

1 JEFFREY H. WOOD  
Acting Assistant Attorney General

2 VANESSA BOYD WILLARD

3 Trial Attorney, CO # 30278

CODY L. C. MCBRIDE

4 Trial Attorney, CA # 298099

ANDREW "GUSS" GUARINO

5 Trial Attorney, CO # 21864

Indian Resources Section

6 Environment and Natural Resources Division

United States Department of Justice

7 999 18th Street, South Terrace, Suite 370

Denver, CO 80202

8 (303) 844-1353

(202) 514-6755

9 (303) 844-1343

Vanessa.Willard@usdoj.gov

10 Cody.McBride@usdoj.gov

Guss.Guarino@usdoj.gov

11 *Counsel for the United States*

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
13 **IN AND FOR THE COUNTY OF APACHE**

14  
15 IN RE THE GENERAL ADJUDICATION OF  
16 ALL RIGHTS TO USE WATER IN THE  
17 LITTLE COLORADO RIVER SYSTEM  
18 AND SOURCE

CIVIL NO. 6417-203

**~~PROPOSED~~ PROTECTIVE ORDER**

19  
20 In the Order re: Navajo Nation's Motion to Strike and Motions in Limine Nos. 1, 2, &  
21 5, LCR Coalition's Motion in Limine to Exclude Testimony and Other Evidence Relating to  
22 Future Water Uses, dated July 31, 2018, the Court instructed the United State to file a stipulated  
23 protective order by August 8, 2018. To comply with that Order, the United States sent this draft  
24 protective order by electronic mail to counsel for the parties to this case and represents that  
25 counsel for the LCR Coalition confirmed that it agreed with this format. Counsel for the Salt  
26

1 River Project noted that it has copies of the leases, as amended, from other sources that should  
2 not be covered by this protective order. The United States agreed and confirms that this  
3 protective order only applies to the copies of the leases, as amended, that are obtained as part of  
4 the discovery in this case. Accordingly, copies of the leases, as amended, with the bates stamps  
5 listed below are covered by this protective order. The United States did not receive a response  
6 from counsel for any other party. Therefore, the Court, having reviewed this protective order,  
7 and good cause appearing,

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

10 **I. Definitions**

11 1. The “Peabody Mining Leases” are the lease documents for Peabody Western Coal  
12 Company to conduct mining operations on lands within the Hopi and Navajo Reservations.  
13 There are three leases total that originated in the 1960s and include subsequent amendments.  
14 These leases, which are confidential, consist of the following:

15 (a) Mining Lease between Sentry Royalty Co. and Navajo Tribe, Lease No. 14-  
16 20-0603-9910, dated June 6, 1966, including 2016 amendment thereto  
17 [US\_HOPI\_00080485 – US\_HOPI\_00080544];

18 (b) Mining Lease between Sentry Royalty Co. and Navajo Tribe, Lease No. 14-  
19 20-0603-8580, dated February 1, 1964, including 1987 lease amendment  
20 thereto [US\_HOPI\_00080440 – US\_HOPI\_00080484]; and

21 (c) Mining Lease between Sentry Royalty Co. and Hopi Tribe, Lease No. 14-20-  
22 0450-5743, dated June 6, 1966, including 1987, 1997 and 2008 amendments  
23 thereto [US\_HOPI\_00080247 – US\_HOPI\_00080439].<sup>1</sup>

24 2. “Party” includes all parties to CV 6417-203.

25 \_\_\_\_\_  
26 <sup>1</sup> A copy of Lease No. 14-20-0450-5743 was inadvertently disclosed as bates number [US\_HOPI\_00012537].  
That disclosure was not intentional, the lease is still confidential, and should be treated as covered by the Order.

1       **II.     Redactions and Limitations on Use**

2           3.     Maintenance of the Peabody Mining Leases by ADWR. ADWR shall maintain  
3 the Peabody Mining Leases in a sealed envelope with the caption of the case and the following  
4 notice:

5                   **CONTAINS CONFIDENTIAL INFORMATION**

6                   **SUBJECT TO PROTECTIVE ORDER**

7                   **ACCESS LIMITED AS PRESCRIBED BY PROTECTIVE ORDER**

8           ADWR shall not post unredacted copies of the Peabody Mining Leases on the ADWR  
9 website and shall remove from the ADWR website any unredacted copies of the Peabody Mining  
10 Leases. ADWR shall provide access to the Peabody Mining Leases only as authorized by this  
11 Order.

12           4.     Disclosure of Confidential Information. Except with the prior written consent of  
13 the United States, Hopi Tribe, and Navajo Nation, the Peabody Mining Leases may be disclosed  
14 only to the following:

15                   (a) Counsel for any Party and any attorneys, paralegals, office clerks, secretaries,  
16                   outside copying services and other personnel working under their supervision  
17                   and assigned to perform duties in connection with the prosecution or defense  
18                   of this action.

19                   (b) Any consultants or experts retained by any counsel of record for any Party,  
20                   subject to compliance with Paragraph 7.

21                   (c) Any other person whom the United States, Hopi Tribe, and Navajo Nation  
22                   agree in writing should have access to the Peabody Mining Leases, subject to  
23                   compliance with Paragraph 10.

24                   (d) The Court and its personnel, subject to the provisions for filing under seal set  
25                   forth in the Arizona Rules of Civil Procedure and other applicable rules.  
26



1           5.     Execution of Exhibit A. Prior to obtaining access to the Peabody Mining Leases,  
2 all persons described in Paragraph 3(b) and (c) above shall be shown a copy of this Protective  
3 Order and shall execute the document attached as Exhibit A. Counsel for the United States, Hopi  
4 Tribe, and Navajo Nation shall be responsible for maintaining copies of the executed Exhibit A.  
5 Persons who have already received access to the Peabody Mining Leases through the inadvertent  
6 disclosure of same in this litigation shall also be shown this Protective Order and shall execute  
7 Exhibit A.

8           6.     Disclosure of Parties' Own Confidential Information. Nothing herein shall  
9 restrict or preclude the United States, Hopi Tribe, or Navajo Nation from disclosing information  
10 contained in the Peabody Mining Leases to any person or entity without regard to the provisions  
11 of this Protective Order.

12           7.     Use of Confidential Information. Each Party's use of the Peabody Mining Leases  
13 is limited to purposes reasonably necessary for the effective prosecution or defense of this action.

14           **III. Other Provisions**

15           8.     Non-Waiver of Rights. Entering into and complying with the terms of this  
16 Protective Order shall not constitute a waiver of any rights to object to discovery or to the  
17 authenticity or admissibility into evidence of any documents or other materials produced in  
18 discovery. Neither the production of the Peabody Mining Leases by the United States, nor the  
19 receipt of the Peabody Mining Leases by a Party, shall be deemed to waive any testimonial or  
20 other privileges or protections that the Navajo Nation may otherwise have.

21           9.     Additional Parties. Any additional Party who joins or is joined in this action shall  
22 not have access to the Peabody Mining Leases until its counsel of record has executed and filed  
23 with the Court its agreement to this Protective Order.

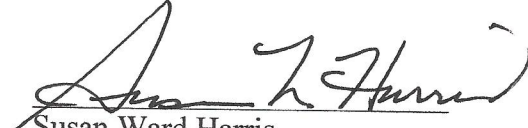
24           10.    Conclusion of Action. Unless otherwise agreed in writing or ordered, all  
25 provisions of this Protective Order shall continue to be binding after the conclusion of this action.  
26

1 The Court shall retain jurisdiction over all Parties bound hereby for purposes of this Protective  
2 Order and may impose appropriate sanctions for violations of this Protective Order.

3 11. Copies and Return of Confidential Information. The Peabody Mining Leases shall  
4 be copied only as necessary for the effective protection or defense of this action, and the Party  
5 making the copy(ies) shall maintain a written record of all copies made and of the distribution of  
6 all copies made. Upon conclusion of this action, including appeals, any Party in the possession of  
7 the Peabody Mining Leases shall provide for the return or destruction of those reports and any  
8 copies thereof, and shall certify to the United States, Hopi Tribe and Navajo Nation that all copies  
9 of the Peabody Mining Leases made or possessed by or for the certifying Party have been  
10 returned to the United States or destroyed.

11  
12 12. Modification by Court Order. This Order may be amended only by order of the  
13 Court, whether upon stipulation, motion or upon the Court's own order.  
14

15  
16 Dated this 22<sup>nd</sup> day of August.

17  
18   
19 Susan Ward Harris  
20 Special Master

21 On August 22, 2018, the original of the  
22 foregoing was mailed to the Clerk of the  
23 Apache County Superior Court for filing and  
24 distributing a copy to all persons listed on  
25 the Court approved mailing list for the Little  
26 Colorado River Adjudication Civil No.  
27 6417-203.  
28