

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 MAY 24 AM 8:01

MCE

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: The government's own figures show New Mexico's share of the Colorado River is not big enough to accommodate the proposed award of water rights to the NN. In most years the award would eliminate non-Navajo uses in New Mexico and create a huge unresolved water deficit.

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**REPLY ON PARTIAL SUMMARY JUDGMENT MOTION NO. 3 –
WATER AVAILABILITY AND IMPACTS ON OTHER USERS**

The Community Ditch Defendants' third motion for partial summary judgment concerns the criteria set out by Congress and this court in its legal standards ruling: the availability of enough water in the Colorado River system to accommodate the proposed Navajo settlement, and the impact of that proposed settlement on other water users in New Mexico.

Partial Summary Judgment Motion No. 3 is a series of calculations based upon the United States own data: Colorado River Basin Water Supply and Demand Study released by the Department of the Interior and Bureau of Reclamation in December 2012. The

2

United States and the other settling parties do not dispute their own figures. These figures relate to the water supply that will be available from the Colorado River system; the amounts of diversion and depletion in the proposed settlement, the amounts of water demanded by the United States for the protection of endangered species, and evaporation from Colorado River storage project reservoirs. The source government documents are attached as exhibits to the motion.

The rest of the water availability calculation uses numbers from the Colorado River Compact of 1922 and the Upper Basin Compact of 1948. There is no dispute about those numbers either. Every 10 years New Mexico and the other upper basin states must deliver 83,000,000 acre-feet of water to the lower basin at Lee Ferry, just below Glen Canyon Dam and the huge reservoir at Lake Powell. This obligation includes 75,000,000 acre-feet for the lower basin, and 7,500,000 acre-feet for the treaty with Mexico, and 500,000 acre-feet for Arizona's portion of the upper basin.

Using the government's own figures in the plain terms of the Colorado compacts, in most years there would be no water available for non-Indian users in San Juan County. In most years (and in most ten-year periods) there would be huge unresolved deficits to the lower basin, amounting to hundreds of thousands of acre-feet. This would wipe out all junior water users in San Juan County.

Accordingly, the United States own figures show that there is not enough water supply available within the Colorado basin to accommodate the Navajo settlement. Therefore the proposed settlement must be rejected, and the actual water rights of the Navajo Nation adjudicated in Stage II. The Community Ditch Defendants concede that the Navajo Nation is entitled to substantial water rights in New Mexico, but those amounts

need to be determined in Stage II. Those water rights are significant, but they are far less than the amounts in the proposed settlement.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 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.