

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

July 20, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: July 28, 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 34**

Courtroom 613 – East Court Building

8:58 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 Dworkin on behalf of the Navajo Nation
- Guss Guarino on behalf of the United States Department of Justice
- Phillip Londen on behalf of the Hopi Tribe
- Kate Shaffer on behalf of the San Juan Southern Paiute Tribe
- Brian Heiserman on behalf of the LCR Coalition (“LCRC”)
- Katrina Wilkinson and Mark McGinnis on behalf of Salt River Project (“SRP”)
- Carrie Brennan on behalf of the Arizona State Land Department (“ASLD”)
- Lee Storey, Ethan Minkin and Luke Erickson on behalf of the City of Flagstaff

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

LET THE RECORD REFLECT that Court Reporter, Cindy Mahoney, was previously sworn on the third day of trial.

Witness, Mark Nicholls, is sworn and testifies.

City of Flagstaff's exhibits 1 and 2 are received in evidence.

Witness, Mark Nicholls, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness testifying outside the scope his expert testimony. Counsel for City of Flagstaff, Mr. Minkin, responds that it is a part of his report.

The objection is overruled.

Witness, Mark Nicholls, testifies further.

Counsel for City of Flagstaff, Mr. Minkin, moves for the admission of City of Flagstaff's exhibit 118. Counsel for Navajo Nation, Mr. Leonard, objects to portions the report.

City of Flagstaff's exhibit 118 is received in evidence without prejudice to the Navajo Nation making its objections to portions of the report.

Witness, Mark Nicholls, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness opining on whether Dr. Greenslade's conclusion are invalid as it calls for a legal conclusion. The Court notes that the witness is giving his technical opinion.

The objection is overruled.

Witness, Mark Nicholls, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to section 6 of Mr. Nicholls report. He believes the conclusion gives a legal opinion and should be stricken for the same reason portions of Mr. Taylor's report was.

Counsel for City of Flagstaff, Mr. Minkin, believes this objection should have been addressed by a Motion in Limine. He states the report is not instructing the Court on any legal issues and Mr. Greenslade had an opportunity to respond to the report.

Counsel for United States, Mr. Guarino, joins in the objection.

The objection is overruled, to the extent that a legal opinion is given, the Court will note it in the final report.

Counsel for Navajo Nation, Mr. Leonard, moves to admit section 4 of Jonathan Taylor's report based on the Court's immediate ruling.

The Court notes that this was previously stricken by former Special Water Master Harris.

IT IS ORDERED denying Navajo Nation's Motion and affirming the previous order striking section 4 of the report.

Witness, Mark Nicholls, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness addressing storage capacity as expert witnesses are limited to one subject.

Counsel for City of Flagstaff, Mr. Minkin, responds that the two witnesses address storage capacity with different methodology.

Counsel for SRP, Mr. McGinnis adds that Dr. Shannon looked at surface water and quantified it and Mr. Nicholls report is more process oriented.

The objection is sustained with respect to the topic of quantification. The witness may however testify regarding processes.

Witness, Mark Nicholls, testifies further.

10:15 a.m. The Court stands in recess.

10:25 a.m. The Court reconvenes with the above-named parties present.

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

Witness, Mark Nicholls, testifies further.

The witness is excused.

Discussion is held regarding Monday's change in courtroom. The Court notes that they will be able to start at 9:00 a.m. in Courtroom 411 but the live feed may not be able to display the evidence screen.

Counsel for LCRC, Mr. Heiserman, addresses the Court regarding the format of post-trial briefing and proposes that the parties address same after the witness testifies on

Monday. No objections are stated, the parties will inform the Court of any agreements on Monday afternoon.

10:31 a.m. This matter stands in recess until Monday, July 24, 2023 (in Courtroom 411).

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.