

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

July 24, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: July 28, 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 35**

Courtroom 411 – East Court Building

9:00 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 and Judith Dworkin on behalf of the Navajo Nation
- 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, David Brown and Brad Pew on behalf of the LCR Coalition (“LCRC”)
- Katrina Wilkinson and Mark McGinnis on behalf of Salt River Project (“SRP”)
- Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)
- Lee Storey, Chris Thomas 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, Bradley Hill, is sworn and testifies.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness testifying about work done after his report as to disclosure.

Counsel for the United States, Mr. McBride, joins in the objection and adds that the witness didn't calculate the water use rate of any specific community outside of Flagstaff.

Counsel for City of Flagstaff, Mr. Thomas, is directed to rephrase the question.

Counsel for Navajo Nation, Mr. Leonard, objects as to foundation.

The objection is sustained. Mr. Thomas may rephrase his question.

Witness, Bradley Hill, testifies further.

Counsel for Navajo Nation, Mr. Leonard, objects to the witness testifying about recent draft rules as to disclosure and outside the scope of his report.

Counsel for City of Flagstaff, Mr. Thomas, moves for the Court to take judicial notice of the ADEQ's report and EPA's WaterSense guidance.

The objection is sustained. The court will address Mr. Thomas' motion after the lunch break.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, moves for the admission of City of Flagstaff's exhibits 3, 4 and 18, United States' exhibit 1238 and Navajo Nation's exhibit 1595.

Counsel for United States, Mr. McBride, objects to the admission of United States' 1238, Navajo Nation's exhibit 1595 and City of Flagstaff's exhibit 18 as to hearsay and relevance. Counsel for Navajo Nation, Mr. Leonard, joins in the relevance and hearsay objections.

Mr. Thomas notes that City of Flagstaff's exhibit 18 is also Navajo Nation's exhibit 1602 and will move for its admission instead as the Nation is not permitted to object to its own exhibit.

The objections are overruled.

City of Flagstaff's exhibits 3 and 4 are received in evidence.

Upon motion of the City of Flagstaff, Navajo Nation's exhibits 1595 and 1602 and United States' exhibit 1238 are received in evidence.

Witness, Bradley Hill, testifies further.

LCRC's exhibit 212 is received in evidence.

Witness, Bradley Hill, testifies further.

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

10:42 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, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness opining on various Arizona towns' water use and management as to foundation.

The objection is sustained.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness opining on the Navajo Nation's obstacles to development as to foundation.

The objection is sustained.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the use of an incomplete hypothetical.

The objection is sustained.

Witness, Bradley Hill, testifies.

Counsel for LCRC, Mr. Pew, objects to the improper use of the deposition and moves to strike. Counsel for City of Flagstaff, Mr. Thomas, joins.

IT IS ORDERED granting the Oral Motion to Strike. Mr. Leonard is permitted to rephrase his question.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness testifying regarding the 1920s water planning as to foundation. The Court notes that was not what Mr. Leonard was asking of the witness and the objection is overruled.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness providing legal conclusions as to whether or not the Navajo Nation will be permitted to request a reevaluation of their water rights in the future.

The objection is sustained.

Witness, Bradley Hill, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1230. Counsel for City of Flagstaff, Mr. Thomas, objects as to relevance.

The objection is overruled and Navajo Nation's exhibit 1230 is received in evidence with the understanding that the Court will only review what is referenced to in testimony and the final briefs.

Witness, Bradley Hill, testifies further.

12:00 p.m. The Court stands in recess.

1:28 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.

Counsel for Navajo Nation, Mr. Leonard, objects to the Court taking judicial notice of a recommendation prepared for ADEQ but does not object to the report. Counsel for United States, Mr. McBride, joins in the objection but does not believe either document is permissible under Rule 201.

The Court inquires what facts in these documents Mr. Thomas would like the Court to take judicial notice of. Counsel for City of Flagstaff, Mr. Thomas, responds that they would like the Court to take notice of ADEQ's rapid progress in eliminating regulatory burdens that prevent the use of treated reclaimed water for drinking use despite the testimony presented by the Navajo Nation. The Court notes that the only indisputable fact is the existence of the documents. Therefore,

IT IS ORDERED granting the City of Flagstaff's Oral Motion to Take Judicial Notice in part. The Court will take judicial notice of the existence of the documents/WaterSense guidance. The Court does not believe its contents to be indisputable and will give it the appropriate weight it is afforded.

Witness, Bradley Hill, testifies further.

Upon motion of the Navajo Nation, City of Flagstaff's exhibit 129 is received in evidence.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness opining on the transportation costs of water as it exceeds the scope of the report.

The objection is sustained. Mr. Leonard may rephrase his question appropriate for a fact witness.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness testifying regarding the transportation costs associated with Red Gap Ranch as it exceeds the scope of the report and not relevant. The Court will permit Mr. Leonard to finish his question and Mr. Thomas may renew his question if he wishes.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness opining on the relevance of transportation costs of alternative water sources as it exceeds the scope of the report.

The objection is sustained. Mr. Leonard may rephrase his question appropriate for a fact witness based on his professional experience.

Mr. Thomas objects to the rephrased question.

The objection is overruled.

Counsel for City of Flagstaff, Mr. Thomas, objects to the subject of City of Flagstaff's future pumping of Red Gap Ranch as to relevance.

The objection is sustained with respect to the topic of modeling.

Witness, Bradley Hill, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1446. Counsel for City of Flagstaff, Mr. Thomas, objects to the admission as to relevance.

The objection is overruled and Navajo Nation's exhibit 1446 is received in evidence. The Court notes that it is a reference to a single data point and will be given the appropriate weight.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness testifying as to City of Peoria's water use as outside the scope of his report.

The objection is overruled, the witness may answer based on his professional experience.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to testimony regarding the cost of reclaimed water delivery to the Navajo Reservation.

The objection is sustained.

Witness, Bradley Hill, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to testimony regarding distribution systems as outside the scope of the expert opinion. Mr. Leonard may ask the witness based on his professional experience. Mr. Leonard agrees to move on from the topic.

Witness, Bradley Hill, testifies further.

Navajo Nation's exhibit 1517 is received in evidence.

Witness, Bradley Hill, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of City of Flagstaff's exhibit 25. Counsel for City of Flagstaff, Mr. Thomas, objects as it is a draft report. Counsel for LCRC, Mr. Pew, adds that he does not believe the witness testified regarding this exhibit and appropriate foundation has not been established.

Witness, Bradley Hill, testifies further.

Counsel for Navajo Nation, Mr. Leonard, renews his request for the admission of City of Flagstaff's exhibit 25 based on the additional testimony given by the witness. Mr. Thomas notes the same objection. He adds that the witness has testified that parts of the

exhibit are outdated and have been superseded. The Court will address the admission of the exhibit after the afternoon break.

Witness, Bradley Hill, testifies further.

3:06 p.m. The Court stands in recess.

3:22 p.m. The Court reconvenes with the above-parties present.

Court Reporter, Cindy Mahoney, is present. A record of the proceedings is also made digitally.

Counsel for Navajo Nation, Mr. Leonard, reads from the City of Flagstaff's website detailing its planning with respect to City of Flagstaff's exhibit 25.

The objections are overruled. Upon motion of the Navajo Nation, City of Flagstaff's exhibit 25 is admitted. The Court notes that it is a draft report that does not reflect what the City is currently practicing.

Witness, Bradley Hill, testifies further.

Upon motion of the City of Flagstaff, Navajo Nation's exhibit 1677 is received in evidence.

The witness is excused.

Counsel for City of Flagstaff, Ms. Storey, addresses the Court regarding Dr. Shen's testimony. She requests an additional 15-20 minutes on direct to accommodate any language barriers as English is Dr. Shen's third language. No objections are made.

IT IS ORDERED granting the request for additional time.

Counsel for LCRC, Mr. Heiserman, provides an update to the Court regarding post-trial briefs. The parties held a conference call and hope to present a proposal on post-trial briefs later this week but will need time to conduct an additional conference call. The Court will discuss the proposal with the parties on Thursday, July 27, 2023.

4:25 p.m. This matter stands in recess until Tuesday, July 25, 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.