

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

July 12, 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 29**

Courtroom 613 – East Court Building

8:56 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 on behalf of the Hopi Tribe
- Irania Fimbres-Ruiz on behalf of the San Juan Southern Paiute Tribe
- Brian Heiserman, David Brown 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”)
- Ethan Minkin on behalf of the City of Flagstaff

Court Reporter, Nicole Bulldis, is present. A record of the proceedings is also made digitally.

LET THE RECORD REFLECT that Court Reporter, Nicole Bulldis, was previously sworn on the third day of trial.

Discussion is held regarding the Navajo Nation's request to admit Hopi Tribe's exhibit 120. Counsel for ASLD, Ms. Brennan, objects as to foundation, hearsay and cumulative. Counsel for LCRC, Mr. Pew, joins in the hearsay objection. Counsel for SRP, Mr. McGinnis, joins in the cumulative objection.

The objections are sustained and Hopi Tribe's exhibit 120 is not received in evidence.

Witness, Ed Harvey, is sworn and testifies.

Counsel for LCRC, Mr. Heiserman, moves for the admission of LCRC's exhibit 123. Counsel for Navajo Nation, Mr. Hiller, objects to its admission and believes it should be offered after cross examination. Mr. Heiserman agrees to move for its admission after cross examination.

Witness, Ed Harvey, testifies further.

9:30 a.m. **LET THE RECORD REFLECT** that Chris Thomas is now present on behalf of City of Flagstaff.

Witness, Ed Harvey, testifies further.

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

10:44 a.m. The Court reconvenes with the above-named parties present.

Court Reporter, Nicole Bulldis, is present. A record of the proceedings is also made digitally.

Witness, Ed Harvey, testifies further.

Counsel for LCRC, Mr. Heiserman, renews his request for admission of LCRC's exhibit 123.

Counsel for Navajo Nation, Mr. Hiller, states that the techniques and standards for Mr. Harvey's profession were not applied to the report and objects under Rule 702. The Court inquires what principals or methods were used to prepare the report and whether the specific methodology was articulated in the report. The witness provides his explanation to the Court.

The objection is overruled and LCRC's exhibit 123 is received in evidence.

Witness, Ed Harvey, testifies further.

Counsel for Navajo Nation, Mr. Hiller, requests to recross examine the witness.

Counsel for LCRC, Mr. Heiserman, objects.

IT IS ORDERED denying the request.

The witness is excused.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding the scope of direct examination of expert witnesses and the parties' March 17, 2021 Stipulation (adopted by the Court by Minute Entry dated February 24, 2023, filed March 14, 2023). While Mr. Leonard's concerns are noted, the Court believes the terms of the stipulation were followed in the Navajo Nation's and United States' case and will continue to be followed in the Objectors' case.

Witness, Delwin Wengert, is sworn and testifies.

Counsel for Navajo Nation, Mr. Leonard, objects to this witness expressing any opinions as there are none contained in his report and adds that he affirmed same during his deposition. Mr. Pew reads from the deposition regarding the witness' understanding of opinion vs. judgment and adds that his opinions are clearly expressed in the report. Mr. Leonard will withdraw his objection so long as the opinions in the report are consistent with his testimony today.

Witness, Delwin Wengert, testifies further.

11:58 a.m. The Court stands in recess.

1:28 p.m. The Court reconvenes with the above-named parties present, with the exception of Ethan Minkin, who is no longer present.

Court Reporter, Nicole Buldis, is present. A record of the proceedings is also made digitally.

Witness, Delwin Wengert, testifies further.

LCRC's exhibit 1 is received in evidence.

Witness, Delwin Wengert, testifies further.

Counsel for LCRC, Mr. Pew, objects to Mr. Leonard referring to an almanac that has not been marked as an exhibit. Counsel for Navajo Nation, Mr. Leonard, responds that

almanacs are publications that warrant judicial notice. Mr. Pew notes that the almanac was not distributed to the Objectors and is an improper reference to facts not in evidence.

The objection is sustained.

Witness, Delwin Wengert, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibits 1402 and 1485.

Counsel for LCRC, Mr. Pew, objects to the admission of Navajo Nation's exhibit 1402 as to foundation. Mr. Leonard withdraws his request to admit Navajo Nation's exhibit 1402.

Navajo Nation's exhibit 1485 is received in evidence.

Witness, Delwin Wengert, testifies further.

The witness is excused.

Counsel for LCRC, Mr. Pew, addresses the Court regarding their witness schedule. He adds that they will be withdrawing Robert Pena as a witness.

Counsel for San Juan Southern Paiute, Ms. Fimbres-Ruiz, addresses the Court regarding their witness schedule. She states that they will be withdrawing two witnesses, Mary Lou Boone and Sergio Desoto to avoid cumulative testimony.

Counsel for Navajo Nation, Mr. Leonard, asks for confirmation that they will still be permitted to submit deposition designations for Mr. Pena now that he has been withdrawn. Mr. Pew affirms that they will confer with Mr. Leonard off the record regarding the deposition designations.

2:47 p.m. This matter stands in recess until Thursday, July 13, 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.