

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

June 19, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: June 23, 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 22**

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, Judith M. Dworkin and Candace French on behalf of the Navajo Nation
- Gus Guarino on behalf of the United States Department of Justice
- Phillip Londen and Brandon Delgado 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”)
- Chris Thomas and Lee Storey on behalf of the City of Flagstaff
- Maria O’Brien on behalf of Atkinson Trading Company

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.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding this week's witness schedule and exhibits.

LET THE RECORD REFLECT that the Navajo Nation inadvertently submitted non-redlined versions of exhibits 387 and 390. Mr. Leonard provides redlined versions of Mr. Greenslade's report (Navajo Nation's exhibit 387) and response to rebuttal report (Navajo Nation's 390) consistent with the Court's prior order. He also provides a more legible version of Navajo Nation's exhibit 1267 (as requested by the Court on May 1, 2023, Day 5) and a version of Navajo Nation's exhibit 1464 with sound. No objection having been made,

IT IS ORDERED directing the clerk to substitute Navajo Nation's exhibits 387, 390, 1267 and 1464 with the corresponding exhibits provided today.

Witness, Dr. Karletta Chief, is sworn and testifies.

Counsel for LCRC, Mr. Heiserman, objects to the witness testifying regarding the average water use for Page, AZ as to foundation and disclosure.

The objection is sustained.

Witness, Dr. Karletta Chief, testifies further.

Navajo Nation's exhibit 1131 is received in evidence.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1462. Counsel for LCRC, Mr. Heiserman, objects to the admission of Navajo Nation's exhibit 1462 as to hearsay. Counsel for SRP, Ms. Wilkinson, joins in the hearsay objection.

The hearsay objection is sustained and Navajo Nation's exhibit 1462 is not received in evidence.

Counsel for Navajo Nation, Mr. Leonard, moves to admit the two photos of Grand Falls contained in exhibit 1462 as a separate exhibit.

IT IS ORDERED that Navajo Nation shall supply a new exhibit with the aforementioned photos as Navajo Nation's exhibit 1913 at which time it will be received in evidence.

10:30 a.m. The Court stands in recess.

10:44 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.

The parties do not have any cross examination for Dr. Chief and the witness is excused.

Witness, Dr. John Leeper, is sworn and testifies.

Navajo Nation's exhibits 367, 369, 370, 372 and 1911 are received in evidence.

Counsel for SRP, Mr. McGinnis, objects and moves to strike the witness' testimony regarding if water in an alluvial aquifer is groundwater as it calls for a legal conclusion.

IT IS ORDERED granting the Oral Motion to Strike. The objection is sustained.

Witness, Dr. John Leeper, testifies further.

11:57 a.m. The Court stands in recess.

1:29 p.m. The Court reconvenes with the above-named parties present, as well as Emmi Blades on behalf of the United States Department of Justice.

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

Witness, Dr. John Leeper, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness referencing the Kyle Study (subject to protective order). Counsel for SRP, Mr. McGinnis, agrees and does not oppose the answer being stricken.

The objection is sustained and the answer will be stricken.

Witness, Dr. John Leeper, testifies further.

SRP's exhibits 5 and 6 are received in evidence.

Witness, Dr. John Leeper, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness testifying outside the scope of his report as to relevance.

The objection is overruled.

Witness, Dr. John Leeper, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to Counsel for City of Flagstaff, Mr. Thomas' line of questioning on subject matter outside the scope of his report. He adds that despite his knowledge from being a former employee of the Navajo Nation Department of Water Resources, this questioning does not pertain to the work he was retained to do in this case.

Counsel for City of Flagstaff, Mr. Thomas, responds that Dr. Leeper's report addresses quantification issues and was admitted this morning as Navajo Nation's exhibit 370. Counsel for ASLD, Ms. Brennan, adds that Rule 611(b) provides that a witness may be cross examined on any relevant matter.

Discussion is held regarding the scope of cross examination, disclosure and the contents of Dr. Leeper's report.

The objection is overruled.

Witness, Dr. John Leeper, testifies further.

Counsel for LCRC, Mr. Heiserman, objects to Counsel for City of Flagstaff, Mr. Thomas, bolstering testimony as friendly cross. Mr. Thomas, states that his line of questioning is meant to provide an understanding as to Dr. Leeper's analysis. Mr. Heiserman has no objection to testimony for that purpose.

Mr. Thomas is directed to keep his questioning related to what was done and why it was done.

2:57 p.m. The Court stands in recess.

3:11 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 City of Flagstaff, Mr. Thomas, moves for the admission of City of Flagstaff's exhibit 76. Counsel for Navajo Nation, Mr. Leonard, objects as to relevance.

The objection is overruled and City of Flagstaff's exhibit 76 is received in evidence.

Witness, Dr. John Leeper, testifies further.

Counsel for SRP, Mr. McGinnis, objects as to foundation to the expert witness testifying regarding diversions and impoundments of which he did not complete work for.

Counsel for City of Flagstaff, Mr. Thomas, withdraws his question.

Witness, Dr. John Leeper, testifies further.

Upon motion of the City of Flagstaff, Navajo Nation's exhibit 1 is received in evidence.

Witness, Dr. John Leeper, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to testimony referencing the Kyle Study (subject to protective order) and moves to strike the question and answer.

IT IS ORDERED granting the Oral Motion to Strike.

Witness, Dr. John Leeper, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, moves for the admission of United States' exhibit 321. Counsel for United States, Mr. Guarino, objects to the admission of United States' exhibit 321 as to hearsay and relevance.

The objection is sustained as to hearsay and United States' exhibit 321 is not received in evidence.

Witness, Dr. John Leeper, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to Counsel for City of Flagstaff, Mr. Thomas' line of questioning regarding impoundments as to relevance and cites the agreement in the joint pretrial statement.

Discussion is held regarding the intention of the stipulation.

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

The objection is overruled. Mr. Thomas will be permitted one more question on this topic then must move on.

Witness, Dr. John Leeper, testifies further.

4:46 p.m. This matter stands in recess until Tuesday, June 20, 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.