

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

CV 6417-201

ORDER SETTING STATUS
CONFERENCE

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

HSR INVOLVED: None.

DESCRIPTIVE SUMMARY: Date set to provide report regarding legal title to real property and initiating action to adjudicate Hopi Industrial Park and Hopi Ranches.

NUMBER OF PAGES: 6.

DATE OF FILING: April 11, 2016.

On March 29, 2016, a status conference was held to ascertain if any disputes existed regarding the dates after 1882 on which the United States acquired legal title to real property within the boundaries of the Hopi Partitioned Land. The parties provided corrections to acquisition date and deed information provided in the Special Master's order dated February 10, 2016. The United States reported that it is in the process of preparing a comprehensive report regarding the dates on which the federal government acquired ownership of the property within the Hopi Partitioned Land, including Land Management District 6.

IT IS ORDERED that the United States shall file a report by June 23, 2016, that identifies the acquisition dates of property within Hopi Partitioned Land, including Land Management District 6 and reports the recording information for the deeds conveying legal title and copies of the deeds. The report will include all information from the February 10, 2016 order, as corrected by the parties.

This matter also involves the Hopi Tribe's claims for water for land known as the Hopi Industrial Park, Aja, Clear Creek, Drye, 26 Bar, and Hart Ranches and "other areas". The following claims have been made with respect to water rights for this land:

Hopi Industrial Park: It is located in Sections 21 and 22 of T19N, R15E of the Gila and Salt River Base and Meridian, Navajo and Coconino Counties, Arizona. The United States claims fee title to the property as trustee for the Hopi Tribe pursuant to a deed dated August 4, 1966. The Hopi Tribe claims immemorial water rights. Hopi Statement of Claimant 39-91443, filed with the Arizona Department of Resources on November 29, 1985; Amended Statement of Claimant 39-91443.

Hopi Ranches: The ranches are the Aja, Clear Creek, 26 Bar, Hart and Drye Ranches. The deeds conveying title to the Hopi Ranches are dated 1997 and later. The 26 Bar Ranch is not held in trust by the United States for the Hopi Tribe. Hopi Amended Statement of Claimant 39-91443, dated January 29, 2004. Portions of the Clear Creek Ranch and the Aja Ranch are also not held in trust. Submission of Deeds Regarding Trust Status of Hopi Ranches filed by the United States, dated December 10, 2012. Water rights for the Hopi Ranches are based on

state law and the Navajo-Hopi Land Dispute Settlement Act. Hopi Amended Statement of Claimant 39-91443.

Based on the record and in accordance with the Court's order, Statements of Claimant for water rights associated with these properties were last amended in 2004.

All Hopi claims must be adjudicated to satisfy the comprehensive requirement of the McCarran Amendment that requires the adjudication of the whole community of claims. *United States v. District Court In & For Eagle Cty, Colo*, 401 U.S. 520, 525 (1971). Given that the claims of Indian Tribes have been given priority in the Little Colorado Adjudication and the parties' historical position that claims held by and for Indian Tribes should be resolved prior to addressing other claims (Minute Entry, dated June 18, 2002) and the fact that Arizona Department of Water Resources has already devoted substantial time to studying the water claims of the Hopi Tribe, the Hopi Tribe's claims for water rights for lands not included in 1882 Executive Order Reservation or Moenkopi Island should be undertaken at this time. Consistent with the prior proceedings in this matter, to the extent that there are any claims that can be resolved as a matter of law, they shall be identified and briefing scheduled and those issues decided.

Ascertaining water claims based on federal and state law is necessarily, however, a fact-intensive inquiry that must be made on a reservation by reservation basis. *See In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001). Pursuant to A.R.S. §45-256, the court must request technical assistance from Arizona Department of Water Resources (ADWR) with respect to areas in which ADWR has hydrological or other expertise. Accordingly, ADWR shall prepare a hydrographic survey report (HSR) that when filed determines the beginning of

the objection period and allows hearings to commence. Thus, ADWR will be ordered to prepare an HSR for the Hopi Industrial Park and the Hopi Ranches. The Hopi II HSR shall include:

1. Hydrological and technical information about available surface water and groundwater resources to meet each claim;
2. Information about historic and existing water uses on the Hopi Industrial Park and Hopi Ranches;
3. Proposed water attributes for claims made by the Hopi Tribe or the United States, which are:
 - i. Types of use of water;
 - ii. Applicable filings made with ADWR;
 - iii. Source of water;
 - iv. Legal description of point of diversion of the water;
 - v. Legal description of place of use of the water;
 - vi. Quantity of use in acre feet per year; and
 - vii. Dates on which any use of water listed in the statements of claimant began or ceased.

If applicable, water attributes will also include storage volume, name of reservoir or stockpond, and number of irrigated acres.

4. An appendix that compiles all Statements of Claimant and any amendments thereof that are associated with the Hopi Industrial Park and Hopi Ranches;

5. A statement that clearly identifies those claims for which the director of Arizona Department of Water Resources does not make a recommendation concerning the water rights claims and uses investigated.

Pursuant to Pretrial Order No. 2 as modified by Pretrial Order No. 3, ADWR shall not include descriptions or opinions of the feasibility, profitability or practicability of future uses reported in the Statements of Claimant analyzed by the Hopi II HSR.

IT IS FURTHER ORDERED that the parties shall file by July 7, 2016, a statement, which shall not exceed 10 pages, that:

1. Identifies issues which can be resolved as a matter of law with respect to the priority dates or water attributes of the Hopi Industrial Park and the Hopi Ranches.
2. Lists any additions or deletions to the proposed list of items that should be included in the Hopi II HSR.

IT IS FURTHER ORDERED that in addition to the foregoing, the Hopi Tribe and the United States shall file by July 7, 2016, a statement that:

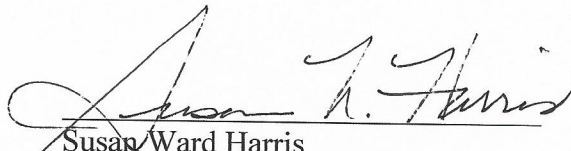
1. Identifies any land in the Little Colorado Adjudication to which the Hopi Tribe asserts water rights in addition to land included in the 1882 Reservation, Moenkopi, Hopi Industrial Park and the Hopi Ranches.
2. Identifies any Statements of Claimant asserting rights by or on behalf of the Hopi Tribe in addition to 39-91443 and 39-91441 that should be the subject of the Hopi II HSR.
3. Identifies by date and recording information the deeds which vested title to the Hopi Industrial Park and the Hopi Ranches in the United

States in fee or in trust or in the Hopi Tribe and which will be used as the basis for asserting a priority date for purposes of state or federal rights for the Hopi Tribe.

IT IS FURTHER ORDERED that Arizona Department of Water Resources shall review Statements of Claimant 39-91443 and 39-91441 and file by July 7, 2016, a statement identifying specific data that should be included in any amended Statements of Claimant that would expedite its investigation of the claims asserted and preparation of an HSR that includes the elements listed above.

IT IS FURTHER ORDERED setting a status conference on July 12, 2016, to:

1. Resolve any issues regarding the dates on which the United States acquired legal title to the land within the Hopi Partitioned Land, including Land Management District 6 or, if disputes exist, schedule proceedings to resolve the dispute.
2. Address matters necessary to proceed forward on the Hopi Industrial Park and the Hopi Ranches.
3. Determine deadlines by which the relevant Statements of Claimant shall be updated and the preliminary Hopi II HSR shall be completed.


Susan Ward Harris
Special Master

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.