

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

10/6/2020

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

S. Motzer

Deputy

FILED: October 12, 2020

In re:
Contested Case No. 6417-203

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

In re: Trial to Court

MINUTE ENTRY

TRIAL TO COURT DAY 12

Courtroom: CCB 301

9:00 a.m. Trial to the Court continues from October 5, 2020.

The following attorneys appear via GoToMeeting:

- Colin Campbell, Grace Rebling, Phillip Londen and Payslie Bowman for the Hopi Tribe
- Vanessa Boyd Willard, Cody McBride, Emmi Blades, and Rebecca Ross for the United States Department of Justice, Indian Resources Section
- Sarah Foley for the United States Department of the Interior
- Brian J. Heiserman, David A. Brown, Lauren J. Caster, Bradley J. Pew for the LCR Coalition
- Mark A. McGinnis for the Salt River Project
- Carrie J. Brennan and Kevin Crestin for the Arizona State Land Department
- Lee A. Storey, Sara Ransom, Alexandra Arboleda, and Ethan B. Minkin for the City of Flagstaff
- Jeffrey S. Leonard, Judith M. Dworkin, Evan F. Hiller, and Kathryn Hoover for the Navajo Nation

Court Reporter, Teri Veres, is present. A record of the proceedings is also made digitally.

Discussion is held regarding procedural matters.

Counsel for LCR Coalition addresses the Court regarding his request for documents to be subject to judicial notice.

Counsel for the Hopi Tribe addresses the Court regarding witnesses as they relate to testifying on voting day, November 3, 2020.

Upon no objection from the parties and for the reasons stated on the record,

LET THE RECORD REFLECT that the Court states that trial will not be held on November 3, 2020, and that the scheduled witnesses will testify on November 12, 2020.

Counsel for the Hopi Tribe states that he will provide an updated November calendar to the parties.

Discussion is held regarding the Hopi Tribe's exhibit 4590.

The City of Flagstaff objects to the admission of Hopi Tribe's exhibit 4590 beyond the portions that were previously identified and opposed the admission of the entirety of the document.

Counsel for Arizona State Land Department joins with the position taken by the City of Flagstaff. The LCR Coalition does not object to the admission of the entire document and takes no position with respect to the issue. SRP has no objection to the admission of the document and takes no position. The United States has no objection to the admission of the entire document. The Navajo Nation states that the revised Kunkel 2019 report does not refer back to the earlier report and there seems to be no basis for the admission of this prior report. It opposes the admission of the entire exhibit. It does not oppose the admission of the portions of the reports referenced.

The Court states that it will take this matter under consideration.

Discussion is held to clarify which exhibits were admitted on October 1, 2020.

LET THE RECORD REFLECT that the clerk confirms that Hopi Tribe's exhibits 4398, 4399, 4400, 4574, 4577, and 4578 were received in evidence on October 1, 2020, and that 4576 was not offered or received in evidence.

Counsel for the Hopi Tribe moves for admission of Hopi Tribe's exhibits 4575 and 4576.

Hopi Tribe's exhibits 4575 and 4576 are received in evidence.

Counsel for the Hopi Tribe moves to withdraw previously received Hopi Tribe exhibit 4578, and admit Hopi Tribe's exhibit 4401.

Hopi Tribe's exhibit 4578 is withdrawn and Hopi Tribe's exhibit 4401 is received in evidence.

Counsel for LCRC moves for the admission of Hopi Tribe's exhibit 4573.

Hopi Tribe's exhibit 4573 is received in evidence.

Discussion is held regarding the Hopi Tribe's forthcoming briefing on its oral motion to restrict the state parties' cross-examination of witnesses regarding the use of the D and N aquifers.

LET THE RECORD REFLECT that the parties will file their responses to said motion no later than **October 16, 2020**.

Todd Umstot having been previously sworn, resumes the stand and continues testifying.

Counsel for the Hopi Tribe objects to the use of the Navajo Nation's exhibit 882.

The Navajo Nation's exhibit 883 is received in evidence.

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

10:45 a.m. The Court reconvenes with the parties and counsel present.

Court reporter, Teri Veres, is present and a record of these proceedings is made digitally.

Todd Umstot continues to testify.

Counsel for the Navajo Nation moves to re-cross examine the witness. The Court denies the request.

11:49 a.m. The Court stands at recess.

1:30 p.m. The Court reconvenes with the parties and counsel present.

Court Reporter, Vanessa Gartner, is present. A record of the proceedings is also made digitally.

Discussion is held regarding procedural matters.

Counsel for the Hopi Tribe addresses the Court question regarding the authenticity objections to the documents that are the subject of the LCR's Motion for

Judicial Notice and states that he is not opposed to waiving their authenticity objections. The Hopi Tribe has issue with respect to the scope of the use of the documents.

Discussion is held regarding the LCR Coalition's Supplemental Request that the Court Rule that Certain Documents Qualify for Judicial Notice, Request for Permission to Mark Newly Available Documents as Trial Exhibits s filed September 16, 2020.

Based on the foregoing,

IT IS ORDERED granting the LCR Coalition's request to list two new documents as exhibits.

Counsel for the Navajo Nation addresses the Court regarding the re-cross examination of Todd Umstot to make an offer of proof.

Thomas Zitt is sworn and testifies.

1:42 p.m. The Court stands at recess.

1:50 p.m. The Court reconvenes with the parties and counsel present.

Court Reporter, Vanessa Gartner, is present. A record of the proceedings is also made digitally.

Thomas Zitt having previously been sworn resumes testifying.

Hopi Tribe's exhibits 4253 and 4251 are received in evidence.

LCRC's exhibit 94 is received in evidence.

Hopi Tribe 4252 is received in evidence.

Counsel for the Navajo Nation moves to strike any testimony concerning any testimony concerning the quantity of the 749 acre-feet per year used for tourism. He does not want the Hopi Tribe to re-amend its Statement of Claimant to assert a separate claim.

Counsel for the Hopi Tribe states that the water quantities are important to demonstrate and support the 160 gpcd and the overall acre feet requested so there is no need to strike the testimony. Counsel for the Navajo Nation states that so long as it is only considered in that context, then it is fine with the Navajo Nation.

Discussion is held on said motion.

Based on the foregoing,

IT IS ORDERED denying Navajo Nation's oral Motion to Strike.

Thomas Zitt is excused.

2:34 p.m. The matter stands at recess until Wednesday, October 7, 2020 at 9:00 a.m.

A copy of the minute entry will be sent to all parties on the Court approved mailing list.