

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

08/14/2020

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

S. Motzer

Deputy

FILED: 08/27/2020

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

CV6417-203

In re: Pre-Trial Conference re: Future Use Trial

MINUTE ENTRY

Courtroom: CCB 301

1:55 p.m. This is the time set for a pre-trial conference.

The following attorneys appear via GoToMeeting:

- Emmi Blades, Rebecca Ross, and Sarah Foley for U.S. Department of Justice
- Phillip Londen, Payslie Bowman, Grace R. Rebling, and Thayne Lowe for the Hopi Tribe
- Jeffrey S. Leonard, Evan F. Hiller, and Judith M. Dworkin for the Navajo Nation
- David A. Brown, Lauren J. Caster, Brian J. Heiserman, and Bradley J. Pew for LCR Coalition
- Mark A. McGinnis for Salt River Project
- Carrie J. Brennan and Kevin Crestin for Arizona State Land Department
- Sara Ransom, Lee A. Storey, and Ethan B. Minkin for the City of Flagstaff
- Robin L. Interpreter observing for the San Juan Southern Paiute Tribe, Yavapai Apache Nation, and Pasqua Yaqui Tribe
- Carroll Onsaе, General Manager of Hopi Telecommunications, Timothy Nuvangyaoma, Chairman of the Hopi Tribe, and Frederick Lomayesva, General Counsel for the Hopi Tribe, Representatives of the Hopi Tribe

A record of the proceedings is made digitally in lieu of a court reporter.

Trial logistics are discussed including GoToMeeting and Bridge Line issues. The Court explained that the Superior Court made the decision to adopt the GoToMeeting platform rather than the Zoom platform. It is in the process of developing a platform that will better meet the needs of the parties and courts. Once the platform has been fully tested, this case will move to that platform.

Ms. Rebling requested confirmation that when exhibits are being presented, the exhibit will be viewed by the court on a separate screen using the “detach camera” feature. The court confirmed that two screens are present on the bench. Protocols are discussed.

Discussion is held regarding the submission of exhibits. Exhibits should be submitted on a flash drive to the Clerk of Court and the Special Water Master. Ms. Rebling discussed that some witnesses may want to have hard copies of the documents.

Mr. Heiserman raised the issue of documents that may be shown to a witness on cross examination and objects to having the responsibility to provide hard copies of all exhibits to the witness in advance of cross-examination. The Court stated that it would not be reasonable to require cross-examining counsel to provide hard copies of documents used in cross-examination.

Discussion is held regarding the presence of a court reporter for trial. A court reporter will be present for the next Pretrial Conference.

Ms. Rebling discussed a series of witness protocols. Mr. Leonard stated that the parties will need to be flexible and adaptable.

The Court directed the parties to deliver the sealed depositions to the Office of the Special Master. The depositions will be stored in the courtroom and available to the Court during the trial. At the conclusion of the trial, the Court will be responsible for delivering the depositions to the Clerk’s Office.

Discussion is held regarding possible interruptions of proceedings where GoToMeeting fails and the chat feature is not available. If a party is dropped from GoToMeeting during proceedings, said party should contact the number provided that will ring in the courtroom.

The Court discussed the problems with the bridge line and stated that the court’s technical staff is working on the issue.

Discussion is held regarding breaks for client consultations.

A break will be taken every hour and a half for 15 minutes, unless any attorney requests an extended break, which will be considered on a case by case basis.

Discussion is held regarding protocols for Hopi Fact Witnesses. Mr. Heiserman objected to in-person testimony from a lay witness if the cross-examining counsel cannot be present. Ms. Rebling would like to be able to re-urge in-person fact witness testimony if the circumstances warrant when the Hopi fact witness are to be called in late October or early November. Mr. Leonard agrees with Mr. Heiserman position and urges that all rules should be applied consistently to all parties and that all witnesses should testify in the same fashion and that a distinction should not be made between fact and expert witnesses. Ms. Blades stated that she does not believe that the United States would object to Hopi witnesses being allowed to testify in person but states that if the United States' expert witnesses have to use the virtual platform then all experts should be required to testify using that platform.

Counsel for the Hopi Tribe addresses the Court regarding the Court designated interpreter and a possible conflict due to the fact that the interpreter knows one of the Hopi Tribe witnesses which presents an ethical issue. Ms. Rebling will advise the Court if the witness who knows the interpreter will be called at trial and requests a notice about the interpreter.

Ms. Rebling proposed that only the counsel who will be either conducting direct or cross-examination of a witness will have their cameras turned on and all other participants will turn off their cameras. Mr. Heiserman suggested efficient methods of making objections.

Discussion is held regarding the redactions of exhibits.

The Court states that it will return the flash drive to counsel for the United States so that the approved redactions can be made to the documents and reviewed by the parties by August 21, 2020 and the flash drive updated and returned to the Court by August 28, 2020.

3:15 p.m. Matter concludes.

LATER:

Computer Platform

The Maricopa Superior Court launched Virtual Justice, a comprehensive online court hearing platform, on August 24, 2020 as part of a pilot program for certain types of cases heard in the Juvenile Department. As its use is expanded throughout the court, Virtual Justice will eventually replace GoToMeeting as the platform that will be used will be used in this case before the end of the year.

Witness Protocols

The Witness Protocols proposed in the Hopi Tribe's Request for Protocols on Virtual Trial ("Hopi Protocols") under subsection (C) on page 3 will be followed where reasonably possible. Counsel who lists a witness shall insure that when that witness is called to testify, the witness shall have a copy of the witness' deposition transcript and a copy of the expert report, if any, prepared by the witness that will constitute that witness' direct testimony. Counsel are encourage to talk to their witnesses about the witness' preferred format for documents that may be used during cross-examination. If the preferred format is a hard rather than electronic copy, then counsel who has called the witness will be responsible for making hard copies available is reasonably possible.

Interruptions of Proceedings

If a party loses access to the GoToMeeting Platform, then once all parties have full access, the party will have the option of having the Court Reporter read the transcript for that portion of the proceeding that occurred in the absence of the party, and the party will have the option to either move to strike the testimony and restart where the participation issue occurred or proceed with the record as it developed while the lawyer was off-line.

In-Person Testimony

The Hopi Tribe raised the question whether its fact witnesses may testify in person along with Hopi counsel if circumstances allow. No proceeding will be allowed which does not also permit the cross-examining attorneys to appear in the proceeding. It is very unlikely that between the court's rules and the physical demands expected to be made on the Maricopa County Superior Court's large courtrooms during the fall of 2020 that an in-person proceeding will be feasible in this case. The Hopi Tribe is not precluded from re-urging this motion later if the circumstances change and subject to the requirements of this paragraph.

Interpreter

The Office of Court Interpretation and Translation Services Department (CITS) is currently planning to retain Marilyn Fredricks to act an interpreter in this case.

Objections

One method to consider for making an objection is the objector use his or her hand to block the camera momentarily so that the court is aware that an objection is pending and the witnesses will be instructed to wait to answer until the objection is stated and ruled upon.

A copy of this order is delivered to the Clerk of the Apache County for filing and distributing a copy to all persons listed on the Court-approved mailing list.