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19 *Attorneys for the Navajo Nation*

20 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

21 IN AND FOR THE COUNTY OF APACHE

22 IN RE THE GENERAL ADJUDICATION
23 OF ALL RIGHTS TO USE WATER IN
24 THE LITTLE COLORADO RIVER
25 SYSTEM AND SOURCE

Case No. CV 6417-203

~~PROPOSED~~ PROTECTIVE
ORDER

26 The Court, having reviewed the Navajo Nation's Motion for a Protective
27 Order, and good cause appearing,

28 IT IS HEREBY ORDERED that the following Protective Order shall govern
the disclosure, handling, and use of documents and data as specified below.

I. Definitions

1. The "Sacred Site Records" are records from the Navajo Historic
Preservation Department concerning Navajo sacred sites. These records, which are
confidential and privileged, consist of the following documents:

- Cameron Records, NN036376-98

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- Flagstaff Records, NN036399-413
- Ganado Records, NN036414-41
- Grand Canyon Records, NN036442-46
- Holbrook, Nutrioso, Springerville, and St. Johns Records, NN036447-62
- Polacca Records, NN036463-86
- Sanders Records, NN036487-97
- Sedona Records, NN036498-99
- Tuba City Records, NN036500-517
- Valle Records, NN036518
- Williams Records, NN036519-20
- Winslow Records, NN036521-37

2. "Party" includes all parties to CV 6417-203.

II. Redactions and Limitations on Use

3. Maintenance of the Sacred Site Records by ADWR. ADWR shall maintain the Sacred Site Records in a sealed envelope with the caption of the case and the following notice:

**CONTAINS CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER
ACCESS LIMITED AS PRESCRIBED BY PROTECTIVE ORDER**

ADWR shall not post unredacted copies of the Sacred Site Records on the ADWR website and shall remove from the ADWR website any unredacted copies of the Sacred Site Records. ADWR shall provide access to the Sacred Site Records only as authorized by this Order.

4. Disclosure of Confidential Information. Except with the prior written consent of the Navajo Nation, the Sacred Site Records may be disclosed only to the following:

- 1 (a) Counsel for any Party and any attorneys, paralegals, office clerks,
2 secretaries, outside copying services and other personnel working
3 under their supervision and assigned to perform duties in
4 connection with the prosecution or defense of this action.
- 5 (b) Any consultants or experts retained by any counsel of record for
6 any Party, subject to compliance with Paragraph 7.
- 7 (c) Any other person whom the Navajo Nation agrees in writing should
8 have access to the Sacred Site Records, subject to compliance with
9 Paragraph 10.
- 10 (d) The Court and its personnel, subject to the provisions for filing
11 under seal set forth in the Arizona Rules of Civil Procedure and
12 other applicable rules.

13 5. Execution of Exhibit A. Prior to obtaining access to the Sacred Site
14 Records, all persons described in Paragraph 3(b) and (c) above shall be shown a copy
15 of this Protective Order and shall execute the document attached as Exhibit A.
16 Counsel for the Navajo Nation shall be responsible for maintaining copies of the
17 executed Exhibit A. Persons who have already received access to the Sacred Site
18 Records through the inadvertent disclosure of same in this litigation shall also be
19 shown this Protective Order and shall execute Exhibit A.

20 6. Disclosure of Parties' Own Confidential Information. Nothing herein
21 shall restrict or preclude the Navajo Nation from disclosing information contained in
22 the Sacred Site Records to any person or entity without regard to the provisions of
23 this Protective Order.

24 7. Use of Confidential Information. Each Party's use of the Sacred Site
25 Records is limited to purposes reasonably necessary for the effective prosecution or
26 defense of this action.¹

27 ¹ The parties are permitted to paraphrase, cite to, and/or reference the Sacred
28 Site Records, with the exception of precise location information. Such use of

1 **III. Other Provisions**

2 8. Non-Waiver of Rights. Entering into and complying with the terms of
3 this Protective Order shall not constitute a waiver of any rights to object to discovery
4 or to the authenticity or admissibility into evidence of any documents or other
5 materials produced in discovery. Neither the production of the Sacred Site Records
6 by the Navajo Nation, nor the receipt of the Sacred Site Records by a Party, shall be
7 deemed to waive any testimonial or other privileges or protections that the Navajo
8 Nation may otherwise have.

9 9. Additional Parties. Any additional Party who joins or is joined in this
10 action shall not have access to the Sacred Site Records until its counsel of record has
11 executed and filed with the Court its agreement to this Protective Order.

12 10. Conclusion of Action. Unless otherwise agreed in writing or ordered,
13 all provisions of this Protective Order shall continue to be binding after the
14 conclusion of this action. The Court shall retain jurisdiction over all Parties bound
15 hereby for purposes of this Protective Order and may impose appropriate sanctions
16 for violation of this Protective Order.

17 11. Copies and Return of Confidential Information. The Sacred Site
18 Records shall be copied only as necessary for the effective prosecution or defense of
19 this action, and the Party making the copy(ies) shall maintain a written record of all
20 copies made and of the distribution of all copies made. Upon conclusion of this
21 action, including appeals, any Party in the possession of the Sacred Site Records
22 shall provide for the return or destruction of those reports and any copies thereof, and
23 shall certify to the Navajo Nation that all copies of the Sacred Site Records made or
24 possessed by or for the certifying Party have been returned to the Navajo Nation or
25 destroyed.

26
27 information does not require that pleadings, expert reports, or other documents
28 paraphrasing, citing to, and/or referencing the Sacred Site Records be filed under seal
or returned at the conclusion of the action.

On August 1, 2018, the original of the foregoing was mailed to the Clerk of the Apache County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for the Little Colorado River Adjudication Civil No. 6417-203.



Barbara Brown

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EXHIBIT A

Agreement to Terms of the Protective Order

FORM OF ACKNOWLEDGEMENT:

I, _____, being a person authorized in this Protective Order to have access to documents and information covered by the Protective Order, have read and understood this Protective Order, and hereby agree to be bound by this Protective Order.

s/ _____

Date: _____

Print name: _____