

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

11/12/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

A. Hatfield

Deputy

FILED: 11/18/2019

In re: Hopi Reservation HSR
Contested Case No. CV 6417-203

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

In re: Telephonic Oral Argument

MINUTE ENTRY

Courtroom: CCB 301

8:30 a.m. This is the time set for Telephonic Oral Argument on the *Joint Statement of Discovery Dispute Regarding Navajo Gaming Documents* and *Joint Statement of Discovery Dispute regarding Navajo Nation's Economic Development Documents* filed October 31, 2019.

The following attorneys appear telephonically: Kevin Crestin on behalf of AZ State Land Department; Bradley Pew on behalf of LCR Coalition; Colin Campbell on behalf of the Hopi Tribe; Evan Hiller, Kathryn Hoover and Jeffrey Leonard on behalf of the Navajo Nation; and Mark McGinnis on behalf of SRP.

Court reporter, Diane Donoho, is present and a record of these proceedings is made digitally.

Oral argument is presented on the *Joint Statement of Discovery Dispute Regarding Navajo Gaming Documents* and *Joint Statement of Discovery Dispute regarding Navajo Nation's Economic Development Documents* by Colin Campbell, Evan Hiller and Jeffrey Leonard.

Based upon the matters presented,

IT IS ORDERED taking this matter under advisement.

9:08 a.m. Matter concludes.

LATER:

Based upon the Rule 7.1(h) Certificates, counsel for the Hopi Tribe and counsel for the Navajo Nation have properly engaged in telephonic and in-person discussions to resolve the discovery disputes prior to the implementation of the expedited procedures for resolving discovery disputes under Ariz. R. Civ. Pro. 26(d).

A. Gaming

The Hopi Tribe contends that it is entitled to information about the Navajo Nation's gaming research and operations for two reasons. First, the Hopi Tribe contends that the Navajo Nation contests the validity of a gravity model used by its expert to forecast gamer visits and resulting revenue the economic feasibility of gaming in the Moenkopi area. At oral argument, counsel for the Navajo Nation stated that its expert has used the gravity model and its objection to the work done by the Hopi Tribe's expert is not to the choice of model. Instead, the Navajo Nation contends that its objection to the work performed by the Hopi Tribe's expert is due to a claimed lack of data and analysis that underlies the Hopi Tribe's expert's report. Given this representation that the gravity model is an appropriate model in the gaming industry, no issue exists about the propriety of the use of the gravity model in assessing gaming operations. Absent a disputed issue, the requested discovery is not relevant.

Second, the Hopi Tribe contends that it is entitled to discovery of the Navajo Nation's annual financial reports of its gaming operations and market analysis of the feasibility of gaming in the northeastern Arizona market. The Navajo Nation reports that it has provided general financial information about the profits and labor costs associated with its casinos in Arizona and New Mexico. It contends that the requests for additional detailed, confidential information are overbroad and irrelevant. Further, it argues that the Navajo Reservation encompasses large areas of Arizona and New Mexico and it should not be required to provide financial information about multiple casino facilities because the issue in this case involves gaming at a discrete location, i.e., the Moenkopi area. The fact that the Navajo Nation operates casinos outside of Arizona does not preclude a more limited financial disclosure about casinos in northern Arizona. The gaming market analysis, according to counsel for the Navajo Nation, does include an analysis of the market in Tuba City which is located in the same geographic area as the Moenkopi area. Financial and marketing information about casinos in the general geographic vicinity of the Moenkopi area is relevant to the Hopi Tribe's claims related to future development of a casino. The Navajo Nation also argues that it should not be required to produce commercially valuable information to a potential competitor. Due to the nature of this expedited procedure, inadequate information exists on the record to resolve this issue that would otherwise be the subject of a fully briefed Rule 26(c) motion. Accordingly, the Court will permit full briefing of the issue pursuant to Rule 26(d)(1).

IT IS ORDERED that information about casinos operated in New Mexico is not relevant and the Navajo Nation shall file a motion in compliance with Rule 26(c) to seek a protective order with respect to its market research and financial information

concerning gaming operations in northern Arizona by **December 4, 2019**. The parties shall file responses and replies as allowed by Rule 26(c) in accordance with the page limits and timelines set by the Arizona Rules of Civil Procedure. An additional good faith consultation certificate complying with Rule 7.1(h) is not required. It is not expected at this point that additional oral argument will be necessary so no date is set for oral argument on the motion.

B. Economic Development

The Hopi Tribe sought document production from the Navajo Nation of any documents related to proposed energy development projects on the Navajo Nation. At oral argument, counsel for the Hopi Tribe focused on the documents related to coal development because of common ownership of certain coal resources. The Navajo Nation objected to the original document request on the grounds that the development of resources on its reservation is not relevant to energy development on the Hopi Reservation. It also argued that due to the breadth of operations on the Navajo Nation in terms of local chapters and the Nation's government, the request is overbroad. Based on the abbreviated briefing permitted in this expedited procedure, it appears that the Hopi Tribe's original request is overbroad, but based on the Hopi Tribe's counsel's oral argument, it also appears that a more limited discovery request concerning coal operations is relevant. Again, as found above, inadequate information exists on the record to resolve this issue that would otherwise be the subject of a fully briefed Rule 37(a) motion to compel. Accordingly, full briefing of the issue is permitted.

IT IS ORDERED that Hopi Tribe shall file a motion under Rule 37(a) to seek an order to compel production of documents from the Navajo Nation pursuant to its July 2, 2018 request that it considers relevant to the feasibility of energy production on the Hopi Reservation. The motion shall be filed by **December 4, 2019**. The parties shall file responses and replies subject to the page limits and timelines under the Arizona Rules of Civil Procedure. An additional good faith consultation certificate complying with Rule 7.1(h) is not required. It is not expected at this point that additional oral argument will be necessary so no date is set for oral argument on the motion.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.