

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

03/29/2018

CLERK OF THE COURT
Form V000

SPECIAL WATER MASTER SUSAN WARD HARRIS

L. Stogsdill
Deputy Clerk
FILED: 4/11/2018

In re: the General Adjudication W-1, W-2, W-3, W-4 (Consolidated) of All Rights to Use Water in the Little Colorado River System and Source

Hopi Reservation HSR

In re: Oral Argument Re: Contested Case No. CV6417-203 Re: Pre-Trial Conference and Oral Argument on the Hopi Tribe's Motion for Protective Order

MINUTE ENTRY

Courtroom 301 – CCB

1:30 p.m. This is the time set for a Pre-Trial Conference and Oral Argument on the Hopi Tribe's Motion for Protective Order.

The following attorneys appear in person: Colin Campbell, Grace R. Rebling and Phillip Londen on behalf of the Hopi Tribe; Vanessa Boyd Willard on behalf of the United States Department of Justice; R. Jeffrey Heilman and Mark McGinnis on behalf of the Salt River Project; M. Kathryn Hoover, Judith M. Dworkin, Jeffrey S. Leonard and Evan F. Hiller on behalf of the Navajo Nation; Alexandra Arboleda and Erin Byrnes on behalf of the City of Flagstaff, Carrie J. Brennan on behalf of the Arizona State Land Department; Brian J. Heiserman, Lauren J. Caster, David A. Brown and Bradley J. Pew on behalf of the LCR Coalition.

Court reporter, Linda Lopez, is present and record of the proceedings is also made digitally.

Colin Campbell, Jeffrey Leonard, Carrie Brennan, David Brown, Erin Byrnes and Vanessa Boyd Willard address the court regarding the proposed site visit and when it will take place. Counsel suggests that a written plan be provided to the court and counsel in advance of the site visit.

For the reasons stated on the record,

IT IS ORDERED that the site visit, if it takes place, will occur during the second week of trial.

IT IS FURTHER ORDERED that deadlines are set by the Court as follows:

1. **April 27, 2018** Dispositive motions due:
 - i. Responses due **June 6, 2018**;
 - ii. Replies due **June 26, 2018**.

2. **June 22, 2018** Motions in Limine Due:
 - i. Responses due **July 16, 2018**;
 - ii. Oral Argument **July 18, 2018** on Dispositive Motions and Motions in Limine at 1:30 p.m. in Courtroom 301 in the Central Court Building, 201 W. Jefferson, Phoenix, Arizona;
 - iii. Trial Management Conference will be held following the oral argument in response to concerns raised by the Navajo Nation.
 - iv. Responses to Motions in Limine filed in advance of the **June 22, 2018** deadline shall be filed in accordance with the case management order, but in no event shall Responses be filed later than July 16, 2018.
 - v. Parties shall abide by the meet and confer rules set forth in the Arizona Rules of Civil Procedure.

3. Joint Pre-Trial Statement is due **August 22, 2018**. David Brown suggests that the Joint Pre-Trial Statement should include a list of witnesses to be called and the proposed dates that they will testify. There are no objections voiced regarding Mr. Brown's suggestion.

The parties shall complete and circulate their portion of the Joint Pre-Trial Statement as follows:

United States on **July 12, 2018**;
Hopi Tribe on **July 19, 2018**;
Navajo Nation on **July 30, 2018**;
LCR Coalition on **August 6, 2018**;
State of Arizona on **August 10, 2018**;
All other parties on **August 15, 2018**.

4. A Readiness Conference will be held on **August 29, 2018** at 1:30 p.m. in Courtroom 301 in the Central Court Building, 201 W. Jefferson, Phoenix, Arizona.

Instructions for telephonic participation for oral arguments and conferences in **Courtroom 301, Central Court Building** are as follows:

Dial: 602-506-9695 (local)
1-855-506-9695 (toll free long distance)
Dial Participant Pass Code 357264#

5. Trial Exhibits:

- i. The proposed format using an excel spreadsheet to list exhibits is acceptable;
- ii. All trial exhibits will be copied on to a single electronic storage device for use during the trial and delivered to the Clerk of the Court, Central Court Building, attention: Wendy Thompson, Supervisor on **August 29, 2018**;
- iii. A duplicate electronic set of exhibits will be delivered to the Court on **August 29, 2018**;
- iv. No exhibits will be duplicated on either the excel spreadsheet or on the electronic storage device.

6. Deposition Transcripts:

Sealed deposition transcripts should be delivered on **August 29, 2018**.
to Clerk of the Court, Central Court Building, attention: Wendy Thompson,
supervisor office.

7. Trial Dates:

- i. Trial will begin on **September 11, 2018 at 10:30 a.m.** Trial during the first week will occur on Tuesday – Thursday beginning at 10:30 a.m. and ending at 4:45 p.m.
- ii. Trial is currently expected to last through the week of October 15, 2018.
- iii. Beginning the second week, trial will be conducted Monday – Thursday.
- iv. No trial proceedings will be held on **September 19, 2018**.

Currently trial is scheduled to be held in Courtroom 309 in the Old Courthouse, 125 W. Washington Street, Phoenix, Arizona. The parties will be notified if the location of the trial is changed to a different courtroom.

Colin Campbell, Jeffrey Leonard, Lauren Castor, Mark McGinnis, Carrie Brennan and Colin Campbell discuss the issue of stipulating to the admission of expert reports at trial. No agreement among the parties was reached.

Discussion is held regarding the use of a Hopi Interpreter. Counsel has been unable to agree on an interpreter for use during the trial. Counsel suggests Court Translation and Information Services provide a certified Hopi interpreter for the trial.

Mr. Campbell proposed filing proposed findings of fact and conclusions of law 30 days after the conclusion of the trial in order to expedite the post-trial process. The Court will

check into the provision of daily transcripts with the court reporter's office for use in the trial proceedings.

Jeffrey Leonard and Lauren Caster address the court regarding using deposition designations and/or live witnesses. Lauren Caster advises the Court that it is his intention to use live witnesses. Colin Campbell also states his intention to use live witnesses and deposition transcripts as permitted under the Arizona Rules of Evidence and Rules of Civil Procedure.

Ms. Willard advised that the United States will be filing an Amended Statement of Claimants that conforms to the evidence by early April 2018. Mr. Campbell also stated that the Hopi Tribe will file an amended Statement of Claimant. Discussion held regarding whether information to be included in the amended Statements of Claimants was previously included in disclosure statements.

2:32 p.m. LET THE RECORD REFLECT that Kimberly Parks on behalf of ADWR; Andrew Guss Guarino and Cody L.C. McBride on behalf of the United States Department of Justice announce their presence on the telephone.

Oral Argument re: the Hopi Tribe's Motion for Protective Order

Argument on the motion and the Hope Tribe's proposed order is presented by Grace R. Rebling and the response is argued by Lauren Caster, David Brown, Mark McGinnis and Jeffrey Leonard. Discussion is also held on the public records issue as it relates to the Hopi Tribe's pending motion.

For the reasons stated on the record,

IT IS ORDERED taking the matter under advisement.

Jeffrey Leonard advises the court that there were documents inadvertently disclosed by his client. He will be circulating a stipulation to counsel regarding their confidentiality in the near future for provision to the court.

3:10 p.m. Matter concludes.

LATER

1. Site Visit.

In those few water rights cases where site visits have occurred, the site visits have been conducted on the terms and conditions mutually agreeable to all the parties. Here, the parties are not in agreement about the length of the visit, the sites to view during the tour, the protocols to follow during the tour, or even whether the site visit should occur. While it would have been very interesting to visit the Hopi Reservation especially on such a

comprehensive tour proposed by the Hopi Tribe, there will be no site visit conducted in this case for the reasons stated above.

2. Transcripts

The court reporters can provide daily or expedited transcripts upon request. No later than 10 business days prior to the first day of the trial, those attorneys desiring daily or expedited transcripts must provide to the Court Reporter Department a written request for expedited service that includes a schedule by which transcripts are expected. Counsel is advised that additional fees will be assessed for the accelerated service.

3. Hopi Translators

The Court Interpreter/Translation Services for the Maricopa County Superior Court is currently in the process of locating a Hopi interpreter. Currently it is expected that the interpreter will not be located locally thereby requiring the court to incur the costs for the interpreter's travel and housing expenses for the duration of the time that the services of interpreter is required. To minimize these costs and to aid Court Interpreter/Translation Services in its search, Counsel shall file by May 18, 2018, a list of consecutive dates that the interpretation services are anticipated to be required.

A copy of this order is mailed to all persons listed on the Court approved mailing list for the Little Colorado River Adjudication Civil No. 6417-203.