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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 HOPI TRIBE'S
MOTION TO EXTEND DEADLINES
FOR EXPERT REPORTS AND
AMENDING THE CASE
MANAGEMENT ORDER

CONTESTED CASE NAME: *In re Hopi Reservation HSR*

HSR INVOLVED: *Hopi Reservation*

DESCRIPTIVE SUMMARY: The Hopi Tribe filed a motion to extend deadlines to file expert reports. The Special Master grants the motion to extend certain deadlines in this contested case to consider the objections to the Hopi Reservation HSR.

NUMBER OF PAGES: 6

DATE OF FILING: August 4, 2017

1 The initial Case Management Order, dated August 25, 2016, required the Hopi
2 Tribe and the United States on behalf of the Hopi Tribe, the Claimants, to file expert
3 reports to support their claims for past and present water uses by January 23, 2017, and for
4 future water uses by March 6, 2017. Thereafter, the parties objecting to the claims, the
5 Objectors, were to file their expert reports to support their objections to the claims made
6 by the Hopi Tribe and the United States on behalf of the Hopi Tribe. No provisions were
7 made for rebuttal reports from experts.
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10 On October 4, 2016, the Navajo Nation filed a Motion to Amend the Case
11 Management Order to require the Claimants to file expert rebuttal reports to the expert
12 reports filed by the Objectors. The United States did not oppose the request provided that
13 the Case Management Order was amended to allow sufficient time for the reports to be
14 prepared and additional discovery conducted. The Hopi Tribe joined the United States'
15 Response. Consequently, the Case Management Order was amended to include the dates
16 by which the United States and the Hopi Tribe were to provide rebuttal expert reports to
17 the Objectors' expert reports and to extend the dates by which discovery was to be
18 completed. The Case Management Order did not authorize any additional rebuttal expert
19 reports.
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22 On January 4, 2017, the Hopi Tribe, citing to several events which had occurred,
23 moved to extend the deadlines for filing its expert reports. The Hopi Tribe's deadline for
24 filing expert reports to support its claims for past and present water use was extended from
25 January 23, 2017, the date on which the United States filed its expert reports, to March 6,
26 2017. Minute Entry, filed January 19, 2017. The deadline for the filing of Hopi Tribe's
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1 export reports concerning future water uses was extended to June 16, 2017, approximately
2 3½ months after the United States filed its expert reports. *Id.*

3 On June 16, 2017, the Hopi Tribe's deadline for filing its expert reports concerning
4 future water uses, the Hopi Tribe disclosed six expert reports and filed a motion seeking
5 further extensions of time to file additional expert reports for both past and present water
6 uses and future water uses. The Hopi Tribe sought a week extension to file an expert
7 report from Professors Hanemann and Whittington regarding future water claims. No
8 party objected to the late filing of this report. According, this issue is moot.
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11 The Hopi Tribe stated that it would file a population report by September 1, 2017,
12 although it subsequently filed a notice on July 31, 2017, withdrawing its request for an
13 extension of time to file an expert future population report. The Hopi Tribe also
14 represented that it had hired a consultant to prepare a comprehensive business plan for
15 future economic development that would not be complete until December 16, 2017. It
16 further stated that it may request a supplemental report from AISDevelopment to present a
17 business plan regarding the development of its cattle resources. The Hopi Tribe's
18 proposed schedule sets the deadline for filing additional economic development reports
19 related to energy and gaming a week after the Objectors' deadline for filing their
20 disclosure statements and expert reports.
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23 The arguments against the granting of the Hopi Tribe's request for the additional
24 extension of time to deliver its expert reports reasonably emphasize the need to have full
25 information about the Hopi's claims as they enter the period allowed to the Objectors to
26 produce expert reports. The Objectors argue that permitting the Hopi Tribe to provide
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1 reports during and after the time allotted for their experts to examine the claims will cause
2 the parties to occur additional costs and will be prejudicial because their experts would be
3 required to generate reports without full information. An additional factor to consider is
4 that the Hopi HSR does not provide the Objectors or their experts with information about
5 the future claims that Objectors' experts could analyze. Arizona Department of Water
6 Resources (ADWR) did not include information regarding the claims made by the Hopi
7 Tribe and the United States on behalf of the Hopi Tribe for future water use in the Hopi
8 HSR. In a Minute Entry Order dated November 10, 2015, Judge Brain directed:
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11 Future use shall be excluded from the Hopi HSR and ADWR shall have no
12 further obligation to obtain information from the United States or the Hopi
13 Tribe that the parties have declined to provide based on assertions that the
14 requested information related to future use or presents confidentiality
15 concerns.

16 The Objectors take the position that any extension of the Hopi Tribe's deadlines
17 mandates an extension of their deadlines. Deadlines will be extended for all parties as set
18 forth below. The objecting parties, in preparing their management plans for this case,
19 should not expect that additional extensions will be granted beyond those set in this Order
20 to provide their experts with additional time to complete their work. Data is currently
21 available to the Objectors' experts to initiate their investigations. The United States has
22 met its deadlines for producing reports and the Hopi Tribe has produced a disclosure
23 statement and provided a set of reports.

24
25 Notwithstanding the fact that the Hopi Tribe has represented that it cannot fully
26 produce all of its expert reports until more than nine months after the date set in the
27 original Case Management Order, the Hopi Tribe contends that the original February 19,
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1 2019 trial date should remain unchanged. While the original trial date was retained after
2 granting the Hopi Tribe the first three month extension, the original trial date cannot be
3 maintained after permitting the Hopi Tribe an additional six months to complete its
4 reports. The Objectors must be allowed adequate time to prepare expert reports after
5 receipt of all expert reports and time must be allowed for the parties to complete discovery
6 and file dispositive motions. Accordingly, the current trial date will be vacated and reset.
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8 The Hopi Tribe also generally advised in its motion that “special rules” may need
9 to be created to deal with future reports. If such a situation were to arise that the Hopi
10 Tribe desired to produce additional expert testimony, then its motion will be evaluated
11 when all the facts are available to determine if good cause exists for the admission of
12 additional reports, taking into account that with the extension granted by this Order, the
13 Hopi Tribe will have had two years from the issuance of the Hopi HSR to produce reports
14 and evidence to support its claims for future water use.
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17 **IT IS ORDERED with respect to past and present water uses:**
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19 All dates shall remain the same except the following:
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- 21 1. On **September 1, 2017**, the Hopi Tribe shall file its expert report on the
22 calculation of claim for subsistence farming.
- 23 2. On **October 13, 2017**, disclosure statements and experts reports will be
24 due from all other litigants for past and present water uses.
- 25 3. On **December 8, 2017**, expert reports will be due from the Hopi Tribe
26 and the United States for past and present water uses that rebut the reports
27 filed by litigants other than the Hopi Tribe and the United States.
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IT IS FURTHER ORDERED with respect to claims for future water use:

1. On **September 15, 2017**, and **November 15, 2017**, the Hopi Tribe shall file a status report regarding the progress of their experts to finalize their expert reports on future water use due on **December 15, 2017**.
2. On **December 15, 2017**, the Hopi Tribe shall file an amended disclosure statement and all expert reports on future water use.
3. On or before **June 8, 2018**, all other parties shall file their initial Rule 26.1 disclosure statements with respect to claims based on future water uses and expert reports.
4. On or before **August 10, 2018**, the United States and the Hopi Tribe shall file their rebuttal expert reports to expert reports filed by the Objectors with respect to claims based on future water uses.
5. All discovery shall be completed by **January 18, 2019**, with respect to future water uses.
6. Dispositive motions shall be filed no later than **March 4, 2019**.
7. Trial shall begin on **July 1, 2019**.

DATED: August 4, 2017.


Susan Ward Harris
Special Master

On August 4, 2017, 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