

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

09/17/2020

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

S. Ortega

Deputy

FILED: 9/28/2020

In re: Hopi Reservation HSR
Contested Case No. CV 6417-203

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

In re: Hopi Reservation HSR

**TRIAL MINUTE ENTRY
DAY 4**

Courtroom: CCB 301

9:00 a.m. Trial to the Court continues from September 16, 2020. The following attorneys and parties appear via GoToMeeting.

- Colin Campbell, Grace Rebling, Phillip Londen and Payslie Bowman for the Hopi Tribe
- Vanessa Boyd Willard, Cody McBride, Emmi Blades, and Rebecca Ross for the United States Department of Justice, Indian Resources Section
- Sarah Foley for the United States Department of the Interior
- Brian J. Heiserman, David A. Brown, Lauren J. Caster, Bradley J. Pew for LCR Coalition
- Mark A. McGinnis and Hannah Woner for the Salt River Project
- Carrie J. Brennan and Kevin Crestin for the Arizona State Land Department
- Lee A. Storey, Sara Ransom, Alexandra Arboleda, and Ethan B. Minkin for the City of Flagstaff
- Jeffrey S. Leonard, Judith M. Dworkin, Evan F. Hiller, and Kathryn Hoover for the Navajo Nation
- Kimberly Parks and Olga Hart observing for ADWR

Court Reporter, Luz Franco, is present and a record of the proceedings is made digitally.

Discussion is held regarding past appearances.

The Court addresses LCR exhibits 1179 and 1186. The Court reviewed the past pleadings and rulings in connection with this matter.

For the reasons set forth on the record,

LCR Coalition exhibits 1179 and 1186 are received in evidence.

United States' case continues.

Paul Hamai is sworn and testifies.

U.S. exhibits 944 and 1446 are received in evidence.

LCR Coalition exhibit 1159 is received in evidence.

10:29 a.m. Court stands at recess.

10:45 a.m. Court reconvenes with respective counsel present.

Court Reporter, Luz Franco, is present and a record of the proceedings is made digitally.

Paul Hamai continues to testify.

LCR Coalition exhibit 581 is received in evidence.

11:55 a.m. Court stands at recess.

1:39 p.m. Court reconvenes with respective counsel present.

Court Reporter, Michele Kaley, is present and a record of the proceedings is made digitally.

Paul Hamai continues to testify.

LCR Coalition exhibit 583 is received in evidence.

3:01 p.m. Court stands at recess.

3:15 p.m. Court reconvenes with respective counsel present.

Court Reporter, Michele Kaley, is present and a record of the proceedings is made digitally.

Paul Hamai continues to testify.

The witness is excused.

Discussion is held regarding the City of Flagstaff's bench memorandum. The Court will rule on the memorandum by Monday, September 21, 2020.

Trial schedule is discussed.

3:44 p.m. Court stands at recess until **9:00 a.m. on September 21, 2020.**

LATER:

The City of Flagstaff filed a bench memorandum regarding a procedure that it claims must be followed before the deposition testimony of a witness may be read into the record. It based its proposed procedure on a decision that concerned a witness who testified that she could not recall prior statements. *State v. Salazar*, 216 Ariz. 316, 166 P.3d 107 (App. 2007), *as amended* (Sept. 18, 2007). The evidentiary rules create an exception to the hearsay rule for prior recorded statements of a witness who cannot remember earlier statements sufficiently to provide accurate testimony. Ariz. R. Evid. 803(5). As also recognized by the *Salazar* Court, the recorded recollection rule may not be the only rule applicable to a prior statement. The appellate court determined in *Salazar* that the trial court had not erred when the recorded recollection rules were not followed because the recorded statement was used for impeachment.

A prior inconsistent statement made by a declarant-witness who is testifying and subject to cross-examination is not hearsay and may be admissible. Ariz. R. Evid. 801(d)(1)(A). Under this rule, the prior statement is admissible under Ariz. R. Evid. 801(d)(1)(A) once the testifying witness makes a statement that is inconsistent with the prior statement. Thus, the proper procedure is to ask the witness a question. If the witness' answer is inconsistent with the deposition testimony taken in the case, the deposition testimony may be used against the party, subject to Rule 32 of Arizona Rules of Civil Procedure including Rule 32(a)(4) when only part of a deposition is offered into evidence.

A copy of this order is mailed to all persons listed on the Court-approved mailing list for Contested Case No. CV6417-203.