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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

CV 6417-203

ORDER GRANTING IN PART AND
DENYING IN PART THE LCR
COALITION'S MOTIONS FOR PARTIAL
SUMMARY JUDGMENT

Contested Case Name: *In re Hopi Reservation HSR*

HSR Involved: *Hopi Reservation*

Descriptive Summary: Order entered on two motions for partial summary judgment
filed by the LCR Coalition.

Number of Pages: 15

Date of Filing: August 16, 2018

The LCR Coalition filed a motion for partial summary judgment seeking a conclusion of
law that prior appropriation does not provide a legal basis for a water right for or on behalf of

1 the Hopi Tribe. *LCR Coalition's Motion for Partial Summary Judgment Regarding the Hopi*
2 *Tribe's Claim to a Prior Appropriative Water Rights for the Hopi Reservation, Including*
3 *Moenkopi Island*, filed April 27, 2018 ("Motion I"). It filed a second motion arguing that if
4 members of the Hopi Tribe who beneficially own allotments of land located in Moenkopi Island
5 have water rights based on continuous beneficial use, those rights cannot be claimed by the
6 Hopi Tribe. *LCR Coalition's Motion for Partial Summary Judgment Regarding the Hopi*
7 *Tribe's Claim to a Prior Appropriative Water Rights for the Hopi Reservation, Including*
8 *Moenkopi Island*, filed April 27, 2018 ("Motion II"). The LCR Coalition claims in both
9 motions that a priority date of time immemorial does not attach to a water right based on prior
10 appropriation. Arizona State Land Department and the City of Flagstaff joined Motion I and
11 Motion II in whole and Salt River Project Agricultural Improvement and Power District and Salt
12 River Valley Water Users' Association joined in part.

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15 Motions I and II put at issue the validity of a specific legal basis for a water right, i.e.,
16 prior appropriation and a priority date of time immemorial. The Motions will not be used as a
17 broader vehicle to decide arguments made in the responses to the Motions concerning the
18 relevance of any evidence offered to quantify water rights based on federal law or
19 quantification of water rights asserted on behalf of allottees of land in Moenkopi Island. In
20 addition, no decision is made with respect to the LCR Coalition's contention that historical
21 state water rights held by a claimant preempt that claimant's federal water rights. This issue
22 can be more appropriately resolved in post-trial proceedings.
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1 **I. Standard for Summary Judgment**

2 The LCR Coalition bears the burden of showing that no genuine issue of material fact exists
3 and that it is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a). Limitations exist on
4 the exercise of discretion by the trier of fact in granting motions, especially if the motion is one
5 for summary judgment. *Schwab v. Ames Construction*, 207 Ariz. 56, ¶15, 83 P.3d 56 (App.
6 2004). The court must consider the entire record before deciding a summary judgment motion
7 and must view the evidence and inferences in a light most favorable to the party opposing the
8 motion. *Chanay v. Chittenden*, 115 Ariz. 32, 563 P. 2d 287 (1977).
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10 **II. Federal Law**

11 A water right must have a legal basis. Under the federal reserved water rights doctrine,
12 the United States has a right to water when it withdraws its land from the public domain and
13 reserves it for a federal purpose. *Cappaert v. United States*, 426 U.S. 128, 138 (1976). Under
14 certain circumstances, aboriginal title may provide a basis for Native Americans to claim water
15 rights. In its Fifth Amended Statement of Claimant filed April 19, 2018 (“Hopi SOC”), the
16 Hopi Tribe claimed a “time immemorial priority date for Moenkopi Island on the basis of its
17 actual, continuous beneficial use of water on lands occupied by the Hopi Tribe and its
18 ancestors.” Hopi SOC at 18. Thus, the question that must be resolved is whether actual,
19 continuous beneficial use of water constitutes a legal basis for a water right for Moenkopi Island
20 under federal law.
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23 The LCR Coalition argues that no legal basis exists under federal law for a prior
24 appropriative water right. The Hopi Tribe contends that the Supreme Court’s decision in *United*
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1 *States v. Winans*, 198 U.S. 371 (1905) and the Ninth Circuit Court of Appeals decision in
2 *United States v. Adiar*, 723 F. 2d 1394 (9th Cir. 1984) provide a basis under federal law for a
3 water right based on prior appropriation. *Hopi Tribe's Consolidated Response to LCR*
4 *Coalition's Motions for Partial Summary Judgment*, filed June 6, 2018 at 13 (“Hopi
5 Response”).

6 At issue in *Winans* was whether members of the Yakima Nation had fishing rights in the
7 Columbia River. Pursuant to an 1859 treaty between the Yakima Nation and the United States,
8 the Yakima Nation generally agreed to “relinquish and convey to the United States all their
9 right, title, and interest in and to the lands and country occupied and claimed by them”. *Winans*,
10 198 U.S. at 377. The parties also agreed that:

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12 The exclusive right of taking fish in all the streams where running through or
13 bordering said reservation is further secured to said confederated tribes and
14 bands of Indians, as also the right of taking fish at all usual and accustomed
places.

15 *Id.* at 378.

16 The court constructed an analytical framework to interpret the terms of the treaty that included a
17 general release and transfer of aboriginal title and specific provisions governing fishing rights:

18 New conditions came into existence, to which those rights had to be
19 accommodated. Only a limitation of them, however, was necessary and
20 intended, not a taking away. In other words the treaty was not a grant of
rights to the Indians, but a grant of rights from them, - a reservation of
21 those not granted.

22 *Id.* at 381. Based on this language, the court found that the Yakima Nation ceded its aboriginal
23 title to the United States subject to an exception in which the Yakima Nation reserved its fishing
24 rights and continued access to fishing locations that were part of the bundle of rights included in

1 its relinquished aboriginal title. The *Winans* right depended on both an aboriginal right existing
2 at the time the treaty was signed and a provision in the treaty that reserved an aboriginal right to
3 the Yakima Nation thereby preserving its rights to the fishing places.

4 As in *Winans*, the court in *United States v. Adair*, 723 F. 2d 1394 (9th Cir. 1984)
5 determined water rights with respect to land in which a Native American tribe no longer had any
6 interest or aboriginal title. In 1864 the Klamath entered into a treaty with the United States. It
7 relinquished its aboriginal title to 12 million acres of land in return for a reservation of a portion
8 of that land in the Williamson River watershed to which it held aboriginal title. The treaty gave
9 the Klamath Tribe the exclusive right to hunt, fish, and gather on the reserved land. At the time
10 the case was initiated, the United States held title to much of the former reservation land
11 although the Klamath Tribe no longer did. Resolved in that case was whether the exclusive
12 rights to hunt and fish contained in the treaty “carry with them an implied reservation of water
13 rights.” *Id.* at 1407. The court answered in the affirmative, expressly finding that Article I of
14 the 1864 Treaty protected the hunting and fishing rights. The court found an implied water right
15 with a priority date of time immemorial based on the same combination of factors used in
16 *Winans*: the existence of an aboriginal right ceded at the time the treaty was signed and a treaty
17 provision that reserved an aboriginal right to the tribe. The *Winans* and *Adair* decisions
18 engaged in an analysis of the specific terms of an agreement between two parties to effectuate
19 the intent of the parties where the contracting tribe held aboriginal title to the land involved in
20 the negotiation. Neither case supports the proposition that a water right can be established
21 under federal law based solely on continuous, beneficial use of water.
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1 Applying the two-step analysis used in the federal cases cited above to the facts in this
2 case, the first step is to decide whether the Hopi Tribe had aboriginal title to the land in the Hopi
3 Reservation including Moenkopi Island at the times the United States reserved land for the Hopi
4 Tribe. As determined by the Indian Claims Commission and addressed in *In re Hopi Priority*,
5 the Hopi Tribe had aboriginal title to land described as follows:

6 Beginning at the northeast corner of the 1882 Hopi Executive Order
7 Reservation, 110" W. Longitude and 36" 30' N. Latitude, thence due
8 south on the 110 W. Longitude to its intersection with the Pueblo Colorado
9 Wash, thence southwesterly following the Pueblo Colorado
10 Wash and the Cottonwood Wash to the Little Colorado River, thence
11 northwesterly along the Little Colorado River to its intersection with
12 111° 30' W. Longitude, thence northeasterly on a line to the
13 intersection of Navajo Creek and 111° W. Longitude, thence
14 southeasterly to the place of beginning.

15 *Hopi Tribe and Navajo Tribe v. United States*, 23 Ind. Cl. Comm. 290, Finding No. 20. See
16 also Report of the Special Master, filed April 24, 2013 at 21-24.¹ As in *Winans* and *Adair*,
17 aboriginal title was extinguished to the land for which the tribe is claiming aboriginal rights.

18 The second step is to analyze whether any rights associated with the land subject to the
19 terminated aboriginal title were reserved by the Hopi Tribe in an agreement with the United
20 States. In this case, unlike in *Winus* and *Adair*, the instrument used to create the 1882 Hopi
21 Reservation was an executive order rather than a treaty. In a determination of whether the
22 federal government has the right to reserve water rights, this is a distinction without a
23 difference. The Supreme Court has explicitly rejected the argument that an executive order

24 ¹ For purposes of this decision only, it is assumed based on Figures 2-7 and 2-13 to the Final Hopi HSR
25 that all of the land in the 1882 Reservation as well as Moenkopi Island is located within the legal description
26 provided above. No party specifically included in its Statement of Facts a fact that Moenkopi Island is located
27 within the Hopi Tribe's aboriginal land as determined by the Indian Claims Commission.

1 could not reserve federal water rights. *Arizona v. California*, 373 U.S. 546, 598 (1963)
2 (“Arizona also argues that, in any event, water rights cannot be reserved by Executive Order. . . .
3 We can give but short shrift at this late date to the argument that the reservations either of land
4 or water are invalid because they were originally set apart by the Executive.”) Reservation of
5 water rights does not depend on the form of the document, i.e., a treaty or an executive order.
6 Instead, rights reserved to an Indian tribe, if any, depend on the terms contained within the
7 document creating the tribal reservation. Neither the Hopi Tribe nor the United States points to
8 any provision in the one-paragraph 1882 Executive Order that reserved any rights to the Hopi
9 Tribe in Moenkopi Island. Moreover, the court has already determined that all aboriginal water
10 rights to the land to which aboriginal title was extinguished were likewise extinguished. *In re*
11 *Hopi Priority*, CV-6417-201, *Minute Entry*, dated January 25, 2016 at 2. Thus, no legal basis
12 exists in this case for water rights described as “appropriative federal reserved water rights
13 (*Winans* rights)”. *Hopi Response* at 8; *United States’ Consolidated Response to LCR*
14 *Coalition’s Motions for Partial Summary Judgment*, filed June 6, 2018 at 13.
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18 **III. State Law Claims**

19 The legal basis for state water rights differ from the legal basis for rights acquired
20 under federal law. *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. &*
21 *Source*, 201 Ariz. 307, 310, ¶3, 35 P.3d 68, 71 (2001) (“*Gila V*”). In Arizona, the doctrine of
22 prior appropriation provides a right to surface water. A.R.S. §45-141(A). No determination
23 was made in *In re Hopi Priority* as to whether the Hopi Tribe had water rights arising under
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1 Arizona law based on the doctrine of prior appropriation. Nor was a determination made of the
2 priority date for such state law water rights assuming they existed. *Order Denying the Hopi*
3 *Tribe’s Motion for Reconsideration*, filed August 18, 2017 at 10.

4 The United States may acquire water rights under state law. *United States v. New*
5 *Mexico*, 438 U.S. 696, 702 (1978). Here the United States asserts no claims for water rights
6 under state law on behalf of the beneficial owners of the land it holds in trust. In contrast, the
7 Hopi Tribe does assert “appropriative rights under Arizona territorial and state law.” *Hopi*
8 *Tribe’s Consolidated Response to LCR Coalition’s Motions for Partial Summary Judgment*,
9 filed June 6, 2018 at 8 (“Hopi Response”). The LCR Coalition argues that as a matter of law,
10 the Hopi Tribe could not acquire rights to water under Arizona law prior to the date that the
11 Hopi Tribe acquired vested interests in the Hopi Reservation including Moenkopi Island,
12 because it did not have a sufficient ownership or possessory interest in the land to validly
13 appropriate water.² Essentially the question of law is one of timing: did the Hopi Tribe’s rights
14 to land now included in the Hopi Reservation prior to the date it acquired a vested title to the
15 land preclude a claim for water rights under state law.
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18 In 1865, the Legislature of the territory of Arizona Territory passed the Howell Code
19 that established the doctrine of prior appropriation in Arizona. *Maricopa County Mun. Water*
20 *Conservation Dist. No. 1 v. Southwest Cotton Co.*, 39 Ariz. 65, 74-75, 4 P. 2d 369, 373 (1931),
21 *modified on denial of reh’g*, 39 Ariz. 367, 7 P.2d 254 (1932). In 1901, the court addressed the
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23 ² The LCR Coalition does not appear to contest that the Hopi Tribe could acquire water rights under state
24 law after the Hopi Tribe acquired vested title or recognized title. Motion I at 16. The Arizona statute governing
25 claims of right to withdraw water contemplates that a recognized Indian tribe may claim water rights under Arizona
law. See A.R.S. §§ 45-181, 45-482.

1 requirements necessary to obtain water right based on prior appropriation. The court held that
2 “the ownership or possession of arable and irrigable lands is distinctly stated to be a condition
3 precedent to . . . the diversion of water for the same from any river, creek, or stream of running
4 water.” *Slosser v. Salt River Valley Canal Co.*, 7 Ariz. 376, 387, 65 P. 332, 335 (1901). In
5 1935, the court undertook to define “possession” for the purpose of deciding whether two
6 individuals who farmed federal land under a mistake of fact as to their ownership could
7 appropriate water for irrigation use that would become appurtenant to land in which the
8 diverters had no right. *In re Determination of Relative Rights, to Use of Waters of Pantano*
9 *Creek in Pima Cty.*, 45 Ariz. 156, 171, 41 P.2d 228, 234 (1935).

11 The *Pantano Creek* court framed the issue as whether the diverters had sufficient
12 possession of the land to validly appropriate water. It began with the conclusion that “[a] person
13 may possess land in two manners, either with the present intent and apparent future ability to
14 acquire the ownership thereof, or else temporarily, through lease or mere occupancy, when he
15 lacks either the intention or the ability to acquire the full title for himself.” Focusing on the
16 provision in Arizona law that made diverted water appurtenant to the specific piece of land
17 irrigated, the court concluded with the finding, stated in the negative: “It would be contrary to
18 the spirit, as well as the letter of our law, to hold that it is possible for a temporary occupant of
19 lands, who has no intention or ability of acquiring a permanent title thereto to make a valid
20 appropriation of a water right which must necessarily appurtenant to that land.” *Id.* at 172. The
21 LCR Coalition cites this decision for the proposition that the absence of a fee title or the
22 immediate ability to obtain a fee title precludes a water right based on prior appropriation.
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1 Therefore, according to the LCR Coalition, the Hopi Tribe did not have the requisite rights to
2 the land to support a state water right until it had a vested interest in the land.

3 The temporal nature Hopi Tribe's use and occupancy of the land does not raise the
4 potential issues that the court envisioned could occur if a person who only briefly occupied land
5 were permitted to divert water thereby creating a water right appurtenant to the land. "No
6 Indians in this country have a longer authenticated history than the Hopis. As far back as the
7 Middle Ages the ancestors of the Hopis occupied the area between Navaho Mountain and the
8 Little Colorado River, and between the San Francisco Mountains and the Luckachukas."
9 *Healing v Jones* 210 F Supp. 125 (1962).

11 In addition to addressing the spirit of the law, the court focused on the letter of the law to
12 define possession. It based its decision on the explicit assumption that only two types of
13 possession could exist. The court did not consider a third type of possession unique to Native
14 Americans who could demonstrate actual, exclusive, continuous use and occupancy of the land
15 for a long period of time. Uninterrupted use and occupation of land by a tribe created "Indian
16 title" to all of its vast holdings. *See United States v. Klamath and Modoc Tribes*, 304 U.S. 119,
17 122-23, (1938); *see also United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 345, (1941);
18 The Supreme Court has found that aboriginal title is "considered as sacred as the fee simple of
19 the whites." *Mitchel v. United States*, 34 U.S. (9 Pet.) 711, 745, 9 L.Ed. 283 (1835); *accord*
20 *United States v. Santa Fe Pacific R. Co.*, 314 U.S. at 345, 62 S.Ct. at 251. Only the United
21 States can extinguish aboriginal title. "Aboriginal title or right is a right of exclusive use and
22 occupancy held by Natives in lands and waters used by them and their ancestors prior to
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1 assertion of sovereignty over such areas by the United States. These rights are superior to those
2 of third parties, including the states, but are subject to the paramount powers of Congress.”
3 *People of Vill. of Gambell v. Clark*, 746 F.2d 572, 574 (9th Cir. 1984); *see also Pueblo of Jemez*
4 *v. United States*, 790 F.3d 1143 (2015). In *Oneida Indian Nation of N. Y. State v. Oneida Cty.*,
5 *New York*, 414 U.S. 661, 677 (1974) the Supreme Court affirmed that “federal law now protects,
6 and has continuously protected from the time of the formation of the United States, possessory
7 rights to tribal lands, wholly apart from the application of state law principles which normally
8 and separately protect a valid right of possession.” *See also State of N.M. ex rel. Reynolds v.*
9 *Aamodt*, 618 F. Supp. 993, 1007–08 (D.N.M. 1985). Thus, based on the foregoing, a tribe
10 holding aboriginal title to land under federal law should be considered to be in possession of
11 that land for purposes of prior appropriation under state law.
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13 A decision that aboriginal title can satisfy the possession condition of prior
14 apportionment does not resolve the ownership or possession condition required by state law for
15 the claims made by the Hopi Tribe to Moenkopi Island. Assuming that the Hopi Tribe had
16 aboriginal title to all the land included in Moenkopi Island, its aboriginal title terminated in
17 1882, but Moenkopi Island did not become a part of the Hopi Reservation until 1934. Thus,
18 legal and factual issues exist regarding the effect of the termination of the aboriginal title and
19 the subsequent extent and nature of the Hopi Tribe’s use and occupancy of the land.
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21 The Hopi Tribe argues that it had sufficient possession to create a state water right after
22 the creation of the 1882 Reservation because the United States protected its rights to farm the
23 land in Moenkopi Island. It is true that during this time period, Congressional and federal
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1 judicial actions were undertaken to define the respective rights of the Hopi Tribe and the Navajo
2 Nation in land that is now known as Moenkopi Island. Indicative of the fact that the Hopi Tribe
3 had some type of right to the land under the auspices of the federal government during this
4 period, the federal district court found that one of the purposes of the Act of June 14, 1934, 48
5 Stat. 960 was to provide protection to “the rights and interests of the Hopi tribe to the land they
6 were occupying and using outside the 1882 Reservation on June 14, 1934.” *Sekaquaptewa v.*
7 *MacDonald*, 448 F. Supp. 1183, 1196 (D. Ariz. 1978), *aff’d in part, rev’d in part*, 619 F.2d 801
8 (9th Cir. 1980). The federal court ultimately approved the Hopi Tribe’s right to Moenkopi
9 Island after finding that the Hopi Tribe proved a level of occupancy greater than that required
10 for aboriginal title. *Masayesva v. Zah*, 65 F.3d 1445, 1451 (9th Cir. 1995). No conclusion as a
11 matter of law can be drawn from this decision that the Hopi Tribe had demonstrated the
12 significant level of occupancy from 1882 through 1934 because the court set 1934 as the test
13 year, not the entire time period.
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16 Where a determination is sought as a matter of law, the court “must view the facts and
17 reasonable inferences therefrom in the light most favorable to the party opposing the motion.”
18 *Andres v. Blake*, 205 Ariz. 236, 240 ¶13 (2003). Given this standard, a determination cannot
19 be made from the current record as a matter of law that the Hopi Tribe did or did not satisfy the
20 condition of ownership or possession necessary to establish a prior appropriation right under
21 state law for Moenkopi Island prior to 1934.
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23 The final question raised by the LCR Coalition with respect to state water rights is the
24 potential priority date for a right asserted under state law. Except as to rights otherwise vested,
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1 the territory of Arizona had the power to establish the right of prior appropriation and upon the
2 exercise of its authority it could grant this right to others.³ Boquillas Land & Cattle Co. v.
3 Curtis, 11 Ariz. 128, 139, 89 P. 504, 507 (1907), *aff'd*, 213 U.S. 339 (1909). Thus, a priority
4 date for a water right based on the newly adopted doctrine prior appropriation should not occur
5 before the date the legislature created the state right.
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7 **IV. Allotments**

8 In Motion II, the LCR Coalition moved for a determination that the Hopi Tribe has no
9 claim for prior appropriative water rights held by allottees or patentees.⁴ It contends that
10 allottees or the patentees would own such rights, if claimed and adjudicated, and there has been
11 no showing that the Hopi Tribe is the successor in interest to these landowners. The General
12 Allotment Act provided that land on reservations could be allotted for the exclusive use of
13 individual Indians. *Colville Confederated Tribes v. Walton*, 647 F. 2d 42, 49 (1981); *see also*
14 *Healing v. Jones*, 210 F. Supp. 125, 150 (D. Ariz. 1962), *aff'd*, 373 U.S. 758 (1963) (The
15 purpose of the allotment system is to remove lands from communal ownership and place them
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18 ³ In its *Response*, the Hopi Tribe incorporated by reference a memorandum filed in *In re Hopi Priority*
19 claiming rights based on either Spanish or Mexican law and preserved by the Treaty of Guadalupe Hidalgo. It
20 alleges no facts in support of its position in this proceeding. With the exception of issues already decided in *In re*
21 *Hopi Priority*, post-trial briefing may be the more appropriate time to argue based on the evidence admitted any
22 remaining issues concerning the effect of the Treaty of Guadalupe Hidalgo on the Hopi Tribe's claims for water
23 rights under state law.

24 ⁴ It also challenges the Hopi Tribe's claim to water rights assigned to or belonging to its members
25 individually, separate and apart from the Hopi Tribe. The Hopi SOC identifies no specific members or specific
26 water uses attributable to an identified member. Consistently with the approach taken in the Hopi SOC, the Hopi
27 Tribe represents that property is held communally by the Hopi Tribe rather than individually by its members. *Hopi*
28 *Response* at 22. Thus, the only water rights at issue here other than those to be held for or on behalf of the Hopi
Tribe are the water rights for the allottees or the allotted land. Accordingly, claims made by the Hopi Tribe to the
ownership of water rights that may be assigned to or belong to individual members of the Hopi Tribe (other than
allottees) appears to be moot based on its representations concerning land ownership on the Hopi Reservation.

1 under individual ownership). Pursuant to Sec. 5 of the General Allotment Act, the United
2 States holds an allotment in trust for the sole use and benefit of the allottee.

3 No dispute exists that the United States allotted land in or near Moenkopi Island to
4 eleven members of the Hopi Tribe under section 4 of the General Allotment Act, ch. 119, sec.
5 4, 24 Stat. 388, 389 (Feb. 8, 1887). Trust patents have been issued for the allotments. The
6 United States acknowledged that it holds the 11 allotments in trust for individual Hopi Indians
7 and their heirs. *United States' Response to LCR Coalition's Statement of Facts in Support of*
8 *Its motions for Partial Summary Judgment Regarding the Hopi Tribe's Claim That It Holds*
9 *Prior Appropriative Water Rights for the Hopi Reservation Including Moenkopi Island Owned*
10 *by Its Members*, filed June 6, 2018 at 7, ¶40. Neither the United States nor the Hopi Tribe
11 disclosed documents or information regarding the individuals who are the current beneficial
12 owners of the allotments. Based on the undisputed facts, the Hopi Tribe is not an allottee and
13 does not have a beneficial interest in an allotment.
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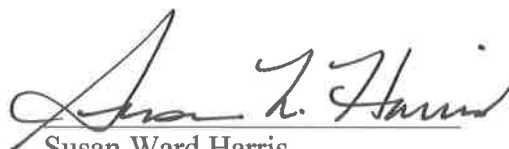
16 The Hopi Tribe asserts that it has the legal right to claim any water rights that attach to
17 the allotted lands because the United States owns the land in trust. *Hopi Response to LCR*
18 *Coalition's Statement of Facts in Support of its Motion for Partial Summary Judgment*
19 *Regarding the Hopi Tribe's Claims that It holds Prior Appropriative Water Rights for Hopi*
20 *Reservation, including Moenkopi Island, Owned by its Members*, filed June 6, 2018, ¶4. The
21 Hopi Tribe cites no authority for the proposition that it can claim the water rights for land in
22 which it has no beneficial or legal interest. It makes no representation that any allottee has
23 authorized it to act on its behalf. Thus, no legal basis exists for the Hopi Tribe to assert a
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claim for a water right for allotted land in which it has no legal or beneficial title and only claims a right through the legal title of the United States.

Accordingly, based on the foregoing,

IT IS ORDERED granting the LCR Coalition's Motions for Partial Summary Judgment in Part and Denying in Part.



Susan Ward Harris
Special Master

On August 16, 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