

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

July 26, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: August 1, 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 37**

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 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
- Kate Shaffer on behalf of the San Juan Southern Paiute Tribe
- Brian Heiserman and Brad Pew on behalf of the LCR Coalition (“LCRC”)
- Katrina Wilkinson and Mark McGinnis on behalf of Salt River Project (“SRP”)
- Kevin Crestin and Carrie Brennan 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.

Counsel for Navajo Nation, Mr. Leonard, addresses the Court regarding Erin Young. The witness is scheduled as a rebuttal witness for the Navajo Nation next week. Given conflicts with her scheduling, the parties have agreed to allow her to testify today.

Witness, Erin Young, is sworn and testifies.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1505. Counsel for LCRC, Mr. Pew, objects as to hearsay. City of Flagstaff, Mr. Thomas, joins in the hearsay objection.

The objection is sustained and Navajo Nation's exhibit 1505 is not received in evidence.

Witness, Erin Young, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the use of City of Flagstaff's exhibit 25 with this witness. Counsel for ASLD, Ms. Brennan, joins in the objection.

The objection is overruled without prejudice to the parties' renewing their objection after the question has been asked.

Witness, Erin Young, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to testimony regarding demography.

The objection is overruled.

Witness, Erin Young, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness being questioned on sections of City of Flagstaff's exhibit 25 that she is not familiar with.

The objection is sustained. Mr. Leonard is directed to refrain from reading large sections of the exhibit.

Witness, Erin Young, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness testifying regarding the City of Flagstaff's surface water planning practices as to relevance.

The objection is sustained.

Witness, Erin Young, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1507. Counsel for City of Flagstaff, Mr. Thomas, objects as to hearsay and notes that it is more prejudicial than probative. Mr. Leonard states that it is a city document and on the city's website as a current document.

Navajo Nation's exhibit 1507 is not received in evidence.

Witness, Erin Young, testifies further.

Counsel for City of Flagstaff, Mr. Thomas, objects to the witness testifying regarding climate issues as it asks for an expert opinion. Counsel for LCRC, Mr. Heiserman, joins in the objection.

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

Witness, Erin Young, testifies further.

Navajo Nation's exhibit 1356 is received in evidence.

10:28 a.m. The Court stands in recess.

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.

Witness, Erin Young, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibits 1509 and 1510. Counsel for City of Flagstaff, Mr. Thomas, objects as to relevance and notes that it exceeds the scope as a rebuttal witness.

The objections are sustained and Navajo Nation's exhibits 1509 and 1510 are not received in evidence.

Witness, Erin Young, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1518. Counsel for City of Flagstaff, Mr. Thomas, objects as to relevance.

Navajo Nation's exhibit 1518 is not received in evidence, Mr. Leonard may renew the request once he has established its relevance.

Witness, Erin Young, testifies further.

LET THE RECORD REFLECT that Mr. Leonard provides copies of the missing page from Navajo Nation's exhibit 1519 to the parties and the witness.

Witness, Erin Young, testifies further.

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1357. Counsel for City of Flagstaff, Mr. Thomas, objects as to relevance. Counsel for LCRC, Mr. Heiserman, objects as to hearsay. Mr. Thomas joins in the hearsay objection.

Mr. Leonard withdraws his request for the admission of Navajo Nation's exhibit 1357 and instead moves for the admission of City of Flagstaff's exhibit 29. Mr. Thomas objects as to relevance.

Upon motion of the Navajo Nation, City of Flagstaff's exhibit 29 is received in evidence.

Witness, Erin Young, testifies further.

The witness is excused.

12:01 p.m. The Court stands in recess.

1:30 p.m. The Court reconvenes with the above-named parties present with the exception of Chris Thomas. Ethan Minkin is now present on behalf of the City of Flagstaff. City attorney for the City of Flagstaff, Sterling Solomon, is present as well.

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

Counsel for Navajo Nation, Mr. Leonard, moves for the admission of Navajo Nation's exhibit 1511.

Counsel for City of Flagstaff, Mr. Minkin, objects as to relevance.

The objection is overruled and Navajo Nation's exhibit 1511 is received in evidence. The Court will keep Mr. Minkin's concerns in mind when reviewing the exhibit.

Witness, Douglas Smith, is sworn and testifies.

City of Flagstaff's exhibit 10 is received in evidence.

Witness, Douglas Smith, testifies further.

Counsel for City of Flagstaff, Mr. Minkin, objects to testimony regarding cost as outside the scope of his report.

The objection is overruled, the witness will be permitted to answer general questions.

Witness, Douglas Smith, testifies further.

Counsel for City of Flagstaff, Mr. Minkin, objects to any speculative testimony regarding cost.

The objection is sustained.

Witness, Douglas Smith, testifies further.

The witness is excused.

Counsel for ASLD, Ms. Brennan, informs the Court that the City of Flagstaff and ASLD have agreed that ASLD may call their witness, Dr. Chang, before the City rests.

Witness, Dr. Jim Chang, is sworn and testifies.

ASLD's exhibits 1, 2, 95 and 111 are received in evidence.

Counsel for United States, Mr. McBride, objects to testimony regarding what the witness heard at a meeting as to hearsay and moves to strike. Counsel for Navajo Nation, Mr. Hiller, objects as to disclosure.

Ms. Brennan withdraws her question.

IT IS ORDERED granting the Oral Motion to Strike.

Witness, Dr. Jim Chang, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to the witness opining on the Census Bureau's use of post-enumeration surveys under Rule 702 and 703 and moves to strike.

IT IS FURTHER ORDERED denying the Oral Motion to Strike.

The objection is overruled. Mr. Hiller may address this issue during his cross examination.

Witness, Dr. Jim Chang, testifies further.

2:53 p.m. The Court stands in recess.

3:10 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, Dr. Jim Chang, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to friendly cross. Counsel for LCRC, Mr. Pew, does not believe this falls under the circumstances laid out in the Stipulation for friendly cross.

The objection is overruled, but Mr. Pew is directed to be clear that he is asking the current witness of his opinions.

Counsel for United States, Mr. McBride, objects to testimony outside the scope of his report. Mr. Pew responds that he testified about this at his deposition.

Counsel for SRP, Mr. McGinnis, does not believe the stipulation on friendly cross applies as the LCRC has not adopted this expert's report and their expert, Dr. Tayman, gave a different number from Dr. Chang. Mr. Pew responds that they have adopted the population numbers but he is not asking the witness about those.

The objection is overruled.

Witness, Dr. Jim Chang, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony regarding the American Community Survey as to relevance.

The objection is overruled.

Witness, Dr. Jim Chang, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to testimony regarding differential privacy. He adds that the witness has not provided a written opinion on this topic. He requests to voir dire the witness to determine whether the LCRC discussed this information with the witness prior as he believes that would qualify as direct testimony. He further adds that the Navajo Nation was not permitted to ask the City of Flagstaff's witnesses on the topic of cost as it was not in their expert reports.

The Court does not believe Mr. Pew is in the realm of direct testimony as defined in the Stipulation. The scope of cross is not limited to the expert report. As to Mr. Hiller's concerns regarding the restriction of cost testimony with the City of Flagstaff's witness, the Court notes that the objections referenced were sustained because the witnesses did not have the foundational knowledge.

Ms. Brennan adds that Mr. Hiller questioned this witness on this topic at length at this deposition.

The objection is overruled.

IT IS FURTHER ORDERED denying Mr. Hiller's request to voir dire the witness.

Witness, Dr. Jim Chang, testifies further.

Counsel for Navajo Nation, Mr. Hiller, objects to undisclosed expert opinion regarding differential privacy.

Counsel for ASLD, Ms. Brennan, notes that their disclosure statement stated that this witness was going to testify consistent with report and deposition.

Discussion is held regarding disclosure and deposition testimony.

The Court will address Mr. Hiller's objection regarding differential privacy on Thursday morning.

The parties provide their last comments on the disclosure objection.

4:13 p.m. This matter stands in recess until Thursday, July 27, 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.