

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

7/14/2022

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

S. Ortega
Deputy

FILED: 7/18/2022

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

MINUTE ENTRY

Central Court Building – Courtroom 301

1:40 p.m. This is the time set for Oral Argument before Special Water Master Susan Ward Harris regarding Navajo Nation’s July 6, 2022 “Motion for Leave to Serve Deposition Notice and Subpoena” and the related Response filed by the City of Flagstaff on July 13, 2022.

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

The following attorneys appear virtually and/or telephonically:

- Jeffrey S. Leonard, Judith M. Dworkin, Evan F. Hiller, Kate Hoover, and Candace D. French for the Navajo Nation
- Julia Kolsrud, Kate Shaffer and Irania Fimbres-Ruiz for the San Juan Southern Paiute Tribe
- Brian J. Heiserman for the LCR Coalition
- Kevin Crestin for the Arizona State Land Department
- Katrina Wilkinson for the Salt River Project (SRP)
- Lee A. Storey and Scott Dosek for the City of Flagstaff
- Rebecca Ross and Cody McBride for the United States Department of Justice, Indian Resources Section

- Payslie Bowman for the Hopi Tribe

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Argument is presented.

Based on the matters presented,

IT IS ORDERED taking Navajo Nation's July 6, 2022 Motion for Leave to Serve Deposition Notice and Subpoena under advisement.

2:24 p.m. Matter concludes.

LATER:

The Navajo Nation seeks to depose Erin Young, the Water Resource Manager for the City of Flagstaff, a party in this case. Among the objections filed by the City of Flagstaff in this case is the objection that the amount of water claimed by the Navajo Nation for domestic, commercial, municipal, and industrial (DCMI) uses do not take into account efficient uses of water. Objection at 3 (June 1, 2020).

The City of Flagstaff opposes the deposition of Ms. Young arguing that Rule 30(b)(6) of the Arizona Rules of Civil Procedure limits depositions of governmental employees to those individuals identified by the City in response to a notice that designates matters for examination. In support of this proposition, the City of Flagstaff cites *Varela v. FCA US LLC*, 249 Ariz. 89, 96, ¶ 27, 466 P.3d 866, 873 (App. 2020), *review granted* (Jan. 5, 2021), *aff'd in part, vacated in part*, 252 Ariz. 451, ¶ 27, 505 P.3d 244 (2022). *Varela* stands for the proposition that the Court may properly preclude the deposition of a corporate employee named by an opposing party based upon a showing by the corporate party that the named employee does not have relevant personal knowledge. *Varela* does not support either the conclusion that Rule 30(b)(6) is the exclusive method to depose an employee of an entity such as a government, corporation or partnership, or that a party may only depose the employees of an opposing party that the opposing party identifies. Government employees may be deposed under the general provisions of Rule 30(b)(1). *See e.g., BlueMountain Credit Alternatives Master Fund L.P. v. Regal Entm't Group*, 2020 COA 67, 465 P.3d 122 (2020) (reversed trial court that refused to permit deposition of named corporate officer); *Byrd v. D.C.*, 259 F.R.D. 1, 4 (D.D.C. 2009) (depositions permitted of named employees of department of Parks and Recreation).

The Navajo Nation argues that it is entitled to depose Ms. Young as a fact witness. It refers to a January 2020 presentation by Ms. Young to the City Council at a work session about Flagstaff's master water plan. It also referenced a newspaper article in which Ms. Young was quoted. According to the Navajo Nation, it seeks the testimony of Mr. Young to impeach the testimony of the City of Flagstaff's expert witness. Litigants have a right to discover from their adversary "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of

the issues at stake in the action, ... and the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Ariz. R. Civ. P. 26. For purposes of discovery, relevant information is that which is “reasonably calculated to lead to the discovery of admissible evidence.” *Indus. Comm'n v. Superior Court In & For Maricopa Cnty.*, 122 Ariz. 374, 375, 595 P.2d 166, 167 (1979) (quoting *Banta v. Superior Court of Maricopa County*, 112 Ariz. 544, 545, 544 P.2d 653, 654 (1976)).

Relevancy here is delimited by the Court’s mandate that the quantification of a federal reserved water right is tailored to the needs of the reservation. *In re General Adjudication of All Rights to Use Water in the Gila Sys. & Source*, 201 Ariz. 307, 35 P.3d 68, 77 (2001) (“*Gila V*”) Water use for DCMI purposes by the surrounding communities is of limited relevance because the quantity used by those communities varies widely, as demonstrated by the 2018 data in the Navajo Reservation HSR, and because the facts and circumstances of the individual communities may differ from those found on the Navajo Reservation. The more relevant evidence concerns the types of uses and amounts of water that the people living on the Navajo Reservation are reasonably expected to use in the future on the Navajo Reservation that fit within the DCMI category and will satisfy the minimal needs of the Navajo Reservation.

Rule 26 of the Arizona Rules of Civil Procedure permits limitations to be imposed on discovery to avoid unreasonably cumulative or duplicative discovery and protective orders to issue where necessary to prevent “annoyance, embarrassment, oppression, or undue burden or expense.” Ariz. R. Civ. P. 26(b)(2)(C) and (c)(1). It permits judicial restrictions to be imposed on the discovery process and confers upon the courts considerable flexibility and discretion in selecting various means to protect a party. *Jolly v. Superior Court of Pinal Cnty.*, 112 Ariz. 186, 192, ¶ 44, 540 P.2d 658, 664 (1975). These rules will serve to check potential fishing expeditions that involve noticing numerous City employees or engaging in an unwarranted examination of the details of the City of Flagstaff’s future infrastructure plans.

IT IS ORDERED that the Navajo Nation may take the deposition of Erin Young with 30 days’ notice. The discovery deadline is extended with respect to this deposition until August 29, 2022. The deposition is subject to the following limitations:

The Navajo Nation represented that it seeks Ms. Young’s deposition as a fact witness. Accordingly, the deposition questioning may not extend to questions that require expert opinions. Such action would be inconsistent with the representations made and is not permitted by Rule 26(b)(4)(E) that requires a party seeking expert testimony in discovery to pay the expert a reasonable fee for the time spent testifying as an expert. Deposition questioning may not call for a legal opinion, privileged communication, or inquire into the Feasibility Report for the Red Gap Ranch project. Pursuant to §9.08[6] of the Rules for Proceedings Before the Special Master, any discovery disputes that arise during the deposition will be resolved by a telephonic conference with the Special Master before the deposition is adjourned.