

SJ-17
Navajo Settle.

DISTRICT COURT
SAN JUAN COUNTY
N.M.

OPEN LETTER TO COURT FILE

August 30, 2004

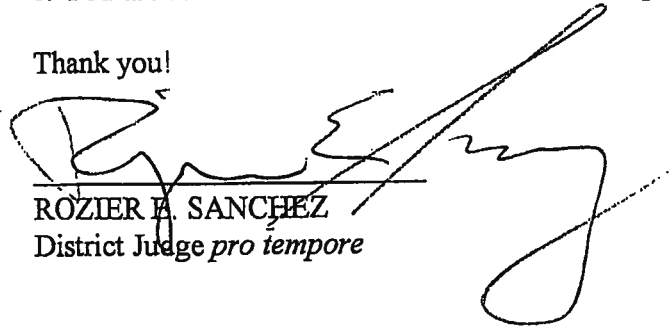
2004 AUG 30 P 1:07

TO: CLERK OF THE ELEVENTH JUDICIAL DISTRICT COURT

Re: Court Orders resulting from August 20, 2004 Motions Hearing in San Juan County Courthouse, Aztec, New Mexico.

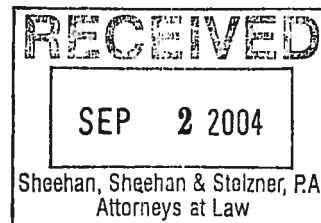
1. Enclosed are two signed Orders of the Court resulting from the August 20, 2004 hearing. One denies the Motions to Enjoin the Execution of the Navajo Water Rights Settlement, and the second denies the Motions for Discovery.
2. Do not file the Orders yet. Please copy the Orders, together with this Open Letter to the Court File and mail them to each of the attorneys of record. Certification of mailing must also be included.
3. This Letter to Open File must be filed with the Court upon its receipt in your office.
4. All three of these documents must be copied and a sufficient number left in the Courthouse in Aztec and Farmington and made available to persons who may wish to read them.
5. Counsel have until Monday, September 14, 2004 in which to file objections to the Orders.
6. You are to file the Orders with the Court on September 14, 2004.

Thank you!



ROZIER A. SANCHEZ
District Judge *pro tempore*

sjolaug04



STATE OF NEW MEXICO

COUNTY OF SAN JUAN

ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO on
Relation of the State Engineer

Plaintiff,

vs

D-1116-CV-7500184

UNITED STATES OF AMERICA, et al,

Defendants

vs

JICARILLA APACHE NATION &
NAVAJO NATION

Intervenors

ORDER

THE ABOVE MATTER coming on for hearing on August 20, 2004, in the San Juan Courthouse, Aztec, New Mexico on Motions filed by the Cities of Bloomfield, Farmington and Aztec and the San Juan Agricultural Water Users Association to conduct immediate discovery to assist in the participation of the hearing process regarding the Navajo Water Rights Settlement Agreement.

The Court requested and received and read legal briefs prior to the hearing, and the Court having heard oral arguments, as well, and the Court being fully advised in the premises finds that the above Motions are not well taken because:

1. The Settlement Agreement referred to in the Motions, is still in a state of negotiation and has not yet been approved by the parties.
2. The Settlement Agreement, once executed by the parties but prior to the entry of the Partial Final Decree referred to in that Argument, is nothing more than a contract between the parties and has no legal impact on the rights of the persons not parties to the Agreement.
3. The Settlement Agreement of the Navajo Nation's Water Rights will be binding on persons not parties to the Settlement Agreement only if the Court enters a Partial Final Decree incorporating the terms of the Agreement. The Court will consider whether it should enter such a decree in the *inter se* proceedings to be conducted at such time as the parties to the Settlement Agreement file a Motion requesting that the Court enter such a decree. The movants and all other water right claimants who can be identified by reasonable efforts, will be provided with prior notice of the *inter se* proceedings and will have an opportunity to object to the Settlement Agreement in those proceedings. Parties to the law suit, at that time, may conduct reasonable discovery in accordance with the Rules of Civil Procedure for the New Mexico District Courts.

For the foregoing reasons, the Court concludes that the appropriate time for the Court to consider the issues raised by the Motions as well as additional motions or objections that may be filed relating to the Settlement Agreement, is in the *inter se* proceedings to be commenced for the

express purpose of determining whether the Court should enter the Partial Final Decree adopting the terms of the Settlement Agreement.

IT IS THEREFORE ORDERED that the above Motions be and the same are hereby denied.

IT IS FURTHER ORDERED that all issues raised in the Motion Hearing on August 20, 2004 be preserved for presentation during an Expedited *inter se* proceeding after the parties to the Settlement Agreement have filed their Motion requesting that the Court enter a Partial Final Decree.

~~ROZIER E. SANCHEZ~~
District Judge *pro tempore*

sjdisc

STATE OF NEW MEXICO

COUNTY OF SAN JUAN

ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO on
Relation of the State Engineer

Plaintiff,

vs

D-1116-CV-7500184

UNITED STATES OF AMERICA, et al,

Defendants

vs

JICARILLA APACHE NATION &
NAVAJO NATION

Intervenors

ORDER

THE ABOVE MATTER coming on for hearing on August 20, 2004, in the San Juan Courthouse, Aztec, New Mexico on Motions to restrain the Plaintiff from Approving and Executing the Proposed Settlement Agreement (between the Office of the New Mexico State Engineer and the Navajo Nation) filed by the San Juan Agricultural Water Users Association, joined by the Bloomfield Irrigation District, and the Motion filed by Gary L. Horner, *in propria persona*, to Enjoin the Execution of the Navajo Water Rights Settlement.

The Court requested and received and read legal briefs prior to the hearing, and the Court having heard oral arguments, as well, and the Court being fully advised in the premises finds that each of the above Motions are not well taken because the movants (I) have not demonstrated that they face an immediate threat of irreparable injury and (ii) movements do have an adequate remedy at law. Specifically:

1. The Settlement Agreement referred to in the Motions, is still in a state of negotiation and has not yet been approved by the parties.
2. The Settlement Agreement, once executed by the parties but prior to the entry of the Partial Final Decree referred to in that Argument, is nothing more than a contract between the parties and has no legal impact on the rights of the persons not parties to the Agreement.
3. The Settlement Agreement of the Navajo Nation's Water Rights will be binding on persons not parties to the Settlement Agreement only if the Court enters a Partial Final Decree incorporating the terms of the Agreement. The Court will consider whether it should enter such a decree in the *inter se* proceedings to be conducted at such time as the parties to the Settlement Agreement file a Motion requesting that the Court enter such a decree. The movants and all other water right claimants who can be identified by reasonable efforts, will be provided with prior notice of the *inter se* proceedings and will have an opportunity to object to the Settlement Agreement in those proceedings.

For the foregoing reasons, the Court concludes that the appropriate time for the Court to consider the issues raised by the Motions as well as additional motions or objections that may be filed relating to the Settlement Agreement, is in the *inter se* proceedings to be commenced for the express purpose of determining whether the Court should enter the Partial Final Decree adopting the terms of the Settlement Agreement.

IT IS THEREFORE ORDERED that the above Motions be and the same are hereby denied.

IT IS FURTHER ORDERED that all issues raised in the Motion Hearing on August 20, 2004 be preserved for presentation during an Expedited *inter se* proceeding after the parties to the Settlement Agreement have filed their Motion requesting that the Court enter a Partial Final Decree.

~~ROZIER E. SANCHEZ~~
District Judge *pro tempore*

sjdec

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

FILED
DISTRICT COURT
SAN JUAN COUNTY
NM *JS*

2004 AUG 31 A 10: 33

STATE OF NEW MEXICO, ex rel,

Plaintiff,

vs.

CV 75-184

UNITED STATES OF AMERICA, et al,

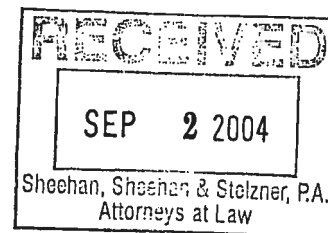
Defendants.

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the **OPEN LETTER TO COURT FILE** dated August 30, 2004 and filed with this Court on August 30, 2004, along with attached unsigned **ORDERS** to be filed with this Court on September 14, 2004 were mailed by first-class mail on this 31st day of August, 2004 to counsel of record as listed on the attached service list.

WELDON J. NEFF
CLERK OF THE DISTRICT COURT

By: *Beverly Liman*
Deputy Clerk



**ATTORNEY LIST
UPDATED 8/30/2004**

**Mark F. Sheridan
Tanya M. Trujillo
Holland & Hart LLP
P.O. Box 2208
Santa Fe, NM 87504-2208**

**Karen L. Townsend
Attorney at Law
120 E. Chaco
Aztec, NM 87410**

**Jay Burnham
Kane Graves
City of Farmington
800 Municipal Drive
Farmington, NM 87401**

**Gary Risley
Miller Law Firm
P.O. Box 869
Farmington, NM 87499-0869**

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

**Grant Porter
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148**

**Bradley Bridgewater
David Gehlert
USDOJ Environment & Natural Resources Div.
999 18th St., Suite 945 North Tower
Denver, CO 80202-2449**

**Cynthia S. Murray
Public Service Company of New Mexico
414 Silver Avenue SW
Albuquerque, NM 87102**

**John W. Utton
Sheehan, Sheehan & Stelzner, PA
P.O. Box 271
Albuquerque, NM 87103-0271**

**Lester K. Taylor
Nordhaus Law Firm
405 Dr. Martin Luther King, Jr. Avenue N.E.
Albuquerque, NM 87102**

**Felix Briones, Jr.
Briones Law Firm
407 N. Auburn Street
Farmington, NM 87401**

**Ryan Paul Parham
Attorney at Law
1180 West Maple Street
Mapleton, UT 84664**

**Stanley M. Pollack
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515**

Karilee S. Ramaley
Pinnacle West Capital Corporation
Law Department
400 North 5th Street, Mail Station 8695
Phoenix, AZ 85004

J.M. Durrett, Jr.
R. Thomas Dailey
100 South Oliver Drive
Aztec, NM 87410

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

Elizabeth N. Taylor
Jolene L. McCaleb
Wolf, Taylor & McCaleb
P.O. Box 30428
Albuquerque, NM 87190-0428

Michael Garcia
Robert Kidd
Assistant City Attorney
P.O. Box 2248
Albuquerque, NM 87103

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

Terry Bassham, Esq.
P.O. Box 982
El Paso, TX 79960

Joseph Van R. Clarke
John F. Kennedy
Cuddy, Kennedy, Hetherington, Albetta & Ives
P.O. Box 4160
Santa Fe, NM 87502-4160

Susan G. Jordan
Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP
1239 Paseo Del Peralta
Santa Fe, NM 87501

Charles Braden
Michael Schoessler
Solicitor Office SW Reg., U.S.D.I.
505 Marquett Ave. N.W., Suite 1800
Albuquerque, NM 87102

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

Richard B. Cole
Law & Resource Planning Associates, P.C.
201 Third Street N.W., Suite 1370
Albuquerque, NM 87102-3381

Curtis Gurley
Attorney at Law
P.O. Box 1982
Farmington, NM 87499

Christopher J. Castillo
P.O. Box 1087
Colorado Springs, CO 80944

William A. Johnson
Associate General Counsel
Ute Mountain Ute Tribe
P.O. Box 128
Towaoc, CO 81334

Germaine Chappelle
John B. Draper
Montgomery & Andrews, PA
P.O. Box 2307
Santa Fe, NM 87504-2307

Stephen E. Snyder, Esq.
4 Manzo Road
Corrales, NM 87048-8385

Chester Miller, III
Attorney at Law
907 W. Apache
Farmington, NM 87401

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

Daniel H. Israel
Attorney at Law
Suite E-149
3455 Table Mesa Drive
Boulder, CO 80305

Perry Abernethy
Office of the State Engineer
121 Tijeras Ave, Suite 2000
Albuquerque, NM 87102

U.S. Attorneys Office
P.O. Box 607
Albuquerque, NM 87103

D. L. Sanders
Chief Counsel
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102

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