

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

03/11/2019

CLERK OF THE COURT
Form V000

HONORABLE MARK H. BRAIN

S. Yoder
Deputy Clerk

FILED: 03/11/2019

In re: The General Adjudication
of all Rights to Use Water in the
Little Colorado River System and Source

CV6417-201

In re: Hopi Priority

MINUTE ENTRY

In February 2009, Judge Ballinger found 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.” Minute Entry dated February 25, 2009. Judge Ballinger denied a motion to reconsider this ruling, and the Arizona Supreme Court declined an interlocutory appeal.

Since then, the Special Master has incorporated Judge Ballinger’s ruling in her Report on August 24, 2017 regarding motions to dismiss the Hopi Tribe’s claims in for off-reservation water. All of which brought the matter back before this court. First, the Hopi Tribe filed a Motion for Entry of Judgment pursuant to Rule 54(b) on May 22, 2017 (supplemented on August 28, 2017). Second, the Hopi Tribe and the United States each filed Objections to the Special Master’s Report Regarding LCR Coalition’s Motions to Dismiss on October 23, 2017. Having considered the parties’ papers and arguments, the motions are resolved as follows.

Regarding the Objections to the Special Master’s Report, the Hopi Tribe claims that Judge Ballinger’s ruling was manifestly erroneous (leading, in turn, to the Special Master’s report being manifestly erroneous). Accordingly, what the Hopi Tribe proposes is a disfavored horizontal appeal. Regardless, it appears to this court that Judge Ballinger was correct; accordingly, the objections are **OVERRULED**.

Regarding the Motion for Entry of Judgment, Rule 54(b) provides that the court “may direct the entry of a final judgment” on discrete claims “if the court expressly determines there is no just reason for delay.” The ultimate issue (claim) in this contested case is the Hopi Tribe’s claim to a sufficient amount of water for homeland purposes. The amount necessary has yet to be determined, and Judge Ballinger’s ruling may become moot depending on that determination. Courts frown on piecemeal appeals. The Arizona Supreme Court has already declined to exercise jurisdiction over such issues, and given the current posture of the case, this court does not believe that it can certify, in good faith, that there is no just reason for delay; instead, the proper process is to proceed with the scheduled evidentiary hearings, reach a result, and then allowing an appeal of those results. Accordingly, the Motion is DENIED.¹

¹ This includes the issues related to Land Management District 6 raised in the LCR Coalition’s Response dated September 21, 2017.