

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2012 NOV 20 PM 3:05

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

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

Plaintiff,

AB-07-1
Claims of Navajo Nation

vs.

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

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

Defendants.

DESCRIPTIVE SUMMARY: The Community Ditch defendants jointly request the court's intervention on the continuing dispute over NIIP discovery. The U.S. has refused to identify witnesses who can testify in preliminary depositions about the actual expenses for NIIP incurred by NAPI and other government agencies, like the BOR or BIA.
NUMBER OF PAGES: 2 + 6 pages attachments
DATE OF FILING: November 20, 2012

NOTICE OF CONTINUING DISCOVERY DISPUTE CONCERNING NIIP

The Community Ditch Defendant-counterclaimants, acting jointly on behalf of various defendants, have propounded discovery concerning NIIP. At the November 6, 2012 discovery conference, counsel reported that the plaintiff settling parties had not produced the documents concerning NIIP which the court had previously ordered them to produce. Counsel also requested the identification of witnesses to testify in preliminary depositions about the actual expenses for NIIP incurred by NAPI and other government agencies, like the BOR or BIA. The court indicated that this was a reasonable request and ordered counsel to confer yet again on the matter.

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Since the November 6 conference, the undersigned counsel has done so, for the third or fourth time. These efforts were unsuccessful, as shown in the attached emails. Defendant nonsettling parties hereby request the court's intervention to enforce compliance with the court's orders and legitimate discovery requests. Movants request that this continuing dispute be heard at the November 28 discovery conference.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
Attorneys for San Juan Agricultural Water Users
Association; Hammond Conservancy District;
Bloomfield Irrigation District; various ditches; and
various members thereof.
12509 Oakland NE
Albuquerque, NM 87122
505-332-9400 / 505-332-3793 FAX

CERTIFICATE OF SERVICE

I hereby certify that on this 20th 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: wmavajointerse@nmcourts.gov and to the filing list referred to in paragraph 8 of the court's November 19, 2012 Corrected Order.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.

RE: Preliminary depositions on NIIP expenses

Subject: RE: Preliminary depositions on NIIP expenses

From: "Guarino, Guss (ENRD)" <Guss.Guarino@usdoj.gov>

Date: 11/9/2012 11:56 AM

To: "Victor R. Marshall" <victor@vrmarshall.com>

CC: "spollack@nndoj.org" <spollack@nndoj.org>, "Gollis Samuel (sgollis@hotmail.com)" <sgollis@hotmail.com>, "Umshler, Sue" <Sue.Umshler@sol.doi.gov>

Victor,

I have reviewed your message and forwarded it on to Sue Umshler who will communicate with the relevant agencies (we rely on BIA/BOR personnel who are associated with NIIP for inquiries such as these). As I have described repeatedly before, I suspect that the analysis that you hope to find (e.g. "What is NIIP's annual electricity consumption in kilowatt hours?" "What is NIIP's annual electricity consumption in kilowatt hours?") has not been previously performed by the US (nonetheless, we are inquiring whether someone knows something about it and if I am mistaken, agency personnel will let us know). Again, all records that the United States has concerning NIIP have been provided to you either by providing them directly to you or they are at the repositories/archives identified.

To set any date or deadline for the United States to respond to your questions, to set a telephonic deposition, and/or to request an order is premature. In fact, Ms. Umshler, who I rely on for communicating with the agencies and who must review any response that the United States might have to your questions, will be out of the office until November 26th, therefore, I we will not have any response to you until shortly after her return.

The United States will respond to your inquiries below to the extent we have the information you seek. Once I know anything more, I will be in touch.

Regards,

Guss Guarino
Indian Resources Section
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Office: 303-844-1343
Cell: 303-229-7256
Fax: 303-844-1350
E-mail: guss.guarino@usdoj.gov

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From: Victor R. Marshall [mailto:victor@vrmarshall.com]
Sent: Thursday, November 08, 2012 2:50 PM

RE: Preliminary depositions on NIIP exp

To: Guarino, Guss (ENRD); Stanley M. Pollack; Singer, Arianne, OSE; Richard Cole; Rick Tully; GARY RISLEY; Adam Rankin; Liz Taylor; Justin B. Breen; Gary L. Horner; vrm; Sheri Heying; Shirley Meridith
Subject: Preliminary depositions on NIIP expenses

Guss, Stanley, & Ariane -

Per Judge Wechsler's instructions two days ago, I am writing to arrange preliminary depositions of the person or persons who can answer some preliminary questions about the actual expenses for NIIP, many of which are not reflected in the audited financial statements.

Here are some of the topics to be covered in the preliminary depositions:

- Who supplies electricity for NIIP? What is NIIP's annual electricity consumption in kilowatt hours? Who has records which will show electricity usage, going back over the years? This includes, but is not limited to, the electricity needed to pump the water uphill.

- Who maintains the roads at NIIP? What is the annual cost of road maintenance or construction? Who has records that will show these costs?

- Who maintains the water infrastructure for NIIP, including all the diversion, canals, laterals, etc.? Who has records that will show these costs?

- What are the metering points for the water supplied to NIIP? Who has these records?

What are the other costs for NIIP that are not included in the audited financial statements? Who has the records?

We understand that various agencies and entities may bear some of the expenses associated with NIIP, such as the NN, BOR, BIA, etc. So that is why you need to designate persons who have personal knowledge on these topics, per rule 30 B6. We would also like them to bring the relevant records.

With your cooperation, these preliminary depositions can be relatively short. The depositions would then be continued until later, after we have a chance to digest the preliminary information.

We would like to take these depositions by telephone, and request that you agree.

We would like to take these preliminary depositions before the next discovery

RE: Preliminary depositions on NIIP expe

conference on November 28, so we propose November 26.

Please respond as soon as possible. If we haven't worked this out by next Monday, I will have to ask Judge Wechsler for an order along these lines.

Regards,
Victor Marshall

NAPI Reports

Subject: NAPI Reports**From:** "Stanley M. Pollack" <smpollack@nndoj.org>**Date:** 11/8/2012 2:58 PM**To:** "Victor R. Marshall" <victor@vrmarshall.com>, "Guss.Guarino@usdoj.gov" <Guss.Guarino@usdoj.gov>, "Singer, Arianne, OSE" <arianne.singer@state.nm.us>, Richard Cole <rbc@keleher-law.com>, Rick Tully <tullylawfirm@qwestoffice.net>, GARY RISLEY <gary@risleylaw.net>, Adam Rankin <AGRankin@hollandhart.com>, Liz Taylor <etaylor@taylormccaleb.com>, "Justin B. Breen" <jbb@keleher-law.com>, "Gary L. Horner" <ghorner@zianet.com>, Sheri Heying <sheri@vrmarshall.com>, Shirley Meridith <shirley@vrmarshall.com>**CC:** John Utton <jwu@sheehansheehan.com>, Kate Hoover <khoover@nndoj.org>, "sgollis@hotmail.com" <sgollis@hotmail.com>

Victor,

I was just about to send you some more NAPI information when I received your email.

Attached please find:

1. NAPI 08 – the Audit Report for 2005
2. NAPI 09 – the Audit Report for 2006
3. NAPI 10 – the O&M Report for 2010
4. NAPI 11 – the O&M Report for 2011

I am still trying to obtain older reports from NAPI.

I will provide a separate response to your email below.

Stanley M. Pollack, Assistant Attorney General
Water Rights Unit
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515

928.871.6192 (Direct Line)
928.871.6200 (Fax)
928.205.5891 (Cell)

This message is intended only for the use of the Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, please delete the email and inform the sender immediately. Thank you.

From: Victor R. Marshall [mailto:victor@vrmarshall.com]**Sent:** Thursday, November 08, 2012 2:50 PM**To:** Guss.Guarino@usdoj.gov; Stanley M. Pollack; Singer, Arianne, OSE; Richard Cole; Rick Tully; GARY RISLEY; Adam Rankin; Liz Taylor; Justin B. Breen; Gary L. Horner; vrm; Sheri Heying; Shirley Meridith**Subject:** Preliminary depositions on NIIP expenses

NAPI Reports

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NAPI Reports

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Regards,
Victor Marshall

Attachments:

NAPI 08 Audit - 2005.PDF	2.8 MB
NAPI 09 Audit - 2006.PDF	2.7 MB
NAPI 10 O&M Annual Report 2010.pdf	1.4 MB
NAPI 11 O&M Annual Report 2011.pdf	1.8 MB