

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

April 20, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

A. Parmar
Deputy

FILED: April 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

2:00 p.m. This is the time set for Pretrial Conference before Special Water Master Sherri Zendri.

The following attorneys appear virtually through Court Connect:

- Jeffrey S. Leonard, Evan Hiller, Judith M. Dworkin, Candance French and Kathryn Hoover on behalf of the Navajo Nation
- Emmi Blades, Cody McBride, Gus Guarino and Rebecca Ross on behalf of the United States Department of Justice
- Phillip Londen and Payslie Bowman on behalf of the Hopi Tribe
- Julia Kolsrud and Kate Shaffer on behalf of the San Juan Southern Paiute Tribe
- Brian J. Heiserman and Bradley Pew on behalf of the LCR Coalition (“LCRC”)
- Carrie Brennan and Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)
- Lee Storey and Ethan Minkin on behalf of the City of Flagstaff
- Mark McGinnis and Katrina Wilkinson on behalf of Salt River Project (“SRP”)
- Maria O’Brien on behalf of the Atkinson Trading Company

- Kimberly Parks observing on behalf of the Arizona Department of Water Resources (“ADWR”)
- Robyn Interpreter and Kristyne Schaaf-Olson observing on behalf of the Yavapai Apache Nation and Pascua Yaqui Tribe

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

The Court addresses the parties regarding the court reporter. The Navajo Nation’s court reporter will be the official court reporter and will be sworn in as required by Rule.

The Court informs the Navajo Nation that it will not grant more time beyond the previously agreed upon 45 minutes for the video. The Court inquires if the Navajo Nation would still like to use the video and why it should be permitted.

Mr. Leonard addresses the Court regarding the Navajo Nation’s Motion. He states that it was his understanding from a previous status conference that the video would not be included in its 45 minute restriction. He does not object to other parties having extra time for opening argument if they view this as unfair. Mr. Leonard states that the video is necessary in order to set the context for their witnesses’ testimony.

The Court is not convinced that the video is necessary given that there will be photo exhibits provided as part of the record and the fleeting nature of the video will likely not be helpful three or four weeks into the trial. The Court asks for an explanation of what exactly is the abstract idea the video is meant to clarify.

Ms. Blades states that the United States filed a Response to the Navajo Nation’s Motion and believes that it would be appropriate to show the video.

No further objections beyond what the parties had already filed with the Court are stated regarding the Navajo Nation’s Motion.

IT IS ORDERED denying the Navajo Nation’s *Motion for Permission to Use Video as Demonstrative Exhibit During Opening Statement*.

Discussion is held regarding the witness calendar received by the Court.

Mr. Leonard underscores that they have worked hard to present the best projected calendar but it is tentative.

The Court inquires if the witnesses are stacked.

Mr. Leonard states that others may be available, but a number of the witnesses live/work on the Navajo Reservation and had to arrange for permission for time off and to travel to Phoenix. The Court understands the travel challenges and logistics for the out-of-town witnesses. If there are local witnesses, the Court encourages the parties to have such witnesses available to utilize a full day of trial.

Ms. Blades inquires if there will be a link provided for the parties to view the trial virtually. The Court is working with its tech department to have a link included in today's Minute Entry. If the link is not provided in time, this Court's staff will distribute the link by email as well as post it to the General Streams Adjudication webpage.

Mr. Heiserman addresses the Court regarding the submission of post-trial briefings. He believes post-trial briefings should be addressed after phase one so as not to wait several years after phase two is completed.

Mr. Leonard addresses the Court regarding Mr. Heiserman's proposal. He believes the proposal is logical but requests time to think it over.

The Court agrees with Mr. Heiserman's and Mr. Leonard's comments. The Court will give the parties time to consider the proposal and enter its decision prior to the end of trial.

Mr. McGinnis addresses the Court regarding its opening statement. He informs the Court that SRP intends to defer its opening statement to when the objector's case begins.

Ms. Storey addresses the Court and informs the Court that the City of Flagstaff is considering deferring its opening statement as well.

Mr. Leonard addresses the Court regarding the video testimony of the late first President Peterson Zah. Objections have been made to the designations of the deposition by the City of Flagstaff and the Hopi Tribe. Mr. Leonard inquires how the Court would like to proceed with the objections.

Ms. Storey informs the Court that the City of Flagstaff intends to waive those objections.

Mr. Londen states that the objections were to the exhibits. He believes the testimony will be used to lay foundation to those exhibits. The Hopi Tribe is considering waiving their objections as well.

The Court will review the objections and address them on Wednesday evening.

Mr. Leonard addresses the Court regarding the use of Navajo words. Concepts may be more easily explained using Navajo; in addition, it is traditional in the Navajo culture to introduce themselves in Navajo. Mr. Leonard inquires if the Court or any parties object to the witnesses introducing themselves in Navajo and then stating the same in English.

The Court does not object to the introductions in Navajo, or the occasional use of Navajo words, but the witnesses may need to explain Navajo words further in English when appropriate.

No objections are stated.

Mr. Leonard mentions a potential conflict regarding new counsel for City of Flagstaff. They are attempting to work it out before the trial but would like to inform the Court that it may arise at the time of trial.

Ms. Storey states that it has received Mr. Leonard's letter and does not see any reason why that issue cannot be resolved.

2:28 p.m. Matter concludes.

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

LATER:

To access the live stream for the duration of the trial please see the Maricopa County Superior Court's Website at:

<https://www.superiorcourt.maricopa.gov/calendar/today/>.