

SUPERIOR COURT OF ARIZONA  
APACHE COUNTY

May 23, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER  
SHERRI ZENDRI

A. Parmar  
Deputy

FILED: May 26, 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  
TRIAL DAY 15**

Courtroom 613 – East Court Building

8:57 a.m. This is the time set for Trial to Court regarding Phase 1 – DCMI and Stock/Wildlife Watering before Special Water Master Sherri Zendri.

The following attorneys appear in person:

- Jeffrey S. Leonard, Evan Hiller and Judith M. Dworkin on behalf of the Navajo Nation
- Gus Guarino and Emmi Blades on behalf of the United States Department of Justice
- Phillip Londen and Payslie Bowman on behalf of the Hopi Tribe
- Julia Kolsrud on behalf of the San Juan Southern Paiute Tribe
- David Brown and Brian J. Heiserman on behalf of the LCR Coalition (“LCRC”)
- Katrina Wilkinson and Mark McGinnis on behalf of Salt River Project (“SRP”)
- Carrie Brennan on behalf of the Arizona State Land Department (“ASLD”)
- Ethan Minkin, Lee Storey and Luke Erickson on behalf of the City of Flagstaff

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

**LET THE RECORD REFLECT** that Court Reporter, Cindy Mahoney, was previously sworn on the first day of trial.

Witness, John Ward, is sworn and testifies.

United States' exhibits 1203, 1204, 1205, 1217 and 1240 are received in evidence.

Upon motion of the Navajo Nation, United States' exhibit 428 is received in evidence.

Upon motion of the Hopi Tribe, United States' exhibit 429 is received in evidence.

Counsel for the Hopi Tribe, Mr. Londen, addresses the Court regarding his request to admit all US' Geological Survey data reports from 1984 through 2021 (29 total) into evidence.

Counsel for Navajo Nation, Mr. Leonard, objects to the admission of all reports as to relevance.

Counsel for United States, Mr. Guarino, joins in the relevance objection.

10:35 a.m. The Court stands in recess.

10:48 a.m. The Court reconvenes with the above-named parties present.

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

Further discussion is held regarding the US' Geological Survey Reports. Mr. Londen offers to narrow his request to the 2010 – 2018 reports as a compromise.

The relevance objection is overruled with respect to the narrowed request of reports.

Hopi Tribe's exhibits 51, 52 and 53 are received in evidence.

Upon motion of the Hopi Tribe, United States' exhibits 130, 133 and 134 are received in evidence.

Witness, John Ward, testifies further.

Hopi Tribe's exhibit 16 is received in evidence.

12:01 p.m. The Court stands in recess.

1:31 p.m. The Court reconvenes with the above-named parties present.

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

Witness, John Ward, testifies further.

Counsel for City of Flagstaff, Mr. Minkin, inquires as to the appropriateness of including additional claims for Aquifer N in Mr. Ward's model. Counsel for Navajo Nation, Mr. Leonard, objects as to relevance and form.

Counsel for United States, Mr. Guarino, joins in the relevance objection.

The relevance objections are sustained.

Witness, John Ward, testifies further.

Counsel for United States, Mr. Guarino, objects to the admission of City of Flagstaff's exhibit 213 as to relevance and hearsay.

Counsel for City of Flagstaff, Mr. Minkin, believes this exhibit falls under the residual exception under Rule 807 and the business record exception under Rule 803(6)(b).

The objection is overruled and City of Flagstaff's exhibit 213 is received in evidence.

Witness, John Ward, testifies further.

Counsel for United States, Mr. Guarino, objects to the admission of City of Flagstaff's 214 as to relevance and hearsay.

The Court inquires as to the relevance of the email exhibit.

Counsel for the City of Flagstaff, Mr. Minkin, responds that the email looks at conjunctive use and incorporating surface water, both issues relevant to DCMI. He adds that it also includes the witness' opinion on the watershed.

Counsel for the Navajo Nation, Mr. Leonard, joins in the relevance and hearsay objections.

Counsel for City of Flagstaff, Mr. Minkin, further adds that the exhibit falls under the residual exception under Rule 807.

The objection is overruled and City of Flagstaff's exhibit 214 is received in evidence.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding exhibit 214 and cites *State v. Parker*, 231 Ariz. 391 (2013).

Counsel for United States, Mr. Guarino, further addresses the Court regarding Rule 807.

The objections are noted and the arguments will be considered in the future, however the Court does believe the exhibit falls under the Rule 807 exception.

2:59 p.m. The Court stands in recess.

3:13 p.m. The Court reconvenes with the above-named parties present.

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

Counsel for ASLD, Ms. Brennan, addresses the Court regarding emails being admitted under the business record exception. She proposes that the parties brief the issue during the holiday break as the issue will come up again.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding the case citation and Ms. Brennan's proposal.

Discussion is held regarding the proposal. The Court is not inclined to order the parties to brief the issue, however the Court expects the parties to be prepared to address this issue after the holiday break on Monday, June 5, 2023.

Witness, John Ward, testifies further.

Counsel for City of Flagstaff, Mr. Minkin inquires if additional claims for economic development made by the United States on behalf of the Navajo Nation would affect the witness' opinions on this case.

Counsel for United States, Mr. Guarino, objects as to relevance.

Counsel for City of Flagstaff, Mr. Minkin, states that competing demands are relevant as it may change the witness' opinion.

Counsel is directed to rephrase the question.

Counsel for United States, Mr. Guarino, objects as to relevance and believes the new question requires the witness to provide a legal opinion.

Counsel for Navajo Nation, Mr. Leonard, joins United States' relevance objection.

The Court inquires if Mr. Minkin is asking about Phase II claims. Mr. Minkin affirms the inquiry is about is Phase II and the relevance objection is sustained.

Witness, John Ward, testifies further.

The witness is excused.

Discussion is held regarding the Court's proposal and the witness schedule for the week of June 5, 2023.

**IT IS ORDERED** that the parties shall be prepared to address the issue of emails/business record exception during a brief discussion (no more than 30 minutes) on Monday, June 5, 2023.

3:41 p.m. This matter stands in recess until Monday, June 5, 2023.

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

**NOTE:** All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.