

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 REGARDING  
RELEVANCE OF REPORT OF  
E. CHARLES ADAMS, Ph.D

CONTESTED CASE NAME: *In re Hopi Reservation HSR*

HSR INVOLVED: *Hopi Reservation*

NUMBER OF PAGES: 6

DATE OF FILING: September 28, 2018.

At issue is the relevance of all or a part of the Report of E. Charles Adams, Ph.D, dated March 2009, titled "Hopi Use and Development of Water Resources in the Little Colorado River Drainage Basin of Arizona: An Archaeological Perspective to 1700," marked as Hopi Exhibit 858 ("Adams Report"). Dr. Adams holds graduate degrees in

archeology. He is the Curator of Archaeology, Arizona State Museum and a professor in the School of Anthropology at the University of Arizona.

The Hopi Tribe distributed the Adams Report with limited redactions to the parties. The Navajo Nation, the City of Flagstaff, the Salt River Project (“SRP”), the LCR Coalition and the Arizona State Land Department objected to all or portions of the Adams Report that the Hopi Tribe did not redact primarily pursuant to Rules 401 and 403, Ariz. R. of Evid.<sup>1</sup> The objecting parties have submitted a copy of the Adams Report with proposed additional redactions.

The proper factors that must be considered in the determination of federal reserved water rights on an Indian reservation include a tribe’s history and culture:

Deference should be given to practices requiring water use that are embedded in Native American traditions. Some rituals may date back hundreds of years, and tribes should be granted water rights necessary to continue such practices into the future. An Indian reservation could not be a true homeland otherwise.

In addition to history, the court should consider tribal culture when quantifying federally reserved rights. Preservation of culture benefits both Indians and non-Indians; for this reason, Congress has recognized the “unique values of Indian culture” in our society. 25 U.S.C. § 1902 (1994) (recognizing the importance of culture when placing Indian children in foster care); *see also* 20 U.S.C. § 7801 (1994) (finding that education should “build on Indian culture”). Water uses that have particular cultural significance should be respected, where possible. The length of time a practice has been engaged in, its nature (e.g., religious or otherwise), and its importance in a tribe’s daily affairs may all be relevant.

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<sup>1</sup> The parties have also previously objected to the admission of the Adams Report on the ground that it constitutes hearsay. Although the Adams Report clearly falls within the definition of hearsay, the hearsay objection shall be overruled pursuant to the exercise of discretion under Rule 611, Ariz. R. Evid., assuming that adequate foundation is laid at the time of the introduction of the Adams Report during the direct examination of Dr. Adams.

*In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 318-319 ¶¶42-43, 35 P. 3d 68, 79-80 (2001).

Thus, the applicable standard for determining relevance is whether the material in the Adams Reports that the objecting parties request to be redacted contains facts that are of consequence in determining the Hopi Tribe's historical and cultural water use practices and whether the proposed redacted text has any tendency to make facts regarding the Hopi Tribe's historical and cultural water use practices more or less probable than they would be without the information.

**A. Chapter 1**

Dr. Adams begins his report with a general introduction of topics that are examined in more depth later in the report. For the reasons stated below, Tables 1.1 and 1.3, Section 1.4.1, and the text redacted by the Hopi Tribe and SRP in Chapter 1 are not relevant.

**B. Chapter 2**

According to Dr. Adams, “[t]he roots to the people known today as Hopi are traced by historical documents to 1540 and by the archaeological record to the 13<sup>th</sup> century”. Adams Report at 4. Chapter 2 concerns the prehistoric period that Dr. Adams defines as A.D. 1 to A.D. 1275. While more than 1,200 years of the archeological history regarding the groups that the author characterizes as the collective ancestors of the Hopi Tribe, including the Anasazi, Sinagua and elements of the Mogollon people may be interesting, that history does not provide facts that are of consequence in determining the Hopi Tribe's historical and cultural practices regarding water use for which federal water rights should be reserved. Accordingly, no portion of Chapter 2 is relevant.



### C. Chapter 3

In this chapter, the author focuses on the period 1275 to 1630. The parties concentrate their objections on those portions of this chapter that discuss geographical areas that do not include any portion of the Hopi Reservation. Dr. Adams divides the Little Colorado River basin into three geographical areas: the Mogollon Rim located south of the Little Colorado River; the Upper Little Colorado River bounded by Puerco River on the north, the Mogollon Rim on the south and the Chevelon Creek on the west; and the Plateau area situated in the north half of the Little Colorado River basin north of the Little Colorado and Puerco Rivers. Adams Report at 13. The parties object to the relevance of any information in the Report about the Upper Little Colorado River and the Mogollon Rim areas.

Sections 3.1 and 3.2 concerning the Mogollon Rim Areas and the Upper Little Colorado River areas describe the habitation sites in those areas and water uses specific to the water sources available to those lands. In the case of the Mogollon Rim Area, Dr. Adams states that that the Sinagua was the only cultural group inhabiting the land. Adams Report at 69. Given that all land at issue in this contested case, i.e., the Hopi Reservation, lies north of the Little Colorado River and that the only people involved are the Hopi Tribe, Sections 3.1 and 3.2 of Chapter 3 are not relevant.

Section 3.3.2 focuses on the Homol'ovi Pueblos located along the Little Colorado River north and east of present-day Winslow, Arizona and south of the Hopi Mesas. Adams Report at 5. Dr. Adams highlights the use of the Little Colorado River to support certain types of agriculture for a limited time period. Dr. Adams states that the Homol'ovi area was abandoned around 1400 and that all occupants in the area moved to

existing villages on the Hopi Mesas. Adams Report at 92, 96. Historical information about agricultural practices and water uses in an area abandoned more than 400 years before the United States created the Hopi Reservation does not make facts regarding the Hopi Tribe's historical and cultural water practices more or less probable for purposes of determining federal reserved water rights.

All portions of Chapter 3 redacted by SRP are not relevant nor are Map 4, Table 3.5 and the final paragraph on page 105 redacted by the Navajo Nation.

#### **D. Chapter 4**

Dr. Adams wrote Chapter 4 about the period 1630 to 1700 and limited his discussion to the area in the Hopi and Navajo reservation areas "because there is no archaeological evidence of settlements elsewhere in the basin." Adams Report at 108. This chapter describes the Spanish and Hopi use and occupation of the reservation area during the centuries immediately preceding the creation of the Hopi Reservation. The spatial and temporal nature of this information fits within the guidelines identified by the *Gila V* Court, provides facts of consequence regarding the Hopi Tribe's historical and cultural practices regarding water use and may make those facts more probable than in the absence of those facts.

Chapter 4 is relevant in its entirety with the exception of the redaction made by the Hopi Tribe.

#### **Chapter 5.**

For the reasons stated above, Chapter 5 is relevant in its entirety with the exception of the redaction made by the Hopi Tribe, redactions made by SRP and the redactions made by the Navajo Nation on pages 127 and 128.

DATED: September 28, 2018.

  
Susan Ward Harris  
Special Master

On September 28, 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 *In re Hopi Reservation HSR*.