



DISTRICT COURT  
SAN JUAN COUNTY NM

FILED

U.S. Department of Justice

Environment and Natural Resources Division

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December 24, 2009

The Honorable James J. Wechsler  
Presiding Judge  
Eleventh Judicial District  
103 South Oliver  
Aztec, NM 87401

Re: San Juan River Basin Adjudication (*New Mexico v. United States, et al.*, 75-CV-1085) –  
United State's Response to Judge Sanchez's Inquiry of October 7, 2009

Dear Judge Wechsler,

On August 4, 2009, this Court issued its Preliminary Scheduling Order for the Adjudication of the Water Rights of the Ute Mountain Ute Tribe ("Scheduling Order"). In the Scheduling Order, this Court established that by March 20, 2020, the State of New Mexico, the United States, and the Ute Mountain Tribe will prepare and submit a motion seeking Court approval of procedures to be followed concerning the Ute Mountain Ute Subproceeding (including the form of the proposed notice to be sent to all water rights claimants of the San Juan River Basin). *See* Scheduling Order, section III(C), p. 8. As structured by the Scheduling Order, the schedule for any discovery associated with the Ute Mountain Ute Subproceeding will be established subsequent to the filing of the anticipated motion and issuance of notice. *See id.*, sections III(D) – (F), pp. 9 – 11.

At the October 7, 2009 Status Conference, Judge Sanchez inquired of counsel for the United States, the Ute Mountain Ute Tribe, and the State of New Mexico whether any dispositive issues might exist which the parties and the Court might proceed with at any time in the near future; Judge Sanchez asked the parties to submit a letter to the Court describing any issues of which counsel were aware.


In the first months of 2009, Congress passed and the President signed legislation authorizing the Navajo Settlement Act. *See* Title X, Subtitle B of the Omnibus Public Land Management Act of 2009, Public Law 111-11. As described on October 7, 2009, the United States is currently using all available resources to ensure that the Subproceeding associated with the Navajo Nation Settlement Agreement proceeds rapidly. The Navajo Settlement Settling Parties (including the United States) are working to ensure that the congressionally imposed deadlines to complete the Navajo Partial Final Decree (December 31, 2013) and the Navajo Supplemental Partial Final Decree (December 31, 2016) are met. Such activities already demand a great deal of time and resources and it is anticipated the activities associated with the Navajo Subproceeding will increase significantly.

Dkttd

On October 7th, I informed the Court that I knew of no dispositive issues associated with the Ute Mountain Ute Subproceeding that the parties might be able to address in the near future. All possible issues associated with the Ute Mountain Ute Subproceeding of which I am aware would require that the notice procedures be accomplished and that the discovery associated with any specific issue be complete. As described above and pursuant to the Scheduling Order, these activities are scheduled to commence some time after March 20, 2020. See Scheduling Order, sections III(C) – (F), p. 8 - 11. I have given the question raised by Judge Sanchez further consideration and have no additional information to provide the Court.

In conclusion, I do not believe that dispositive issues exist associated with the Ute Mountain Ute Subproceeding which the State of New Mexico, the United States, and the Ute Mountain Ute Tribe can proceed with in the near future. Further, Counsel for the Ute Mountain Ute Tribe has reviewed this letter and concurs with my assessment and response to Judge Sanchez's question. If you have any follow-up questions with respect to the opinions expressed by myself in this letter, by counsel for the Ute Mountain Ute Tribe, or by counsel for the state of New Mexico, do not hesitate to contact us.

Sincerely,



Andrew "Guss" Guarino  
Trial Attorney

CC:

Dan Israel, Esq., Counsel for the Ute Mountain Ute Tribe  
Tracy L. Hoffman, Special Assistant Attorney General, Counsel for the State of New Mexico