

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE

2 **STATE OF NEW MEXICO, ex rel STATE ENGINEER,** FILED

3
4 **Plaintiff-Appellee,**

AUG 12 2014

Wendy Flores

5 v.

6
7 **UNITED STATES OF AMERICA,**

No. 33,534

San Juan County

D-1116-CV-1975-00184

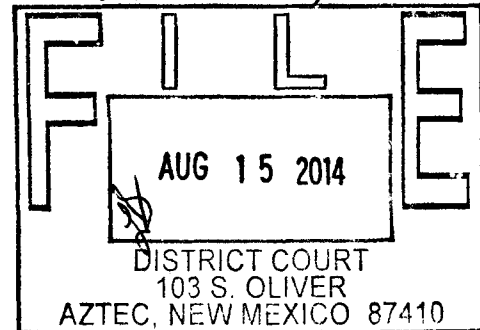
8 **Defendant-Appellee,**

AB-07-1

9 v.

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11 **NAVAJO NATION,**

12 **Defendant/Intervenor-Appellee,**



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14 v.

15 **MCCARTY TRUST, STEPHEN**
16 **ALBERT MCCARTY, TRUSTEE**
17 **AND ESTATE OF MARY MCCARTY,**
18 **a/k/a MARY LOUISE MCCARTY,**
19 **Deceased,**

20 **Defendants-Appellants.**

21 _____ /
22 **THIRD ORDER REGARDING RECORD PROPER**

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24 This matter is before the Court on the unopposed motion of Appellant
25 Gary Horner, filed February 24, 2014, to use a single, paginated electronic
26 record proper in the four appeals (Court of Appeals Case Nos. 33,437, 33,439,
27 33,534, and 33,535) filed in this Court from the Eleventh Judicial District
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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:
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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.
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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:
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- 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
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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).
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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;

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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.

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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.

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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

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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.
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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.
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15 8. On April 7, 2014, this Court received preliminary designations from
16 Appellants in Court of Appeals Case Nos. 33,439 and 33,535. On April
17 11, 2014, this Court received a preliminary designation from Appellant
18 in Court of Appeals Case No. 33,437. This Court did not receive a
19 preliminary designation from Appellant in Court of Appeals Case No.
20 33,534.
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22 9. On May 7, 2014, this Court ordered the parties to provide the Court with
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a status report, signed by all parties, of the record that the parties agree to designate in these four appeals. The parties were also ordered to attach a certification from the Eleventh Judicial District Court that such a record - paginated and electronic - could be produced, and by when it could be produced.

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

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

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

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

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

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

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

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.
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- 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.
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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:
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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
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23 2. all documents in the main, broader adjudication, D-1116-CV-1975-
24 184-1, and
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26 3. all documents in the State Trust Lands sub-file, AF-01-0022, and
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