

SUPERIOR COURT OF ARIZONA  
APACHE COUNTY

12/4/2020

CLERK OF THE COURT  
FORM V000

SPECIAL WATER MASTER  
SUSAN WARD HARRIS

S. Motzer  
Deputy

FILED: 12/18/2020

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: Status Conference

**MINUTE ENTRY**

Central Court Building – Courtroom 301

1:30 p.m. This is the time set for a Status Conference 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, Emmie Blades, Sarah Foley, Rebecca Ross and Cody L.C. McBride for the US Department of Justice
- Kimberly Parks for Arizona Department of Water Resources (ADWR)
- Lauren Caster and David A. Brown for the LCR Coalition
- Carrie Brennan and Kevin Crestin for the Arizona State Land Department (ASLD)
- Kathryn Hoover, Jeffrey Leonard, Judith Dworkin, Evan Hiller and Joe Keene for the Navajo Nation
- Phillip Londen and Grace Rebling observing for the Hopi Tribe
- Mark McGinnis, John Weldon, and Hannah Woner for SRP
- William Staudenmaier for Arizona Public Service
- Lee A. Storey for the City of Flagstaff

- Robyn Interpreter and Sue Montgomery observing for the Pascua Yaquai Tribe and representing the San Juan Southern Paiute Tribe
- Cristina Sheehan for Atkinson Trading Company.

Robyn Interpreter for the San Juan Southern Paiute Tribe addresses the Court regarding how the San Juan Southern Paiute Tribe's claims for water rights will fit in the LCR Adjudication and whether those claims should be dealt with in a corresponding way with the Navajo Nation's claims. She states that in the *Masayesva v. Zah* case, the federal district court issued a decision in 1992 that established that the San Juan Southern Paiute Tribe has an exclusive property interest in the 1934 Act reservation lands as well as a joint use interest. Ms. Interpreter reports that that *Masayesva v. Zah* case is stayed and the Navajo Nation and the San Juan Southern Paiute Tribe have negotiated a treaty that has not been introduced into Congress. She states that there is a lack of clarity with respect to the San Juan Southern Paiute Tribe's claims and positioning in the adjudication.

Mr. Guarino addresses the Court and states that the case should proceed as scheduled. He states that the San Juan Southern Paiute Tribe is a recognized tribe that has not been identified with a specific, exclusive area of land, which is an issue that is the subject of federal litigation that is not appropriate to be determined in the adjudication. He suggests that there may be a subproceeding at the conclusion of the case where there may be other matters that may need to be taken up regarding the San Juan Southern Paiute Tribe. The better course now is to proceed as planned and provide the San Juan Southern Paiute Tribe with the opportunity to participate.

Ms. Hoover addresses the Court and states that this proceeding can go forward with the recognition that the San Juan Southern Paiute people live within the boundaries of the Navajo Reservation and that the United States filed claims on behalf of all tribes including the San Juan Southern Paiute Tribe. She addressed the status of the treaty and future actions with respect to the treaty to be taken by the tribes. Ms. Hoover states that the lands cannot be segregated out for the San Juan Southern Paiute because right now there has been no determination of the lands for the San Juan Southern Paiute Tribe. She also stated that it was her thought that as the proceeding goes along should a land base be recognized for the San Juan Southern Paiute Tribe, there would be a partition out of the award to the Navajo Nation for the San Juan Southern Paiute Tribe. There is no Congressional determination of a reservation. Ms. Hoover also stated she does not know how to adjudicate a water right for a people without a land base.

Mr. McGinnis states that Ms. Hoover's discussion is consistent with his understanding because he believed that the parties were trying claims for the Navajo reservation that included the San Juan Southern Paiute Tribe. He assumes evidence could be put on during the trial about the San Juan Southern Paiute Tribe.

Mr. Caster for the LCR Coalition addresses the Court and states the legislation provided that the Southern Paiute members would receive an allotment and referenced the federal district court's findings on the issue. He discussed water rights associated with allotments and stated that there is only one reserved water right for that land. Mr. Caster

listed the Statements of Claimant filed by the Southern Paiute Tribe as 39-91713, 39-91714, and 39-91715.

Ms. Storey for the City of Flagstaff addresses the Court. She states that the concern is that there not be duplicate claims and if and when the San Juan Southern Paiute do have a land base to which the water rights would be attached that the rights come out of the Navajo claims. She stated that it is important that the San Juan Southern Paiute be involved in this case.

Ms. Brennan for the ASLD states that federal reserved water rights attach to a reservation of land so that no federal rights will issue on behalf of a tribe until a reservation occurs. If and when land is reserved for the San Juan Southern Paiute and the contours of that reservation are known, then the court should have an idea about population growth within those boundaries and it can proceed from there.

Counsel for the San Juan Southern Paiute Tribe disagrees with the characterization of the future property interests to the land as an allotment as opposed to a reservation. The tribe is making claims based on aboriginal rights and the 1934 Act. Ms. Interpreter addresses the Court regarding a contested case should be initiated to address the claims of the San Juan Southern Paiute Tribe.

Counsel for the United States addresses the Court regarding the same.

The Court states that it will set a date for Counsel for the San Juan Southern Paiute Tribe to submit a proposal in the spring of 2021, and a follow-up date for the parties to respond in the Summer.

LET THE RECORD REFLECT that the Court affirms the dates set forth in the previously issued *In re Navajo Nation* Order.

2:36 p.m. Matter Concludes.

LATER:

The San Juan Southern Paiute Tribe shall submit a written proposal about the method to resolve its claims and objections by **March 31, 2021**. The proposal shall address, among other issues, whether a federal reserved water right can be considered or awarded to the United States on behalf of a tribe in the absence of a reservation created for that tribe. The proposal shall also address whether federal water rights determined for the Navajo Reservation can properly include water rights for all tribes living on the Navajo Reservation. If the San Juan Southern Paiute Tribe intends to file amended Statements of Claimant, then the proposal shall include the date by which its amended Statements of Claimant shall be filed. The written proposal shall include a proposed schedule of any proceedings that the San Juan Southern Paiute Tribe believes to be necessary in addition to those already scheduled in CV6417-300.

Responses to the proposal shall be filed by **July 30, 2021**. No briefing of any issue raised by the San Juan Southern Paiute shall be included. Instead, the parties shall identify any issues that they believe are raised by the proposal filed by the San Juan Southern Paiute Tribe or should be considered in connection with the proposal. A status conference shall be held on **August 18, 2021** at **1:30 p.m.** in the Superior Court of Arizona, Central Court Building, Courtroom 301, 201 West Jefferson Street, Phoenix, AZ 85003-2202.

Instructions for telephonic participation:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Collaboration (conference) Code 357264#

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