

**SUPERIOR COURT OF ARIZONA
APACHE COUNTY**

September 14, 2022

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

S. Motzer
Deputy

FILED: 9/16/2022

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

CV 6417-300

In Re: Navajo Nation

MINUTE ENTRY

Central Court Building – Courtroom 301

2:00 p.m. This is the time set for a virtual/telephonic Hearing on a potential discovery dispute pertaining to the forthcoming deposition of Erin Young, via the Court Connect / Teams application. All parties appear virtually. Appearances are as follows:

- Jeffrey Leonard, Judy Dworkin, Evan Hiller and Kate Hoover for the Navajo Nation
- Julia Kolsrud, Kate Shaffer, and Irania Fimbres-Ruiz for the San Juan Southern Paiute Tribe
- Brian Heiserman for the LCR Coalition
- Kevin Crestin for the Arizona State Land Department (ASLD)
- Mark McGinnis and Katrina Wilkinson for Salt River Project
- Lee Storey, Scott Dosek, and Ethan Minkin for the City of Flagstaff
- Emmie Blades for the United States Department of Justice
- Payslie Bowman for the Hopi Tribe

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

Counsel for City of Flagstaff requested this conference and addresses the Court regarding her concerns pertaining to the forthcoming continuation of the deposition of Erin Young.

Counsel for the Navajo Nation addresses the Court.

Discussion is held regarding exhibits that counsel for the Navajo Nation wishes to discuss with Ms. Young.

3:22 p.m. Matter concludes.

LATER:

The duration of a deposition is limited to four hours and must be completed in a single day absent agreement of the parties or a court order. Ariz. R. Civ. P. 30(d). In this case the deposition of Erin Young, the Water Resource Manager for the City of Flagstaff, has extended over 5.5 hours and the Navajo Nation and the LCR Coalition desire additional time to depose Ms. Young. The City of Flagstaff does not oppose the request but seeks to limit the time and scope of the remainder of the deposition.

The deposition of Ms. Young, as described by counsel, was fraught with more than the usual tension apparently due to a fundamental disagreement about the nature of the questions that may be posed to Ms. Young. The Navajo Nation had represented that it sought to depose Ms. Young as a fact witness. The scope of testimony that may be elicited from a fact witness differs from an expert witness. An expert witness may give testimony based on facts and data from three types of sources: “(1) facts admitted into evidence at trial, (2) facts personally perceived by the expert, [or] (3) facts of a type reasonably relied upon by experts in the particular field.” *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 44, 945 P.2d 317, 355 (App. 1996), as corrected on denial of reconsideration (Jan. 13, 1997). In contrast, a fact witness testifies about facts derived from one of the person’s five senses, e.g., what the witness saw, heard, or felt. See *State ex rel. Montgomery v. Whitten*, 228 Ariz. 17, 21, ¶¶ 14-16, 262 P.3d 238, 242 (App. 2011). Ms. Young’s testimony shall be limited to the testimony that a fact witness may properly give that includes the work that Ms. Young has done.

The deposition of Ms. Young will be permitted to continue for no more than 1.5 hours on October 10, 2022. The Navajo Nation shall have no more than one hour to question Ms. Young. The Navajo Nation shall only ask questions that may be appropriately asked of a fact witness with respect to the following documents:

- Exhibit 252 Flagstaff 2019 Water Commission minutes
- Exhibit 253 City of Flagstaff master plan
- Exhibits 276 (power point), 277 (power point), and 2774 (minutes) concerning City of Flagstaff’s January 14, 2020 work session
- 2025 strategic plan/brochure not yet marked as an exhibit.

The City of Flagstaff shall be deemed to have a standing objection to the form of all questions asked by the Navajo Nation so that no form objections are necessary, and the absence of a form objection will not constitute a waiver of the objection. The City of Flagstaff may instruct the witness not to answer a question to preserve a privilege. It may instruct the witness not to answer a question that calls for an expert opinion. It may instruct the witness not to answer a question that pertains to a document not listed above. It may not instruct the witness not to answer a question solely on the grounds that it was asked in the first day of the deposition. The City of Flagstaff may not instruct the witness not to answer a question on any other ground not listed in this paragraph without first arranging for a telephonic conference with the Special Master to resolve the dispute. If the City of Flagstaff fails to arrange for the telephonic conference before instructing the witness not to answer the question, then the basis for the instruction will be deemed invalid and Ms. Young will be required to provide an answer to the question.

The LCR Coalition shall have ten minutes to ask questions and the City of Flagstaff shall have twenty minutes to ask questions of Ms. Young. No party may ask any questions after counsel for City of Flagstaff questions Ms. Young. The scope of the questions that may be asked by the LCR Coalition and the City of Flagstaff are not limited to the documents listed above.

The deposition will not occur in-person. The deposition will be conducted on a mutually agreeable software platform that allows the parties to attend remotely.

Although the Minute Entry dated July 18, 2022, instructed the parties to resolve any disputes arising during the deposition by a telephonic conference with the Special Master before the deposition adjourned, the Navajo Nation and the City of Flagstaff have both stated a preference to submit their disputes in writing following the conclusion of the oral deposition. The Navajo Nation will submit its motion to compel answers to questions by October 13, 2022. The City of Flagstaff shall file its response by October 21, 2022. Any questions that Ms. Young may be required to answer because of a ruling on the motion will be done in writing.

NOTE: All court proceedings are recorded digitally. The parties or counsel may request a CD of the proceedings. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.

Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

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