

< 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,

D-1116-CV-75-184  
HON. JAMES J. WECHSLER  
Presiding Judge

vs.

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

SAN JUAN RIVER  
GENERAL STREAM  
ADJUDICATION

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

NAME OF PARTY: The Navajo Nation.

DESCRIPTIVE SUMMARY: The Navajo Nation replies to the *Response to Navajo Nation's Notice of Discovery Dispute with Community Ditch Defendants*, filed by the Community Ditch Defendants, February 19, 2013.

NUMBER OF PAGES: 4, including Certificate of Service.

DATE OF FILING: Fax-filed on February 25, 2013.

**THE NAVAJO NATION'S REPLY TO COMMUNITY DITCH DEFENDANTS**

The Navajo Nation submits its reply to the *Response to Navajo Nation's Notice of Discovery Dispute with Community Ditch Defendants* (filed Feb. 19, 2013) ("Ditch Response"). The subject of this discovery dispute is simple – the Navajo Nation is attempting to discern the identity of the clients that Mr. Marshall typically refers to as the "Community Ditch Defendants" and the Nation seeks the verification of answers to interrogatories filed by Mr. Marshall on behalf of each of his clients.

On November 13, 2012, Mr. Marshall, without verification as required by Rule 1-033(C)(2), filed *Responses by Community Ditch Defendant-Counterclaimants to Navajo Nation's Discovery*. The Navajo Nation subsequently requested verification of the responses

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and, on January 10, 2013, Mr. Marshall filed a pleading styled *Verification*, which was signed by Mr. Jim Rogers. The *Verification* does not identify the specific interrogatory answers to which Mr. Rogers' verification applied, the capacity in which Mr. Rogers was verifying, or on whose behalf, other than his own, Mr. Rogers was verifying. The Navajo Nation filed its *Notice of Discovery Dispute with Community Ditch Defendants* both to determine the identity of Mr. Marshall's clients and to secure verification of the objections to the water rights settlement that were asserted in the *Answer, Objections and Counterclaim by Community Ditch Defendant-Counterclaimants* filed on October 19, 2012 and the *Responses by Community Ditch Defendant-Counterclaimants to Navajo Nation's Discovery* on November 3, 2012, both of which were signed by Mr. Marshall without verification.

The Ditch Response recites a litany of reasons why the Navajo Nation's Notice of Discovery Dispute is "not well-taken." However, nothing in the Ditch Response addresses the two fundamental issues – (1) Mr. Marshall has never identified who he represents in this *Inter Se* proceeding, despite the Court's Order of November 30, 2011, directing him to do so; and (2) the responses to the discovery were not verified by each of the clients Mr. Marshall purports to represent, despite the requirement of Rule 1-033(C)(2) and the Court's Order of November 30, 2012, affirming the Rule's applicability in this proceeding. At the heart of the Ditch Response is the contention that Mr. Jim Rogers, who signed the *Verification* in his individual capacity can somehow provide sufficient verification on behalf of the twenty five (25) ditch organizations Mr. Marshall filed appearances for on September 15, 2011 in addition to the indeterminate number of unidentified individuals who Mr. Marshall asserts have retained him as their attorney.

Subsequent to the filing of the Ditch Response, Mr. Marshall filed *Additional Verifications of Discovery Responses* on February 22, 2013 ("Additional Verifications"). The

Additional Verifications consist of form verifications signed by forty-two (42) individuals, none of which are signed in an official capacity on behalf of any of the twenty five (25) "Community Ditch" organizations Mr. Marshall purports to represent. Therefore, despite the efforts of the Navajo Nation to obtain a definitive list from Mr. Marshall of the clients he represents and to obtain their verification, only forty-three (43) individuals have been identified and provided verification.

The Navajo Nation respectfully requests that the Court restrict the further participation in the Navajo *Inter Se* to the forty three (43) individuals who provided verification plus any additional individuals or organizations who file an appropriate verification on or before the close of discovery, March 1, 2013.

Respectfully submitted this 25<sup>th</sup> day of February, 2013.

NAVAJO NATION



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Stanley M. Pollack  
M. Kathryn Hoover  
Navajo Nation Department of Justice  
Post Office Drawer 2010  
Window Rock, Navajo Nation (AZ) 86515  
(928) 871-7510

Samuel D. Gollis  
Samuel D. Gollis, Attorney at Law, P.C.  
901 Rio Grande Boulevard, Suite F-144  
Albuquerque, New Mexico 87104  
(505) 883-4696

*Attorneys for the Navajo Nation*

### CERTIFICATE OF SERVICE

I certify that on this 25th day of February, 2013, an electronic version of *The Nation's Response to Community Ditch Defendants* was served by electronic mail to: [wrvnavajointerse@nmcourts.gov](mailto:wrvnavajointerse@nmcourts.gov) and [aoccai@nmcourts.gov](mailto:aoccai@nmcourts.gov) and to the following distribution list.



Stanley M. Pollack

Name	Representing	e-mail
Seth R. Fullerton	ABCWUA & City of Espanola	srfullerton@newmexicowaterlaw.com
Jay F. Stein	ABCWUA & City of Espanola	jfstein@newmexicowaterlaw.com
Thomas C. Bird	Cities of Aztec & Bloomfield	tcb@keleher-law.com
Richard B. Cole	Cities of Aztec & Bloomfield	rbc@keleher-law.com
Cassandra R. Malone	Cities of Aztec & Bloomfield	crm@keleher-law.com
Richard T. Tully	B-Square Ranch	tullylawfirm@qwestoffice.net
Maria O'Brien	BHP Navajo Coal and Enterprise Field Services	mobrien@modrall.com
Christina C. Sheehan	BHP Navajo Coal and Enterprise Field Services	ccs@modrall.com
Rebecca Dempsey	Bloomfield Schools	rdempsey@cuddymccarthy.com
Victor R. Marshall	Community Ditch Defendants	victor@vrmarshall.com
Adam G. Rankin	Conoco Phillips & EPNG	agrarkin@hollandhart.com
Mark Sheridan	Conoco Phillips & EPNG	msheridan@hollandhart.com
James C. Brockmann	City of Gallup	jbrockmann@newmexicowaterlaw.com
Kyle Harwood	HMC Leasing	kyle@harwood-consulting.com
Herbert A. Becker	Jicarilla Apache Nation	herb.becker@jaassociatesnm.com
Natasha Cuylear	Jicarilla Apache Nation	natasha.cuylear@jaassociatesnm.com
Gary Risley	La Plata Acequia Assn.	gary@risleylaw.net
Priscilla A. Shannon	McCarty Trust	pshannonlaw@yahoo.com
Arianne Singer	State of New Mexico	arianne.singer@state.nm.us
John W. Utton	State of New Mexico	jwu@sheehansheehan.com
Robert E. Oxford	Pro Se	bjoxford@yahoo.com
Gary L. Horner	Pro Se	ghorner@zianet.com
Jolene L. McCaleb	San Juan Water Commission	jmccaleb@taylormccaleb.com
Liz N. Taylor	San Juan Water Commission	etaylor@taylormccaleb.com
David Gehlert	United States	david.gehlert@usdoj.gov
Andrew J. "Guss" Guarino	United States	guss.guarino@usdoj.gov
Leander Bergen	Ute Mountain Ute Tribe	lbergen@nativeamericanlawyers.com
Celene Hawkins	Ute Mountain Ute Tribe	chawkins@utemountain.org
Peter Ortego	Ute Mountain Ute Tribe	portego@utemountain.org