

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

10/16/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

A. Hatfield

Deputy

FILED: 12/13/2019

In re: Navajo Nation
Contested Case No. CV6417-300

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

In re: Status Conference

MINUTE ENTRY

Courtroom: CCB 301

1:32 p.m. This is the time set for a status conference before Special Water Master Susan Ward Harris.

The following attorneys and parties appear in-person: Alexandra Arboleda is present on behalf City of Flagstaff; Lauren Caster on behalf of LCR Coalition; Kevin Crestin on behalf of AZ State Land Department; Judith Dworkin and Kathryn Hoover on behalf of the Navajo Nation; R. Jeffrey Heilman and John Weldon on behalf of the Salt River Project; and Phillip Londen on behalf of the Hopi Tribe.

The following attorneys and parties appear telephonically: John Burnside on behalf of APS; Andrew Guarino and Cody McBride on behalf of the United States; Kimberly Parks on behalf of AZ Department of Water Resources; and Christina Sheehan on behalf of the Atkinson Trading Company, Inc.

Court reporter, Tonya McCowan, is present and a record of these proceedings is made digitally.

The Court addresses the parties regarding issues where there is agreement and where disputes exist. The Navajo Nation and the United States assert rights for the Navajo Reservation under federal law and not under state law so the parties appear to agree that federal law will determine water rights for the Navajo Reservation. The boundaries of the Navajo Reservation are in dispute. There is a dispute as to whether the

Trust Land, consisting of Twin Arrows, Turquoise Ranch, Trust No. 790T13126 and Trust No. 790T5029, are inside or outside the boundaries of the Navajo Reservation. There seems to be agreement among the parties that federal law applies to water rights to the Trust Land and claims for those rights should be included in this case. The parties agree that water rights for the land owned in fee by the Navajo Nation are determined under state law and claims for those water rights should not be included in this case but should be adjudicated along with other claims for water rights in the subwatershed. With respect to the allotments, there are issues about whether the allotments have been withdrawn from public lands or reservation land, the law applicable to water rights for the allotments, whether the water rights for the allotments should be adjudicated with other rights in the subwatershed or as a separate case, and the notice that should be provided to the allottees.

Mr. Guarino states that it is the United States' position that it is asserting water rights in this case for all lands held in trust under federal law.

Ms. Hoover states that some confusion arose from the 2016 report filed by the Navajo Nation identifying certain land as trust lands outside the reservation boundaries. Land was acquired under the authority of the 1974 Act and in 1980 there was an amendment that allowed the Navajo Nation to identify land to be acquired in trust and added to the Reservation. All of the new lands have been added to the Reservation. Mr. Guarino identified the 1980 act as 94 stat. 929 sec. 4.

Mr. Guarino states that the United States expects to file an update to its September 9, 2019 Report by the end of the year, if not sooner.

Mr. Caster states that the former ranch lands located south and east of the Navajo Reservation in Arizona have been authorized by Congress to be taken into the Reservation but there is a proclamation process. He further states that the LCR Coalition has not been able to find the proclamation which is important because it dictates the priority date.

Mr. Caster also states that he does not have an objection to determining water rights for allotments towards the end of this case, but does believe that notice to the allottees should be given sooner so that they can participate in this contested case if they choose.

Ms. Parks states that notice of the preliminary HSR in this contested was given to owners of land within the boundaries of the Navajo Reservation identified from the county records. Arizona Department of Water Resources has not received a list of allottees from the United States.

Ms. Hoover agrees with Mr. Caster about the need for notice to be provided by the United States to the allottees because it is the United States' obligation as the trustee. She argues that the water rights for the allotted lands should be adjudicated with the other contested cases in the subwatershed and those water rights would be determined under federal law. Ms. Hoover suggested that the determination of the applicable law for the adjudication of allotted lands should be decided in the *In re Hopi Reservation*.

Mr. Weldon states that there is some confusion about whether the allotments that are within the perimeter of the Navajo Reservation are public domain allotments or were created out of reserved lands after those lands were added to the reservation. He also argues that federal reserved water rights are not available to public land allotments or forest service allotments.

Mr. Crestin and Ms. Arboleda state their respective positions regarding trust land, public domain allotments, and notice to allottees.

Further discussion continues.

2:20 p.m. Matter concludes.

LATER:

IT IS ORDERED that the United States shall file an update to its Report on Allotments filed on September 9, 2019 by **January 10, 2020**. The update shall include the available information necessary to make a determination as to whether the allotments are from the public domain or from the Navajo Reservation.

IT IS FURTHER ORDERED that the United States shall provide a notice by first-class mail to the allottees, heirs, and assigns of land located within the exterior boundaries of the Navajo Reservation held in trust by the United States and to the allottees, heirs, and assigns of the 51 individual allotments located within the LCR Basin but outside the boundaries of the Navajo Reservation held in trust by the United States about this contested case similar to the notice provided by the Hopi Tribe to allottees in contested case CV 6417-203 that advises the allottees of their interests and rights. The form of notice shall also include a copy of the "Arizona Department of Water Resources' Notice of Publication of Final Hydrographic Survey Report for Certain Water Uses on the Navajo Reservation and Commencement of Objection Period" filed on December 2, 2019. The United States shall file a copy of the complete notice with the court and mail the notice to the allottees no later than **January 17, 2020**.

IT IS FURTHER ORDERED that procedures necessary to initiate a separate contested case to adjudicate water rights for the 51 individual allotments within the LCR Basin but outside the boundaries of the Navajo Reservation held in trust by the United

States and the land within the boundaries of the Navajo Reservation land allotted under the General Allocation Act, sec. 4, will occur after the Arizona Department of Water Resources issues the final hydrographic survey report analyzing the United States' and Navajo Nation's amended statements of claimant for historic, present and future cultural, unique tribal, recreational, fish, wildlife and conservation, mining, heavy industrial/commercial uses on the Navajo Reservation.

IT IS FURTHER ORDERED that water rights for lands located outside of the boundaries of the Navajo Reservation and owned by the Navajo Nation in fee for which water rights will be determined under state law will be adjudicated as a separate contested case along with other contested cases initiated in the subwatershed where those lands are located. Water rights for land located outside of the boundaries of the Navajo Reservation and owned by the Navajo Nation in fee for which the Navajo Nation only claims water rights under state law will not be adjudicated in Phase III of this contested case.

IT IS FURTHER ORDERED that water rights for lands held in trust by the United States for the Navajo Nation for which it asserts federal reserved water rights shall continue to be included in this case. This determination to retain the trust lands in this case is not a resolution of the priority date issue raised by the LCR Coalition which the LCR Coalition argues is dependent on whether the necessary procedures have occurred to add the trust lands to the Navajo Reservation.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.