

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

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

Plaintiff,

AB-07-1
Claims of Navajo Nation

vs.

No. CV 75-184
Honorable James J. Wechsler
Presiding Judge

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

Defendants.

DESCRIPTIVE SUMMARY: Community Ditches move for reconsideration of discovery about evaporation from Colorado River reservoirs in other states. This evaporation reduces the amount available from the San Juan River in New Mexico, contrary to the statements of counsel for the settling parties.

NUMBER OF PAGES: 3 +6 pages of exhibits

DATE OF FILING: April 1, 2013

**COMMUNITY DITCH MOTION FOR RECONSIDERATION
ABOUT EVAPORATION FROM COLORADO RIVER RESERVOIRS**

The Community Ditch Defendants respectfully move the court to reconsider its decision denying discovery into the evaporation from Colorado River reservoirs outside of the State of New Mexico. The court's ruling was based on statements by counsel for the plaintiff settling parties that evaporation from these reservoirs was irrelevant because it does not affect the water supply available from the San Juan River in New Mexico. Accordingly the court allowed discovery into evaporation from Navajo Reservoir, but not from other reservoirs on the Colorado River system, most of which are operated by the BOR.

JUDGE

WEBSITE

SCANNED

D✓

The representations made by counsel for the settling parties were wrong.

Evaporation from reservoirs in other states directly reduces the amount of water which can be consumed from the San Juan River in New Mexico.

Attached and incorporated as Exhibit 1 to this motion are pages from Bureau of Reclamation, Provisional Upper Colorado River Basin Consumptive Uses and Losses Report 2006-2010 (revised August 2012). These pages explain that the Upper Colorado River Commission decides which states are charged with the share of evaporation from major reservoirs like Lake Powell (located in Utah and Arizona) and Flaming Gorge (located in Utah and Wyoming). In 2010 evaporation from these reservoirs totaled 531,100 acre feet, meaning that New Mexico was charged with 11.25% , or 59,749 acre-feet. This amount is much greater than the evaporation from Navajo Reservoir. [Note: Exhibit 1 was obtained through a request under the Inspection of Public Records Act, not through discovery in this case.]

Evaporation from Lake Nighthorse (also known as Ridges Basin Reservoir) is also charged to New Mexico, even though Lake Nighthorse is located in Colorado. Nighthorse evaporation reduces the amount of water which is physically and legally available for use within New Mexico. See Exhibit 2 attached and incorporated hereto – pages 19 to 21 of the proposed settlement agreement signed by Bill Richardson.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2013, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: wnavajointerse@nmcourts.gov and to the filing list referred to in the Notice of Amended Service List filed February 25, 2013.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.

RECLAMATION

Managing Water in the West

PROVISIONAL Upper Colorado River Basin Consumptive Uses and Losses Report 2006-2010

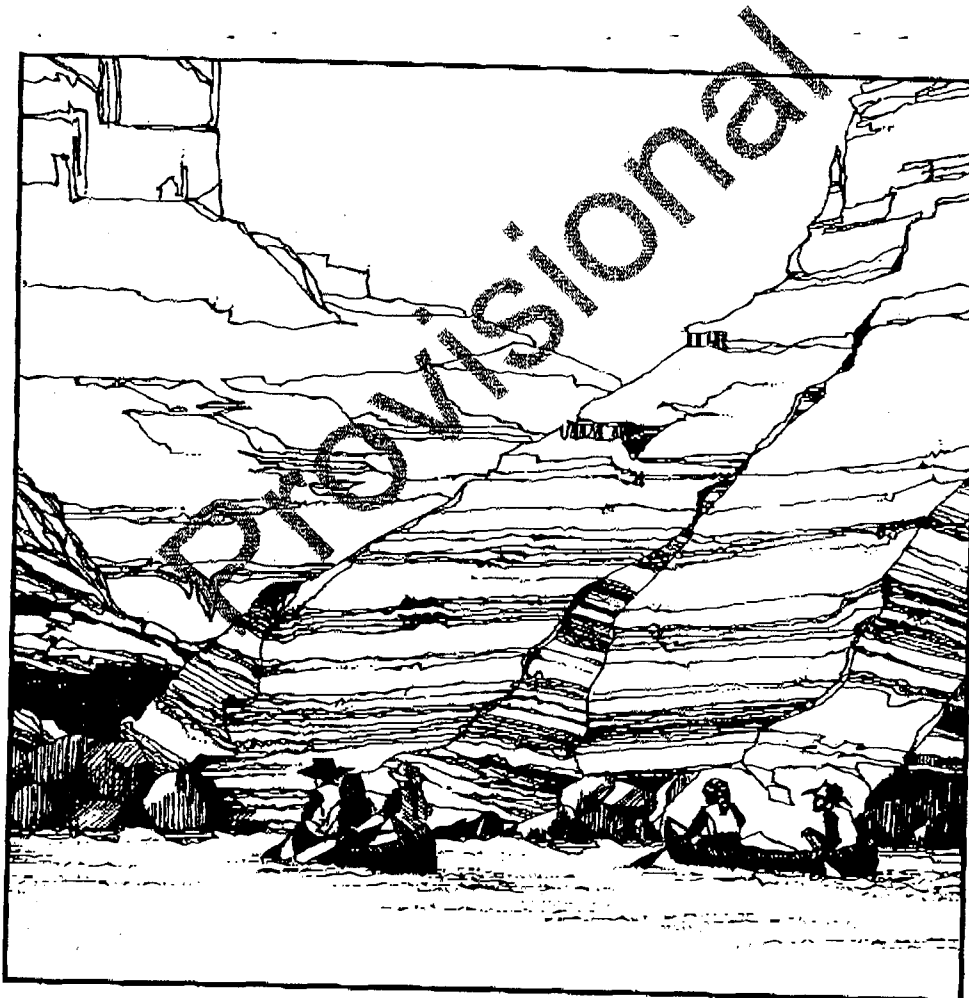


EXHIBIT
1



U.S. Department of the Interior
Bureau of Reclamation

April 2012
Revised August 2012

As a result of almost continuous studies concerning these problems, adequate production and effluent records are usually available to adequately assess water use.

Trans-basin Diversions

Nearly all the trans-basin diversions both out of and into the Colorado River System were measured and reported by the Geological Survey, or local water commissioners and users. The remainder were estimated on the basis of past records and capacity of facilities. Due to the high degree of measurement, this area of basin consumptive use is considered to be quite accurately determined.

BENEFICIAL CONSUMPTIVE USES AND LOSSES

A summary table of the Upper Colorado River System total annual water uses, 2006 through 2010, by states is shown on page iv. Water use within the selected reporting areas is discussed below.

Upper Colorado River Tributaries

Summaries of estimated annual consumptive uses and losses in the Upper Colorado River Basin for each of the reporting years, broken down by State, reporting area, and type of use are shown in tables UC-2 through UC-6. The subtotals and totals may not add appropriately because totals were computed before rounding all values to 100 acre-feet. Totals were computed before rounding to ensure values reported, including subtotals and totals, are representative of the values utilized for computation of natural flow in the Upper Colorado Basin.

Estimated main stem reservoir evaporation losses shown in table UC-7. Technically these are not all main stem reservoir evaporation losses that participate in the Colorado River Storage Project (CRSP). The Upper Colorado River Committee designates which reservoirs in the CRSP have evaporation losses charged to the State and which have losses charged to the basins. A table of Reservoirs is available here: those to be charged to the basins are bolded. These reservoir evaporation losses amount to about 10 percent of all Upper Basin uses and losses.

Upper Basin consumptive use averaged 4.0 million acre-feet per year for the reporting period 2006 - 2010. Agricultural uses accounted for about 67 percent of the total Upper Basin consumptive uses and losses. Variation in consumptive use during the reporting period was largely due to year-to-year changes in climatic conditions.

Transbasin exports, the second largest Upper Basin use, on the average accounted for 20 percent of Upper Basin total use, showed year by year variation during the reporting period. Water uses for thermal electric power generation averaged 165,800 acre-feet per year, which represents about four percent of consumptive use in the Upper Basin.

Consumptive Uses and Losses

**Table UC-1
Upper Colorado River Basin
Estimated Main Stem Reservoir Evaporation ¹
2006-2010**

Reservoir	Evaporation					Average
	2006	2007	2008	2009	2010	
Flaming Gorge	76.5	76.6	75.3	79.7	78.4	77.3
Blue Mesa	8.8	8.7	8.2	8.8	8.4	8.6
Morrow Point	0.8	0.8	0.8	0.8	0.8	0.8
Lake Powell	357.9	367.0	410.8	443.8	413.4	404.6
TOTAL	444.0	453.0	495.1	533.1	531.0	491.3

¹ Undistributed by States. Evaporation determined using average historical evaporation rates.

Provisional

9.3 Administration for Compact Compliance.

9.3.1 Subject to the provisions of the Partial Final Decree and the Supplemental Partial Final Decree, the Navajo Nation and the United States, acting in its capacity as trustee for the Navajo Nation, agree that the State of New Mexico may administer in priority water rights in the San Juan River Basin in New Mexico, including rights of the Navajo Nation, as may be necessary for New Mexico to comply with its obligations under interstate compacts and other applicable law.

9.3.2 If it is determined that the consumptive use of water in New Mexico from the San Juan River Basin exceeds the State of New Mexico's Upper Colorado River Basin Compact Article III(a) apportionment taking into account salvage of river losses by use and other relevant factors, the Navajo Nation agrees, subject to subparagraphs 9.3.4 and 9.3.5, to not exercise a portion of its depletion rights adjudicated to the Navajo Nation by the Partial Final Decree and the Supplemental Partial Final Decree in an amount, as measured on the San Juan River, not to exceed in any year the lesser of:

- (1) the amount of over-allocation;
- (2) a quantity equal to: (i) 67% of the sum of 13,520 acre-feet per year and ~~the New Mexico share of Lake Nighthorse evaporation~~ plus (ii) an additional one acre-foot for each acre-foot of depletion for those water rights adjudicated as abandoned or forfeited by the Court in the Stream Adjudication or otherwise terminated by



operation of law, or for those rights that may be permanently retired by the State of New Mexico, or for those permits or licenses cancelled by the New Mexico State Engineer, after the effective date of this Agreement; and

- (3) the sum of 13,520 acre-feet per year ~~and the New Mexico share of Lake Nighthorse evaporation~~ reduced by the same percentage shortage that is allocated, if any, to the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project as a result of such over-allocation.

9.3.3 In the event that the Upper Colorado River Commission determines pursuant to Article IV of the Upper Colorado River Basin Compact that the State of New Mexico must curtail its consumptive uses of water for some period of time to allow the Upper Basin to comply with Article III of the Colorado River Compact, the Navajo Nation agrees, subject to subparagraphs 9.3.4 and 9.3.5, to not exercise for said period of time a portion of its depletion rights adjudicated to the Navajo Nation by the Partial Final Decree and the Supplemental Partial Final Decree in an amount, as measured on the San Juan River, not to exceed in any year the lesser of:

- (1) the amount of curtailment required of the State of New Mexico;
- (2) a quantity equal to: (i) 67% of the sum of 13,520 acre-feet per year ~~and the New Mexico share of Lake Nighthorse evaporation~~ plus (ii) an additional one acre-foot for each acre-foot of depletion for

those water rights adjudicated as abandoned or forfeited by the Court in the Stream Adjudication or otherwise terminated by operation of law, or for those rights that may be permanently retired by the State of New Mexico, or for those permits or licenses cancelled by the New Mexico State Engineer, after the effective date of this Agreement; and

- (3) the sum of 13,520 acre-feet per year and ~~the New Mexico share of Lake Navajo's operation~~ reduced by the same percentage shortage that is allocated, if any, to the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project as a result of such curtailment.

9.3.4 For the purpose of determining the quantity referenced in subparagraphs 9.3.2(2) and 9.3.3(2), depletion amounts for rights abandoned, forfeited, terminated or retired, or for permits or licenses cancelled, shall be as quantified by decree, permit or license, or if not so quantified shall be based on the consumptive use for municipal, industrial or commercial uses or on annual consumptive irrigation requirements that are consistent with those provided in the report of Hydrographic Survey approved by the Echo Ditch Decree for irrigation uses, as appropriate. Depletions associated with permits or licenses pursuant to New Mexico State Engineer File Nos. 758, 2472, 2807 and 2875, all cancelled in accordance with subparagraph 4.3.1, shall not be accounted towards the quantity referenced in subparagraphs 9.3.2(2) and 9.3.3(2). Nothing in