

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

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

Plaintiff,

vs.

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

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler

Presiding Judge

DESCRIPTIVE SUMMARY: Preliminary and tentative list of potential witnesses, submitted by the Community Ditch Defendant-Counterclaimants, based upon incomplete discovery.

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**FIRST PRELIMINARY AND TENTATIVE WITNESS LIST
BY COMMUNITY DITCH DEFENDANT-COUNTERCLAIMANTS**

As instructed by the court, the community ditch defendant-counterclaimants hereby submit their preliminary and tentative list of potential witnesses in this case. In this list, the terms "including" and "include" means "including but not limited to."

1. All those witnesses identified by the plaintiffs.
2. All those witnesses identified by other parties to this litigation.
3. Water users and water rights owners on the community ditches.
4. Witnesses who can testify about the matters asserted in the Answer,

Objections, and Counterclaim filed by the community ditch defendant-counterclaimants on

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October 9, 2012, and the answers to the counterclaim which are due on December 3, 2012. Until that time, this case is not at issue. After the plaintiffs file their answers, those answers will identify additional disputed topics of fact and law which will require discovery and additional witnesses.

6. Bill Richardson, former governor of New Mexico. He signed the proposed agreement.
7. Bill Hume, water advisor to Bill Richardson in the Office of the Governor.
8. John Leeper.
9. John Whipple.
10. Michael Connor, head of the BOR.

At the present time, the community ditch defendant-counterclaimants have no way to definitely identify the witnesses which they will call at trial, for the following reasons:

Discovery has just begun;

Almost all of the pertinent information is in the exclusive possession of the United States, the Navajo Nation, and the state engineer, not the community ditch defendant-counterclaimants;

The plaintiffs have resisted and delayed the discovery necessary to identify issues and prepare this case for trial;

This case is incredibly complex, both factually and legally. It necessarily includes the water law of New Mexico, the law of the Colorado River, geography, history, ethnography, climatology, global warming, hydrology, endangered species, agronomy, economics, politics, federal water laws, engineering, and demographics; and

In terms of time, this case includes prehistory, the creation of the Navajo Reservation in the mid-19th century, the admission of New Mexico to the union in 1912, the Colorado River Compacts of the 1920s and 1940s, the projects authorized by Congress in the 1950s and 1960s, the operation of NIIP since the 1970s, and the circumstances since 2000 surrounding the negotiation of the proposed agreement. This case also reaches into the future with projections of water flow, climate, and population.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2012, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: wnavajointerse@nmcourts.gov.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.