1 2 3 4 5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 6 7 IN AND FOR THE COUNTY OF APACHE 8 IN RE THE GENERAL CV6417 9 ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE 10 COLORADO RIVER SYSTEM AND Case: CV6417-33-7056 11 **SOURCE** 12 13 ORDER RESUMING CONTESTED 14 **CASE AND SETTING STATUS** 15 CONFERENCE 16 17 CONTESTED CASE NAMES: In re Evans et al. 18 HSR INVOLVED: Silver Creek Hydrographic Survey. 19 DESCRIPTIVE SUMMARY: The Clerk of Apache County is directed to initiate 20 CV6417-33-7056. Initial conference set for Thursday, September 19, 2024, at 9:30 21 a.m. 22 NUMBER OF PAGES: 15 23 **General Explanation** 24 25

This order resumes, after a lengthy pause in adjudication, a case to determine rights to use water on land that the Navajo County Assessor has identified as owned by Porter Springs LLC. The first step in this case is an initial conference with the Court,

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scheduled for **Thursday**, **September 19**, **2024**, **at 9:30** a.m. to determine if the landowner is interested in pursuing water rights claims. The current landowner **MUST** attend the scheduled initial conference if they plan to pursue a water rights claim. Failure to appear at the initial conference could result in the dismissal of the case and the loss of potential surface water rights associated with the property.

In this case, the United States Forest Service ("Claimant") filed Statements of Claimant ("SOCs") 39-80946, 39-89960, 39-91644, and 39-91860 in 1985 to assert claims to use water on land that appears to comprise Navajo County tax parcel 311-20-006, which is currently owned by Porter Springs LLC.

During the initial conference, the landowner must state whether they intend to pursue a water rights claim.

Additional background information on the process for determining water rights in Arizona can be found on Attachment A.

Details of the Case

The SOCs include claims for domestic, stockpond, stock watering, irrigation, recreational, and wildlife uses.

The Arizona Department of Water Resources ("ADWR") investigated the claims and prepared Watershed File Report ("WFR") 33-56-ADBB-001, published in the Final Silver Creek Watershed Hydrographic Survey Report (1991) ("Silver Creek HSR"). The WFR recorded that water was supplying a domestic and stock watering use as well one stockpond and five other reservoirs within Section 18, Township 9 North Range 23 East. A copy of the WFR is attached as Attachment B. A copy of a map displaying the area investigated by ADWR, denoted by "(1)," is attached as Attachment C.

After ADWR issued the WFR, objections were filed to the findings made in the WFR by the Apache-Sitgreaves National Forest, Salt River Project and the United States

joined by the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The purpose of this case is to consider claims in SOCs 39-80946, 39-89960, 39-91644, and 39-91860 and to resolve the objections to WFR No. 33-56-ADBB-001.

Claimant and Landowners

WFR 33-56-ADBB-001 lists "Evans, et al" as the owners of the property investigated in 1991. According to maps obtained from the Navajo County Assessor's ("Assessor") website, the land investigated appears to comprise Navajo County tax parcel 311-20-006, which is currently owned by Porter Springs LLC.

A copy of the map showing the relevant tax parcels and current ownership is attached as Attachment D. The public records of ADWR do not contain any assignments of the SOCs listed in the WFRs, and landowners do not appear to have filed any additional SOCs since the issuance of the 1991 HSR.

Objections

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There are significant objections to WFR 33-56-ADBB-001 and the property owners are encouraged to review the comments at the link below prior to the initial status conference. http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp.

In order to obtain a decreed water right, a property owner must present to the Court both an appropriate SOC claiming a water right in the name of the property owner, and evidence of that right. This evidence may include the relevant WFRs. Alternatively, the property owners may settle with objectors. If either the property owner proves to the Court the existence of a water right on their property or enters into a valid settlement approved by the Court, the court will recognize enforceable water rights in a "Final Decree." Ariz. Rev. Stat. § 45-257(B).

This is an order from the Court, and all parties must comply with the following instructions. The failure to obey this, or any, court order may result in the dismissal of this case and the loss of potential surface water rights. If you have questions regarding

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this Order or any of the attachments, please contact the General Stream Adjudication, Office of the Special Water Master, at (602) 372-4115. Please note that staff can only answer administrative questions and cannot provide legal advice.

IT IS ORDERED:

- 1. <u>Case Initiation.</u> This order initiates contested case CV6417-33-7056. This case will resolve claims to use appropriable water asserted in Statements of Claimant 39-80946, 39-89960, 39-91644, and 39-91860 and objections that were filed to Watershed File Report No. 33-56-ADBB-001.
- 2. Initial Conference. An initial conference shall be held on Thursday, September 19, 2024, at 9:30 a.m. to determine whether the current landowner intends to pursue claims for water rights. The conference will be held using the Court Connect program. Instructions for Court Connect are attached as Attachment E. If you receive this Order by email, click on the red box "Join Court Connect Hearing" on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect the internet program by typing on https://tinyurl.com/specialwatermaster. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect.
- 3. <u>Parties</u>. The litigants in this contested case are the claimant, the current landowner, and all parties who filed objections to the Watershed File Report. The objectors are Apache-Sitgreaves National Forest, Salt River Project, the United States, the San Juan Southern Paiute Tribe, the Hopi Tribe, and the Navajo Nation.
- 4. <u>Objections</u>. Copies of objections filed to this case can be found under the respective case names and numbers on the following website:

http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp.

5. Court-Approved Mailing List.

- A. The initial Court-approved mailing list for this case shall include all persons listed on Attachment F to this order. The list may be modified only by filing a motion with the Special Master to amend the Court-approved mailing list. Litigants are responsible for using the current Court-approved mailing list.
- B. A copy of any pleading filed with the Clerk of the Apache County
 Superior Court in this case shall be served upon each person listed
 on the Court-approved mailing list.
- C. Claimants wishing to be added or removed from the mailing list shall file a motion with the Special Master. Parties allowed to intervene will be automatically added to the Court-approved mailing list.
- D. The Clerk of the Court will send copies of all minute entries and orders issued in this case to the parties listed on the Court-approved mailing list.
- E. Claimants who would like to receive courtesy copies of minute entries and orders may request inclusion on an email list by sending a request to emily.natale@jbazmc.maricopa.gov.

Signed this day of

Sherri L. Zendri

Special Water Master

Emily Natale

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ATTACHMENT A

General Background on the Water Rights Determination Process in Arizona

A general stream adjudication is a judicial proceeding to determine the quantity and priority of all water rights in a river system. Arizona is undertaking general stream adjudications of both the Gila River and the Little Colorado River systems. A river system includes surface water flowing "in streams or other natural channels", groundwater sufficiently connected to that surface water, and water subject to claims by the federal government. Ariz. Rev. Stat. § 45-251(7). Recognizing and respecting water rights and the priority of such rights is important in Arizona where times of drought or water scarcity can occur.

All cases begin with the filing of a "Statement of Claimant," ("SOC") in which a property owner makes a claim for a right to use surface water on their property. Ariz. Rev. Stat. § 45-254(A). This person is the "claimant." The SOCs contain, among other characteristics, a description of the source and quantity of the water used, the location of use, the location from which the water was diverted, and the date when the water was first put to use. *Id.* § 45-254(C).

After the property owner files the SOCs, the Arizona Department of Water Resources ("ADWR") prepares a "Watershed File Report," ("WFR") in which ADWR investigates the claims in the SOCs and recommends water rights associated with the property. *Id.* § 45-256(B). ADWR compiles all WFRs for a watershed into a comprehensive Hydrographic Survey Report ("HSR") and publishes the report for public review and comment. In response, other claimants in the Adjudication may file "objections" disputing the information or recommendations in the WFR. The individuals who file objections are called "objectors."

This "contested case", one of thousands in the Little Colorado River System, will evaluate claims asserted in specific Statements of Claimant while considering objections to the WFR that reported ADWR's initial inspection of those claims.

ATTACHMENT B

Watershed File Reports

LAND OWNER

WATERSHED FILE REPORT NUMBER

EVANS, ET AL

033-56-ADBB-001

PHOTO ID - 16-5

QUAD 1 - LAKESIDE

DG paper

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA		OCATION TWNP RNGE	CLAIM DATE	DIVERSION LOCATION SECTION TWNP RNG
3/24/99 / 10-0091383		IRRIGATION STOCKWATERING	NONE CLMD	11	090N 220E	1910	NONE CLAIMED
10-0091430		IRRIGATION STOCKWATERING DOMESTIC OTHER	NONE CLMD		090N 220E 090N 230E	1891	07 090N 230I 18 090N 230I
✓ 10-0091458		IRRIGATION DOMESTIC STOCKWATERING OTHER	NONE CLMD	S212	090N 230E 090N 220E 090N 220E	1912	07 090N 230I 18 090N 230I
10-0092002		IRRIGATION STOCKWATERING DOMESTIC OTHER	NONE CLMD	12	090N 220E 090N 220E 090N 220E	1913	SENE18 090N 230 SWNE18 090N 230 SENENW18 090N 230
10-0092015		IRRIGATION DOMESTIC STOCKWATERING OTHER	NONE CLMD	NONE	CLAIMED	1913	NWNENE13 090N 220
36-0044380		IRRIGATION STOCKWATERING	20.00		100N 220E 100N 220E	< 1919	NE18 090N 230
36-0066961		REC/FISH/WLDLF	44.00	NENW18	090N 230E	1900	NWNW18 090N 230
38-0010650		STOCKPOND REC/FISH/WLDLF	. 18	NWNE 18	090N 230E	1945	NWNE18 090N 230
∵√ 39-0080946		DOMESTIC OTHER	. 11 44.00	NWNW18	090N 230E	1900	NWNW18 090N 230
ELECTRONIC \$ 39-0089960		STOCKPOND	.57	NWNE 18	090N 230E	1945	NWNE18 090N 230
√ 39-0091644		IRRIGATION	NONE CLMD	SW12	090N 220E 090N 220E 090N 220E	NONE	NENWNW18 090N 230
v 39-0091860		STOCKWATERING REC/FISH/WLDLF	40.00	03	090N 220E 090N 220E 090N 220E	1910	N218 090N 230

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
10-0091383	IRRIGATION STOCKWATERING	IRRIGATION STOCKWATERING	D01,S01	SW001, SW002, SR005 SR004
10-0091430	IRRIGATION DOMESTIC STOCKWATERING OTHER	IRRIGATION DOMESTIC INCIDENTAL INCIDENTAL	DO1	SROO4,DMOO1,SROO5
10-0091458	IRRIGATION DOMESTIC STOCKWATERING OTHER	IRRIGATION DOMESTIC INCIDENTAL INCIDENTAL	DO1	DMOO1,SROO5,SROO4
10-0092002	IRRIGATION	IRRIGATION	DO1,SO1	SROO4, DMOO1, SWOO1

DWR ANALYSIS OF FILINGS AND DECREES (CONTINUED) 033-56-ADBB-001

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
10-0092002	DOMESTIC STOCKWATERING OTHER	DOMESTIC STOCKWATERING INCIDENTAL		SW002, SR005
10-0092015	IRRIGATION DOMESTIC STOCKWATERING OTHER	IRRIGATION DOMESTIC Incidental Incidental	DO1	DMOO1, SROO4, SROO5
36-0044380	IRRIGATION STOCKWATERING	NONE STOCKWATERING	SO1	SW001,SW002
36-0066961	REC/FISH/WLDLF	REC/FISH/WLDLF	SO1	SWOO1,SWOO2,SROO1 SROO2,SROO3,SROO4 SROO5
38-0010650	STOCKPOND REC/FISH/WLDLF	STOCKPOND INCIDENTAL		SP001
39-0080946	DOMESTIC REC/FISH/WLDLF	DOMESTIC REC/FISH/WLDLF	S01,D01	DMOO1,SWOO1,SWOO2 SROO1,SROO2,SROO3 SROO4,SROO5
39-0089960	STOCKPOND REC/FISH/WLDLF	STOCKPOND INCIDENTAL		SP001
39-0091644	IRRIGATION	IRRIGATION	DO1	SR005
39-0091860	STOCKWATERING REC/FISH/WLDLF	STOCKWATERING INCIDENTAL	SO1	SW001, SW002

DIVERSIONS

L	OCA	TI	ON
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				WATER SOURCE AND CLASSIFICATION
DO1	NENWNW18 090N			SURFACE WATER: SHOW LOW CREEK SHARED
SO1	NESWNE18 090N	230E	PORTER SPRINGS	SURFACE WATER: SHOW LOW CREEK

USES

	LOCAT	ION	SUPPLIED BY		PHOTO	SOURCE	
PWR #	SECTION T	WNP RNGE	DIVERSIONS	WATER SOURCES	DATE	CHANGE	FACILITY NAME
DMOO1	SWNENW18 O	90N 230E	SO1	SURFACE WATER		NO	
SW001	NESWNE18 O	90N 230E		SURFACE WATER		NO	PORTER SPRINGS
SW002	NESWNE18 O	90N 230E		SURFACE WATER		NO	PORTER SPRINGS

RESERVOIRS

PWR #		ATION TWNP		SUPPLIED BY DIVERSIONS	WATER	SOURC	-	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
SP001	NENWNE 18	090N	230E		SURFAC	E WAT	ER	1953	MORGAN WASH TANK	STOCKWATERING
SR001	NESWNE 18	090N	230E		SURFAC	E WAT	ER	1953	UNNAMED	WILDLIFE RECREATION
SR002	NESWNE18	090N	230E		SURFAC	E WAT	ER	1953	UNNAMED	WILDLIFE RECREATION
SR003	NWSWNE 18	090N	230E		SURFAC	E WAT	ER	1953	UNNAMED	WILDLIFE RECREATION
SR004	SENENW18	090N	230E		SURFAC	E WAT	ER	1935	UNNAMED	WILDLIFE RECREATION
SR005	NENWNW18	090N	230E		SURFAC	E WAT	ER	1953	UNNAMED	WILDLIFE RECREATION IRRIGATION

** WATER FROM DO1 IS SHARED WITH THESE ADDITIONAL FILES: 033-56ACAA-1, 033-56-2, 033-56-13, 033-56-23

PWR SUMMARY

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	PPARENT FIRST USE DATE* TE BASIS FOR DATE WATER SOURC	CES AND CLASSIFICATIONS
DMOO1	39-0080946 39-0091860	10-0091383 10-0091430 10-0091458 10-0092002 10-0092015 36-0044380 36-0066961	SURFACE WAT	TER: SHOW LOW CREEK
SP001	39-0089960	38-0010650	45 38-10650 SURFACE WAT	TER: SHOW LOW CREEK
SR001	39-0080946	36-0066961	53 1953 AERIAL PHOTO SURFACE WAT	TER: SHOW LOW CREEK
SR002	39-0080946	36-0066961	53 1953 AERIAL PHOTO SURFACE WAT	TER: SHOW LOW CREEK
SR003	39-0080946	36-0066961	53 1953 AERIAL PHOTO SURFACE WAT	TER: SHOW LOW CREEK
SR004	39-0080946	10-0091383	OO 36-66961 SURFACE WAT	TER: SHOW LOW CREEK
		10-0091430		
		10-0091458		
		10-0092002		
		10-0092015		
		36-0066961		
SR005	39-0080946	10-0091383	53 1953 AERIAL PHOTO SURFACE WAT	ER: SHOW LOW CREEK
	39-0091644	10-0091430		
		10-0091458		
		10-0092002		
		10-0092015		
		36-0066961		
SW001	39-0080946	10-0091383	OO 36-66961 SURFACE WAT	TER: SHOW LOW CREEK
	39-0091860	10-0092002		
		36-0044380		
		36-0066961		
SW002	39-0080946	10-0091383	OO 36-66961 SURFACE WAT	TER: SHOW LOW CREEK
	39-0091860	10-0092002		
		36-0044380		
		36-0066961		

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE							REMARKS	
DMOO1								SEE VOLUME 1 - GENERAL ASSESSMENT	
SP001	MAX.	AREA/CAP	LT 2.0				LTE 15.0 AF		
SR001	MAX.	AREA/CAP	LT 2.0				LTE 15.0 AF		
SR002	MAX.	AREA/CAP	LT 2.0				LTE 15.0 AF		
SRO03	MAX.	AREA/CAP	LT 2.0				LTE 15.0 AF		
SRO04	MAX.	AREA/CAP	2.6				7.7 AF		
SR005	MAX.	AREA/CAP	1.2				7.1 AF		
SW001								SEE VOLUME 1 -	
SW002								GENERAL ASSESSMENT SEE VOLUME 1 - GENERAL ASSESSMENT	

EXPLANATION

FILINGS AND DECREES

FILING 10-09-1-383 IS A NOTICE OF WATER LOCATION FILED BY M.L. FISH ON NOVEMBER 27, 1910 IN NAVAJO COUNTY.

FILING 10-09-1-430 IS A NOTICE OF WATER LOCATION FILED BY KENNETH M. JACKSON ON AUGUST 31, 1911 IN NAVAJO COUNTY.

FILING 10-09-1-458 IS A NOTICE OF LOCATION OF WATER RIGHT FILED BY BEULAH JACKSON ON JUNE 7, 1912 IN NAVAJO COUNTY.

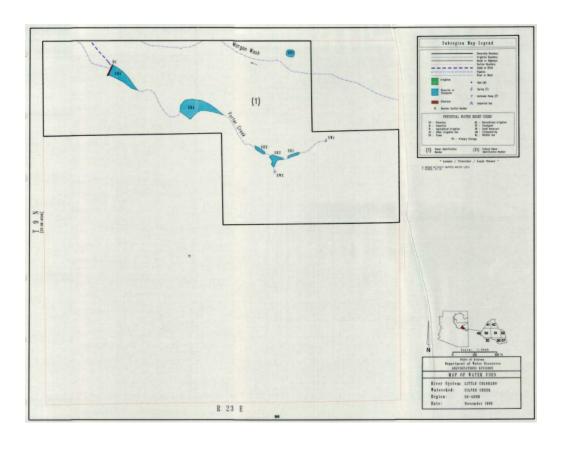
FILING 10-09-2-2 IS NOTICE OF WATER LOCATION FILED BY BEULAH A. JACKSON ON JANUARY 12, 1913 IN NAVAJO COUNTY.

FILING 10-09-2-15 IS NOTICE OF LOCATION OF WATER RIGHT FILED BY BEULAH A. JACKSON ON FEBRUARY 24, 1913 IN NAVAJO COUNTY.

NOTICES 10-09-1-430, 10-09-1-458 & 10-09-2-15 ALL CLAIM THE WATERS OF MORGAN WASH AND ITS TRIBUTARIES FOR IRRIGATION, DOMESTIC, STOCK, AND OTHER USES. NOTICE 10-09-1-430 ALSO CLAIMS AN AMOUNT OF "1000 MINERS INCHES."

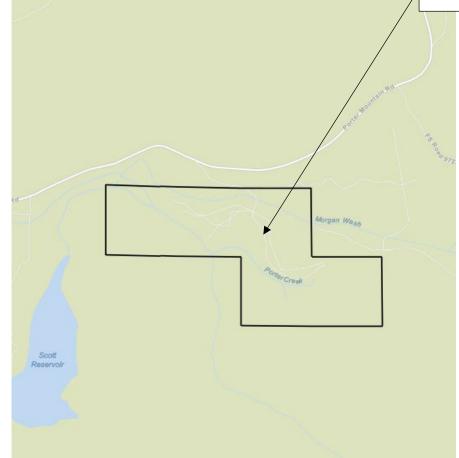
ATTACHMENT C

WFR Map



Assessor Map





ATTACHMENT E



Court Connect Hearing Notice for In re Apache-Sitgreaves National Forest

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

- 1. Click the JOIN COURT CONNECT HEARING button below.
- 2. Enter your full name and role in name field.
- 3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re Apache-Sitgreaves National Forest

Contested Case No. CV6417-33-7054

Start Date/Time: Thursday, September 19, 2024 at 9:30 a.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by

dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: https://tinyurl.com/specialwatermaster

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: <u>Here</u>

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ATTACHMENT F

1 2 **Initial Court-Approved Mailing List** 3 San Juan Southern Paiute Tribe Arizona Department of Water Resources Kimberly R. Parks and Karen J. Nielsen J. Kolsrud, I. Fimbres-Ruiz, K. Shaffer 4 1110 West Washington, Suite 310 May, Potenza, Baran & Gillespie, PC Phoenix, AZ 85007 1850 N. Central Avenue, Ste 1600 5 Phoenix, AZ 85004-4633 6 Clerk of the Superior Court **Apache County** Navajo Nation 7 P.O. Box 365 Evan Hiller, Candace French, Jeffrey St Johns, AZ 85936 Leonard, Judith Dworkin and Kathryn 8 Hoover Mark J. Widerschein SACKS TIERNEY P.A. 9 Maggie Woodward 4250 N. Drinkwater Blvd., 4th Floor 10 Alexa Penalosa Scottsdale, AZ 85251 US Dept of Justice – ENRD 11 **Natural Resources Section** Navajo Nation Department of Justice Ethel Branch & G. Michelle Brown-Yazzie PO Box 7611 12 Washington, DC 20044 PO Drawer 2010 13 Window Rock, AZ 86515 Special Master Sherri Zendri 14 Superior Court of Arizona Salt River Project 201 W. Jefferson Street J.B. Weldon, M.A. McGinnis, M.K. Foy 15 Courtroom 301 Salmon, Lewis, and Weldon 2850 E. Camelback Rd. Suite 200 Phoenix, AZ 85003 16 Phoenix, AZ 85016. 17 Vanessa Boyd Willard U. S. Department of Justice Porter Springs LLC 18 999 18th Street, Suite 370 PO Box 489 Denver, CO 80202 Oueen Creek, AZ 85142 19 Hopi Tribe Josh Edelstein Phoenix Field Solicitor 20 General Counsel of the Hopi Tribe Office of the Solicitor 21 P. O. Box 123 U.S. Department of the Interior Kykotsmovi, AZ 86039 Sandra Day O'Connor U.S. Courthouse 22 401 W. Washington St., Ste. 404, SPC 44 Apache-Sitgreaves National Forest Phoenix, AZ 85003 23 PO Box 640 24 Springerville, AZ 85938 25 C. Campbell, P. Londen, P. Bowden OSBORN MALEDON, P.S. 26 2929 North Central Avenue, Ste 2100

Phoenix, AZ 85012

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