

SUPERIOR COURT OF ARIZONA  
APACHE AND MARICOPA COUNTY

01/21/2016

CLERK OF THE COURT  
FORM V000

HONORABLE MARK H. BRAIN

L. Stogsdill  
Deputy

FILED: 01/25/2016

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

CV6417-201

In re Hopi Tribe Priority

MINUTE ENTRY

On April 24, 2013, the Special Master filed his Report of the Special Master; Motion for Adoption of Report; and Notice for Filing Objections to the Report (the "Report"). The Report set forth the Special Master's conclusions regarding seven issues regarding the priority of water rights claimed by the Hopi Tribe. In addition to the Hopi Tribe, a number of parties appeared in the proceedings with comments and/or objections.<sup>1</sup> The Court subsequently heard argument on the comments and objections. Having fully considered the parties' papers and arguments, the Court now rules as follows.

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<sup>1</sup> The Court received comments and objections from the Hopi Tribe, the Navajo Nation, the United States, Tucson Electric Power, Salt River Project, the City of Flagstaff, Freeport McMoRan (now Freeport Minerals), Arizona Public Service, Catalyst Paper, the Arizona State Land Department, and a group of claimants commonly referred to as the Little Colorado River Claimants.

**Issue 1: Does the Hopi Tribe Hold Water Rights with a Priority of Time Immemorial?**

Land Management District 6

At pages 12-19, the Special Master found that the Hopi Tribe holds water rights with a priority of time immemorial in the area within Land Management District 6 within the reservation created by the 1882 Executive Order.<sup>2</sup> The Court agrees.

IT IS ORDERED accepting Findings of Fact 1-7 and Conclusions of Law 2-5.

Extinguishment of Aboriginal Title and Water Rights

At pages 19-27, the Special Master found that the Hopi Tribe does not hold time immemorial water rights on tribal lands within the 1882 Executive Order's reservation but outside of Land Management District 6. The Court agrees.

IT IS ORDERED amending Conclusion of Law 6 to state, "The Hopi Tribe's aboriginal title was extinguished for all land within the reservation created by the 1882 Executive Order except as to that land in Land Management District 6."

IT IS FURTHER ORDERED accepting Findings of Fact 8-11 and Conclusions of Law 7-8.

**Issue 2: Does the Hopi Tribe Hold Water Rights with a Priority Date of 1948 as a Result of the Treaty of Guadalupe Hidalgo?**

At pages 27-29, the Special Master found that the Hopi Tribe does not hold water rights as a result of the Treaty of Guadalupe Hidalgo. The Court agrees.

IT IS ORDERED accepting Findings of Fact 12-13 and Conclusions of Law 9-11.

**Issue 3: Does the Hopi Tribe Possess Water Rights with a Priority Date of 1882 a Result of the Establishment of the Hopi Reservation under the Executive Order of December 16, 1882?**

At pages 29-43, the Special Master found that the Hopi Tribe holds federal reserved water rights with a priority date of 1882 in the part of the reservation designated as the Hopi Partitioned Lands. The Court agrees.<sup>3</sup>

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<sup>2</sup> The Court's brief description of the Special Master's work is intended to aid the reader in understanding the Court's rulings. They are not intended to modify the Special Master's findings and conclusions except where specifically noted.

IT IS ORDERED accepting Findings of Fact 14-19 and Conclusions of Law 12-14.

IT IS ORDERED rejecting Finding of Fact 20 (it does not appear that the United States held the land “in trust”).

IT IS ORDERED amending Conclusion of Law 15 to state, “The priority date of the Hopi Tribe’s federal reserved water right in the Hopi Partitioned Lands owned by the federal government on December 16, 1882 is December 16, 1882.”

**Issue 4: Does the Hopi Tribe Possess Water Rights With Another Date of Priority as a Result of Congressional Acts and Court Decisions Adding Property to the Hopi Reservation?**

Moenkopi Island

At pages 43-51, the Special Master found that the Hopi Tribe holds an implied reserved water right to Moenkopi Island with a priority date of June 14, 1934. The Court agrees.

IT IS ORDERED accepting Findings of Fact 21-25 and Conclusions of Law 16-21 and 23.

IT IS ORDERED amending Conclusion of Law 22 to read, “The 1934 Act provided federal reserved water rights for the use of the Hopi Indians residing in Moenkopi Island.”

Hopi Industrial Park and Aja Clear Creek, Drye and Hart Ranches

At pp. 52-54, the Special Master concluded that he was unable to make any recommendations at that juncture.

Reacquired Lands

At pp. 54-60, the Special Master discussed in some detail the checkerboard of railroad lands that were reacquired by the government at various times. There appear to be issues of fact regarding the ownership of the land prior to the reacquisitions.

IT IS ORDERED accepting Findings of Fact 26-37.

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<sup>3</sup> Various parties claim that the priority date should be much later, and should coincide with the date of the actual partition of these lands. But the withdrawal of these lands in 1882 created a federal reserved water right, which was essentially transferred to the tribe as part of the subsequent partition.

IT IS FURTHER ORDERED rejecting Finding of Fact 38 and Conclusion of Law 24.

**Issue 5: Does Claim or Issue Preclusion or Both Preclude any Claims by or on Behalf of the Hopi Tribe to Water Rights More Senior to Those Held by any Other Claimant?**

At pp. 60-66, the Special Master discussed various aspects of claim and issue preclusion. Some of these findings appear moot in light of the Court's findings regarding the termination of aboriginal rights.

IT IS ORDERED accepting Finding of Fact 39, with the caveat that none of the parties to this litigation (excepting the United States, the Hopi Tribe, and the Navajo Nation) were parties to the Hopi Tribe's action before the Indian Claims Commission, *Healing II*, or the partition cases.

IT IS ORDERED accepting Finding of Fact 40 and Conclusions of Law 25-26, with the same caveat—the parties to this litigation satisfy the *Nevada* exception, and are not barred from asserting claim or issue preclusion.

IT IS ORDERED accepting Conclusions of Law 27 and 29.

IT IS ORDERED modifying Conclusion of Law 28 to read, “The Hopi Tribe's water rights and their priorities based upon federal reserved water rights or any basis other than aboriginal rights, were not actually litigated and determined by a valid and final judgment in the Indian Claims Commission, *Healing II*, or the partition cases.”

IT IS ORDERED modifying Conclusion of Law 30 to read, “The Hopi Tribe is not precluded by the Indian Claims Commission, *Healing II*, or the partition cases from asserting water rights senior to those held by any other claimant except as provided in Conclusion of Law 8.”

**Issue 6: Does Accord and Satisfaction Preclude any Claims by or on Behalf of the Hopi Tribe to Water Rights More Senior to Those Held by any Other Claimant?**

At pp. 66-68, the Special Master discussed various aspects of accord and satisfaction. This discussion appears to be moot given the conclusion that the Hopi's aboriginal water rights to land on the Hopi reservation outside of land Management District 6 were extinguished.

**Issue 7: May the Hopi Tribe Assert a Priority that is Senior to the Navajo Nation for Water Resources that are shared by both tribes [in Light of Various Statutes]?**

IT IS ORDERED accepting Conclusion of Law 32. That said, the allocation of water among these tribes is not appropriate for summary judgment.

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IT IS ORDERED granting and denying the following motions to the extent consistent with the rulings set forth above:

- Hopi Tribe's Motion for Summary Judgment on Hopi Water Priorities Excluding Spanish Law Rights (dated March 26, 2010).
- Hopi Tribe's Motion for Summary Judgment on Hopi Water Rights Under the Treaty of Guadalupe Hidalgo (dated April 27, 2012).
- Motion of the Navajo Nation for Summary Judgment on Issue G (dated March 26, 2010).
- United States' Motion for Summary Judgment that the Hopi Tribe Holds Water Rights with a Priority Date Time Immemorial (dated March 26, 2010).
- Catalyst Paper (Snowflake) Inc.'s Motion for Partial Summary Judgment on Issues Designated for Briefing by the Case Initiation Order and Designation of Issues for Briefing (dated March 26, 2010).

IT IS FURTHER ORDERED directing ADWR to implement the determinations adopted by the Court.

IT IS FURTHER ORDERED referring these matters back to the Special Master to undertake such proceedings as appropriate to resolve the claims at issue.

A copy of this order is mailed to all persons listed on the court approved mailing lists dated October 29, 2015 for CV 6417-201.