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7 ENVIRONMENTAL APPEALS BOARD
8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
9 WASHINGTON, D.C.

10 In Re:

11 Four Corners Power Plant
NPDES Renewal Permit: NN0000019
Arizona Public Service Company (Permittee)

NPDES Appeal No. 19-06

DECLARATION OF CLARK MOSELEY

12
13 I, Clark Moseley, certify and declare as follows:

14 1. I am the Chief Executive Officer for the Navajo Transitional Energy Company,
15 LLC. I am over the age of 18 and otherwise competent to testify. I make this declaration
16 based upon my own personal knowledge.

17 2. NTEC was formed in 2013. I became the CEO in 2014. In my role as CEO, I
18 have gained intimate knowledge of the history of NTEC's formation by and through review
19 and analysis of the Enabling Legislation forming NTEC (Navajo Nation Resolution No. CAP-
20 20-13, as amended by CO-58-13 ("NTEC Formation Resolution")) and NTEC's Operating
21 Agreement as well as discussions with members of the Navajo Council, the former Attorney
22 General, and various stakeholders.

23 3. NTEC owns and operates the Navajo Mine on land held in trust by the federal
24 government for the benefit of the Navajo Nation, leased with the consent of the Nation, and
25 located entirely within the boundaries of the Nation.

26 4. NTEC is a wholly-owned Navajo limited liability corporation located on the

DECLARATION OF CLARK MOSELEY - 1

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1 Navajo Nation and incorporated pursuant to Navajo law. The Navajo Nation expressly
2 extended its sovereign immunity to NTEC under Sections A(1) and A(9) of the NTEC
3 Formation Resolution.

4 5. The Navajo Mine supplies coal exclusively to the nearby Four Corners Power
5 Plant (FCPP) which is also on Navajo Nation trust land, leased with the consent of the Nation,
6 and entirely within the boundaries of the Nation. While the FCPP and NTEC have separate
7 National Pollutant Discharge Elimination System (NPDES) permits, NTEC relies upon the
8 ongoing, permitted operations of the FCPP as the sole purchaser of NTEC's coal. The Navajo
9 Mine's economic viability is directly affected by FCPP's ability to purchase NTEC's coal. As
10 a result, the outcome of this appeal will directly affect NTEC.

11 6. In July 2, 2018, NTEC closed a transaction to acquire a seven percent
12 ownership interest in units 4 and 5 of the FCPP. Under the purchase and sale agreement,
13 NTEC purchased the seven percent interest from 4C Acquisition, LLC (4CA), an affiliate of
14 Arizona Public Service Company, which operates FCPP. As a result, the outcome of this
15 appeal will directly affect NTEC. On July 9, 2018, NTEC issued a press release regarding its
16 acquisition.

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18 *I certify under penalty of perjury under the laws of the state of Washington that the*
19 *foregoing is true and correct.*

20 Dated this 30th day of December, 2019 at FARMINGTON, NEW MEXICO.

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23 Clark Moseley
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DECLARATION OF CLARK MOSELEY - 2

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Navajo Transitional Energy Company, LLC's Amicus Brief* IN THE MATTER OF Four Corners Power Plant - Arizona Public Service Co., NPDES Appeal No. 18-02, were sent to the following persons in the manner indicated on this 2nd day of January, 2020:

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CERTIFICATE OF SERVICE - 1

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