

SUPERIOR COURT OF ARIZONA  
APACHE COUNTY

2/11/2021

CLERK OF THE COURT

SPECIAL WATER MASTER  
SUSAN WARD HARRIS

S. Ortega

Deputy

FILED: 2/16/2021

In re: Hopi Reservation HSR  
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

**TRIAL MINUTE ENTRY – DAY 59**

Courtroom: CCB 301

9:01 a.m. Trial to the Court continues from February 10, 2021.

The following attorneys and parties appear by 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, and Bradley J. Pew for LCR Coalition
- Mark A. McGinnis and Hannah Woner for the Salt River Project
- Carrie J. Brennan and Kevin Crestin for the Arizona State Land Department (“ASLD”)
- 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, Luz Franco, is present. A record of the proceeding is also made digitally.

LET THE RECORD REFLECT that the counsel for the Hopi Tribe states that he does not see the public line listed on the GoToMeeting platform. The Court takes a break to verify the status of the public line and reports that it is operational and available on the GoToMeeting platform.

Neil Blandford is sworn and testifies.

Hopi Tribe exhibit 4352 is received in evidence.

The witness is excused.

The trial schedule is discussed. Next Tuesday, February 16, 2021, is the last day of trial. Dr. David Swanson is expected to testify on that day.

The Court addresses the documents for which LCR Coalition's request for judicial notice was granted earlier in this trial. The Court has prepared a chart that relates the documents for which judicial notice was granted to the documents marked as exhibits.

Mr. Campbell makes a brief argument to the Court relating to the documents. Mr. Heiserman intends to move the documents into evidence next week.

The Court will review the prior minute entry regarding this matter, send a copy of it to all counsel by the end of the day, and revisit the subject next week.

9:54 a.m. Court stands at recess until **Tuesday, February 16, 2021 at 9:00 a.m.**

## **LATER:**

By minute entry filed February 25, 2020, a schedule was set for the parties who intended to file initial Proposed Finding of Fact and Conclusions of Law and for the remaining parties to file responsive Proposed Findings of Fact and Conclusions of Law. Subsequently, the parties have all stated an intent to file Proposed Findings of Fact and Conclusions of Law. On February 9, 2021, the parties either filed or orally joined with filed proposed post-trial briefing schedules. The parties have agreed<sup>1</sup> that they will:

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<sup>1</sup> The Navajo Nation stated that it was receptive to the proposed changes to the post-trial schedule so long as the dates set forth in the new schedule do not unduly compress the schedule set in the February 25, 2020 minute entry. Navajo Nation's Proposal on Post-Trial Scheduling, filed February 9, 2021, at 3.

1. File closing briefs simultaneously;
2. File Proposed Findings of Fact and Conclusions of Law concurrently with the closing brief; and
3. Brief the issues as designated by the parties in their closing briefs.

Based on the parties' agreements, the schedule set forth in the February 25, 2020 minute entry is vacated.

After consideration of the arguments made by the parties concerning issues about which there was no consensus and the parties' request to schedule closing arguments after the post-trial briefing is complete,

**IT IS ORDERED:**

1. All parties shall file closing briefs on or before **May 28, 2021**.
  - a. Closing briefs are limited to 50 pages.
  - b. Closing briefs must conform to Ariz. R. Civ. P. 5.2(a) and (b), including, but not limited to, the requirement that the pleadings must be single-sided and use 13 point font in text and footnotes.
  - c. No documents shall be attached to the closing briefs.
2. Proposed Findings of Fact and Conclusions of Law shall be filed on or before **May 28, 2021**.
  - a. No page limit applies to the Proposed Findings of Fact and Conclusions of Law.
  - b. The Proposed Findings of Fact and Conclusions of Law must be stated in concise, numbered paragraphs.
  - c. Each proposed finding of fact must cite the specific part of record relied upon to support the proposed finding of fact.
  - d. No legal argument shall be included in the Proposed Findings of Fact and Conclusions of Law. Citations may be included to post-trial briefs, motions filed or decisions entered in this contested case to support a proposed conclusion of law.
  - e. No documents shall be attached to the Proposed Findings of Fact and Conclusions of Law.
  - f. No party may file a proposed statement of fact or conclusion of law after May 28, 2020.

3. Responses to closing briefs shall be filed on or before **July 30, 2021**.
  - a. A party may file no more than one Response.
  - b. The Response shall comply with Ariz. R. Civ. P. 5.2 (a) and (b).
  - c. No Response shall exceed 85 pages.
  - d. If two or more parties elect to file a joint Response, the joint Response shall not exceed 85 pages.
  - e. A statement contained in Response filed by one party that the party joins in whole or in part with the Response filed by another party does not:
    - i. attribute the pages of the joined Response to the joining party;
    - ii. convert either Response into a joint Response; or
    - iii. constitute the filing of more than one Response by the joining party.
  - f. Each party shall have full discretion to allocate the pages in its Response among the issues presented in the closing briefs as it determines necessary to best present its position.
  
4. Parties may file controverting statements in response to Proposed Findings of Fact and Conclusions of Law on or before **July 30, 2021**.
  - a. No page limit applies to the controverting statements.
  - b. A party may elect to file a single controverting statement or it may file separate controverting statements to the other parties' Proposed Findings of Fact and Conclusions of Law.
  - c. Parties may jointly file a controverting statement.
  - d. Controverting statements shall consist of concise, numbered paragraphs.
  - e. If a party controverts a proposed finding of fact or conclusion of law of another party,
    - i. the controverting party shall identify the controverted proposed finding of fact or conclusion of law by party and paragraph number;
    - ii. the controverting party must cite the specific part of record relied upon to support the controverting party's position that the controverted statement of fact is not true;
    - iii. the controverting party may not include a responsive fact or a supplemental fact;

- iv. the controverting party must cite to the specific portion of its closing brief or Response that supports its position as to a controverted legal conclusion; and
    - v. no legal argument may be included in a controverting statement.
  - f. No documents shall be attached to the controverting statements.
  - g. If a party files a controverting statement to another party's Proposed Statements of Fact and Conclusions of Law, that filing must include a list of each numbered paragraph contained in the other party's Proposed Statements of Fact and Conclusions of Law that the controverting party does not dispute.
  - h. If a party neither controverts a proposed statement of fact or conclusion of law submitted by another party nor includes that proposed statement of fact or conclusion of law in a separate list of undisputed statements of facts or conclusions of law, the proposed statement of fact or conclusion of law will be deemed undisputed by that party.
- 5. No reply brief may be filed in support of a closing brief by any party.
- 6. Closing arguments shall occur as follows:
  - a. The United States and the Hopi Tribe shall present closing arguments on August 16, 2021 beginning at 9:00 a.m.
  - b. The LCR Coalition, the Navajo Nation, the Arizona State Land Department, the City of Flagstaff, and Salt River Project shall present closing arguments beginning on August 17, 2021 at 9:00 a.m.
  - c. Each party shall be permitted 60 minutes to make a closing argument. The parties should anticipate that the closing argument will serve as an opportunity for the Special Master to ask questions about their positions. The Special Master has the discretion to extend the time limit when necessary to allow the party to provide oral answers to questions posed during the closing argument.

- d. If COVID-19 protocols permit the closing arguments to be held at the courthouse, closing arguments shall be held in the Maricopa County Superior Court, Courtroom 613, East Court Building, 101 West Jefferson, Phoenix, Arizona 85003-2243. If COVID-19 protocols do not permit the closing arguments to be held in the courthouse, closing arguments shall be held in accordance with the protocols and on the platform currently in use by the Superior Court.

IT IS FURTHER ORDERED that a telephonic status conference shall be held on **September 17, 2021 at 1:30 p.m.** regarding allottees' claims for water rights under state law.

Instructions for telephonic appearance at the Status Conference:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Collaboration (conference) Code 357264#

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