

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

THE UNITED STATES OF AMERICA et al.,

Defendants.

D-1116-CV-75-184
Honorable James J. Wechsler
Presiding Judge

San Juan River Adjudication

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

DESCRIPTIVE SUMMARY: Defendants B Square Ranch, LLC et al.'s Motion for Extension of Time

NAME OF PARTY: Defendants B Square Ranch, LLC et al.

NUMBER OF PAGES: 8

DATE OF FILING: March 5, 2013 by electronic service and March 6, 2013 with Court Clerk.

DEFENDANTS B SQUARE RANCH, LLC ET AL.'s MOTION FOR EXTENSION OF TIME TO CLOSE DISCOVERY AND EXTEND DEADLINES

Defendants B Square Ranch, LLC et al. move for extensions of time for: (i) discovery to close, (ii) the filing of dispositive motions, and (iii) other deadlines pertaining to the above-styled action.

At the present time the following deadlines are in effect concerning this action:

March 1, 2013
March 15, 2013

March 15, 2013
April 10, 2013
April 24, 2013

Close of discovery
Settling Parties' memorandum in support of Settlement Agreement
Non-Settling Parties' dispositive motions
Responses to dispositive motions
Replies to responses to dispositive motions

Week of May 6, 2013	Hearing on dispositive motions
Week of June 10, 2013	Decision on need for evidentiary hearing
June 24, 2013	Submittal of witness lists and exchange of exhibits
June 27, 2013	Parties submit proposed pretrial order
July 2, 2013	Pre-hearing conference
July 22, 2013	Parties submit proposed pre-hearing findings of fact and conclusions of law
Weeks of July 29, August 5 and August 12, 2013	Evidentiary hearing

Defendants B Square Ranch, LLC et al. hereby move for extensions of time of 120 days for each of the above deadlines.

As grounds for this Motion for Extension of Time, Defendants B Square Ranch, LLC et al. state as follows:

BACKGROUND

As applicable and appropriate at the present time, Defendants B Square Ranch, LLC et al. incorporate and adopt by reference the motions for extension of time previously filed in this action by the Cities of Aztec and Bloomfield on September 13, 2012, the San Juan Water Commission filed September 14, 2012, La Plata Acequia Association et al. on September 21, 2012 and Robert Oxford on September 24, 2012. The Community Ditch Defendants, Defendants B Square Ranch, LLC et al., Conoco Phillips Company and El Paso Natural Gas Company joined in some, if not all, of these motions for extension of time.

After reviewing these September, 2012 motions for extension of time and the responses thereto by the Settling Parties as well as hearing arguments of the Settling Parties and Non-Settling Parties at different hearings, the Court entered several orders that eventually established the above-described deadlines.

In the last few months Settling Parties and Non-Settling Parties have been scheduling depositions of witnesses, supplementing their witness lists, and producing additional documents in order to meet the discovery deadline of March 1, 2013.

San Juan Water Commission and Conoco Phillips/El Paso Natural Gas Company scheduled and were going to conduct the depositions of Settling Parties' expert witnesses before the discovery deadline. A few days before the depositions of Settling Parties' expert witnesses were to be conducted, San Juan Water Commission and Conoco Phillips/El Paso Natural Gas Company and La Plata Acequia Association et al. entered into settlement agreements with Settling Parties, primarily the State of New Mexico ex. rel. State Engineer.

The remaining Non-Settling Parties and, in particular, Community Ditch Defendants, tried to assume the work being pursued by San Juan Water Commission and Conoco Phillips/El Paso Natural Gas Company, e.g., schedule and conduct the depositions of Settling Parties, supplement the witness lists, review the documents that were previously produced by Settling Parties, and review the current continued production of documents by Settling Parties.

The discovery closed in the above-styled action effective March 1, 2013. However, it is imperative the remaining Non-Settling Parties have additional time to complete discovery, and prepare and file their dispositive motions after completing discovery. Further, contrary to the positions of Settling Parties and their counsel, the remaining Non-Settling Parties do not have unlimited access to resources, personnel and counsel to complete these tasks.

AUTHORITY

Access to the courts encompasses the ability of Non-Settling Parties to resolve these Non-Settling Parties' legal claims. Trujillo v. City of Albuquerque, 125 N.M. 721, 965 P. 2d 305, 1998-NMSC 031. In order to comply with due process and equal protection, when legislation or a settlement agreement attempts to impair a vested property right, notice and opportunity to respond must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford these parties the opportunity to present their objections. USCA Const. Amend. 14, Section 1; Const. Art. 2 Section 18, Pierce v. State, 121 N.M. 212, 910 P.2d 288, 1996 NMSC 001.

In determining whether an individual's procedural due process rights are violated, the Tenth Circuit Court of Appeals considers whether a party possesses a protected property right or interest to which due process protections are applicable; whether a party was afforded an appropriate level of process; and whether the State of New Mexico deprived a person of property unless fair procedures were used by the court in making a decision. USCA Const. Amend. 14, Copelin-Brown v. New Mexico State Personnel Board, 399 F.3d 1248 C.A. 10 (NM) 2005.

Requirements of due process are not technical, and no particular procedure is necessary for protecting substantial rights. The circumstances of each case dictate the requirements of due process and the principal considerations in the case are the integrity of the fact-finding process and the basic fairness of the decision. United

Nuclear Corp. v. General Atomic Co., 93 N.M. 105, 597 P.2d 290 (1979), cert. denied, 100 St. Ct. 222, 444 U.S. 911, 62 L.Ed.2d 145.

Due process requires a timely notice reasonably calculated to inform a party of the subject matter and the issues involved in the proceeding; a reasonable opportunity to refute or defend the claims; a reasonable opportunity to confront and cross-examine adverse witnesses; an opportunity to present evidence on the party's behalf; a hearing before an impartial decision maker; decision based on the record; and statement for reasons for the decision. U.S.C.A. Const. Amend. 14; In the Matter of Pamela A.G., 139 N.M. 459, 134 P.3d 746, 2006 NMSC 019; and Board of Education of Carlsbad Municipal Schools v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994).

Denial of right to conduct discovery can result in a denial of procedural due process of law. U.S.C.A. Const. Amends. 5 and 14; New Mexico Industrial Energy Consumers v. New Mexico Public Regulation Commission, 104 N.M. 565, 725 P. 2d 244 (1986).

ARGUMENT

As previously stated in pleadings and documents filed by Defendants B Square Ranch, LLC et al. in the above-styled action, it should be of **no surprise** to Settling Parties and the Court that Defendants B Square Ranch, LLC et al. and the other Non-Settling Parties are not and have not be able to adequately respond to the discovery requests by the Settling Parties, to identify witnesses and exhibits, and to comply with the scheduling orders issued by the Court.

As stated in the previous motions for extension by Non-Settling Parties, Defendants B Square Ranch et al. and the Non-Settling Parties do not and have not

had sufficient time to review the documents originally, subsequently and currently being produced by the Settling Parties. Defendants B Square Ranch et al. and the remaining Non-Settling Parties have not been able to complete sufficient discovery to be able to adequately prepare dispositive motions, and adequately prepare for the evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. only became involved in the above-styled action through the Entry of Appearance by its counsel on October 19, 2011. Defendants B Square Ranch, LLC et al. and their counsel, unlike the Settling Parties, cannot devote full time and unlimited funds to the above-styled law suit.

As strongly recommended by the Court at several hearings as well as being ordered by the Court in the above-styled action, Defendants B Square Ranch, LLC et al. have been meeting, conversing and cooperating with other Non-Settling Parties' counsel; they have joined in certain Non-Settling Parties' motions; and they have coordinated with other Non-Settling Parties on discovery matters. In order to be more efficient and effective with time, fees, costs and expenses, Defendants B Square Ranch, LLC et al. have adopted and incorporated by reference many of the responses, answers, legal arguments and citations of other Non-Settling Parties to the discovery requests of the Settling Parties.

The current scheduling orders entered in the above-styled action are **denying fundamental due process** to Defendants B Square Ranch et al. and the remaining Non-Settling Parties to: (i) fully protect their rights and interests in the above-styled action; (ii) comply with the orders of the Court; (iii) examine the discovery that has been provided by Settling Parties; (iv) request additional discovery from the Settling Parties;

(v) adequately object, respond or answer the current discovery requests of the Settling Parties; (vi) fully develop objections or responses to the proposed Settlement Agreement; (vii) make a knowledgeable and informed decision whether to approve or oppose the proposed Settlement Agreement; (viii) take over, schedule and attempt to complete the work that was being performed by the Non-Settling Parties who entered into settlement agreements just before the March 1, 2013 discovery deadline within the last few weeks; (ix) conduct depositions of Settling Parties' witnesses; (x) review the voluminous documents previously produced by the Settling Parties; (xi) overcome the obstacles stated by other Non-Settling Parties in reviewing the documents produced by Settling Parties; (xii) satisfy onerous, unnecessary and unreasonable requirements and procedures to review and copy voluminous documents at repositories established by Settling Parties in numerous locations; and (xiii) prepare dispositive motions within a reasonable time after discovery is completed.

Defendants B Square Ranch, LLC et al. incorporate herein by reference the statements, arguments and authority cited by Non-Settling Parties contained in the Motions for Extension of Time filed by these Non-Settling Parties in the above-styled action on September 11, 2012 (Cities of Aztec and Bloomfield), September 14, 2012 (San Juan Water Commission), September 21, 2012 (La Plata Acequia Association et al.) and September 24, 2012 (Robert Oxford) when these statements, arguments and authority are currently applicable and appropriate.

Counsel for Settling Parties, counsel for Non-Settling Parties and Non-Settling Parties appearing pro se were notified of this Motion for Extension for their consent or objection.

The following parties consented to or joined this Motion:

La Plata Acequia Association et al., Stephen McCarty,
McCarty Trust, Gary Horner, Community Ditch Defendants,
City of Aztec and City of Bloomfield

The following parties objected to this Motion:

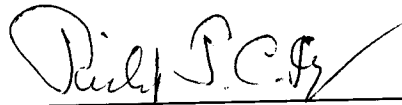
Jicarilla Apache Tribe, Navajo Nation,
Ute Mountain Tribe, State of New Mexico
and United States of America

The following parties take no position on this Motion:

ConocoPhillips Company, El Paso Natural Gas Company,
San Juan Water Commission, Albuquerque Bernalillo
County Water Utility Authority and City of Espanola

WHEREFORE, Defendants B Square Ranch, LLC et al. pray for the entry of an appropriate order granting the above Motion for Extension of Time for (i) discovery to close, (ii) the filing of dispositive motions, and (iii) other deadlines.

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