

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

February 23, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A. Parmar
Deputy

FILED: March 1, 2023

In re: the General Adjudication
Of All Rights to Use Water in the
Little Colorado River System and Source

Case No. CV6417-300

In Re: Navajo Nation

MINUTE ENTRY

Courtroom 301 – Central Court Building

2:30 p.m. This is the time set for Oral Argument regarding the SRP's *Motion in Limine to Preclude Evidence of Census Undercount* filed January 13, 2023, SRP's *Motion in Limine to Preclude Reports and Testimony by Jonathan Taylor* filed January 13, 2023, LCR Coalition's *Motion in Limine Regarding Jonathan Taylor's Expert Reports and Testimony* filed January 13, 2023 and Navajo Nation's *Motion in Limine Re: San Juan Southern Paiute Evidence* filed January 13, 2023 and Pretrial Conference before Special Water Master Susan Ward Harris.

The following attorneys appear virtually through Court Connect:

- Judith M. Dworkin, Jeffrey S. Leonard, Evan Hiller, Candance French and Kathryn Hoover on behalf of the Navajo Nation
- Assistant Attorney Generals, Michelle Brown-Yazzie and McArthur Stant, observing on behalf of the Navajo Nation Department of Justice
- Payslie Bowman and Phillip Londen on behalf of the Hopi Tribe
- Mark McGinnis and Katrina Wilkinson on behalf of Salt River Project ("SRP")

- Gus Guarino, Emmi Blades, Cody McBride and Rebecca Ross on behalf of the United States Department of Justice
- Brian J. Heiserman, David Brown, J. Albert Brown and Bradley Pew on behalf of the LCR Coalition
- Lee Storey and Ethan Minkin on behalf of the City of Flagstaff
- Julia Kolsrud and Kate Shaffer on behalf of the San Juan Southern Paiute Tribe
- Carrie Brennan and Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)
- Kimberly Parks and Kome Akpolo observing on behalf of the Arizona Department of Water Resources (“ADWR”)
- Maria O’Brien observing on behalf of Atkinson Trading Company
- Michael Rolland on behalf of the Cities of Avondale, Glendale, Mesa, Scottsdale and Tempe
- Robyn Interpreter observing on behalf of the Yavapai Apache Nation and Pascua Yaqui Tribe

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the order of arguments.

Mr. McGinnis addresses the Court regarding SRP’s *Motion in Limine to Preclude Evidence of Census Undercount* filed January 13, 2023. He does not believe that there are facts or evidence specific to the reservation or study area to support an upward adjustment for an assumed undercount. He asks the Court to preclude the expert witness testimony pursuant to Rule 702 of the Arizona Rules of Evidence.

Ms. Storey joined in SRP’s Motion. She states that has nothing to add and asks that the Court grant the Motion.

Ms. Brennan concurs with Mr. McGinnis’ comments. She adds that she does not believe there is any evidence in the exhibits that speaks to whether there was an undercount of 22.4% in 2010.

Mr. Hiller addresses the Court regarding SRP’s Motion. He reads from pages 62 and 63 of Mr. Nez’s deposition. He believes that there is ample evidence to support that the Navajo Nation is hard to count by the Census Bureau. He states that the issues with rural addresses, inaccessibility to homes, and difficulty contacting the residents was present in 2010 and exacerbated by COVID in 2020. He asks the Court to deny the Motion.

Mr. McBride addresses the Court regarding SRP’s Motion. He believes that the Motion should be denied for at least two reasons. First, this is a bench trial and Motions in Limine should not be used to weigh evidence to resolve factual disputes and second, Dr. Greene’s adjustment for an undercount in the 2010 census was based on sufficient facts and data and a reliable methodology.

Mr. McGinnis addresses the Court regarding Mr. Hiller's and Mr. McBride's arguments against SRP's Motion.

Mr. McGinnis addresses the Court regarding SRP's *Motion in Limine to Preclude Reports and Testimony by Jonathan Taylor* filed January 13, 2023. He asks that the Court preclude Mr. Taylor's evidence/testimony under Rule 26(b)(4) of the Arizona Rules of Civil Procedure and Rules 402, 403 and 702 of the Arizona Rules of Evidence.

Mr. Heiserman addresses the Court regarding LCR Coalition's *Motion in Limine Regarding Jonathan Taylor's Expert Reports and Testimony* filed January 13, 2023. He believes Mr. Taylor interpreted/analyzed case law, then based those interpretations as legal principals to develop standards for the quantification for tribal water rights. He believes this type of work is inadmissible under the *Ryan v. Napier* Arizona Supreme Court Decision. LCR Coalition has joined in SRP's Motion regarding Mr. Taylor and asks that the Court at least exclude the material constituting legal opinions if it is not inclined to exclude the entire report.

Mr. Leonard addresses the Court regarding SPR's Motion and LCR Coalition's Motion regarding Jonathan Taylor. He does not believe the one expert per issue rule applies as Mr. Lichty and Mr. Taylor approached their work using different tools and perspectives as an engineer and economist. He does not believe Mr. Taylor is dictating to the Court what standard of the law should be applied, but rather made a concerted effort to apply the law as the Court has laid it down. He cites the Court's previous order under the Hopi Case on August 13, 2020 concerning motions in limine/redactions and believes that Mr. Taylor's report falls within what the Court previously said was acceptable.

Discussion is held regarding scheduling for the continuance of today's oral argument. Mr. McGinnis states that he appreciates the Court's patience and will forgo his reply if the Court does not have any further questions. The Court will start with the Navajo Nation's Motion tomorrow then proceed to the Pretrial Conference.

IT IS ORDERED continuing today's Oral Argument and Pretrial Conference to **February 24, 2023 at 12:00 p.m.** before the Special Water Master Susan Ward Harris via TEAMS.

4:55 p.m. This matter stands in recess until February 24, 2023 at 12:00 p.m.

A copy of this minute entry is provided to all parties on the Court approved mailing list.