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11
12 **THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 The Hopi Tribe; The United Mine Workers of
America; and Peabody Western Coal
15 Company,

16 Plaintiffs,

17 v.

18 Central Arizona Water Conservation District
and the Gila River Indian Community,

19 Defendants.
20
21
22

CASE NO. 2:18-cv-01337

**JOINT RESPONSE TO THE
CENTRAL ARIZONA WATER
CONSERVATION DISTRICT'S
REQUEST FOR JUDICIAL
NOTICE OF PUBLIC
RECORDS IN SUPPORT OF
ITS MOTION TO DISMISS
[DOC. 23]**

23 The Hopi Tribe, the United Mine Workers of America and Peabody Western Coal
24 Company (collectively, "Plaintiffs") hereby file this joint response to the Central Arizona
25 Water Conservation District's ("CAWCD") Request for Judicial Notice of Public Records
26 in Support of Its Motion to Dismiss [Doc. 23] (the "Request"). Plaintiffs do not oppose
27 the Court taking judicial notice of the four documents attached to the Request solely in
28 connection with the Court's consideration of the CAWCD's Motion to Dismiss [Doc. 22]

and the Gila River Indian Community's (collectively, with CAWCD, "Defendants") Motion to Dismiss [Doc. 36] subject to three conditions. *First*, granting the Request, "will *not* convert" Defendants' Motions to Dismiss "into one[s] for summary judgment." Request at 2. *Second*, granting the Request will not convert Defendants' facial challenges to subject matter jurisdiction in their Motions to Dismiss into factual challenges. *Third*, Plaintiffs do not agree with CAWCD's characterizations of the four documents attached to the Request. They are written documents that speak for themselves, to which Plaintiffs refer for a true and complete statement of their contents.

Dated: September 18, 2018.

By: /s/ Charles F. Donnelly (w/ permission) By: /s/ Ethan G. Shenkman (w/ permission)

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF System for filing and transmission to counsel of record registered for electronic filing.

/s/ Eric E. Lynch