

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 MAR 13 AM 9:52

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

STATE OF NEW MEXICO, *ex rel.*
State Engineer,

Plaintiff,

vs.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

JICARILLA APACHE TRIBE and the

NAVAJO NATION,

Defendant-Intervenor.

CV 75-184
Hon. James J. Wechsler
Presiding Judge

AB-07-1
Claims of the Navajo
Nation

**ORDER REGARDING CLIENT IDENTIFICATION
AND VERIFICATIONS OF INTERROGATORIES**

This matter comes before the Court on the Navajo Nation's Notice of Discovery Dispute with the Community Ditch Defendants (February 1, 2013), the Community Ditch Defendants' Response (February 19, 2013) and the Navajo Nation's Reply to Community Ditch Defendants (February 25, 2013), and discussion at a March 8, 2013 telephonic conference. The Navajo Nation raises questions regarding the identity of clients represented by the law firm of Victor Marshall and the verifications for interrogatory responses filed by the Marshall firm.¹

Identity of Clients

When this *inter se* proceeding for the determination of the water rights claims of the Navajo Nation was initiated, the Marshall firm entered an appearance as counsel for twenty four irrigation ditches and their members. Entry of Appearance for Attached List of Parties, September 15, 2011. Following a number of motions to strike and objections to that entry of appearance, the Court issued its Memorandum Opinion and Order Granting Motions to Strike on November 30, 2011. Among other directives, the Court permitted the Marshall firm to file

¹ The discovery dispute was resolved by Order Regarding Notice of Impasse with the Navajo Nation (February 25, 2013).

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entries of appearance and/or notices of intent to participate on behalf of persons or entities, regardless of whether they were previously included in the lists previously filed. Order at 22.

On December 12, 2011, the Marshall firm filed a Notice of Current Representation in Light of Order Granting Motions to Strike, which stated that at the time of filing, the Marshall firm represented the twenty four ditches listed in the September 15, 2011 entry of appearance and persons who timely filed notices of intent to participate and listed the firm by name. Between October 7, 2011 and January 18, 2013, Victor Marshall filed five amendments to the September 15, 2011 entry of appearance, each of which listed individuals or entities that had notified his firm to be deleted from the firm's entry of appearance.

Accordingly, the Court concludes that the Marshall firm's identification of clients is complete. The Navajo Nation can easily ascertain the Marshall firm's clients from the existing record.

Verifications

The Community Ditch Defendants responded to the Navajo Nation's November 12, 2012 Discovery Requests on November 13, 2012. The discovery was directed to each person or entity that had filed a notice of intent to participate and was represented by the Marshall firm. The responses and objections were signed by Victor Marshall. None of the interrogatory answers was verified with the responses pursuant to Rule 1-033(C)(1) NMRA: "Each interrogatory shall be answered separately and fully in writing under oath ... " and (C)(2): The answers are to be signed by the person making them and the objections signed by the attorney making them." See, *Lackey v. Mesa Petroleum Company*, 90 N.M. 65, 66, 559 P.2d 1192 (Ct. App. 1976)(stating that answers to interrogatories must be made under oath).

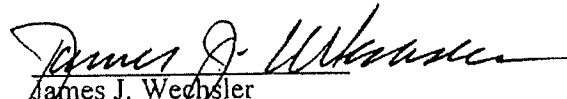
Subsequently, a verification by Jim Rogers was filed January 10, 2013, and a document titled Additional Verifications of Discovery Responses was filed February 25, 2013. The latter includes forty two verifications signed by individuals. The verifications, however, do not include information about whether the individual was acting on his own behalf or in a representative

capacity for one of the entities represented by the Marshall firm. The Navajo Nation is entitled to this information.

The Navajo Nation additionally requests that the Court limit further participation in this proceeding to those forty three individuals who provided verifications. The Court denies this request without prejudice to the Navajo Nation to renew the request upon a showing of specific prejudice to its ability to present its position in this proceeding that would justify such relief.

IT IS ORDERED, THEREFORE, that within ten days of the date of this Order, the Marshall firm shall file a document that lists each of the individuals who signed a verification and a statement identifying the capacity of the individual to provide the verification; i.e., whether the individual signed in his individual capacity and/or as a representative of an entity, and if so, the representative capacity of the individual.

IT IS SO ORDERED.


James J. Wechsler
Presiding Judge