

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
AB
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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: The Community Ditch Defendant-Counterclaimants do not seek an adjudication of their water rights in this inter se proceeding, No. AB-07-01. This limited-scope inter se can determine the amounts and priorities of the water rights of Navajo Tribe, not the water rights of any one else.

NUMBER OF PAGES: 4

DATE OF FILING: April 2, 2013

CLARIFICATION BY COMMUNITY DITCH DEFENDANTS-COUNTERCLAIMANTS CONCERNING THE WATER RIGHTS TO BE ADJUDICATED IN THE NAVAJO INTER SE

The Community Ditch Defendants-counterclaimants submit this clarification for the record concerning the water rights to be adjudicated in this Navajo Inter Se proceeding, No. AB-07-1. Clarification is necessary because the Court's Order of February 15, 2013 misapprehends the position of the Community Ditch Defendant-counterclaimants.

At pages 1-2, the Order states the following:

The counterclaim, when read in conjunction with the prayer for relief, requests the Court to disapprove the proposed Settlement Agreement and "proceed to quantify and prioritize the Navajo and United States [sic] claims to the San Juan River, relative to

the community ditch defendant-counterclaimants." The Court construes the latter phrase, "relative to the community ditch defendant-counterclaimants," to mean that the current proceedings should include an adjudication of the Community Ditch Defendants' water rights claims.

This request for inclusion is explained and amplified in the Community Ditch Defendants' response to the State's motion to dismiss. The Community Ditch Defendants read Rule 1-071 to require a "complete *inter se*," or the determination of all objections to all water rights in the system. In other words, all water rights in the system should be adjudicated at this time so the Community Ditch Defendants have the opportunity to demonstrate their water rights claims as well as assert their objections to the Navajo claims.

For the record, the Community Ditch Defendant-counterclaimants do not contend that it is necessary to adjudicate all water rights in the system in this *inter se* proceeding.

Adjudicating all water rights is neither necessary nor possible in this limited-scope *inter se*.

First, the Court has limited the scope of this *inter se* to the water claims of the Navajo Nation. The Court's notice to water users so states.

Second, the Court and the settling parties have structured this case so that the only question for decision at this stage of the *inter se* is whether to disapprove or approve of the proposed settlement in toto, as a package. That is the only question before the Court: yes or no, up or down.

Community Ditch Defendant-counterclaimants contend that the Court must disapprove the proposed settlement because it is legally defective and unsupported by evidence. If the Court disapproves settlement, then the Court has said it must quantify and decree the water rights of the Navajo Nation. To do this, it is not necessary to quantify and adjudicate the water rights of anyone else.

To quantify the Navajo water rights, the Court must adjudicate the amount and priority of each Navajo water right. This is necessary so that other water rights users will know how the Navajo water rights rank relative to their own. To illustrate, suppose hypothetically that the Court were to determine that the Navajo Nation is entitled to 5000 acre-feet of water for the Hogback-Cudei project, with a priority date of 1962. Since the Community Ditch Defendants hold water rights under the 1948 Echo Ditch Decree with priorities going back to the 19th century, the Community Ditch Defendants would know that the Hogback-Cudei rights are subordinate relative to the 1948 Echo Ditch rights.

This does not require an adjudication of all the water rights in the San Juan basin. That task is left for the general adjudication. This *inter se* can only adjudicate the water rights of the Navajo Nation in amount and priority. The adjudication of non-Navajo water rights, whatever they may be, are not within the limited scope of this *inter se*.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
Attorneys for San Juan Agricultural Water Users
Association; Hammond Conservancy District;
Bloomfield Irrigation District; various ditches; and
various members thereof.
12509 Oakland NE
Albuquerque, NM 87122
505-332-9400 / 505-332-3793 FAX

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 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: wrvajointerse@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.