

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

July 31, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: August 4, 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 39**

Courtroom 613 – East Court Building

8:59 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, Judith Dworkin and Kathryn Hoover on behalf of the Navajo Nation
- Emmi Blades, Guss Guarino and Cody McBride on behalf of the United States Department of Justice
- Phillip Londen on behalf of the Hopi Tribe
- Julia Kolsrud on behalf of the San Juan Southern Paiute Tribe
- Brian Heiserman and Brad Pew on behalf of the LCR Coalition (“LCRC”)
- Mark McGinnis on behalf of Salt River Project (“SRP”)
- Kevin Crestin and 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 first day of trial.

Witness, Dr. Jeff Tayman, is sworn and testifies.

City of Flagstaff's exhibits 7, 93 and 95 are received in evidence.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for City of Flagstaff, Mr. Minkin, moves for the admission of City of Flagstaff's exhibit 41.

Counsel for Navajo Nation, Mr. Hiller, objects and moves to strike a portions of the report.

Counsel for LCRC, Mr. Pew, objects to the motion to strike as to disclosure and notes that the Navajo Nation's objection is waived as they did not list this objection on the pretrial statement.

Counsel for United States, Mr. McBride, joins in the Navajo Nation's objection.

Counsel for SRP, Mr. McGinnis, joins in LCRC's objection.

The objection is overruled and City of Flagstaff's exhibit 41 is received in evidence. The Court will permit the Claimants to lodge their specific objections to the portions of the report.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony regarding Dr. Swanson's report as to foundation.

Mr. Minkin states he will lay the foundation for this line of questioning.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony regarding projections that do not appear in this witness' primary report.

The objection is overruled. Mr. Hiller may address this issue during their cross examination.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony not in the initial report and moves to strike. Counsel for United States, Mr. McBride, joins in the objection.

Counsel for City of Flagstaff, Mr. Minkin, cites Rule 26.1(f) and notes that Dr. Tayman testified extensively about this topic at his deposition.

Counsel for LCRC, Mr. Pew, notes that the witness testified regarding these projections in his deposition.

The objection is overruled.

IT IS ORDERED denying the Motion to Strike.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for United States, Mr. McBride, objects to undisclosed testimony regarding Dr. Greene's rebuttal report. Counsel for Navajo Nation, Mr. Hiller, joins in the objection.

The objection is overruled. The witness may use an example but cannot give an opinion.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony not in this witness' PES report. Counsel for United States, Mr. McBride, joins in the objection.

Counsel for City of Flagstaff, Mr. Minkin, states that this witness discussed undercount at his deposition. Counsel for Mr. McBride states this particular issue was not discussed at the deposition. The Court notes that the witness is a demographer.

The objection is sustained.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony outside the scope of his report.

The objection is overruled. The witness may testify regarding this issue to the extent that he is speaking to his factual experience.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller objects to this witness testifying regarding models that are used for economic factors that drive migration as outside the scope of his

report. Counsel for City of Flagstaff, Mr. Minkin, notes that this topic is discussed in Appendix B of his report.

The objection is overruled.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to this witness providing opinions on the valid way to determine migration patterns.

The objection is overruled.

Witness, Dr. Jeff Tayman, testifies further.

10:24 a.m. The Court stands in recess.

10:40 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, Dr. Jeff Tayman, testifies further.

Counsel for LCRC, Mr. Pew, objects to this witness testifying regarding a formula he does not have familiarity with as to Rule 403. Counsel for City of Flagstaff, Mr. Minkin, objects to Mr. Hiller doing calculations on behalf of the witness.

The objection is sustained.

Witness, Dr. Jeff Tayman, testifies further.

11:53 a.m. The Court stands in recess.

1:29 p.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, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony regarding 2020 Census data as outside the scope of cross.

Mr. Minkin agrees to move on.

Witness, Dr. Jeff Tayman, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to the witness' testimony regarding methods used for San Diego projections as to relevance and disclosure.

Counsel for City of Flagstaff, Mr. Minkin, notes that the question is regarding the methodology.

The objection is overruled.

Witness, Dr. Jeff Tayman, testifies further.

The witness is excused.

City of Flagstaff rests.

Counsel for LCRC, Mr. Heiserman, addresses the Court regarding Robert Pena. The parties have been working towards deposition designations and propose the deposition with highlighted designations be marked and received as LCRC 234. The parties have further stipulated to admit LCRC's exhibits 199 (deposition exhibit 407), 200 (deposition exhibit 408), 201 (deposition exhibit 409), 202 (deposition exhibit 410), 203 (deposition exhibit 411) and Navajo Nation's exhibits 1562 (deposition exhibit 412) and 1394 (deposition exhibit 414).

The parties have further stipulated to the Court taking judicial notice of the five following statements from Springerville's 2022 Community Water System Report:

- The 2022 Community Water System Report filed by the town of Springerville reported a water withdrawn of 222.85 acre feet in a population served of 1,724 people.
- The 2022 Community Water System Report filed by the town of Springerville reflects a gallons per capita daily usage of 115.39
- Town of Springerville's 2022 CWS Report was prepared by Wes Whiting as the operator of record
- The 2022 Springerville CWS report estimated water withdrawn from five wells as 44.57 acre feet from each well
- The water delivered to customers in the 2022 Springerville CWS Report with 740 total residential metered connections and 791 total non-residential metered connections and lists a total connections of 1,531

The Court inquires why the City of Flagstaff will not stipulate to the admission of the CWS Report as an exhibit.

Counsel for City of Flagstaff, Ms. Storey, responds that CWS was not on the exhibit list, not discussed with the experts or witnesses, and Mr. Pena did not author the report.

IT IS ORDERED granting the parties' Stipulation. The Court will take judicial notice of the above five statements from the 2022 Springerville Community Water System Report.

By stipulation of the parties, LCRC's exhibits 199, 200, 201, 202 and 203 and Navajo Nation's exhibits 1562 and 1394 are received in evidence.

IT IS ORDERED that the Navajo Nation disclose their rebuttal witnesses on Tuesday 12:00 p.m. (noon) to all parties by email.

Counsel for Navajo Nation, Mr. Leonard, requests an additional 20-30 minutes with rebuttal witness, Dr. Liebler.

Discussion is held regarding the Navajo Nation's request.

IT IS FURTHER ORDERED denying the request.

Counsel for LCRC, Mr. Heiserman, addresses the Court regarding its proposal for post-trial briefing.

Discussion is held regarding the proposal.

IT IS FURTHER ORDERED that no trial shall be held on Tuesday, August 1, 2023. The Court will present its final orders on post-trial briefing on Wednesday.

3:02 p.m. This matter stands in recess until Wednesday, August 2, 2023.

A copy of this minute entry is provided to all parties on the Court approved mailing list.

LATER:

LET THE RECORD REFLECT that the clerk receives LCRC's exhibit 234 on a separate USB drive after conclusion of today's hearing. LCRC's exhibit 234 is marked for identification and received in evidence by stipulation of the parties.

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.