

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2012 DEC 27 AM 9:44

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

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

CV-75-184

Plaintiff

HON. JAMES J. WECHSLER
Presiding Judge

vs.

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

SAN JUAN RIVER
ADJUDICATION

Defendants

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION

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

Defendant-Intervenors

NAME OF PARTY FILING THE PRESENT DOCUMENT: The United States of America.
DESCRIPTIVE SUMMARY: Pursuant to the Court's Order of Nov. 16, 2012, the United States provides notice of a discovery dispute concerning the *Joint Discovery About Other Water Claims by the United States* served upon the United States by clients represented by Victor Marshall.
NUMBER OF PAGES: 3
DATE OF FILING: Dec. 26, 2012

THE UNITED STATES' NOTICE OF DISCOVERY DISPUTE

Parties represented by Victor R. Marshall & Assocs., P.C. have served the United States with *Joint Discovery About Other Water Claims by the United States* ("Other Claims Discovery"). The Other Claims Discovery consists of ten (10) interrogatories and a related Request for Production that seeks information regarding water rights claims the United States has made, or may make, on behalf of federal entities unrelated to the Navajo Nation as well as

information regarding the United States' potential exercise of regulatory "rights or duties or obligations" throughout the entire Colorado River Basin.

Pursuant to the Court's Order of November 19, 2012, the United States provides notice that the parties have a dispute regarding the scope and relevance of the Other Claims Discovery. In an effort to minimize the scope of the dispute, the United States has agreed to provide responsive documents from within the San Juan River Basin in New Mexico for five (5) of the interrogatories, notwithstanding the United States' objection that the material is irrelevant and outside the bounds of discovery as defined by this Court.

Counsel for the United States spoke with Mr. Marshall in an effort to resolve, or further limit the scope of the dispute, but was unable to do so. Mr. Marshall's summary of that conversation is included in the e-mail exchange attached as Exhibit 1.¹ Because Mr. Marshall was unwilling to limit the scope of the Other Claims Discovery, the United States will be filing a Motion for Protective Order seeking (1) confirmation that the United States obligation in responding to the Other Claims Discovery is limited to providing information located within the San Juan River Basin in New Mexico and (2) to quash Interrogatories 6 – 10, which generally seek irrelevant information relating to the United States potential exercise of its regulatory authority throughout the Colorado River Basin.

The parties have agreed that an immediate telephonic hearing is not necessary. The United States requests that the United States' Motion for Protective Order be heard at the Discovery Conference set for January 9 or at the first date thereafter that is mutually convenient for the Court and the parties.

¹ Mr. Marshall's statement regarding the United States' willingness to respond to Interrogatories Nos. 1 – 5 omits the caveat that the United States is only willing to provide responsive material from within the San Juan River Basin in New Mexico.

DATED this 26th day of December, 2012.

Respectfully Submitted,

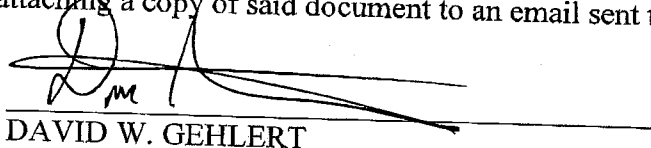
UNITED STATES OF AMERICA



DAVID W. GEHLERT
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of December, 2012, a true and correct copy of the forgoing was served on all parties by attaching a copy of said document to an email sent to wnavajointerse@nmcourts.gov.


DAVID W. GEHLERT

Gehlert, David (ENRD)

From: Victor R. Marshall [victor@vrmmarshall.com]
Sent: Wednesday, December 26, 2012 12:33 PM
To: Victor R. Marshall
Cc: Gehlert, David (ENRD); Sheri Heying; Shirley Meridith; Jolene McCaleb; Richard Cole; Liz Taylor; Adam Rankin; GARY RISLEY; Gary L. Horner; Rick Tully; Jay Stein; Victor Marshall
Subject: Re: Joint Discovery About Other Water Claims by the United States

Dear Mr. Gehlert -

This is to confirm our telephone conversation on 12/26 concerning the discovery about other US water claims.

-The US will answer interrogatories 1 through 5, although it considers them irrelevant, because they can be answered readily.

The US objects to interrogatory number 6, which asked the US to identify any other claims by the US which might affect water flows in the San Juan River basin. The US deems this topic to be "irrelevant". Our view is that this is highly relevant and clearly discoverable, because such claims by the US affect the amount of water that is available for all the other users on the San Juan River.

- The US objects to interrogatory 6 through 9 as entirely irrelevant and beyond the scope of allowable discovery. As I explained to you, what happens elsewhere on the Colorado River system necessarily affects the amount of water available to New Mexico as its share of the entire Colorado River system. As you know, the Colorado River compact obligates the upper basin (including New Mexico) to deliver 7.5 million acre-feet to the lower basin annually, averaged over the last 10 years. The upper basin compact gives New Mexico a percentage share of the Colorado River system water available after the mandated deliveries are made to the lower basin. Therefore, any water shortage anywhere in the upper basin affects the amount of water New Mexico is entitled to take from the San Juan River. Drought anywhere in the Colorado basin reduces the surplus over 7.5 million acre-feet, and hence the amount available to New Mexico. Likewise, a priority claim by the US to any part of the Colorado River system also affects New Mexico.

You basically agreed that the 2 compacts affect the amount of water that is available from the San Juan River for use in New Mexico, but you nevertheless deemed the subject to be "irrelevant".

Notwithstanding your objection, I am asking the United States specifically to provide us with Internet links that will show the water accountings (1) between the upper and lower basins under the Colorado River compact, and (2) between the upper basin states under the upper basin compact. You said that you did not know where they were, but you thought they were available on the web. As part of our discovery, notwithstanding your objections, we are asking the US to provide at least that information.

You will file in your objections by December 30, which is the deadline. It is problematic whether this can be heard on January 9, because I haven't seen your objections yet. And I can tell that I need to write a major brief on these critical issues. Furthermore I don't know where I am going to be on January 9. You said that you wanted to come to Santa Fe for the arguments, and I am agreeable to scheduling a another date for you to come to Santa Fe or to appear by telephone or video link.

Regards,
Victor Marshall

On 12/26/2012 10:12 AM, Victor R. Marshall wrote:

David -

I just called & left a voicemail for you. Please call me to discuss this discovery. 505-332-9400 or my cell 505-250-7718.

Thanks

Victor Marshall

On 12/20/2012 5:31 PM, Gehlert, David (ENRD) wrote:

Thanks for letting me know. Either day will be fine. Dave

From: Victor R. Marshall [<mailto:victor@vrmarshall.com>]

Sent: Thursday, December 20, 2012 5:26 PM

To: Gehlert, David (ENRD)

Cc: Guarino, Guss (ENRD); Umshler, Sue; Victor Marshall; Shirley Meridith

Subject: Re: Joint Discovery About Other Water Claims by the United States

I'm preparing for a hearing tomorrow afternoon. Will try to respond by 12/24 or 12/26.

Regards,

Victor Marshall

On 12/20/2012 5:12 PM, Gehlert, David (ENRD) wrote:

Mr. Marshall,

I am contacting you pursuant to Paragraph 3 of the Court's November 19, 2012 Corrected Order which sets a procedure for addressing discovery disputes. I believe we have a discovery dispute regarding the *Joint Discovery About Other Water Claims By the United States* you filed on Nov. 30, 2012. In our view, all of your Interrogatories which seek information from outside the San Juan River Basin in New Mexico are overly broad, and your Interrogatories Nos. 6 – 9 are improper because they seek irrelevant information and/or would be unduly burdensome to answer.

Please let me know if we may resolve all or part of this dispute by agreeing that (1) all responses will be limited to the San Juan River Basin in New Mexico or (2) Interrogatories 6-9 will be withdrawn. If we cannot resolve this dispute, I will file a Motion for Protective Order in lieu of responding to those Interrogatories.

If a Motion is filed, I would like to request that the Court hear it at the January 9 Discovery Conference. However, if you prefer to have it heard on at the February 4 Discovery Conference, I am amenable to that as well.

Thank you for our cooperation in this matter. I look forward to your response,

David Gehlert
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