

SJ-17
Navajo Settlement
2/21/05

IN THE ELEVENTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SAN JUAN

STATE OF NEW MEXICO, *ex rel.*
State Engineer,

Plaintiff,

vs.

No. CV-75-184-1

THE UNITED STATES OF AMERICA,
et al.,

SAN JUAN RIVER GENERAL
STREAM ADJUDICATION

Defendants,

and

JICARILLA APACHE TRIBE,

Defendant-Intervener.

**REPLY TO STATE'S RESPONSE TO COURT'S ORDER TO
SHOW CAUSE BY THE BLOOMFIELD IRRIGATION DISTRICT, NORTH
STAR DOMESTIC WATER CONSUMERS AND MUTUAL SEWER WORKS,
CO-OP, INC., AND SAN JUAN DEVELOPMENT**

NOW COME the Bloomfield Irrigation District, North Star Domestic Water Consumers and Mutual Sewer Works, Co-Op, Inc., and San Juan Development , each represented by the undersigned counsel, and jointly file this reply to the State's Response to this Court's Order to Show Cause why this case should not be dismissed. The parties to this reply concur with the State's request that this action not be dismissed.

1. Dismissal of this action would lead to a waste of the judicial resources already expended. Tremendous judicial resources have been expended in getting this case to the procedural position it occupies as of this date. The Jicarilla partial settlement has been entered, the proposed Navajo Settlement is starting the necessary legislative process, and the Court has

ruled upon and entered orders relating to the Echo Ditch Decree rights, issues related to the Navajo Settlement, and other matters. If this case is dismissed, each of these matters will be re-litigated from the beginning.

2. To dismiss the case at this time will create an economic hardship for many smaller water rights holders. Many holders of otherwise small water rights have banded together to collectively address issues of mutual concerns. Some through their ditch associations (e.g. the Bloomfield Irrigation District); some through cooperative associations (e.g. San Juan Agricultural Water Users); or individually (e.g. North Star Water, Gary Horner). The tens, if not hundreds, of thousands of dollars expended to litigate issues previously addressed by this Court are wasted if this case is dismissed. The litigation is a financial hardship for many groups, and it would be doubly so if already decided issues must be briefed and ruled upon again.

Beyond issues ruled upon by the court, most of the parties to the litigation have expended resources commenting upon and participating in public sessions related to the proposed Navajo Water Rights Settlement. Resources have also been spent with regard to the Jicarilla partial settlement. A dismissal of this case could lead to both settlements being reconsidered or the process starting over.

3. Dismissal of this case would harm all the San Juan County area economically. The lack of certainty over water rights can and does affect the local economy. The Court's entry of the partial final decree with regard to the Jicarilla Apaches assisted in settling some of the uncertainty. The Court's order regarding Echo Ditch rights did likewise. A settlement of the Navajo Nation rights, when and if entered, would also have a beneficial effect.

Numerous contracts have already been entered into with the Jicarilla Apache Nation concerning water. Water rights have been bought and sold based upon the Echo Ditch Decree.

Even the proposed Navajo Settlement offers cities, power plants, and others the opportunity to plan and manage their water needs based upon the proposed allocation to the Navajos.

Elimination of these prior rulings and the proposed Navajo Settlement could have the effect of depressing water rights values held in the San Juan Basin, raise concerns over the stability and availability of the water supply for municipal and business development, and, if sufficient water to meet economic needs cannot be generated, could lead to the lay off of employees or rendering family farms non-productive.

4. The largest unresolved issue is currently pending settlement. The cloud of the Navajo Nation's water rights claims have been lingering over the water rights held by non-federal parties for many years. The State and the Navajo Nation have announced an agreement that is being submitted to Congress. While this reply should not be considered either as an endorsement or objection to the proposed settlement, years of effort working towards this settlement may be lost if the case is dismissed. Further, this Court has the background and experience with all the parties to fairly hear and determine any objections related to the proposed settlement. With the proposed Navajo Settlement, if approved, the Jicarilla Decree and the Echo Ditch Decree, the vast majority of water rights in the San Juan Basin will have been determined.

5. If this case is dismissed, it will probably be refiled in federal court. While it is not argued that a federal court cannot fairly adjudicate the water issues involved in this adjudication, a federal court action would impose an additional burden on small water rights holders with regard to participating in the process. The mere re-location of the litigation to Albuquerque could negatively affect the ability of many pro se water rights holders to participate in the process.

6. Accuracy is speed when it comes to the hydrographic survey. While the State Engineer has spent time and money acquiring satellite imagery to assist in the hydrographic survey, one must express concern over the "completeness" of the survey to be done. Without "boots on the ground" to confirm the satellite data, interview land owners, and otherwise obtain information, the hydrographic survey will result in a "best guess", not an accurate portrayal of actual water use.

As the writer's accounting professor once said "Accuracy is speed." So while the parties and the Court may desire to proceed quickly forward, a hydrographic survey done on the cheap could lead to numerous errors, which in turn could lead to litigation with regard to a number of subfile offers.

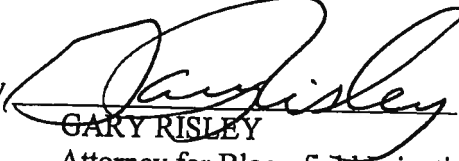
It is suggested that water rights that are not appurtenant to specific land (e.g. municipal water) be tendered an offer of judgment first. This could be followed, on a time table to be established by the Court in cooperation with the Office of the State Engineer, offers related to water appurtenant to land once ground surveys are completed with regard to those rights. This proposal would allow the Office of the State Engineer to spread the cost of the survey over a few more years and to propose offers in which the public can have confidence.

WHEREFORE, premises considered, the parties to this reply would pray that the Court not dismiss this action.

Respectfully submitted,

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