

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE

IN CHAMBERS ( X ) IN OPEN COURT ( )

SPECIAL MASTER GEORGE A. SCHADE, JR.  
Presiding

IN RE THE GENERAL ADJUDICATION OF  
ALL RIGHTS TO USE WATER IN THE LITTLE  
COLORADO RIVER SYSTEM AND SOURCE

DATE: September 24, 2012

CV 6417-201

ORDER DENYING THE HOPI  
TRIBE'S MOTION IN LIMINE  
AND REQUEST FOR ORAL  
ARGUMENT

CONTESTED CASE NAME: *In re Hopi Tribe Priority.*

HSR INVOLVED: None.

DESCRIPTIVE SUMMARY: The Special Master denies the Hopi Tribe's Motion in Limine and Request for Oral Argument.

NUMBER OF PAGES: 3.

DATE OF FILING: September 24, 2012 (mailed).

The Hopi Tribe filed a Motion in Limine and Request for Oral Argument to exclude evidence of the following matters described in the proposed lodged order:

1. Navajo presence in the Little Colorado River Basin;
2. Navajo water use in the Little Colorado River Basin;
3. The creation of the Navajo Reservation;
4. The homeland intent of the Navajo Reservation;

5. The federal government's efforts to manage the Navajo Nation's lands;
6. The federal government's efforts to catalogue and develop water resources on the Navajo Reservation and for the benefit of the Navajo inhabitants in the Little Colorado River Basin;
7. The trust obligation of the United States to the Navajo Nation; and
8. The location of Navajo members within the boundaries of the 1882 Reservation.<sup>1</sup>

The Navajo Nation opposed the motion. No other litigants filed papers concerning the motion. Arizona Rule of Civil Procedure 7.2(c) states that “[t]he moving party shall not file a reply in support of its motion *in limine*.”

The Hopi Tribe's motion and request will be denied. The Special Master finds that a ruling cannot be deferred until, at best, days prior to the upcoming oral argument or after its conclusion. Deferring a ruling until then will deprive the litigants of a clear understanding of the scope of the oral argument.

Relevancy is the first consideration when ruling on this motion in limine. From a practical standpoint and as a matter of fairness to all litigants, the Special Master cannot properly determine between now and October 24, 2012, the relevancy of the evidence sought to be excluded. Nearly 500 pages of motions, responses, replies, and proposed statements of fact briefing congressional legislation, executive orders, case law, and administrative decisions have been filed. The Special Master is currently reading these materials.

Second, the Court's order of reference to the Special Master and the case initiation order make it problematic to grant the motion for the reasons it is asserted.<sup>2</sup>

Third, the task of excluding all or a portion of the challenged evidence would be not only a laborious and monumental task but also a process likely to inject confusion in next month's oral argument, and possibly require its postponement.

This case focuses on the date or dates of priority to be adjudicated for the claimed reserved water rights of the Hopi Tribe and no other claimant. The Navajo Nation concedes that in this contested case it “does not seek an adjudication of its water rights or a determination of the priority to be assigned to its rights.”<sup>3</sup> The Special Master understands the objectives of this case. The Hopi Tribe's concerns are not warranted.

For the foregoing reasons, IT IS ORDERED denying the Hopi Tribe's Motion in

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<sup>1</sup> Hopi Tribe's Proposed Order Granting Hopi Tribe's Motion in Limine at 2 (Aug. 10, 2012).

<sup>2</sup> The text of both orders is available at <http://tinyurl.com/9uaahst> (Mar. 19, 2008) and <http://tinyurl.com/9vsotcw> (Sept. 8, 2008), respectively.

<sup>3</sup> Navajo Nation's Resp. to Hopi Tribe's Motion in Limine at 21 (July 17, 2012).

Limine and Request for Oral Argument.

DATED: September 24, 2012.

/s/ George A. Schade, Jr.  
GEORGE A. SCHADE, JR.  
Special Master

On September 24, 2012, 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. 6417-201 dated July 17, 2012. The Special Master distributed a copy by electronic mail.

/s/ George A. Schade, Jr.  
George A. Schade, Jr.