

DISTRICT COURT
SAN JUAN COUNTY NM
FILED *u*

2013 APR -1 PM 3: 59

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

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

Plaintiff,

vs.

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

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler

Presiding Judge

DESCRIPTIVE SUMMARY: Motion to compel the plaintiff-settling parties to respond in good faith to the Request for Admission and Stipulation About Water Units of Measurement, filed on February 11, 2013.

NUMBER OF PAGES: 3 +5 pages of exhibits

DATE OF FILING: April 1, 2013

COMMUNITY DITCH MOTION TO COMPEL PLAINTIFFS TO RESPOND TO REQUEST FOR ADMISSION CONCERNING WATER UNITS OF MEASUREMENT

Pursuant to Rule 1-037, the Community Ditch Defendants move the court to compel each of the three plaintiff settling parties to respond to the Request for Admission and Stipulation About Water Units of Measurement, which was filed on February 11, 2013. *See* Exhibit 1 attached. The request seeks to establish uniform weights and measures and conversion tables to be used by all parties and the court during this proceeding .

0

At one hearing Mr. Pollack told the court that he objected to the request, and said that he would file objections on behalf of the Navajo Nation, and perhaps on behalf of the other settling parties.

Now, the Navajo Nation and the other settling parties have refused to file any responses to the request for admission, on the alleged grounds that the court cut off the pending request for admission in its order of March 15, 2013. *See Exhibit 2.* The court did not intend to cut off responses to discovery that was already pending, well before the new April 1 deadline.

When Mr. Pollack raised this issue, the court indicated at the hearing that requests for admission and stipulation were generally appropriate, and made no ruling against the request.

An agreed admission and stipulation on weights, measurements, and conversion factors for water would save the court and the parties considerable time and money. It would also reduce the possibility of calculation errors, because experience has shown that lawyers generally are not very good at arithmetic.

WHEREFORE, the Community Ditch Defendants respectfully move the court to compel each of the settling parties to respond in good faith to the Request for Admission and Stipulation About Water Units of Measurement. Community Ditch Defendants also request costs and attorneys fees in connection with this motion, because the settling parties are engaged in pure obstructionism on a straightforward issue.

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 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.

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

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

Plaintiff,

vs.

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

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler

Presiding Judge

DESCRIPTIVE SUMMARY: Request for admission and stipulation on water units of measurement for use by the court and the parties.

NUMBER OF PAGES: 3

DATE OF FILING: February 11, 2013

**REQUEST FOR ADMISSION AND STIPULATION
ABOUT WATER UNITS OF MEASUREMENT**

Pursuant to Rule 1-036, the Community Ditch Defendant-counterclaimants and other cooperating defendants submit the following requests for admission to each of the following parties: the Navajo Nation, the United States, and the State of New Mexico:

Request for Admission Number 1: Admit that the water units of measurement shown on the attached page are correct.

Response:



Request for Admission Number 2: Admit that the water units of measurement shown on the attached page can be used by the court and all parties during proceedings in this case.

Response:

The United States, the Navajo Nation, and the State of New Mexico are hereby requested to enter into a formal stipulation for the use of these water units of measurement. All parties are requested to suggest other units of water measurement that would be useful to the court and the parties.

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 this 11th day of February, 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: wrnavajointerse@nmcourts.gov and to the filing list referred to in paragraph 8 of the court's November 19, 2012 Corrected Order.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.

WATER UNITS OF MEASUREMENT

- A. 1 cubic foot of water = 7.48 U.S. fluid gallon
= 62.3 pounds (varies slightly depending on pressure, temperature, etc.)
- B. 1 acre = 43,560 square feet
- C. 1 acre-foot of water = 43,560 cubic feet of water (enough water to cover 1 acre to a depth of 1 foot)
= 325,829 gallons
= 2,713,788 pounds
- D. 1 cubic foot per second = 60 cubic feet per minute = 3,600 cubic feet per hour
= 86,400 cubic feet per day = 1.983 acre-feet per day
- E. 1 year = 365.25 days = 31,557,600 seconds (A common "year" unit in scientific practice is a year of exactly 365.25 days, based on a day of exactly 86,400 seconds.)
- F. 1 cfs per year = 724.46 acre-feet per year
= 31,557,600 cubic feet per year = 236,050,848 gallons per year
- G. Miner's inch – unit of flow per unit of time
- 1/50 cubic foot per second (566 milliliters per second) in southern California, Idaho, Kansas, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Washington.
- 1/40 cubic foot per second (708 milliliters per second) in Arizona, northern California, Montana, Nevada, Oregon.
- 1/38 cubic foot per second (745 milliliters per second) in Colorado.

Subject: Fwd: Re: Where are your answers to our request for admission on measures of water?

From: "Victor R. Marshall" <victor@vrmarshall.com>

Date: 3/21/2013 3:08 PM

To: Rick Tully <tullylawfirm@qwestoffice.net>, "Gary L. Horner" <ghorner@zianet.com>, Richard Cole <rbc@keleher-law.com>, Sheri Heying <sheri@vrmarshall.com>, Shirley Meridith <shirley@vrmarshall.com>, Victor Marshall <victor@vrmarshall.com>, Gary Risley <gary@risleylaw.net>

----- Original Message -----

Subject:Re: Where are your answers to our request for admission on measures of water?

Date:Thu, 21 Mar 2013 15:05:56 -0600

From:Victor R. Marshall <victor@vrmarshall.com>

To:Stanley M. Pollack <smpollack@nndoj.org>

CC:Sheri Heying <sheri@vrmarshall.com>, Shirley Meridith <shirley@vrmarshall.com>, "Guss.Guarino@usdoj.gov" <Guss.Guarino@usdoj.gov>, "Singer, Arianne, OSE" <arianne.singer@state.nm.us>, "David Gehlert (David.Gehlert@usdoj.gov)" <David.Gehlert@usdoj.gov>, Samuel Gollis <sgollis@hotmail.com>

Stanley, Guss, Ariane -

- a. I don't agree with your interpretation of what the court did.
- b. The USGS doesn't have many of the measurements that are useful in this case, like miner's inch in various states, or the conversion from cubic feet per second to acre-feet per year. [But thanks for letting me know about the monimolimnion and the mixolimnion....]
- c. The only figure that can be quibbled over is the weight of one cubic foot of water, since the density of water varies slightly with temperature. I picked a density number in the middle of the range. However, if you have a density number [with at least 4 significant digits] that you think is more accurate, please send it to me and I will revise the stipulation accordingly.
- d. Add any other conversions you think are useful for Wechsler and the parties.

Let me know, otherwise I'll ask Wechsler to deal with this.



regards,

On 3/21/2013 1:51 PM, Stanley M. Pollack wrote:

On behalf of the Settling Parties I am writing to advise you that discovery in the Navajo *Inter Se* closed on March 1, 2013. The *Third Amended Order Granting Motions to Extend Deadlines in Part and Setting Schedule Governing Discovery and Remaining Proceedings* (Mar. 15, 2013) did not extend the discovery schedule for any discovery other than for four depositions and access to the document repositories.

Even if the Settling Parties were to reply, we would deny these admissions because your assertions on measurement were simply wrong. I suggest that you visit: <http://water.usgs.gov/wsc/glossary.html#D> and compare your measurement definitions to those used by the USGS.

Stanley M. Pollack, Assistant Attorney General
Water Rights Unit
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515

928.871.7510
928.871.6200 (Fax)
928.205.5891 (Cell)

This message is intended only for the use of the Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, please delete the email and inform the sender immediately. Thank you.

From: Victor R. Marshall [<mailto:victor@vrmarshall.com>]
Sent: Thursday, March 21, 2013 9:52 AM
To: Guss.Guarino@usdoj.gov; Singer, Arianne, OSE; Stanley M. Pollack; Sheri Heying; Shirley Meridith; Victor Marshall
Subject: Where are your answers to our request for admission on measures of water?

They were served last month, but I don't recall seeing any responses. Did I miss something?

Regards,
Victor