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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE

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

Civil Case No. CV6417-300

ORDER DENYING REQUEST FOR  
PARTIAL STAY

CONTESTED CASE NAME: *In re Navajo Nation*

HSR INVOLVED: Navajo Reservation Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: A partial stay will not be granted for the adjudication of federal reserved water rights for use on land to which the Navajo Nation and the San Juan Southern Paiute Tribe dispute beneficial ownership. The United States, the Navajo Nation, and the Paiute Tribe shall file a joint report on **January 10, 2022**.

NUMBER OF PAGES: 7

DATE OF FILING: November 2, 2021

1 The San Juan Southern Paiute Tribe (“Paiute Tribe”), a federally recognized Indian Tribe <sup>1</sup>  
2 proposed a multi-step procedure to determine federal reserved water rights for the Paiute Tribe and  
3 to resolve the Paiute Tribe’s objections filed in June 2020 (“2020 Objections”) to the hydrographic  
4 survey report prepared by Arizona Department of Water Resources (“ADWR”) that analyzed the  
5 federal reserved water rights claimed by the Navajo Nation and the United States on behalf of the  
6 Navajo Nation. The proposed plan consists of five steps.  
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- 8 1. A stay would be entered in this contested case with respect to claims for federal reserved  
9 water rights for use on that land claimed by the Paiute Tribe that was formally made a part  
10 of the Navajo Reservation under an act passed by Congress on June 14, 1934, 48 Stat. 960  
11 (“the 1934 Act”).  
12
- 13 2. The Paiute Tribe would be given time to prepare and file an amended statement of claimant  
14 for water rights based on its asserted property interests to the disputed land.  
15
- 16 3. The Arizona Department of Water Resources would prepare and issue a hydrographic  
17 survey report (the “Proposed HSR”) that analyzes the Paiute Tribe’s claims.  
18
- 19 4. A contested case would be initiated to adjudicate the federal reserved rights claimed by  
20 the Paiute Tribe and the objections to the Proposed HSR.  
21
- 22 5. A second contested case would be initiated to consolidate in a single case the claims stayed  
23 in this case and the claims asserted in the proposed new case for the Paiute Tribe that  
24 concern water rights for the same land.  
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27 <sup>1</sup> *Masayesva for & on Behalf of Hopi Indian Tribe v. Zah*, 792 F. Supp. 1178, 1188 (D. Ariz. 1992)  
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1           The legal situation that necessitates consideration of the proposed procedure involves the  
2 United States, the Navajo Nation, and the Paiute Tribe and an unresolved land dispute. It, as first  
3 described in this case in the 2020 Objection, arises from the 1934 Act that “described the external  
4 boundaries of the Navajo Reservation, and conveyed an equitable interest in certain of these lands  
5 to the Navajo Nation and ‘such other Indians as may already be located thereon.’” *Masayesva for*  
6 *& on Behalf of Hopi Indian Tribe v. Zah*, 816 F. Supp. 1387, 1393 (D. Ariz. 1992), *aff’d in part,*  
7 *rev’d in part sub nom. Masayesva v. Zah*, 65 F.3d 1445 (9th Cir. 1995), *as amended on denial of*  
8 *reh’g and reh’g en banc* (Dec. 5, 1995). (The land described in the 1934 Act is referred to as “the  
9 1934 Act Reservation”). The Paiute Tribe are included in the “other Indians” referenced in the 1934  
10 Act. The Navajo Nation agrees that the 1934 Act set aside lands in the 1934 Act Reservation  
11 explicitly for the Navajo Nation and impliedly for the Paiute Tribe. Navajo Response at 2. It does  
12 not agree as to the specific rights that the Navajo Nation and the Paiute Tribe hold in the 1934 Act  
13 Reservation.  
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16           Pursuant to the Navajo-Hopi Settlement Act of 1975, P.L. 93-531, 88 Stat. 1712, the Paiute  
17 Tribe and the Navajo Nation litigated their dispute before the federal district court. The district court  
18 made findings of facts regarding their respective interests to contested areas of the 1934 Act  
19 Reservation but held that it did not have jurisdiction to partition land to the Paiute Tribe or to create  
20 a reservation for the Paiute Tribe. *Masayesva For & On Behalf of Hopi Indian Tribe v. Zah For &*  
21 *On Behalf of Navajo Indian Tribe*, 794 F. Supp. 899, 902 (D. Ariz. 1992). The court held that  
22 “Congress has defined the Paiute Tribe’s exclusive remedy as the allotment of parcels of land to  
23 Paiute individuals, which precludes the judicial creation of a different remedy.” *Masayesva v. Zah*,  
24 816 F. Supp. at 1429. The parties appealed the decision to the Ninth Circuit Court of Appeals.  
25 During the almost three decades since the district court entered its decision, the Ninth Circuit has not  
26 entered a decision regarding the claims of the Navajo Nation and the Paiute Tribe because, at the  
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1 joint request of the Paiute Tribe and the Navajo Nation, the case has been stayed and no final action  
2 to partition the beneficial interests in the 1934 Act Reservation has occurred.

3 As all parties recognize, the adjudication court does not have either the jurisdiction or the  
4 authority to resolve this longstanding problem of the United States, the Navajo Nation, and the Paiute  
5 Tribe concerning beneficial interests in federal land. Due to the unfinished litigation, appropriate  
6 procedures must now be considered to assure that the Paiute Tribe's claims are properly adjudicated  
7 and to continue the adjudication of this case, in which the parties have already invested significant  
8 time and resources during the past five years, on a reasonable schedule. No party seeks to stay this  
9 contested case in its entirety. Further, no dispute exists that federal reserved water rights for the  
10 benefit of the Navajo Nation may be adjudicated for the land to which the Paiute Tribe asserts no  
11 claim pursuant to Section 8(a) of the 1974 Act. In addition, all parties support the continued  
12 adjudication of the claims for federal reserved water rights by and for the Navajo Nation as currently  
13 scheduled.  
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16 The dispute that exists among the parties concerns the geographical scope of the continued  
17 adjudication. As outlined above, the Paiute Tribe proposes that the geographic scope of the case  
18 should be limited by staying the adjudication of the claims for federal reserved water rights for land  
19 in the 1934 Act Reservation in dispute. The amount of land in dispute, according to the  
20 representations made by the Paiute Tribe, is at least 26,000 acres but could extend to 56,000 acres.  
21 In *Masayesva v. Zah*, the district court made specific findings about the location of the land that the  
22 Paiute Tribe used for farming and grazing but did not provide a total amount of acreage that was  
23 either exclusively or jointly used by the Paiute Tribe. The Paiute Tribe represented that it appealed  
24 the amount of acreage on appeal as too little.  
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26 More fundamental than the identification of the land, however, is the absence of a reservation  
27 for the Paiute Tribe. Although the Paiute Tribe argues that it has an equitable property interest in  
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1 certain portions of the 1934 Act Reservation, the district court held that Congress did not authorize  
2 a reservation for the Paiute Tribe. Instead, Congress authorized the allotment of land to individual  
3 Paiute individuals. 25 U.S.C. 640d-8. The Navajo Nation explicitly and the Paiute Tribe, implicitly,  
4 advised that the partition of the 1934 Act Reservation to create a separate reservation for the Paiute  
5 Tribe requires an act of Congress. Thus, a serious question exists as to the authority of the Paiute  
6 Tribe to assert claims on behalf of the Paiute Tribe to a beneficial interest in a federal reserved water  
7 right to land in which individual Paiute allottees rather than the Paiute Tribe may have a beneficial  
8 interest.  
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10 Because the United States, the Navajo Nation, and the Paiute Tribe have not concluded their  
11 land dispute, the proposal laid out by the Paiute Tribe cannot be adopted. As counsel for the Paiute  
12 Tribe properly recognized in formulating the proposal, the first step in adjudicating federal reserved  
13 water right on behalf of the Paiute Tribe is the filing of a statement of claimant that clearly identifies  
14 its claims. At this time, an order to the Paiute Tribe to file an amended Statement of Claimant on  
15 behalf of the Paiute Tribe would be premature. Similarly, the second step in the proposal should not  
16 be taken given the uncertainty that exists. Currently ADWR's resources are dedicated to a number  
17 of pending projects, and it would not be reasonable to request that ADWR stretch its resources to  
18 generate the Proposed HSR where even minimum information such as a legal description is not  
19 available. This decision to not proceed forward with the Proposed HSR and a separate contested  
20 case for the Paiute Tribe is based on the current situation and will be re-examined based on the facts  
21 that exist when the United States, the Navajo Nation, and the Paiute Tribe finalize the litigation in  
22 the federal court, obtain the requisite Congressional action, and advise the adjudication court that the  
23 parties agree the dispute is resolved.  
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26 As acknowledged by the parties, the extended stay in the Ninth Circuit and the absence of  
27 action to obtain Congressional approval of a partition of the 1934 Act creates a strong probability  
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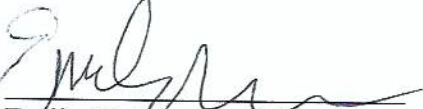
1 that procedural issues will arise again during this litigation of this case. The unresolved dispute also  
2 creates a complicated situation in which a decree will be entered. If the United States, the Navajo  
3 Nation, and the Paiute Tribe do not resolve the dispute prior to the completion of the case, any decree  
4 issued to the United States on behalf of the Navajo Nation will be clouded and may be fraught with  
5 uncertainty. In its response the United States contemplated that as many as three separate decrees  
6 may be necessary. United States Response at 5. Consequently, the language, terms, and conditions  
7 that may attach to the decree present yet another issue that will have to be resolved in this case. The  
8 continued absence of a definitive solution to a problem that has been pending for decades may also  
9 require, in addition to time and resources devoted to procedural hurdles, that the parties to engage in  
10 duplicative efforts if it becomes necessary to adjudicate water rights for the same land twice.  
11 Notwithstanding the possible consequences of moving forward as previously scheduled, the partial  
12 stay will not be granted because of greater harm and prejudice to all parties that would result from  
13 an extended stay of this adjudication tied to a final resolution of dispute over beneficial interests in  
14 federal land.  
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16  
17 **IT IS ORDERED** denying a stay of this case in whole or in part to adjudicate federal  
18 reserved water rights for use on the federal land in the 1934 Act Reservation to which the Navajo  
19 Nation and the Paiute Tribe claim a beneficial right.  
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21 **IT IS FURTHER ORDERED** that the United States, the Navajo Nation, and the Paiute  
22 Tribe shall file a joint report on **January 10, 2022** setting forth the status of the case pending in  
23 the Ninth Circuit and any action anticipated with respect to legislation to be introduced in Congress  
24 in 2022.  
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26   
27 Susan Ward Harris  
28 Special Master

1 On November 2, 2021, the original of the foregoing was  
2 delivered to the Clerk of the Apache County Superior Court  
3 for filing and distributing a copy to all persons listed on the  
Court-approved mailing list for this contested case.

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Emily Natale

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