

John Whipple

From: utton
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To: Phil Mutz; D Sanders; Tanya Trujillo; Estevan Lopez; John Dantonio; Karin Stangl; waterjim; Abernethy.Perry; jwhipple
Subject: Judge greenlights Navajo water negotiations

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Judge greenlights water negotiations
By Jim Snyder/The Daily Times
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AZTEC — It is now official: Motions by Farmington resident Gary Horner as well as the San Juan Agricultural Water Users Association to enjoin, or forbid, the Navajo Nation and the state of New Mexico from proceeding with negotiations over the tribe's proposed water rights settlement agreement on the San Juan Basin have been denied in a court ruling.

District Judge pro tempore Rozier Sanchez called their motions "premature" during an Aug. 20 hearing, but did not issue his expected ruling until Sept. 17.

He said at the conclusion of the three-hour hearing he would not halt the settlement since it was still in negotiations between the state engineer and the Navajo Nation and a final draft had not been submitted to the court.

Sanchez also said at the hearing and again in his written ruling the appropriate time for the court to consider any motions to stop the settlement would be during the inter se phase. This would occur only after a final draft has been signed by the Navajo Nation, the state of New Mexico and the United States — possibly by 2006. The inter se phase would end with the court granting a partial final decree in 2015, according to the state engineer's office

Sanchez said in his ruling, "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 lawsuit, at that time, may conduct reasonable discovery in accordance with the rules of civil procedure for the New Mexico District Courts," he said.

Richard Cole, an Albuquerque attorney representing Farmington, Bloomfield and Aztec, said during the hearing the court should grant a motion of discovery, "So that we can all have input into the process." He added they needed documents to understand what was happening in the settlement before it proceeded to the inter se stage.

Arguing against Horner and San Juan Agricultural Water Users Association attorney Felix Briones was United States Department of Justice Attorney Bradley Bridgewater, with the Environmental and Natural Resources Division in Denver; state engineer attorney Perry Abernethy of Albuquerque; state engineer attorney John Utton of Albuquerque and Navajo Nation water attorney Stanley Pollack of Window Rock, Ariz.

"There is no settlement (agreement)," Abernethy said in reply to Cole. "These are negotiations. There's no authority for anyone to interfere ... between the Navajo Nation and New Mexico. It would violate separation of powers (for the court to interfere)."

The settlement seeks to quantify 606,060 acre-feet of diverted water rights annually — 56 percent of the water on the San Juan Basin within New Mexico — to the Navajo Nation. No draft of the settlement — which was introduced Dec. 5 followed by a second draft July 9 — has ever been presented to the 88-member Navajo Nation Council, Gov. Bill Richardson's office or the United States for approval.

Horner, an attorney, and Briones argued the state has not conducted a hydrographic survey to see how much water actually existed nor had done a practicable irrigation acreage study to determine who was utilizing it.

"When you reject the PIA you reject the concept of future water users," Horner said, adding the settlement would cause

irrevocable harm to non-Navajo water right holders in San Juan County despite the Navajo Nation agreeing in the second draft not to challenge the 1948 Echo Ditch Decree.

Horner further argued the Navajo Nation was seeking a monopoly of the basin's actual water supply. That would leave non-Navajos no choice but to purchase their water from the Navajo Nation in the future, he said.

Horner added the court would lose its authority to challenge the settlement once it is passed by Congress. Sanchez disagreed saying the authority was with the state court.

The settlement, which once had an April 1 deadline to be sent to Congress for monetary appropriations, is back in closed-door negotiations after U.S. Sen. Pete Domenici, R-N.M. — expected to be its principle sponsor — balked at the proposed \$1.2 billion in federal funding.

Draft two of the settlement calls for \$372.8 million in federal funding for the Navajo Indian Irrigation Project, \$589.6 million to build the Navajo-Gallup Pipeline as well as funding for Navajo ditch improvements and other projects.

"I am writing to you to let you know that I cannot support the current estimates of the federal costs of this settlement," Domenici said last month in a letter to Navajo President Joe Shirley Jr. "I am hearing total estimates between \$900 million and \$1.25 billion and all of it federal money. ... I see no way that Congress would be able to fund these huge amounts of money."

U.S. Rep. Tom Udall, D-N.M., said earlier this month the settlement's federal price tag was too high.

"I'm hoping the finalized settlement — which we don't have yet — comes in at a lower figure," Udall said. "I agree with Sen. Domenici about the difficulty of passage. ... \$1.2 billion is much more expensive than any (water) bill we've seen on the House side."

The related New Mexico state engineer versus the United States thirty-year lawsuit seeks to adjudicate all water rights — including the Navajo Nation's once the settlement is passed — within New Mexico. That lawsuit is also overseen by Sanchez.

Sanchez recognized Horner's right this summer to formally challenge the settlement in court after he obtained a small water right from Carroll Crawford.

Jim Snyder: jims@daily-times.com

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