

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 APR 15 AM 11:47

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 for Partial Summary Judgment #1. Community ditch defendants' motion for partial summary judgment concerning applications for permits from the state engineer.

NUMBER OF PAGES: 3 +3 page exhibit

DATE OF FILING: April 15, 2013

**COMMUNITY DITCH DEFENDANTS' MOTION AND MEMO
FOR PARTIAL SUMMARY JUDGMENT
CONCERNING APPLICATIONS FOR PERMITS
FROM THE STATE ENGINEER**

Pursuant to Rule 1-056(B), the Community Ditch Defendants move for partial summary judgment concerning permit application numbers 2847, 2829, 2873, 2883, 2917, 3215, and application 2847, 2849, 2873, 2917 Combined.

There is no genuine issue as to these material facts:

1. A notice for each of these applications was never published as required by NMSA 1978, § 72-5-4. *See* Exhibit 1, The State's Responses to Discovery About Publication of Applications (Dec. 3, 2012), highlighted for ease of reference.

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2. No proof of publication for any of these applications was ever filed as required by statute. *See* Exhibit 1.

3. The applicants did not comply with the application and permit requirements set forth in NMSA 1978, §§ 72-5-1 (requiring complete data), -3 (requiring amended application for applications which are defective in form, feasibility and ability to carry the construction to completion), -4 (requiring publication in a newspaper of general circulation), -5 (requiring time for objections or protests by any person), -5.1 (standing for those asserting legitimate concerns for public welfare and conservation of water), -6 (requiring evidentiary hearing for interested parties; five-year limit on construction), -7 (rejecting applications which do not comply with the law, rules, and regulations), -21 (requiring recording of all water permits with the county clerk), -31 (preserving right *de novo* appeal from any action by state engineer on applications for permits).

4. The applications are invalid.

5. The applications do not entitle the applicants to priority dates based upon the dates of the original applications.

Therefore defendants are entitled to a partial summary judgment as a matter of law that the applicants do not hold valid permits or permit applications for any of the water claimed in permit application numbers 2847, 2829, 2873, 2883, 2917, 3215, or application 2847, 2849, 2873, 2917 Combined.

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.
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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 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
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT

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

Plaintiff,

vs.

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

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Claims of the Navajo Nation
Case No. AB-07-1

NAME OF PARTY: State of New Mexico *ex rel.* State Engineer ("the State")

DESCRIPTIVE SUMMARY: The State submits its *Responses to Discovery about Publication of Applications* served by the Community Ditch Defendants on November 5, 2012.

NUMBER OF PAGES: 4

DATE OF FILING: December 3, 2012

**THE STATE'S RESPONSES TO DISCOVERY ABOUT PUBLICATION OF
APPLICATIONS**

The State of New Mexico ("the State") responds to *Discovery about Publication of Applications* served by Victor R. Marshall on November 5, 2012 on behalf of the San Juan Agricultural Water Users Association, Hammond Conservancy District, Bloomfield Irrigation District, various ditches and various other defendants as follows:

EXHIBIT

1

GENERAL OBJECTIONS

The State objects to the requests to the extent that they request any documents or information not required to satisfy the standard of proof adopted by the Court by *Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof*, dated April 19, 2012. The State reserves all evidentiary objections to any responses or documents that may be offered in evidence at a trial. The State reserves the right to supplement its objections.

REQUESTS

Request No. 1: Admit that no notice was ever published for any application in any of the following files maintained by the New Mexico State Engineer: 2847 (San Juan Chama); 2829 (NIIP); 2873 (Navajo Reservoir Evaporation); 2883 (Animas-La Plata); 2917 (miscellaneous); 3215 (undetermined, natural flow and seepage, municipal and industrial); and 2847, 2849, 2873, 2917 combined.

Response. The State objects to this request on the grounds that it seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objection, the State admits that it has no records that notice of receiving an application was published for OSE File Nos. 2847, 2829, 2873, 2883, 2917, 3215, or 2847, 2849, 2873, 2917 Combined, and affirmatively states that no publication of notice of the United States' intention to utilize waters for federal reclamation project works was required under NMSA 1978, Section 72-5-33 or its predecessor statutes.

Request No. 2: Admit that no notice was ever published for any notice of intention in any of the following files maintained by the New Mexico State Engineer: 2847 (San Juan Chama);

2829 (NIIP); 2873 (Navajo Reservoir Evaporation); 2883 (Animas-La Plata); 2917 (miscellaneous); 3215 (undetermined, natural flow and seepage, municipal and industrial); and 2847, 2849, 2873, 2917 combined.

Response. The State objects to this request on the grounds that it seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

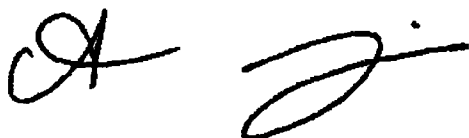
Without waiving its objection, the State admits that it has no records that notice of any notice of intention was published for OSE File Nos. 2847, 2829, 2873, 2883, 2917, 3215, or 2847, 2849, 2873, 2917 Combined, and affirmatively states that no publication of notice of the United States' notice of intention to utilize waters for federal reclamation project works was required under NMSA 1978, Section 72-5-33 or its predecessor statutes.

Request No. 3: If you fail to admit any of the foregoing, please produce satisfactory proof of publication for any application or notice of intent identified above.

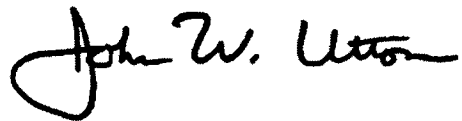
Response: The State has not identified any documents responsive to this request.

Respectfully submitted, this 3rd day of December, 2012.

STATE OF NEW MEXICO



Arianne Singer
Special Assistant Attorney General
New Mexico Office of the State Engineer
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(505) 827-6150

A handwritten signature in black ink that reads "John W. Utton". The signature is written in a cursive style with a large, looping initial "J".

John W. Utton
Special Assistant Attorney General
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