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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 DENYING MOTION FOR  
RECONSIDERATION  
AND  
SETTING ORAL ARGUMENT ON  
REQUEST TO PRESENT VIDEO AT  
TRIAL

CONTESTED CASE NAME: *In re Hopi Reservation HSR*

HSR INVOLVED: *Hopi Reservation*

DESCRIPTIVE SUMMARY: Motion for reconsideration of site visit denied and oral argument set on Hopi Tribe's Request to Present Video at Trial for **June 13, 2018**.

NUMBER OF PAGES: 5

DATE OF FILING: May 30, 2018

The Hopi Tribe filed a motion for reconsideration of the denial of a four-day site visit to be held in conjunction with the trial on its claims for water rights based on past and present uses. The Hopi Tribe presents primarily two arguments in support of its motion for reconsideration of

1 the denial of a site visit. First, it contends there is a general practice in the general stream  
2 adjudication to conduct site visits and, that it expected that such a site visit would occur due to a  
3 series of discussions about a potential site visit during pre-trial proceedings. Second, it claims  
4 that the court erred by denying the Hopi Tribe's request for a field trip due to the parties' inability  
5 to reach agreement on whether to conduct the trip or on the itinerary and protocols.

6 No general practice has developed over the decades of the general adjudications to  
7 conduct site visits. The Hopi Tribe is correct that in the general adjudication of the Gila River  
8 System and Source, the court agreed to site visits in three contested cases. Specifically, those site  
9 visits were one-day trips to a military base and to two different wilderness areas. The court's  
10 willingness, in response to the mutual agreement of all of the parties, to engage in a few site visits  
11 does not create a general practice and should not be viewed as a precedent for all contested cases.  
12 These adjudications involve tens of thousands of claims and the court clearly cannot physically be  
13 expected to view the sites of all claims. Moreover, the claimants and objectors in these  
14 adjudications should not be required as a matter of course to incur the time and cost of site visits  
15 to present their claims and objections, respectively.

16 The site visits that the Hopi Tribe relies upon in support of its request for a field trip  
17 differed materially from its proposed trip. They were conducted in accordance with an itinerary  
18 and guidelines acceptable to all of the parties. They were conducted in the course of a day. They  
19 were not conducted for the purpose of making an evidentiary record; no official transcript was  
20 made of the visits. Here, the LCR Coalition, joined by the City of Flagstaff and Salt River  
21 Project, the State of Arizona, and the Navajo Nation filed objections to the proposed site visit on a  
22 number of grounds. The Hopi Tribe's proposed excursion extends over multiple days. An expert  
23 witness would accompany the trip and serve as a historical guide. A court reporter would attend  
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1 and transcribe the field visit. The terms of the Hopi Tribe's site visit proposed to take place in a  
2 contested case in the Little Colorado River adjudication are not consistent with the terms of the  
3 three site visits conducted in the Gila River adjudication.

4 The Hopi Tribe further contends that the court cannot deny a site visit due to a lack of  
5 consensus among the parties and, instead must order a multi-day site visit because "the unique  
6 circumstances of the Hopi Tribe cannot be fully conveyed through expert and fact witnesses."  
7 Motion for Reconsideration of Site Visit or, In the Alternative, Request to Present Video at Trial,  
8 filed April 19, 2018, at 6 ("Motion"). A trial court may conduct a site visit for the limited  
9 purpose of assisting in the understanding of the evidence and not as additional evidence. *Adams*  
10 *v. Lindberg*, 125 Ariz. 441, 442, 610 P.2d 75, 76 (Ct. App. 1980). The site visit is not a substitute  
11 for evidence. *Tarpley v. Hornyak*, 174 S.W.3d 736 (Tenn. Ct. App. 2004) Thus, the question is  
12 whether the court requires a site visit to understand the evidence that will be presented at trial.  
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14 The evidence that will be presented at trial will concern the past and present water uses  
15 and needs of the Hopi Tribe. At this time, there is no reason to believe that the evidence to be  
16 presented at trial cannot be understood. Courts routinely consider complex factual matters  
17 without engaging in site visits by properly relying on the evidence presented. The Hopi Tribe and  
18 the United States are represented by competent counsel. The parties have had more than two  
19 years since the issuance of the final Hydrographic Survey Report for the Hopi Indian Reservation  
20 (HSR) in December 2015 to prepare their evidence to support their objections to the HSR and in  
21 support of their claims. The Hopi Tribe and the United States were given the time they requested  
22 to fully present their claims. The trial for this phase of the case is scheduled for six weeks.  
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24 The decision to grant a site visit also necessarily involves consideration of the cost to the  
25 court and the parties. See, e.g., *United States v. Crochiere*, 129 F.3d 233, 236 (1st Cir. 1997) ("In  
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1 making this determination [to allow a site visit], the court may consider such factors as the  
2 orderliness of the trial, ... whether it would be time-consuming or logistically difficult . . . .”) The  
3 only cost to consider in the three cases cited by the Hopi Tribe, where all of the parties agreed to  
4 the site visit, was the cost of the court’s limited time and resources. The proposed site visit, in  
5 contrast, requires the additional consideration of the cost to all of the parties. This field trip is  
6 not a simple request necessitating a portion of a day to travel to and view a single site, such as the  
7 light poles on a tennis court viewed in *Adams v. Lindberg*, 125 Ariz. 441, 442, 610 P.2d 75, 76  
8 (Ct. App. 1980) or the scene of a crime in the case cited by the Hopi Tribe, *State v. Money*, 110  
9 Ariz. 18, 25, 514 P.2d 1014, 1021 (1973) (“We are of the opinion that for a denial of a jury view  
10 to constitute an abuse of discretion, it must appear almost to a certainty that such denial deprived  
11 the jury of material assistance in evaluating the evidence and that such deprivation was in fact  
12 prejudicial to the defense.”) The itinerary proposed by the Hopi Tribe on March 16, 2018,  
13 requires four days to visit dozens of sites, including a well, well fields, petroglyphs and a Hopi  
14 governmental complex. The parties are expected to provide their own transportation except where  
15 four wheel drive access is required in which case the Hopi Tribe would provide transportation.  
16 The parties are expected to obtain and pay for lodging for the duration of the trip. In addition, the  
17 parties will be required to pay legal fees for the days their attorneys spend on the trip. Thus, the  
18 cost in terms of time and resources that the parties would have to bear to participate in the site  
19 visit would be significant.

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23 Accordingly, in the exercise of the court’s discretion after considering the potential benefit  
24 to the court and the cost to the parties,

25 **IT IS ORDERED** denying the motion for reconsideration.  
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1 On May 25, 2018, the Arizona State Land Department responded to the Hopi Tribe's  
2 alternative request to prepare and disclose a video. The Navajo Nation filed a preliminary  
3 response on May 30, 2018, generally agreeing with the Arizona State Land Department, but  
4 asserting that it was premature to file a response to the Hopi Tribe's alternative request absent  
5 express direction from the court.

6 **IT IS ORDERED** that the parties shall be permitted to file responses to the Hopi Tribe's  
7 Request to Prepare and Disclose a Video until June 11, 2018, and setting oral argument on the  
8 Hopi Tribe's Request to Prepare and Disclose a Video on Wednesday, June 13, 2018, at 2:00 p.m.  
9 in the Superior Court of Arizona, Central Court Building, Courtroom 301, 201 West Jefferson  
10 Street, Phoenix, AZ, 85003-2202.

11  
12 Instructions for telephonic participation:  
13 Dial: 602-506-9695 (local)  
14 1-855-506-9695 (toll free long distance)  
Dial Participant Pass Code 357264#

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16   
17 Susan Ward Harris  
18 Special Master

19 On May 30, 2018 the original of the foregoing  
20 was mailed to the Clerk of the Apache County  
21 Superior Court for filing and distributing a  
22 copy to all persons listed on the Court  
23 approved mailing list for the Little Colorado  
24 River Adjudication Civil No. 6417-203.