

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 JUN -4 PM 4:40

ELEVENTH JUDICIAL DISTRICT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

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 PROPOSAL RE JUNE 11 - 12, 2013 HEARING PROCEDURE

SUMMARY

1. Name of party filing the present document: **Gary L. Horner**
2. Title of the present document: **GARY L. HORNER'S PROPOSAL RE JUNE 11 - 12, 2013 HEARING PROCEDURE.**
3. Descriptive summary of the relief sought: **This document represents Mr. Horner's proposal re June 11 - 12, 2013 hearing procedure.**
- 4: Number of pages of the present document: **22 (including 14 pages of Exhibits)**

COMES NOW Gary L. Horner, Esq., *In Propria Persona* (hereinafter referred to in the first person), in response to the Court's email request for proposals regarding the procedures to be utilized at the upcoming June 11-12, 2013 hearing on dispositive motions.

Accordingly, I state:

I. Introduction.

On June 3, 2013 (yesterday), Stanley Pollack, representing the Navajo Nation, sent an

*Horner's Proposal re June 11-12
Hearing Procedure*

email to Celina Jones, with the Administrative Office of the Courts - and contact person for those desiring to communicate with Judge Wechsler, offering to submit a proposal for the allocation of time and structure for the upcoming June 11-12 hearing. A copy of said email is attached hereto as Exhibit 1. Ms. Jones responded by email the same day indicating that Judge Wechsler was planning to allocate time based upon the four prongs of the legal standard.¹ A copy of Ms. Jones email is attached hereto as Exhibit 2.

On the same day, Mr. Pollack submitted by email a "PROPOSED SCHEDULE" for said hearing. A copy of Mr. Pollack's email and Proposed Schedule are attached hereto as Exhibit 3.

The next day, June 4, 2013 (today), Richard Tully, representing B Square Ranch LLC, et al., submitted by email a PROPOSED SCHEDULE FOR MOTIONS HEARINGS ON TUESDAY, JUNE 11 AND WEDNESDAY, JUNE 12, 2013. A copy of Mr. Tully's email and Proposed Schedule is attached hereto as Exhibit 4.

¹ Pursuant to the AMENDED ORDER ESTABLISHING THE LEGAL STANDARDS FOR EVALUATING THE PROPOSED DECREES AND RESPECTIVE BURDENS OF PROOF, entered in the present matter on April 19, 2012 ("Order re Legal Standards"), the Court stated with respect to such Legal Standard for Approval that:

"The Settling Parties must demonstrate that the Proposed Decrees are 'fair, adequate, and reasonable, and consistent with the public interest and applicable law.' Order re Legal Standards, pp. 1-2. Emphasis added.

Said Order re Legal Standards also provided, regarding the Respective Burdens of the parties, that:

"The Settling Parties shall have the burden of production and the burden of persuasion to demonstrate that (a) the Settlement Agreement is the product of good faith, arms-length negotiations, (b) the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights, (c) there is a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial, and (d) the Settlement Agreement is consistent with public policy and applicable law. The Settling Parties must first demonstrate that the Proposed Decrees satisfy these four elements by prima facie evidence to meet their burden of production. If the Settling Parties satisfy the initial burden of production, the burden of rebutting the Settling Parties' evidence shall shift to the Objectors. The Settling Parties, however, shall retain the burden of persuasion by a preponderance of the evidence. The Objectors need not demonstrate injury to their own water rights claims in order to state a cognizable objection." Order re Legal Standards, p. 3. Emphasis added.

II. The purpose of the hearing is to hear and determine Dispositive Motions.

The upcoming June 11-12, 2013 hearing has been called for the purpose of considering and determining dispositive motions with respect to the Navajo Settlement and Proposed Decrees. In that regard, please refer to:

1) The ORDER (1) GRANTING SETTLING PARTIES' MOTION TO EXTEND CERTAIN DEADLINES AND (2) SETTING SCHEDULE GOVERNING DISCOVERY AND REMAINING PROCEEDINGS entered in the present matter on February 3, 2012 (hereinafter referred to as the "2/3/12 Scheduling Order");

2) the AMENDED ORDER SETTING SCHEDULE GOVERNING DISCOVERY ON THE NON-SETTLING PARTIES AND REMAINING PROCEEDINGS, entered in the present matter on August 7, 2012 ("8/7/12 Scheduling Order");

3) the SECOND AMENDED ORDER SETTING SCHEDULE GOVERNING DISCOVERY ON THE NON-SETTLING PARTIES AND REMAINING PROCEEDINGS, entered in the present matter on November 6, 2012 ("11/6/12 Scheduling Order"); and

4) the THIRD AMENDED ORDER GRANTING MOTIONS TO EXTEND DEADLINES IN PART AND SETTING SCHEDULE GOVERNING DISCOVERY AND REMAINING PROCEEDINGS, entered on March 15, 2013 ("3/15/2013 Scheduling Order").

Specifically, the 3/15/2013 Scheduling Order provided that:

"3. Dispositive Motions

"a. April 15, 2013: Settling Parties' memorandum in support of the Settlement Motion of the United States, Navajo Nation and State of New Mexico for Entry of Partial Final Decrees, filed January 3, 2011.

"b. April 15, 2013: Non-Settling Parties' dispositive motions.

"c. May 10, 2013: Responses to dispositive motions.

"d. May 24, 2013: Replies to responses to dispositive motions.

"e. Week of June 10, 2013: Hearing on dispositive motions." 3/15/2013 Scheduling Order, p. 3.

Similarly, every Bi-Weekly Report since October 15, 2012 has indicated a hearing (now

set for June 11-12, 2013) to hear and determine dispositive motions.

Therefore, the purpose for the hearing is to hear and determine dispositive motions. A secondary, but integral, purpose of said hearing is to determine if disputed material facts remain, such that a trial would be required to hear and determine such material facts.

III. Objectors have made significant efforts in filing dispositive motions.

Accordingly, on April 15, 2013, Objectors filed several dispositive motions, based upon NMRA Rule 1-056, or otherwise. In accordance with the Court's orders regarding dispositive motions, on or before April 15, 2013, I personally filed 785 pages of material relating to dispositive motions. Other Objectors filed an additional 87 pages of material. By now, I have filed 1,194 pages of material relating to such dispositive motions, or responses to the Settling Parties' Memoranda in support of their Settlement Motion, and the Objectors have filed a combined total of 1,520 pages (including my 1,194 pages). Such material and related motions should be the basis for the hearing on June 11-12.

IV. The Settling Parties have filed no dispositive motions.

Of the utmost significance is the fact that none of the Settling Parties filed any manner of dispositive motions (based upon Rule 1-056 or otherwise) in the present matter. However, on April 15, 2013, the Settling Parties filed Memoranda in support of their SETTLEMENT MOTION OF UNITED STATES, NAVAJO NATION AND STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES ("Settlement Motion"), which had been filed on January 3, 2011.

So, there are no dispositive motions filed by the Settling Parties to be heard and determined at the June 11-12 hearing.

It should be noted that pursuant to the Settling Parties' Memoranda, they make significant reference to Technical Reports (and related Affidavits) previously filed in the present matter. However, such Technical Reports are hearsay (out of court statements offered to prove the truth of the matter asserted) and are not appropriate for consideration by the Court at this point, and such Technical Reports will not even be admissible at trial. Further, I have disputed all of such Technical reports. In *United States v. Washington*, 375 F.Supp.2d 1050, 1067 (2005), the Court made clear that the Report of Dr. Greene (appears to be the same Dr. Gretchen Greene preparing a "Technical Report" regarding future Navajo population in the present matter) would not be admissible at trial, but Dr. Greene would be permitted to testify, with the understanding that the parties may object to any such testimony under the Rules of Evidence if the testimony is (1) not relevant, or (2) the answer would result in speculation.

V. Mr. Pollack's Proposal is inappropriate and should be rejected.

Pursuant to the Court's email request for proposals regarding the upcoming hearing, Mr. Pollack submitted a Proposed Schedule for said hearing. Pursuant to said Proposed Schedule, Mr. Pollack followed the four prongs of the burdens of the parties previously established by the Court, giving equal time to the Settling Parties and Objectors. It should be noted that the Memoranda in support of the Settlement Motion filed by the Settling Parties also generally followed said four prongs.

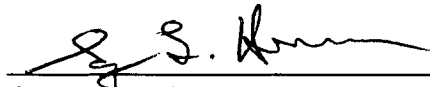
The result of Mr. Pollack's Proposal is that the entire two days would be spent addressing

the Settling Parties' arguments from their Memoranda (which was not a dispositive motion), while no time would be allowed to address the Objectors' dispositive motions, which was the purpose of the hearing.

VI. Mr. Tully's Proposal is substantially appropriate and should be adopted with minor adjustment.

On the other hand, Mr. Tully's proposal is straightforward and would address the Objectors' dispositive motions, which was to be the purpose of the hearing. Accordingly, I support Mr. Tully's proposal, except to the extent that Mr. Tully would apparently allow the Settling Parties to argue their Memoranda at the conclusion of the two day hearing. Arguments regarding said Memoranda, not being dispositive motions, should not be allowed.

Respectfully, submitted by:



GARY L. HORNER, Esq.,
In Propria Persona
Post Office Box 2497
Farmington, New Mexico 87499
(505) 326-2378

June 4, 2013

Date

PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

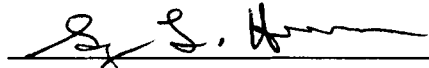
I HEREBY CERTIFY - in accordance with the ORDER MANDATING ALTERNATIVE METHOD FOR SERVICE OF ORDERS, MOTIONS, NOTICES AND OTHER COURT PAPERS, entered in the present matter on September 28, 2011 by the Honorable James Wechsler, Presiding Judge - that a true copy of the foregoing was served on the parties 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 4th day of June, 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 4th day of June, 2013.

<u>Name</u>	<u>Representing</u>	<u>Email Address</u>
Richard Tully	B-Square Ranch	<u>tullylawfirm@qwestoffice.net</u>
John Utton	State of New Mexico	<u>jwu@sheehansheehan.com</u>
Arianne Singer	State of New Mexico	<u>arianne.singer@state.nm.us</u>
Andrew J. "Guss" Guarino	United States	<u>guss.guarino@usdoj.gov</u>
David W. Gehlert	United States	<u>david.gehlert@usdoj.gov</u>
Stanley Pollack	Navajo Nation	<u>smpollack@nndoj.org</u>
Kathryn Hoover	Navajo Nation	<u>khoover@nndoj.org</u>
Samuel Gollis	Navajo Nation	<u>sgollis@hotmail.com</u>
Victor R. Marshall	Community Ditch Defendants	<u>victor@vrmarshall.com</u>
Richard Cole	Cities of Aztec & Bloomfield	<u>rbc@keleher-law.com</u>
Cassandra Malone	Cities of Aztec & Bloomfield	<u>crm@keleher-law.com</u>
Justin Breen	Cities of Aztec & Bloomfield	<u>jbb@keleher-law.com</u>
Thomas C. Bird	Cities of Aztec & Bloomfield	<u>tcb@keleher-law.com</u>
Adam Rankin	ConocoPhillips & El Paso Nat. Gas	<u>agrankin@hollandhart.com</u>
Mark Sheridan	ConocoPhillips & El Paso Nat. Gas	<u>msheridan@hollandhart.com</u>
James Brockmann	City of Gallup	<u>jcbrockmann@newmexicowaterlaw.com</u>
Seth Fullerton	ABCWUA & City of Espanola	<u>sfullerton@newmexicowaterlaw.com</u>
Jay Stein	ABCWUA & City of Espanola	<u>jfstein@newmexicowaterlaw.com</u>
Jolene McCaleb	San Juan Water Commission	<u>jmccaleb@taylormccaleb.com</u>
Elizabeth Taylor	San Juan Water Commission	<u>etaylor@taylormccaleb.com</u>
Gary Risley	La Plata Acequia Assn.	<u>gary@risleylaw.net</u>
Priscilla Shannon	McCarty Trust	<u>pshannonlaw@yahoo.com</u>
Celene Hawkins	Ute Mountain Ute Tribe	<u>chawkins@utemountain.org</u>
Lee Bergen	Ute Mountain Ute Tribe	<u>lbergen@nativeamericanlawyers.com</u>
Peter Ortego	Ute Mountain Ute Tribe	<u>portego@utemountain.org</u>
Herbert Becker	Jicarilla Apache Nation	<u>herb.becker@jaassociatesnm.com</u>

Rebecca Dempsey	Bloomfield Schools	rdempsey@cuddymccarthy.com
Maria O'Brien	BHP Navajo Coal; Enterprise Field Services	mobrien@modrall.com
Christina Sheehan	BHP Navajo Coal; Enterprise Field Services	ccs@modrall.com
Kyle Harwood	HMC Leasing	kyle@harwood-consulting.com
Robert Oxford	Pro Se	bjoxford@yahoo.com
Gary Horner	In Propria persona	ghorner@zianet.com



GARY L. HORNER

Exhibit 1

Associated with:

GARY L. HORNER'S PROPOSAL RE JUNE 11 - 12, 2013 HEARING PROCEDURE

Filed June 4, 2013

Gary L. Horner

From: "Stanley M. Pollack" <smpollack@nndoj.org>
Date: Monday, June 03, 2013 8:18 AM
To: "Celina Jones" <aoccaj@nmcourts.gov>
Cc: "Samuel Gollis" <sgollis@hotmail.com>; <tullylawfirm@qwestoffice.net>; <victor@vrmarshall.com>; <rbc@keleher-law.com>; <crm@keleher-law.com>; <jbb@keleher-law.com>; <tcb@keleher-law.com>; <agrarkin@hollandhart.com>; <msherdan@hollandhart.com>; <jcbrockmann@newmexicowaterlaw.com>; <srfullerton@newmexicowaterlaw.com>; <jfstein@newmexicowaterlaw.com>; <jmccaleb@taylormccaleb.com>; <etaylor@taylormccaleb.com>; <gary@risleylaw.net>; <pshannonlaw@yahoo.com>; <lbergen@nativeamericanlawyers.com>; <portego@utemountain.org>; <chawkins@utemountain.org>; <rdempsey@cuddymccarthy.com>; <mobrien@modrall.com>; <ccs@modrall.com>; <bjoxford@yahoo.com>; <ghorner@zianet.com>; <jwu@sheehansheehan.com>; <arianne.singer@state.nm.us>; <misty.braswell@state.nm.us>; "Guss Guarino" <guss.guarino@usdoj.gov>; <david.gehlert@usdoj.gov>; "Kate Hoover" <khoover@nndoj.org>
Subject: Hearing on June 11 & 12

Celina,

Does Judge Wechsler have a plan for the allocation of time among the parties and structure for the hearing next week? If not, would the Court entertain a proposal if the parties are able to come up with a proposal?

Stanley M. Pollack
Assistant Attorney General
Water Rights Unit
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515

928.871.7510
928.871.6200 (Fax)
928.205.5891 (Cell)

This message is intended only for the use of the Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, please delete the email and inform the sender immediately. Thank you.

Exhibit 2

Associated with:

GARY L. HORNER'S PROPOSAL RE JUNE 11 - 12, 2013 HEARING PROCEDURE

Filed June 4, 2013

Gary L. Horner

From: "Celina Jones" <aoccaj@nmcourts.gov>
Date: Monday, June 03, 2013 10:45 AM
To: "Victor R. Marshall" <victor@vrmarshall.com>
Cc: "Samuel Gollis" <sgollis@hotmail.com>; <tullylawfirm@qwestoffice.net>; <rbc@keleher-law.com>; <crm@keleher-law.com>; <jbb@keleher-law.com>; <tcb@keleher-law.com>; <agrarkin@hollandhart.com>; <msherdan@hollandhart.com>; <jcbrockmann@newmexicowaterlaw.com>; <srfullerton@newmexicowaterlaw.com>; <jfstein@newmexicowaterlaw.com>; <jmccaleb@taylormccaleb.com>; <etaylor@taylormccaleb.com>; <gary@risleylaw.net>; <pshannonlaw@yahoo.com>; <lbergen@nativeamericanlawyers.com>; <portego@utemountain.org>; "(chawkins@utemountain.org)" <chawkins@utemountain.org>; <rdempsey@cuddymccarthy.com>; <mobrien@modrall.com>; <ccs@modrall.com>; <bjoxford@yahoo.com>; <ghorner@zianet.com>; <jwu@sheehansheehan.com>; <arianne.singer@state.nm.us>; <misty.braswell@state.nm.us>; "Guss Guarino" <guss.guarino@usdoj.gov>; <david.gehlert@usdoj.gov>; "Kate Hoover" <khoover@nndoj.org>; "Sheri Heying" <sheri@vrmarshall.com>; "Shirley Meridith" <shirley@vrmarshall.com>; "Stanley M. Pollack" <smpollack@nndoj.org>
Subject: Re: Hearing on June 11 & 12

Dear Counsel,

In preparation for next week's hearing, Judge Wechsler is planning to allocate time to the parties to present arguments concerning each of the four prongs of the legal standard. The judge welcomes your input, and requests that either a joint proposal or multiple proposals be filed no later than tomorrow, Tuesday June 4, 2013, at 5:00 pm.

-Celina

----- Original Message -----

From: "Victor R. Marshall" <victor@vrmarshall.com>
To: "Stanley M. Pollack" <smpollack@nndoj.org>
Cc: "Celina Jones" <aoccaj@nmcourts.gov>, "Samuel Gollis" <sgollis@hotmail.com>, "(tullylawfirm@qwestoffice.net)" <tullylawfirm@qwestoffice.net>, "(rbc@keleher-law.com)" <rbc@keleher-law.com>, "(crm@keleher-law.com)" <crm@keleher-law.com>, "(jbb@keleher-law.com)" <jbb@keleher-law.com>, "(tcb@keleher-law.com)" <tcb@keleher-law.com>, "(agrarkin@hollandhart.com)" <agrarkin@hollandhart.com>, "(msherdan@hollandhart.com)" <msherdan@hollandhart.com>, "(jcbrockmann@newmexicowaterlaw.com)" <jcbrockmann@newmexicowaterlaw.com>, "(srfullerton@newmexicowaterlaw.com)" <srfullerton@newmexicowaterlaw.com>, "(jfstein@newmexicowaterlaw.com)" <jfstein@newmexicowaterlaw.com>, "(jmccaleb@taylormccaleb.com)" <jmccaleb@taylormccaleb.com>, "(etaylor@taylormccaleb.com)" <etaylor@taylormccaleb.com>, "(gary@risleylaw.net)" <gary@risleylaw.net>, "(pshannonlaw@yahoo.com)" <pshannonlaw@yahoo.com>, "(lbergen@nativeamericanlawyers.com)" <lbergen@nativeamericanlawyers.com>, "(portego@utemountain.org)" <portego@utemountain.org>, "(chawkins@utemountain.org)" <chawkins@utemountain.org>, "(rdempsey@cuddymccarthy.com)" <rdempsey@cuddymccarthy.com>, "(mobrien@modrall.com)" <mobrien@modrall.com>, "(ccs@modrall.com)" <ccs@modrall.com>, "(bjoxford@yahoo.com)" <bjoxford@yahoo.com>, "(ghorner@zianet.com)" <ghorner@zianet.com>, "(jwu@sheehansheehan.com)" <jwu@sheehansheehan.com>, "(arianne.singer@state.nm.us)" <arianne.singer@state.nm.us>, "(misty.braswell@state.nm.us)" <misty.braswell@state.nm.us>, "Guss Guarino" <guss.guarino@usdoj.gov>, "(david.gehlert@usdoj.gov)" <david.gehlert@usdoj.gov>, "Kate Hoover" <khoover@nndoj.org>, "Sheri Heying" <sheri@vrmarshall.com>, "Shirley Meridith"

6/4/2013

<shirley@vrmarshall.com>, "Victor Marshall" <victor@vrmarshall.com>

Sent: Monday, June 3, 2013 8:32:31 AM

Subject: Re: Hearing on June 11 & 12

Celina -

This would be a good idea if the parties can come up with an agreement or at least a partial agreement. I'll call Stanley later today.

Regards,
Victor Marshall

On 6/3/2013 8:18 AM, Stanley M. Pollack wrote:

Celina,

Does Judge Wechsler have a plan for the allocation of time among the parties and structure for the hearing next week? If not, would the Court entertain a proposal if the parties are able to come up with a proposal?

Stanley M. Pollack

Assistant Attorney General

Water Rights Unit

Navajo Nation Department of Justice

P.O. Drawer 2010

Window Rock, AZ 86515

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Gary L. Horner

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Date: Monday, June 03, 2013 3:54 PM
To: "Victor R. Marshall" <victor@vrmarshall.com>
Cc: "Samuel Gollis" <sgollis@hotmail.com>; <tullylawfirm@qwestoffice.net>; <rbc@keleher-law.com>; <crm@keleher-law.com>; <jbb@keleher-law.com>; <tcb@keleher-law.com>; <agrarkin@hollandhart.com>; <msherman@hollandhart.com>; <jcbrockmann@newmexicowaterlaw.com>; <srfullerton@newmexicowaterlaw.com>; <jfstein@newmexicowaterlaw.com>; <jmccaleb@taylormccaleb.com>; <etaylor@taylormccaleb.com>; <gary@risleylaw.net>; <pshannonlaw@yahoo.com>; <lbergen@nativeamericanlawyers.com>; <portego@utemountain.org>; "(chawkins@utemountain.org)" <chawkins@utemountain.org>; <rdempsey@cuddymccarthy.com>; <mobrien@modrall.com>; <ccs@modrall.com>; <bjoxford@yahoo.com>; <ghorner@zianet.com>; <jwu@sheehansheehan.com>; <arianne.singer@state.nm.us>; <misty.braswell@state.nm.us>; "Guss Guarino" <guss.guarino@usdoj.gov>; <david.gehlert@usdoj.gov>; "Kate Hoover" <khoover@nndoj.org>; "Sheri Heying" <sheri@vrmarshall.com>; "Shirley Meridith" <shirley@vrmarshall.com>
Attach: 2013-06-03 Navajo Inter Se proposed hearing schedule.doc
Subject: RE: Hearing on June 11 & 12 - Proposed Schedule

Counsel,

Per the email from Ms. Jones, I am attaching a proposed schedule for the hearing on June 11 & 12 allocating time for argument concerning each of the four prongs of the legal standard, with a short introduction on June 11 and a short conclusion on the 12th. Please note that the exact time of the afternoon break is subject to change each day, depending on the length of the Proponents' opening arguments on prongs 2 and 4.

Please let me know if this proposal is acceptable.

Stanley M. Pollack
 Assistant Attorney General
 Water Rights Unit
 Navajo Nation Department of Justice
 P.O. Drawer 2010
 Window Rock, AZ 86515

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-----Original Message-----

From: Celina Jones [mailto:aoccaj@nmcourts.gov]
Sent: Monday, June 03, 2013 10:45 AM
To: Victor R. Marshall
Cc: Samuel Gollis; (tullylawfirm@qwestoffice.net); (rbc@keleher-law.com); (crm@keleher-law.com); (jbb@keleher-law.com); (tcb@keleher-law.com); (agrarkin@hollandhart.com);

6/4/2013

(msh Sheridan@hollandhart.com); (jcbrockmann@newmexicowaterlaw.com);
 (srfullerton@newmexicowaterlaw.com); (jfstein@newmexicowaterlaw.com);
 (jmccaleb@taylormccaleb.com); (etaylor@taylormccaleb.com); (gary@risleylaw.net);
 (pshannonlaw@yahoo.com); (lbergen@nativeamericanlawyers.com); (portego@utemountain.org);
 (chawkins@utemountain.org); (rdempsey@cuddymccarthy.com); (mobrien@modrall.com);
 (ccs@modrall.com); (bjoxford@yahoo.com); (ghorner@zianet.com); (jwu@sheehansheehan.com);
 (arianne.singer@state.nm.us); (misty.braswell@state.nm.us); Guss Guarino; (david.gehlert@usdoj.gov);
 Kate Hoover; Sheri Heying; Shirley Meridith; Stanley M. Pollack
 Subject: Re: Hearing on June 11 & 12

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-Celina

----- Original Message -----

From: "Victor R. Marshall" <victor@vrmarshall.com>

To: "Stanley M. Pollack" <smpollack@nndoj.org>

Cc: "Celina Jones" <aoccaj@nmcourts.gov>, "Samuel Gollis" <sgollis@hotmail.com>, "tullylawfirm@qwestoffice.net" <tullylawfirm@qwestoffice.net>, "rbc@keleher-law.com" <rbc@keleher-law.com>, "crm@keleher-law.com" <crm@keleher-law.com>, "jbb@keleher-law.com" <jbb@keleher-law.com>, "tcb@keleher-law.com" <tcb@keleher-law.com>, "agrarkin@hollandhart.com" <agrarkin@hollandhart.com>, "msh Sheridan@hollandhart.com" <msh Sheridan@hollandhart.com>, "jcbrockmann@newmexicowaterlaw.com" <jcbrockmann@newmexicowaterlaw.com>, "srfullerton@newmexicowaterlaw.com" <srfullerton@newmexicowaterlaw.com>, "jfstein@newmexicowaterlaw.com" <jfstein@newmexicowaterlaw.com>, "jmccaleb@taylormccaleb.com" <jmccaleb@taylormccaleb.com>, "etaylor@taylormccaleb.com" <etaylor@taylormccaleb.com>, "gary@risleylaw.net" <gary@risleylaw.net>, "pshannonlaw@yahoo.com" <pshannonlaw@yahoo.com>, "lbergen@nativeamericanlawyers.com" <lbergen@nativeamericanlawyers.com>, "portego@utemountain.org" <portego@utemountain.org>, "chawkins@utemountain.org" <chawkins@utemountain.org>, "rdempsey@cuddymccarthy.com" <rdempsey@cuddymccarthy.com>, "mobrien@modrall.com" <mobrien@modrall.com>, "ccs@modrall.com" <ccs@modrall.com>, "bjoxford@yahoo.com" <bjoxford@yahoo.com>, "ghorner@zianet.com" <ghorner@zianet.com>, "jwu@sheehansheehan.com" <jwu@sheehansheehan.com>, "arianne.singer@state.nm.us" <arianne.singer@state.nm.us>, "misty.braswell@state.nm.us" <misty.braswell@state.nm.us>, "Guss Guarino" <guss.guarino@usdoj.gov>, "david.gehlert@usdoj.gov" <david.gehlert@usdoj.gov>, "Kate Hoover" <khoover@nndoj.org>, "Sheri Heying" <sheri@vrmarshall.com>, "Shirley Meridith" <shirley@vrmarshall.com>, "Victor Marshall" <victor@vrmarshall.com>

Sent: Monday, June 3, 2013 8:32:31 AM

Subject: Re: Hearing on June 11 & 12

Celina -

This would be a good idea if the parties can come up with an agreement or at least a partial

agreement. I'll call Stanley later today.

Regards ,
Victor Marshall

On 6/3/2013 8:18 AM, Stanley M. Pollack wrote:

Celina,

Does Judge Wechsler have a plan for the allocation of time among the parties and structure for the hearing next week? If not, would the Court entertain a proposal if the parties are able to come up with a proposal?

Stanley M. Pollack

Assistant Attorney General

Water Rights Unit

Navajo Nation Department of Justice

P.O. Drawer 2010

Window Rock, AZ 86515

928.871.7510

928.871.6200 (Fax)

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PROPOSED SCHEDULE

Tuesday, June 11

- 8:30 – 8:50 Housekeeping matters – phone roll call, introduction of counsel, etc.
- 8:50 – 9:10 Introduction by Settlement Proponents
- 9:10 – 9:30 Introduction by Objectors

- 9:30 – 12:00 Argument on Prong 1
 - Settlement Proponents' Argument in support of Settlement Motion (1 ¼ hours divided between Argument and Reply)
 - Objectors' Response (1 ¼ hours)
 - Settlement Proponents' Reply

LUNCH BREAK (12:00 – 1:30)

- 1:30 – 4:45 Argument on Prong 2
 - Settlement Proponents' Argument in support of Settlement Motion (1 ½ hours divided between Argument and Reply)
 - 3:00 – 3:15 BREAK (Exact time subject to change)
 - Objectors' Response (1 ½ hours)
 - Settlement Proponents' Reply

Wednesday, June 12

- 8:30 – 8:45 Housekeeping matters

- 8:45 – 11:45 Argument on Prong 3
 - Settlement Proponents' Argument in support of Settlement Motion (1 ½ hours divided between Argument and Reply)
 - Objectors' Response (1 ½ hours)
 - Settlement Proponents' Reply

LUNCH BREAK (11:45 – 1:15)

- 1:15 – 4:30 Argument on Prong 4
 - Settlement Proponents' Argument in support of Settlement Motion (1 ½ hours divided between Argument and Reply)
 - 2:45 – 3:00 BREAK (Exact time subject to change)
 - Objectors' Response (1 ½ hours)
 - Settlement Proponents' Reply

- 4:30 – 5:00 CLOSING (Settlement Proponents ¼ hour; Objectors ¼ hour)
 - Closing Argument by Settlement Proponents (¼ hour)
 - Closing Argument by Objectors (¼ hour)

Exhibit 4

Associated with:

GARY L. HORNER'S PROPOSAL RE JUNE 11 - 12, 2013 HEARING PROCEDURE

Filed June 4, 2013

Gary L. Horner

From: "Tully Law Firm" <tullylawfirm@qwestoffice.net>
Date: Tuesday, June 04, 2013 9:32 AM
To: "Community Ditch Defendants" <victor@vrmarshall.com>; "Gary Horner" <ghorner@zianet.com>;
"Robert Oxford" <bjoxford@yahoo.com>; "McCarty Trust" <pshannonlaw@yahoo.com>
Attach: wateradjudicationmotionshearing.docx
Subject: Motions Hearing-June 11 and 12, 2013

"Folks":

Attached for review in Word format is a draft of a proposed schedule for the above-captioned motions hearing.

Please provide comments, revisions, additions or deletions at your earliest convenience.

Thank you.

Rick Tully

PROPOSED SCHEDULE FOR MOTIONS HEARINGS ON
TUESDAY, JUNE 11 AND WEDNESDAY, JUNE 12, 2013

Morning-June 11, 2013

- A. Introduction of counsel and housekeeping matters
- B. Settling Parties' Motions in Support of Settlement Agreement and Proposed Decrees are basically "closing arguments" to be used at the conclusion of the evidentiary hearing
- C. Defendants' Motions for Partial Summary Judgments are motions to be heard before the evidentiary hearing
- D. The following are the standards for the Court to decide on the pending motions:
 - 1. The Settlement Agreement is the product of good faith and arms-length negotiations
 - 2. The Settlement Agreement's provisions and Proposed Decrees will reduce or eliminate impacts on junior water rights
 - 3. There is a reasonable basis to conclude the Settlement Agreement provides for less than the potential claims that could be secured at trial
 - 4. The Settlement Agreement is consistent with public policy and applicable law

Remainder of June 11, 2013 and June 12, 2013

- 1. Motions for Partial Summary Judgments
by Defendants Community Ditches
Responses by Settling Parties
Replies by Defendant Community Ditches
- 2. Motion for Partial Summary Judgment
by Defendants B Square Ranch, LLC et al.
Response by Settling Parties
Reply by Defendant B Square Ranch, LLC et al.
- 3. Motion for Partial Summary Judgment
By Robert Oxford
Response by Settling Parties
Reply by Robert Oxford
- 4. Motions for Partial Summary Judgment
by Gary Horner
Responses by Settling Parties
Replies by Gary Horner
- 5. Joinders to Defendants' Motions for Partial Summary Judgment
by other Defendants
- 6. Motions in Support of Settlement Agreement and Proposed Decrees
By Settling Parties
Responses by Defendants
Replies by Settling Parties