

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

09/27/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

A. Hatfield

Deputy

FILED: 09/27/2019

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: Telephonic Oral Argument

MINUTE ENTRY

Courtroom: CCB 301

2:30 p.m. This is the time set for a Telephonic Oral Argument on *LCR's Coalition's Motion to Strike Report by Michael Hanemann Dated September 21, 2019 and any Related Documents, and to Preclude any Oral Testimony about the Content of that Report and Related Documents and Request for Expedited Hearing* filed September 25, 2019.

The following attorneys appear telephonically: Colin Campbell and Grace Rebling on behalf of the Hopi Tribe; Jeffrey Leonard, Judith Dworkin, and Evan Hiller on behalf of the Navajo Nation; Lauren Caster, Brian Heiserman and Bradley Pew on behalf of the LCR Coalition; Mark McGinnis and John Weldon on behalf of the Salt River Project; and Sara Ransom and Lee Storey on behalf of the City of Flagstaff.

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

Oral argument is presented on *LCR's Coalition's Motion to Strike Report by Michael Hanemann Dated September 21, 2019 and any Related Documents, and to Preclude any Oral Testimony about the Content of that Report and Related Documents and Request for Expedited Hearing* by the following counsel: Lauren Caster, Sara Ransom, Jeffrey Leonard, Kevin Crestin, Mark McGinnis, and Colin Campbell.

Mr. Caster argued that the Report should be stricken because it is an expert report that was not timely produced.

Mr. Leonard argued that the parties will be prejudiced if the Report were permitted to be used because of the costs that they would have to incur to evaluate and respond to it.

Mr. Campbell stated that Dr. Hanemann had prepared by the Report on his own initiative and as part of his research work. Mr. Campbell further stated that he had received the Report on September 21, 2019.

Based upon the matters presented,

IT IS ORDERED taking the LCR Coalition's Motion under advisement.

2:47 p.m. Matter concludes.

LATER: It is the Hopi Tribe's position that the inclusion of Dr. Hanemann's "Report on a Survey" (Report) on its most recent Supplemental Disclosure Statement filed on September 21, 2019 was required by its continuing duty of disclosure imposed by Ariz. R. Civ. Pro. 26.1(f)(2). The duty under the rule is imposed to give opposing parties a reasonable opportunity to prepare for trial – "nothing more, nothing less". *Zimmerman v. Shakman*, 204 Ariz. 231, 235, ¶ 13, 62 P.3d 976, 980 (App. 2003). Counsel represented that the Report was not intended as an expert report or rebuttal report which were to have been produced by March 15, 2019, and June 14, 2019, respectively. Amended Case Management Order, dated December 20, 2018. He also represented that Report would not be used in the case in chief. Thus, the only purpose that the Report would serve for the Hopi Tribe would be to counter evidence/testimony offered by an opposing party. The date set for expert rebuttal reports has expired and opposing parties should not be put to the expense in time and money to prepare to depose Dr. Hanemann on the subject of the Report or examine him on the matters raised in the Report at trial. Accordingly, the Report shall not be listed as an exhibit at trial nor shall oral testimony about the Report be elicited from Dr. Hanemann at deposition or trial.

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