

SUPERIOR COURT OF ARIZONA  
APACHE COUNTY

July 10, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER  
SHERRI ZENDRI

A. Parmar  
Deputy

FILED: July 13, 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 27**

Courtroom 613 – East Court Building

8:58 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 Candace French on behalf of the Navajo Nation
- Guss Guarino and Cody McBride on behalf of the United States Department of Justice
- Phillip Londen, Payslie Bowman and Brandon Delgado on behalf of the Hopi Tribe; the Osborn Maledon summer associate class are also present to observe.
- Kate Shaffer on behalf of the San Juan Southern Paiute Tribe
- David Brown, Brian J. Heiserman and Brad Pew on behalf of the LCR Coalition (“LCRC”)
- Katrina Wilkinson and Mark McGinnis on behalf of Salt River Project (“SRP”)
- Carrie Brennan and Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)

- Lee Storey, Ethan Minkin 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.

Counsel for Hopi Tribe, Mr. Londen, addresses the Court regarding its withdrawal of witness, Neil Blandford and whether Mr. Umstot should testify in Phase 1 of this case. The Navajo Nation and United States object to Mr. Umstot testifying in Phase 1. The Hopi Tribe does not wish to waive their opportunity to present his testimony regarding impoundments but have reached an agreement with all parties but the City of Flagstaff to have Mr. Umstot testify in Phase 2. He adds that it may be more efficient for him to testify in Phase 2 as there will be different modeling use and a full scope of the Navajo Nation's agricultural claims.

Counsel for United States, Mr. Guarino, addresses the Court regarding its relevance objection. He adds that the United States and Navajo Nation have had an ongoing objection to Mr. Umstot and if he testifies in Phase 2 it will allow more time for them to confer and attempt to resolve those objections.

Counsel for City of Flagstaff, Ms. Story, addresses the Court regarding its objection to the witness being withdrawn and called in Phase 2. She explains that one of their expert witness, Mr. Nicholls, relies on Mr. Umstot's modeling and conclusions. The modeling is relevant to the City's position in this case. City of Flagstaff will not stipulate to excise the prior testimony or reports already admitted in this case.

Counsel for LCRC, Mr. Heiserman, addresses the Court regarding their position. They do not believe that Mr. Umstot's testimony is needed for the Court to quantify Navajo Nation's water right and take no position whether he should testify in Phase 1 or 2. They do not have an objection to him being withdrawn in Phase 1 but reserve the right to argue whether that evidence should be received in Phase 2.

Counsel for SRP, Mr. McGinnis, and Counsel for ASLD, Ms. Brennan, agree with Mr. Heiserman.

Counsel for San Juan Southern Paiute Tribe, Ms. Shaffer, does not take a position and has no objection to him testifying in Phase 2. With respect to excising any prior testimony, she would like to review what will be excised before agreeing with that proposal.

Discussion is held regarding the proposal to excise prior testimony regarding Mr. Umstot's work. Mr. Heiserman would like time to review the sections of testimony before taking a position. Ms. Storey does not believe there is any legal authority to excise testimony already in the record without an agreement from all parties.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding their relevance objection. They agree with the position of the United States and agree with Mr. Londen's proposal to call the witness in Phase 2. Mr. Leonard does not object to the parties reviewing testimony and rebuttal reports and addressing it after the lunch break. He does not believe Mr. Umstot's opinions are relevant to determining the Navajo Nation's water right in Phase 1 as it pertains to the effects on the Hopi Reservation.

The Court is inclined to allow the witness to testify as there is more burden upon the parties by withdrawing the witness after testimony regarding his opinions have already been admitted into the record. The Court does believe there is some relevance to his testimony, the parties will still be permitted to make their relevance objections during his testimony, should they see fit.

Witness, Dr. Jill Jim, is sworn and testifies.

Navajo Nation's exhibit 135 is received in evidence.

Witness, Dr. Jill Jim, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1207. Counsel for ASLD, Ms. Brennan, objects to its admission as to foundation and relevance.

The witness provides foundation for the exhibit as to the source of the population numbers.

Counsel for City of Flagstaff, Ms. Storey, joins in the foundation and relevance objections.

The objections are sustained and Navajo Nation's exhibit 1207 is not received in evidence.

Witness, Dr. Jill Jim, testifies further.

Counsel for Navajo Nation, Mr. Leonard, renews his request to admit Navajo Nation's exhibit 1207. The Court notes that it is past the morning break time and will address the admission of this exhibit after the break.

10:36 a.m. The Court stands in recess.

10:50 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.

Navajo Nation's exhibit 1207 is received in evidence for the narrowed purpose of evidence of the Navajo Nation's vaccination program, however it will be the Navajo Nation's burden to explain why that is relevant to this case.

The Court addresses the parties regarding Mr. Umstot's testimony. The Court will not direct any party on how to present their case. It will be up to the Hopi Tribe whether they want Mr. Umstot to testify in this Phase or Phase 2, but the Court believes Mr. Umstot to be relevant and will not strike the record.

Counsel for the Hopi Tribe, Mr. Londen, affirms that Mr. Umstot will testify tomorrow based upon the comments of the City of Flagstaff.

Witness, Dr. Jill Jim, testifies further.

Navajo Nation's exhibit 1206 is received in evidence.

Witness, Dr. Jill Jim, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1205. Counsel for ASLD, Ms. Brennan, objects as to relevance and hearsay.

Counsel for LCRC, Mr. Heiserman, objects as to disclosure as this witness was not disclosed to speak about population numbers.

Counsel for City of Flagstaff, Ms. Storey, joins in the ASLD's and LCRC's objections.

The objections are noted and Navajo Nation's exhibit 1205 is received in evidence for the narrowed purpose of evidence of a vaccination program and the Navajo Nation's ability to control their own public health endeavors.

Witness, Dr. Jill Jim, testifies further.

Counsel for LCRC, Mr. Heiserman, objects to the witness opining on what will support a greater population as to foundation and disclosure.

The objection is overruled.

Witness, Dr. Jill Jim, testifies further.

The witness is excused.

Counsel for Navajo Nation, Mr. Leonard, asks the Court to take judicial notice of the numbers in both Navajo Nation's and the United States' Statements of Claimant ("SOC") in Phase 2 and Phase 3 pursuant to Rule 201(b) and 201(c).

Discussion is held regarding the request and whether it is relevant. Counsel for City of Flagstaff, Ms. Storey, notes that the four SOCs are marked as City of Flagstaff's exhibits 69, 173, 174 and 175.

Upon motion of the Navajo Nation, City of Flagstaff's exhibits 69, 173, 174 and 175 are received in evidence and admitted for the sole purpose of establishing that those claims have been made/filed with ADWR.

The Navajo Nation and United States rest their case in chief.

Counsel for SRP, Mr. McGinnis, presents his opening statement to the Court.

12:00 p.m. The Court stands in recess.

1:26 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, Ms. Storey, presents her opening statement to the Court.

Witness, Dr. David Swanson, is sworn and testifies.

Hopi Tribe's exhibits 80 and 81 are received in evidence.

Counsel for Navajo Nation, Mr. Hiller, objects to the witness testifying outside of the scope of his report as undisclosed testimony. Counsel for United States, Mr. Guarino, concurs with Mr. Hiller, and joins in the objection. Counsel for ASLD, Ms. Brennan, notes that this testimony was in his deposition and would not be undisclosed testimony.

Mr. Hiller withdraws his objection to the extent that Dr. Swanson is simply stating that he stands by his report.

Discussion is held regarding the scope of expert witness testimony. Dr. Swanson will not be permitted to testify regarding new information but to the extent that his testimony is a reiteration of his report, it will be permitted.

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

3:14 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.

The Court addresses the parties' regarding the scope of expert witness testimony. The Court notes that the Rules of Evidence do not limit an expert witness' testimony to

their report. If there is a stipulation regarding expert witness' report and testimony, it should be produced to this Court for its review. Mr. Leonard believes there is a stipulation that an expert's report will dictate an expert's testimony that was adopted by previous Special Water Master Harris.

Witness, Dr. David Swanson, testifies further.

Counsel for LCRC, Mr. Pew, addresses the Court regarding a demonstrative exhibit that was disclosed by Navajo Nation on Wednesday. He requests he be permitted to recross examine the witness if Mr. Hiller is permitted to use the exhibit. Mr. Londen does not object to Mr. Pew's proposal. No objection having been made,

**IT IS ORDERED** granting LCRC's request.

Witness, Dr. David Swanson, testifies further.

4:29 p.m. This matter stands in recess until Tuesday, July 11, 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.