

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

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

Plaintiff,

v.

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

Defendants.

CV-75-184

**HON. JAMES J. WECHSLER
Presiding Judge**

**SAN JUAN RIVER
ADJUDICATION**

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

NAME OF PARTY: ConocoPhillips, its subsidiaries and affiliates, ConocoPhillips Company, Burlington Resources Oil and Gas Company LP ("ConocoPhillips"), and El Paso Natural Gas Company.

DESCRIPTIVE SUMMARY: ConocoPhillips and El Paso Natural Gas Company's Joint Motion with the San Juan Water Commission to Stay Consideration of Gary L. Horner's Motion on the Applicable Standard for Determination of Federal Reserved Water Rights.

NUMBER OF PAGES: 5

DATE OF FILING: November 26, 2012.

**CONOCOPHILLIPS AND EL PASO NATURAL GAS COMPANY'S JOINT MOTION
WITH THE SAN JUAN WATER COMMISSION TO STAY CONSIDERATION OF
GARY L. HORNER'S MOTION ON THE APPLICABLE STANDARD FOR
DETERMINATION OF FEDERAL RESERVED WATER RIGHTS**

ConocoPhillips and El Paso Natural Gas Company ("EPNG") file this joint motion with the San Juan Water Commission pursuant to Rule 1-007 NMRA to stay consideration of Gary L. Horner's Motion for the Determination of the Applicable Standard for the Determination of Federal Reserved Water Rights ("Horner Motion"). A stay is necessary to allow the non-settling

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parties to evaluate the Settlement Agreement, the Settling Parties' claims, initial discovery responses and document production. ConocoPhillips, EPNG, and the San Juan Water Commission state the following in support of this Motion:

1. The Court has “supervisory control over [its] docket[] and inherent power to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases.” *Lewis v. Samson*, 2001-NMSC-035, ¶ 26, 131 N.M. 317, 35 P.3d 972 (quoting *Pizza Hut, Inc. v. Branch*, 89 N.M. 325, 327-28, 552 P.2d 227, 229-30 (Ct. App. 1976)). It also has discretion to continue consideration of a premature motion for summary judgment. Rule 1-056(F) NMRA; *Diversified Dev. & Inv., Inc. v. Heil*, 119 N.M. 290, 296, 889 P.2d 1212, 1218 (1995) (“Generally, a court should not grant summary judgment before a party has completed discovery, . . . particularly when further factual resolution is essential to determine the central legal issues.”). Requests to stay consideration of summary judgment motions when key facts are not finally decided should be treated liberally. *Azar v. Prudential Ins. Co. of Am.*, 2003-NMCA-062, ¶¶ 83-84, 133 N.M. 669, 68 P.3d 909 (reversing partial summary judgment where the facts were not sufficiently developed).

2. The Horner Motion, filed on November 8, 2012, seeks “an order establishing the standard by which federal reserved water rights for Indian Tribes should be determined” and that seeks to limit the federal reserved rights for the Navajo Nation “to the minimal needs of the Tribe to fulfill the original primary purposes for which the reservation was created[.]” See Horner Motion at 2.

3. The Horner Motion raises substantive issues of fact and law central to this proceeding that require discovery, which is ongoing. Because the Horner Motion seeks to obtain

declaratory judgment on the issue of the determination of federal reserved water rights, it is a motion pursuant to Rule 1-056 NMRA, and is premature at this stage of discovery.

4. Discovery has just started in this proceeding. ConocoPhillips and EPNG and other Non-Settling Parties are still evaluating the Settling Parties' initial discovery responses and document productions, as well as the terms of the Settlement Agreement, the provisions of the Proposed Decrees, and the Settling Parties' claims. This work is necessary to understand the nature of the Navajo Nation's claims and the Settling Parties' theory in support of the Settlement Agreement and their motion to approve the proposed decrees.

5. As discovery has only recently commenced, the Non-Settling Parties are still actively undertaking discovery to address these issues, and the issues raised in the Horner Motion. These issues, including those raised in the Horner Motion, will require briefing *after* the Parties have had an opportunity to undertake discovery to address them.

6. The Horner Motion is premature, therefore, until the claims of the Navajo Nation and Settling Parties can be evaluated in light of full discovery on these issues. Neither the Court nor the parties to this proceeding are prepared to properly address this issue at this early stage of discovery when the Settling Parties' theory of the Navajo Nation's claims remain uncertain. Only after discovery is complete, when the claims and theories have been fully evaluated, will this motion be ripe for consideration.

7. Accordingly, consideration of this issue should be stayed until the Non-Settling Parties have had sufficient time to evaluate the Settling Parties' claims, the provisions of the Settlement Agreement and Proposed Decrees, and the documents and technical reports produced in support thereof.

8. Bloomfield Schools, the Cities of Aztec and Bloomfield, and the Marshall Interests (San Juan Agricultural Water Users Association, Hammond Conservancy District, Bloomfield Irrigation District, various ditches and various members thereof) concur in this Motion. The Jicarilla Apache Nation, Albuquerque Bernalillo County Water Utility Authority, and the City of Española do not oppose the Motion. The Navajo Nation and the State of New Mexico concur in the relief sought, as similarly requested in the *Settling Parties' Request for Clarification and Motion for Extension of Time to Reply to the Horner Motion* filed November 21, 2012. Gary Horner opposes this Motion.

WHEREFORE, ConocoPhillips, EPNG, and the San Juan Water Commission respectfully request that the Court stay briefing and consideration of the Horner Motion until after the close of discovery on March 1, 2013. If the Court declines to grant this Motion, however, ConocoPhillips, EPNG, and the San Juan Water Commission request that the Parties to this proceeding have twenty days from the date of an order denying this motion within which to respond to the Horner Motion.

Respectfully Submitted,

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ATTORNEYS FOR SAN JUAN WATER
COMMISSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all parties via email transmission by emailing to wrnavajointerse@nmcourts.gov this 26th day of November 2012.



Adam G. Rankin

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