

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

June 6, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: June 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 16**

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 Judith M. Dworkin on behalf of the Navajo Nation
- Gus Guarino and Cody McBride on behalf of the United States Department of Justice
- Phillip Londen and Payslie Bowman on behalf of the Hopi Tribe
- Kate Shaffer and Irania Fimbres-Ruiz on behalf of the San Juan Southern Paiute Tribe (“SJSPT”)
- David Brown, Brian J. Heiserman 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 and Luke Erickson 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 admission of emails under the business record exception to hearsay. The Parties claim that only a small percentage of the total exhibits are emails.

IT IS ORDERED that the Court will deal with the admission of emails on a case-by-case basis. If emails are offered into evidence in the future, the offering party must first address why the email is admissible under the Rules of Evidence.

LET THE RECORD REFLECT that Counsel for the United States, Mr. McBride, addresses the Court regarding US' exhibit 1330. He informs the Court that they inadvertently submitted the non-redlined version of Dr. Stringham's report and provided the correct redlined version of the exhibit to the clerk prior to the commencement of today's hearing. No objection having been made,

IT IS ORDERED directing the clerk to substitute the redlined version of Dr. Stringham's report as US' exhibit 1330.

Witness, Dr. Gretchen Greene, is sworn and testifies.

US' exhibit 1213 is received in evidence.

Counsel for SRP, Mr. McGinnis, addresses the Court regarding SRP's *Motion in Limine to Preclude Evidence of Census Undercount* filed January 13, 2023. Although the Motion was denied, Mr. McGinnis would like to make it clear that SRP is not waiving its objection with respect to the undercount testimony.

Discussion is held regarding the objection.

SRP's ongoing objection is noted by the Court.

Witness, Dr. Gretchen Greene, testifies further.

US' exhibits 1199, 1280, 1281 and 1282 are received in evidence.

10:21 a.m. The Court stands in recess.

10:34 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, Dr. Gretchen Greene, testifies further.

Counsel for LCRC, Mr. Pew, objects to Counsel for the Navajo Nation, Mr. Hiller, questioning this witness any further regarding an undercount. He cites the preclusion listed in 2(b)(i) of the Court's *Order Approving In Re Navajo Nation Phase 1 Pretrial Stipulations* filed March 17, 2023.

Counsel for SRP, Mr. McGinnis, joins in the objection.

The objection is sustained; however, Mr. Hiller will be permitted one more question regarding an undercount.

Witness, Dr. Gretchen Greene, testifies further.

Counsel for the Navajo Nation, Mr. Hiller, objects to Counsel for SJSPT, Ms. Shaffer, questioning the witness regarding the exclusion of the SJSPT's population in the Navajo Reservation's number as to relevance.

The objection is overruled.

Witness, Dr. Gretchen Greene, testifies further.

Upon motion of the LCRC, US' exhibit 80 is received in evidence.

LCRC's exhibit 11 is received in evidence.

Counsel for LCRC, Mr. Pew, moves for the admission of LCRC's exhibits 14, 15 and 16. Counsel for United States, Mr. McBride, objects to all three exhibits as to hearsay and cumulative. He further adds that Mr. Pew read all the relevant parts of the documents into the record.

Counsel for Navajo Nation, Mr. Hiller, joins in the hearsay objection.

Counsel for LCRC, Mr. Pew, withdraws his request to admit LCRC's exhibits 15 and 16. He still moves for the admission of LCRC's exhibit 14 as he is not offering it for the truth of the matter asserted, but to show that the witness had that information provided to her.

The objection is overruled and LCRC's exhibit 14 is received in evidence.

Witness, Dr. Gretchen Greene, testifies further.

11:56 a.m. The Court stands in recess.

1:28 p.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, Dr. Gretchen Greene, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to the witness being questioned by Counsel for LCRC, Mr. Pew, regarding her knowledge of the number of homes on the Navajo Reservation in 2080 as to foundation and relevance.

The objection is overruled.

Witness, Dr. Gretchen Greene, testifies further.

Upon motion of the LCRC, US' exhibits 57, 340, 1195 and 1206 are received in evidence.

Counsel for LCRC, Mr. Pew, moves for the admission of LCRC's exhibit 24. Counsel for United States, Mr. McBride, objects as to hearsay. Counsel for Navajo Nation, Mr. Hiller, joins in the objection.

The objection is overruled and LCRC's exhibit 24 is received in evidence.

Witness, Dr. Gretchen Greene, testifies further.

Counsel for LCRC, Mr. Pew, moves for the admission of LCRC's exhibit 25. Counsel for United States, Mr. McBride, objects as to hearsay, cumulative and relevance.

The objection is overruled and LCRC's exhibit 25 is received in evidence.

Witness, Dr. Gretchen Greene, testifies further.

Counsel for LCRC, Mr. Pew, moves for the admission of US' exhibit 1258. Counsel for the United States, Mr. McBride, objects to the admission of the exhibit as to hearsay. He adds that it is not a public record, but a PowerPoint from a webinar.

The Objectors believe the objection has been waived as it was not listed in the pretrial statement in accordance with Rule 16(f)(2)(E) and previous Special Water Master Harris' ruling in the Court's Minute Entry dated March 16, 2023 (filed March 21, 2023).

The Claimants do not believe this applies to objections to its own exhibits being offered by the Objectors. Mr. Hiller cites the *Claimants Navajo Nation and United States' Form Objections to Trial Exhibits* submitted with the exhibits.

2:54 p.m. The Court stands in recess.

3:11 p.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.

Discussion is held regarding US' exhibit 1258.

The objection is sustained, the Court notes that it has its own concerns with the exhibit and US' exhibit 1258 is not received in evidence. However, Mr. Pew is permitted to ask the witness questions about the PowerPoint.

Further discussion is held regarding previous Special Water Master Harris' ruling on the waiver of exhibit objections. The Court will review the prior rulings/orders and the parties shall address this issue with the Court on Thursday morning before Dr. Peacock's testimony.

Witness, Dr. Gretchen Greene, testifies further.

Upon motion of the LCRC, US' exhibit 1276 is received in evidence.

4:28 p.m. This matter stands in recess until Wednesday, June 7, 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.