

John Whipple

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Sent: Tuesday, May 25, 2004 10:57 AM
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Cc: etd; today; utton; kygilb
Subject: FWD: Daily Times: Navajos trying to control water

----- Original Message -----
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> Farmington Daily Times

Headlines

Attorney: Navajos trying to control water
By Jim SnyderThe Daily Times
May 25, 2004, 11:12 pm

FARMINGTON – The Navajo Nation is allegedly trying to corner the basin’s water market by pursuing 600,000 acre feet in its proposed San Juan Basin water rights settlement – more than twice the water it needs – in order to have excess water to sell to Las Vegas, Phoenix, Los Angeles and local power plants, Farmington attorney Gary Horner said Monday. “They’re after money. And they’re going to get \$1 billion (in capital improvements attached to the settlement). This is extortion,” he said. The Navajo Nation could complete the Navajo Indian Irrigation Project, have water for its farmers and provide drinking water for its citizens along the reservation’s eastern strip between Shiprock and Gallup, all for 250,000 to 300,000 acre feet, Horner said. The settlement is about dollars and not about water, he added. The state engineer, instead of working to protect the water rights of off-reservation users, is in closed-door negotiations with the Navajo Nation to develop a revised water-rights settlement draft, he said. Horner made his comments in an interview following an adjudication hearing in the 11th Judicial Court regarding the 30-year-old New Mexico State Engineer vs. the United States lawsuit. The state engineer is seeking to adjudicate water right settlements in the lawsuit. Judge Rozier Sanchez told the attorneys present he wanted to see motions filed on the lawsuit as well as progress made on the proposed Navajo water rights settlement. John Utton, a private attorney for the state engineer, told the court the state had received more than 300 pages of public comments on the Dec. 5, 2003, settlement draft. Negotiations between the state engineer and the Navajo Nation for an updated, or revised, draft were still ongoing, he said. “It is our hope to have the settlement legislation introduced (to Congress) this year,” Navajo Nation water attorney Stanley Pollack said. The Navajo Council held a water rights workshop – in executive session – last Wednesday and Thursday in Window Rock, Ariz., without an updated draft to review. “I’m going to propose a six-month time limit from today,” Sanchez said to Pollack and Utton. “You can go back and tell Congress the judge is waiting.” Horner made a verbal motion to have void a confidentiality agreement signed by Farmington, Bloomfield and Aztec city representatives and others who attended a secret water rights meeting last month. The invitation-only meeting, held April 1 at Farmington City Hall, discussed the proposed Navajo water rights settlement as well as the forthcoming proposed draft, according to a copy of the confidentiality statement obtained by The Daily Times. Bob Johnson, executive director of the New Mexico Foundation of Open Government, said at the time, the secret government meeting violated the public trust although it did not violate the state’s Open Meetings Act.

Horner told the court the agreement forced the Farmington city attorney to break an attorney-client relationship because they could not talk to city council officials, who they work for, about the contents of the meeting. State engineer attorney DL Sanders objected to Horner's motion. The confidentiality agreement was mandated by Interstate Stream Commissioner Jim Dunlap, he said. Sanchez sustained the objection saying he would not entertain any verbal motions. He then told Horner to file a written motion. The state engineer will likely use the New Mexico State Engineer vs. the United States lawsuit as a reason to ask the court to dismiss any written motions filed in court by any basin water user because they are not a party to the lawsuit, Horner said. Sanders told the judge, "We have members of the public speaking who represent nothing. We're getting far out where members of San Juan County can speak. We have people coming in who are not parties (to the lawsuit) at all." Sanchez agreed, saying, "Ultimately we'll have 20,000 possible water users in here ... who may not be parties." Sanchez also said, however, he would not deny anyone the right to file a motion with the court. "I'll be able to file a motion," Horner said in the interview. "But the state engineer will come along and say, 'This guy is not a party to the case,' and will move to strike the motion." Sanchez also told state engineer attorneys - against their objections - to file motions with the court. "I'm puzzled," Sanders said. "Administrative law is separate from acts of the court," adding any "motion is unnecessary work." Sanchez stayed by his original decision. "The reason I want you to file motions to that I want the people to be informed," he said. He also called for a hydrographic survey of the basin to be done as soon as possible. Maria O'Brien, an attorney with BHP Billiton, told Sanchez she was concerned about communication occurring between the court's Special Master Stephen Snyder and the state engineer. "On the hydrographic survey - it will not be behind closed doors," Snyder said. "There will be no ex parte contact."

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