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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 Nos. CV 6417-203
CV 6417-300

ORDER GRANTING HOPI TRIBE'S
REQUEST FOR A PRETRIAL
CONFERENCE

CONTESTED CASE NAME: *In re Hopi Reservation HSR; In re Navajo Nation*

DESCRIPTIVE SUMMARY: Telephonic pretrial conference set for August 29, 2019 8:30 a.m. in
In re Hopi Reservation HSR.

NUMBER OF PAGES: 3

DATE OF FILING: August 16, 2019

At the June 4, 2019 oral argument in *In Re Navajo Nation*, the Court proposed a schedule to address evidentiary issues related to the Navajo Nation's claims for water rights for stock watering and stockponds. In addition, the Court also proposed a subsequent procedure to resolve the

1 dispute between the United States and the Hopi Tribe on one side and the remaining parties on the
2 other side regarding whether a federal reserved water right for stockponds, stock and wildlife
3 watering could be granted for a specific quantity of water to be obtained from a number of sources
4 of water without specifying the amount of water that could be obtained from any single source.
5

6 On June 21, 2019, the Navajo Nation moved for the adoption of a different procedure and
7 schedule than the approach outlined at the June 4, 2019 oral argument. It proposed that briefing
8 should occur in *In re Hopi Reservation HSR* with respect to the attributes or characteristics
9 necessary to quantify the Hopi Tribe's federal reserved water rights and then a second round of
10 briefing should address the question of evidence necessary to quantify and finally adjudicate the
11 Hopi Tribe's federal reserved right claims for stockponds, stock and wildlife watering. The
12 United States did not file a response to the motion and no other party objected to the Navajo
13 Nation's proposal. The City of Flagstaff indicated its willingness to meet with the parties to
14 discuss the possibility of entering into a limited stipulated agreement concerning certain *de minimis*
15 uses. *City of Flagstaff's Response to Navajo Nation's Motion*, filed July 12, 2019 at 3.
16

17 Based on the Navajo Nation's motion, it appears that the Navajo Nation does not desire that
18 the evidentiary issues regarding its claims for stockponds, stock and wildlife watering be
19 considered at this time in *In re Navajo Nation*. Accordingly, the proceedings to be held in *In re*
20 *Navajo Nation* anticipated in the Order dated May 6, 2019 in *In re Navajo Nation* and discussed at
21 the June 4, 2019 oral argument will not be scheduled.
22

23 In its Response, the Hopi Tribe argues that the same attributes and characteristics to support
24 water rights may not be required to define the respective federal reserved water rights of the
25 Navajo Nation and the Hopi Tribe. It contends that the necessary attributes and characteristics of
26 federal reserved water rights is not a purely legal issue, but must be resolved in the factual context
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1 of the determination of federal reserved water rights for each reservation. The Hopi Tribe also
2 requested a Pretrial Conference because uncertainty exists as to the legal issues that should be
3 briefed in *In re Hopi Reservation HSR*.

4 IT IS ORDERED granting the Hopi Tribe's request for a Pretrial Conference in *n re Hopi*
5 *Reservation HSR*. It will be held telephonically on **August 29, 2019 at 8:30 a.m.** The purpose of
6 the Pretrial Conference will be to determine if there are issues in *In re Hopi Reservation HSR* that
7 should be briefed at this time with respect to the necessary attributes and characteristics of federal
8 reserved water rights for water use on the Hopi Reservation and, if so, what categories of use
9 should be the focus of the briefing. Not all uses should be at issue. For example, the amount of
10 water obtained from each source of water used for mining was not disputed in the first phase of this
11 case. The issue involving water used for mining concerned the allocation of the metered amount
12 of water pumped from eight specific wells.
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15 Instructions for telephonic appearance:
16 Dial: 602-506-9695 (local)
17 1-855-506-9695 (toll free long distance)
18 Dial Participant Pass Code 357264#

19 
20 _____
21 SUSAN WARD HARRIS
22 Special Master

23 On August 16, 2019, the original of the foregoing was
24 mailed to the Clerk of the Apache County Superior
25 Court for filing and distributing a copy to all persons
26 listed on the Court approved mailing lists for Cases
27 Nos. CV6417-203 and CV6417-300.

28 
29 _____
30 Barbara Brown