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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 6417-300
ORDER TO FILE AMENDED
STATEMENTS OF CLAIMANT
AND
ORDER REQUESTING TECHNICAL
ASSISTANCE FROM THE ARIZONA
DEPARTMENT OF WATER
RESOURCES

CASE NAME: *In re Navajo Nation*
HSR INVOLVED: None.
DESCRIPTIVE SUMMARY: Order to Navajo Nation and the United States to file amended statements of claimant for each water use on the Navajo Reservation and on the land owned by and on behalf of the Navajo Nation and request for preparation of hydrographic survey reports from Arizona Department of Water Resources pursuant to A.R.S. §45-256(B).
NUMBER OF PAGES: 13.
DATE OF FILING: December 28, 2016.

1 This case concerns all claims for water rights for and on behalf of the Navajo
2 Nation on the Navajo Reservation,¹ allotments held in trust for individual Navajo
3 Indians and the Navajo Nation and land located outside the boundaries of the Navajo
4 Reservation held in trust for and in fee by the Navajo Nation. The United States and
5 the Navajo Nation (collectively the “Claimants”) represented that an analysis of the
6 water claims based on types or categories of water use would be more efficient than
7 an investigation organized by geographic sub-watersheds. Proposed Schedule for the
8 Submission of the Navajo Nation’s and the United States’ (as Trustee for the Navajo
9 Nation) Statements of Claimant, dated November 8, 2016, pp. 2-3. The Hopi Tribe,
10 the only party that opposed proceeding by water use type rather than by geographic
11 area, argued that the Upper Puerco River and Lower Puerco River watersheds should
12 be addressed separately because this area is “most likely to have competing claims”
13 and segregating it would reduce the scope of review. Hopi Tribe’s Objections to the
14 Proposed Schedule for the Submission of the Navajo Nation’s and the United States’
15 Statements of Claimant, dated November 28, 2016, p. 4. It is not clear that such an
16 approach would warrant any reduction in the scope of review. Adopting two
17 organizing methods to consider the claims for the Navajo Nation appears to
18 potentially add more complexity to the proceedings than would be warranted by any
19 benefit gained. Accordingly, Claimants’ amended claims will be considered over a
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26 ¹ The United States and the Navajo Nation has defined the boundaries of the Navajo Reservation as
27 those defined by the Treaty of June 1, 1868, expanded by the Act of June 14, 1934, 48 Stat. 960 and Act of
28 December 22, 1974, 88 Stat, 1712 as amended by Act of July 8, 1980, 94 Stat. 929. Report of the United
States and the Navajo Nation, dated November 10, 2016.

1 staged period based on types or categories of water use rather than by geographic
2 area.

3 The Claimants provided a proposed schedule for filing amended statements of
4 claimant for each type of water use. At oral argument, counsel for the United States
5 explained that due to the magnitude of the project, the anticipated cost of collecting
6 the information and filing the amended statements of claimant will require funding
7 through several federal budget cycles. Several parties objected to the length of time
8 requested. The Salt River Project Agricultural Improvement and Power District
9 (“SRP”) highlighted the fact that A.R.S. §45-254(E)(2) permits the filing of a claim
10 for water use through the conclusion of the hearing on a federal reservation. It
11 implicitly argued that extended deadlines will result in yet additional claims and
12 further delays before water claims for the entire reservation can be finally resolved.
13 While this concern certainly has merit, setting deadlines that the Claimants cannot
14 meet due to budgetary constraints or to the amount of work required will, in all
15 likelihood, only result in repeated extensions of time that, in turn, will frustrate the
16 planning efforts of the other parties leading to still further delays.

17 The LCR Coalition and the Hopi Tribe also objected to the length of time
18 requested by the Claimants to file amended statements of claimant contending that
19 the Hopi Tribe was allowed a much shorter period to file its amended statement of
20 claimant that are now the subject of *In re Hopi Reservation*. It is true that by an
21 Order filed July 16, 2002, the Court originally directed the Hopi Tribe to amend its
22 statement of claimant by December 20, 2002. It is also true that the deadline was
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1 twice extended and the Hopi Tribe continued to amend its statement of claimant for
2 the next 13 years, filing its third amended statement of claimant on June 2, 2015,
3 supplemented on September 17, 2015. Trial on the claims for the water rights
4 asserted by and on behalf of the Hopi Tribe is scheduled for 2018, 16 years after first
5 ordered to file an amended statement of claimant. The adoption in this case of more
6 realistic deadlines by which to amend the statements of claimant should obviate the
7 need for additional amendments.
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10 To expedite the investigation by Arizona Department of Water Resources
11 (ADWR) and production of a report required by A.R.S. §45-256, the Claimants shall
12 file amended statements of claimant that provide current, specific information about
13 the water attributes associated with each individual use sufficient to define the water
14 rights with specificity. The amended statements of claimant shall provide the
15 information requested by and in the format identified in Attachment B to the
16 Comments submitted by the Arizona Department of Water Resources filed July 11,
17 2016 (“Comments”). It is expected that ADWR will produce a preliminary HSR
18 within six months of the date of the filing of amended statements of claimant that
19 provide the information in the format requested in its Comments and will issue a final
20 HSR promptly after the conclusion of the comment period for the preliminary HSR.
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24 When the objection period expires for each final HSR, the litigation process
25 shall immediately begin to resolve the objections filed to the proposed water rights
26 identified in the HSR and determine future uses claimed for the category of water use
27 investigated. Claimants and Objectors will not be given lengthy periods to prepare
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1 Disclosure Statements and produce expert reports. Instead, they will be expected to
2 use the objection period to prepare their cases and be prepared to support their claims
3 and objections, respectively.
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5 This Order, based on the information, representations and arguments provided
6 by the parties, should provide an orderly and continuous flow of work for all parties
7 that will result in a more timely adjudication of Claimants' water rights. The parties
8 are expected to engage in the planning and do the work necessary to meet the
9 deadlines for each step in the process so that the first trial in this contested case will
10 begin in five years. Accordingly,
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12 **IT IS ORDERED** that the Claimants shall submit historical, anthropological,
13 archeological and ethnographic information in support of priority dates for on-
14 reservation water uses by January 12, 2018. The parties shall file memoranda by
15 March 16, 2018, identifying key issues that can be resolved through summary
16 proceedings and other issues, such as priority dates, that can be addressed once the
17 Claimants produce the January 12, 2018 information. A status conference will be
18 held on April 12, 2018, at 10:30 a.m. in the Maricopa County Superior Court,
19 Courtroom 301, Central Court Building, 201 West Jefferson, Phoenix, Arizona 85003
20 to identify issues that are ripe for consideration and, if not earlier addressed, consider
21 whether *de minimis* proceedings would be appropriate to adjudicate any of the
22 Claimants' water uses.
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1 **IT IS FURTHER ORDERED** that the Claimants shall file amended
2 statements of claimants on the following dates for the designated uses:

3 June 1, 2018: historic, present and future stock ponds, stock and wildlife
4 watering, domestic, commercial, municipal and industrial (collectively “DCMI”)
5 water uses on the Navajo Reservation;
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7 January 7, 2020: historic, present and future cultural, unique tribal,
8 recreational, fish, wildlife and conservation, mining, and heavy industrial/
9 commercial uses on the Navajo Reservation; and
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11 June 1, 2021: historic, present and future irrigation uses on the Navajo Nation
12 and all water uses on land in the Little Colorado River Basin outside the boundaries
13 of the Navajo Nation held in fee by the Navajo Nation or in trust by the United States
14 for the Navajo Nation.
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17 **IT IS FURTHER ORDERED** that each amended statement of claimant shall
18 include the information and data requested by ADWR in its comments filed July 7,
19 2016, and more particularly described in Appendix A attached hereto.
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22 **IT IS FURTHER ORDERED** that ADWR shall prepare a HSR in
23 compliance with *In re General Adjudication of All Rights to Use Water in the Gila*
24 *River System and Source*, 201 Ariz. 307 (2001) (Gila V) regarding the Claimants’
25 amended statements of claimant for historic, present and future stock ponds, stock
26 and wildlife watering, and DCMI water uses on the Navajo Reservation that:
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- 1 a. includes hydrological and technical information about available surface
2 water and groundwater supplies and resources to meet each claim for
3 historic and present water for stockponds, stock and wildlife watering, and
4 DCMI water uses;
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- 6 b. provides detailed information about historic and present stockponds, stock
7 and wildlife watering, and DCMI water use;
- 8
- 9 c. reports in accordance with A.R.S. §45-256(B) proposed water right
10 attributes for each claim for historic and present stockponds, stock and
11 wildlife watering, and DCMI use and, where no proposed use is
12 recommended clearly identify the same by a statement that the Director of
13 Arizona Department of Water Resources does not make a recommendation
14 concerning the water right claimed and investigated;
- 15
- 16 d. lists the priority date asserted in the amended statements of claimant for
17 each proposed water right and the asserted legal basis for the priority date;
- 18
- 19 e. furnishes adequate descriptive and technical information about proposed
20 future stockponds, stock and wildlife watering, and DCMI water uses
21 adequate to, as stated in Pretrial Order No. 2 (August 15, 1988), “serve as a
22 basis for evaluating claims of future uses;”
- 23
- 24 f. omits, pursuant to Pretrial Order No. 2 as modified in Pretrial Order No. 3
25 (January 27, 1994), descriptions or opinions of the feasibility, profitability
26 or practicability of future uses of water for stockponds, stock and wildlife
27 watering, and DCMI uses except that ADWR may survey the already
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1 existing literature on the specified uses and list what previous studies, if
2 any, have been done; and

3 g. attaches as an appendix the amended statements of claimant.
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6 **IT IS FURTHER ORDERED** that the claims for historic, present and future
7 stockponds, stock watering, wildlife, and DCMI water uses shall be analyzed and
8 adjudicated on the following schedule:
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10 ADWR shall issue a Preliminary HSR: January 7, 2019

11 Comment Period on Preliminary HSR concludes: April 8, 2019

12 ADWR shall issue a Final HSR: September 30, 2019

13 Objection Period terminates: March 30, 2020
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15 Claimants Disclosure Statements and Expert Reports due: May 15, 2020

16 Objectors Disclosure and Expert Reports due: August 31, 2020

17 Discovery concludes: May 15, 2021

18 Trial begins: January 10, 2022
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22 Susan Ward Harris
23 Special Master

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25 On December 28, 2016, the original of the
26 foregoing was mailed to the Clerk of the Apache
27 County Superior Court for filing and distributing a
28 copy to all persons listed on the Court approved
mailing list for the Little Colorado River
Adjudication Civil No. 6417-300

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APPENDIX A

ATTACHMENT B

ADWR'S DATA REQUIREMENTS FOR NAVAJO LANDS PRELIMINARY HSR

In Statement of Claimant 39-91442, the Navajo Nation claims certain types of use (present and future) on Navajo Lands. In order to expedite ADWR's preparation of a preliminary HSR for the Navajo Lands, ADWR requests that information be provided and formatted for each type of use as described below.

Claimed Types of Use

Domestic Use

- A. Present (for each diversion)
 - 1. Mapped diversion location and type (well or spring)
 - 2. Estimated or measured quantity delivered
 - 3. Estimated or actual population served
- B. Future
 - 1. Mapped location of planned diversions
 - 2. Projected population to be served
 - 3. Estimated gallons per capita per day

Irrigation Use

- A. Present (for each irrigation project)
 - 1. Mapped locations of currently irrigated acres and acreage totals
 - 2. Names and locations of diversions/sources for both groundwater and surface water
 - 3. Diversion requirement
 - 4. Basis for determining the diversion requirement
 - a. Diversion measurements
 - b. Crop types and consumptive use for each crop
 - c. Estimated conveyance efficiencies
 - d. Estimated on-farm efficiencies
 - e. Fill capacities of water storage facilities
 - f. Evaporation losses from any water storage facilities

B. Future

1. Mapped locations and acreage of proposed irrigation projects
2. Estimated diversion requirements and their basis
3. Water sources

Stockpond Use

A. Present

1. Mapped locations of existing stockponds
2. Stockpond surface areas and the method of measurement
3. Stockpond capacities and the method of measurement
4. Means of estimating annual water use
5. Water sources

B. Future

1. Mapped locations of proposed stockponds
2. Basis for addition of future stockponds (e.g., plans to increase number of stock or necessity of additional watering for existing stock)

Municipal Use

A. Present (for each water system)

1. Mapped diversion locations and types (wells or springs)
2. Estimated or measured quantities delivered
3. Estimated population served

B. Future

1. Mapped location of planned water systems
2. Projected populations to be served
3. Estimated gallons per capita per day

Commercial or Industrial

A. Present

1. Mapped locations of on-going uses
2. Water sources
3. Quantities used and basis
4. Basis for estimating water use for construction related purposes

B. Future

1. Mapped locations of proposed future uses

2. Basis for estimating future water use quantities
3. Proposed water sources

Mining

A. Present

1. Mapped locations of currently used diversions and basis for quantities delivered for mining purposes
2. Mapped locations of mining impoundments
3. Surface areas, capacities, and basis for estimating evaporation losses

B. Future

1. Mapped locations of proposed future mining uses
2. Basis for estimate of future quantity of use including water used directly for mining purposes and evaporation losses from future impoundments

Stockwatering Other than from a Stockpond (Livestock Wells)

A. Present

1. Well locations and quantities of use
2. Basis of quantity of use including number of livestock and estimated use per animal unit or metering, if available.

B. Future

1. Proposed well locations
2. Basis for future quantities needed

Recreation, Fish & Wildlife (and Conservation Water Uses)

A. Present

1. Mapped locations, surface areas, and capacities of impoundments
2. Method of estimating evaporative losses

B. Future

1. Mapped proposed locations, surface areas, and capacities of impoundments

Formatting Requirements

Tables

Tables of data should be provided in either Microsoft Excel or Microsoft Access.

Maps

Maps should be provided in a digital ArcGIS format (i.e. geodatabase, map coverages or feature classes, and/or polygon or point shapefile data).

Imagery

Imagery used to document present and historic water uses should be provided as digital ortho-rectified aerial photography datasets compatible with ArcGIS.

Published documents and expert reports

Reports and studies previously published in peer reviewed journals or as academic theses should be provided as PDFs. Expert reports should also be provided as PDFs with any tables, maps, or imagery provided in the formats listed above. Expert reports should be in final format and sealed by an appropriate registered professional. ADWR cannot make findings based on draft reports.