.org/export-raw-data/>

An Excel data file will be attached with this letter, NavajoWaterExport.xls.

⁷ University of Arizona, Palynology Department. Davis, Owen. palynolo@geo.arizona.edu. Introduction to Quaternary Ecology Fall, 2009, Radiometric and Chemical Dating Techniques.

⁸ State of Washington, Department of Ecology, Dangerous Materials, Lead in Dangerous Waste. <http://www.ecy.wa.gov/programs/hwtr/dangermat/lead.html>

⁹ US EPA, Radiation Protection. Alpha Particles. <http://www.epa.gov/radiation/understand/alpha.html>

The Navajo Nation needs fresh surface drinking water which is a federal reserved right as mentioned in 207 US 564 (1908), *Winters v. The United States*, No. 158, Supreme Court of the United States¹⁰. Navajo Nation water rights are defined by the federal government, federal law, Navajo Treaty of 1868¹¹ implied agricultural rights Article V and VII, the Navajo Nation borders the Colorado River. The numbers submitted by the Navajo Nation needs to be increased to 14 million acre-feet per year. I hear Jason John was the Navajo representative, but what person would leave their own people without fresh drinking water in the middle of a desert that contains rat poison.

I can be reached at the above return address, (928) 380-3198, or e-mail vinceyazzie@yahoo.com

Sincerely,

/s/ Vincent H. Yazzie

Vincent H. Yazzie

¹⁰ Wikipedia, The Free Encyclopedia. *Winters v. United States*.

http://en.wikipedia.org/wiki/Winters_v._United_States

¹¹ Museum of New Mexico Office of Statewide Programs and Education, Regional Educational Technology Assistance Program. Historic Documents. Treaty Between the United States of American and the Navajo Tribe of Indians. <http://reta.nmsu.edu/modules/longwalk/lesson/document/treaty.htm>

Exhibit 1

Witherspoon, Dwight. Navajo Nation Council Delegate, Black Mesa, Forest Lake, Hard Rock, Pinion, Whippoorwill. Navajo Times, February 28, 2013.
<http://www.navajotimes.com/opinions/2013/0213/022813guest.php>

Make NGS truly the Navajo Generating Station

By Dwight Witherspoon
Special to the Times

February 28, 2013

Although the Navajo Generating Station carries the name of the Navajo people, its lease previously negotiated in 1968 and 1969 had significant flaws for the Navajo Nation.

First, five power companies along with the United States Bureau of Reclamation planned a way to generate cheap electricity and deliver water throughout the State of Arizona by using the Navajo Nation's resources. Second, the Navajo Nation was exploited for use of its land, water and coal with little benefit.

Therefore, it is critical for the Navajo Nation to re-negotiate Navajo Generating Station's use of Navajo land, water, and coal, including taxes and ownership so the Navajo Nation experiences maximum benefits.

The Generating Station is operated by Salt River Project (SRP), which has 21.7 percent ownership plus another 24.3 percent share designated to it by the U.S. Bureau of Reclamation.

This designation of ownership from the Bureau of Reclamation to SRP was intended for two purposes: 1) to attempt to alleviate a conflict of interest the bureau would have as a trustee for the Navajo Nation (yet it allowed, if not influenced, the Navajo Nation to waive claims to the Upper Colorado River Basin for the life of the Generating Station or 50 years to provide cheap energy), and 2) to establish a non-profit entity called the Central Arizona Project (CAP) to annually deliver 1.5 million acre-feet of cheap water throughout Arizona.

The energy designated for SRP from BOR is used to lift the water for transportation from the Lower Colorado River and to help repay BOR for the construction of the Central Arizona Project. CAP delivers 50 percent of the water for Phoenix and 80 percent of the water for Tucson, as well as water to the central Arizona tribes and to recharge the overdrawn aquifers in Phoenix Valley and Tucson.

NGS owners also include: Arizona Public Service Company at 14 percent; Department of Water and Power of the City of Los Angeles at 21.2 percent; Nevada Power Company at 11.3 percent; and Tucson Gas & Electric Company at 7.5 percent.

The planned exploitation of Navajo land, water, and coal to generate cheap electricity and deliver water throughout Arizona was negotiated in 1968 and 1969.

Some 7,466 acres of Navajo land is used for the NGS including rights of way for train rail to deliver the Navajo coal to NGS, rights of way for power lines, coal ash placement, and other smaller land uses.

In 2010, the Navajo Nation received \$608,000 for its land lease(s) to NGS. In the same year, the Navajo Nation received no taxes from NGS, but taxes were paid to the state of Arizona. The Navajo Nation did not receive any money for taxes until 2011.

The generating station is able to use 34,100 acre-feet of the 50,000 acre-feet of water apportioned to the state of Arizona from the Upper Colorado River Basin for a small delivery fee to the Bureau of Reclamation (which used to be \$7 per acre-foot).

The Navajo Nation had to waive its claim to the 50,000 acre-feet and any claim above the 50,000 acre-feet apportioned to the state of Arizona for the life of the Generation Station or 50 years, whichever comes first, and 50 years will be in September 2019.

The Navajo Nation waiver by Resolution CD-108-68 allows for 34,100 acre-feet of the 50,000 to be used for NGS. The Navajo Nation was influenced by possible coal revenues from Peabody and NGS jobs. At the standard rate of \$1,000 per acre-foot, the Navajo Nation is sacrificing \$34.1 million per year.

Peabody Western Coal Company pays the Navajo Nation 12.5 cents per ton of the exclusively Navajo coal and 6.25 cents on the Navajo/Hopi joint coal. The PWCC pays \$471 per acre-foot for lease of the Navajo Aquifer water (which is some of the best water in the country) and uses it for dust suppression, cleaning trucks/large mining equipment, and human use (including water-hauling for Navajos).

PWCC used to pay a little over \$1,000 per acre-foot for use of Navajo Aquifer Water from the 10-year negotiated period of 1997 to 2007. The PWCC uses around 1,200 acre-feet per year and used to use much more to slurry coal to the Mohave Generation Station in Nevada, which was shut down in 2005.

Therefore, the Navajo Nation will be seeking to maximize its benefits from the generating station through lease(s), taxes, ownership, and water waiver in the re-negotiations.

Credit goes to the grassroots people and organizations for educating me on issues regarding the "Arizona" Generating Station and for suggesting that the Navajo Nation should push for ownership in NGS. When meeting with NGS representatives, the small benefits to the Navajo Nation were clearly drawn out and it was also clearly pointed out that there needs to be an ownership provision or the Nation will be advocating to charge the highest possible for the lease, taxes, and water waiver to rectify a poor 1969 agreement.

Only through a Navajo Nation ownership provision will the re-negotiation be a win-win for all; otherwise, the re-negotiation will be a win-lose for one and a loss for the other (meaning electricity and water rates will dramatically increase throughout Arizona). Only through increases in land lease, taxes, ownership, and ability to make claim to the water in 2019 can the Generating Station truly be called the "Navajo" Generating Station. Editor's note: Dwight Witherspoon is a

member of the Navajo Nation Council representing Black Mesa, Forest Lake, Hard Rock, Piñon and Whippoorwill.

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Attorneys for the Navajo Nation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE NAVAJO NATION,)
)
Plaintiff,)
)
v.)
)
)
UNITED STATES DEPARTMENT OF)
THE INTERIOR, *et al.*,)
)
Defendants.)
_____)

CASE NO. CV 03-507 PCT PGR
**STATUS REPORT AND MOTION
FOR 90-DAY EXTENSION OF STAY**

MOTION

Plaintiff, the Navajo Nation, respectfully requests the Court to grant a 90 day extension of the stay of this case, which otherwise will expire on February 15, 2013. If this motion is granted, the stay of this litigation will expire on May 16, 2013.

The United States Department of the Interior (“Department”) et al. (“Federal Defendants”), support this request. Intervenors, the State of Arizona, Central Arizona Water Conservation District, Salt River Project (including Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users Association), Imperial Irrigation District, Metropolitan Water District of Southern California, Coachella Valley Water District, and the State of Nevada (including its Colorado River Commission of Nevada and the Southern Nevada Water Authority) (collectively “Parties”) do not object to this request. The Arizona Power Authority did not respond to an email inquiring as to its position.

MEMORANDUM IN SUPPORT

I. STATUS REPORT AND BACKGROUND

As the Court is aware, the Navajo Nation commenced this action on March 14, 2003, seeking declaratory and injunctive relief, related to the Secretary of the Interior’s operation of the various management programs in the Lower Basin of the Colorado River. Numerous parties filed motions to intervene, and the Navajo Nation and the Federal Defendants stipulated to the granting of all motions to intervene and to an initial two-year stay of this litigation that would afford the Department an opportunity to appoint an Indian water rights settlement team, and to pursue efforts to resolve the Navajo Nation’s water rights claims through negotiation and settlement. The Court approved that stipulation in an order issued on October 13, 2004. *Order re Joint Stipulation to Request Granting of Motions to Intervene and Motion to Stay Proceedings*

(Oct. 13, 2004) (Doc. 133). The Court has repeatedly granted extensions of the stay as settlement negotiations progressed, most recently for an eighteen-month period, which will expire on February 15, 2013. *See Order* (Sept 14, 2011) (Doc. 181).

As the Parties previously advised the Court in status reports filed periodically since October 2004, the Department appointed an Indian water rights settlement team in this matter. In addition, because water from the Little Colorado River (“LCR”) system may serve the needs of the Navajo Nation, and could affect the magnitude of the Navajo Nation’s potential claim to water from the mainstem Colorado River, participants in the State of Arizona LCR general stream adjudication (“LCR participants”)¹ participated in joint settlement discussions with the Parties in the instant action in meetings held since May 2005. The LCR participants executed a confidentiality stipulation, similar to that signed by the Parties to the instant action, which was filed with this Court in these proceedings on October 13, 2005.

Settlement-related meetings were held in Phoenix, Arizona over the past ten years. Attorneys for the Parties designated by the Court to participate in the negotiations (“Negotiating Parties”), attorneys for various California and Nevada entities, as well as certain attorneys for LCR participants, met regularly in an effort to develop a proposed settlement agreement and exhibits. In the course of these discussions, it became apparent that a settlement of the Navajo Nation’s claims to water from the Lower Colorado River would not be possible, so the Negotiating Parties, including the Hopi Tribe, but not the

¹ *In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, No. CV 6417 (Ariz. Sup. Ct. Apache County).

California and Nevada entities or the Arizona Power Authority, (collectively the “LCR Negotiating Parties”) focused on resolving the water rights claims of the Navajo Nation and the Hopi Tribe in the LCR system. On June 3, 2011, attorneys for the LCR Negotiating Parties (other than the Federal Defendants) completed a proposed settlement agreement and draft federal legislation to authorize a settlement. In addition, the attorneys for the LCR Negotiating Parties (other than the Federal Defendants) executed a document entitled “Approval by Counsel of Settlement Agreement & Legislation” committing to recommend the proposed settlement agreement to their respective clients. The proposed settlement would not have resolved the Navajo Nation’s claims to water from the Colorado River or otherwise directly addressed the issues in this litigation. Nevertheless, under the terms of the proposed settlement, the instant action would have been dismissed if the proposed settlement agreement had been approved by the Parties and Congress and thereafter executed by the United States.

As the Parties previously advised the Court, on June 3, 2011, the proposed settlement agreement, which had not yet been approved by the Parties, and draft federal legislation were sent to Arizona Senator Jon Kyl. After Senator Kyl advised that further negotiations would be required with the Administration and the Arizona Congressional Delegation prior to the introduction of settlement legislation, attorneys for the LCR Negotiating Parties had further discussions about the cost of the settlement and worked on finalizing various exhibits to the proposed agreement. The attorneys for the Parties subsequently advised the Court in August 2011, that it would take until the end of 2012

for their principals to determine whether to approve the proposed settlement agreement and for Congress to consider enactment of federal legislation approving the proposed settlement and authorizing its implementation. As a result, the Parties in the instant proceedings asked the Court to continue the stay in this matter until February 2013. The Court granted the requested stay and directed that the Parties report to the Court as to the status of the proposed settlement by February 4, 2013. *Order* (Sep. 14, 2011) (Doc. 181).

Since that time, the Parties have worked diligently to complete a settlement agreement that could be enacted by Congress, but those efforts have not succeeded. The proposed settlement agreement and draft legislation ultimately were not acceptable to the Navajo Nation. And although it is not a party in this case, the Hopi Tribe also ultimately found the proposed settlement agreement and draft legislation, as they pertained to its LCR claims, unacceptable.

Last Fall, the Parties attempted to resolve the issues that concerned the Navajo Nation as well as the Hopi Tribe. In November 2012, the leadership of both Tribes met with the Secretary of the Interior and other federal officials to discuss the Tribes' concerns. In December, a meeting with the affected Parties was held in Phoenix to address the differences that had arisen. That meeting did not result in agreement on modifications to the proposed settlement agreement nor did it result in an agreed-upon future course of action to attempt to develop a revised agreement that would ultimately be acceptable to all Parties and which could be enacted by Congress. As a result, counsel for the Navajo Nation cannot advise the Court at this time that the efforts over the last

decade to pursue a comprehensive resolution of the Navajo Nation's LCR claims, along with provisions to address at least certain of its concerns related to the Colorado River, are likely to succeed and result in the resolution of the issues in this litigation. The Navajo Nation respectfully requests that the Court accept this *Status Report and Motion for 90-Day Extension of Stay* as the status report required pursuant to the Order of September 14, 2011.

II. ARGUMENT

The Request for a 90-Day Extension of The Stay Should Be Granted

In light of the circumstances described above, the Navajo Nation requires an additional 90 days to fully consider whether to put the case back in active litigation in its current posture. Should the Navajo Nation determine to put the case back in litigation, it will, at a minimum, ask leave of the Court to file an amended complaint in light of the passage of time since the original complaint was filed. More significantly, during this short additional period of time, the Navajo Nation would like the opportunity to continue discussions with the Federal Defendants as to whether there are alternative ways to address the Navajo Nation's concerns over the effect of the Federal Defendants' management of the Colorado River on the interests of the Navajo Nation. The discussions between the Navajo Nation and the Federal Defendants over the years have resulted in a better understanding by both sides of the issues at stake and their relationship to the Federal Defendants' activities on the Colorado River. The Federal Defendants have indicated that further discussions between the Federal Defendants and the Navajo Nation are warranted before the case returns to active litigation in its current

posture and agree that the additional stay would assist in conducting those discussions. Further discussions with the intervening parties are necessary as well. As noted above, no Party objects to the additional stay. Accordingly, the Navajo Nation respectfully asks the Court to continue the present stay for an additional 90 days.

Permission to represent the positions of the Parties set forth above was given by email.

Respectfully submitted this 1st day of February, 2013.

Stanley M. Pollack, Attorney ID 011046
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, Arizona 86515

McELROY, MEYER, WALKER
& CONDON, P.C.
Alice E. Walker
Scott B. McElroy
1007 Pearl Street, Suite 220
Boulder, Colorado 80302

/s/ Scott B. McElroy

By: _____
Scott B. McElroy

Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2013, I electronically filed the foregoing *Status Report and Motion for 90-day Extension of Stay* with the Clerk of the Court using the CM/ECF system, which will generate and transmit a notice of electronic filing to the following CM/ECF registrants:

Alice Elizabeth Walker, awalker@mmwclaw.com, dvitale@mmwclaw.com
Dana R Walsh, dana.walsh@snwa.com, trish.daws@snwa.com
Douglas V Fant, dsfant@gowebway.com, doug@powerauthority.org
Edward S Geldermann, jay.geldermann@usdoj.gov, geldermann@comcast.net
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Gregory K Wilkinson, Gregory.Wilkinson@bbklaw.com, Linda.Peabody@bbklaw.com
Heidi McNeil Staudenmaier, hstaudenmaier@swlaw.com, docket@swlaw.com
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Navajo Nation,
Plaintiff,

vs.

United States Department of the
Interior, et al.,
Defendants.

No. CV-03-00507-PCT-PGR

ORDER

The current stay of this action will expire on February 13, 2013. Plaintiff the Navajo Nation has filed a combined status report and motion seeking an extension of the stay for an additional ninety days. The motion states that the federal defendants support the requested stay, that intervenors the State of Arizona, the Central Arizona Water Conservation District, the Salt River Project (including the Agricultural Improvement and Power District and the Salt River Valley Water Users Association), the Imperial Irrigation District, the Metropolitan Water District of Southern California, the Coachella Valley Water District, the State of Nevada (including its Colorado River Commission of Nevada and the Southern Nevada Water Authority) do not object to the requested stay, and that intervenor the Arizona Power Authority did not respond to the plaintiff's inquiry as to its position on the

1 requested stay. Upon consideration of the plaintiff's status report and the reasons
2 for the additional stay set forth in its motion,

3 IT IS ORDERED that the plaintiff's Motion for 90-Day Extension of Stay (Doc.
4 192) is granted.

5 IT IS FURTHER ORDERED that the stay of this litigation will expire on May
6 16, 2013.

7 IT IS FURTHER ORDERED that the plaintiff shall file a status report no later
8 than May 12, 2013.

9 IT IS FURTHER ORDERED that the other provisions of the *Order re Joint*
10 *Stipulation to Request Granting of Motions to Intervene and Motion to Stay*
11 *Proceedings* (Doc. 133), entered on October 13, 2004, as modified, shall be
12 extended accordingly, and remain in full force and effect, provided that any party
13 may move to lift the stay without first providing 60 days' notice to the other parties
14 and without a showing of good cause.

15 DATED this 4th day of February, 2013.

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18 Paul G. Rosenblatt
19 United States District Judge
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