

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 IN AND FOR THE COUNTY OF APACHE  
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5 IN RE THE GENERAL ADJUDICATION OF  
6 ALL RIGHTS TO USE WATER IN THE  
7 LITTLE COLORADO RIVER SYSTEM AND  
8 SOURCE

CV 6417

SUPPLEMENTAL ORDER OF  
REFERENCE

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11 HSR INVOLVED: None.

12 DESCRIPTIVE SUMMARY: The Court issues a supplemental order of reference to the  
13 Special Master.

14 NUMBER OF PAGES: 4.  
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18 By Order dated January 27, 1994, the Court found that the examination of the claims  
19 for water rights of, *inter alia*, the Hopi Tribe and the Navajo Nation merited priority in this  
20 adjudication. Accordingly, pursuant to A.R.S. § 45-256 the Arizona Department of Water  
21 Resources (ADWR) was requested to prepare a hydrographic survey report (HSR) for the  
22 water right claims asserted by and on behalf of the Hopi Tribe with respect to lands located  
23 within two non-contiguous geographic areas known as the 1882 Executive Order  
24 Reservation and the 1934 Act Reservation (collectively, the "Hopi Reservation"). On  
25 December 15, 2015, ADWR issued a final HSR for the Hopi Reservation (Hopi HSR).  
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1 Objections have been filed to the Hopi HSR and the process to determine the claimed water  
2 rights on the Hopi Reservation has been initiated.

3         During the period of the preparation of the Hopi HSR, this Court considered a  
4 number of legal issues related to the claims asserted by and on behalf of the Hopi Tribe.  
5 While a number of those issues were decided pursuant to this Court's Order dated January  
6 25, 2016, there remain issues that are the subject of a motion for reconsideration, were  
7 remanded to the Special Master for additional findings of fact and conclusions of law, and  
8 could not be decided due to the absence of a HSR and factual disputes.

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10         The unresolved issues include claims for water rights for land owned by or on behalf  
11 of the Hopi Tribe located outside the boundaries of the Hopi Reservation. This land has  
12 been generally referred to as the Hopi Ranches and the Hopi Industrial Park. The Hopi  
13 Tribe also owns, either legally or beneficially, additional land that is not included within the  
14 Hopi Ranches, the Hopi Industrial Park or the Hopi Reservation. To complete the  
15 adjudication of water rights held by or on behalf of the Hopi Tribe, the Hopi Tribe and the  
16 United States must amend existing statements of claimant regarding their claims for water  
17 rights for land outside the boundaries of the Hopi Reservation. Thereafter, ADWR must  
18 prepare a hydrographic survey report pursuant to A.R.S. §45-256.  
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21         The final set of legal issues initiated by the Court concerned the priority of water  
22 rights claimed by the Navajo Nation for water resources shared by both tribes. After  
23 lengthy proceedings, the Special Master issued a report in CV 6417-201 indicating that a  
24 determination could not be made with respect to the claims of the Navajo Nation due to  
25 genuine disputes about material facts, an insufficiently developed factual record and the  
26 concern that the consideration of at least one approach advocated by a party could have  
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1 exceeded the Court's order of reference. In this Court's Order dated January 25, 2016, the  
2 Court agreed that issues raised concerning the Navajo Nation's water rights were not  
3 appropriate for summary judgement.

4 The Special Master has appropriately taken the initial action to begin the process  
5 necessary to resolve the remainder of the claims for and on behalf of the Hopi Tribe and the  
6 claims of the Navajo Nation. In the general case CV 6417 and in the specific case CV  
7 6417-201, this Court has issued orders that refer specific factual and legal issues to the  
8 Special Master. To further the efficiency of the adjudication and to address concerns raised  
9 by a limited number of the parties regarding the scope of the Special Master's authority, it is  
10 appropriate to reiterate that this Court has conveyed to the Special Master by its Order dated  
11 July 20, 2015 ("Initial Order of Reference"), those broad powers necessary to define the  
12 water rights of claimants in the general adjudication of the Little Colorado River System and  
13 Source for the purposes of filing a report with this Court under Rule 53(g) of the Arizona  
14 Rules of Civil Procedure. This Order shall not be interpreted to limit the authority  
15 conveyed in the Initial Order of Reference.  
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19 **IT IS ORDERED:**

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21 A. In order to prepare and file with the Court a report concerning the remainder  
22 of the claims for and on behalf of the Hopi Tribe and the Navajo Nation, the Special Master  
23 shall organize and conduct the necessary proceedings and hearings, which shall include, but  
24 are not limited to, directing the filing of amended statements of claimant, considering  
25 motions with respect to such amended statements of claims, and exercising the Special  
26 Master's authority under A.R.S. §45-256(A) to request technical assistance from Arizona  
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1 Department of Water Resources. The Special Master may provide guidelines for such  
2 technical assistance that may include a designation of the claims, the watershed, or the  
3 geographic area to be considered in the hydrographic survey report to be prepared by the  
4 Arizona Department of Water Resources. Further, as required by A.R.S. §45-257(A) the  
5 Special Master shall conduct hearings to determine the water rights of the claimants  
6 included in the final the hydrographic survey reports.  
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8 B. This Court may from time to time reserve to itself consideration of  
9 substantive legal issues in these proceedings upon its own motion, reference of the Special  
10 Master or motion of the parties.

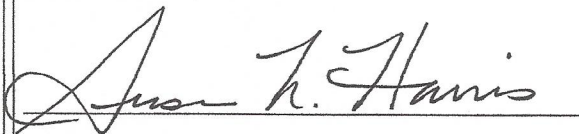
11 C. The Special Master shall submit findings of fact, conclusions of law, and  
12 recommendations in a single report or a series of report to the Court.  
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14 Dated: July 15, 2016

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16 Mark H. Brain  
17 Judge of the Superior Court

18 On July 18, 2016, the original of the  
19 foregoing was sent to the Clerk of the Apache  
20 County Superior Court for filing and  
21 distributing a copy to all persons listed on the  
22 court approved mailing list for Contested Case  
23 No. CV 6417.

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