

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE

FILED

AUG 12 2014

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

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee,

v.

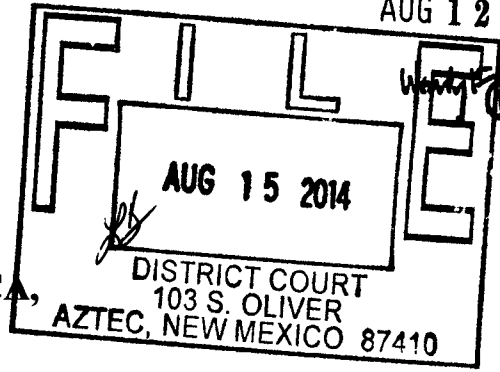
NAVAJO NATION,

Defendant/Intervenor-Appellee,

v.

GARY HORNER,

Defendant-Appellant



**Case No.: 33,437
San Juan County
D-1116-CV-1975-00184**

AB-07-1

THIRD ORDER REGARDING RECORD PROPER

This matter is before the Court on the unopposed motion of Appellant Gary Horner, filed February 24, 2014, to use a single, paginated electronic record proper in the four appeals (Court of Appeals Case Nos. 33,437, 33,439, 33,534, and 33,535) filed in this Court from the Eleventh Judicial District

D

1 Court's Partial Final Judgment and Decree of the Water Rights of the Navajo
2 Nation. It is also before the Court on Gary Horner's May 15, 2014 Motion to
3 Include Documents from Beyond the Navajo *Inter Se* in the Record Proper. This
4 order is based on the following:
5

6
7 1. On November 1, 2013, the Eleventh Judicial District Court entered a
8 Partial Final Judgment and Decree of the Water Rights of the Navajo
9 Nation.
10

11 2. On December 2, 2013, the following four groups of Appellants each filed
12 a notice of appeal in the Eleventh Judicial District Court:
13

- 14 • Gary Horner (Court of Appeals Case No. 33,437);
- 15 • B Square Ranch, LLC; Bolack Minerals Company, a/k/a Bolack
16 Minerals Company Limited Partnership; Estate of Tom Bolack,
17 a/k/a Thomas Felix Bolack, Deceased; Bolack Minerals
18 Foundation; Tommy Bolack Revocable Trust; Estate of Juanita
19 Velasquez, Deceased; David A. Pierce and Maxine M. Pierce; and
20 David M. Drake and Shawna Drake (Court of Appeals Case No.
21 33,439);
- 22 • McCarty Trust, Stephen Albert McCarty, Trustee, and Estate of
23 Mary McCarty, a/k/a Mary Louise McCarty, Deceased (Court of
24
25
26
27
28

1 Appeals Case No. 33,534);

- 2
- 3 • San Juan Agricultural Water Users Association; Hammond
 - 4 Conservancy District; Bloomfield Irrigation District; Various
 - 5 Ditches and Various Members thereof (Court of Appeals Case No.
 - 6 33,535).
 - 7

8 3. The docketing statements in these appeals were filed in Court of Appeals
9 as follows: Case No. 33,437, January 2, 2014; Case No. 33,439, January
10 31, 2014; Case No. 33,534, February 4, 2014; Case No. 33,535, February
11 10, 2014;

12

13

14 4. On January 2, 2014, Appellants in Court of Appeals Cases Nos. 33,439,
15 33,534, and 33,545 filed a joint motion to extend the time to file their
16 docketing statements and to designate a partial electronic record in this
17 appeal.

18

19 5. On January 7, 2014, Appellant in Court of Appeals Case No. 33,437 filed
20 a motion to use the Eleventh Judicial District Court's website, on which
21 documents filed in the case were posted, instead of a paper record proper.

22

23

24 6. On February 4, 2014, this Court entered an order requiring the parties to
25 meet and discuss in good faith how to limit the record proper and to
26 report back to this Court in writing by February 21, 2014, on whether

1 agreement could be reached among the parties about the designation of
2 a paper record on appeal. This Court stated in its order that if the parties
3 failed to reach agreement, a special master would be assigned.
4

5 7. On February 24, 2014, Gary Horner, Appellant in Court of Appeals Case
6 No, 33,437, filed an unopposed motion to use a single paginated
7 electronic record in all four appeals. Mr. Horner represented that the
8 Eleventh Judicial District would be able to produce a paginated,
9 electronic record proper. Mr. Horner represented in this motion that the
10 parties agreed that each Appellant would designate documents and
11 pleadings to be included in the record proper, which would then be
12 reviewed by Appellees, who would be able to make additional
13 designations.
14
15
16
17

18 8. On April 7, 2014, this Court received preliminary designations from
19 Appellants in Court of Appeals Case Nos. 33,439 and 33,535. On April
20 11, 2014, this Court received a preliminary designation from Appellant
21 in Court of Appeals Case No. 33,437. This Court did not receive a
22 preliminary designation from Appellant in Court of Appeals Case No.
23 33,534.
24
25

26 9. On May 7, 2014, this Court ordered the parties to provide the Court with
27
28

1 a status report, signed by all parties, of the record that the parties agree to
2 designate in these four appeals. The parties were also ordered to attach
3 a certification from the Eleventh Judicial District Court that such a record
4 - paginated and electronic - could be produced, and by when it could be
5 produced.
6
7

8 10. On May 21, 2014, Appellees' Status Report Regarding Designation of
9 Record Proper was filed. It indicates that the parties agree to include in
10 the record proper:
11

12 a. all documents in the Navajo *Inter Se* sub-proceeding file of the
13 broader San Juan River adjudication, AB-07-1, including documents that
14 are not on the website;
15

16 b. all documents in the main, broader adjudication, D-1116-CV-
17 1975-184-1;
18

19 c. all documents in the State Trust Lands sub-file, AF-01-0022;
20

21 d. the State Trust Lands sub-file of the La Plata section sub-file.
22

23 11. The Status Report was signed by the United States, Department of
24 Justice; the State of New Mexico, Office of the State Engineer; and the
25 Navajo Nation.
26

27 12. Parties that did not sign, but did concur with, the report are B Square
28

1 Ranch, *et al.* and McCarty Trust, *et al.* San Juan Agricultural Water
2 Users' Association, *et al.* neither signed the report nor indicated
3 concurrence or disagreement.
4

5 13. Attached to the status report is a May 21, 2014 certification from the
6 district court, by Loressa Bachert. She states that a paginated, electronic
7 record proper can be prepared and filed with this Court in electronic
8 format on a hard drive. She further estimates that after certain conditions
9 have been met that she can prepare the Record Proper in five weeks.
10
11

12
13
14 After due consideration, **IT IS THEREFORE ORDERED** that Gary
15 Horner's motion for a single, paginated, electronic record proper is hereby
16 **GRANTED**, and that the Eleventh Judicial District Court shall prepare the
17 electronic Record Proper consisting of these documents from its records:
18

19 1. all documents in the Navajo *Inter Se* sub-proceeding file of the
20 broader San Juan River adjudication, AB-07-1, including documents that are
21 not on the website, and
22

23 2. all documents in the main, broader adjudication, D-1116-CV-1975-
24 184-1, and
25

26 3. all documents in the State Trust Lands sub-file, AF-01-0022, and
27
28

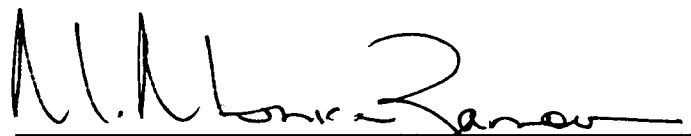
1 4. all documents in the State Trust Lands sub-file of the La Plata
2 section sub-file;
3

4 **IT IS FURTHER ORDERED** that parties that submitted any
5 hydrographic surveys (maps, CDs) or over-sized documents that are included in
6 the above descriptions in paragraphs 1 through 4 shall convert them to PDF
7 electronic format and submit them to the district court within ten (10) days of
8 this Order for inclusion in the electronic Record Proper;
9
10

11 **IT IS FURTHER ORDERED** that Appellants shall make arrangements
12 for payment of costs associated with preparation of the electronic Record
13 Proper, upon request of the district court;
14

15 **IT IS FURTHER ORDERED** that the district court shall file the Record
16 Proper with this Court in electronic format on a hard drive, within five (5) weeks
17 of the date of this Order.
18
19
20

21 
22 _____
23 MICHAEL D. BUSTAMANTE, Judge

24 
25 _____
26 M. MONICA ZAMORA, Judge
27
28