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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
THE LITTLE COLORADO RIVER
SYSTEM AND SOURCE

CIVIL NO. 6417-34-1

UNITED STATES' MOTION TO DISMISS
OR IN THE ALTERNATIVE STAY

CONTESTED CASE NAME: *In re Atkinson's Ltd. Of Az. DBA Cameron Trading Post*

DESCRIPTIVE SUMMARY: The United States moves the Court, pursuant to Ariz.R.Civ.P. 12(b) to dismiss this contested case for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. In the alternative, the United States moves the court to dismiss this contested case without prejudice, or enter a stay of proceedings, pending exhaustion of tribal remedies.

PROCEEDING NO.: LC 148

NUMBER OF PAGES: 3

DATE OF FILING: Original mailed to the Clerk of Court on May 11, 1999

The United States of America ("United States") hereby moves the Court pursuant to Rule 12(b) of the Arizona Rules of Civil Procedure to dismiss this action for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. In the alternative, the United States moves the Court to dismiss without prejudice or stay this action pending exhaustion of Navajo Nation administrative and judicial remedies available to Atkinson Trading Company, Inc. ("ATC"). In support of this motion, the United States asserts:

1 1. ATC's request for an expedited declaration of its water rights under state law
2 is contrary to statute and the prior procedural orders of this Court and is not ripe.

3 2. ATC has requested a declaration that the Navajo Nation has no jurisdiction or
4 authority to regulate ATC's use of water, but has alleged no final action by the Navajo Nation, or
5 an agency of the Navajo Nation, constituting an assertion of jurisdiction by the Navajo Nation
6 over ATC's use of water.

7 3. ATC has requested a declaration that the Navajo Nation has no jurisdiction or
8 authority to regulate ATC's use of water, but has alleged no hardship to ATC that will result
9 from denial of the requested relief.

10 4. ATC's request for a declaration that the Navajo Nation has no jurisdiction or
11 authority to regulate ATC's use of water is not ripe.

12 5. ATC has requested a declaration that the Navajo Nation Water Code is
13 inapplicable to ATC's water rights and ATC's use of water, but has not alleged any final action
14 by the Navajo Nation constituting an assertion that ATC's water rights and ATC's use of water
15 are subject to the Navajo Nation Water Code.

16 6. ATC has requested a declaration that the Navajo Nation Water Code is
17 inapplicable to ATC's water rights and ATC's use of water, but has not alleged any hardship that
18 will result to ATC from denial of the requested relief.

19 7. ATC's request for a declaration that the Navajo Nation Water Code is
20 inapplicable to ATC's water rights and ATC's use of water is not ripe.

21 8. ATC has not exhausted available Navajo Nation administrative and judicial
22 remedies.

23 9. ATC has alleged no applicable waiver of the sovereign immunity of the
24 Navajo Nation.

10. There is no waiver of the sovereign immunity of the Navajo Nation for suits seeking the relief requested by ATC.

11. This Court is prohibited by the Arizona Enabling Act and the Arizona Constitution from asserting jurisdiction over the Navajo Nation.

12. This Court therefore lacks jurisdiction over the subject matter of ATC's requests for relief.

WHEREFORE, the United States respectfully moves the Court to dismiss this contested case. In the alternative, the United States moves the Court to stay this contested case pending exhaustion by ATC of available Navajo Nation administrative and judicial remedies.

Dated May 11, 1999.

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The original of the foregoing mailed this 11th day of May, 1999, to the Clerk of the Apache County Superior Court for filing. Copies of the foregoing mailed this 11th day of May, 1999, to all parties on the Court-approved mailing list for Case No. 6417-34-1.

Bradley S. Bridgewater