

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re:	)	
	)	
Arizona Public Service Company	)	
	)	Appeal No. NPDES 19-06
NPDES Permit No. NN0000019	)	
	)	
	)	

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**REGION 9 RESPONSE TO ORDER REQUIRING DOCUMENTS TO  
BE INCLUDED IN THE ADMINISTRATIVE RECORD**

In its Order Requiring Documents To Be Included In The Administrative Record dated August 10, 2020 (“August 10 Order”), the Environmental Appeals Board (“Board”) listed five documents that appeared to be missing from the Administrative Record for this permit proceeding and from the Certified Index of the Administrative Record (“Certified Index”).

(1) Region 9 notes that the first two documents described in the August 10 Order (the January 20, 2006 Decision Document on Navajo Nation’s Application for Treatment in the Same Manner as a State, and the October 31, 2005 Letter from the Navajo Nation to Wayne Nastri, EPA Regional Administrator) are attachments to Administrative Record Document AR # 15.d, entitled “Email from Patrick Antonio, NNEPA to Gary Sheth, EPA,

May 31, 2017 Re: Morgan Lake and 401 Cert. with three attachments.” Region 9 has revised the Certified Index to more clearly identify those attachments.

(2) Region 9 notes that the fourth document listed in the Board’s August 10 Order is already included in the Administrative Record as AR # 7.h and is described as “Letter from Susan Millsap, USFWS, to Nicole Caveny, OSMRE June 25, 2018.” Region 9 has revised the Certified Index to more completely describe the nature of this document.

(3) Region 9 acknowledges that the third and fifth documents listed in the Board’s August 10 Order and cited in the Response to Comments were inadvertently omitted from the Certified Index. As instructed in the Board’s August 10 Order, Region 9 has added these documents to the Certified Index.

(4) Region 9 reviewed the Region’s Response to Comments and found additional documents that were cited but were not included in the Certified Index. These items were: (a) the 1983 and 1988 NPDES Permits for the Four Corners Power Plant, discussed at page 44 of the Response to Comments; (b) the Letter from Benjamin Grumbles, EPA, to John Paul Woodley, U.S. Dept. of the Army, dated March 1, 2006, discussed at page 45 of the Response to Comments; and (c) the Email from Louis Nichols, EPA, to Tom Hagler, EPA, dated September 19, 2019, discussed at page 78 of the Response to Comments. Region 9 has added these documents to the Certified Index.

(5) Region 9 also notes that the Response to Comments, at page 77, includes a citation to “Miller 2014.” This citation is actually a citation to the scientific source of the Table 7 included at page 92 of the Final USFWS Biological Opinion for the Four Corners Power Plant and Navajo Mine Energy Project (April 8, 2015) (AR# 7.i). The cite was

erroneously included in the Response to Comments, and the underlying scientific document should not be part of the Administrative Record for this proceeding.

(6) Finally, Region 9 is notifying the Board and the parties that it has replaced the incomplete versions of AR# 14.c and AR# 14.d with complete versions of those documents in the “Sharepoint” online version of the Administrative Record. AR# 14.d is an email from Jeffrey Allmon, Pinnacle West, to Tom Hagler and Gary Sheth, EPA, dated March 18, 2017, with several attachments. AR# 14.c is a Memorandum from Gary Sheth, EPA, to Administrative Record dated July 20, 2017, regarding Morgan Lake, with those same attachments. The attachments were inadvertently omitted when those documents were inserted into the Sharepoint online version of the Administrative Record. The Region gave access to the Sharepoint online version to the parties in December 2019. We are making note of this correction in case the parties are relying on the December 2019 Sharepoint file. We also note that the correct version of AR# 14.c was previously provided to the Petitioner via email exchange on July 9, 2018. Copies of the corrected AR# 14.c and AR# 14.d are attached.

A revised Certified Index reflecting the above is attached.

Region 9 is also enclosing as attachments each of the documents being added to the Certified Index, so that the Board and all Parties have them available for Review. At the outset, we note that all of these documents were cited in Region 9’s Response to Comments document and are therefore part of the Administrative Record. *See* 40 C.F.R. Section 124.17(b).

Date: August 19, 2020

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached **REGION 9 NOTICE REGARDING ORAL ARGUMENT** to be served by electronic mail upon the persons listed below.

Dated: August 19, 2020

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