

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

8/1/2018

CLERK OF THE COURT

SPECIAL MASTER
SUSAN WARD HARRIS

D. Charbagi
Deputy

FILED: 8/16/2018

In re: the General Adjudication
of All Rights to Use Water in the
Little Colorado River System and Source

CV6417-203

In re: Oral Argument Re: Hopi Tribe's Motion to
Restructure Future Water Rights Trial and
Consolidate Hopi Future DCMI, Tourism, and
Economic Development claims with the Navajo
Nation's Trial

Re: Order Setting Pretrial Conference

MINUTE ENTRY

Courtroom 301- CCB

1:34 p.m. This is the time set for Oral Argument before Special Master Susan Ward Harris on the Hopi Tribe's Motion to Restructure Future Water Rights Trial and Consolidate Hopi Future DCMI, Tourism, and Economic Development claims with the Navajo Nation's Trial and Order Setting Pretrial Conference.

The following attorneys appear in person: Carrie J. Brennan for the Arizona State Land Department; David A. Brown, J. Albert Brown, Brian J. Heiserman and Lauren J. Caster for The LCR Coalition; Colin F. Campbell and Phillip Londen for the Hopi Tribe; Mark A. McGinnis, John B. Weldon, Jr. and R. Jeffrey Heilman for the Salt River Project; Jeffrey S. Leonard, Kathryn M. Hoover, Stanley M. Pollack and Judith M. Dworkin for the Navajo Nation Department of Justice, and Erin E. Byrnes and Lee A. Storey for the City of Flagstaff.

The following attorneys appear telephonically: Jay Tomkus for the Pascua Yavapai Tribe and the Yavapai-Apache Nation; Megan H. Tracy for the Arizona Public Service; Rodgerick Begay for the Navajo Nation Department of Justice; Cody McBride for the U.S. Department of Justice; Joe P. Sparks for the San Carlos Apache Tribe and the

Tonto Apache Tribe and Vanessa Boyd Willard for the United States Department of Justice.

Court reporter Catherine Turner is present.

No record of the proceedings is made digitally due to technical difficulties with the recording system.

Counsel Colin Campbell for the Hopi Tribe and Counsel David Brown for LCR Coalition present argument to the Court regarding the Hopi Tribe's Motion to Restructure Future Water Rights Trial and Consolidate Hopi Future DCMI, Tourism, and Economic Development claims with the Navajo Nation's Trial.

1:53 p.m. Court stands at recess to allow repair of the recording system.

2:02 p.m. Court reconvenes with respective counsel and parties present.

Court reporter Catherine Turner is present. A record of the proceeding is also made digitally.

Counsel David Brown continues to present argument to the Court regarding the LCR Coalition's objections to the motion and requests that the court proceed with the trial as scheduled with only slight adjustments as will be discussed. Further, informing the court that any changes to schedule included in the motion at this time could be prejudicial to all parties involved.

Counsel Jeffrey Leonard presents argument to the Court regarding the Navajo Nation's objections to the motion.

Counsel Carrie J. Brennan presents argument to the Court regarding the Arizona State Land Department's objections to the motion.

Counsel Erin E. Byrnes presents argument to the Court regarding City of Flagstaff's opposition to the motion.

Counsel Vanessa Willard telephonically presents argument to the Court regarding the United States Department of Justice support for the motion to try domestic, commercial, municipal and industrial (DCMI) use in the proceeding scheduled to consider the Navajo Nation's claims for DCMI. Ms. Willard took no position with respect to the remainder of the motion.

No other objections are presented to the Court.

Counsel Colin Campbell further presents argument to the Court regarding the motion.

The Court requests the parties proceed with discussions regarding pretrial issues.

Counsel David Brown addresses the Court regarding the exhibits regarding authenticity, hearsay and relevance. He requests the Court to allow the parties to reserve all the objections to the exhibits except for authenticity and foundation until the trial.

Counsel Colin Campbell addresses the Court regarding the Court's question as to the need to have custodian of records appear at trial. Discussion is held regarding the authenticity and relevance objections to the exhibits.

Counsel Vanessa Willard informs the Court that the United States Department of Justice agrees with the Hopi Tribe regarding the exhibit list issue.

Counsel Jeffrey Leonard addresses the Court regarding the exhibits list issue.

Counsel Mark McGinnis for Salt River Project addresses the Court regarding the objections to the exhibit list.

Counsel Vanessa Willard further addresses the Court regarding the exhibit list issue.

Counsel Colin Campbell further addresses the Court regarding the exhibit list objections.

Counsel David Brown addresses the Court regarding the length of the trial and trial schedule. Counsel requests the Court hold trial days on Fridays and to start the trial days at 9:00 a.m. instead of 10:30 a.m. The Court advises the parties that the courtroom is being shared with another division and not generally available for this case prior to 10:30.

Counsel Colin Campbell addresses the Court regarding expert reports. He requests the Court reform the schedule and set structure.

Counsel Jeffrey Leonard addresses the Court regarding his objection to extending the trial to be held on Fridays. He also submitted a copy of the proposed changes to the scheduling of the Navajo case.

Counsel David Brown addresses the Court that exhibits A and B, proposed trial schedules, do not calculate the 4.25 hours of available daily trial time correctly and will not coincide with his dates.

Counsel Colin Campbell affirms to the Court that the dates scheduled for the translator are still the correct dates.

Counsel Vanessa Willard addresses the Court to affirm that United States expert reports have been submitted.

The parties make no stipulations regarding admission of expert reports.

IT IS ORDERED granting the Navajo Nation's uncontested Motion for Protective Order filed on June 27, 2018.

IT IS FURTHER ORDERED granting City of Flagstaff's Stipulation for an extension of Deadlines of Disclosed Substitute Expert Witnesses.

Counsel Colin Campbell discusses with the Court the length allowable for opening statements.

IT IS FURTHER ORDERED allowing brief opening statements of 15 minutes.

3:42 p.m. Matter concludes.

LATER:

Water rights for the Hopi Tribe must be adjudicated. At this point, the adjudication of the Hopi Tribe's water rights has been divided into three phases: Priority, Past and Present Use, and Future Use. In its motion, the Hopi Tribe moved to further divide the third phase into subproceedings on future irrigation use, future DCMI use, and future economic development and tourism use. It proposed that future irrigation use would be tried at the time currently set for the bench trial on Future Use but that the two remaining subproceedings would be rescheduled for years in the future. Specifically, the Hopi Tribe's DCMI claims would be tried with the Navajo's DCMI claims based on past, present and future use scheduled for trial in 2022, and the future economic development claims would be tried with the second phase of the Navajo proceedings for which a trial date is not currently set.

As decided in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P. 3d 68 (2001) the court must determine the amount of water required for each reservation tailored to that reservation's minimal need. Accordingly, given that the focus for the determination of water rights is the needs of each reservation, no purpose would be accomplished by allowing years of delay in order to jointly consider the claims for water rights asserted by the Hopi Tribe and the Navajo Nation on the Hopi and Navajo reservations, respectively.

Moreover, an extended delay of the trial raises the potential problems that lay and expert witnesses may no longer be available to testify thereby causing the loss of valuable information and the need to incur additional costs to retain new experts. The Objectors

have also represented that they have incurred significant amount of time and resources responding to the Hopi Tribe's claims. A multiple-year postpone of the resolution of their objections with its associated costs is not warranted in this case.

IT IS ORDERED denying the Hopi Tribe's Motion to Restructure Future Water Rights Trial and Consolidate Hopi Future DCMI, Tourism, and Economic Development claims with the Navajo Nation's Trial.

IT IS FURTHER ORDERED that to the extent that the Navajo Nation's submission of a schedule extending the dates in its current proceedings is a request for an extension of those dates, the request is denied.