

SUPERIOR COURT OF ARIZONA  
APACHE COUNTY

August 2, 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 40**

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, Judith Dworkin and Kathryn Hoover on behalf of the Navajo Nation
- Emmi Blades 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 and Katrina Wilkinson 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. Gretchen Greene, having been previously sworn on June 6, 2023, testifies further.

The witness is excused.

Witness, Dr. Carolyn Liebler, having been previously sworn on June 13, 2023, testifies further.

The witness is excused.

9:38 a.m. **LET THE RECORD REFLECT** that counsel, Candace French, is now present on behalf of the Navajo Nation.

Witness, Former Navajo Nation President Jonathan Nez, having been previously sworn on May 1, 2023, testifies further.

Counsel for ASLD, Ms. Brennan, objects to this witness testifying regarding future population as to disclosure. Counsel for Navajo Nation, Mr. Leonard, responds that Dr. Chang testified about population and states the line of questioning is relevant to NACOG (Northern Arizona Council of Governments) which is what the witness was disclosed to testify about.

The objection is overruled.

Witness, Former Navajo Nation President Jonathan Nez, testifies further.

Counsel for LCRC, Mr. Pew, objects to testimony regarding 2010 Census as to disclosure.

The objection is sustained.

Witness, Former Navajo Nation President Jonathan Nez, testifies further.

The witness is excused.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding the confidential portions of the transcript. If the parties require any further orders regarding the confidential portions, they may submit a request when sending the transcript to the Court.

Counsel for Navajo Nation, Mr. Hiller, addresses the Court regarding its proposal for post-trial briefing.

Counsel for City of Flagstaff, Ms. Storey, addresses the Court regarding the City's proposal for other parties' issues.

Discussion is held regarding post-trial briefing.

The Court addresses the parties regarding its proposed schedule for post-trial briefing.

10:27 a.m. The Court stands in recess to allow the parties to confer.

10:44 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.

Discussion is held regarding the parties' comments on the Court's proposed schedule.

**IT IS ORDERED** setting the following post-trial briefing schedule:

- I. Initial Brief with proposed findings of fact and conclusions of law shall be filed no later than **November 16, 2023**.
  - A. A summary of the party's claims regarding the appropriate gallons per capita per day and the appropriate projected population for the Navajo Nation within the study area shall be no more than 20 pages. A listing of proposed findings of fact or proposed conclusions of law is not included in the 20 pages and has no page limit.
  - B. Each party may have up to 60 additional pages (total for all questions) to answer, at the party's discretion, any of the following questions provided by the Court. A listing of proposed findings of fact or proposed conclusions of law is not included in the 60 pages and has no page limit.
    1. What is the appropriate level of specificity for a Federal Reserved Water Rights (FRWR) decree?
    2. Can a FRWR to groundwater be recognized without first demonstrating that surface water is inadequate? Can "inadequate" be anything more than simply a *use-specific* designation?
    3. What would such an "inadequate" designation do to the rest of the general stream adjudication for the Little Colorado River? If the water is not adequate for the Navajo Nation, can it be adequate for another party?

4. Are water quality and feasibility of access appropriate considerations of “adequacy” for the Navajo Nation determination? Would they be considerations for other parties?
5. If this Court must find that other waters are inadequate before granting a FRWR, would the proposed water right need to state what the source of the water is?
6. What water sources are appropriate for consideration as “other waters”?
7. Can the Court determine the availability of the surface and groundwater resources on the Navajo Reservation without considering and accounting for other parties’ (tribal and non-tribal) rights to the same water resources?
8. How does the Court administer FRWR **between** the Navajo Nation and the United States as trustee for the Hopi and San Juan Southern Paiute Tribes as well as the Navajo Nation?
9. Could a future change in the Study Area such as a boundary change or ecological changes impact quantification of the Navajo Nation’s FRWR? Is “minimal need” static?
10. Does the law permit the Court consider the following:
  - a. The total quantity of water that can be safely withdrawn from any or all aquifers without negatively impacting ground water sources such as quality, quantity, and recharge? Is “safe yield” an appropriate consideration?
  - b. The quantity of water reasonably available due to the impacts of climate change such as longer, hotter periods of drought, “flashier” precipitation events, and changing ecology within the streambeds.
  - c. Can this Court allocate a water quantity that may only exist for a limited time.

A party may also include other issues if and only if there is enough of a record for the Court to make a recommendation prior to Phase II, or if the issue is not specifically part of Phase II but a recommendation at this time would help the Phase II proceedings. Justification must be included.

Any discussion of assigning sources to specific uses is prohibited since all uses have not been determined/evaluated.

- II. Response Briefs shall be no more than 75 pages total and filed no later than **February 16, 2024**.
- III. Navajo Nation and United States shall file their final replies no later than **March 15, 2024**. Each reply shall be no more than 25 pages.
- IV. In-person oral arguments will be scheduled for **April 16 and 17, 2023**. The courtroom location will be determined later. Navajo Nation and United

States will each have 60 minutes total for opening and reply; each Objector will have 45 minutes.

Trial having concluded in this matter, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

**IT IS FURTHER ORDERED** directing the above-named clerk to dispose of the exhibits marked for identification which were not offered or received in evidence:

11:10 a.m. Matter concludes.

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.