

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

July 11, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: July 14, 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 28**

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 and Evan Hiller on behalf of the Navajo Nation
- Guss Guarino and Cody McBride on behalf of the United States Department of Justice
- Phillip Londen and Payslie Bowman on behalf of the Hopi Tribe
- Kate Shaffer on behalf of the San Juan Southern Paiute Tribe
- David Brown and Brad Pew 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, Nicole Bulldis, is present. A record of the proceedings is also made digitally.

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

Witness, Dr. David Swanson, having been previously sworn, testifies.

Counsel for Hopi Tribe, Mr. Londen, objects to the witness testifying regarding the lifting of the Bennett Freeze as to foundation. Counsel for LCRC, Mr. Pew, joins in the foundation objection.

The objection is sustained.

Witness, Dr. David Swanson, testifies further.

Counsel for the City of Flagstaff, Mr. Minkin, objects to the use of calculations done by Mr. Hiller as he does not qualify as an expert under Rule 703. Counsel for SRP, Mr. McGinnis, adds that Mr. Hiller was not able to produce the numbers on his chart.

The objection is sustained.

Witness, Dr. David Swanson, testifies further.

Counsel for ASLD, Ms. Brennan, objects to Mr. Hiller's use of a demonstrative exhibit (Dr. Swanson's Hopi Tribal Population Forecast) as it is not listed as a trial exhibit.

Counsel for Navajo Nation, Mr. Hiller, does not believe that to be true as deposition transcripts are used and not listed as trial exhibits. Counsel for United States, Mr. Guarino, agrees with Mr. Hiller, and notes that the Rules of Evidence permit the use of anything to refresh a witness' recollection.

Counsel for SRP, Mr. McGinnis, disagrees and states Rule 16 of the Arizona Rules of Civil Procedure require the parties to list any exhibits for any purpose in the pretrial statement.

Counsel for United States, Mr. Guarino, disagrees with Mr. McGinnis' application of the rules and notes that Mr. Hiller is not asking to admit the report into evidence.

Counsel for San Juan Southern Paiute Tribe, Ms. Shaffer, inquires as to which rule Mr. Guarino is referencing. She notes that the Rule 803 of the Rules of Evidence is an exception to hearsay, not lack of disclosure.

Counsel for LCRC, Mr. Pew, agrees with Mr. McGinnis and does not believe good cause has been shown as required by Rule 16.

Counsel for City of Flagstaff, Mr. Minkin, joins in the objection and notes that the Hopi CV6417-203 trial transcript is listed as an exhibit by LCRC.

The objection is sustained. The Court will permit Mr. Hiller to give the 2000 and 2010 population numbers to the witness but he will not be permitted any further use of the report.

10:33 a.m. The Court stands in recess.

10:45 a.m. The Court reconvenes with the parties and counsel present.

Court Reporter, Nicole Bulldis, is present. A record of the proceedings is also made digitally.

Witness, Dr. David Swanson, testifies further.

Counsel for LCRC, Mr. Pew, objects to Mr. Hiller calculating annual growth rates instead of the witness.

Counsel for Navajo Nation, Mr. Hiller, provides a calculator to the witness so he may calculate the figures instead. The witness notes that he is not comfortable calculating annual growth rates using the calculator provided.

Discussion is held regarding the relevance regarding the line of questioning on growth rate calculations.

Counsel for LCRC, Mr. Pew, states an ongoing objection to the use of the demonstrative numbers. Counsel for City of Flagstaff, Mr. Minkin, objects as to relevance. Ms. Brennan suggests rephrasing the question as a hypothetical.

Mr. Hiller is directed to avoid the use of the calculation numbers if possible.

Witness, Dr. David Swanson, testifies further.

Counsel for Hopi Tribe, Mr. Londen, objects to the witness testifying about Dr. Greene's report as he has not reviewed the report.

The objection is overruled, but Mr. Hiller is instructed to keep the questioning as hypothetical.

Witness, Dr. David Swanson, testifies further.

Counsel for LCRC, Mr. Pew, objects to the witness being questioned regarding the citizenship question on the 2020 Census as to foundation. Counsel for City of Flagstaff, Mr. Minkin, objects as to relevance to the 2020 Census.

The Court inquires as to the relevance of this line of questioning. Counsel for Navajo Nation, Mr. Hiller, responds that Dr. Chang will express his opinions on the 2020 Census and believes this witness to have relevant knowledge.

The relevance objection is overruled, Mr. Hiller may continue his questioning regarding the 2020 Census. However, the foundation objection is sustained with respect to the citizenship question.

Witness, Dr. David Swanson, testifies further.

Upon motion of the Navajo Nation, Hopi Tribe's exhibit 102 is received in evidence.

Witness, Dr. David Swanson, testifies further.

Counsel for Hopi Tribe, Mr. Londen, objects to questioning regarding internet access on the Navajo Reservation as cumulative and time wasting pursuant to Rule 403.

The objection is sustained.

Discussion is held regarding time estimates regarding Mr. Umstot's testimony.

12:02 p.m. The Court stands in recess.

1:28 p.m. The Court reconvenes with the above-named parties present.

Court Reporter, Nicole Buldis, is present. A record of the proceedings is also made digitally.

Witness, Dr. David Swanson, testifies further.

Counsel for LCRC, Mr. Pew, objects to the witness opining on whether a high/low population growth estimate is better for allocating a water right as to foundation. Counsel for SRP, Mr. McGinnis, joins in the foundation objection.

The objection is sustained.

Witness, Dr. David Swanson, testifies further.

Counsel for United States, Mr. McBride, moves for the admission of US' exhibit 1283. Counsel for SRP, Mr. McGinnis, objects as to completeness and notes that the last page of the report is missing.

The objection is overruled and US' exhibit 1283 is received in evidence.

Witness, Dr. David Swanson, testifies further.

The witness is excused.

Witness, Todd Umstot, is sworn.

LET THE RECORD REFLECT that both the Navajo Nation and United States continue to find that this particular witness is not relevant to this phase of the litigation and have a standing objection to his testimony.

Witness, Todd Umstot, testifies.

Hopi Tribe's exhibit 121 is received in evidence.

Witness, Todd Umstot, testifies further.

Counsel for Hopi Tribe, Ms. Bowman, moves for the admission of Hopi Tribe's exhibit 122.

Hopi Tribe's exhibit 122 is admitted over the ongoing objections of the Navajo Nation and the United States.

3:00 p.m. The Court stands in recess.

3:14 p.m. The Court reconvenes with the above-named parties present with the exception of Mr. Pew who is no longer present.

Court Reporter, Nicole Buldis, is present. A record of the proceedings is also made digitally.

Witness, Todd Umstot, testifies further.

Hopi Tribe's exhibit 137 is received in evidence.

The witness is excused.

The Hopi Tribe rests its case.

Counsel for LCRC, Mr. Brown, addresses the Court regarding LCRC's witness schedule.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Hopi Tribe's 120. Counsel for ASLD, Ms. Brennan, objects to its admission as cumulative evidence. The Court will address the admission of this exhibit tomorrow morning before Mr. Harvey's testimony.

4:42 p.m. This matter stands in recess until Wednesday, July 12, 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.