

1 ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

** FILED **
21NOV2019 - 04:00PM
U.S.EPA - Region 09

3 IN THE MATTER OF:)

Docket No. SDWA-09-2020-0004

4)
5 Hopi Tribe, owner/operator of the Hopi
6 Cultural Center Public Water System,)

7 Respondent.)

8 PWS ID No. 0400260)

9 Proceedings pursuant to Sections 1414(g) of
10 the Safe Drinking Water Act, 42 U.S.C. §
300g-3(g).)

**CONSENT AGREEMENT
AND
FINAL ORDER**

11 **CONSENT AGREEMENT**

12 **I. AUTHORITY**

13 1. This Consent Agreement is entered into and the Final Order ("CA/FO") is
14 issued under the authorities vested in the Administrator of the United States Environmental
15 Protection Agency ("EPA") by Section 1414(g)(3)(B) of the Safe Drinking Water Act
16 ("SDWA"), 42 U.S.C. § 300g-3(g)(3)(B).
17

18 2. The Administrator has delegated the authority to enter into this CA/FO to EPA
19 Region IX's Regional Administrator. The Regional Administrator in turn has delegated the
20 authority to enter into this Consent Agreement to the EPA Region IX Enforcement and
21 Compliance Assurance Division's Director.

22 3. In accordance with this authority, and with the "Consolidated Rules of Practice
23 Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or
24 Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"), the
25 Director of the Enforcement and Compliance Assurance Division, EPA Region IX, and Hopi

1 Tribe (“Respondent”), together referred to as “the Parties,” hereby agree to this Consent
2 Agreement’s terms and to the issuance of the Final Order.

3 4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), where the Parties here have
4 agreed to settlement before EPA Region IX’s filing of a complaint, this proceeding is
5 simultaneously commenced by the issuance of this Consent Agreement and concluded by the
6 issuance of the Final Order that ratifies the Parties’ Consent Agreement.

7 5. Part II of this CA/FO contains a concise statement of the factual and legal basis for the
8 alleged violations of the SDWA, together with the specific provisions of the SDWA and
9 implementing regulations that Respondent is alleged to have violated, in accordance with
10 40 C.F.R. § 22.18(b)(2).

11 **II. STIPULATIONS AND FINDINGS**

12 EPA alleges the following:

13 1. Respondent is an “Indian Tribe” under section 104 of the Federally Recognized Indian
14 Tribe List Act, 25 U.S.C. § 479a, and 88 Fed. Reg. 1200, 1201 (February 1, 2019), and thus a
15 municipality within the meaning of section 1401 (10) of the SDWA, 42 U.S.C. § 300f(10), and
16 also a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and
17 40 C.F.R. § 144.3

18 2. Respondent owns and/or operates a system known to EPA as the “Hopi Cultural Center
19 Public Water System” (hereinafter referred to as the “System”), located approximately sixty (60)
20 miles east of Tuba City on Highway 264 and EPA has provided for it the following identifier:
21 PWS ID 0400260.

22 3. The System provides water for human consumption through pipes and has two (2) service
23 connections and therefore meets the definition of a “public water system” in section 1401(4) of
24 the SDWA, 42 U.S.C. § 300f(4). The System’s source of drinking water is groundwater.
25

1 4. Since the System regularly serves at least twenty-five (25) of the same persons over six
2 (6) months a year, EPA considers the System to be a “non-transient non-community water
3 system,” as defined at 40 C.F.R. 141.2.

4 5. As an owner and/or operator of a public water system, Respondent is a “supplier of
5 water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40
6 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the SDWA, 42
7 U.S.C. § 300g *et seq.*, and its implementing regulations at 40 C.F.R. part 141.

8 6. On January 22, 2001, EPA lowered the arsenic MCL specified at 40 C.F.R. § 141.62(b)
9 from 50 micrograms per liter (“ug/L”) to the current arsenic MCL of 10 ug/L.

10 7. 40 C.F.R. § 141.6(j) provides that the current arsenic MCL of 10 ug/L specified at 40
11 C.F.R. § 141.62(b) became effective for the purpose of compliance on January 23, 2006.

12 8. On August 16, 2016, EPA entered into an Administrative Order on Consent with
13 Respondent (Docket No. PWS-AOC-2016-6001) (the “Order”), pursuant to EPA’s authority
14 under SDWA § 1414(g), 42 U.S.C. § 300g-3(g), which required, *inter alia*, that Respondent
15 install a Point of Use/Point of Entry water treatment device at the System by February 12, 2017.

16 9. Respondent has not met the February 12, 2017 deadline to install a Point of Use/Point of
17 Entry water treatment device at the System.

18 10. To the present date, the System remains out of compliance with the arsenic MCL of 10
19 ug/L based on the analytical results of sampling performed at the System in all four quarters of
20 2018 and the first quarter of 2019 that shows a running annual average level of arsenic of 13
21 ug/L.

22 11. Pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), and 40
23 C.F.R. § 19.4, any person who violates or refuses to comply with an administrative order issued
24 pursuant to EPA’s authority under SDWA § 1414(g), 42 U.S.C. § 300g-3(g), shall be liable to
25

1 the United States for an administrative civil penalty of not more than fifty-seven thousand three
2 hundred and seventeen dollars (\$57,317).

3
4 **III. SETTLEMENT TERMS**

5 The Parties agree as follows:

6 **A. General Provisions**

7 12. For the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations
8 contained in this CA/FO, (2) neither admits nor denies the specific factual allegations contained
9 in this CA/FO, (3) consents to the assessment of the penalty and to the specified conditions
10 contained in this CA/FO, and (4) waives any right to contest the allegations or to appeal the final
11 order accompanying this consent agreement. 40 C.F.R. § 22.18(b)(2).

12 13. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
13 agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the
14 specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which
15 includes payment of administrative civil penalties, shall constitute settlement of Respondent's
16 liability for federal civil penalties for the ongoing SDWA violations specifically identified in this
17 CA/FO, but only up to the Effective Date of the Final Order.

18 14. This CA/FO's provisions shall apply to and be binding upon Respondent, and upon any
19 successor agencies or other entities or persons otherwise bound by law. The provisions of this
20 CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants,
21 authorized representatives, employees, and successors or assigns. Action or inaction of any
22 persons, firms, contractors, employees, agents, or corporations acting under, through, or for
23 Respondent shall not excuse any failure of Respondent to fully perform its obligations under this
24 CA/FO.

25 15. This CA/FO's issuance does not in any way affect EPA's right to pursue appropriate

1 injunctive or other equitable relief or criminal sanctions for any violations of law, including for
2 any ongoing violations of SDWA that post-date the Effective Date of the Final Order.

3 16. This CA/FO is not a permit or modification of a permit, and does not affect
4 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
5 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
6 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
7 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
8 except as specifically set forth herein.

9 17. This CA/FO does not constitute a waiver, suspension, or modification of the requirements
10 of any federal, state, or local statute, regulation or condition of any permit issued thereunder,
11 including the requirements of the Act and accompanying regulations.

12 18. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO,
13 as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any
14 actions against Respondent for noncompliance with this CA/FO.

15 19. Unless otherwise specified, the Parties shall each bear their own costs and attorneys fees
16 incurred in this proceeding.

17 20. This Consent Agreement may be executed and transmitted by facsimile, email or other
18 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
19 of which shall constitute an instrument. If any portion of this Consent Agreement is determined
20 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining
21 portions shall remain in full force and effect.

22 21. The undersigned representative of each party certifies that he or she is duly and fully
23 authorized to enter into and ratify this Consent Agreement.

24 **B. Penalty**

25 22. Respondent agrees to pay to the United States an administrative civil penalty of three

1 thousand, eight hundred dollars (\$3,800) no later than 30 days following the Effective Date of
2 the Final Order. The penalty payment date is hereafter referred to as the "Due Date."

3 23. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer,
4 Automated Clearing House (ACH), or online payment. Payment instructions are available at:
5 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
6 check must be payable to the order of "Treasurer, United States of America" and delivered to the
7 following address:

8 U.S. Environmental Protection Agency
9 Fines and Penalties
10 Cincinnati Finance Center
11 P.O. Box 979077
12 St. Louis, Missouri 63197-9000

13 24. Respondent must provide a letter with evidence of the payment made pursuant to
14 Paragraph 23 above, accompanied by this action's title and docket number, to the EPA Region
15 IX Regional Hearing Clerk and the EPA Region IX Enforcement Division Compliance Officer
16 via United States mail, at the following addresses:

| | |
|---|--------------------------------------|
| 17 Regional Hearing Clerk | Hillary Hecht, Compliance Officer |
| 18 U.S. Environmental Protection Agency | U.S. Environmental Protection Agency |
| 19 Region IX - Office of Regional Counsel | Region IX - ECAD |
| 20 75 Hawthorne Street (ORC-1) | 75 Hawthorne Street (ENF-3) |
| 21 San Francisco, CA 94105 | San Francisco, CA 94105 |

22 25. If the full penalty payment is not received on or before the due date, interest shall accrue
23 on any overdue amount from the due date through the date of payment, at the annual rate
24 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a \$15.00
25 late payment handling charge will be assessed for each 30-day period (or any portion thereof)
following the due date in which the balance remains unpaid. A six percent per annum penalty
will also be applied on any principal amount not paid within ninety (90) days of the due date.

1 Respondent shall tender any interest, handling charges, or late penalty payments in the same
2 manner as described above.

3 26. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if Respondent
4 fails to pay by the due date the administrative civil penalty assessed in this CA/FO, EPA may
5 bring a civil action in an appropriate district court to recover the amount assessed (plus costs,
6 attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of such
7 penalty shall not be subject to review.

8 27. Respondent shall not deduct the civil penalty, nor any interest, late penalty payments, or
9 administrative handling fees provided for in this CA/FO from Respondent's federal, state, or
10 local income taxes.

11 **IV. EFFECTIVE DATE**

12 28. The "Effective Date" of the CA/FO shall be the date that the Final Order is filed with the
13 Regional Hearing Clerk.

14 FOR THE CONSENTING PARTIES:

15
16 RESPONDENT HOPI TRIBE:

17 BY: _____

DATE: _____

10/21/2019

18 NAME (printed): **TIMOTHY L. NUVANGYAOMA,**

19 TITLE: **CHAIRMAN**

1 COMPLAINTANT:

2 BY: 

DATE: 11/8/19

3 Amy C. Miller, Director
4 Enforcement and Compliance Assurance Division
5 United States Environmental Protection Agency, Region IX
6
7

8 Of counsel:

9 Janet Magnuson
10 Attorney-Advisor
11 Office of Regional Counsel
12 U.S. Environmental Protection Agency, Region IX
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1 ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 IN THE MATTER OF:) Docket No.: SDWA-09-2020-0004
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5 Hopi Tribe, owner/operator of the)
6 Hopi Cultural Center Public Water System,)
7 Respondent.) **FINAL ORDER**
8 PWS ID No. 0400260)
9 Proceedings pursuant to Sections 1414(g) of)
10 the Safe Drinking Water Act, 42 U.S.C. §)
300g-3(g).

11 It is Hereby Ordered that the foregoing Consent Agreement and this Final Order (U.S.
12 EPA Docket No. SDWA-09-2020-0004) be entered and that Respondent shall pay a civil penalty
13 in the amount of three thousand eight hundred dollars (\$3,800) in accordance with the terms of
14 this Consent Agreement and Final Order.

15
16 BY:  DATE: Nov. 21. 2019
17 Beatrice Wong
18 Regional Judicial Officer
EPA - Region IX

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing FINAL ORDER incorporating the CONSENT AGREEMENT
3 in the matter of the Hopi Cultural Center Public Water System (SDWA-09-2020-0004) was filed
4 with the Regional Hearing Clerk and sent.

5 **FIRST CLASS MAIL - CERTIFIED**

6 Tracking Numbers: 7019 0700 0001 7652 9367

7 Respondent

8 Chairman Timothy Nuvangyaoma
9 Hopi Cultural Center Public Water System
10 P.O. Box 123
11 Kykotsmovi, AZ 86039

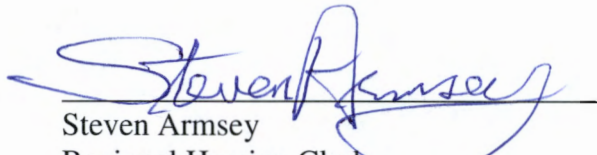
12 **HAND DELIVERED**

13 EPA Region IX Attorney:

14 Janet Magnuson, Attorney Advisor
15 United States Environmental Protection Agency
16 Region IX – Office of Regional Counsel (ORC-2)
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 Dated at San Francisco, California:

20 Nov. 21, 2019

21 
22 Steven Armsey
23 Regional Hearing Clerk
24 U.S. EPA, Region 9
25