

SAN JUAN COUNTY NM
FILED

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2010 MAR 26 PM 1 16

STATE OF NEW MEXICO
COUNTY OF SAN JUAN

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

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants,

vs.

THE JICARILLA APACHE TRIBE
AND THE NAVAJO NATION,

Defendant-Intervenors.

No. CV 75-184
Honorable James J. Wechsler
Presiding Judge

SAN JUAN RIVER BASIN
ADJUDICATION

SAN JUAN RIVER
GENERAL STREAM
LITIGATION

**NOTICE OF INVOLUNTARY COMPLIANCE WITH
COURT'S ORDER OF DECEMBER 27, 2007, AND MOTION FOR
OPPORTUNITY TO BE HEARD AFTER THE ORDER IS LIFTED**

The San Juan Agricultural Water Users Association and Hammond Conservancy District and their counsel hereby give notice that they are complying, reluctantly and involuntarily, with the Order of December 27, 2007. This Order is the subject of a pending emergency motion. It appears that the Court and the Special Master were not aware of this Order, which is understandable given the huge size of the record. However, the Order remains in place, and it must be obeyed.

A review of the Order and the proceedings which led to the Order makes it unmistakably clear that the Order bars any discussion of issues relating to joinder, including the "notice" by which absent water users would purportedly be joined in this litigation. The record of proceedings in 2007 shows that Judge Sanchez imposed serious sanctions for raising this issue. See e.g.: Objections to "Invitation to Tour Animas La Plata Project, filed

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9/7/07; Order Regarding Objections to "Invitation to Tour Animas La Plata Project," filed 10/1/07; Report on Fairness and Due Process Issues, filed 10/4/07; and Motion for Immediate Joinder of All Affected Parties, filed 10/9/07.

As long as the Order remains in place, it bars the Association and the Hammond and their counsel from any meaningful participation about notice and joinder, including but not limited to the notice being proposed by the Navajo Nation, the State Engineer, and the United States. This includes the telephone conference scheduled for March 26, 2010. There is no way for movants to participate meaningfully in that telephone conference without being able to explain the problems with the notice, but that would violate the Court Order. Furthermore, when the movants do not discuss the joinder and notice issues, it has been misinterpreted as assent or acquiescence on these issues, when in fact movants are involuntarily obeying the Court Order.

The Association and Hammond and undersigned counsel would like very much to address these issues, and intend to do so promptly after the Order is lifted. Since the Order was entered by a judge, it appears that it can be vacated only by a judge, not the special master.

WHEREFORE, movants respectfully move the Court to allow them a reasonable opportunity to be heard and to submit filings after the December 27, 2007 Order is lifted, if it is lifted.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by email to the attorneys electing email service at: wrattonney@11thjdc.com and to the La Plata parties electing email service at wrlaplata@11thjdc.com this 26th day of March, 2010.

I further certify that a true and correct copy of the foregoing has been served on the following attorneys by facsimile, and by mail to Gary Horner, Dan Israel and William Johnson, on March 26, 2010; and by email to Jolene McCaleb and Elizabeth Taylor.

- Stanley Pollack and Bidtah Becker
- Jay Burnham
- John Draper and Jeffrey Wechsler
- J.M. Durrett, Jr.
- Robert Kidd and Michael Garcia
- Tracy Hofmann, Arianne Singer and D.L. Sanders
- Stephen Hughes, John Sullivan and Michael Thomas
- Maria O'Brien
- Gary Risley
- Richard Cole

