

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2010 MAY 19 AM 10 30

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
SUPPLEMENTAL EMERGENCY MOTION**

The Navajo Nation files this response to the Supplemental Emergency Motion to Vacate Orders of November 14 and December 26, 2007 filed by the San Juan Agricultural Water Users Association and the Hammond Conservancy District (hereafter collectively "the Association"). The Navajo Nation files this response with great reluctance because the subject matter of this request is a distraction from the real issues before the Court in this case; however, the Nation did not want its failure to file a response to be taken as assent to the various actions taken by counsel for the Association.

At the outset, the Court should be advised that the Navajo Nation previously concurred in State of New Mexico's Opposition to San Juan Agricultural Water Users Association's and Hammond Conservancy District's Emergency Motion to Vacate Order of December 26, 2007 filed on March 31, 2010. In that opposition, the State of New Mexico noted the Association's repeated failure to comply with Rule 1-007.1(B) NMRA and LR11-104 by failing to seek

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concurrence of counsel prior to filing a motion. The Association has repeatedly been advised that its actions fail to comply with these rules.¹ Now the Association's Supplemental Motion seeks relief from the Court, once again, without respect for the rules of civil procedure.²

The Orders of November 14, 2007 and December 26, 2007 arose out of the Association's Objections to "Invitation to Tour Animas La Plata Project," September 7, 2007 in which the Association implied that the San Juan Water Commission, BHP Navajo Coal Company, the State of New Mexico and the Navajo Nation were improperly attempting to influence the Court about the merits of this case "before all the parties have been joined." Objections at 3. In response, the Court was concerned that such statements were an "apparent misrepresentation without any basis in the record" and ordered counsel for the Association to provide documentation of the allegations. Order Regarding Objections to "Invitation to Tour Animas La Plata Project," October 1, 2007 at 2. Rather than documenting any improper conduct by the parties, counsel for the Association filed a lengthy Report on Fairness and Due Process Issues, October 5, 2007 ("Report"), repeatedly arguing the need to join all claimants before the adjudication could proceed. Simultaneously, the Association filed its Motion for Immediate Joinder of all Affected

¹ See e.g. Navajo Nation's Response to SJAWUA/HCD Motion for Limited Discovery, October 16, 2007 at 9; State of New Mexico's Response to Victor Marshall's Report on Fairness and Due Process Issues, October 18, 2007 at 7 ("The State notes that, yet again, counsel flouted the New Mexico Rules of Civil Procedure by failing to seek opposing counsels' concurrence as required by Rule 1-007.1(B) NMRA...")

² Ironically, the Association has repeatedly advised others of the need to follow the Rules of Civil Procedure. See e.g. Association's Suggestions, Comments and Objections to Procedures for Adjudicating the Navajo "Settlement," October 22, 2010 at ¶3 ("The adjudication must precede [sic] in accordance with the Rules of Civil Procedure.") and Suggestions, Comments and Objections about Draft Order by San Juan Agricultural Water Users Association and Hammond Conservancy District, January 4, 2010 at. 1-2 ("The key is following the rules of civil procedure – all of the rules... This is not a lawsuit for freelancing, and improvising, and deviating from the Rules of Civil Procedure.")

Parties, October 5, 2007. Subsequently, various parties objected to mischaracterizations contained in the Report.³

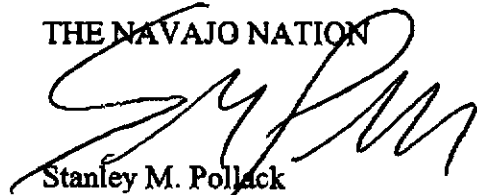
The Navajo Nation does not wish to revisit this unfortunate chapter in the proceedings; however, what is important is the record made by the Court in its Orders of November 14, 2007 and December 26, 2007 concerning accusations made by counsel for the Association and his conduct before the Court. These orders were not appealed, nor were motions for reconsideration filed. Now, more than two years later, the Association seeks to vacate the orders without providing justification as to why the orders are defective. There is no reason to "expunge" the record of these orders, particularly in light of the litany of pleadings filed by other parties in this adjudication concerning the actions and allegations by counsel for the Association in this matter. The Supplemental Emergency Motion makes clear that counsel simply seeks to vacate the orders in an effort to erase the record of questionable conduct as determined by Judge Sanchez in this case. Indeed, the orders need not be vacated for the purpose of allowing counsel to argue the issue of joinder, as he himself notes he is able to do even with the orders in place. See Supplemental Emergency Motion at 2 ("[T]he Court is now considering the issue of joinder as it must.")

For these reasons, the Court should deny the Supplemental Emergency Motion.

³ See Response of San Juan Water Commission to Victor R. Marshall's "Report on Fairness and Due Process Issues," October 12, 2007 at 1 ("In the Objection, Mr. Marshall made several unsupported factual allegations against the Commission and other parties in the San Juan River Basin Adjudication."); Response of BHP Navajo Coal Company to Victor Marshall's Report on Fairness and Due Process Issues, October 16, 2007 at 2 ("Mr. Marshall utilizes the Report to fashion a baseless due process argument and to continue his, at the very least implicit assertions, that various parties and their counsel are involved in improper efforts to 'influence' the Court and to deny other parties of their due process rights."); State of New Mexico's Response to Victor Marshall's Report on Fairness and Due Process Issues, October 18, 2007.

Respectfully submitted this 19th day of May 2010.

THE NAVAJO NATION



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M. Kathryn Hoover

Navajo Nation Department of Justice

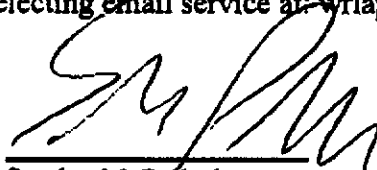
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the Navajo Nation's Response to Supplemental Emergency Motion was mailed this 18th day of May, 2010 by first class mail to counsel listed on Attachment "A" and by email to counsel electing email service at: wrattorney@l1thjdc.com and to the parties electing email service at: wrlaplata@l1thjdc.com.



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ATTACHMENT "A"