

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

STATE OF NEW MEXICO, *ex rel.*
THE STATE ENGINEER,

Plaintiff,

AB-07-1

Claims of Navajo Nation

vs.

No. CV 75-184

THE UNITED STATES OF AMERICA, *et al.*,

Honorable James J. Wechsler
Presiding Judge

Defendants.

DESCRIPTIVE SUMMARY: The US and NN assert that the US can provide water by contract even if the NN has no federal reserved water rights. They say that the court cannot prevent them from contracting water above the settlement amounts. The proposed settlement does not limit the NN to the amounts in the decree. So the proposed settlement would set a minimum but not a maximum on the amount of water the NN could take from New Mexico's share of the Colorado River.

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DATE OF FILING: June 25, 2013

**NOTICE OF FILING EXCERPT FROM JUNE 12 HEARING
ABOUT BOR CONTRACT WATER FOR THE NAVAJO NATION
IN ADDITION TO RESERVED RIGHTS**

Attached is an excerpt from the hearing on June 12, 2013. In this excerpt, the Navajo Nation and the United States assert that the Navajo Nation can obtain water from the United States by contract from Navajo Reservoir even if the Navajo Nation has no federal reserved water rights. So, according to the US and NN, there is nothing that this court can do to stop the United States from contracting with the Navajo Nation for water in excess of the amounts in the proposed settlement.

The Office of the State Engineer apparently agrees with this position.

A quick review of the proposed settlement agreement shows that it contains no provision limiting the Navajo Nation to the amounts of water specified in the proposed decree.

Therefore the proposed settlement would set a floor but not a ceiling on the amounts of water the Navajo Nation could take from New Mexico's share of the Colorado River. The proposed settlement would set a minimum but not a maximum on the amount of water the United States could give to the Navajo Nation.

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 June 25, 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.

June 12, 2013 Navajo Water Rights hearing. AB 07-1

8:49 am Stanley Pollack for the Navajo Nation: - **The United States holds water pursuant to a permit that was made in 1955. That permit is for far more water than the amounts of water that this settlement contains. There is nothing to stop the Secretary of the Interior from contracting with the Navajo Nation for any amount of water in that permit, even in excess of the amounts of water that this settlement contains.** The Navajo Nation currently has a contract with the Secretary for that water, but we can contract for more. **So, there's nothing that this court can do to stop the United States from contracting with the Navajo Nation for that...**

Guss Guarino for the United States:

If in the event the United States and the Navajo Nation are asked to litigate, **the contract rights for the Navajo Nation will exist and they will exist no matter what this court ultimately rules or quantifies for the reserved rights of the Navajo Nation.** They are contract rights that are in place, and that are the Navajo Nation's. **So the contract rights and the rights that are associated with NIIP of 508,000 acre-feet of water diversion will continue to exist.** The contract rights associated with the other permits and authorizations which the United States has with the Navajo Nation for the water contracted for will just continue.

8:53:30 Judge Wechsler: **So why are we here?**

Guarino: We need to resolve, there are very large unresolved questions associated with the quantification of the Navajo Nation's water rights, the extent of the Navajo Nation's water rights. And it's important that we quantify them. Now, those rights associated with the contracts held by the United States and the Navajo Nation, they are, there is overlap between the contract rights and the reserved rights of the Navajo Nation. There's no question about that. But the question is in this adjudication, the quantification of the water rights will happen, but the contracts that the Navajo Nation and the permits that the Navajo Nation hold, the United States hold, will just continue. So there is overlap, there is a relationship, but the quantification..

Judge: Tell me the relationship...I'd like to learn a little bit more about that.

Guarino: Sure. When, for instance, in the Navajo Reservoir, the United States in accordance with statute, they must have a contract with an end user, including the Navajo Nation. And so for water that is stored in the Navajo Nation, there must continue to be a contract between the United States as the operator of the dam and the receiver of the water. And so that's required. So that water is part of what is the reserved water right of the Navajo Nation, we would argue, and this process helps to quantify and resolve the extent of the Navajo Nation's water rights. That's why we have to have a contract between the United States as the operator of the dam and the Navajo Nation, end user of the water. Even if it's associated with a reserved right, if its coming out of storage, that it has to be under a contract.

8:55:37 Judge: - Okay, **and so if this court were to say the Navajo Nation is not entitled to any reserved rights...** And I understand that's not we're here for in this part of the proceeding, but suppose we went down the line, and that were the ruling of the court, **what I'm hearing you say right now is, that doesn't make any difference with respect to the Navajo Nation's use of the water in the Navajo Reservoir.**

Guarino: That's stored in Navajo Reservoir. **That's correct. That's correct.**

***** [emphases added]