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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel STATE ENGINEER, COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

Plaintiff-Appellee,

AUG 1 2 2014

v.

Wandy Fines

UNITED STATES OF AMERICA,

No. 33,439

San Juan County

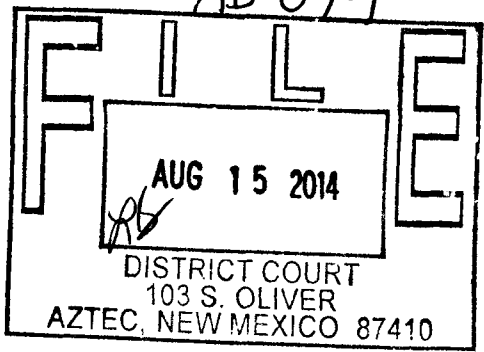
Defendant-Appellee,

D-1116-CV-1975-00184

AB-07-1

v.

NAVAJO NATION,



Defendant/Intervenor-Appellee,

v.

**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.

THIRD ORDER REGARDING RECORD PROPER

This matter is before the Court on the unopposed motion of Appellant

D ✓

1 Gary Horner, filed February 24, 2014, to use a single, paginated electronic
2 record proper in the four appeals (Court of Appeals Case Nos. 33,437, 33,439,
3 33,534, and 33,535) filed in this Court from the Eleventh Judicial District
4 Court's Partial Final Judgment and Decree of the Water Rights of the Navajo
5 Nation. It is also before the Court on Gary Horner's May 15, 2014 Motion to
6 Include Documents from Beyond the Navajo *Inter Se* in the Record Proper. This
7 order is based on the following:
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10

- 11 1. On November 1, 2013, the Eleventh Judicial District Court entered a
12 Partial Final Judgment and Decree of the Water Rights of the Navajo
13 Nation.
14
- 15 2. On December 2, 2013, the following four groups of Appellants each filed
16 a notice of appeal in the Eleventh Judicial District Court:
17
 - 18 • Gary Horner (Court of Appeals Case No. 33,437);
 - 19 • B Square Ranch, LLC; Bolack Minerals Company, a/k/a Bolack
20 Minerals Company Limited Partnership; Estate of Tom Bolack,
21 a/k/a Thomas Felix Bolack, Deceased; Bolack Minerals
22 Foundation; Tommy Bolack Revocable Trust; Estate of Juanita
23 Velasquez, Deceased; David A. Pierce and Maxine M. Pierce; and
24 David M. Drake and Shawna Drake (Court of Appeals Case No.
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1 33,439);

- 2 • McCarty Trust, Stephen Albert McCarty, Trustee, and Estate of
- 3 Mary McCarty, a/k/a Mary Louise McCarty, Deceased (Court of
- 4 Appeals Case No. 33,534);
- 5
- 6 • San Juan Agricultural Water Users Association; Hammond
- 7 Conservancy District; Bloomfield Irrigation District; Various
- 8 Ditches and Various Members thereof (Court of Appeals Case No.
- 9 33,535).
- 10
- 11

12 3. The docketing statements in these appeals were filed in Court of Appeals
13 as follows: Case No. 33,437, January 2, 2014; Case No. 33,439, January
14 31, 2014; Case No. 33,534, February 4, 2014; Case No. 33,535, February
15 10, 2014;

16

17

18 4. On January 2, 2014, Appellants in Court of Appeals Cases Nos. 33,439,
19 33,534, and 33,545 filed a joint motion to extend the time to file their
20 docketing statements and to designate a partial electronic record in this
21 appeal.

22

23

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

1 6. On February 4, 2014, this Court entered an order requiring the parties to
2 meet and discuss in good faith how to limit the record proper and to
3 report back to this Court in writing by February 21, 2014, on whether
4 agreement could be reached among the parties about the designation of
5 a paper record on appeal. This Court stated in its order that if the parties
6 failed to reach agreement, a special master would be assigned.
7

8
9 7. On February 24, 2014, Gary Horner, Appellant in Court of Appeals Case
10 No, 33,437, filed an unopposed motion to use a single paginated
11 electronic record in all four appeals. Mr. Horner represented that the
12 Eleventh Judicial District would be able to produce a paginated,
13 electronic record proper. Mr. Horner represented in this motion that the
14 parties agreed that each Appellant would designate documents and
15 pleadings to be included in the record proper, which would then be
16 reviewed by Appellees, who would be able to make additional
17 designations.
18

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22 8. On April 7, 2014, this Court received preliminary designations from
23 Appellants in Court of Appeals Case Nos. 33,439 and 33,535. On April
24 11, 2014, this Court received a preliminary designation from Appellant
25 in Court of Appeals Case No. 33,437. This Court did not receive a
26
27

1 preliminary designation from Appellant in Court of Appeals Case No.
2 33,534.
3

4 9. On May 7, 2014, this Court ordered the parties to provide the Court with
5 a status report, signed by all parties, of the record that the parties agree to
6 designate in these four appeals. The parties were also ordered to attach
7 a certification from the Eleventh Judicial District Court that such a record
8 - paginated and electronic - could be produced, and by when it could be
9 produced.
10

11
12 10. On May 21, 2014, Appellees' Status Report Regarding Designation of
13 Record Proper was filed. It indicates that the parties agree to include in
14 the record proper:
15

16
17 a. all documents in the Navajo *Inter Se* sub-proceeding file of the
18 broader San Juan River adjudication, AB-07-1, including documents that
19 are not on the website;
20

21 b. all documents in the main, broader adjudication, D-1116-CV-
22 1975-184-1;
23

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

25 d. the State Trust Lands sub-file of the La Plata section sub-file.
26

27 11. The Status Report was signed by the United States, Department of
28

1 Justice; the State of New Mexico, Office of the State Engineer; and the
2 Navajo Nation.
3

4 12. Parties that did not sign, but did concur with, the report are B Square
5 Ranch, *et al.* and McCarty Trust, *et al.* San Juan Agricultural Water
6 Users' Association, *et al.* neither signed the report nor indicated
7 concurrence or disagreement.
8

9 13. Attached to the status report is a May 21, 2014 certification from the
10 district court, by Loressa Bachert. She states that a paginated, electronic
11 record proper can be prepared and filed with this Court in electronic
12 format on a hard drive. She further estimates that after certain conditions
13 have been met that she can prepare the Record Proper in five weeks.
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18 After due consideration, **IT IS THEREFORE ORDERED** that Gary
19 Horner's motion for a single, paginated, electronic record proper is hereby
20 **GRANTED**, and that the Eleventh Judicial District Court shall prepare the
21 electronic Record Proper consisting of these documents from its records:
22

23 1. all documents in the Navajo *Inter Se* sub-proceeding file of the
24 broader San Juan River adjudication, AB-07-1, including documents that are
25 not on the website, and
26
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1 2. all documents in the main, broader adjudication, D-1116-CV-1975-
2 184-1, and
3

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

5 4. all documents in the State Trust Lands sub-file of the La Plata
6 section sub-file;
7

8 **IT IS FURTHER ORDERED** that parties that submitted any
9 hydrographic surveys (maps, CDs) or over-sized documents that are included in
10 the above descriptions in paragraphs 1 through 4 shall convert them to PDF
11 electronic format and submit them to the district court within ten (10) days of
12 this Order for inclusion in the electronic Record Proper;
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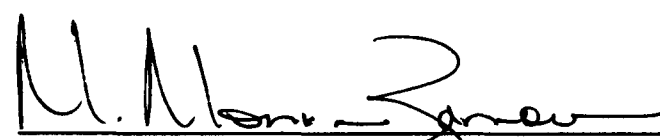
15 **IT IS FURTHER ORDERED** that Appellants shall make arrangements
16 for payment of costs associated with preparation of the electronic Record
17 Proper, upon request of the district court;
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IT IS FURTHER ORDERED that the district court shall file the Record Proper with this Court in electronic format on a hard drive, within five (5) weeks of the date of this Order.



MICHAEL D. BUSTAMANTE, Judge



M. MONICA ZAMORA, Judge