

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

3/2/2021

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN WARD HARRIS

S. Motzer
Deputy

FILED: 3/3/2021

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

CV6417-300

In Re: Navajo Nation

In re: Oral Argument on Navajo Nation's Motion to Amend Case Order

MINUTE ENTRY

Central Court Building – Courtroom 301

8:15 a.m. This is the time set for oral argument on the Navajo Nation's Motion to Amend Case Management Order Re: Delaying the Consideration of Priority Until Phase III before Special Water Master Susan Ward Harris.

A record of the proceedings is made digitally in lieu of a court reporter.

The following attorneys appear virtually/telephonically:

- Andrew Guarino for the US Department of Justice
- Kimberly Parks observing for Arizona Department of Water Resources (ADWR)
- Lauren Caster, Brian Heiserman and David A. Brown for the LCR Coalition
- Carrie Brennan and Kevin Crestin for the Arizona State Land Department (ASLD)
- Jeffrey Leonard, Judith Dworkin, and Evan Hiller for the Navajo Nation
- Phillip Londen, Grace Rebling, and Payslie Bowman for the Hopi Tribe
- Mark McGinnis for Salt River Project
- Robyn Interpreter for the San Juan Southern Paiute Tribe
- Lee Storey for the City of Flagstaff

Discussion is held regarding the need to delay consideration of the general priority issue and the specific issues that would not be the subject of Phase I.

Counsel for the Navajo Nation informs the Court that the issues regarding anthropology and historical analysis would not be the subject of Phase I. The Navajo Nation can put on the evidence about historical uses but cannot put on evidence yet about the issues that involve the relationship between the Navajo-U.S. treaties, the relationship between the Navajo Nation and the U.S. and how those relationships affects the priority issue.

Further discussion is held about whether determinations can be made as to which particular uses are aboriginal uses. Mr. Leonard states that the priority determinations are affected by the relationship, the negotiations, the intentions, and the treaties between the Navajo Nation and the United States.

Mr. Leonard states in response to a question from the court that there may be some degree of overlap in the evidence presented in later phases. The principle concern of the Navajo Nation is that it does not want to see the issue of priority as to any use determined in phase I because there will be missing information.

Discussion is held regarding witness availability.

Mr. Brown also points out that the lack of access to the National Archives affects all of the parties because the objecting parties' experts needed to examine historical documents also.

All parties support the Navajo Nation's Motion with the exception of the Hopi Tribe.

Counsel for the Hopi Tribe argues that the legal rulings in the Hopi priority case should apply with equal force in this proceeding and thinks there are few issues that require discovery concerning priority. She argues that based on rulings in the Hopi priority case, the decisions made by the Indian Claims Commission should be binding. Ms. Rebling also stated that purely legal issues can be decided now which would narrow the issues that have to ultimately be tried.

Mr. Leonard disputes that the issues in the Hopi case are the same as the issues that will be presented in the Navajo case.

Based on the foregoing,

IT IS ORDERED granting the Navajo Nation's motion.

IT IS FURTHER ORDERED that counsel for the Navajo Nation shall draft a form of order that specifies the information that will not be presented as part of Phase I and circulate said form of order among the parties. All parties shall agree, or counsel for the Navajo Nation shall specify the scope of the disagreement.

8:48 a.m. Matter concludes.

LATER: The Navajo Nation shall either provide a form of order by **Friday, March 12, 2021** that lists the specific issue(s) that will not be tried in Phase 1 and the expert reports that will not be delivered by April 30, 2021 as a result of the granting of the Navajo Nation's motion or a description of the disputed questions about the issues that will not be tried during Phase I and the expert reports that will not be produced by April 30, 2021.

A copy of this minute entry is provided to all parties on the Court approved mailing list.