

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

10/31/2018

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

A. Hatfield

Deputy

FILED: 11/9/2018

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

CV 6417-203

In re: Hopi Reservation HSR

In re: Trial to the Court Day 28

MINUTE ENTRY

Courtroom: ECB 613

10:31 a.m. This is the time set for Trial to the Court before Special Water Master Susan Ward Harris.

The following attorneys and parties appear in-person: Kathryn Hoover, Jeffrey Leonard, Judith Dworkin and Evan Hiller on behalf of the Navajo Nation; Kevin Crestin on behalf of the Arizona State Land Department; Brian Heiserman on behalf of the LCR Coalition; Erin Byrnes and Lee Storey on behalf of the City of Flagstaff; R. Jeffrey Heilman and Mark McGinnis on behalf of Salt River Project; Sarah Foley, Vanessa Willard, and Cody McBride on behalf of the United States Department of Justice; Grace Rebling and Colin Campbell on behalf of the Hopi Tribe. Kimberly Parks on behalf of the Arizona Department of Water Resources.

Court reporter, Marylynn Lemoine, is present and a record of the proceedings is made digitally.

Discussion is held regarding Navajo exhibits 142 and 143. The proposed redactions of Navajo exhibit 143 are to be submitted to the Court by November 2, 2018. The Navajo Nation's position regarding the exhibit is to be filed by November 5, 2018, and Hopi Tribe is to file its response by November 13, 2018.

Mr. Campbell makes an oral motion that the Court reconsider its ruling regarding the testimony of Dr. James McCord. Dr. McCord criticized the federal model because the federal model does not take into account depletion of flow on the Navajo Reservation. Mr. Campbell argues that depletions of flow on the Navajo Reservation should not be taken into account in the model as the validity of depletions raises the question of the respective priorities of the Hopi Tribe and the Navajo Nation to the flow. He also argued that the federal model results should not be discounted due to depletions by the Navajo Nation because the Hopi Tribe has been precluded from introducing evidence regarding use of water off of the reservation, citing to the testimony offered by Dr. Blandford regarding wells that were not on the reservation, thereby preventing the Hopi Tribe from rebutting the expert's criticism.

The Court takes the motion under advisement.

Further discussion is held regarding the scheduling for closing arguments and a request to reschedule the Pretrial Conference concerning the Future Use trial from December 20, 2018 to December 18, 2018.

The Court addresses the objection made by counsel for the Hopi Tribe that the Navajo Nation violated Ariz. R. Civ. Pro. 26(b)(4)(D) by naming Dr. McCord and Dr. Leeper as expert witnesses who will testify about the models prepared by the United States. Dr. McCord and Dr. Leeper jointly prepared an interdisciplinary expert report to analyze the Claimants' models and the results of the models. When an issue involves more than one discipline, the court should liberally exercise its discretion in defining the scope of the issue for purposes of imposing the limitation on the number of experts established by the rule. At issue is the validity of the United States' models created to establish the amount of water used by the Hopi Tribe for irrigation. The purposes for which the experts are offered can be divided into issues related to the models and to the data and assumptions used in the models. Dr. McCord is a hydrologist with extensive experience in modelling. On direct examination he testified about issues related to the models: calibration using Coal Mine Wash, measurement error, lack of sensitivity analyses, conceptual uncertainty, and uncertainty arising from determinations of root depth and crop coefficients. He provided sensitivity analysis showing the impact on the results from changes in model parameters. In contrast, Dr. Leeper is an engineer and it is represented that he will testify about the underlying data used in the model. The Court ruled that Dr. Leeper may not answer questions concerning model-relative issues such as sensitivity or uncertainty analysis and otherwise he may testify about the data and assumptions input into the models.

Mr. Leonard addresses Navajo Nation exhibits 273-472 and 512-595 which are photographs from the 2017 field visit.

Mr. Campbell requests until tomorrow morning to review the photographs.

Navajo exhibits 616-737 are marked for identification. Counsel for the Navajo Nation is directed to submit the exhibits in an electronic file to the courtroom clerk.

The Court will further discuss the admission of the photographs tomorrow morning after Counsel for the Hopi Tribe has had the opportunity to review the exhibits.

Dr. John Leeper resumes the stand and continues to testify.

Portions of Navajo exhibit 194 are received in evidence. Hopi exhibit 194 having been submitted in electronic format only, Counsel for the Navajo Nation is directed to submit a revised electronic file to the courtroom clerk containing only the portions in evidence for identification and retention as admitted.

11:59 a.m. The Court stands at recess.

1:29 p.m. Court reconvenes with the parties and respective counsel present.

Court reporter, Barbara Stockford, is present and a record of the proceedings is made digitally.

Mr. Heiserman advises the Court that he will be filing a Rule 52(c) motion and requests that oral arguments on this motion be set separately from closing arguments and the pre-trial conference. The Court agrees that the motion will be argued separately.

Dr. Leeper continues to testify.

3:00 p.m. The Court stands at recess.

3:30 p.m. Court reconvenes with the parties and respective counsel present.

Proposed redactions to Dr. Whiteley's report are to be given to Counsel for the Hopi Tribe by November 8, 2018. Discussion regarding the redactions will be held the morning of November 9, 2018.

4:46 p.m. Matter concludes.

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case No. CV6417-203.