

ELEVENTH JUDICIAL DISTRICT  
COUNTY OF SAN JUAN  
STATE OF NEW MEXICO

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED  
103  
2011 OCT 14 PM 3:42

STATE OF NEW MEXICO ex rel.  
State Engineer,  
Plaintiff,

v.  
UNITED STATES OF AMERICA, et al.,  
Defendants.

v.  
THE JICARILLA APACHE TRIBE and the  
NAVAJO NATION,  
Defendant-Intervenors.

No. CV 75-184  
SAN JUAN RIVER  
ADJUDICATION SUIT

Claims of the Navajo Nation  
Case No.: AB-07-1

**SUMMARY OF**  
**GARY L. HORNER'S COMMENTS AND OBJECTIONS REGARDING**  
**THE SCHEDULING ORDER GOVERNING PRETRIAL ACTIVITIES**

COMES NOW Gary L. Horner, Esq., *In Propria Persona* (hereinafter referred to in the first person), and provides a summary of GARY L. HORNER'S COMMENTS AND OBJECTIONS REGARDING THE SCHEDULING ORDER GOVERNING PRETRIAL ACTIVITIES, which has been filed concurrently herewith.

Accordingly, I state:

D/

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I. Individuals and entities filing Notices of Intent to Participate should be referred to as “Claimants.” ..... 1

II. Entering the subject Scheduling Order prior to the Scheduling Conference violates due process. .... 3

    A. No one was allowed the opportunity to consider, discuss, confer, or otherwise provide input, with respect to the subject Scheduling Order ..... 4

    B. Attendance at the Scheduling Conference was Mandatory - those not attending will be prohibited from further participation in this matter. .... 5

    C. The only purpose of the Scheduling Conference was to eliminate the participation of (“weed out”) as many water users as possible. .... 5

    D. The entry of the subject Scheduling Order before the subject Scheduling Conference, the conduct of the subject Scheduling Conference itself, as well as the requirement that attendance at the subject Scheduling Conference was mandatory, all represent violations of the due process rights of all of the water users of the San Juan Basin. .... 6

III. The subject Scheduling Order violates Rule 1-016. .... 7

    A. Prohibiting anyone from further participation in the present matter as a sanction for not attending the subject Scheduling Conference violates due process. .... 9

IV. The subject Scheduling Order violates the Court’s Procedural Order. .... 10

V. The stay of discovery in the Scheduling Order violates the Rules of Civil Procedure and the Procedural Order. .... 11

    A. The Rules of Civil Procedure authorize discovery after the commencement of an action. .... 11

    B. The only reason to stay discovery is to make the discovery of necessary information more difficult for adversely affected water users. .... 12

    C. The stay of discovery violates the Procedural Order. .... 13

VI. Requiring that objections be filed before the completion of discovery violates due process. .... 14

    A. Objections should not be required to be filed until after discovery is completed. ... 14

    B. Adversely affected water users must have the opportunity to discover necessary information from the Settling Parties. .... 15

    C. Requiring Objections to be filed before discovery is completed represents a denial of due process. .... 15

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A. The Settling Parties' Settlement Motion should be regarded as a motion for summary judgment. . . . . 19


B. The Scheduling Order improperly incorporates an erroneous standard of review and burden of proof. . . . . 20

VIII. The Scheduling Order makes no provision for motions and hearings regarding significant preliminary matters. . . . . 22

IX. Conclusion. . . . . 23

PROOF OF SERVICE BY ELECTRONIC TRANSMISSION . . . . . 24

Respectfully submitted by:

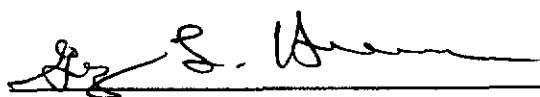
  
 \_\_\_\_\_  
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October 14, 2011  
 \_\_\_\_\_  
 Date

**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I HEREBY CERTIFY - in accordance with the ORDER MANDATING ALTERNATIVE METHOD FOR SERVICE OF ORDERS, MOTIONS, NOTICES AND OTHER COURT PAPERS, entered in the present matter on September 28, 2011 by the Honorable James Wechsler, Presiding Judge - that a true copy of the foregoing was served on the parties and Claimants in the present matter, by attaching a copy of said document to an email sent to the following email list server(s) maintained by the Court, this 14<sup>th</sup> day of October, 2011:

[wnavajointerse@nmcourts.gov](mailto:wnavajointerse@nmcourts.gov)

  
 \_\_\_\_\_  
 GARY L. HORNER