

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

9/17/2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A. Parmar
Deputy

FILED: October 18, 2021

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

Central Court Building – Courtroom 301

3:00 p.m. This is the time set for a telephonic Status Conference before Special Water Master Susan Ward Harris to assess the proposal submitted by the San Juan Southern Paiute Tribe.

The following attorneys appear via Court Connect:

- Robyn Interpreter and Sue Montgomery on behalf of the San Juan Southern Paiute Tribe and Julia Kolsrud (general counsel) for the San Juan Southern Paiute Tribe
- Kathryn Hoover, Jeffrey S. Leonard and Judith M. Dworkin on behalf of the Navajo Nation
- Michelle Brown-Yazzie on behalf of the Navajo Nation Department of Justice
- Gus Guarino, Emmi Blades, Cody McBride and Rebecca Ross on behalf of the United States Department of Justice
- Lauren Caster and David A. Brown on behalf of the LCR Coalition
- Payslie Bowman observing on behalf of the Hopi Tribe
- Mark McGinnis and John Weldon on behalf of the Salt River Project (“SRP”)

- Carrie J. Brennan and Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)
- Alexandra Arboleda on behalf of the City of Flagstaff
- Kimberly Parks on behalf of the Arizona Department of Water Resources (“ADWR”)

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

The Court inquires why this issue was not raised by the San Juan Southern Paiute Tribe in 2016 during the initial scheduling proceedings. Ms. Interpreter reports that the tribe was not represented at that time nor was the tribe on the court-approved mailing list. Counsel for the tribe had withdrawn in 2008 and had no attorney of record. In addition, the United States holds the rights in trust for the San Juan Southern Paiute Tribe and it would have been assumed that the US would have raised those issues. As soon as the Tribe was represented, the Tribe made it known to ADWR in publishing the preliminary HSR and made/filed its comments and objections. The Tribe has also reached out to the US regarding this issue.

Ms. Interpreter reports that the Tribe does own fee land within Tuba City, AZ and owns land on Interstate 40 west of Flagstaff, AZ. Ms. Interpreter reports that the US does not own any land in trust on behalf of the Tribe not located in the boundaries of the Navajo Nation.

Discussion is held regarding Ms. Interpreter’s proposal and the responses filed. She proposes that the San Juan Southern Paiute Tribe have its own contested case for its water rights claims to the 1934 Act reservation and if the Court is inclined, the fee land within the LCR watershed as well. It is her position that the fee land that the Tribe owns outside the reservation should be processed in the same manner as claims by other non-native claimants.

Discussion is held regarding the *Masayesva v. Zah* district court case and how the pendency of that appeal affects the San Juan Southern Paiute Tribe.

Mr. Guarino agrees with Ms. Interpreter’s proposal that the San Juan Southern Paiute Tribe and Navajo Nation present a report on the progress of the treaty to the Court. He does not believe San Juan Southern Paiute Tribe’s proposal should be accepted by the Court.

The Court inquires whether the president of the Navajo Nation and Navajo Nation council have approved the proposed federal legislation. Ms. Hoover states it is her understanding that given the 20 plus year delay in moving the treaty to Congress, there is a question as to whether the treaty was appropriately entered into by the government. She explains that outside counsel is holding public presentations to explain the treaty with the intent to build an understanding of the treaty so the government may move forward with the support of the local populous. The committee will consider the legislation after the

presentations are made and the delegates have voted whether to support the congressional legislation or not.

Discussion is held regarding the Navajo Nation's proposal. Ms. Hoover believes that the Court should move forward with adjudication the Navajo Nation's claims to the 1934 Act Reservation at this time with the caveat that there are lands that may be eventually set aside and recognized as a reservation for the San Juan Southern Paiute Tribe or held in trust by the US on behalf both tribes. She believes that would give the tribe the opportunity to amend their claims, have ADWR do a HSR and put on evidence at that time. She does not believe the Court can award water uses to the San Juan Southern Paiute Tribe without knowing the boundaries of their land.

Mr. McGinnis reflects the only position of SRP procedurally is that it prefers not to delay the Navajo Nation's case for a long period of time. If the San Juan Southern Paiute Tribe's claims are litigated, SRP will want to participate.

Mr. Caster believes this Court's hands are tied by the two *Masayeva v. Zah*'s district court decisions. He believes the Court should proceed with the Navajo Nation's case until further action is taken by the federal courts. He does not object to Ms. Hoover's proposal but does not want this case to be delayed by the San Juan Southern Paiute Tribe's claims.

Ms. Brennan joins in LCRC's filing. She believes Ms. Hoover's proposal is the cleanest way to settle the claims.

Ms. Arboleda takes no position on the procedural issues, except that the City of Flagstaff prefers not to delay this case.

Ms. Interpreter states her objections to Ms. Hoover's proposal.

Ms. Hoover addresses the Court.

Mr. Guarino addresses the Court.

Discussion is held regarding the Apache County's method and timing of sending out the Court's orders.

4:15 p.m. Matter concludes.

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