

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

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

Plaintiff,

vs.

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

Defendants.

CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

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

NAME OF PARTY: The Jicarilla Apache Nation, Defendant. .

DESCRIPTIVE SUMMARY: The Jicarilla Apache Nation notifies the Court it has no disclosures and urges the Court to approve the two proposed Decrees filed by the Settling Parties in this matter.

NUMBER OF PAGES: 0.

DATE OF FILING: Fax filed to 505-334-1940 on 21 September 2012.

JICARILLA APCHE NATION URGES THE COURT TO APPROVE THE TWO DECREES SUBMITTED BY THE UNITED STATES, THE STATE OF NEW MEXICO AND THE NAVAJO NATION

Two preliminary matters must be addressed before demonstrating that the United States, the State of New Mexico and the Navajo Nation (Settling Parties) have established that the Navajo Settlement is fair, adequate, reasonable and consistent with public interest and applicable law. The preliminary matters involve filing a disclosure and objection on the 21st of September. This is to notify the Court that the Jicarilla Apache Nation does not have any disclosures or objections to file.

Turning now to the main issue in this case, entry of the proposed Partial Final Judgment and Decree of Water Rights of the Navajo Nation and the proposed Supplemental Partial Final Judgment and Decree of Water Rights of the Navajo Nation (Decrees) by the Court, it is the

recommendation of the Jicarilla Apache Nation that the Court enter the Decrees.

By any objective standard, a comparison of the Statement of Claims filed by the United States on behalf of the Navajo Nation with the amounts of water listed in the Decrees, a review of the disclosure and discovery documents provided by the Settling Parties, the Technical Assessment of the Settlement filed by the State of New Mexico on the 6th of September and the State of New Mexico's Revised Statement of the Factual and Legal Bases of the Settlement filed on the 7th of September evince that the Navajo Settlement is fair, adequate, reasonable and consistent with public interest and applicable law.

**THE SETTLEMENT IS A PRODUCT OF GOOD FAITH ARMS LENGTH
NEGOTIATIONS**

As the State's 7 September filing demonstrates, the Navajo Settlement was a product of good faith arm's length negotiations over an extended period of time. These negotiations involved not only the Settling Parties but included members of the public who participated at public meetings regarding the settlement. The results of the public meetings were changes to the proposed settlement after each session to address concerns raised. Further, a final change to the settlement was made after the people's representatives in Congress enacted the Northwestern New Mexico Rural Water Projects Act (Public Law 111-11, Title X, Subtitle B) (Settlement Act) and the Settlement Act was signed into law by the President on 30 March 2009 to make the Navajo Settlement consistent with the newly enacted law. All of this activity ensured that the Settlement was the product of good faith negotiations and the Decrees that were produced deserve to be entered by the Court.

THE NAVAJO SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

That the Navajo Settlement is fair, adequate and reasonable is fully supported by the Statement of Claims of Water Rights of the Navajo Nation filed by the United States on the 3rd of January 2012 and Technical Reports filed by the United States on the 27th of January 2012

describing the technical basis for the Statement of Claims, and the State of New Mexico's Technical

Assessment and Revised Statement of the Factual and Legal Bases of the Settlement. Those documents describe the many benefits that the State of New Mexico derives from the Settlement that she could not obtain is litigation; some of the benefits are: the Navajo Nation waiver of a claim to irrigation water based on the practicably irrigable acreage standard, agreement by the Navajo Nation to share shortage and subordinate its early priority, an agreement by the Navajo Nation not to contest the Echo Ditch Decree, protection of uses of water by junior non-Indian water users and construction of a water conveyance system, to name a few.

The documents also demonstrate that the amount of water rights agreed to by the Settling Parties for the Navajo Nation is less than the claims filed by the United States on behalf of the Navajo Nation. The Settling Parties have agreed that the amounts in the Decrees are adequate and reasonable. There is no reason to substitute a third parties conclusion to the contrary for the Settling Parties' judgment. To do so would completely defeat the purpose of settlement which in part is to avoid costly and uncertain results of litigation and would run contra to the public interest of avoiding litigation in favor of settlement.

THE SETTLEMENT IS CONSISTENT WITH PUBLIC INTEREST AND APPLICABLE LAW.

One of the main goals of the Settlement Act is to construct a water delivery system which will provide potable water to the City of Gallup, isolated Navajo communities in the "checkerboard" area and to the Southeastern part of the Jicarilla Apache Reservation known as the Tee Pees. As the New Mexico Technical Assessment noted, groundbreaking for the project occurred on 2 June 2012 and since then construction has commenced for the project. Delivery

of potable water to the communities listed above is in the Public Interest and meets the Trust Obligation of the United States to the Navajo Nation and its members. It also furthers the interest of the State of New Mexico to ensure that her citizens to promote a healthy lifestyle by having access to reliable drinking water.

Entry of the Decrees is consistent with applicable law. Federal law controls the determination of the Navajo Nation's water rights. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963); *State v. Lewis et al.*, 116 N.M. 194 (Ct App. NM 1993); *Arizona v. San Carlos Apache*, 463 U.S. 545 (1983).

The vast amount of material provided by the Settling Parties in support of the water rights described in the Decrees is more than sufficient to enable all parties to make a determination whether the settlement is fair and reasonable and fully meets the federal law applicable to this case. Indeed, the quantity and quality of data far exceeds that submitted in this Court on behalf of the settlement of the Jicarilla Apache Nation's claims. The undersigned attorney worked with the technical team that produced the Reconnaissance Level Hydrographic Survey that was filed in support of the Jicarilla settlement. There were no extensive reports produced in the Jicarilla settlement as there have been in the case at bar nor did the Court require them. See Joint Motion for Entry of A Partial Final Judgment and Decree on the Water Rights of the Jicarilla Apache Tribe filed on November 3, 1997 and the United States and Jicarilla Apache Tribe Memorandum in Support of Joint Motion for Entry of A Partial Final Judgment and Decree on the Water Rights of the Jicarilla Apache Tribe. And in the Jicarilla matter, the hydrographic survey was deemed sufficient by the Court to support the settlement entered into by the United States, the State of New Mexico and the Jicarilla Apache Tribe. Based on that, the Court entered the Decrees on behalf of the Jicarilla Apache Tribe.

It appears that the next step that some of the non-settling parties want to pursue in this

case is deposition as part of their discovery. But this Court should hold that the Settling Parties have complied with federal law, met their burden establishing that the Settlement is fair, adequate, reasonable and consistent with public interest and applicable law, close discovery and enter the Decrees.

Respectfully submitted, this 21st day of September 2012.

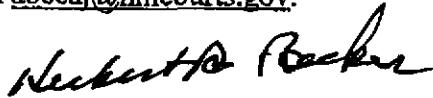
JICARILLA APACHE NATION



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2012, at approximately 11:00 AM, an electronic version of this pleading in support of the Navajo Settlement was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov.



Herbert A. Becker