

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

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

Plaintiffs/Appellants,

No. 33439
D-1116-CV-75-184
Honorable James J. Wechsler
Presiding Judge

v.

THE UNITED STATES OF AMERICA et al.,

San Juan River Adjudication
Cause No. AB-07-1
Claims of the Navajo Nation

Defendants/Appellees.

DOCKETING STATEMENT by Defendants/Appellees
B Square Ranch, LLC; Bolack Minerals Company
a.k.a. Bolack Minerals Company Limited Partnership;
Estate of Tom Bolack a.k.a. Thomas Felix Bolack, Deceased;
Bolack Minerals Foundation; Tommy Bolack Revocable Trust;
Estate of Juanita Velasquez, Deceased; David A. Pierce and
Maxine M. Pierce; and David M. Drake and Shawna Drake
("Defendants/Appellants B Square Ranch, LLC et al.")

Submitted by:

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A ✓

Nature of the Proceeding

Pursuant to Rule 12-201 (A) (2) NMRA (2013), this is an appeal as of right from the Partial Final Judgment and Decree of the Water Rights of the Navajo Nation and the Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation both entered on November 1, 2013.

The District Court entered the above-described Partial Final Judgment and the Supplemental Partial Final Judgment after the District Court entered the Order Granting the Settlement Motion for Entry of Partial Final Decrees Describing the Water Rights of the Navajo Nation on August 16, 2013. The Order Granting the Settlement Motion was incorporated in the Partial Final Judgment and the Supplemental Partial Final Judgment.

The following are pleadings or documents filed in D-1116-CV-75-184 that were pending at the District Court at the time the appeal by Defendants/Appellants B Square Ranch, LLC et al. as well as the appeals of the Community Ditch Defendants, Gary L. Horner, Stephen Albert McCarty, Trustee of the McCarthy Trust, and the Estate of Mary McCarty a.k.a. Mary Louise McCarty, Deceased were filed:

1. Joint Motion for New Trial by Community Ditch Defendants and Defendants/Appellants B Square Ranch, LLC et al.
2. Motion and Joinder(s) to such Motion for Extension of Time to File Notice of Appeal by Defendants/Appellants B Square Ranch, LLC et al.
3. Motion for Disclosure of Ex Parte Communications filed by Community Ditch Defendants
4. Joint Response by Plaintiffs/Appellees in Opposition to Motion for Extension of Time to File Notice of Appeal

Other than the entry of an Order Denying a New Trial that was filed November 26, 2013, the District Court did not issue any rulings or orders on the above-described remaining Motions or Response.

Orders to be Reviewed and Timeliness of Appeal

The orders to be reviewed in this appeal are the above-described Partial Final Judgment and Supplemental Partial Final Judgment as well as the Order Granting the Settlement Motion for Entry of Partial Final Decrees Describing the Water Rights of the Navajo Nation that was incorporated in these Partial Final Judgments.

After the above-described Partial Final Judgments were filed, Defendants/Appellants B Square Ranch, LLC et al. filed a Motion for Extension of Time to File Notice of Appeal. The District Court did not schedule a hearing on the Motion for Extension of Time nor any of the other pending motions before the 30-day period to file an appeal expired. Defendants/Appellants B Square Ranch, LLC et al. timely filed a Notice of Appeal on December 2, 2013.

Statement of the Case

A.

(Identification of Defendants B Square Ranch, LLC et al.)

Due to a Notice of Withdrawal of Participation by certain Defendants previously included in the group known as "Defendants B Square Ranch, LLC et al.", this Docketing Statement is being filed by the following Defendants/Appellants:

- A. B Square Ranch, LLC; Bolack Minerals Company a.k.a. Bolack Minerals Company Limited Partnership; Estate of Tom Bolack a.k.a. Thomas Felix Bolack, Deceased; Bolack Museum Foundation and Tommy Bolack Revocable Trust
- B. Estate of Juanita Velasquez, Deceased
- C. David A. Pierce and Maxine M. Pierce
- D. David M. Drake and Shawna Drake

Defendants Tommy Bolack Minerals Corporation, The Citizens Bank of Farmington, New Mexico, Richard Tully a.k.a. Richard T. C. Tully, Cecelia R. Tully and Rikki A. Tully a.k.a. Rikki A. Phillips have previously filed a notice of these Defendants' withdrawal from participation in this action.

In the event the above-described Defendants are found to be owners of any water rights that may be affected by the terms of the settlement agreement between the United States of America, the Navajo Nation and the State of New Mexico in the San Juan Basin, these Defendants will be bound by the terms of the final non-appealable judgment entered in this action.

B.
(Background of Settlement Agreement)

For several years, the Navajo Nation and the State of New Mexico, through the New Mexico State Engineer's Office, entered into negotiations in an attempt to settle the water rights claims of the Navajo Nation in the San Juan River Basin located in the State of New Mexico. The United States did not participate in the negotiation of the proposed Settlement Agreement. The original Settlement Agreement was signed in 2005.

Over 5 years after the negotiation of the Settlement Agreement, the United States prepared a Statement of Claims and other technical reports in an attempt to support the Settlement Agreement between the Navajo Nation and the State of New Mexico. The Statement of Claims and the technical reports were prepared during the pendency of this action to support the Navajo Nation's claims, and these claims were prepared to support and justify the already existing Settlement Agreement.

After several revisions to the original Settlement Agreement, the final settlement agreement was signed by the State of New Mexico, the Navajo Nation and the United States of America in December, 2010.

The State of New Mexico, through its State Engineer, filed a motion in January, 2011 requesting the District Court of San Juan County, New Mexico to approve the Settlement Agreement concerning the water rights of the Navajo Nation in the San Juan River Basin. In other words, the executive branches of the State of New Mexico, the Navajo Nation and the United States of America are requesting the judicial branch of the State of New Mexico to adjudicate the water rights of the Navajo Nation in New Mexico, and establish the priority dates for such water rights based on a settlement agreement instead of an evidentiary hearing or trial.

When the motion to approve the Settlement Agreement was filed in early 2011, a determination had been made that other water rights owners in the San Juan River Basin might have their water rights adversely affected by the proposed Settlement Agreement. An Order Establishing Initial Procedures for Entry of a Partial Final Judgment and Decree of the Water Rights of the Navajo Nation as well as an Order Approving Final Forms of Notice of Navajo Inter Se and Notices of Intent to Participate in Navajo Inter Se and Setting Deadlines for Service and Filing of Notice was also filed in this action.

C.

(Initial participation by Defendants B Square Ranch, LLC et al. and discovery requests and problems)

Defendants B Square Ranch, LLC et al. timely filed their Notices of Intent to Participate in the Navajo *Inter Se* Proceeding and attended the mandatory scheduling

conference on Monday, October 3, 2011. The Tully Law Firm, P. A. entered its appearance for Defendants B Square Ranch, LLC et al. and attended the Court hearing on October 26, 2011 on behalf of these Defendants.

At the October 26, 2011 hearing, counsel for Defendants B Square Ranch, LLC et al. objected to the scheduling of discovery and other matters that were being discussed at such hearing and requested the Court to allow the "Non-Settling Parties", including Defendants B Square Ranch, LLC et al., to pursue discovery in this action pursuant to the New Mexico Rules of Civil Procedure, and, in particular, to allow these parties to immediately commence discovery.

If discovery could be initiated at that time, Defendants B Square Ranch, LLC et al. would be able to evaluate and decide if they should agree to the proposed Settlement Agreement and Partial Final Judgments or oppose such Settlement Agreement and Partial Final Judgments.

After the October 26, 2011 hearing, the Court entered an order on February 3, 2012 stating the Non-Settling Parties' discovery was not to commence until June 1, 2012, over 7 months after the October 26, 2011 hearing.

Over 7 months passed without the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., being able to serve discovery on the Settling Parties. Discovery was served on the Settling Parties on or after June 1, 2012 by the Non-Settling Parties, including Defendants B Square Ranch, LLC et al.

In response to the Non-Settling Parties' discovery, including Defendants B Square Ranch, LLC et al.'s discovery, the Settling Parties filed objections to the

discovery and did not produce any documents nor did they provide any substantive answers to the interrogatories other than asserting a number of objections.

Defendants B Square Ranch, LLC et al. and other Non-Settling Parties then filed motions to compel discovery and the Court held a hearing on such motions. The Court granted certain of the motions to compel and denied other motions to compel. The Settling Parties thereafter produced certain documents and answered certain interrogatories. However, there are still certain requested documents that have not been produced and certain interrogatories that have not been answered by the Settling Parties at the time this appeal was filed.

The Settling Parties did produce a large number of documents (300,000 to 400,000 pages) to the Non-Settling Parties claiming that such documents were relevant in this action. This "document dump" was not organized, contained hundreds of irrelevant documents, and could not be reviewed by the Non-Settling Parties in a timely fashion under the deadlines ordered by the District Court.

The Settling Parties set up procedures for the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., to review documents at agencies or offices of the Settling Parties ("repositories"). When attempts were made to review these documents at the repositories, these procedures were so onerous, time consuming and impractical that the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., were effectively denied access to the documents at the repositories in order to review and inspect these documents under the deadlines ordered by the District Court.

When Defendants B Square Ranch, LLC et al. reviewed documents at the office

of the Navajo Indian Irrigation Project in Farmington, New Mexico, the following procedures were in place and needed to be complied with:

- Advance written notice had be provided to the Farmington office of the Navajo Indian Irrigation Project identifying: (i) the name of the one person who would be allowed to review the records, and (ii) the specific documents that were to be reviewed at that office

- No notes, memos, comments or statements could be made on a separate piece of paper or tablet by the person reviewing the documents

- An agency employee would be present at all times to observe the person reviewing the documents as well as when the person reviewing the documents left the room

- No recording devices were allowed in the room while the documents were being reviewed

- The review of documents could only be made during the hours selected by the agency, not the regular hours of operation of the agency

- No documents requested to be copied could be copied until a Solicitor of the United States Department of Justice or United States Department of the Interior conducted a privilege and confidentiality review of the requested documents to determine whether or not these documents were discoverable

- After the privilege and confidentiality review was completed, the person requesting copies of the documents could not have copies made on the agency's photocopying machine and then pay for such copies

- The person requesting copies of documents had to make arrangements for a business approved by the agency to deliver and remove a photocopying machine to the agency during the hours selected by the agency

- The person requesting copies of documents had to either make the copies or arrange for a non-agency person to make the copies at the agency's office

- Numerous documents that were supposed to be at the Farmington office of the Navajo Indian Irrigation Project for review were not located at that office, but in a different office across town

- It took 5 hours to review 6 drawers in 1-1/2 file cabinets, and there were 12 to 13 file cabinets with 4 drawers each that were not reviewed at that agency

D.

(Requests for Extensions of Time to
Conduct and Complete Discovery)

After the original document dump, the Settling Parties produced a large number of additional documents in August and September 12, 2012.

In mid-September 2012, the City of Aztec and the City of Bloomfield filed a joint Motion to Extend All Scheduled Deadlines and the San Juan Water Commission filed a

separate Motion to Extend Remaining Case Management Deadlines by 180 Days in this action. Defendants B Square Ranch, LLC et al. joined these two Motions to Extend All Scheduled Deadlines.

These Motions to Extend Deadlines requested the extension of all deadlines by either 120 days or 180 days to allow the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., to manage pretrial discovery and to adequately develop their cases because Defendants B Square Ranch, LLC et al. and certain of the Non-Settling Parties did not believe in good faith they would be able to meet the deadlines that were ordered by the District Court. During this same time frame, certain of the Non-Settling Parties filed second motions to compel discovery by the Settling Parties.

As strongly recommended by the Court at several hearings as well as being ordered by the Court in this action, Defendants B Square Ranch, LLC et al. met, conversed and cooperated with other Non-Settling Parties' counsel; they joined in certain Non-Settling Parties' motions; and they coordinated with other Non-Settling Parties on discovery matters. In order to be more efficient and effective with time, fees, costs and expenses, Defendants B Square Ranch, LLC et al. adopted and incorporated by reference many of the responses, answers, legal arguments and citations of other Non-Settling Parties to the discovery requests of the Settling Parties.

With the original document dump of 300,000-400,000 documents and these additional documents, it was not possible for the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., to have sufficient time to review the documents originally and subsequently produced by the Settling Parties prior to the entry of the above-described Partial Final Judgments and Order Granting the Settlement Motion.

As stated in the previous motions for extension by Non-Settling Parties and other pleadings and documents filed by Defendants B Square Ranch et al., the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., also did not have sufficient time to adequately respond to the discovery requests by the Settling Parties, to identify witnesses and exhibits, to comply with the scheduling orders issued by the District Court, to complete sufficient discovery in order to adequately prepare dispositive motions, and to adequately prepare for the evidentiary hearing in this action.

The District Court in this action did not permit the parties to pursue the normal course for a law suit. The normal course is to have the parties file dispositive motions after sufficient discovery to support such motions is completed. The District Court was notified several times by the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., that discovery was not complete in this action.

As an example, Tommy Bolack, Member of B Square Ranch, LLC, General Partner of Bolack Minerals Company a.k.a. Bolack Minerals Company Limited Partnership, Co-Personal Representative of the Estate of Tom Bolack a.k.a. Thomas Felix Bolack, Deceased, President of Bolack Museum Foundation and Trustee of the Tommy Bolack Revocable Trust filed an Affidavit in this action on May 10, 2013.

In his unrebutted Affidavit, Tommy Bolack stated under oath that he was informed and was aware of the proceedings in this action, and that, based on his personal information and knowledge, Defendant B Square Ranch, LLC, Defendant Bolack Minerals Company a.k.a. Bolack Minerals Company Limited Partnership, Defendant Estate of Tom Bolack a.k.a. Thomas Felix Bolack, Deceased, Defendant Bolack Museum Foundation, and Defendant Tommy Bolack Revocable Trust were

unable to: (i) fully protect their rights and interests in this action; (ii) comply with the orders of the Court; (iii) examine the discovery that had been provided by the Settling Parties; (iv) request additional discovery from the Settling Parties; (v) adequately object, respond or answer the discovery requests of the Settling Parties; (vi) fully develop objections or responses to the proposed Settlement Agreement; (vii) make a knowledgeable and informed decision whether to approve or oppose the proposed Settlement Agreement; (viii) take over, schedule and attempt to complete the work that was being performed by the Non-Settling Parties who subsequently entered into settlement agreements in this action; (ix) conduct depositions of the Settling Parties' witnesses; (x) review the voluminous documents previously produced by the Settling Parties; (xi) overcome the obstacles stated by the other Non-Settling Parties in reviewing the documents produced by the Settling Parties; (xii) satisfy the requirements and procedures to review and copy voluminous documents at repositories established by the Settling Parties in several locations; (xiii) prepare dispositive motions within a reasonable time after discovery was completed; and (iv) prepare responses to the Settling Parties' dispositive motions, including the Settling Parties' Memorandums in support of the Settlement Agreement.

Tommy Bolack further stated under oath in his affidavit that, based on his personal information and knowledge, Defendant B Square Ranch, LLC, Defendant Bolack Minerals Company a.k.a. Bolack Minerals Company Limited Partnership, Defendant Estate of Tom Bolack a.k.a. Thomas Felix Bolack, Deceased, Defendant Bolack Museum Foundation, and Defendant Tommy Bolack Revocable Trust needed

additional time to: (i) complete discovery, and (ii) prepare and file dispositive motions after discovery was completed.

Notwithstanding the statements and representations of the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., the District Court continued to establish discovery deadlines that could not be met. No matter how many times the District Court established a discovery deadline, the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., were not able to complete discovery in this action.

Defendants B Square Ranch, LLC et al. and its counsel, unlike the Settling Parties, could not devote full time and unlimited funds to this action because they have limited access to resources, personnel and counsel.

E.
(Discrimination and Bias in Scheduling Orders)

The Settling Parties also filed motions to extend deadlines and a proposed schedule for discovery for the reasons that this action is technically and legally complex, the parties were unable to devote sufficient time to resolve certain matters or file certain documents, and certain deadlines should be extended that had been previously ordered by the District Court.

The Settling Parties represented to the District Court and the Non-Settling Parties that there was a date certain (December 31, 2013) when the Partial Final Decrees must be entered for the Settlement Agreement to remain viable. However, at the same time while making this representation, the Settling Parties requested extensions of deadlines and they did not timely answer, respond and comply with the Non-Settling Parties', including Defendants B Square Ranch, LLC et al.'s, discovery requests. As a result of

such actions, the scheduling deadlines that the Non-Settling Parties had been ordered to meet were adversely affected.

There was also discrimination and bias against the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., in the scheduling orders entered by the District Court. The scheduling orders stated that if the Non-Settling Parties do not comply with the discovery requests by the Settling Parties or otherwise adhere to the requirements of the orders of the Court, the objections of the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., might be dismissed from this action.

At this same time, the Settling Parties were not complying with discovery requests, and they were not complying with the Court's orders. These scheduling orders entered by the District Court did not contain the provision that the Settling Parties' non-compliance could result in the dismissal of the action.

F.
(Attempts to Complete Discovery in
Compliance with Scheduling Orders)

As previously stated, Defendants B Square Ranch, LLC et al. incorporated and adopted by reference the motions for extension of time previously filed in this action by the Cities of Aztec and Bloomfield, the San Juan Water Commission, La Plata Acequia Association and Robert Oxford. Other Non-Settling Parties, including the Community Ditch Defendants and Defendants Conoco Phillips Company/EI Paso Natural Gas Company joined in some, if not all, of these motions for extension of time.

After reviewing these motions for extension of time and the responses thereto by the Settling Parties as well as hearing arguments of the Settling Parties and Non-

Settling Parties at different hearings, the District Court entered several orders that established certain specified deadlines.

The Settling Parties and the Non-Settling Parties scheduled depositions of witnesses, supplemented their witness lists, and produced additional documents in order to meet the discovery deadline ordered by the District Court.

Defendant San Juan Water Commission and Defendants Conoco Phillips/El Paso Natural Gas Company scheduled and proceeded to take the depositions of the Settling Parties' expert witnesses before the discovery deadline of March 31, 2013. A few days before the depositions of the Settling Parties' expert witnesses were to be conducted, Defendant San Juan Water Commission, Defendants Conoco Phillips/El Paso Natural Gas Company and Defendants La Plata Acequia Association et al. entered into settlement agreements with the Settling Parties, primarily the State of New Mexico ex. rel. State Engineer.

The remaining Non-Settling Parties and, in particular, the Community Ditch Defendants, tried to take over the discovery being pursued by Defendant San Juan Water Commission and Defendants Conoco Phillips/El Paso Natural Gas Company, e.g., scheduling and conducting the depositions of the Settling Parties and their expert witnesses, supplementing the witness lists, reviewing the documents that were previously produced by the Settling Parties, and reviewing the production of documents by Settling Parties.

Under this short time period remaining before the Court ordered discovery deadline occurred, the remaining Non-Settling Parties, including Defendants B Square

Ranch, LLC et al., were made to comply with the scheduling deadline for completion of discovery.

Under these circumstances and in efforts to complete discovery under the very short time deadline by March 31, 2013, the remaining Non-Settling Parties conducted or attempted to conduct the following discovery:

- A. Defendants B Square Ranch, LLC et al. copied records and documents at the Farmington office of the Navajo Indian Irrigation Project
- B. Community Ditch Defendants filed a Request for Documents Needed to Depose John Leeper as Identified in His Informational Report
- C. Defendants B Square Ranch, LLC et al. reviewed records and documents on at the Farmington office of the Navajo Indian Irrigation Project
- D. Community Ditch Defendants conducted the deposition of Lionel Haskie, Operations & Maintenance Manager, Navajo Agricultural Products Industry, in Albuquerque, New Mexico
- E. Defendants B Square Ranch, LLC et al. copied records and documents at the Farmington office of the Navajo Indian Irrigation Project

Under these circumstances and during this short time frame, the Community Ditch Defendants filed the following motions concerning discovery in this action:

- Additional Motion to Compel Concerning NIIP-NAPI
- Motion to Compel Plaintiffs to Respond to Request for Admissions Concerning Water Units of Measurement
- Motion for Reconsideration About Evaporation for Colorado River Reservoirs

When the discovery closed in this action as ordered by the District Court on March 31, 2013, the remaining Non-Settling Parties, including Defendants B Square Ranch, LLC et al., needed additional time to complete discovery, and to prepare and file their dispositive motions after completing discovery.

G.
(Failure of Settling Parties to Comply with
Rule 1-056 NMRA 2013, Summary Judgment)

Pursuant to the Third Amended Order Granting Motions to Extend Deadlines and Setting Schedule Governing Discovery and Remaining Proceedings filed March 15,

2013 ("Third Amended Order") and Rule 1-056 NMRA 2013, Summary Judgment, a procedure was established wherein the District Court could determine whether a genuine claim for relief existed for the Settlement Agreement and whether there was a genuine issue of fact warranting the submission of this action to the Court for an evidentiary hearing.

The following are the standards that the District Court ordered that were to be considered and decided on for determination of the Settling Parties' Memorandums in Support of the Settlement Agreement and the Non-Settling Parties' motions for summary judgment :

1. Whether the Settlement Agreement was the product of good faith and arms-length negotiations.
2. Whether the Settlement Agreement's provisions and the Partial Final Judgments would reduce or eliminate impacts on junior water rights.
3. Whether there was a reasonable basis to conclude the Settlement Agreement provided for less than the potential claims that could be secured at trial.
4. Whether the Settlement Agreement was consistent with public policy and applicable law.

As ordered by the District Court, the Settling Parties had the burden of proof and burden of persuasion on the foregoing standards.

Pursuant to the Third Amended Order, the Settling Parties' Memorandums in Support of the Settlement Agreement were filed in this action. Settling Parties' Memorandums in Support of Settlement Agreement were basically "closing arguments" to be used at the conclusion of the evidentiary hearing.

Settling Parties' Memorandums did not comply with Rule 1-056 NMRA 2013 as follows:

-The Memorandums do not contain a short and concise statement of the reasons in support of the Settlement Motion. The Memorandum of Settling Parties Navajo Nation and United States (without affidavits and exhibits) contained 76 pages.

The Memorandum of Settling Party State of New Mexico (without affidavits and exhibits) contained 85 pages.

-The Memorandums did not contain a concise statement of all material facts as to which the Settling Parties contended no genuine issue exists.

-The Memorandums do not number the material facts that Settling Parties contended that no genuine issue exists.

-The Memorandums do not contain numbered material facts that refer with particularity to those portions of the record to which the Settling Parties relied.

-The supporting affidavits to Settling Parties' Memorandums were not made on the personal knowledge of the affiants; certain of the affidavits were in the narrative or contained historical information; these affidavits did not set forth such facts as would be admissible in evidence; and the affidavits do not affirmatively show that the affiant was competent to testify to the matters stated in his/her affidavit.

-The supporting affidavits did not state facts which would be admissible in evidence as sustainable objections excluding these statements could be made on the basis of: (i) conclusions of law by the affiants, (ii) relevancy, (iii) hearsay or (iv) lack of foundation.

-All of the supporting affidavits that accompanied the Settling Parties' Memorandums were signed by the affiants in the time period from April 10, 2013 through April 15, 2013 except for the affidavit of Clifford R. Landers signed on March 19, 2013. Discovery in the above-styled action closed on March 31, 2013. The affidavits submitted by the Settling Parties dated after March 31, 2013 should not have been considered by the District Court and should have been stricken from the record.

H.

(Rule 1-056 (F) NMRA 2013 is applicable to this action)

The Settling Parties could not justify their position that the Settlement Agreement should be approved before the District Court issued the Order Granting the Settlement Motion and the Partial Final Judgments because Tommy Bolack's unrebutted affidavit provided evidence that Defendants B Square Ranch, LLC et al., needed additional time to complete discovery, and to prepare and file their dispositive motions after completing discovery.

Under Rule 1-056 (F) NMRA 2013, the District Court should have refused Settling Parties' application for judgment, ordered a continuance of this action to permit the parties to conduct discovery, or it should have entered such other order that would be fair and just to Defendants B Square Ranch, LLC et al. and the Settling Parties.

I.
(Inconsistent, Contradictory and Ambiguous Orders)

The Settlement Agreement appears to state there must be a determination declaring there is sufficient water reasonably likely to be available to New Mexico under the apportionment made by the Upper Colorado River Compact for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and for existing and authorized Navajo and non-Navajo uses from the San Juan River Basin in New Mexico.

The District Court entered an order in this action that, for purposes of discovery, the following subject matter is generally reasonably calculated to lead to the discovery of admissible evidence:

- The available water supply in the San Juan River as it relates to the Settling Parties' obligation to demonstrate that the Settlement Agreement will reduce or eliminate impacts on junior water rights and may also address issues of additional releases and water administration under the Settlement Agreement.

The District Court also ruled in this same Order that, for purposes of discovery, requests concerning the following subject matter is not generally reasonably calculated to lead to the discovery of admissible evidence.

- Proceedings concerning future administration or remedies in the event of insufficient water supplies to fulfill the uses described in the Partial Final Judgments because they are at best only tangentially related to the legal standard in this action.

It is obvious from the foregoing rulings by the District Court concerning specific discovery disputes between the Settling Parties and the Non-Settling Parties, including the Defendants B Square Ranch, LLC et al. that such rulings and the rulings described in the table attached to the order are inconsistent, contradictory and ambiguous.

J.
(Waiver and Relinquishment of Winters Rights)

Pursuant to the Third Amended Order and Rule 1-056 NMRA 2013, Summary Judgment, Defendants B Square Ranch, LLC et al. moved for entry of an order and judgment in this action that the Settling Party Navajo Nation (formerly known as the Navajo Tribe) waived and relinquished its rights under the "Winters Rights Doctrine" as consideration for the building of the Navajo Indian Irrigation Project ("NIIP").

The Navajo Nation, the State of New Mexico and the United States negotiated and approved the Settlement Agreement without any significant review of the negotiations, legislative history, documents, agreements and laws for the Upper Colorado River Project and NIIP.

The Settling Parties' Memorandums show the Settling Parties negotiated and approved the Settlement Agreement on the basis and assumption that the Navajo Nation retained and currently are entitled to water rights under the Winters Rights Doctrine.

The Navajo Nation, the State of New Mexico and the United States did not take into consideration while negotiating and signing the Settlement Agreement and then submitting the Proposed Decrees to this Court for approval that the Navajo Nation had previously voluntarily and knowingly waived and relinquished the Navajo Nation's reserved water rights under the Winters Rights Doctrine in exchange for NIIP.

There was a significant lack of due diligence by the Navajo Nation, the State of New Mexico and the United States in reviewing the status and history of the water rights of the Navajo Nation when the Settling Parties negotiated and approved the Settlement Agreement and submitted the Proposed Decrees to this Court for approval.

The District Court was incorrect when it denied as a matter of law Defendants B Square Ranch, LLC et al's Motion for Summary Judgment that the Settling Party Navajo Nation (formerly known as the Navajo Tribe) waived and relinquished its rights under the Winters Rights Doctrine as consideration for the building of NIIP. At a minimum, there are genuine issues of material fact whether the Navajo Nation waived and relinquished its reserved water rights under the Winters Rights Doctrine, and whether such waiver and relinquishment of the Navajo Nation's reserved water rights under the Winters Rights Doctrine in exchange for the Navajo Indian Irrigation Project was voluntarily and knowing.

K.
(Disqualification of USA's Attorneys)

Defendants B Square Ranch, LLC et al. filed a motion for the disqualification of Andrew J. ("Guss") Guarino and David W. ("Dave") Gehlert, attorneys for the United States of America from any further participation in this action for failure to comply with the Rules of Civil Procedure for the District Courts, the Rules Governing the New Mexico Bar, the New Mexico Rules of Professional Conduct, New Mexico law, and federal laws and regulations.

It makes no difference if the attorneys for the United States of America have or have not appeared in water adjudication cases for many years. 28 U.S.C. Section 530B has been in effect since April, 1999 and this federal law should have been complied with by the attorneys for the United States of America in this action.

The District Court located in San Juan County, New Mexico was incorrect when it denied as a matter of law Defendants B Square Ranch, LLC et al's motion that Andrew J. ("Guss") Guarino and David W. ("Dave") Gehlert be disqualified from any further

participation in this action for failure to comply with Rule 1-089.1 NMRA 2012 of the Rules of Civil Procedure for the District Courts; Rule 24-106 of the Rules Governing the New Mexico Bar; Rule 16-505 NMRA 2012 and Rule 16-804 NMRA 2012 of the Rules of Professional Conduct; NMSA 1978, Section 36-2-27 (2012); 28 U.S.C. Section 530B; and 28 CFR Section 77.3.

Statement of the Issues

The following are the issues to be addressed in this appeal:

A. Whether the scheduling orders entered in this action denied fundamental due process to Defendants B Square Ranch et al. and the remaining Non-Settling Parties to:

- (i) fully protect their rights and interests in the action;
- (ii) comply with the orders of the Court;
- (iii) examine the discovery that was provided by the Settling Parties;
- (iv) request additional discovery from the Settling Parties;
- (v) adequately object, respond or answer the discovery requests of the Settling Parties;
- (vi) fully develop objections or responses to the Settlement Agreement and Partial Final Judgments;
- (vii) make a knowledgeable and informed decision whether to approve or oppose the Settlement Agreement;
- (viii) take over, schedule and attempt to complete the work that was being performed by the Non-Settling Parties who entered into settlement agreements just before the March 1, 2013 discovery deadline;
- (ix) conduct depositions of Settling Parties' witnesses;
- (x) review the voluminous documents produced by the Settling Parties;
- (xi) overcome the obstacles stated by other Non-Settling Parties in reviewing the documents produced by the Settling Parties;
- (xii) satisfy onerous, unnecessary and unreasonable requirements and procedures to review and copy voluminous documents at repositories established

by Settling Parties in numerous locations; and (xiii) prepare dispositive motions within a reasonable time after discovery is completed.

B. Whether the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico.

C. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, what water rights have been reserved?

D. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, where are such water rights located?

E. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, what are the priority dates for such water rights?

F. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, what use has been made of these water rights?

G. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, when were these water rights used?

H. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, were these water rights beneficially used?

I. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, when were these water rights put to beneficial use?

J. If the Navajo Nation has any reserved water rights in the San Juan River Basin in New Mexico, have these water rights been abandoned, forfeited, waived, relinquished or released?

K. Whether the Navajo Nation voluntarily and knowingly waived and relinquished its reserved water rights under the Winters Rights Doctrine in exchange for NIIP.

L. Whether the Navajo Nation has the right to divert water from the waters of the San Juan River Basin in New Mexico for the following purposes or uses:

1. NIIP
2. Navajo-Gallup Nation Supply Project
3. Animas-La Plata Project
4. Municipal and domestic uses
5. Hospah-Cudei Irrigation Project
6. Fruitland-Cambridge Irrigation Project
7. Supplemental carriage water
8. Non-irrigation purposes or transfers to other places of use
9. Uses on Navajo Nation's lands located in the State of Arizona
10. Ground water for beneficial use on lands located in the State of New Mexico
11. Additional diversions of ground water in the San Juan River Basin in New Mexico
12. Diversions or delivery of ground water from the San Juan River Basin in New Mexico for domestic and sanitary use in the San Juan River Basin in Arizona
13. Ground water diversions or withdrawals from within the San Juan River Basin in New Mexico to areas in New Mexico located outside the physical drainage of the San Juan River and its tributaries
14. Ground water diversions or withdrawals from the San Juan River Basin in New Mexico for use in the San Juan River Basin in Arizona
15. Historic, existing and future uses on lands in the San Juan River Basin in New Mexico
16. Diversion of surface water from springs and ground water in the San Juan River Basin in New Mexico for residential domestic and stock tank uses
17. Diversion of surface water and ground water in the San Juan River Basin in New Mexico by individual members of the Navajo Nation
18. De minimus uses of water from the San Juan River Basin in New Mexico
19. Fill or refill stock ponds from water that supplied for water sources other than from the San Juan River
20. Diversion of water from all existing stock water sources for stock water use
21. Diversion of waters of the San Juan River Basin in New Mexico for irrigation uses
22. Diversion of waters from tributaries to the San Juan River within the San Juan River drainage in New Mexico for irrigation uses
23. Diversion of waters in the Chinle Wash drainage for irrigation uses
24. Fill or refill irrigation reservoir supplies from water sources other than the San Juan River

M. If the Navajo Nation has any reserved water rights in the San Juan River

Basin in New Mexico, what amounts of water can be diverted from the San Juan River Basin in New Mexico for the purposes or uses described in K above?

N. Whether the Navajo Nation should be adjudicated water rights from the San Juan River Basin in New Mexico from federal water rights if the Navajo Nation does not have water rights reserved by the United States of America for the Navajo Nation.

O. Whether the Navajo Nation should be adjudicated water rights from the San Juan River Basin in New Mexico from federal water rights that have been licensed or permitted for use on particular projects.

P. Whether licensed or permitted rights for federal water rights can or should become decreed or adjudicated water rights owned by the Navajo Nation.

Q. Whether the Navajo Nation has the right to lease and contract for water from the San Juan River Basin in New Mexico for use outside the State of New Mexico.

R. Whether the State of New Mexico and the Navajo Nation should have prepared a practicably irrigable analysis ("PIA") before or during the negotiations of the Settlement Agreement.

S. Whether the State of New Mexico followed its own laws, whether statutory or case law, that a quantification of the Navajo Nation's federal reserved water rights, if any, must be based on the Navajo Nation's PIA.

T. Whether the claim by the Settling Parties that the Navajo Nation is entitled to a federal reserved water right for groundwater is consistent with existing statutes or case law.

U. Whether there should have been PIA analyses for the United States of

America's claim of a reserved water right for the current Navajo Indian Irrigation Project (NIIP) or for the irrigation of the authorized, but non-irrigated portions of NIIP.

V. Whether the assertions of the United States of America of water claims for the Navajo Nation for irrigation use, livestock use, commercial use, municipal use, industrial use, municipal use and domestic use are authorized in New Mexico.

W. Whether the State of New Mexico negotiated and approved and the United States of America approved the Settlement Agreement without any review of the negotiations, legislative history, documents, agreements and laws for the Upper Colorado River Project and NIIP.

X. Whether the State of New Mexico conducted an adequate due diligence in reviewing the status and history of the water rights of the Navajo Nation.

Y. Whether the State of New Mexico and the United States of America took into consideration while approving the Settlement Agreement and submitting for approval the Partial Final Judgments the Navajo Nation's previous waiver of its reserved water rights in exchange for NIIP.

X. Whether the Settlement Agreement and Partial Final Judgments provide a complete identification of the Navajo Nation's water rights.

Y. Whether, in the event the Settlement Agreement is approved and the proposed Decrees are entered and the water rights are in excess of the Navajo Nation's legal entitlement thereto, such excess water rights will be available to the State of New Mexico, the Non-Settling Parties and the owners of junior water rights.

Z. Whether the State of New Mexico and the United States of America protected

and continue to protect the water rights of the State of New Mexico, the Non-Settling Parties and owners of junior water rights.

AA. Whether there was discrimination and bias against the Non-Settling Parties, including Defendants B Square Ranch, LLC et al., in the scheduling orders entered by the District Court.

BB. Whether there were inconsistent, contradictory and ambiguous orders entered in this action by the District Court.

CC. Whether the Settlement Agreement and Partial Final Judgments provide for 50% of new additional water rights to be acquired by the Navajo Nation.

DD. Whether the Settlement Agreement and Partial Final Judgments provide for the extension of federal reserved water rights to groundwater in New Mexico.

EE. Whether an extension of federal reserved water rights to groundwater in New Mexico complies with applicable law.

FF. Whether the Settlement Agreement and Partial Final Judgments allow the Navajo Nation to lease, sell or dispose of water allocated to New Mexico to be acquired by non-New Mexico entities or to be used outside New Mexico.

GG. Whether, in the event the Settlement Agreement is approved and the Partial Final Judgments are upheld and the Navajo Nation subsequently breaches the Settlement Agreement and the Partial Final Judgments, the State of New Mexico and the United States of America designated a specific court of law with the requisite authority to compel the Navajo Nation to comply with the Settlement Agreement and Partial Final Judgments or to award appropriate damages.

HH. Whether, in the event the Settlement Agreement is approved and the

Partial Final Judgments and the Navajo Nation subsequently breaches the Settlement Agreement and Partial Final Judgments, the State of New Mexico or the United States of America secured an appropriate written waiver of the sovereign immunity of the Navajo Nation to compel the Navajo Nation to comply with the Settlement Agreement and the Partial Final Judgments.

II. Whether in the event the Settlement Agreement is approved and the Partial Final Judgments are upheld and the Navajo Nation subsequently breaches the Settlement Agreement and Partial Final Judgments, the State of New Mexico or the United States of America secured an appropriate waiver of the sovereign immunity of the Navajo Nation to allow the Settling Parties, the Non-Settling Parties, the owners of junior water rights, or any other parties damaged by the Navajo Nation's breach of the Settlement Agreement and Partial Final Judgments to recover damages or to compel the Navajo Nation to comply with the Settlement Agreement and the Partial Final Judgments.

JJ. Whether the reserved water claims asserted on behalf of the Navajo Nation include acreage in excess of historically irrigated acreage by the Navajo Nation is PIA.

KK. Whether the reserved water claims asserted on behalf of the Navajo Nation in excess of historically irrigated acreage by the Navajo Nation is PIA.

LL. Whether the priority dates for any reserved water rights claims by the Navajo Nation should be the dates when the expansions or modifications to the boundaries of the Navajo Nation occurred instead of 1868.

MM. Whether the 1868 priority date for all of the Navajo Nation's reserved

water rights has significant adverse consequences for all other water users in New Mexico.

NN. Whether the Navajo Nation 's contract to take water from storage at the Navajo Reservoir for NIIP allows the Navajo Nation to assert ownership or is entitled to an adjudication of water rights associated with NIIP.

OO. Whether the approval of the Settlement Agreement and the entry of the Partial Final Judgments grant Navajo Nation's water rights to the Navajo Nation greater than what the Navajo Nation could secure at a trial.

PP. Whether the Settlement Agreement and the Partial Final Judgments are consistent with applicable law.

QQ. Whether there was a lack of due diligence by the State of New Mexico and the United States in negotiating and approving the Settlement Agreement and the entry of the Partial Final Judgments.

RR. Whether Rule 1-056 (F) NMRA 2013 is applicable to this action.

SS. Whether the Settling Parties complied with Rule 1-054 NMRA (2013) in this action.

TT. Whether Andrew J. ("Guss") Guarino and David W. ("Dave") Gehlert, attorneys for the United States of America, should be allowed to participate in this action for failure to comply with the Rules of Civil Procedure for the District Courts, the Rules Governing the New Mexico Bar, the New Mexico Rules of Professional Conduct, New Mexico law, and federal laws and regulations.

UU. Whether, if the State of New Mexico or other water users on the San Juan

River suffer injuries or damages in the event there is insufficient water reasonably available to New Mexico for the Navajo Nation's uses in New Mexico, there are procedures, remedies or relief available to such parties.

VV. Whether, if the direct flow of the San Juan River is insufficient to supply beneficial uses under direct-flow water rights in New Mexico and to supply the amount of water available from the Settlement Agreement for the uses by the Navajo Nation, there are procedures, remedies or relief available to the United States, the State of New Mexico or other water users for an incorrect or inaccurate determination that this is sufficient water reasonably available to New Mexico for the Navajo Nation's uses in New Mexico.

WW. Whether, if the State of New Mexico, as the watermaster, does not properly administer water rights and the diversion of water within the water stream in New Mexico that is subject to the Settlement Agreement, there are procedures, remedies or relief available to the United States, the Navajo Nation or other water users for such improper administration of the water available to New Mexico under the apportionment made for the Navajo Nation's uses in New Mexico.

XX. Whether the District Court of San Juan County, New Mexico has jurisdiction in the event there is an improper administration of the water available to New Mexico under the apportionment made for the Navajo Nation's uses in New Mexico.

YY. Whether the State of New Mexico, the United States of America and the Navajo Nation have waived their sovereign immunity for any damages or injuries that may occur due to an incorrect or inaccurate determination that this is sufficient water reasonably available to New Mexico for the Navajo Nation's uses in New Mexico.

The above Statement of Issues were preserved in the trial court through the pleadings or documents described in the above section entitled "*Statement of the Case*", and in the following documents or pleadings:

-Defendants B Square Ranch, LLC et al.'s Motion to Compel Discovery filed on July 2, 2012

-Defendants B Square Ranch, LLC et al.'s Amended Motion to Compel Discovery filed on July 3, 2012

-Defendants B Square Ranch, LLC et al.'s Report to the Court Concerning Answers/Responses/Objections to these Defendants' First Set of Interrogatories filed on July 16, 2012

-Defendants B Square Ranch, LLC et al.'s Joinder to the Motion to Extend All Scheduled Deadlines by the City of Aztec and the City of Bloomfield as well as Joinder to San Juan Water Commission's Motion to Extend Remaining Case Management Deadlines by 180 Days filed on September 20, 2012

-Defendants B Square Ranch, LLC et al.'s Initial Disclosures were served on October 1, 2012

-Defendants B Square Ranch, LLC et al.'s Preliminary Objections to Proposed Settlement Agreement filed on October 1, 2012

-Defendants B Square Ranch, LLC et al.'s Answer/Response to Navajo Nation's Motion to Dismiss Certain Non-Settling Parties for Failure to Comply with Court's Scheduling Orders filed on October 19, 2012

-Certain Defendants' Notice of Withdrawal of Participation filed on or about October 30, 2012

-Objections, Responses and Answers to United States' Discovery Requests of B Square Ranch, LLC et al. filed on November 1, 2012

-Objections, Responses and Answers to Navajo Nation's' Discovery Requests of B Square Ranch, LLC et al. filed on November 13, 2012

-Objections, Responses and Answers to United States' Discovery Requests of B Square Ranch, LLC et al. filed on November 13, 2012

-Defendants B Square Ranch, LLC et al.'s Identification of Expert Witnesses filed on December 14, 2012

-Defendants B Square Ranch, LLC et al.'s Responses and Answers pursuant to Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests of the United States, the Navajo Nation and the State of New Mexico plus Verification filed on December 21, 2012

-Defendants B Square Ranch, LLC et al.'s Motion to Disqualify Attorneys for United States of America filed on January 10, 2013

-Defendants B Square Ranch, LLC et al.'s Reply Brief to Motion to Disqualify Attorneys for United States of America filed on February 1, 2013

-Defendants B Square Ranch, LLC et al.'s Supplemental Responses and Answers pursuant to Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests of the United States, the Navajo Nation and the State of New Mexico ("Settling Parties") filed on March 4, 2013

-Defendants B Square Ranch, LLC et. al's Motion for Extension of Time will be filed on March 6, 2013

-Defendants B Square Ranch, LLC et. al's Motion for Extension of Time filed on April 11, 2013

-Defendants B Square Ranch, LLC et. al's Motion that Settling Party Navajo Nation Waived and Relinquished Its Winter Rights when Navajo Indian Irrigation Project was Built filed on April 15, 2013

-Defendants B Square Ranch, LLC et. al's Errata Notice to Motion that Settling Party Navajo Nation Waived and Relinquished Its Winters Rights when Navajo Indian Irrigation Project was Built filed on May 6, 2013

-Defendants B Square Ranch, LLC et. al's Consolidated Response to Memorandum of the Navajo Nation and the United States in Support of the Settlement Motion and State of New Mexico's Memorandum in Support of Settlement Motion for Entry of Partial Decrees ("Settling Parties' Memorandums") filed on May 10, 2013

-Defendants B Square Ranch, LLC et al.'s Consolidated Reply to Response by the Navajo Nation and the United States in Opposition to the Summary Judgment Motions of Objectors and to State of New Mexico's Consolidated Response to Motions filed by certain Defendants on May 24, 2013

List of Authorities

The following are authorities applicable to this appeal:

1. Rule 12-201 (A) (2) NMRA (2013), Appeal as of right; when taken.

2. Rule 1-071.1 NMRA (2013), Statutory stream system adjudication suits; service and joinder of water rights claimants; responses.

3. Rule 1-071.2 NMRA (2-013), Statutory stream system adjudication suits, stream system issue and expedited inter se proceedings.

4. Disqualification of Attorneys:

- a. Rule 1-089.1 NMRA 2012, Nonadmitted and nonresident counsel
- b. Rule 24-106 of the Rules Governing the New Mexico Bar, Practice by nonadmitted lawyers before state courts
- c. Rule 16-505 NMRA 2012, Unauthorized practice of law; multijurisdictional practice of law
- d. Rule 16-804 NMRA 2012 of the Rules of Professional Conduct, Misconduct
- e. NMSA 1978, Section 36-2-27 (2012), Practice without admission; contempt of court; foreign attorneys
- f. 28 U.S.C. Section 530B
- g. 28 CFR Section 77.3.
- h. Mark E. Hersh v. United States of America, 1986 WL 31684 (E.D. Wis.)
- i. Steve v. Rivera, 2012 NMSC 003, 268 P.3d 40, reversing in part, 2010 NMCA NMCA 109, 149 N.M. 406, 249 P.3d 944

5. Winters Rights Doctrine:

- a. Henry Winters et al. vs. United States, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908)
- b. State of Arizona vs. State of California et al., 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963)
- c. Colorado River Storage Project Act of 1956-Public Law 84-485
- d. Navajo Indian Irrigation Project-Public Law 87-483, and approved by the President June 13, 1962 ("NIIP Act")
- e. Upper Colorado River Basin Compact, Act of April 6, 1949

6. Summary Judgment:

- a. Rule 1-056 NMRA 2013, "Summary Judgment",
- b. Meeker v. Walker, 80 N.M. 280, 454 P.2d 762 (1969). Rule 1-056 NMRA 2013 provides a method whereby the Court can determine whether a genuine claim for relief exists and whether there is a genuine issue of fact warranting the submission of the case to the fact finder.
- c. Buffington v. Continental Casualty Co., 69 N.M. 365, 367 P.2d 539 (1961). Rule 1-056 NMRA 2013 allows a court to bring litigation to an end at an early stage when it clearly appears that one of the parties is entitled to a judgment as made out by the pleadings and clear and undisputed evidence.
- d. Goradia v. Hahn Co., 111 N.M. 779, 810 P.2d 798 (1991). Rule 1-056 NMRA 2013 is to expedite litigation to determine whether a party

possesses competent evidence to support that party's pleadings so as to raise genuine issues of material fact. One of the principal purposes of Rule 1-056 NMRA 2012 proceeding is to isolate and dispose of factually unsupported claims or defenses.

7. Due Process:

- a. U.S.C.A. Const. Amend. 14; Const. Art. 2 Section 18. No person shall be deprived of life, liberty or property without due process of law.
- b. Trujillo v. City of Albuquerque, 125 N.M. 721, 965 P. 2d 305, 1998-NMSC 031. Access to the courts encompasses the ability of a party to resolve that party's legal claims.
- c. USCA Const. Amend. 14, Section 1; Const. Art. 2 Section 18; and Pierce v. State, 121 N.M. 212, 910 P.2d 288, 1996 NMSC 001. In order to comply with due process and equal protection, when legislation or a settlement agreement attempts to impair a vested property right, notice and opportunity to respond must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford these parties the opportunity to present their objections.
- d. Madrid v. St. Joseph Hospital, 1996-NMSC-064, 122 N.M. 524, 928 P.2d 250. Procedural due process requires the government to give notice and an opportunity to be heard before depriving an individual of liberty or property.
- e. Wagner v. AGW Consultants, 2005-NMSC-016, 137 N.M. 734, 114 P.3d 1050. Substantive due process cases inquire whether a government action shocks the conscience or interferes with rights implicit in the concept of ordered liberty.
- f. USCA Const. Amend. 14, Copelin-Brown v. New Mexico State Personnel Board, 399 F.3d 1248 C.A. 10 (NM) 2005. In determining whether an individual's procedural due process rights are violated, the Tenth Circuit Court of Appeals considers whether a party possesses a protected property right or interest to which due process protections are applicable; whether a party was afforded an appropriate level of process; and whether the State of New Mexico deprived a person of property unless fair procedures were used by the court in making a decision.
- g. United Nuclear Corp. v. General Atomic Co., 93 N.M. 105, 597 P.2d 290 (1979), cert. denied, 100 St. Ct. 222, 444 U.S. 911, 62 L.Ed.2d 145. Requirements of due process are not technical, and no particular procedure is necessary for protecting substantial rights. The circumstances of each case dictate the requirements of due process and the principal considerations in the case are the integrity of the fact-finding process and the basic fairness of the decision.
- h. U.S.C.A. Const. Amend. 14; In the Matter of Pamela A.G., 139 N.M. 459, 134 P.3d 746, 2006 NMSC 019; and Board of Education of Carlsbad Municipal Schools v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994). Due process requires a timely notice reasonably calculated to inform a party of the subject matter and the issues involved in the proceeding; a

reasonable opportunity to refute or defend the claims; a reasonable opportunity to confront and cross-examine adverse witnesses; an opportunity to present evidence on the party's behalf; a hearing before an impartial decision maker; decision based on the record; and statement for reasons for the decision.

- i. U.S.C.A. Const. Amends. 5 and 14; New Mexico Industrial Energy Consumers v. New Mexico Public Regulation Commission, 104 N.M. 565, 725 P. 2d 244 (1986). Denial of right to conduct discovery can result in a denial of procedural due process of law.
- j. U.S.C.A. Const. Amend. 14; Const. Art. 2 Section 18 No person shall be deprived of life, liberty or property without due process of law.

Standard of Review

The applicable standard of review in this appeal concerning: (i) Defendants B Square Ranch, LLC et al.'s motions for summary judgments or motions to dismiss; (ii) denial of due process, are de novo.

Tape Recordings of the Proceedings

All of the proceedings were audio tape or digitally recorded in this matter.

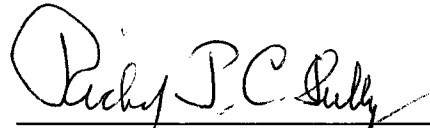
Prior or Related Appeals

There are no prior or related appeals in this matter.

Appointment of Appellate Counsel

No order has been entered appointing appellate counsel on behalf of Defendants/Appellants B Square Ranch, LLC et al. in this appeal.

TULLY LAW FIRM, P. A.

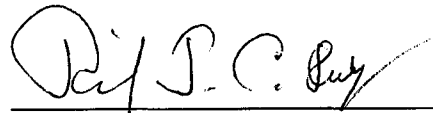


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CERTIFICATE OF SERVICE

I certify that I caused a copy of this Docketing Statement to be served on the following persons or parties by e-mail, first class mail, postage prepaid or by Federal Express on January 30, 2014:

Weldon Neff Chief Executive Officer Eleventh Judicial District 103 South Oliver Drive Aztec, NM 87410	(Personal delivery)
Loressa Bachert Water Clerk Specialist Eleventh Judicial District 103 South Oliver Drive Aztec, NM 87410	(Personal delivery)
Wendy Jones, Chief Clerk New Mexico Court of Appeals 237 Don Gaspar Avenue Santa Fe, NM 87501	(Federal Express)
Settling Parties' Counsel	(Via e-mail to wrnavajointerse@nmcourts.gov , which is the Court's electronic service list)
Other Non-Settling Parties Counsel	(Via e-mail to wrnavajointerse@nmcourts.gov , which is the Court's electronic service list)
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January 30, 2014