

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, Plaintiff;
v.
UNITED STATES OF AMERICA, Defendant; AND
NAVAJO NATION, Defendant-Intervenor,
Appellees.

v. Case No.:

COMMUNITY DITCH DEFENDANTS-COUNTERCLAIMANTS;
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 AND TOMMY BOLACK REVOCABLE TRUST;
ESTATE OF JUANITA VELASQUE, DECEASED; DAVID A. PIERCE AND
MAXINE M. PIERCE; DAVID M. DRAKE AND SHAWNA DRAKE
("DEFENDANTS B SQUARE RANCH, LLC ET AL.");
GARY L. HORNER; and
MCCARTY TRUST; STEPHEN ALBERT MCCARTY; TRUSTEE AND
ESTATE OF MARY MCCARTY, DECEASED,
Defendants/Appellants,

Appeal taken from the Eleventh Judicial District Court
San Juan County, New Mexico
Cause No: CV-75-184
Expedited *Inter Se* re the Navajo Nation: No. AB-07-1
The Honorable James J. Wechsler Presiding Judge

DOCKETING STATEMENT by Defendants/Appellants
McCarty Trust; Stephen Albert McCarty, Trustee,
and Estate of Mary McCarty, Deceased

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1. NATURE OF THE PROCEEDING.

This docketing statement was prepared by trial counsel, Priscilla A. Shannon, pursuant to Rule 12-208. This is an appeal from an Order Granting The Settlement Motion For Entry of Partial Final Decrees Describing the Water rights of the Navajo Nation, entered on August 16, 2013; 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 aforementioned documents were entered in the matter of State Of New Mexico *ex rel. State Engineer, v. United States Of America, et al.*, Cause No. CV 75-184, in the Eleventh Judicial District Court of New Mexico, San Juan County and presided over by Judge James J. Wechsler.

For purposes of judicial economy and efficiency Defendants, McCarty Trust, et al hereby incorporate by reference ALL of the statements by Gary L. Horner in the Gary L. Horner's Docketing Statement, paragraph 1

STATEMENT OF THE NATURE OF PROCEEDING.

2. DATE OF JUDGMENT AND TIMELINESS OF APPEAL.

Defendants/Appellants, McCarty Trust, et al. timely filed a Notice of Appeal on December 2, 2013.

3. STATEMENT OF THE CASE.

For Purposes of judicial economy and efficiency, and to create less confusion on a complicated case, Defendants, McCarty Trust et al., hereby incorporate by reference ALL of the statements in the Gary L. Horner's Docketing Statement, paragraph 3 STATEMENT OF THE CASE.

A. Identification of Defendants McCarty Trust et al.

Defendants, McCarty Trust, et al. f/n/a Stephen A. McCarty and/or Mary L. McCarty are owners of approximately three hundred and twenty (320) acres of irrigated farm land situated along the La Plata River in San Juan County New Mexico. The original homestead has been in the family for over ninety (90) years.

B. Background of Settlement Agreement.

For Purposes of judicial economy, efficiency and to create less confusion on a complicated case, Defendants, McCarty Trust et al., incorporate by reference ALL of the statements by Defendants B Square Ranch et al., in paragraph 3(B) (Background of Settlement Agreement).

C. Initial participation by Defendants McCarty Trust et al. and discovery requests and problems.

Defendants McCarty Trust et al. a/k/a Stephen A. McCarty and/or Mary L. McCarty, timely filed their Notices of Intent to Participate. Priscilla A. Shannon accompanied Defendants to the scheduling conference held on 6/29/11 and entered her appearance for Defendants on 6/30/11.

For Purposes of judicial economy, efficiency and to create less confusion on a complicated case, Defendants, McCarty Trust et al., incorporate by reference paragraphs 3 through 10 of the statements by Defendants B Square Ranch et al., in paragraph 3(C) (Initial participation by Defendants B Square Ranch, LLC et al. and discovery requests and problems).

D. Requests for Extensions of Time to Conduct and Complete Discovery.

For Purposes of judicial economy, efficiency and to create less confusion on a complicated case, Defendants, McCarty Trust et al., incorporate by reference paragraphs ALL of the statements by Defendants B Square Ranch et al., in paragraph 3(D) (Requests for Extensions of Time to Conduct and Complete Discovery).

E. Discrimination and Bias in Scheduling Orders.

For Purposes of judicial economy, efficiency and to create less confusion on a complicated case, Defendants, McCarty Trust et al., incorporate by reference paragraphs ALL of the statements by Defendants B Square Ranch et al., in paragraph 3(E) (Discrimination and Bias in Scheduling Orders).

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

For Purposes of judicial economy, efficiency and to create less confusion on a complicated case, Defendants, McCarty Trust et al., incorporate by reference ALL of the statements by Defendants B Square Ranch et al., in paragraphs 3(F) (Attempts to Complete Discovery in Compliance with Scheduling Orders).

G. Waiver and Relinquishment of Winters Rights.

For Purposes of judicial economy, efficiency and to create less confusion on a complicated case, Defendants, McCarty Trust et al., incorporate by reference ALL of the statements by Defendants B Square Ranch et al., in paragraph 3(J) (Waiver and Relinquishment of Winters Rights).

4. STATEMENT OF ISSUES:

For purposes of judicial economy and efficiency, Defendants, McCarty Trust et al., incorporate by reference All of the issues presented in the Gary L. Horner Docketing Statement paragraph 4 STATEMENT OF THE ISSUES and all the Statements presented in the Docketing Statement by Defendants/Appellants B Square Ranch, LLC et al.

Defendants, McCarty Trust, et al. has identified five (5) additional sub-issues to the Defendants/Appellants B Square Ranch, LLC et al.'s Statement of the Issues, paragraph K, Whether the Navajo Nation voluntarily and

knowingly waived and relinquished its reserved water rights under the Winters Rights Doctrine in exchange for NIIP.

Sub –Issue 1: Does the Navajo Nation, as a sovereign nation, have the inherent power to waive certain water rights in order to gain certain water rights?

Sub-Issue 2: Does the United States Constitution adopt tribal rights to Indian lands and grant to Congress, under its plenary powers to regulate Commerce... with the Indian tribes, also grant Congress the exclusive power to negate a sovereign nation's prior agreement as to what water rights they are asserting?

Sub-Issue 3: Does the Doctrine concerning the federal government as trustee over Indian Land conflict with the inherent tribal sovereignty of self-government when entering into agreements concerning natural resources such as water or gas, require Congress to approve any and all agreements?

Sub-Issue 4: Does the United States Constitution apply to Indian Tribes or the people who occupy Indian land?

Sub-Issue 5: Does the United States Constitution grant Congress the right to regulate areas of traditional state concern, such as water?

5. STATEMENT OF AUTHORITIES:

For purposes of judicial economy and efficiency, Defendants, McCarty Trust et al., incorporate by reference ALL of the authorities listed in the Gary L. Horner Docketing Statement paragraph 5 LIST OF AUTHORITIES and APPLICABLE STANDARD OF REVIEW, and ALL of the authorities listed in the Docketing Statement by Defendants/Appellants B Square Ranch, LLC et al. paragraph titled List of Authorities.

Additional Authorities:

- a. Adoptive Couple v. Baby Girl, 133 S.Ct. 2552 (2013), Justice Thomas, concurring (“Congress’ assertion of ‘plenary power’ over Indian affairs is also inconsistent with the history of the Indian Commerce Clause.”) [discusses the drafting history of the Constitutional Convention and the limited construction of the Indian Commerce Clause].
- b. Gloria Valencia-Weber & Christine P. Zuni, Domestic Violence and Tribal Protection of Indigenous Women in the United States, 69 St. John’s L. Rev. 69 (1995) [Discusses the inherent conflict between tribal sovereignty and the concurrent doctrine of the federal government as trustee for the dependent tribes.]

- c. See, Women's Rural Advocacy Programs/DV Information/Native American/Sovereignty at <http://www.letswrap.com/nadvinfo/sovereign.htm>. [Discusses the key characteristics of a sovereign state including the capacity to enter into relationships with other nation-states.]
- d. Scott Gould, The Consent Paradigm: Tribal Sovereignty At the millennium, 96 Colum. L. Rev. 809, 815-34.

6. STANDARD OF REVIEW

The issues presented are pure questions of law. Where a pure question of law is at issue, an appellate court reviews all issues on appeal under a de novo standard of review. *Rutherford v. Chaves County*, 2003-NMSC-010, ¶ 8, 133 N.M. 756, 69 P.3d 1199.

7. TAPE RECORDING OF THE PROCEEDINGS

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

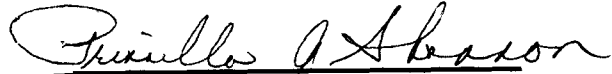
8. PRIOR APPEALS

There are no prior or related appeals in this matter

9. APPOINTMENT OF APPELLATE COUNSEL

No order has been entered appointing appellate counsel on behalf of Defendants/Appellants McCarty Trust, et al.

RESPECTFULLY, SUBMITTED BY:



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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 February 3, 2014:

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