

SJ-17  
Navajo Settlement

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

STATE OF NEW MEXICO, ex rel.  
THE STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants,

No. CV 75-184  
Honorable Rozier E. Sanchez  
District Judge Pro Tempore

SAN JUAN RIVER BASIN  
ADJUDICATION

vs.

THE JICARILLA APACHE TRIBE  
AND THE NAVAJO NATION,

SAN JUAN RIVER  
GENERAL STREAM  
LITIGATION

Defendant-Intervenors.

**SUGGESTIONS, COMMENTS, AND OBJECTIONS CONCERNING  
PROCEDURES FOR ADJUDICATING THE NAVAJO "SETTLEMENT"**

Regardless of what has happened, or not, in the three decades of this litigation, there is a constructive solution to the present predicament:

1. The Tribe and/or the U.S. must serve all water users in the San Juan Basin with a summons and complaint, since the Tribe and the U.S. are seeking a judgment against them. *This is the first and only issue. Without proper service of process, the entire adjudication would be unconstitutional, and a waste of time.*
2. Once all parties have been joined, then notice of pleadings and hearings can be given in streamlined fashion. The summons and complaint will alert people that they need to hire a lawyer, and it is likely that many of them will hire the same lawyers, and

notice to the lawyers will be notice to all of their clients. This will drastically reduce the e-mail service list.

3. The adjudication must precede in accordance with the Rules of Civil Procedure: complaint, answer, counterclaim, cross-claim. The first purpose of the complaint is to alert the defendants that they are being sued. The second purpose of the complaint is to set forth the legal and factual basis for the plaintiffs' claim, to frame the issues for the Court and the parties. The tribe has not explained either its legal theories or the facts which support its claims. Thus far the Tribe has simply stated a conclusion – that it is entitled to huge amounts of water – without explaining why and how. The Tribe's explanation is eagerly awaited by other water users.

4. The legal and factual issues need to be framed by the pleading process, which then serves as a guide for discovery. The Tribe and the U.S. would like to "expedite" (minimize) discovery because the Tribe's claim simply does not withstand scrutiny. The Ute Mountain Ute Tribe has correctly pointed out that this case will require a large amount of discovery.

5. The supposed federal "deadline" is a false issue. First, the deadline can and will be extended if necessary. Second, as a matter of separation of powers, Congress cannot impose an artificial deadline on state judicial processes at the expense of persons who are not parties to the "settlement." While the Tribe and the U.S. may agree as between themselves that "the deal is off" as of a certain date, such an agreement does not affect the substantive rights of other water users, or their due process rights. Above all, the courts do not cut corners on full judicial due process. Full judicial due process is the only reason courts exist

in the first place. And only courts can provide full judicial process. This is why we have a separate judicial branch.

6. The proposed notice will be thrown in the trash by 99% of the people who receive it, like the judicial notices of class-action settlements that entitle the recipient to a coupon worth \$.47 on his next purchase.

7. The proposed notice and procedure is designed to deceive and default thousands of *pro se* litigants, using the *imprimatur* of the judiciary.

8. The Navajo "Settlement" is not a settlement at all. It has too many conditions, exclusions, ambiguities, and unenforceable provisions.

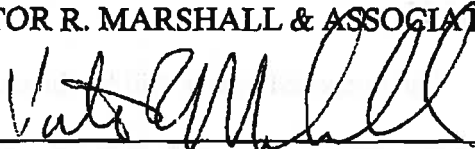
9. The Hammond Conservancy District and the San Juan Agricultural Water Users agree with the points raised by Mr. Horner on behalf of the Bloomfield Irrigation District. There are a few points on which the Association and the Hammond have a different view, but those can be explored at the hearings.

10. All of the other water users in the San Juan basin have a right to be heard on the procedures that should be followed for scrutinizing and adjudicating the Navajo "Settlement" before the procedures are set. As every litigator knows, the procedures for litigating a dispute are almost as important, sometimes more important, than the merits of the case. This is why the Tribe and the U.S. are trying to set the procedures before the other water users can be heard. Suppose the situation were reversed. Suppose the local water users were trying to set procedures for adjudicating the claims of the Tribe and the United States, without giving them an opportunity to speak on how the adjudication will be handled. Would the Tribe and the United States consider that fair? Of course not.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By



Victor R. Marshall  
Attorneys for San Juan Agricultural  
Water Users Association  
12509 Oakland NE  
Albuquerque, New Mexico 87122  
505-332-9400 / 505-332-3793 FAX

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by email to the attorneys electing email service at: wrattorney@11thjdc.com and to the La Plata parties electing email service at wrlaplata@11thjdc.com this 7th day of October, 2009.

I further certify that a true and correct copy of the foregoing has been served on the following attorneys by facsimile, and by mail to Gary Horner, Dan Israel and William Johnson, on October 22, 2009.

Stanley Pollack and Bidtah Becker  
Jay Burnham  
John Draper and Jeffrey Wechsler  
J.M. Durrett, Jr.  
Robert Kidd and Michael Garcia  
Tracy Hofmann, Arianne Singer and D.L. Sanders  
Stephen Hughes, John Sullivan and Michael Thomas  
Jolene McCaleb and Elizabeth Taylor  
Maria O'Brien  
Gary Risley  
Richard Cole

