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Hopi LCR Trial

The Future Phase of the Little Colorado River Adjudication

Phoenix, Ariz. - The contested case for Hopi water claims in the Little Colorado River adjudication began this past September. The water claims have been separated into three trials, the first on past and present water use; the next trial (now in 2020) on future water needs; and a third trial for the Hopi ranch lands south of the Hopi Reservation sometime after 2022.

There is no precise method for quantifying the water reserved to a tribe for a permanent homeland. The Arizona Supreme Court has instructed the lower court to consider a long list of factors in determining federal reserved water rights, including a tribe's culture and history, the tribe's historic water use, and a tribe's population, economic base, and future development plans. *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 35 P.3d 68 (Ariz. 2001) ("Gila V").

In the first trial on past and present water use, the court heard testimony about the Hopi Tribe's culture, history, religion, and historic water use. These will be important factors in considering Hopi's overall water rights. The court must respect historic and cultural water uses.

In the next trial, the court will hear testimony about future water needs. The court will hear from demographers about the projected future population. Water will always be used, most importantly, for life. It is therefore important for the court to hear evidence regarding the expected numbers of future generations. The United States and Hopi Tribe have retained demographers that estimate the Hopi population will reach somewhere between 38,000 and 52,000 tribal members by 2200.

The court will also hear from Hopi fact witnesses and expert witnesses about future development projects. Future development projects need to be achievable from a practical standpoint—they must not be 'pie-in-the-sky' ideas that will never reach fruition. The court will be considering evidence about natural resources on the reservation and how water granted in this case will be put to its best use on the reservation. The court will also consider the economic

feasibility of proposed uses and will hear evidence about physical infrastructure, human resources, the employment base, technology, raw materials, financial resources, and capital for projects.

Hopi experts have developed proposals for the further development of natural resources available on the reservation including livestock, solar power, coal and other mineral extraction. An economy has no chance of developing without adequate water, and without an economy, tribal members are forced to leave the reservation to find jobs and the reservation cannot be a “permanent and abiding” homeland for the Hopi people. The experts have quantified the water needed for the continued development of the natural resources and will offer opinions at trial regarding the economic feasibility of the projects.

Hopi fact witnesses will also testify about community planning and development for future generations. It will be important that the court hear directly from Hopi people about their vision for future generations on the Reservation.

The court recently adopted an amended case scheduling order for the future phase of the case. The trial is now set to begin on June 1, 2020. The Hopi Tribe must identify its witnesses for the next phase by January 18, 2019, and the parties will then engage in depositions and discovery through the end of the year. There will be briefing on legal issues and preparation for the trial in 2020.

The special master appointed to oversee the case will consider all of the evidence and argument from the past and present water use trial and the future water needs trial. The judge will then produce a comprehensive report on the amount of water needed to make the Hopi Reservation a permanent homeland for Hopi for generations to come. All parties will be given an opportunity to comment on this report. Afterwards, the decision will be sent for review to the Superior Court.

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