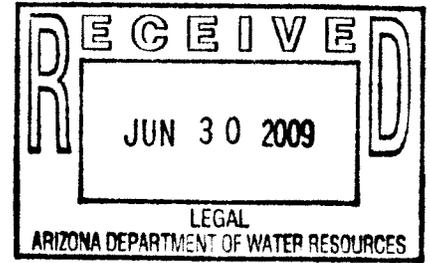


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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF APACHE**

10 **IN RE THE GENERAL ADJUDICATION**
11 **OF ALL RIGHTS TO USE WATER IN**
12 **THE LITTLE COLORADO RIVER**
13 **SYSTEM AND SOURCE**

Civil No. 6417

**CITY OF FLAGSTAFF'S COMMENTS
AND JOINDER IN LCR CLAIMANTS'
COMMENTS TO ADWR'S
PRELIMINARY HYDROGRAPHIC
SURVEY REPORT FOR THE HOPI
INDIAN RESERVATION**

(Assigned to the Honorable Eddward P.
Ballinger, Jr.)

14 Contested Case Name: *In re Hopi Tribe Priority*

15 HSR Involved: Preliminary Hydrographic Survey Report for the Hopi
16 Indian Reservation.

17 Descriptive Summary: The City of Flagstaff submits comments and joins
18 in comments submitted by the LCR Claimaints related to the Arizona
Department of Water Resources' Preliminary Hydrographic Survey Report
for the Hopi Indian Reservation

19 Statement of Claimant Nos.: City of Flagstaff 39-03-83947, 39-03-83948,
20 39-03-83949

21 Date of Filing: Original mailed to the Clerk of the Superior Court for
Apache County on June 29, 2009.

22 Number of Pages: 4

INTRODUCTION

The City of Flagstaff (the “City”) submits these comments to the Preliminary Hydrographic Survey Report of the Hopi Indian Reservation (the “HSR”) submitted to this Court in December 2008, by the Arizona Department of Water Resources (“ADWR”). The City notes that many of the Hopi claims are not addressed in the HSR, and others were excluded or have yet to be analyzed by ADWR due to “legal issues pending before the Court and the Special Master” (See HSR, § 9.3.3). Therefore, these comments are not comprehensive and additional comments may be required if the HSR is revised or when it is finalized. Furthermore, the City joins in certain LCR Claimants’ Comments to the HSR for the reasons stated therein.

I. The final HSR should include the Court’s March 2, 2009 order.

On March 2, 2009, after having considered the positions of the parties, this Court declared “that the Hopi Tribe is precluded from asserting water right claims in this adjudication to the extent such claims seek the right to water sources located within the Little Colorado River Basin that neither abut nor traverse Hopi lands.” See Minute Entry dated March 2, 2009. In the HSR, ADWR specifically notes the then-current status of this issue as it existed before the Court at the time the HSR was submitted. See id. The HSR states that “until the legal issues before the Court and the Special Master are resolved, ADWR is unable to recommend certain water right attributes.” Id. Since the Court has declared that the Hopi Tribe is “precluded from asserting water right claims . . .

1 located within the Little Colorado River Basin that neither abut nor traverse Hopi lands,”
2 such claims should be addressed accordingly in the HSR. The City believes such an
3 approach furthers the interests of judicial economy by ensuring all of the Hopi Tribe’s
4 claims are evaluated comprehensively and concurrently. Shelving certain Hopi claims
5 while determining only those claims on the “main reservation” risks unnecessary delays,
6 duplication of work, and lack of certainty for non-Hopi claimants. Moreover, evaluating
7 all of the Hopi Tribe’s claims concurrently would satisfy the “comprehensive
8 requirement” of the McCarran Amendment, ensuring that all claims are included in the
9 adjudication. United States v. District Court of Eagle County, 401 U.S. 520, 525 (1971).

10 **II. Comments by LCR Claimants**

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12 The City notes the comments filed by the LCR Claimants to the HSR and
13 specifically joins in paragraphs II – IV for all the reasons stated therein.

14 **CONCLUSION**

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16 The City of Flagstaff respectfully requests that the above comments be included in
17 the HSR prior to its finalization. The City of Flagstaff respectfully requests further that,
18 having joined in certain comments to the HSR submitted by the LCR Claimants, that
19 such comments also be included in the HSR prior to its finalization.

20 —

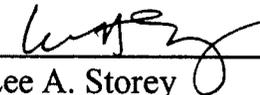
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DATED this 29th day of June, 2009.

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ORIGINAL of the foregoing mailed for
filing to the Clerk of the Apache County
Superior Court this 29 day of June
2009, and a COPY mailed to all persons
on the Court-approved mailing list for the
Little Colorado River Adjudication
Civil No. 6417 dated June 18, 2009.



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