

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

10/8/2020

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

S. Motzer

Deputy

FILED: October 12, 2020

In re:
Contested Case No. 6417-203

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

In re: Trial to Court

TRIAL TO COURT DAY 14

Courtroom: CCB 301

9:00 a.m. Trial to the Court continues from October 7, 2020.

The following attorneys and parties appear via GoToMeeting:

- Colin Campbell, Grace Rebling, Phillip Londen and Payslie Bowman for the Hopi Tribe
- Vanessa Boyd Willard, Cody McBride, Emmi Blades, and Rebecca Ross for the United States Department of Justice, Indian Resources Section
- Sarah Foley for the United States Department of the Interior
- Brian J. Heiserman, David A. Brown, Lauren J. Caster, Bradley J. Pew for LCR Coalition
- Mark A. McGinnis for the Salt River Project
- Carrie J. Brennan and Kevin Crestin for the Arizona State Land Department
- Lee A. Storey, Sara Ransom, Alexandra Arboleda, and Ethan B. Minkin for the City of Flagstaff
- Jeffrey S. Leonard, Judith M. Dworkin, Evan F. Hiller, and Kathryn Hoover for the Navajo Nation

Court Reporter, Michele Kaley, is present. A record of the proceedings is also made digitally.

Discussion is held regarding the time to be spent on direct examination of witnesses who jointly authored an expert report and a rebuttal report given the Court's prior ruling that direct examination is set at 30 minutes per report.

Counsel for the Arizona State Land Department and LCR Coalition address the Court.

Counsel for the Hopi Tribe states that the Court accepted and applied in this case the stipulation of the parties that direct reports would come in and the parties would have 30 minutes of direct examination with respect to each witness. He further pointed out that in response to a question from counsel for the Navajo Nation, the Court stated that a party received thirty minutes for both the direct exam and the rebuttal examination. He also stated that it would be unfair on the morning of direct examination to cut his time in half.

The Court states that it was her understanding that the parties had agreed to thirty minutes per report, not per witness.

Counsel for SRP stated that the parties' agreement was 30-minutes per witness.

Counsel for the Navajo Nation concurred with Arizona State Land Department's position.

The Court stated that in light of the decision made on the first day that witnesses would be allowed 30 minutes per report, Hopi Counsel will be allowed one hour of direct examination of a witness on an expert report and rebuttal report that he co-authored.

Counsel for the City of Flagstaff addresses the Court regarding inconsistent statements made by Dr. Hanemann during his testimony yesterday that contradicted his deposition testimony. Counsel has provided the excerpts of the deposition to counsel for the Hopi Tribe to avoid a completeness objection. Counsel proposed to either read the impeachment testimony into the record. Alternatively, the City of Flagstaff could submit the deposition excerpts as an exhibit so that it becomes part of the record on the issue of reclaimed water in Arizona being excluded from the DCMI gpcd rate calculation and also on the issue of whether Dr. Hanemann had any documentation to support his opinion.

The Court states that this issue will be addressed when Dr. Hanemann returns to testify on October 21, 2020, and the excerpts of his deposition should be offered as an exhibit.

Counsel for LCRC joined with the Arizona State Land Department's objection to the length of direct examination and requests judicial notice of exhibits 1467 and 1468.

IT IS ORDERED granting LCRC's request for Judicial Notice of LCR exhibits 1467 and 1468.

Counsel for the Navajo Nation addresses the Court, stating that the Court order filed September 10, 2020 specifies that the parties agreed and understood that direct examination of the expert that would be limited to 30 minutes.

Carl Bauer is sworn and testifies.

Upon motion of counsel for the Hopi Tribe, the Hopi Tribe's exhibits 4273, 4274, and 4276 are received in evidence.

Counsel for SRP moves to strike as non-responsive.

IT IS ORDERED granting SRP's oral Motion to Strike.

Counsel for LCRC moves for the admission of LCRC's exhibit 1226.

Counsel for the United States objects for lack of foundation.

Counsel for the Hopi Tribe joins.

Discussion is held thereon.

LET THE RECORD REFLECT that the Court states that it will consider the admission of LCRC's exhibit 1226 and rule on the admission of said exhibit at a later time.

10:30 a.m. The Court stands at recess.

10:45 a.m. The Court reconvenes with the parties and counsel present.

Court reporter, Michele Kaley, is present and a record of these proceedings is made digitally.

Carl Bauer continues to testify.

Counsel for LCRC moves for the admission on LCRC's exhibit 246.

Over the objection of counsel for the Hopi Tribe, LCRC's exhibit 246 is received in evidence.

LCRC's exhibit 1351 is received in evidence.

12:01 p.m. The Court stands at recess.

1:30 p.m. The Court reconvenes with the parties and counsel present.

Court reporter, Marylynne LeMoine, is present and a record of these proceedings is made digitally.

LCRC's exhibit 1226 is received in evidence.

Carl Bauer continues testifying.

1:34 p.m. The Court stands at recess.

1:52 p.m. The Court reconvenes with the parties and counsel present.

Court reporter, Marylynne LeMoine, is present and a record of these proceedings is made digitally.

Carl Bauer continues testifying.

LCRC's exhibits 1468, 207, 247, 270, 494, and 566 are received in evidence.

3:05 p.m. The Court stands at recess due to a power outage.

3:20 p.m. The Court reconvenes with the parties and counsel present.

Court reporter, Marylynne LeMoine, is present and a record of these proceedings is made digitally.

Carl Bauer continues testifying.

Counsel for the Navajo Nation moves to strike testimony as non-responsive.

IT IS ORDERED granting the Navajo Nation's oral Motion to Strike.

Upon the motion of counsel for the Hopi Tribe, LCRC's exhibit 1342 is received in evidence.

Carl Bauer is excused.

4:05 p.m. The matter stands at recess until Tuesday, October 13, 2020 at 9:00 a.m.

A copy of the minute entry will be sent to all parties on the Court approved mailing list.