

Bi-Weekly Navajo *Inter Se* Report May 24, 2013

San Juan River Basin Adjudication Claims of the Navajo Nation CV-75-184; Case No. AB-07-1

Eleventh Judicial District Court
103 S. Oliver
Aztec, NM 87410
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<http://sjrba.11thjdc.com/Navajo%20Claim%20Subfiles>

DISTRICT COURT
SAN JUAN COUNTY, NM
FILED
2013 MAY 27 PM 9:49
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PLEASE NOTE: SUMMARY REQUIRED: As required by the **Order Mandating Alternative Method For Service of Orders, Motions, Notices and Other Court Papers** filed September 28, 2011, no motion or other request for relief will be considered by the Court unless it is accompanied by a separate written summary of the motion or other request for relief.

This summary must include:

1. The name of the party filing the pleading
2. The title of the pleading
3. A descriptive summary of the relief sought, **no longer than seventy-five (75) words**
4. The total number of pages in the pleading

PROCEDURAL AND SCHEDULING ORDERS CURRENTLY IN EFFECT

Date Filed:	Document Title
March 15, 2013	Third Amended Order Granting Motions to Extend Deadlines In Part and Setting Schedule Governing Discovery and Remaining proceedings
November 19, 2012	Corrected Order Summarizing Discovery Activities Discussed at the November 6, 2012 Discovery Conference
November 6, 2012	Second Amended Order Setting Schedule Governing Discovery on The Non-Settling Parties and Remaining Proceedings
September 28, 2011	Order Mandating Alternative Method For Service of Orders, Motions, Notices and Other Court Papers
August 7, 2012	Amended Order Setting Schedule Governing Discovery on the Non-Settling Parties and Remaining Proceedings

PENDING HEARINGS

<u>DATE / TIME / TYPE OF HEARING</u>	<u>LOCATIONS</u>
June 11th & 12th, 2013 8:30 AM	Aztec District Court 103 South Oliver Drive Aztec, NM 87410

PENDING DEADLINES

Dispositive Motions	
June 11th and June 12th, 2013	Hearing on dispositive motions
Week of July 8, 2013	Decision on the 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 facts and conclusions of law
Weeks of August 26,	Evidentiary Hearing (If necessary)

September 2, and September 9, 2013:	
Post Hearing Briefing	
24 Days After Evidentiary Hearing	Proposed post-hearing findings of fact and conclusions of law and memorandum in support (Settling Parties and Non-Settling Parties)
10 Days After Proposed Findings of Facts and Conclusions of Law	Responses
December 31, 2013	Decision of Court

DOCUMENTS FILED May 13, 2013 through May 24, 2013

Date Filed	Document Title
5-13-2013	Bi-Weekly Navajo Inter-se Report
5-13-2013	Additional Exhibits Filed by Community Ditch Defendants as Part of Their Response to Purported Dispositive Motions <u>Summary:</u> Additional exhibits filed by Community Ditch Defendants as part of their response to purported dispositive motions filed by US, NN, and OSE on April 15, 2013. These exhibits are also filed in support of the Community Ditch motions for partial summary judgment
5-14-2013	The United States Notice Concerning Attachment A <u>Summary:</u> The United States submits Attachment A for the United States' Response to Motions Seeking to Invalidate Bureau of Reclamation Water Rights
5-20-2013	Order Denying Community Ditch Defendants' Motion for Reconsideration About Evaporation From Colorado River Reservoirs
5-20-2013	Order Denying Community Ditch Defendants' Additional Motion to Compel Concerning NIIP-NAPI
5-24-2013	Reply on Partial Summary Judgment Motion No. 1 - Permits <u>Summary:</u> Overview of summary judgment motions. Partial summary judgment must be entered that the United States does not hold valid permits from the state engineer for files numbered 2847, 2829, 2873, 2883, 2917, 3215 or 2847, 2849, 2873, 2917 Combined. The US, NN and OSE admit that no such permits exist
5-24-2013	Reply on Partial Summary Judgment Motion No. 2 – Minimum Needs <u>Summary:</u> In Stage I of this bifurcated proceeding, the defendants are entitled to summary judgment that the proposed settlement awards amounts of water that exceed the minimum needs of the Navajo tribal members of the Reservation in New Mexico. So the settlement violates <i>U.S. v. New Mexico, Cappaert, and Arizona v. California</i> . Stage I summary judgment will not prejudice the NN, because Stage II will award the actual amount that it is entitled to
5-24-2013	Reply on Partial Summary Judgment Motion No. 3 – Water Availability and Impacts on Other Users

	<p><u>Summary</u>: 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</p>
5-24-2013	<p>Reply in Support of Motion For Partial Summary Judgment #4 - NIIP</p> <p><u>Summary</u>: The US, NN, and OSE concede that NIIP is not PIA, and make no claim based on PIA. Because NIIP is not PIA, water for NIIP cannot be included in the Navajo water claim.</p> <p>The US, NN and OSE claim that the 1962 NIIP Act establishes a water right for NIIP. They have failed to inform the court that section 13 of the 1962 Act expressly states that it does establish any water rights.</p>
5-24-2013	<p>Reply on Conditional Motion to Dismiss, or in the Alternative to Reject the Settlement Because The US, NN and OSE Do Not Recognize The Court's Authority</p> <p><u>Summary</u>: The US, NN and OSE continue to reject the court's authority over the San Juan River. They assert that the court lacks jurisdiction to protect the rights of other river users, or to scrutinize the federal government's actions on the river. The settling parties repudiation of the court's authority is sufficient reason to reject the proposed settlement. Their rejection makes the settlement unenforceable.</p>
5-24-2013	<p>Certificate of Service by Richard T.C. Tully</p> <p><u>Summary</u>: None</p>
5-24-2013	<p>Reply of Robert E. Oxford's to The Response by The Settling Parties to My Summary Judgement Motion Motions to Deny The Settlement Agreement and Associated Proposed Decrees of The Navajo Nation Water Rights</p> <p><u>Summary</u>: Robert E. Oxford's reply to the Navajo Nation, USA and State of New Mexico's response to my summary judgment motions filed April 15, 2013</p>
5-24-2013	<p>Defendants B Square Ranch, LLC Et als Consolidated Reply to Response by NN and US and to Consolidated Response by State of New Mexico in Opposition to Motion That Settling Party Navajo Nation Waived and Relinquished Its Winters Rights When Navajo Indian Irrigation Project Was Built</p> <p><u>Summary</u>: Defendants B Square Ranch, LLC et al.'s Consolidated Reply to Settling Parties' Responses in Opposition to Motion that Settling Party Navajo Nation Waived and Relinquished Its Winters Rights when NIIP was Built</p>
5-24-2013	<p>State's Consolidated Reply to Responses Filed by Community Ditch Defendants, Gary L. Horner, Robert E. Oxford and Defendants B Square Ranch, LLC et al on May 10, 2013</p> <p><u>Summary</u>: <i>State's Consolidated Reply to Responses Filed by Community Ditch Defendants, Gary L. Horner, Robert E. Oxford and Defendants B Square Ranch, LLC</i></p>
5-24-2013	<p>Reply Memorandum of The Navajo Nation and United States in Support of The Settlement Motion</p> <p><u>Summary</u>: Reply Memorandum in support of the Settlement Motion (filed on January 3, 2011)</p>
5-24-2013	<p>Supplemental Affidavit of John J Whipple</p> <p><u>Summary</u>: None</p>
5-24-2013	<p>Gary L. Horners's Reply to The State's Consolidated Response to Motions Filed by</p>

	<p>Community Ditch Defendants, Gary L. Horner, Robert E. Oxford and Defendants B Square Ranch. LLC et al on April 15, 2013</p> <p><u>Summary:</u> This document represents Mr. Horner's reply to the STATE'S CONSOLIDATED RESPONSE TO MOTIONS FILED BY COMMUNITY DITCH DEFENDANTS, GARY L. HORNER, ROBERT E. OXFORD AND DEFENDANTS B SQUARE RANCH, LLC ET AL ON APRIL 15, 2013</p>
5-24-2013	<p>Gary L. Horner's Reply to The Response of The Navajo Nation and United States in Opposition to The Summary Judgment Motions of Objectors</p> <p><u>Summary:</u> This document represents Mr. Horner's reply to the RESPONSE OF THE NAVAJO NATION AND UNITED STATES IN OPPOSITION TO THE SUMMARY JUDGMENT MOTIONS OF OBJECTORS</p>
5-24-2013	<p>Gary L. Horner's Reply to The Ute Mountain Ute Tribe's Answer Brief Opposing Non-Settling Parties' Dispositive Motions</p> <p><u>Summary:</u> This document represents Mr. Horner's reply to the UTE MOUNTAIN UTE TRIBE'S ANSWER BRIEF OPPOSING NON-SETTLING PARTIES' DISPOSITIVE MOTIONS</p>
5-24-2013	<p>Gary L. Horner's Reply to The Jicarilla Apache Nation Response Brief to The Motion and Brief Filed by Gary L. Horner on 8 November 2012 For The Determination of The Applicable Standard For The Determination of Federal Reserved Water Rights</p> <p><u>Summary:</u> This document represents Mr. Horner's reply to the Jicarilla Apache Nation response brief to the Motion and Brief filed by Gary L. Horner on 8 November 2012 for the determination of the applicable standard for the determination of federal reserved water rights</p>
5-24-2013	<p>Gary L. Horner's Reply to The Albuquerque Bernalillo County Water Utility Authority and City of Espanola's Response in Opposition to Community Ditch Defendants' Motion and Memo for Partial Summary Judgment and Gary L. Horner's Motion For Summary Judgment and Memorandum in Support</p> <p><u>Summary:</u> This document represents Mr. Horner's reply to the Albuquerque</p>
5-24-2013	<p>Gary L Horner's Reply to The United States' Response to Motions Seeking to Invalidate Bureau of Reclamation Water Rights</p> <p><u>Summary:</u> This document represents Mr. Horner's reply to THE UNITED STATES' RESPONSE TO MOTIONS SEEKING TO INVALIDATE BUREAU OF RECLAMATION WATER RIGHTS</p>

OBTAINING DOCUMENTS CONTAINED IN THIS REPORT:

Documents are available in their entirety on the Court website, at <http://sjrba.11thjdc.com/Navajo%20Claim%20Subfiles>. A paper copy may be obtained from the Court by requesting a hardcopy from the Court in writing addressed to:

Water Clerk Specialist
Eleventh Judicial District Court
103 So. Oliver Dr.
Aztec, NM 87410

The request shall include a money order to cover copying costs, currently set at \$.35 per page. The request shall also include a self-addressed envelope of sufficient size and with sufficient postage for mailing the requested documents.

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