

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

March 16, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A. Parmar
Deputy

FILED: March 21, 2023

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

Case No. CV6417-300

In Re: Navajo Nation

MINUTE ENTRY

Courtroom 301 – Central Court Building

1:30 p.m. This is the time set for a Pretrial Conference regarding the LCR Coalition's Request for Status Conference Regarding Objections to Trial Exhibits and Navajo Nation's Request to Address Additional Trial Exhibit Matters before Special Water Master Susan Ward Harris.

The following attorneys appear virtually through Court Connect:

- Brian J. Heiserman and Bradley Pew on behalf of the LCR Coalition ("LCRC")
- Judith M. Dworkin, Jeffrey S. Leonard, Evan Hiller, Candance French and Kathryn Hoover on behalf of the Navajo Nation
- Phillip Londen on behalf of the Hopi Tribe
- Emmi Blades, Rebecca Ross and Cody McBride on behalf of the United States Department of Justice
- Mark McGinnis and Katrina Wilkinson on behalf of Salt River Project ("SRP")
- Carrie Brennan and Kevin Crestin on behalf of the Arizona State Land Department ("ASLD")
- Kate Shaffer on behalf of the San Juan Southern Paiute Tribe

- Lee Storey and Ethan Minkin on behalf of the City of Flagstaff

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

Mr. Heiserman addresses the Court regarding the pretrial statements/objections. His position is that the Court has the authority to modify the requirements in Rule 16(f) of the Ariz. Rules of Civil Procedure and that the parties should be permitted to stipulate to reserve certain objections to exhibits for trial.

Mr. Londen addresses the Court. His position is also based on Rule 16. His position is that the requirement dictated by Rule 16(f)(2)(E) cannot be waived and should not be. He believes this provision is essential to trial preparation.

Ms. Shaffer agrees with Mr. Londen's points. She also believes reserving objections for trial may hinder any stipulations to admit exhibits.

Mr. Leonard addresses the Court. He supports LCRC's position. He believes it may be a time saver in the event that any exhibits do not get offered.

Mr. McGinnis agrees with LCRC's analysis. He disagrees with Mr. Londen's analysis of the time it would take to review authenticity objections vs. other objections.

Ms. Brennan concurs with the remarks made by Mr. Heiserman and Mr. McGinnis and supports that position.

Ms. Blades states the United States would have joined the stipulation and believes the Court does have the authority to modify the provision of Rule 16, but will do whatever the court orders.

Mr. Minkin agrees with the positions outlined by Mr. Heiserman and Mr. McGinnis.

The Court disagrees with Mr. Londen's analysis of Rule 16(f)(2)(E) given Rule 16(f)(8) and believes the Court does have the ability to modify that provision. However, the parties are entitled under the rules to have all parties state their objections to the exhibits. Accordingly,

IT IS ORDERED that the parties shall comply with Rule 16(f)(2)(E) and list all objections to exhibits in the pretrial statement. If an objection is not listed on the pretrial statement, the objection will be deemed waived.

Mr. Leonard addresses the Court regarding the Navajo Nation's motion. He believes that the parties should be permitted to offer exhibits not listed in the pretrial statement if it has been disclosed.

Mr. Heiserman addresses the Court. He has concerns about documents being used as exhibits during trial without the other parties being able to review the document in real time.

Discussion is held regarding the proposal of two days' notice for additional exhibits.

Mr. Heiserman has concerns and believes there should be limitations so that there are not several new exhibits being introduced without good cause or being introduced during the claimants' rebuttal case.

Mr. Londen believes there should be a showing of good cause to introduce unlisted and additional exhibits.

Ms. Blades has nothing to add.

Mr. McGinnis generally agrees with Mr. Heiserman's approach and thinks there should be two days' notice and a showing of good cause.

Ms. Brennan states that ASLD does not agree with the Navajo Nation's proposal for the reasons stated by Mr. Heiserman and has nothing more to add.

Ms. Shaffer agrees with the good cause standard and agrees with following the rule.

Mr. Minkin agrees with Mr. Heiserman and Mr. McGinnis but would prefer a limitation on the number of new exhibits and four days' notice.

Mr. Leonard responds to the parties' comments.

The Court expects the parties to exercise professional and good judgment about listing the exhibits. Rule 16(f)(2)(E) shall apply in the event a party seeks to introduce an exhibit that has not been listed in the Joint Pretrial Statement.

2:04 p.m. Matter concludes.

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