

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 APR 11 AM 9:01

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: April 10, 2013 by electronic service and April 11, 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 31, 2013	Close of discovery
April 15, 2013	Settling Parties' memorandum in support of Settlement Agreement
April 15, 2013	Non-Settling Parties' dispositive motions
May 10, 2013	Responses to dispositive motions
May 24, 2013	Replies to responses to dispositive motions

June 11 and 12, 2013	Hearing on dispositive motions
Week of July 8, 2013	Decision on need for evidentiary hearing
July 22, 2013	Submittal of witness lists and exchange of exhibits
July 25, 2013	Parties submit proposed pretrial order
July 30, 2013	Pre-hearing conference
August 19, 2013	Parties submit proposed pre-hearing findings of fact and conclusions of law
Weeks of August 26, September 2 and September 16, 2013 (if necessary)	Evidentiary hearing

Defendants B Square Ranch, LLC et al. move for extensions of time of 90 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, Robert Oxford on September 24, 2012, and Defendants B Square Ranch, LLC et al on March 5, 2013.

After reviewing these prior Motions for Extension of Time, 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 has entered several orders, the most recent being the Third Amended Order Granting Motions to Extend Deadlines in Part and Setting Schedule Governing Discovery and Remaining Proceedings filed on March

15, 2013, and the Notice of Hearing filed March 21, 2013, establish 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 first March 1, 2013 and now March 31, 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.

In efforts to complete discovery by March 31, 2013 after the entry of the above-described Third Amended Order Granting Motions to Extend Deadlines, the remaining Non-Settling Parties have conducted or attempted to conduct the following discovery:

- A. Defendants B Square Ranch, LLC et al. copied records and documents on March 11, 2013 at the Farmington office of the Navajo Indian Irrigation Project

- B. Community Ditch Defendants filed a Request for Documents Needed to Depose John Leeper as Identified in His Informational Report on March 18, 2013
- C. Defendants B Square Ranch, LLC et al. reviewed records and documents on March 19, 2013 at the Farmington office of the Navajo Indian Irrigation Project
- D. Community Ditch Defendants conducted the deposition of Lionel Haskie, Operations & Maintenance Manager, Navajo Agricultural Products Industry, on March 26, 2013 in Albuquerque, New Mexico
- E. Defendants B Square Ranch, LLC et al. copied records and documents on April 8, 2013 at the Farmington office of the Navajo Indian Irrigation Project

As previously stated, the discovery closed in the above-styled action on March 31, 2013.

On April 1, 2013, the Non-Settling Party Community Ditch Defendants filed the following motions concerning discovery in the above-styled action:

1. Additional Motion to Compel Concerning NIIP-NAPI
2. Motion to Compel Plaintiffs to Respond to Request for Admissions Concerning Water Units of Measurement
3. Motion for Reconsideration About Evaporation for Colorado River Reservoirs

None of these three Motions have been heard by the Court, and further, the Settling Parties have not yet responded to such Motions.

Defendants B Square Ranch, LLC et al. need additional time to: (i) complete discovery, and (ii) prepare and file their dispositive motions after discovery is completed and after the Settling Parties have filed their dispositive motions.

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. U.S.C.A. 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. U.S.C.A. 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 a 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 the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., in the above-styled action, 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.

Further, Defendants B Square Ranch et al. and the remaining Non-Settling Parties have not been able to complete sufficient discovery to adequately prepare and file dispositive motions and to prepare for an evidentiary hearing in the above-styled action.

The Court's order that dispositive motions by the Settling Parties and the Non-Settling Parties be simultaneously filed on April 15, 2013 places the Non-Settling Parties

in an unfair and prejudicial position. The normal course for a law suit is to have the parties to file dispositive motions after discovery is completed. The Court has been notified several times by different Non-Settling Parties that discovery is not complete, but the Court establishes discovery deadlines that cannot be followed. No matter how many times the Court establishes a discovery deadline, the fact remains that the Non-Settling Parties have not completed discovery in the above-styled action.

The scheduling orders entered in the above-styled action have **denied and are currently 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, sometimes through motions to compel; (v) adequately object, respond or answer the 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 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; (xiii) prepare dispositive motions within a

reasonable time after discovery is completed; and (iv) prepare dispositive motions after the Settling Parties have filed their dispositive motions.

Since the current discovery deadline of March 31, 2013 has passed, and only a few days remain before dispositive motions are to be simultaneously filed by the Settling Parties and the Non-Settling Parties on April 15, 2013, counsel for Settling Parties, counsel for Non-Settling Parties, and Non-Settling Parties appearing pro se were not notified of this Motion for Extension to secure their consent or objection before this Motion was filed.

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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