

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

08/29/2018

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER SUSAN WARD
HARRIS

A. Hatfield

Deputy

FILED: 9/5/2018

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

CV 6417-203

In re: Hopi Reservation HSR

In re: Readiness Conference

MINUTE ENTRY

Courtroom: CCB 301

This is the time set for a Trial Readiness Conference before Special Water Master Susan Ward Harris.

The following attorneys appear in-person: Lauren Caster, Brad Pew, and Brian Heiserman on behalf of the LCR Coalition; Carrie Brennan and Kevin Crestin on behalf of the Arizona State Land Department; Cody McBride on behalf of the United States Department of Justice; Kathryn Hoover, Jeffrey Leonard and Evan Hiller on behalf of the Navajo Nation; Erin Byrnes and Alexandra Arboleda on behalf of the City of Flagstaff; Mark McGinnis and R. Jeffrey Heilman on behalf of SRP; Colin Campbell and Grace Rebling on behalf of the Hopi Tribe.

The following attorneys appear telephonically: David Brown and J. Albert Brown on behalf of the LCR Coalition; John Burnside on behalf of APS; Jay Tomkus on behalf of the Pascua Yaqui Tribe and the Yavapai-Apache Nation; and Vanessa Willard on behalf of the United States Department of Justice.

Court reporter, Jennifer Sullivan, is present and a record of the proceedings is made digitally.

Trial issues are discussed which include the following:

1. Witness Schedule
2. Deposition Designation
3. Expedited Transcripts
4. Digital Files
5. Supplemental Exhibit Lists

Discussion is held regarding Hopi Tribe's *Motion for Rule 17 Relief on Behalf of the Hopi Allottees* and Hopi Tribe's *Motion for Clarification of August 16, 2018 and August 20, 2018*.

The Court took the motions, witness scheduling and notice regarding use of depositions under advisement.

2:17 p.m. Matter concludes.

LATER

1) Hopi Tribe's Rule 17 Motion.

The statutory provisions governing the general adjudication require a person to file or have filed on its behalf a statement of claimant as the initial step in the adjudication of water rights. A.R.S. Section 45-254. Failure to timely file a statement of claimant forecloses a grant of water rights. *Id.* The United States as the trustee filed a statement of claimant asserting water rights under federal law with respect to water rights for the allotted land for which it holds legal title. The United States does not assert state law claims on behalf of the allottees or with respect to the allotted land.

At issue here are potential claims by the beneficial owners of allotted land for water under state law. In this contested case, the United States and the Hopi Tribe filed statements of claimant but no representation has been made that the allottees filed individual statements of claim. Following the court's decision that the Hopi Tribe did not show as a matter of fact or law that it had authority to act on behalf of the allottees to assert claims for water rights under state law, the Hopi Tribe moved for relief under Rule 17(a). The Hopi Tribe specifically requested additional time to provide proof of each allottee's decision to join, ratify or be substituted into the action. According to the Hopi Tribe, the allottees number more than 400 individuals. Counsel for the Hopi Tribe indicated at the Readiness Conference that he would file with the court a form of notice to the allottees. Upon receipt of the form of notice, a conference will be held to schedule an orderly procedure to address the form and substance of additional claims in accordance with the general adjudication statutes. The decision to establish this separate proceeding within the contested case is not a decision as to any procedural or substantive

issue. Instead, it is being implemented so that the issues related to the potential claims by allottees to state water rights can be determined under the controlling law.

In addition, the Hopi Tribe requested that evidence be permitted at the trial which will begin on September 11, 2018, with regard to possible state claims that the allottees may assert or which may be asserted on their behalf. The purpose of the immediate trial is to consider the past and present uses of water analyzed in the Hopi Reservation HSR issued in 2016 that was prepared in response to the statements of claimant, as amended, filed by the United States and the Hopi Tribe. The scope of the hearing will not be expanded to include evidence related to claims for water rights that have not been filed.

2) Hopi Tribe's Motion to file additional, late rebuttal reports.

At the Readiness Conference, counsel for the Hopi Tribe indicated that he had additional information about the proposed rebuttal reports from Richard Horner, Carl Bauer, and Eric Henson that was not included in the initial motion. Accordingly, the portion of the order denying the Hopi Tribe's motion to submit rebuttal reports is vacated and the Hopi Tribe shall have until September 10, 2018 to file a reply in support of its motion to file rebuttal reports from Richard Horner, Carl Bauer, and Eric Henson.

3) Witness Schedule and Notification Regarding Use of Depositions.

The United States and the Hopi Tribe shall file an amended witness list and schedule by September 11, 2018, based on the days now scheduled for trial. No changes will be made to the scheduled dates for witnesses who require the services of a translator. The Navajo Nation shall file its amended witness schedule by September 14, 2018.

Counsel for the Hopi Tribe shall provide opposing counsel with two calendar days advance notice of his intent to use deposition testimony other than for impeachment in either transcript or nontranscript form.

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case No. CV6417-203.