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 CV 6417-203 THE LITTLE COLORADO RIVER SYSTEM AND SOURCE ORDER CONFIRMING FILING DATES AND ORAL ARGUMENTS AND RESCHEDULING INITIAL DATE OF TRIAL CONTESTED CASE NAME: In re Hopi Reservation HSR HSR INVOLVED: Hopi Reservation DESCRIPTIVE SUMMARY: Dates for pretrial pleadings and oral arguments confirmed. The June 2, 2020 date to initiate the trial is vacated and tentatively rescheduled for July 7, 2020. NUMBER OF PAGES: 5 DATE OF FILING: April 15, 2020 

On April 6, 2020, the Hopi Tribe moved for an indefinite continuance of the trial scheduled to begin June 2, 2020, to continue the adjudication of water rights for the Hopi Reservation. Over the next several days, the LCR Coalition, the City of Flagstaff, the United States, the Navajo Nation, and the Arizona State Land Department filed responses. The LCR Coalition requested that all existing dates for pretrial proceedings remain in place and that no decision be made before April 21, 2020 about rescheduling the trial so that any decisions could be made in light of the most recent information and court protocols. The United States, the City of Flagstaff, and the Arizona State Land Department all concurred with the LCR Coalition's position that dates for pretrial actions should not change. The Navajo Nation took no position.

No party agreed the trial should be indefinitely postponed. The Arizona State Land Department and the United States proposed that the initiation of the trial be continued until August 4, 2020, and September 15, 2020, respectively. The City of Flagstaff agreed with the date proposed by the Arizona State Land Department and objects to the date proposed by the United States. The Navajo Nation agreed with the date proposed by the United States.

As stated in the Hopi Tribe's and the United States' papers, the scheduled trial requires the efforts of a large number of people which have been hampered by the need to perform under new and difficult circumstances that were not anticipated at the time that the original schedule was set. It is a credit to all of the parties and their counsel that they have been able to adapt to the evolving circumstances and have met and will continue to meet the filing deadlines set for this month and the proceedings scheduled in May 2020. These efforts, however, have limited the parties' ability to devote all of the time and resources to pretrial preparation previously

anticipated. Thus, a delay of the initial trial date is warranted under the circumstances. The only question is the appropriate amount of delay.

This proceeding cannot be delayed indefinitely. As the Hopi Tribe recognized earlier in this proceeding, "many of the Hopi Tribe's experts and lay witnesses are aging. The Hopi Tribe has already lost an expert witness on Spanish and Mexican law, necessitating the hiring of a new expert." Hopi Tribe's Motion to Perpetuate Testimony and Admit Reports under Ariz. R. Evid. 807, filed July 6, 2017 at 2. This issue is not unique to the Hopi Tribe. An extended delay imposes similar risks on all of the parties. This year will mark the fifth anniversary of the issuance of the Hopi Reservation HSR, dated December 2015, which began this contested case. The parties have invested material amounts of time and resources in expert reports, locating lay witnesses, and generally preparing for this case. An indefinite delay could risk the loss of key witnesses, make at least part of the effort for naught, and impose greater costs in the future.

The Arizona State Land Department proposed that a trial date be set to provide more certainty for the parties and suggested a date based on the current projection that the Covid 19 infections are expected to decline in Arizona to near zero in early June 2020. It proposed August 4, 2020 based on the assumption that the three-week break in July continues to be necessary. The Navajo Nation joined in the sentiment that a setting a date would be beneficial to the parties, but added the caveat that the date may have to change for reasons of public health and the health of the participants in this case. A revised schedule will be put in place so that the parties can plan and prepare their respective cases with the understanding that flexibility will be required to assure that evolving dictates necessary for public health are met.

The United States, joined by the Navajo Nation, proposed a September 15, 2020 date to begin the trial on the grounds that it has not and will not be able to prepare for trial in March, April and May. While undoubtedly true that trial preparation has become more difficult since the various states began implementing orders in mid to late March to limit travel and the ability to work cooperatively in an office, that alone does not justify a 3.5-month delay of a trial date agreed to by all of the parties and set in December 2018. The suggested date could also result in further delay if there is a resurgence of the viral infection in the fall and the trial must again be postponed.

The Maricopa County Superior Court has recognized that this health crisis would continue for months and has been working toward the adoption of policies and the creation of technology that will enable the courts to fully function beyond the operations that the court has maintained and will maintain through the duration of Executive Order 2020-18 issued by Governor Ducey on March 30, 2020. The Superior Court is in the process of implementing virtual courtrooms to conduct video hearings in its divisions for the pending cases during those time periods necessitated by the Covid 19 pandemic. Thus, the lack of physical availability of the desired courtroom may no longer cause a three-week recess in the middle of the trial.

There are three proceedings set in the matter in May: May 7, May 8, and May 19. At each proceeding, the most current information available about the court protocols will be provided to the parties to advance the discussion about trial dates. Given the level of uncertainty about the progression of the impact of the viral infections over the coming months, all participants in this proceeding will simply have to be prepared to move forward at the times consistent with the

protection of the health of the public and the parties. Assuming adequate technology, trial may begin and continue through July 2020.

IT IS ORDERED confirming all existing dates and deadlines in April and May 2020. Trial dates in June 2020 are vacated. Trial shall not begin on June 2, 2020, and trial in this matter shall tentatively begin after a five-week delay on July 7, 2020.

Susan Ward Harris Special Master

On April 15, 2020, 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. 6417-203.