

20-11 Navajo Sett

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED

2008 FEB 12 AM 11 20

ELEVENTH JUDICIAL DISTRICT  
COUNTY OF SAN JUAN  
STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.  
State Engineer,

Plaintiff

v.

CV-75-184-1

THE UNITED STATES OF AMERICA,  
et al.,

SAN JUAN RIVER GENERAL  
STREAM ADJUDICATION

Defendants

and

THE JICARILLA APACHE NATION and  
THE NAVAJO NATION,

Defendants-Interveners.

**NAVAJO NATION'S OBJECTION TO FORM OF THE ORDER DENYING  
MOTION FOR LIMITED DISCOVERY CONCERNING 2007 BOR  
HYDROLOGIC DETERMINATION**

The Navajo Nation respectfully objects to the form of the Order Denying Motion for Limited Discovery Concerning 2007 BOR Hydrologic Determination ("2008 Order"). This objection is made pursuant to Rule 1-058(C) for the following reasons.

In its 2008 Order, the Court stated that its findings concerning the Motion for Limited Discovery Concerning 2007 BOR Hydrologic Determination were the same as its findings in the December 26, 2007 Order ("2007 Order") concerning the discovery motion filed October 24, 2003. The findings in the 2007 Order were:

1. The negotiations for settlement between the autonomous nations and the United States are confidential.
2. The Court has no jurisdiction over the Settlement Agreement because it has not yet been filed with the Court.
3. All parties will have an opportunity to seek discovery regarding the Settlement Agreement after it has been filed with the court and prior to the *inter se* phase of the adjudication.

2007 Order at 2.

Judge  
DK-fd  
Judy  
web

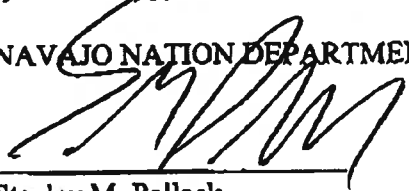
While it was true that the Navajo Nation objected to the Motion for Limited Discovery Concerning 2007 BOR Hydrologic Determination for the reason that the discovery request was made in the context of discovery of matters relating to a possible water rights settlement not yet before the Court, the Navajo Nation also objected for a variety of other reasons, including: (1) the Hydrologic Determination is not at issue in this adjudication, (2) the decisions of the Secretary are not reviewable in this adjudication, and (3) water availability is not at issue in this adjudication.

The Navajo Nation respectfully suggests that the Court amend the 2008 Order to clarify that if discovery concerning the 2007 BOR Hydrologic Determination is sought at a later date, all issues relating to whether this discovery is permissible are reserved for resolution at such time.

Various counsel, including all counsel involved in the briefing and argument on the underlying discovery motion, were contacted concerning this objection. The United States supports this motion, and the State of New Mexico and numerous other parties responded that they have no objections. The San Juan Agricultural Water Users Association and Hammond Conservancy do not object, provided that the rights of all parties to participate in discovery or to raise objections to discovery are reserved. A proposed order reflecting this reservation is attached, together with an underline/strikeout modification of the 2008 Order for the Court's convenience.

Respectfully submitted this 12<sup>th</sup> day of February, 2008.

NAVAJO NATION DEPARTMENT OF JUSTICE



Stanley M. Pollack  
Bidtah N. Becker  
Post Office Drawer 2010  
Window Rock, Navajo Nation (AZ) 86515  
(928) 871-6192

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NAVAJO NATION'S OBJECTION TO FORM OF THE ORDER DENYING MOTION FOR LIMITED DISCOVERY CONCERNING 2007 BOR HYDROLOGIC DETERMINATION along with a proposed order and underline/strikeout version of the order were mailed to all persons on the following distribution list by placing same in the United States mail, first class postage prepaid, this 12<sup>th</sup> day of February, 2008.

**Distribution List**

Tracy L. Hoffman  
Arienne Singer  
Office of the NM State Engineer  
P.O. Box 25102  
Santa Fe, NM 87504-5102

Bradley S. Bridgewater  
U.S. Dept. of Justice  
1961 Stout Street - 8<sup>th</sup> Floor  
Denver, CO 80294

Jay Burnham  
City of Farmington  
800 Municipal Drive  
Farmington, NM 87401

John B. Draper  
Jeffrey J. Wechsler  
Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, NM 87504

Robert L. Finch, Jr.  
555 E. Main  
Farmington, NM 87401

Michael I. Garcia  
Robert D. Kidd, Jr.  
Assistant District Attorneys  
P.O. Box 2248  
Albuquerque, NM 87012

Curtis Gurly  
P.O. Box 1982  
Farmington, NM 87499

Kyle Harwood  
Assistant City Attorney  
P.O. Box 909  
Santa Fe, NM 87504

Gary Horner  
Attorney at Law  
P.O. Box 2497  
Farmington, NM 87499-2497

Stephen G. Hughes  
Michael J. Thomas  
New Mexico State Land Office  
P.O. Box 1148  
Santa Fe, NM 87504-1148

Daniel H. Israel  
Attorney at Law  
1315 Bear Mountain Drive  
Boulder, CO 80305

Susan G. Jordan  
Noelle Graney  
Nordhaus Law Firm  
1239 Paseo Del Peralta  
Santa Fe, NM 87501

John F. Kennedy  
Cuddy, Kennedy, Hetherington,  
Albeta & Ives  
P.O. Box 4160  
Santa Fe, NM 87502

F. Chester Miller, III  
907 West Apache Street  
Farmington, NM 87401

Cynthia S. Murray  
Public Service Company of NM  
2401 Aztec Road NE  
Albuquerque, NM 87107

Sunny J. Nixon  
Rodney, Dickason, Sloan, Akin &  
Robb  
P.O. Box 1357  
Santa Fe, NM 87504

Maria O'Brien  
Modrall, Sperling, Roehl, Harris &  
Sisk, PA  
P.O. Box 2168  
Albuquerque, NM 87103-2168

Sylvia G. Porter  
Office of General Counsel  
El Paso Electric Company  
123 W. Mills  
El Paso, Texas 79901

Jay F. Stein  
P.O. Box 5250  
Santa Fe, NM 87502

Elizabeth N. Taylor  
Jolene L. McCaleb  
Wolf, Taylor & McCaleb, P.A.  
P.O. Box 2540  
Corrales, NM 87048-2540

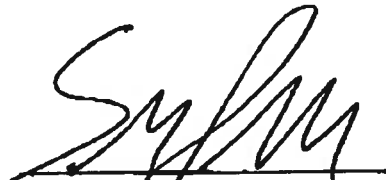
Larry T. Thrower  
Thrower Law Firm  
P.O. Box 5657  
Farmington, NM 87499

Sue E. Umshler  
U.S. Dept. Of the Interior  
SE Regional Solicitors Office  
505 Marquette Ave. NW, #1800  
Albuquerque, NM 87102

John W. Utton  
Sheehan, Sheehan & Stelzner, P.A.  
P.O. Box 271  
Albuquerque, NM 87103

In addition the following counsel were served by email to [wrattorney@lthjdc.com](mailto:wrattorney@lthjdc.com) by attaching a pdf version of this document this 12<sup>th</sup> day of February, 2008:

Mark K. Adams  
Richard B. Cole  
David W. Gehlert  
William A. Johnson  
Victor R. Marshall  
James Noble  
Gary Risley  
Stephen E. Snyder  
L. William Staudenmaier



Stanley M. Follack