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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>	<p>IN THE MATTER OF:</p> <p>Department of the Interior, Bureau of Indian Affairs Hopi Agency, BIA Keams Canyon Public Water System (PWS ID No. 0900054)</p> <p style="padding-left: 100px;">Respondents.</p> <p>Proceedings pursuant to section 1447 of the Safe Drinking Water Act, 42 U.S.C. § 300j-6.</p>	<p>) DOCKET NO. SDWA-09-2013-0001</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CONSENT AGREEMENT AND [REDACTED] FINAL ORDER</p>
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CONSENT AGREEMENT

Complainant, the Regional Administrator for Region 9 of the United States Environmental Protection Agency (EPA), and Respondents, the U.S. Department of the Interior (DOI) and its Bureau of Indian Affairs Hopi Agency (BIA), collectively referred to as "the Parties," have agreed that settlement of this matter is in the public interest and that execution of this Consent Agreement and proposed Final Order (CA/FO) without further litigation, is the most appropriate means of resolving this matter.

Before taking any testimony, without further adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

The Parties enter into this CA/FO pursuant to section 1447 of the federal Safe Drinking Water Act (Act), 42 U.S.C. § 300j-6, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.1(a)(9), 13(b) and 22.18(b)(2)-(3).

1 This action addresses violations of the Act at the Keams Canyon public water system
2 (System) owned by, operated by, or otherwise the legal responsibility of Respondents. These
3 violations were the subject of the Administrative Order issued by EPA Region 9 on March 22,
4 2011, docket no. PWS-AO-2011-6003 (2011 Order) (attachment A). EPA Region 9 issued the
5 2011 Order for the following violations of the Act and its national primary drinking water
6 regulations (NPDWRs) at 40 C.F.R. Part 141: (1) failure to meet the maximum contaminant
7 level (MCL) for arsenic at 40 C.F.R. § 141.62(b) since July 1, 2008; (2) failure to consistently
8 comply with the arsenic monitoring requirements at 40 C.F.R. § 141.23(c)(7) since July 1, 2008;
9 and (3) failure to comply with the total trihalomethanes (TTHMs) monitoring requirements of
10 the Stage 1 Disinfection Byproducts Rule (Stage 1 DBPR) at 40 C.F.R. § 141.132(b) since July
11 1, 2008.

12 Pursuant to the Act, and in consideration of the nature of the violations and other relevant
13 factors, EPA has determined that \$136,000 is an appropriate civil administrative penalty to settle
14 this action.

15 **II. GENERAL PROVISIONS**

16 1. The Parties agree to the commencement and conclusion of this cause of action by
17 issuance of this CA/FO, as prescribed by the Consolidated Rules, 40 C.F.R. § 22.18(b).

18 2. Respondents agree that Complainant has the authority to bring an administrative action
19 for these violations and for the assessment of penalties under section 1447(b) of the Act, 42
20 U.S.C. § 300j-6(b).

21 3. For purposes of this proceeding, Respondents admit the jurisdictional allegations in this
22 CA/FO.

23 4. Respondents neither admit nor deny the specific factual allegations and conclusions of
24 law set forth in this CA/FO, except as provided in paragraphs 1 through 3, above.

25 5. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this
CA/FO, the issuance of the attached Final Order, or the enforcement of the CA/FO.

1 6. For the purposes of this proceeding only, Respondents hereby expressly waive their
2 rights to contest the allegations set forth in this CA/FO and any right to appeal the accompanying
3 Final Order.

4 7. Respondents hereby expressly waive their rights to a hearing or to confer with the EPA
5 Administrator under section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3).

6 8. Respondents consent to the issuance of this CA/FO and agree to comply with its terms
7 and conditions, including payment of the civil administrative penalty.

8 9. Respondents agree to bear their own costs and attorney's fees.

9 10. The Parties agree that this CA/FO's provisions are binding upon the Complainant and
10 Respondents, and their employees, successors, and assigns.

11 11. Respondents agree that this CA/FO does not relieve their obligation to comply with all
12 applicable provisions of federal, state, local, or tribal law, and that it is not a ruling on, or
13 determination of, any issue related to any federal, state, local, or tribal permit.

14 **III. EPA'S GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15 12. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and
16 (3), Complainant makes the findings of fact and conclusions of law which follow.

17 13. Respondents are each a "federal agency" as that term is defined in section 1401(11) of
18 the Act, 42 U.S.C. § 300f(11).

19 14. Respondents are each a "person" within the meaning of section 1401(12) of the Act, 42
20 U.S.C. §300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement.

21 15. Respondents own and/or operate, or are otherwise legally responsible for the System.

22 16. The System has at least 220 service connections used by year-round residents and
23 regularly serves at least 500 year-round individuals and is therefore a "public water system"
24 within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and is a "community
25 water system" within the meaning of 40 C.F.R. § 141.2.

1 17. Respondents own and/or operate the System and therefore each is a "supplier of water"
2 within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2,
3 and are each therefore subject to the NPDWRs under part B of the Act, 42 U.S.C. § 300g *et seq.*

4 18. The source of the System's water is groundwater from two groundwater wells that are
5 not under the direct influence of surface water.

6 19. EPA reviewed data files recording the System's compliance history from fiscal years
7 2008 through 2012 and found the following violations:

8 Failure to Monitor for Inorganic Chemicals (Arsenic)

9 20. Pursuant to 40 C.F.R. § 141.23, community water systems must monitor for inorganic
10 chemicals, including arsenic.

11 21. 40 C.F.R. § 141.23(c)(7) requires systems which detect arsenic above the arsenic MCL of
12 0.010 milligrams per liter (mg/l) at 40 C.F.R. § 141.62(b) to monitor quarterly beginning in the
13 next quarter after the detection of arsenic above its MCL.

14 22. Pursuant to 40 C.F.R. § 141.23(c)(7), Respondents were required to conduct monitoring
15 for arsenic on a quarterly basis based on their detection of arsenic at level of 0.039 mg/l, which
16 was above the arsenic MCL, in the second quarter of 2006 on May 10, 2006.

17 9. Since July 1, 2008, Respondents failed to consistently conduct quarterly monitoring for
18 arsenic in the third and fourth quarters of 2008, the first, second, and fourth quarters of 2009, the
19 first quarter of 2010, and the first quarter of 2011, in violation of 40 C.F.R. § 141.23(c)(7).

20 23. On April 6, 2011, in the second quarter of 2011, Respondents conducted quarterly
21 monitoring for arsenic, and have continued to consistently conduct quarterly monitoring for
22 arsenic through the first quarter of 2013. Thus, Respondents are currently in compliance with the
23 arsenic monitoring requirements at 40 C.F.R. § 141.23(c)(7).

24 Violation of the Maximum Contaminant Level for Arsenic

25 24. Pursuant to 40 C.F.R. § 141.62(b), the arsenic MCL is 0.010 mg/l and is applicable to
community water systems.

1
2 25. 40 C.F.R. § 141.23(i)(1) provides that for systems conducting quarterly monitoring,
3 compliance with the arsenic MCL is determined by a running annual average at any sampling
4 point. If the average at *any* sampling point is greater than the MCL, then the system is out of
5 compliance, and if any one sample would cause the annual average to exceed the MCL then the
6 system is out of compliance with the arsenic MCL immediately. If a system fails to collect the
7 required number of samples, compliance (average concentration) is based on the total number of
8 samples collected.

9 26. Respondents' June 23, 2010 monitoring results in the second quarter of 2010 indicated
10 arsenic levels at 0.044 mg/l, which caused the annual average to exceed the MCL, and which
11 immediately placed the System out of compliance with the arsenic MCL in accordance with 40
12 C.F.R. § 141.23(i)(1). The System remained out of compliance with the arsenic MCL at 40
13 C.F.R. § 141.62(b) through the end of 2011 based on Respondents' monitoring results in the
14 third quarter (0.038 mg/l) and fourth quarter (0.045 mg/l) of 2010, and the second quarter (0.039
15 mg/l) and fourth quarter (0.043 mg/l) of 2011.

16 27. On February 28, 2012, Respondents installed new arsenic treatment at the System
17 pursuant to EPA Region 9's 2011 Order.

18 28. Based on the analytical results of arsenic sampling (attachment B) conducted by
19 Respondents since their installation of new arsenic treatment on February 28, 2012, the current
20 running annual average level of arsenic in drinking water supplied by the System is 0.0032 mg/l,
21 which is below the arsenic MCL of 0.010 mg/l. Thus, the system is currently in compliance with
22 the arsenic MCL at 40 C.F.R. § 141.62(b).

23 Failure to Monitor for Disinfection Byproducts

24 29. Pursuant to 40 C.F.R. § 141.130(a), a community water system that adds a chemical
25 disinfectant to the water in any part of the drinking water treatment process must comply with
the Stage 1 DBPR.

1 30. The Stage 1 DBPR, at 40 C.F.R. § 141.132(b)(1), requires public water systems using
2 only groundwater not under the direct influence of surface water, and which use chemical
3 disinfectants, and which serve fewer than 10,000 persons, to routinely sample once per year per
4 treatment plant during the months of warmest water temperature for, *inter alia*, TTHMs.

5 31. Respondents failed to monitor for TTHMs during the warmest months of 2008, 2009, and
6 2010, in violation of 40 C.F.R. § 141.132(b)(1).

7 32. Respondents conducted monitoring for TTHMs in the warmest months of 2011 and 2012
8 in accordance with 40 C.F.R. § 141.132(b)(1) by monitoring for TTHMs on July 12, 2011, and
9 May 30, 2012. Thus, Respondents are currently in compliance with the TTHM monitoring
10 requirements of 40 C.F.R. § 141.132(b)(1).

11 **IV. CIVIL PENALTY**

12 33. Section 1447 of the Act, 42 U.S.C. § 300j-6, authorizes EPA to take an enforcement
13 action whenever it determines that a Federal agency has violated an applicable requirement
14 under the Act. Pursuant to section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), EPA may issue a
15 penalty order assessing a penalty against any Federal agency that owns or operates any public
16 water system which violates an applicable requirement of the Act. Violators are subject to, *inter*
17 *alia*, the assessment of a civil penalty of not more than \$32,500 per day per violation pursuant to
18 section 1447(b)(2) of the Act, 42 U.S.C. § 300j-6(b)(2); *see also* 40 C.F.R. 19.4, Table 1 (Civil
19 Penalty Monetary Inflation Adjustments).

20 34. Pursuant to section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), Respondents' agreement to
21 comply with all provisions of the CA/FO, the nature of the violations, and other relevant factors,
22 EPA has determined that an appropriate civil penalty to settle this action is in the amount of
23 \$136,000.

24 35. Respondents agree to pay the penalty, and also agree that the penalty must be paid within
25 90 days of the effective date of the CA/FO. The date by which payment must be received by the
United States is the "due date" for the payment. Respondents must make the payment in

1 accordance with any of the acceptable methods of payment listed in the attached EPA Region 9
2 Collection Information Sheet, which is incorporated by reference as part of this CA/FO.
3 Concurrent with payment of the penalty, Respondents agree to provide written notice of
4 payment, referencing the title and docket number of this case and attaching a photocopy of the
5 penalty payment, via certified mail to each of the following:

6 Regional Hearing Clerk
7 Office of Regional Counsel
8 U.S. EPA Region 9 (ORC-1)
9 75 Hawthorne Street
10 San Francisco, California 94105

and

Roberto Rodriguez
Enforcement Division,
U.S. EPA Region 9
SDWA/UIC/FIFRA Section
75 Hawthorne Street (Enf-3-3)
San Francisco, CA 94105

11 **V. FUNDING**

12 36. It is the expectation of the Parties to this CA/FO that all of Respondents' obligations
13 arising under this Consent Agreement will be fully funded. Respondents agree to seek sufficient
14 funding through the DOI budgetary process to fulfill their obligations under this CA/FO.

15 **VI. NOTICE TO RESPONDENTS**

16 37. By EPA's letter dated December 9, 2011, Respondents were given notice and afforded
17 the opportunity to confer with EPA regarding the violations of the Act as provided for by section
18 1447(b)(1)(3) of the Act, 42 U.S.C. § 300j-6(b)(1)-(3).

19 **VII. EFFECT OF SETTLEMENT**

20 38. Payment of the penalty specified in section IV of this CA/FO and full compliance with
21 the provisions of this CA/FO will constitute full and final satisfaction of all civil administrative
22 claims for penalties through March 31, 2013, which Complainant may have under the Act for the
23 specific violations alleged in section III (EPA's General Findings of Fact and Conclusions of
24 Law) above. Compliance with this CA/FO is not a defense to any action commenced at any time
25 for any violations alleged in section III above that continued past March 31, 2013, or for any
other violation of the federal laws and regulations administered by EPA.

1 39. Failure to comply with any term of this CA/FO will void this covenant not to sue.

2 **VIII. RESERVATION OF RIGHTS**

3 40. This CA/FO resolves only the civil claims for administrative monetary penalties through
4 March 31, 2013, for the specific violations alleged in section III of the CA/FO. This CA/FO does
5 not resolve any other civil or any criminal liability that Respondents may have as a result of the
6 circumstances described in section III of the CA/FO or elsewhere. EPA reserves the right to
7 commence action under section 1431 of the Act, 42 U.S.C. § 300i, against any person, including
8 Respondents, in response to any condition which EPA determines may present an imminent and
9 substantial endangerment to the public health, public welfare, or the environment. In addition,
10 this settlement is subject to all limitations on the scope of resolution and to the reservation of
11 rights set forth in section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights
12 and remedies available to it under the Act, and the regulations promulgated thereunder, and any
13 other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this
14 CA/FO, following its filing with the Regional Hearing Clerk. Respondents reserve all available
15 rights and defenses they may have to defend themselves in any such action except as specifically
16 stated in this CA/FO.

17 **IX. ENTIRE CONSENT AGREEMENT**

18 41. This CA/FO constitutes the entire agreement and understanding of the Parties regarding
19 settlement of all claims pertaining to specific violations alleged herein, and there are no
20 representations, warranties, covenants, terms, or conditions agreed upon between the Parties
21 other than those expressed in this CA/FO.

22 **X. MODIFICATION**

23 42. The Parties may agree to non-material modifications to this CA/FO. Unless specifically
24 allowed in this CA/FO by unilateral notice of one of the Parties, non-material modifications must
25 be made in writing and will be effective when expressly agreed upon by both Parties. For
purposes of this paragraph, non-material modifications include, but are not limited to: (i) any

1 modification specifically allowed by another provision of this CA/FO; (ii) any modification to
2 the schedules set forth in this CA/FO; (iii) changes in persons and addresses for notification; and
3 (iv), any other modification to this CA/FO that does not materially affect the obligations and
4 rights of any Party under this CA/FO.

5 **XI. SEVERABILITY**

6 43. If any provision of this CA/FO is ruled invalid, illegal, or unconstitutional, the Parties
7 agree that any such ruling will not affect the remainder of the CA/FO.

8 **XII. ANTI-DEFICIENCY ACT**

9 44. Failure to obtain adequate funds or appropriations from Congress does not release
10 Respondents from their obligation to comply with the Act, and the applicable regulations
11 thereunder, or with this CA/FO, except as provided in this CA/FO. The Parties agree that nothing
12 in this CA/FO may be interpreted to require obligation or payment of funds in violation of the
13 Anti-Deficiency Act, 31 U.S.C. § 1341.

14 **XIII. AUTHORITY TO BIND THE PARTIES**

15 45. Respondents' undersigned representatives each certify that they are fully authorized by
16 the Respondents to enter into the terms and conditions of this CA/FO and to bind the
17 Respondents to it.

18 **XIV. EFFECTIVE DATE**

19 46. This CA/FO is effective upon its filing with the EPA Region 9 Hearing Clerk.
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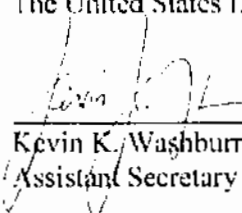
1 **XV. SIGNATURES**

2
3 For Respondent:

The United States Department of the Interior

4 JUL 25 2013

5 Date



Kevin K. Washburn
Assistant Secretary - Indian Affairs

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7 For Respondent:

The Bureau of Indian Affairs

8 JUL 22 2013

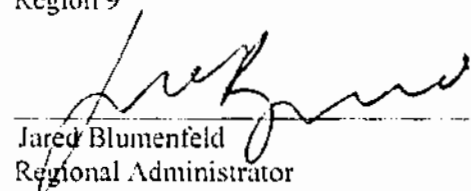
9 Date


Bryan Bowker
Regional Director

10
11 For Complainant:

U.S. Environmental Protection Agency
Region 9

12
13 7/5/13
14 Date


Jared Blumenfeld
Regional Administrator

1 **EPA REGION 9 COLLECTION INFORMATION SHEET**

2 The civil penalty must be paid by remitting a certified or cashier's check, including the name and
3 docket number of this case (SDWA-09-2013-0001), for the amount, payable to "Treasurer,
4 United States of America," (or be paid by one of the other methods listed below) and sent as
5 follows:

6 Regular Mail:

7 U.S. Environmental Protection Agency
8 Fines and Penalties
9 Cincinnati Finance Center
10 PO Box 979077
11 St. Louis, MO 63197-9000

12 Wire Transfers:

13 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with
14 the following information:
15 Federal Reserve Bank of New York
16 ABA = 021030004
17 Account = 68010727
18 SWIFT address = FRNYUS33
19 33 Liberty Street
20 New York, NY 10045
21 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
22 Protection Agency"

23 Overnight Mail:

24 U.S. Bank
25 1005 Convention Plaza
26 Mail Station SL-MO-C2GL
27 ATTN Box 979077
28 St. Louis, MO 63101
29 Contact: Natalie Pearson (314-418-4087)

30 ACH (also known as REX or remittance express):

31 Automated Clearinghouse (ACH) for receiving US currency
32 PNC Bank
33 808 17th Street, NW
34 Washington, DC 20074
35 Contact – Jesse White (301-887-6548)
36 ABA = 051036706
37 Transaction Code 22 – checking
38 Environmental Protection Agency
39 Account 31006
40 CTX Format

1
2 On Line Payment:

This payment option can be accessed from the information below:

3 www.pay.gov

4 Enter "sf01.1" in the search field

5 Open form and complete required fields

6 A copy of each check, or notification that the payment has been made by one of the other
7 methods listed above, including proof of the date payment was made, must be sent with a
8 transmittal letter, indicating Respondents' names, the case title, and docket number, to both:

- 9 a) Regional Hearing Clerk
10 Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- 11 b) Roberto Rodriguez
12 SDWA/FIFRA Section
Enforcement Division, EPA Region 9
13 75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105
14 Ph: 415-972-3302
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN RE THE MATTER OF:)

Department of Interior,)
Bureau of Indian Affairs Hopi Agency, BIA)
Keams Canyon Public Water System)
(PWS ID No. 0900054))

Respondents.)

Proceedings pursuant to section 1447 of the)
Safe Drinking Water Act, 42 U.S.C. § 300j-6)

U.S. EPA Docket No.
SDWA-09-2013-0001

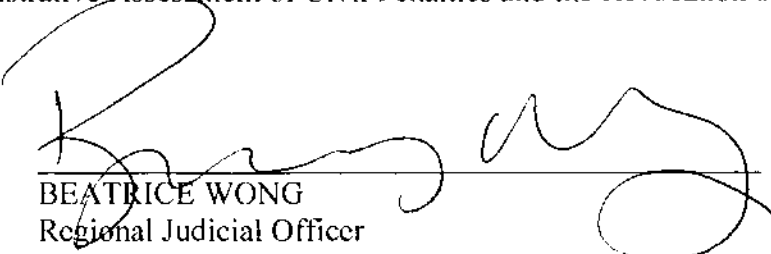
ORDER GRANTING APPROVAL OF CONSENT AGREEMENT

By written motion, filed September 6, 2013, Complainant, the United States Environmental Protection Agency (EPA) sought approval of the parties' Consent Agreement and issuance of a Final Order to resolve the instant matter.

IT IS HEREBY ORDERED THAT:

1. EPA's request for approval of the Consent Agreement and issuance of a Final Order is GRANTED.
2. The Consent Agreement between EPA and Respondents, the U.S. Department of Interior ("DOI") and its Bureau of Indian Affairs Hopi Agency (BIA) and this Final Order for this matter, EPA Docket No. SDWA-09-2013-0001, shall be ENTERED;
3. Respondents DOI and BIA shall comply with the requirements set forth in the Consent Agreement, incorporated by reference in this Final Order, which becomes final and effective on the date it is filed with the EPA Region 9 Regional Hearing Clerk.
4. EPA shall provide public notice of the availability of judicial review of the parties' Consent Agreement and Final Order in accordance with 40 CFR §22.43 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.

Dated: September 19, 2013


BEATRICE WONG
Regional Judicial Officer

Attachment

A

ATTACHMENT A

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**Administrative Order issued by EPA Region 9 on March 22, 2011
Docket No. PWS-AO-2011-6003**

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3) Docket No. PWS-AO-2011-6003

4 **IN THE MATTER OF:**

5 Department of the Interior,)
6 Bureau of Indian Affairs Hopi Agency,)
7 BIA Keams Canyon Public Water System)
8 P.O. Box 158)
9 Hopi Tribe)
10 Keams Canyon, AZ 86034)

ADMINISTRATIVE ORDER

11 Respondents.

12 (PWSID: No. 090400054)

13 Proceedings pursuant to Sections 1414(g) and)
14 1447(a) of the Federal Safe Drinking Water)
15 Act, 42 U.S.C. §§ 300g-3(g) and 300j-6(a))

16 I. JURISDICTION

17 1. This Administrative Order ("Order") is issued under the authority vested in the
18 Administrator of the United States Environmental Protection Agency ("EPA") by Safe Drinking
19 Water Act ("SDWA" or "Act") sections 1414(g) and 1447(a), 42 U.S.C. §§ 300g-3(g) and 300j-
20 6(a), and duly delegated to the Manager of the Drinking Water Office of EPA Region 9.

21 2. EPA has primary enforcement responsibility for the Act's public water supply protection
22 program on the Hopi Indian Reservation. No other governmental authority is approved to
23 administer the public water supply protection program on the Hopi Indian Reservation.

24 II. STATEMENT OF PURPOSE

25 3. EPA is issuing this Order to place Respondents on an enforceable schedule to come into
compliance with the National Primary Drinking Water Regulations at 40 C.F.R. Part 141,
including the Act's "maximum contaminant level" ("MCL") for arsenic in the drinking water

1 delivered by Respondents to their customers, and the monitoring and reporting requirements
2 associated with the Stage 1 Disinfection Byproducts Rule ("Stage 1 DBPR").

3 III. FINDINGS

4 4. The Department of the Interior and the Bureau of Indian Affairs Hopi Agency are federal
5 agencies and are therefore each considered a "person" within the meaning of Section 1401(12) of
6 the Act and 40 C.F.R. § 141.2, and are hereinafter referred to collectively as "Respondents."

7 5. Respondents own and/or operate a public water system known to EPA as the "BIA
8 Keams Canyon community water system" (hereinafter referred to as the "System"), located in
9 Keams Canyon, on the Hopi Indian Reservation, in Arizona, for the provision to the public of
10 piped water for human consumption.

11 6. The System has at least 220 service connections used by year-round residents and
12 regularly serves at least 500 year-round individuals and is therefore a "public water system" as
13 that term is defined in Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water
14 system" as that term is defined in Section 1401(15) of the Act, 42 U.S.C. § 300f(15), and 40
15 C.F.R. § 141.2.

16 7. As an owner and/or operator of a public water system, each Respondent is a "supplier of
17 water" as that term is defined in Section 1401(5) of the Act, 42 U.S.C. §300f(5), and 40 C.F.R. §
18 141.2. Each Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. §
19 300g *et seq.*, and its implementing regulations at 40 C.F.R. part 141.

20 8. The source of the System's water is groundwater from two groundwater wells that are
21 not under the direct influence of surface water. The System includes a booster pumping facility
22 equipped with a storage reservoir and two booster pumps, two finished water storage tanks, and a
23 distribution system.

24 Violation of Arsenic MCL and Monitoring Requirements

25 9. On January 22, 2001, EPA lowered the arsenic MCL specified at 40 C.F.R. § 141.62(b)

1 from 50 micrograms per liter (ug/L) to the current arsenic MCL of 10 ug/L. MCL is defined
2 under 40 C.F.R. § 141.2 as the maximum permissible level of a contaminant in water that is
3 delivered to any user of a public water system.

4 10. 40 C.F.R. § 141.6(j) provides that the current arsenic MCL of 10 ug/L specified at 40
5 C.F.R. § 141.62(b) became effective for the purpose of compliance on January 23, 2006.

6 11. 40 C.F.R. § 141.23(c)(1) requires all community water systems to conduct monitoring to
7 determine compliance with the arsenic MCL specified at 40 C.F.R. § 141.62(b), and requires
8 groundwater systems to take one sample every 3 years at each Sampling Point.

9 12. On May 10, 2006, Respondents performed arsenic sampling at a sampling point referred
10 to as "ID EP001" to determine compliance with the arsenic MCL in accordance with 40 C.F.R. §
11 141.23(c)(1). The analytical results of the sampling performed on May 10, 2006 revealed arsenic
12 in drinking water above the arsenic MCL at a level of 39 ug/L.

13 13. 40 C.F.R. § 141.23(i)(2) provides that for systems monitoring annually or less frequently
14 the system is out of compliance if monitoring reveals arsenic at levels greater than the MCL.

15 14. Pursuant to 40 C.F.R. § 141.23(i)(2), Respondents failed to comply with the arsenic MCL
16 specified at 40 C.F.R. § 141.62(b) in 2006 when the analytical results of the sampling performed
17 on May 10, 2006 revealed arsenic in drinking water above the arsenic MCL.

18 15. 40 C.F.R. § 141.23(c)(7) requires systems which detect arsenic above the arsenic MCL to
19 monitor quarterly beginning in the next quarter after the detection of arsenic above the MCL
20 occurred.

21 16. Respondents failed to monitor quarterly beginning in the next quarter after the detection
22 of arsenic above the MCL occurred at the System on May 10, 2006, or subsequently in the fourth
23 quarter of 2006, the third and fourth quarters of 2007, in any quarter of 2008 and 2009, or in the
24 first quarter of 2010, in violation of 40 C.F.R. § 141.23(c)(7).
25

1 17. 40 C.F.R. § 141.23(i)(1) provides that for systems conducting quarterly monitoring,
2 compliance with the arsenic MCL is determined by a running annual arithmetic average at any
3 sampling point. If the average at any sampling point is greater than the MCL, then the system is
4 out of compliance, and if any one sample would cause the annual average exceed the MCL then
5 the system is out of compliance with the arsenic MCL immediately. If a system fails to collect
6 the required number of samples, compliance (average concentration) is based on the total number
7 of samples collected.

8 18. Respondents failed to comply with the arsenic MCL specified at 40 C.F.R. § 141.62(b)
9 in 2006, 2007, and 2010, based on the running annual averages of the total number of samples
10 collected in those years. The analytical results of Respondents' monitoring for calendar years
11 2006 through 2010 are included herein as Exhibit 1.

12 Violation of Stage 1 DBPR Monitoring Requirements

13 19. Pursuant to 40 C.F.R. § 141.130(a), a community water system that adds a chemical
14 disinfectant to the water in any part of the drinking water treatment process must meet the
15 requirements of the Stage 1 Disinfection Byproducts Rule ("Stage 1 DBPR").

16 20. A community water system must comply with the Stage 1 DBPR beginning January 1,
17 2004, as required by 40 C.F.R. § 141.130(b)(1), if it is a public water system using only
18 groundwater not under the direct influence of surface water.

19 21. The Stage 1 DBPR, at 40 C.F.R. § 141.132(b)(1)(i), requires public water system using
20 only groundwater not under the direct influence of surface water using chemical disinfectants
21 and serving fewer than 10,000 persons, to routinely sample once per year per treatment plant
22 during the months of warmest water temperature (i.e., June through September) for, inter alia,
23 total trihalomethanes ("TTHMs").

24 22. Respondents failed to monitor for TTHMs during the warmest months of 2008, 2009, and
25 2010, in violation of 40 C.F.R. § 141.132(b)(1).

1 and/or new water source(s). In addition, the Compliance Plan shall include a description of the
2 management controls that Respondents will put in place, pending compliance with the arsenic
3 MCL, to minimize noncompliance with the arsenic MCL by, e.g., selecting and serving water
4 only from those wells with the lowest arsenic concentrations. These management controls will be
5 in addition to any requirements for providing alternative water to the users of the System set
6 forth in the national Consent Agreement and Final Order addressing noncompliance at Bureau
7 Indian Education schools and BIA public water systems nationwide.

8 b. EPA may require Respondents to modify the draft Compliance Plan as necessary
9 to effectuate Respondents' compliance with the arsenic MCL by the compliance deadline set
10 forth in this Order. Unless otherwise specified by EPA, Respondents shall, within 15 days of
11 receipt of comments from EPA, incorporate the modifications and resubmit this revised draft
12 Compliance Plan to EPA for approval.

13 c. After receiving EPA approval of the Compliance Plan, Respondents shall comply
14 with all steps, deadlines, and other requirements described in the final Compliance Plan.

15 27. Respondents shall achieve compliance with the running annual average MCL for
16 arsenic at every arsenic sampling point in Respondents' public water system no later than
17 December 31, 2012 Respondents shall provide written notification to EPA of the date on which
18 Respondents have met this requirement within 10 days of receiving the sampling results from the
19 laboratory. This notification shall include, but not be limited to, the laboratory reports showing
20 the results of the arsenic analyses conducted on samples of the water served by the System that
21 indicate Respondents' attainment of this requirement.

22 28. Following Respondents' initial attainment of compliance with the running annual
23 average arsenic MCL pursuant to the paragraph immediately above, Respondents shall maintain
24 continuous compliance with the arsenic MCL for all water the System serves to their customers
25 for human consumption.

1 29. Respondents shall continue quarterly sampling for arsenic at all compliance sampling
2 points, until directed otherwise by EPA in writing, in accordance with 40 C.F.R. § 141.23(c)(8).
3 Respondents shall comply with additional and more frequent arsenic sampling and analysis
4 requirements if EPA determines in writing that these additional requirements are necessary for
5 determining compliance with the arsenic MCL, or otherwise necessary and appropriate to assist
6 with achieving or overseeing compliance with the arsenic MCL and this Order.

7 30. Quarterly Progress Reports. Respondents shall submit to EPA written quarterly progress
8 reports that describe the steps Respondents have taken pursuant to its approved Compliance Plan
9 to achieve compliance with the arsenic MCL during the previous quarter. The first report is due
10 June 30, 2011. The second report is due September 30, 2011, the third report is due December
11 31, 2011, the fourth report is due March 31, 2012, the fifth report is due June 30, 2012, and the
12 sixth report is due September 30, 2012. Respondents shall continue to submit quarterly reports
13 thereafter until Respondents achieve full compliance with this Order.

14 Compliance with Stage 1 DBPR Monitoring and Reporting Requirements

15 31. By September 30, 2011, Respondents shall monitor water served by the System for
16 TTHMs and submit such water samples for analysis to determine compliance with the TTHMs
17 MCLs to a laboratory certified by EPA.

18 32. By October 31, 2011, Respondents shall submit to EPA the laboratory reports showing
19 the analytical results of all TTHMs monitoring of the water served by the System pursuant to this
20 Order. Such reports shall be submitted to EPA within 3 business days of Respondents' receipt of
21 such reports, or within 45 days of TTHMs monitoring, whichever is sooner.

22 33. Respondents shall comply with additional or more frequent Stage 1 DBPR monitoring
23 and analysis if EPA determines in writing that these additional requirements are necessary for
24 compliance with the Stage 1 DBPR.
25

Compliance with Reporting Requirements.

34. Respondents shall immediately comply upon the effective date of this Order and at all times thereafter with the requirements of 40 C.F.R. § 141.31(a), except where a different reporting period is required by this Order.

35. Respondents shall comply immediately upon the effective date of this Order and at all times thereafter with the reporting requirements of 40 C.F.R. § 141.31(b) by reporting to EPA within 48 hours any failure to comply with the National Primary Drinking Water Regulations (including failure to comply with monitoring requirements), except where a different reporting period is specified by 40 C.F.R. Part 141. EPA's address and fax and telephone numbers are listed in Paragraph 41 below.

Compliance with Public Notification Requirements

36. Respondents shall comply within 30 days of the effective date of this Order and at all times thereafter with the public notification requirements of 40 C.F.R. Part 141, Subpart Q. Within 30 days of the effective date of this Order, Respondents shall issue all required public notices for Respondents' failure to conduct the required monitoring for arsenic and TTHMs. Such public notice shall meet the notification procedures of, and its contents shall meet the requirements of, 40 C.F.R. Part 141, Subpart Q. Respondents shall provide a copy of each notice to EPA in accordance with the paragraph immediately below.

37. Respondents shall comply within 30 days of the effective date of this Order and at all times thereafter with the reporting requirements of 40 C.F.R. § 141.31(d) by submitting to EPA, within 10 days of completion of each public notification required pursuant to 40 C.F.R. Part 141, Subpart Q, a certification and a representative copy of each type of notice distributed, published, posted or otherwise made available to the persons served by the System and to the media.

1 Additional Requirements

2 38. If any event occurs that causes or is likely to cause delay in the achievement of any
3 requirement of this Order within any time frame specified in this Order, Respondents shall notify
4 EPA in writing, within 3 business days of learning of the actual or likely delay, of the anticipated
5 length and cause of the delay, the measures taken, or to be taken, to prevent or minimize the
6 delay, and the timetable by which Respondents intend to implement these measures and achieve
7 the requirement. Respondents shall adopt all reasonable measures to avoid or minimize delay.
8 Submittal of the notice to EPA required by this paragraph does not extend any deadline or time
9 frame in this Order.

10 39. Respondents shall submit to EPA such additional documents and information as EPA
11 may reasonably request to determine Respondents' compliance with this Order.

12 40. All submittals to EPA made pursuant to this Order shall be accompanied by the
13 following certification signed by a responsible officer of Respondents:

14 "I certify under penalty of law that this document and all attachments were prepared
15 under my direction or supervision in accordance with a system designed to ensure that
16 qualified personnel gather and evaluate the information submitted. Based on my inquiry
17 of the person(s) who managed the system, or of person(s) directly responsible for
18 gathering the information, I certify that the information is, to the best of my knowledge
and belief, true, accurate and complete. I am aware that there are significant penalties for
submitting false information, including the possibility of fine and imprisonment for
knowing violations."

19 41. All information required to be submitted pursuant to this Order shall be submitted to:

20 Joel Jones
21 Drinking Water Office
22 U.S. Environmental Protection Agency, Region 9
23 75 Hawthorne Street (WTR-6)
24 San Francisco, CA 94105
25 Office Telephone No. (415) 972-3449
Office Fax No. (415) 947-3549

V. GENERAL PROVISIONS

1
2 42. Notwithstanding Respondents' compliance with any requirement of this Order,
3 Respondents' failure to comply with all of the requirements of the Act and 40 C.F.R. Part 141
4 may subject Respondents to additional enforcement actions, including but not limited to,
5 administrative actions.

6 43. This Order shall not prohibit, prevent, or otherwise preclude EPA from taking whatever
7 action it deems appropriate to enforce the Act in any manner and shall not prohibit, prevent, or
8 otherwise preclude EPA from using this Order in subsequent administrative proceedings.
9 Nothing in this Order shall constitute a waiver, suspension or modification of the requirements of
10 the Act, or the rules and regulations promulgated thereunder, which remain in full force and
11 effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action
12 otherwise authorized under the law.

13 44. Violations of the Order, the SDWA, or its applicable requirements, may subject
14 Respondents, as appropriate, to a civil action under Section 1447(b) of the Act, 42 U.S.C. § 300j-
15 6, for administrative penalties of up to \$32,500 per day per violation. See also 40 C.F.R. § 19.4.

16 45. This Order does not relieve Respondents of any responsibilities or liabilities established
17 pursuant to any applicable local, state, or federal law.

18 46. The provisions of this Order shall be severable. If any provision of this Order is found
19 to be unenforceable, the remaining provisions shall remain in full force and effect.


20 47. The provisions of this Order shall be binding upon Respondents, their officers, directors,
21 agents, servants, authorized representatives and successors or assigns.

22 48. This Order shall be effective on the date on which it is signed. This Order shall remain
23 in effect until EPA notifies Respondents in writing of EPA's determination that the water
24 provided by Respondents' System has continuously met the arsenic MCL, and Stage 1 DBPR
25 requirements, on a continuous basis for 2 years and that all the terms of the Order are fulfilled.

1 49. Providing false or misleading information may subject you to civil and/or criminal
2 enforcement.

3 50. EPA may amend or modify this Order by providing written notice of such amendment
4 or modification to Respondents.

5
6 ORDERED, this 22nd day of March, 2011.

7
8 
9 _____
10 Corine Li, P.E., Manager
11 Drinking Water Office

12 United States Environmental Protection Agency, Region 9
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Exhibit 1

Docket No. PWS-AO-2011-6003

BIA Keams Canyon Arsenic Monitoring Calendar Years 2006 through 2010

Calendar Year 2006 Monitoring			
Sampling Point ("Compliance Point ID EP001")	Date	Quarter (Calendar Year)	Result(s) (ug/L)
No sampling record and/or result submitted		1 st	
"Well#1"	May 10, 2006	2 nd	39
No sampling record and/or result submitted		3 rd	
No sampling record and/or result submitted		4 th	
Calendar Year 2006 Running Annual Arithmetic "RAA" Average			39

Calendar Year 2007 Monitoring			
Sampling Point ("Compliance Point ID EP001")	Date	Quarter (Calendar Year)	Result(s) (ug/L)
"Well #2-POE"	1/24/2007	1 st	35
"Well #3-POE"	1/24/2007	1 st	34
"Well #2-POE"	5/24/2007	2 nd	40
"Well #3-POE"	5/24/2007	2 nd	22
No sampling record and/or result submitted		3 rd	
No sampling record and/or result submitted		4 th	
Calendar Year 2007 Running Annual			
Arithmetic "RAA" Average			33
$35+34+40+22/4$			

Calendar Year 2008 Monitoring			
Sampling Point ("Compliance Point ID EP001")	Date	Quarter (Calendar Year)	Result(s) (ug/L)
No sampling record and/or result submitted		1 st	
No sampling record and/or result submitted		2 nd	
No sampling record and/or result submitted		3 rd	
No sampling record and/or result submitted		4 th	
Calendar Year 2008 Running Annual Arithmetic "RAA" Average			N/A

Calendar Year 2009 Monitoring			
Sampling Point ("Compliance Point ID EP001")	Date	Quarter (Calendar Year)	Result(s) (ug/L)
No sampling record and/or result submitted		1 st	
No sampling record and/or result submitted		2 nd	
No sampling record and/or result submitted		3 rd	
No sampling record and/or result submitted		4 th	
Calendar Year 2009 Running Annual Arithmetic "RAA" Average			N/A

Calendar Year 2010 Monitoring			
Sampling Point ("Compliance Point ID EP001")	Date	Quarter (Calendar Year)	Result(s) (ug/L)
No sampling record and/or result submitted		1 st	
"Well#2"	June 23, 2010	2 nd	44
"Well#2"	September 3, 2010	3 rd	38
"Well#2"	December 15, 2010	4 th	42
Calendar Year 2010 Running Annual			
Arithmetic "RAA" Average			41
44+38+42/3			

Attachment

B

ATTACHMENT B

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**BIA Keams Canyon PWS
Individual Contaminant Report
For Arsenic**

Dated February 27, 2013

**BIA Keams Canyon PWS
Individual Contaminant Report For Arsenic
Dated February 27, 2013**

<u>Sample Date</u>	<u>Sample Location</u>	<u>Sample Result (mg/L)</u>
3/21/2012	Building 59	0.0124
3/28/2012	Building 68	0.0099
4/24/2012	Finished Water	< 0.001 ND
5/1/2012	Finished Water	< 0.001 ND
5/9/2012	Finished Water	< 0.001 ND
5/16/2012	Finished Water	< 0.001 ND
5/23/2012	Finished Water	0.0011
5/30/2012	Building 59	0.0033
5/30/2012	Finished Water	0.0016
6/20/2012	Facility Management Office	0.002
6/20/2012	Finished Water	< 0.001
6/26/2012	Building 1	0.0025
6/26/2012	Finished Water	< 0.001
7/5/2012	Finished Water	0.0019
7/5/2012	Building 59	0.001
7/11/2012	Finished Water	< 0.001 ND
7/18/2012	Finished Water	< 0.001 ND
8/15/2012	Finished Water	0.001
8/21/2012	Facility Management Office	0.0019
8/21/2012	Finished Water	0.0041
12/5/2012	Building 59	0.0039
12/5/2012	Finished Water	0.0012
12/12/2012	Finished Water	0.0195
12/12/2012	Building 59	0.0025
1/9/2013	Finished Water	0.0015
1/9/2013	Building 64	0.0037
1/29/2013	Finished Water	0.0015
1/29/2013	Building 64	0.0083

Total .0622 (mg/L) / 25 (no. of samples)

RAA= .0025 (mg/L) – Four quarters back

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of DOI/BIA Keams Canyon Public Water System (**Docket #: SDWA-09-2013-0001**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:


A copy was mailed via CERTIFIED MAIL to:

Adrienne Gaziano
U.S. Dept. of the Interior
Office of the Solicitor – Division of Indian Affairs
MS-6513 MIB
1849 C Street, NW
Washington, DC 20240

CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 8266

A copy was hand-delivered to the following U.S. EPA case attorney:

Richard Campbell, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/19/2013
Date