

2013 APR 15 AM 11:47

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: Community Ditch Defendants' Introduction to dispositive pleadings, a statement of general parameters for the summary judgment process.

NUMBER OF PAGES: 4

DATE OF FILING: April 15, 2013

**INTRODUCTION TO COMMUNITY DITCH MOTIONS  
FOR PARTIAL SUMMARY JUDGMENT**

The Community Ditch Defendants are filing several motions for partial summary judgment on certain issues which they believe are ripe for summary judgment on the present state of the record. There are many other issues on which the Community Ditch Defendants are entitled to judgment as a matter of law or fact, as set forth in the Answer Objections and Counterclaim filed on October 19, 2012. Some of those issues may become appropriate for dispositive action prior to trial, or during trial. In the meantime, these summary judgment motions concentrate on some specific aspects of the case which are ready for summary disposition.

There is only one question before the court at this stage of the case: whether to disapprove or approve the proposed settlement agreement and proposed judgment in toto, as a package deal without change or amendment. Yes or no, up or down, on the entire proposed agreement and judicial decree. The settling parties requested this segmentation of the case, and the court granted their request. Order Establishing Initial Procedures 11 (Aug. 19, 2010).

This makes the present task a relatively easy one, susceptible to summary judgment in favor of the defendants. At this point the court is not quantifying the exact amounts and priorities of the water rights to which the Navajo Nation is entitled. That requires more precision and more evidence, but for now the court is only deciding whether there are any legal or factual defects in the proposed settlement. It is quite easy to see that there are multiple manifest errors of law and fact in the alleged settlement. Therefore the settlement must be rejected in its present form. The court should order further negotiations among all interested parties, not just the government agencies. These negotiations must include all the people who depend on the San Juan River, like the Community Ditch Defendants. The community ditches and their users have adjudicated rights under the Echo Ditch Decree, and those rights must be respected – in court and in any negotiations. If those negotiations prove unsuccessful, then the court should proceed to adjudicate the actual water rights of the Navajo Nation in accordance with section I(B)(2) of the Court's Order of August 19, 2010.

The court has set standards and procedures which place the burden of proof and persuasion on the settling parties. The settling parties must introduce admissible evidence and cite controlling law to prove that the Navajo Nation is entitled to more water than provided in the settlement: 646,640 acre-feet of diversion and 335,681 acre-feet of depletion

from New Mexico's share of the Colorado River. Order Establishing the Legal Standards (Feb. 3, 2012).

The settling parties cannot meet their burden, because these are huge amounts of water, far beyond the amounts to which the Navajo tribe is entitled under the *Winters* line of cases. The "negotiated" amounts are far in excess of the minimum amounts needed to allow Navajo tribal members to live on the reservation in New Mexico. The court can make this determination in this phase of the case without deciding the exact amounts that belong to the Navajo tribe. That task – quantification – is for a later stage of the case, after all the stakeholders try to negotiate a better solution.

The Navajo Nation also carries the burden to prove by a preponderance of admissible evidence that the proposed settlement eliminates and mitigates impacts on other water users. It cannot meet this burden, because it is impossible for anyone to consume 335,681 acre feet from the shrinking Colorado River water supply, and leave enough water for other existing users, like community ditches, or local towns, or the San Juan - Chama Project. There isn't enough water available from New Mexico's share of the Colorado River system.

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 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](mailto: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.