

JUDICIAL COURT
SAN JUAN COUNTY NM
FILED

DM

2010 MAR 5 AM 11 02

STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

CV-75-184

Plaintiff,

HON. JAMES J. WECHSLER
Presiding Judge

vs.

THE UNITED STATES OF AMERICA, *et al.*,

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

**RESPONSE OF THE NAVAJO NATION TO THE
REQUEST FOR AGENDA ITEM FOR WATER RIGHTS OWNERS**

The Navajo Nation files this response¹ to the Request for Agenda Item for Water Rights Owners ("Request") submitted by the San Juan Agricultural Water Users Association ("Association") and the Hammond Conservancy District. The Request suggests that the Court include "a regular item on its agenda for input by water rights owners in the San Juan Basin." Navajo Nation does not support this request for several reasons.

The Request assumes that water rights owners require a special place and a role in this adjudication. This is only unusual because *every* defendant in the adjudication (including the Navajo Nation) is presumably a water right owner. *See* NMSA 1978, § 72-4-17 ("In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters * * * shall be made parties."). Every agenda item and every matter taken up

¹ The filing made in this matter is characterized as a "request." It was not submitted as a formal motion; therefore, the Navajo Nation believes that this response is timely.

DKtd ✓

by the Court is of interest to water rights users. Therefore, a separate and distinct agenda item for water rights owners would be superfluous and confusing.

The Request filed by the Association is especially troubling since the role of the Association in this adjudication has previously been a source of concern to a number of the parties. The Association purports to "represent[] 36 of the 38 irrigation ditches in the San Juan river system" with membership of "about 15,000 landowners and their families." Statement of Mike Sullivan, Chairman, San Juan Agricultural Water Users Association, S. Hrg. 110-148, June 27, 2007 at 102.² Initially in this litigation, the Association conceded that is not a water right owner, but has participated in this adjudication "to advocate on its membership's behalf certain concerns and to report to the Court the concerns of its members." *Motion of the San Juan Agricultural Water Users Association to Intervene as a Party Claimant*, August 13, 2004, at 1. Subsequently, the Association represented to the Court that it acquired a water right, and the Court permitted the Association to intervene as a party to the litigation. *Order Granting Leave to the San Juan Agricultural Water Users Association to Intervene*, August 20, 2004. The Court has permitted the interests of individual water users to be represented by the Association and has allowed individual members to address the Court even after counsel for the Association has addressed the Court.³

It would appear that individual water users already have ample representation and opportunity to participate in this adjudication without being further elevated as a specific item on the Court's agenda. Further, if a water rights owner is represented by counsel or an association,

² Available at <http://ftp.resource.org/gpo.gov/hearings/110s/37826.txt>. The other two irrigation ditches ostensibly not represented by the Association are the Hogback and Fruitland ditches owned by the Navajo Nation.

³ Ordinarily, individuals do not have the right to appear both by counsel and on their own behalf. See: 7A C.J.S. Attorney & Client § 196.

it would appear unfair to other participants to permit both counsel and client an opportunity to raise issues and concerns at two distinct points in the same hearing.

It is unclear from the Request whether it was intended to request a standing place on the agenda for individual *pro se* water rights owners to raise any matter that concerns them. If that is the intent, the Request is equally flawed. All water rights owners, whether *pro se* or represented by counsel, have an equal stake in the adjudication. New Mexico courts recognize latitude in dealing with *pro se* litigants, but have consistently held that *pro se* litigants must "comply with the rules and orders of the court, [and enjoy] no greater rights than those who employ counsel." *Newsome v. Farer*, 103 N.M. 415, 419, 708 P.2d 327, 331 (1985). *Pro se* litigants have rights identical to represented litigants not, as suggested in the Request, rights greater than represented litigants.

The Court's hearings should not devolve into a public forum for questions and concerns about any matter relating to the San Juan River.⁴ In the past, public participants at the hearings raised questions about such topics as the San Juan River Recovery Implementation Program, the rule-making concerning Navajo Reservoir Operations, and the voluntary shortage-sharing agreements involving several parties to the adjudication. These are all matters of great, general interest to water users in the San Juan River basin, but have no bearing on the legal adjudication of the rights to use water within the San Juan River stream system. The Navajo Nation is concerned that a generic agenda item inviting water rights owners to address the Court, without

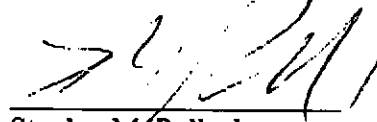
⁴ There are numerous vehicles to provide additional assistance to *pro se* litigants. This Court has a website that also provides information to *pro se* litigants: <http://www.11thjdc.com/node/123>. In addition there are already numerous vehicles available for unrepresented water rights owners to obtain additional information. The Joe M Stell Water Ombudsman Program at the University of New Mexico School of Law is one such resource: http://uttcncenter.unm.edu/ombudsman_3.html Information is also available at the State Engineer's Website: http://www.ose.state.nm.us/legal_ose_adjudication.html.

reference to any specific issue before the Court, will simply turn the adjudication proceedings into a public forum on all matters relating to the San Juan River.

For these reasons, the Court should decline the Request.

Respectfully submitted this 5th day of March 2010.

THE NAVAJO NATION



Stanley M. Pollack
Bidtah N. Becker
M. Kathryn Hoover
Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-7510

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the *Response of the Navajo Nation to the Request for Agenda Item for Water Rights Owners*, was mailed this 5th day of March, 2010 by first class mail to counsel listed on Attachment A and by email to counsel electing email service at: wrattorney@11thjdc.com and to the parties electing email service at: wrlaplata@11thjdc.com.



Stanley M. Pollack

Shenan R. Atcity, Esq.
Herbert A. Becker, Esq.
2309 Renard SE, Ste. 200
Albuquerque, NM 87106

Dan Israel, Esq.
1315 Bear Mountain Dr., Ste. A
Boulder, CO 80305

Stephen E. Snyder, Esq.
4 Manzo Road
Corrales, NM 87048

Bradley S. Bridgewater, Esq.
Guss Guarino, Esq.
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294

John F. Kennedy, Esq.
Cuddy Kennedy Albetta Ives &
Archuleta-Staehlin LLP
P.O. Box 4160
Santa Fe, NM 87502

Michael J. Thomas, Esq.
P.O. Box 1148
Santa Fe, NM 87504

Jay Burnham, Esq.
800 Municipal Drive
Farmington, NM 87401

Robert D. Kidd, Esq.
P.O. Box 2248
Albuquerque, NM 87103

John F. Utton, Esq.
Sheehan, Sheehan & Steizner
P.O. Box 271
Albuquerque, NM 87103-0271

Christopher J. Castillo, Esq.
2 North Nevada Ave., Rm. 1432
Colorado Springs, CO 80944

La Plata Conservancy District
Document Repository
P.O. Box 207
La Plata, NM 87418

Tim Vollman, Esq.
3500 Comanche Rd. NE, Bldg. B
Albuquerque, NM 87107

John Draper, Esq.
Jeffrey J. Wechsler, Esq.
P.O. Box 2307
Santa Fe, NM 87504

Jolene L. McCaleb, Esq.
Elizabeth N. Taylor, Esq.
P.O. Box 2540
Corrales, NM 87048

J.M. Durrett, Jr., Esq.
Joseph F. Sawyer, Esq.
Douglas Echols, Esq.
100 S. Oliver
Aztec, NM 87410

Maria O'Brien, Esq.
Modrall Sperling
P.O. Box 2168
Albuquerque, NM 87103

Michael I. Garcia, Esq.
P.O. Box 2248
Albuquerque, NM 87103

DL Sanders
Tracy L. Hofmann
Arienne Singer
Special Assistant Attorneys General
Office of the State Engineer
PO Box 15102
Santa Fe, NM 87504-5102

Gary Horner, Esq.
P.O. Box 2497
Farmington, NM 87499

San Juan Adjudication Document Repository
100 Gossett Drive
Aztec, NM 87410

Stephen Hughes, Esq.
John L. Sullivan, Esq.
Michael J. Thomas, Esq.
NM State Land Office
P.O. Box 1148
Santa Fe, NM 87504

ATTACHMENT "A"