

ELEVENTH JUDICIAL DISTRICT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 APR 15 AM 10:17

STATE OF NEW MEXICO ex rel.
State Engineer,
Plaintiff,

v.
UNITED STATES OF AMERICA, et al.,
Defendants.

v.
THE JICARILLA APACHE TRIBE and the
NAVAJO NATION,
Defendant-Intervenors.

No. CV 75-184
SAN JUAN RIVER
ADJUDICATION SUIT

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

GARY L. HORNER'S MOTION FOR SUMMARY JUDGMENT:
THAT IS,
THE "SETTLEMENT MOTION OF THE UNITED STATES, NAVAJO NATION AND
THE STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES"
SHOULD BE DENIED

SUMMARY

1. Name of party filing the present document: **Gary L. Horner**
2. Title of the present document: **GARY L. HORNER'S MOTION FOR SUMMARY JUDGMENT: THAT IS, THE "SETTLEMENT MOTION OF THE UNITED STATES, NAVAJO NATION AND THE STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES" SHOULD BE DENIED**
3. Descriptive summary of the relief sought: **This document represents Mr. Horner's Motion for Summary Judgment: that is, the Settling Parties' Settlement Motion should be denied.**
- 4: Number of pages of the present document: **5**

COMES NOW Gary L. Horner, Esq., *In Propria Persona* (hereinafter referred to in the first person), pursuant to Rule 1-056 NMRA, and respectfully moves the Court for Summary Judgment in the above referenced cause.

*Horner's Motion for
Summary Judgment*

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As and for good cause for said Motion I state:

1. Pursuant to Rule 1-056C. NMRA, there is no genuine issue as to any material fact, and I am entitled to summary judgment as a matter of law, with respect to all of the issues set forth herein, as well as:

a. **GARY L. HORNER'S OBJECTIONS: TO THE SETTLEMENT MOTION OF UNITED STATES, NAVAJO NATION AND STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES; AND THE PROPOSED DECREES ASSOCIATED WITH SAID SETTLEMENT MOTION**, which was filed in the present matter on September 24, 2012, which is hereby incorporated herein by reference;

b. **GARY L. HORNER'S MOTION FOR THE DETERMINATION OF THE APPLICABLE STANDARD FOR THE DETERMINATION OF FEDERAL RESERVED WATER RIGHTS**, which was filed in the present matter on November 8, 2012, and is hereby incorporated herein by reference;

c. **GARY L. HORNER'S MOTION FOR A DETERMINATION THAT FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT DEFINE THE EXTENT OF THE WATER RIGHTS FOR THE NAVAJO NATION**, which is being filed in the present matter concurrently herewith, which is hereby incorporated herein by reference; and

d. The **SETTLEMENT MOTION OF THE UNITED STATES, NAVAJO NATION AND THE STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES**, which was filed in the present matter on January 3, 2011 ("Settlement Motion").

3. I direct the Court's attention to **GARY L. HORNER'S MEMORANDUM IN SUPPORT OF GARY L. HORNER'S MOTION FOR SUMMARY JUDGMENT:**

THAT IS, THAT THE “SETTLEMENT MOTION OF THE UNITED STATES, NAVAJO NATION AND THE STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES” SHOULD BE DENIED which is filed with this Court concurrently herewith and is hereby incorporated herein by reference as if set forth fully herein.

4. Concurrence of opposing counsel has not been sought with respect to this Motion for Summary Judgment, in accordance with Rule 1-007.1 NMRA, since the nature of this Motion obviates the need for such concurrence. I assume the Settling Parties oppose this Motion.

PRAYER FOR RELIEF

WHEREFORE, I pray the Court for Summary Judgment:

- 1) Denying the Settlement Motion;
- 2) Denying the entry of the Proposed Decrees;
- 3) Requiring the state engineer to provide an adequate and reliable hydrographic survey of the existing water uses of the Navajo Nation before the water rights of the Navajo Nation are considered further in this matter;
- 4) Requiring the Navajo Nation to establish with certainty their current uses of water, and the dates of the first beneficial uses of such water;
- 5) Requiring the state engineer to provide a complete accounting of: all water available in the San Juan Basin; all water available for appropriation and use in this Basin; all limitations on the availability or use of water within the Basin pursuant to compacts, agreements or other reasons; all water rights currently in existence in the Basin; and all water currently being used in the Basin;

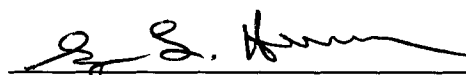
6) Requiring the state engineer to provide an adequate and reliable hydrographic survey of the entire San Juan Basin before this adjudication suit proceeds.

7) For reasonable attorney's fees;

8) For costs of this suit; and

9) For such other and further relief as the Court deems necessary and appropriate.

Respectfully, submitted by:


GARY L. HORNER, Esq.,
In Propria Persona
Post Office Box 2497
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(505) 326-2378

April 15, 2013

Date

PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

I HEREBY CERTIFY - in accordance with the ORDER MANDATING ALTERNATIVE METHOD FOR SERVICE OF ORDERS, MOTIONS, NOTICES AND OTHER COURT PAPERS, entered in the present matter on September 28, 2011 by the Honorable James Wechsler, Presiding Judge - that a true copy of the foregoing was served on the parties and Claimants in the present matter, by attaching a copy of said document to an email sent to the following email list server(s) maintained by the Court, this 15th day of April, 2013:

wrnavajointerse@nmcourts.gov

Further, pursuant to the Court's CORRECTED ORDER SUMMARIZING DISCOVERY ACTIVITIES DISCUSSED AT THE NOVEMBER 6, 2012 DISCOVERY CONFERENCE, entered in the present matter on November 19, 2012, that a true copy of the foregoing document was emailed to the following individuals, this 15th day of April, 2013.

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 GARY L. HORNER