

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

02/25/2009

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. TOMLINSON
DEPUTY

FILED: 03/02/2009

In Re the General Adjudication of
All Rights to Use Water in the Little
Colorado River System and Source

CV-6417

In Re Motions for Summary Judgment on
Water Rights Claims By and For the Hopi
Tribe to Surface Streams That Do Not
Traverse Any Part of the Hopi Reservation

MINUTE ENTRY

The court has considered the positions of the parties with respect to the question of whether the Hopi Tribe is precluded from claiming a right to water from surface streams located within the Little Colorado River Basin, but which do not traverse any part of the Hopi Reservation. In answering this question, some parties have requested that the court hold that claimants may never assert rights to water that is not adjacent to or traverses the claimant's land unless the claimant has a legal right to physical access to the water source. After much pondering, the court concludes that this question may have to be addressed on another occasion, but it need not be considered to resolve the pending motions directed to the Hopi Tribe's claims.

In this case, the court agrees with those asserting that the Hopi Tribe's claims in this adjudication arise under unusual, if not unique, circumstances. The Hopi Tribe claims the right to water that it can only access by intruding onto lands owned by others, particularly the Navajo Nation. These two tribes have been involved in disputes and litigation regarding their respective land rights for decades.

The United States Congress and the federal courts have undertaken to define the rights of the Navajo Nation and the Hopi Tribe by virtue of the reservations created in 1882 and 1934 and their related settlement acts, as well as by numerous rulings entered by the Indian Claims, federal district, and appellate courts. These pronouncements are not subject to review by this adjudication court and do not support the Hopi Tribe's claim to water sources located outside its reservation.

The court also finds that the Hopi Tribe cannot overcome the legal impediments to its claims by asserting the right to an easement by prescription or necessity. The Tribe has not pointed to any directive by any tribunal that would justify a finding that the adjudication court can ignore sovereign rights and hold that the Navajo Nation does not have the power to exclude the Hopi Tribe, or others, from the Nation's lands.

In summary, the court agrees with those movants who assert that the rights of the Hopi Tribe and the Navajo Nation have been carefully considered and resolved by legislative acts and federal court litigation. These determinations dictate the outcome with respect to the pending motions. Therefore,

IT IS ORDERED granting the Navajo Nation's motion for summary disposition and declaring that the Hopi Tribe is precluded from asserting water right claims in this adjudication to the extent such claims seek the right to water sources located within the Little Colorado River Basin that neither abut nor traverse Hopi lands.

IT IS FURTHER ORDERED deeming the remaining pending motions requesting a declaration limiting the Hopi Tribe's claims in this adjudication moot in light of this order.

IT IS FURTHER ORDERED signing this minute entry as an order of the Court.

/s/ Eddward P. Ballinger, Jr.
JUDICIAL OFFICER OF THE SUPERIOR COURT

A copy of this minute entry is mailed to all parties on the Court-approved mailing list for Little Colorado River Adjudication Civil No. 6417 dated January 23, 2009.