

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

June 12, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: June 20, 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 19**

Courtroom 613 – East Court Building

9:04 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 M. Dworkin and Candace French on behalf of the Navajo Nation
- Rebecca Ross and Katheryn C. Carey on behalf of the United States Department of Justice
- Phillip Londen and Brandon Delgado on behalf of the Hopi Tribe
- Irania Fimbres-Ruiz on behalf of the San Juan Southern Paiute Tribe
- Brad Pew, David Brown and Brian J. Heiserman 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”)
- Alexandra Arboleda 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, Norbert Nez, is sworn and testifies.

Counsel for LCRC, Mr. Pew, objects to the witness testifying regarding an undercount as to foundation and hearsay.

The objection is sustained. The Court notes that this is not an expert witness and Mr. Hiller is directed to restate the question more appropriately for a fact witness.

Witness, Norbert Nez, testifies further.

Counsel for LCRC, Mr. Pew, objects to Mr. Hiller's line of questioning as hearsay within hearsay. He adds that the witness is being read a summarization of a meeting then asked to validate statements that he did not make.

The objection is sustained and Mr. Hiller is directed to rephrase the question more appropriately for a fact witness.

Witness, Norbert Nez, testifies further.

Counsel for ASLD, Ms. Brennan, objects to the witness testifying regarding what the Census Bureau told him as to hearsay and about what the Bureau did in response as to foundation.

The objection is sustained; however, Mr. Hiller will be permitted to ask the witness regarding his experiences of which he has personal knowledge.

Witness, Norbert Nez, testifies further.

Counsel for LCRC, Mr. Pew, objects to testimony regarding an undercount on the reservation as to foundation. Counsel for SRP, Mr. McGinnis, joins in the objection and adds that the witness has no personal knowledge of an undercount.

Discussion is held regarding SRP's Motion in Limine and whether this witness can appropriately testify as to past Censuses and its meetings. Counsel for SRP, Mr. McGinnis, adds that this witness was not disclosed to speak about the 2010 Census nor does he have any personal knowledge of it.

Counsel for Navajo Nation, Mr. Hiller, addresses the Court regarding his offer of proof regarding Mr. Nez's investigation into past Censuses and involvement in the improvement project for the 2020 Census.

10:23 a.m. The Court stands in recess.

10:41 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.

The Court addresses the offer of proof. Mr. Nez is not an expert witness and may not give his opinions. Pursuant to Rule 602, the witness may only testify as to his experiences of the points made by Mr. Hiller if he has personal knowledge.

Witness, Norbert Nez, testifies further.

Counsel for Navajo Nation, Mr. Hiller, moves to admit Navajo Nation's exhibit 1065. Counsel for LCRC, Mr. Pew, objects to its admission as to hearsay within hearsay. Mr. Hiller responds that the statements in the document qualify as a present sense impression.

Discussion is held regarding the relevance of the document and the hearsay objection.

The objection is sustained and Navajo Nation exhibit's 1065 is not received in evidence.

Witness, Norbert Nez, testifies further.

Counsel for LCRC, Mr. Pew, moves to strike the witness' testimony regarding students returning to the Reservation as to foundation.

IT IS ORDERED granting the Motion to Strike.

Witness, Norbert Nez, testifies further.

Counsel for Navajo Nation, Mr. Hiller, moves for the admission of Navajo Nation's exhibit 1066.

Counsel for LCRC, Mr. Pew, objects as to hearsay.

The objection is overruled and Navajo Nation's exhibit 1066 is received in evidence. LCRC's concerns are noted and will be addressed as the Court reviews the report.

Witness, Norbert Nez, testifies further.

The witness is excused.

Witness, Ron Duncan, is sworn and testifies.

Navajo Nation's exhibit 1172 is received in evidence.

The witness is excused.

Witness, MC Baldwin, is sworn and testifies.

11:55 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, MC Baldwin, testifies further.

1:34 p.m. The Court stands in recess due to technical difficulties.

1:36 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, MC Baldwin, testifies further.

Navajo Nation's exhibit 222 is received in evidence.

The witness is excused.

Witness, Thomas Walker, is sworn and testifies.

Counsel for LCRC, Mr. Pew, objects to this witness testifying regarding challenges with past Censuses as to hearsay and foundation. The witness has no personal knowledge of the challenges.

Counsel for Navajo Nation, Mr. Hiller, believes this falls under the residual exception under Rule 807. Mr. Pew does not believe this falls under the exception as the names of the constituents were not provided prior to trial.

The Court notes that the witness has already explained that his information is coming from somebody else. The Court will overrule the objection with the understanding that the Court has already defined his level of personal knowledge.

Witness, Thomas Walker, testifies further.

Counsel for LCRC, Mr. Pew, objects to this witness opining on an undercount in 2020 as to foundation.

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

The objection is sustained.

Witness, Thomas Walker, testifies further.

The witness is excused.

2:47 p.m. This matter stands in recess until Tuesday, June 13, 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.