HOPI TRIBAL COUNCIL
RESOLUTION
H-032-2011

WHEREAS, the Hopi Tribe is a federally recognized Indian Tribe pursuant to the Indian Reorganization Act of 1934, and is employed by the Constitution and By-Laws of the Hopi Tribe, ARTICLE VI-POWERS OF THE TRIBAL COUNCIL and ARTICLE VII-LAND to enact its own laws to improve, preserve and conserve the natural resources found on the Hopi Reservation; and

WHEREAS, clean high-quality water is vital to the spiritual, cultural and economic well-being of the Hopi Tribe; and

WHEREAS, the Hopi Tribe Water Code provides for the adoption and implementation of subsequent enforcement provisions; and

WHEREAS, the Hopi Tribe has developed a source water protection program for the protection of its drinking water sources, which was developed in accordance with principles of sound water management and protection, and incorporates conservation principles and practices; and

WHEREAS, participation and comments of the Hopi Tribal members were sought in public meetings.

NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby adopts and promulgates the attached HOPI TRIBE GROUNDWATER ENFORCEMENT ORDINANCE, as a regulation deemed necessary to continue the Hopi Tribe's water protection and conservation measures on the Hopi Reservation.

HOPI TRIBAL COUNCIL
RESOLUTION
H-032-2011

BE IT FURTHER RESOLVED that the attached HOPI TRIBE GROUNDWATER ENFORCEMENT ORDINANCE becomes effective immediately upon Tribal Council adoption of this Resolution.

BE IT FURTHER RESOLVED that the Hopi Tribal Council formally submits the Groundwater Enforcement Ordinance to Region IX, United States Environmental Protection Agency.

HOPI TRIBAL COUNCIL
RESOLUTION
H-032-2011

CERTIFICATION

The Hopi Tribal Council duly adopted the foregoing Resolution on March 1, 2011, at a meeting at which a quorum was present with a vote of 7 in favor, 6 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by ARTICLE VI-POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a) of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said Resolution is effective as of the date of adoption and does not require Secretarial approval.

LeRoy N. Shingoitewa, Chairman
Hopi Tribal Council

ATTEST:

Martha A. Mase

Martha A. Mase, Tribal Secretary
Hopi Tribal Council

HOPI TRIBAL GROUNDWATER ENFORCEMENT ORDINANCE #57

CHAPTER 1
GENERAL PROVISIONS

Section 1.00 Definitions

As used in this ordinance:

(A) "Administrative Record" means all documents which the Director considered or relied on in selecting a response to contamination, threatened contamination, or a trespass upon Hopi Tribal Groundwater, culminating in a Notice of Trespass to Hopi Tribal Groundwater and Order to Comply or Notice of Assessment of Penalty and Damages.

(B) "Contaminant" means any liquid, gaseous, solid, radioactive, hazardous or other substance which, when discharged to Hopi Tribal Groundwater has potential to or does:

1. interfere with Tribal designated water uses;
2. change water color, odor, or usability as a drinking water source through a cause not attributable to natural subsurface processes affecting groundwater;
3. adversely change other chemical, biological, thermal, or physical conditions; or
4. harm human life, aquatic life, or terrestrial plant and wildlife.

(C) "Contaminate" means the discharge of contaminants, or the failure to act to prevent the discharge or further migration of contaminants and includes past discharges that create a present or ongoing threat to Hopi Tribal Groundwater.

(D) "Contamination" means the presence of foreign particles, chemicals, contaminants, or elevated levels of naturally occurring substances resulting from human or human-induced activities.

(E) "Color" means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in solution (true color) but also that color due to suspended matter.

(F) "Director" means the Director of the Hopi Tribe's Water Resources Program, or its successor agency, or his or her designee.

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(G) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, percolating, escaping, leaching (including passive migrating), dumping or disposing into the environment.

(H) "Divisions, departments, and programs of the Hopi Tribal Government" means any subparts of the Hopi Tribal Government, including formal and informal committees, that the Hopi Tribal Government deems necessary to conduct its business.

(I) "Hopi Tribal Council" means the governing body of the Hopi Tribe as set forth in Articles I-Jurisdiction, IV-The Tribal Council, and VI-Powers of the Tribal Council of The Constitution and By-Laws of the Hopi Tribe.

(J) "Hopi Tribal Groundwater" includes any subsurface water occurring under either saturated or unsaturated conditions including in particular, any water contained within the Navajo-aquifer (N-aquifer) and all areas recharging the N-aquifer (including water-bearing units of the Navajo Sandstone, the Kayenta Formation, the Wingate Sandstone, and all springs emanating from these units).

(K) "Hopi Water Quality Standards" means those standards as specified by the Hopi Tribe Water Code pursuant to Hopi Tribal Resolution H-107-97.

(L) "Nonpoint source" means a diffuse source of contamination that does not result from a contaminant discharge at a specific single location (such as a single pipe) but generally results from human or human-induced activities which introduce contaminants into Hopi Tribal Groundwater through surface runoff, precipitation, atmospheric deposition, or percolation.

(M) "Person" means any individual, group of individuals, corporation, partnership, association, State, municipality, commission, political subdivision of a State, interstate body, the federal government or any federal agency, or any other entity, but does not include the Hopi Tribe.

(N) "Point source" includes any discernible, confined, and discrete conveyance from which contaminants are or may be discharged.

(O) "Property" means any land and anything growing on, attached to, or erected on land that has any affect on Hopi Tribal Groundwater.

(P) "Secretary" means the Secretary of the United States Department of the Interior or his or her authorized representative.

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(Q) "Source Water Protection Area" means the portion of a watershed or groundwater area that may contribute water (and, therefore, contaminants) to the water supply.

(R) "Threaten" or "Threatening" means actions or circumstances that have the potential to cause harm or damage.

(S) "Trespass" means the unauthorized interest in, possession of, holding over upon, entry upon, or other use, of Hopi Tribal Groundwater.

(T) "Unique water" means a Hopi water that has been classified as an outstanding natural resource water by the Tribal Council.

(U) "Wellhead and Source Water Protection Area" means the surface and subsurface area surrounding a water well, wellfield, spring or aquifer supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

All other words and terms used herein shall be given their usual, customary, and accepted meaning.

Section 1.01 Authority

(A) Pursuant to Tribal Ordinance H-107-97, the Hopi Tribe Water Code, the Tribal Council of the Hopi Tribe, a federally recognized tribe of Indians, hereby enacts this Groundwater Enforcement Ordinance.

(B) The Groundwater Enforcement Ordinance is consistent with the Hopi Tribe Water Code which provides that:

1. "Existing uses [of groundwater] shall be protected; that is, the level of water quality necessary to protect existing uses shall be maintained. Hopi Tribe Water Code, section 2.101.

2. To enforce the Hopi Tribe Water Code's Water Quality Standards, the Tribal Council may adopt additional regulations. Hopi Tribe Water Code, section 2.102(A).

3. To maintain and protect existing water quality in a unique water, the Tribal Council may adopt, by rule, site-specific water quality standards. Hopi Tribe Water Code, section 7.101(B).

4. The N-aquifer and all areas recharging the N-aquifer (including water-bearing units of the Navajo Sandstone, the Kayenta Formation, the

Wingate Sandstone, and all springs emanating from these units) are classified as a unique water. Hopi Tribe Water Code, section 7.101(F).

(C) This Groundwater Enforcement Ordinance is consistent with the Hopi Tribe's *Hopit Potskwaniat* (Hopi Tribal Consolidated Strategic Plan, Revised November 2001), which establishes as a goal to ensure adequate and quality water supply for present and future needs of the Hopi Tribe and instructs the Hopi Tribe to identify contaminated sources of water and either eliminate the contaminated sources or quarantine them from public contact.

(D) This Groundwater Enforcement Ordinance is consistent with the Safe Drinking Water Act (42 U.S.C. § 300f et seq.) which declares that a Wellhead Protection Area program shall include, as appropriate, the implementation of control measures to protect the water supply within Wellhead and Source Water Protection Areas and "nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems..." 42 U.S.C. §§ 300h-7(a)(4) and 300g-3(e).

Section 1.02 Purposes and Applicability

(A) The purpose of the Groundwater Enforcement Ordinance is the following:

1. to further ensure that degradation of existing groundwater quality does not occur;

2. to protect, maintain, and restore the Hopi Tribe's drinking water sources by establishing enforcement provisions for violations of the Hopi Tribe Water Code within the designated Wellhead and Source Water Protection Areas;

3. to integrate control measures into the Hopi Tribe Water Code, which incorporate the Source Water Assessment of the Hopi Reservation; and

4. to promote the health, social welfare and economic well-being of the Hopi people.

(B) The Groundwater Enforcement Ordinance applies to all groundwater within a Wellhead and Source Water Protection Area for the Hopi Tribal Groundwater. The Groundwater Enforcement Ordinance applies to all discharges, including discharges from both point and nonpoint sources, but shall not apply to natural phenomena not brought about or exacerbated by human activity.

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(C) The Groundwater Enforcement Ordinance applies to all persons holding or claiming an interest in, possessing, holding over upon, entering upon, operating, or otherwise using any property that in some way affects the Hopi Tribal Groundwater.

(D) This Groundwater Enforcement Ordinance is enacted in addition to, and not in replacement of, the Hopi Tribe Water Code. The Hopi Tribe Water Code prohibits the degradation of any Hopi Tribal Groundwater and, thus, such prohibition predates this Groundwater Enforcement Ordinance and, thus, has already been in effect and any persons holding or claiming an interest in, possessing, holding over upon, entering upon, operating, or otherwise using property that in some way affects the Hopi Tribal Groundwater are already under a duty to prevent the degradation of the Hopi Tribal Groundwater. Nothing contained in this Ordinance shall be construed to diminish, limit, or otherwise adversely affect the requirements of the Hopi Tribe Water Code.

Section 1.03 Severability

If any provision of this Ordinance, or its application to any person or class of persons, or to any groundwater or to any circumstances, is held invalid for any reason by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 1.04 Short Title

This ordinance shall be known and may be cited as the "Hopi Tribal Groundwater Enforcement Ordinance."

CHAPTER 2
PROHIBITIONS, UNLAWFUL ACTS; PENALTIES, DAMAGES

Section 2.00 Prohibition on Degradation of Hopi Tribal Groundwater

No person shall contaminate, threaten to contaminate, or trespass in any manner upon Hopi Tribal Groundwater. All existing uses of Hopi Tribal Groundwater shall be protected; that is, the level of water quality necessary to maintain those uses is maintained and any such degradation is prohibited.

Section 2.01 Unlawful Acts

It shall be unlawful to contaminate, threaten to contaminate, or otherwise trespass upon Hopi Tribal Groundwater or cause a violation of Hopi Water Quality Standards in violation of Section 2.00 of this Ordinance. Each day that a person shall so violate Section 2.00 of this Ordinance shall constitute a separate violation. Each violation with

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respect to (1) a separate point source or nonpoint source and (2) a separate discharge of contaminants to the groundwater shall constitute a separate violation.

Section 2.02 Civil Penalties

(A) Any person who violates any provision of Section 2.01 of this Ordinance shall be subject to a civil penalty not to exceed $27,500.00 for each violation per day.

(B) In determining the amount of a civil penalty, the Director or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, any history of such violations, any good-faith efforts to comply with applicable requirements, and such other factors as justice may require.

Section 2.03 Damages

(A) Any person who violates any provision of Section 2.01 of this Ordinance shall be liable to the Hopi Tribe for all damages proximately caused by such violation.

(B) Damages proximately caused by a violation shall be determined by the Director or the court, as the case may be, based upon:

1. the higher of the economic benefit to the violator or the detriment to the Hopi Tribe (including, but not limited to, lost opportunity costs);

2. the costs of enforcement (including, but not limited to, costs associated with investigation of violations and reasonable attorney and expert witness fees and costs);

3. the cost of any response action taken or ordered by the Director, or his designee, to restore the groundwater to a point of compliance with the Hopi Water Quality Standards;

4. the reasonable cost of a damage assessment; and

5. all other consequential or special damages proximately flowing from the violation (including, but not limited to, compensation for the interim loss of groundwater pending recovery and replacement water supply systems if such violation of Section 2.01 contaminates or threatens to contaminate a public water supply system).

Section 2.04 Criminal Penalties

(A) A person who is alleged to have knowingly violated this Groundwater Enforcement Ordinance may be prosecuted for the commission of a crime.

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(B) Violation of this Groundwater Enforcement Ordinance is a misdemeanor and may be punished by imprisonment of not more than thirty (30) days.

CHAPTER 3
ENFORCEMENT

Section 3.00 Information and Investigation

(A) Any person may provide information to the Director in writing concerning facts which indicate the contamination, threatened contamination, or a trespass upon Hopi Tribal Groundwater.

(B) Upon receipt of information indicating the contamination, threatened contamination, or a trespass upon Hopi Tribal Groundwater, the Director shall:

1. Notify such Villages whose drinking water supply is or may be affected by the contamination, threatened contamination, or a trespass upon Hopi Tribal Groundwater; and

2. Undertake such investigation as may be necessary to determine whether and how to proceed to protect and restore the Hopi Tribal Groundwater.

(C) The Director, or his or her designee, may notify any divisions, departments, and programs of the Hopi Tribal Government, which, in the Director's discretion, need to be informed of contamination, threatened contamination or a trespass upon Hopi Tribal Groundwater.

(D) The Director may require any person who has or may have information relevant to his or her investigation into the potential contamination, threat of contamination, or trespass upon Hopi Tribal Groundwater to furnish, upon reasonable notice, information or documents relating to such matter. In addition, upon reasonable notice, such person shall grant the Director or his or her designee access at all reasonable times to the property at issue to inspect and copy all documents or records relating to such matters or copy and furnish such documents or records at the option and expense of such person.

(E) The Director, or his or her designee, may enter any property at any time during normal business hours, and at other reasonable times, to inspect, investigate, or monitor activities which in the Director's judgment may be contaminating or threatening to contaminate, or trespass upon Hopi Tribal Groundwater.

(F) The Director, of his or her designee, has the authority to collect samples of soil, groundwater, or other materials and take any other invasive investigatory actions, which in the Director's sole discretion are necessary to determine whether

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contamination, threat of contamination or trespass upon Hopi Tribal Groundwater has occurred.

(G) If, after an inspection by the Director, the Director finds that contamination, threatened contamination, or a trespass upon Hopi Tribal Groundwater is occurring or has occurred and poses an immediate hazard to the public health or safety to the Hopi Tribal Groundwater, the Director may take immediate action necessary to prevent or stop the contamination or threatened contamination, protect the public, and mitigate any damage to Hopi Tribal Groundwater, including taking any steps to remove and/or confiscate any potential sources of contamination.

(H) The Director shall consult with Villages whose drinking water supply is or may be affected by the contamination, threatened contamination, or a trespass upon groundwater prior to determining how to proceed when the Director has determined that the Hopi Tribal Groundwater has been impacted.

(I) Any costs or fees incurred by the Director of his or her designee in carrying out actions under this Section must be paid by the person who contaminated or threatened to contaminate or trespassed upon Hopi Tribal Groundwater as provided for in Section 3.03.

(J) The Director of the Hopi Tribe's Water Resources Program shall have the authority to designate one or more employees of the Hopi Water Resources Program as his designees for purposes of implementing this ordinance and taking authorized investigative actions pursuant to this Ordinance.

Section 3.01 Enforcement

Whenever, on the basis of information available to the Director, the Director finds that any person has caused a violation of any provision of Sections 2.00 or 2.01 of this Ordinance, the Director may take any of the following actions or combination of actions:

(A) Issue a Notice of Trespass to Hopi Tribal Groundwater and Order to Comply in accordance with Section 3.02 of this Ordinance;

(B) Issue a Notice of Assessment of Penalty and Damages in accordance with Section 3.03 of this Ordinance;

(C) Request the Hopi Tribe's General Counsel to bring a civil action in accordance with Section 3.10 of this Ordinance.

The Director of the Hopi Tribe's Water Resources Program shall have the authority to designate one or more employees of the Hopi Water Resources Program as his

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designees for purposes of implementing this ordinance and taking authorized enforcement actions pursuant to this Ordinance.

Section 3.02 Notice of Trespass to Hopi Tribal Groundwater and Order to Comply

(A) A Notice of Trespass to Hopi Tribal Groundwater and Order to Comply shall be in writing and shall identify the person who is contaminating, threatening to contaminate, or trespassing upon Hopi Tribal Groundwater, the location and date of the contamination, threatened contamination or trespass upon Hopi Tribal Groundwater, and shall contain a short statement of facts indicating the nature and circumstances of the contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater.

(B) The notice and order shall specify what action shall be taken by the person who has contaminated, threatened to contaminate, or trespassed upon Hopi Tribal Groundwater. Action required may include:

1. Halting of discharges from point sources and/or nonpoint sources;
2. Undertaking an investigation;
3. Requiring access to property for sampling and other investigation;
4. Paying all related attorneys and expert witness fees and costs;
5. Remediating any groundwater degradation and bringing affected Hopi Tribal Groundwater back into compliance with the Hopi Water Quality Standards;
6. Complying with the terms, conditions, covenants or restrictions of any applicable laws, regulations, or permit; and
7. Such other action as may be necessary to cure a violation.

(C) The notice and order shall specify a reasonable period of time within which to comply.

(D) The notice and order shall advise the person identified therein of the rights available under Sections 3.07, 3.08, and 3.09 of this Ordinance.

(E) The notice and order shall be served upon the person identified in the notice in accordance with the provisions of Rule 2 of the Hopi Rules of Civil Procedure, or as otherwise specified in an applicable agreement or permit.

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(F) Nothing in this section shall prohibit the assessment of penalties and/or damages for contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater occurring prior to service of a notice and order or prior to the completion of any compliance period provided for by a notice or order.

Section 3.03 Notice of Assessment of Penalty and Damages.

(A) A Notice of Assessment of Penalty and Damages may be served with a Notice of Trespass to Hopi Tribal Groundwater and Order to Comply or at any time thereafter.

(B) The Notice of Assessment of Penalty and Damages shall be in writing and shall identify the person who contaminated, threatened contamination, or trespassed upon Hopi Tribal Groundwater, the location and date of the contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater, and shall contain a short statement of facts indicating the nature and circumstances of the contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater.

(C) The Notice shall specify:

1. the amount of penalties assessed in accordance with Section 2.02 of this Ordinance;

2. the amount of damages assessed in accordance with Section 2.03 of this Ordinance;

3. the amount of attorneys' and experts' fees and costs; and

4. the time period for which assessment is made.

(D) Each item of assessment of penalty, damages, fees and/or costs shall reference the provisions of this Ordinance, which govern the assessment, and shall be accompanied by a short description of the method the Director used to determine the amount of said assessment.

(E) The Notice shall specify the date payment is due to the Tribe and shall recite the provisions of subsections (A), (B) and (C) of Section 3.04 of this Ordinance.

(F) The Notice shall advise the person identified therein of the rights available under Sections 3.07, 3.08, and 3.09 of this Ordinance.

(G) The Notice shall be served upon the person identified in the Notice in the same manner as a summons and complaint pursuant to the Hopi Rules of Civil Procedure, or as otherwise specified in an applicable permit or agreement.

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Section 3.04 Payment of Penalties, Damages, Fees, and Costs

(A) Penalties, damages, costs and fees assessed pursuant to Section 2.02 and/or 2.03 of this Ordinance shall be due and payable upon receipt of notice thereof and shall become delinquent thirty (30) calendar days thereafter.

(B) Payments shall be made by certified check payable to the order of the Hopi Tribe.

(C) Interest on any delinquent payment of penalties, damages, costs and fees shall accrue from the date such payment becomes delinquent pursuant to Section 3.04(A). Said interest shall be assessed at the rate of two percent (2%) per month compounded until said assessment is paid or otherwise discharged.

(D) Monies collected through payment of penalties, damages, costs and fees, together with any interest thereon, shall be deposited in the Hopi Tribe's Groundwater Enforcement Fund.

(E) Hopi Tribal Groundwater Enforcement Fund

1. A Hopi Tribal Groundwater Enforcement Fund is hereby established.

2. The Hopi Tribal Groundwater Enforcement Fund will be comprised of proceeds received from penalties, damages, costs and fees assessed pursuant to Section 2.02 and/or 2.03 of this Ordinance.

3. Expenditures may be allocated from the Hopi Tribal Groundwater Enforcement Fund only for construction, repair, operation, or maintenance of measures to protect Hopi Tribal Groundwater consistent with the Hopi Tribe Water Code or otherwise in accordance with this Ordinance.

4. Expenditures from the Hopi Tribal Groundwater Enforcement Fund shall be administered and managed by the Hopi Tribal Water Resources Program. Annual Expenditure reports shall be submitted to Tribal Council for their review.

Section 3.05 Notice to Villages, Divisions, Departments and Programs

The Director shall deliver a copy of the Notice of Trespass to Hopi Tribal Groundwater and Order to Comply and the Notice of Assessment of Penalty and Damages to:

(A) the Office of the Chairman of the Hopi Tribal Council (which shall provide copies to the other members of the Hopi Tribal Council);

(B) the Office of the General Counsel of the Hopi Tribe;

(C) the Hopi Water Resources Program;

(D) the Hopi Resources Enforcement Services;

(E) the division, department or program that issued any related agreement or permit; and

(F) any Village whose drinking water supply is or may be affected by the contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater.

Section 3.06 Administrative Record

(A) The Director shall be responsible for compiling an Administrative Record for each Notice of Trespass to Hopi Tribal Groundwater and Order to Comply and Notice of Assessment of Penalty and Damage.

(B) Such record shall consist of any and all information, data, evidence, or report that the Director relied upon when issuing the Notice of Trespass to Hopi Tribal Groundwater and Order to Comply, or Notice of Assessment of Penalty and Damages.

(C) The Administrative Record shall include any Notices of Appeal and any documents submitted with such notice pursuant to Section 3.07 of this Ordinance, including any reports supporting such appeal.

(D) Such record may be reviewed by any member of the public upon proper request. All reasonable costs associated with complying with such request shall be paid by the person making such request.

Section 3.07 Appeals

(A) Any person who receives a Notice of Trespass to Hopi Tribal Groundwater and Order to Comply or Notice of Assessment of Penalty and Damages pursuant to Section 3.02 or 3.03 of this Ordinance may appeal by filing with the Director a Notice of Appeal within fifteen (15) calendar days of receipt of such Notice.

(B) The Notice of Appeal shall be in writing and shall:

1. identify the person to whom notice is addressed, the location and date at issue, and shall contain a short statement of facts indicating the nature and circumstances of the contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater;

2. specify the Notice or Order being appealed;

3. specify the legal or factual basis for the appeal; and

4. include documents, reports or affidavits from experts or witnesses in support of the party's position on appeal.

(C) Upon the receipt of a Notice of Appeal, the Director shall refer the appeal to the Chairman of the Hopi Tribal Council, who shall, within ten (10) calendar days, assign the appeal to a qualified and impartial hearing officer and notify the parties of the name of that hearing officer and the telephone number and address where he or she can be reached.

Section 3.08 Stay Upon Appeal

(A) The filing of a Notice of Appeal with the Director shall not stay the enforcement of the Notice of Trespass to Hopi Tribal Groundwater and Order to Comply or Notice of Assessment of Penalties and Damages. However, an appellant may request the hearing officer to grant a stay of enforcement any time after filing the Notice of Appeal but before the issuance of a decision by the hearing officer. A stay may be granted by the hearing officer where justice so requires, and upon such terms and conditions as the hearing officer may find just and proper. An order granting a stay shall be in writing and shall state the grounds therefor and the terms and conditions thereof.

(B) A stay shall not be granted if the contamination, threatened contamination, or trespass upon Hopi Tribal Groundwater poses a substantial and imminent threat to a drinking water supply source.

(C) An order granting or denying a stay, and any terms and conditions thereof, shall be final and may be appealed to the Hopi Tribal Court or other court of competent jurisdiction within fifteen (15) calendar days of its issuance, pursuant to Section 3.10 of this Ordinance.

Section 3.09 Hearing and Decision

(A) The Hearing Officer shall hear the appeal within thirty (30) calendar days of the date the Hearing Officer was assigned to the appeal by the Chairman pursuant to Section 3.07(C). Upon request of a party, a delay of not more than fifteen (15) calendar days may be granted.

(B) Notice shall be afforded to the parties at least ten (10) calendar days in advance of the date set for hearing. Each party at the hearing may be represented by counsel. Except with respect to a challenge to a response action, each party shall have the opportunity to provide written submissions, subpoena witnesses, present evidence, and examine witnesses. Notices of subpoenas, written

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submissions, lists of witnesses and exhibits must be received by the Hearing Officer and all other parties to the hearing at least five (5) calendar days in advance of the hearing.

(C) Review of any issues concerning the adequacy of any response action taken or ordered by the Director, or his designee, including, but not limited to, the actions taken or ordered by the Director pursuant to sections 2.03(B)(3), 3.00(B)(2), 3.00(E), 3.00(F), 3.00(G) shall be limited to the Administrative Record. The Hearing Officer shall uphold the Director's, or his designee's, decision with regards to any response action unless the objecting party can demonstrate, on the Administrative Record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(D) Within twenty (20) calendar days after the hearing, the Hearing Officer shall issue a written decision stating the grounds therefor. The Hearing Officer may uphold, reverse, or modify the decision of the Director or any part thereof, but may not grant any other relief.

(E) The decisions of the Hearing Officer shall be final and may be appealed by any party to the Hopi Tribal Court or other court of competent jurisdiction pursuant to Section 3.10 of this Ordinance.

Section 3.10 Judicial Review and Enforcement

(A) The written decision of the Hearing Officer made pursuant to Sections 3.08 and 3.09 of this Ordinance may be appealed by any party within thirty (30) calendar days of its issuance to the Hopi Tribal Court or other court of competent jurisdiction.

(B) All appeals to the Hopi Tribal Court or other court of competent jurisdiction shall be made in accordance with the Hopi Rules of Civil Procedure, or other applicable rules.

(C) Judicial review of any issues concerning the adequacy of any response action taken or ordered by the Director, or his designee, including, but not limited to, the actions taken or ordered by the Director pursuant to sections 2.03(B)(3), 3.00(B)(2), 3.00(E), 3.00(F), 3.00(G), shall be limited to the Administrative Record. The court shall uphold the Director's, or his designee's, decision with regards to any response action unless the objecting party can demonstrate, on the Administrative Record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

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(D) At the request of the Director or otherwise, the General Counsel of the Hopi Tribe may bring a civil action in any court of competent jurisdiction to enjoin any contamination, threatened contamination or trespass upon Hopi Tribal Groundwater or to obtain payment or enforcement of any assessment of damages, penalties, costs and/or fees, or for such other relief as may be authorized or allowed under any applicable law.

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