

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

CV-75-184

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

HON. JAMES J. WECHSLER
PRESIDING JUDGE

Plaintiff,

SAN JUAN RIVER
ADJUDICATION

v.

Claims of Navajo Nation
Case No: AB-07

THE UNITED STATES OF AMERICA,
et al.,

Defendants,

**NOTICE OF EXPEDITED *INTER SE* PROCEEDING
TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION
AND DEADLINE FOR FILING NOTICES OF INTENT TO PARTICIPATE**

To: ALL PERSONS AND ENTITIES CLAIMING WATER RIGHTS IN THE SAN JUAN RIVER SYSTEM AND THE SAN JUAN RIVER UNDERGROUND WATER BASIN WITHIN THE STATE OF NEW MEXICO, INCLUDING PERSONS PREVIOUSLY JOINED AS DEFENDANTS IN THE ABOVE-CAPTIONED ACTION, AND ALL KNOWN AND UNKNOWN CLAIMANTS OF INTEREST

YOU ARE HEREBY NOTIFIED that the Eleventh Judicial District Court for the State of New Mexico (the "Court") has ordered commencement of an expedited *inter se* proceeding to adjudicate all of the water rights claims of the Navajo Nation within the San Juan River Basin in New Mexico ("Navajo *Inter Se*"). (An "*inter se*" proceeding allows all water rights claimants to object to the water right of another claimant. This usually occurs toward the end of the adjudication, but here the Court proposes to hear this matter before all water rights claims have been adjudicated; therefore, this *inter se* proceeding is "expedited." This is the same process that was utilized for the consideration of the Jicarilla Apache settlement.) The Navajo *Inter Se* will result in entry by the Court of a final adjudication decree or decrees that will be final and binding on all others claiming water rights within the San Juan River System and the San Juan River Underground Water Basin in New Mexico ("San Juan River Basin"), whether the Navajo Nation's claims are ultimately decided by settlement or by litigation. This Notice states the deadline established by the Court for all others claiming water rights within the San Juan River Basin to file a notice of intent to participate in the Navajo *Inter Se* ("Notice of Intent to Participate").

PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES THE ONLY OPPORTUNITY YOU WILL HAVE TO PARTICIPATE IN THE NAVAJO *INTER SE*.

This matter has come before the Court following execution of a Settlement Agreement (the "Settlement Agreement") by the Navajo Nation, the State of New Mexico on the relation of the State

Engineer ("State"), and the United States of America ("United States") (collectively "the Settling Parties"). Under the terms of the Settlement Agreement all of the water rights of the Navajo Nation within the San Juan River Basin would be settled and finally determined by entry by the Court of two proposed adjudication decrees, the Appendix 1 Decree and the Appendix 2 Decree, attached to the Settlement Agreement. The Court has ordered that settlement of the Navajo Nation's claims as proposed by the Settlement Agreement be heard first and therefore has severed the issue of settlement ("Severed Issue") from all other issues in the Navajo *Inter Se*. If determination of the Severed Issue results in the Court's entry of the Appendix 1 and 2 Decrees, whether entered separately or jointly, the Navajo Nation's water rights in the San Juan River Basin will be fully and finally adjudicated and no further proceeding will be required.

THE COURT HAS NOT YET MADE ANY DECISION ABOUT WHETHER TO ENTER THE PROPOSED DECREES TO ALLOW THE SETTLEMENT TO BE IMPLEMENTED. IF THE COURT DOES NOT ENTER THE PROPOSED DECREES AND THE SETTLEMENT FAILS, THE NAVAJO *INTER SE* WILL CONTINUE AND THE COURT WILL ALLOW THE NAVAJO NATION AND THE UNITED STATES TO FILE LITIGATION COMPLAINTS ASSERTING CLAIMS TO THE WATERS OF THE SAN JUAN RIVER BASIN AND THOSE CLAIMS WILL BE RESOLVED AMONG ALL PARTIES AND THE CLAIMANTS WITHIN THE SAN JUAN RIVER BASIN.

If you own water rights in the San Juan River Basin, you have the right to file a Notice of Intent to Participate in the Navajo *Inter Se*, including determination of the Severed Issue, but you must exercise that right in the manner, and within the deadline, established by the Court or you will be barred from further participation in the Navajo *Inter Se*. This is the only notice you will receive of your right to participate in the Navajo *Inter Se*. The Court has established **SEPTEMBER 16, 2011** as the deadline for filing a Notice of Intent to Participate. If you do not file a Notice of Intent to Participate you will be bound by the determination of the Court, even if the terms of any decree(s) entered by the Court vary from the terms of the proposed Appendix 1 and 2 Decrees.

Summary of the Proceedings:

In 1975, the State of New Mexico commenced a general stream adjudication to determine all surface and underground water rights in the San Juan River Basin. In response, the United States filed a Supplemental Answer making water rights claims on behalf of the Navajo Nation and other tribes asserting the right to use, divert and impound sufficient ground and surface water to satisfy the present and future needs of the tribes for irrigation, domestic, industrial, aesthetic, recreational, streamflow and other purposes within the San Juan River Basin. The water rights of the Jicarilla Apache Nation were resolved by a negotiated settlement and Partial Final Judgment and Decree entered by the Court in 1999. In 1997, the Navajo Nation and the State of New Mexico entered into settlement discussions and in 2005, the State and the Navajo Nation signed the Settlement Agreement. In 2009, the United States Congress enacted the Northwestern New Mexico Rural Water Projects Act ("Settlement Act"), Title X, Subtitle B of the Omnibus Public Land Management Act of 2009, Public Law 111-11. On December 17, 2010, the Secretary of the Interior, on behalf of the United States, signed the Settlement Agreement, which calls for the Settling Parties to move the Court to enter the proposed Appendix 1 and Appendix 2 Decrees setting forth all of the Navajo Nation's water rights in the San Juan River Basin in New Mexico.

Summary of Navajo Water Rights Proposed by Settlement:

Under the Settlement Agreement, most of the Navajo Nation's water rights would be recognized by entry by the Court of the proposed Appendix 1 Decree. The Appendix 1 Decree would adjudicate to the Navajo Nation reserved water rights whose source of supply is from the San Juan River Basin for a total diversion and use of 606,660 acre-feet per year (afy) or the quantity of water necessary to supply a total depletion of 325,670 afy, whichever is less, for the following uses: Navajo Indian Irrigation Project; Fruitland-Cambridge Irrigation Project; Hogback-Cudei Irrigation Project; Navajo-Gallup Water Supply Project; Animas-La Plata Project; San Juan River municipal/industrial uses; and reserved ground water uses up to 2,000 afy. The locations of all surface water uses may be viewed on hydrographic survey maps described below. Pursuant to the terms of the proposed Appendix 1 Decree, these rights will be adjudicated a priority date of June 1, 1868; however, for purposes of priority administration, the Navajo Nation has agreed that the uses served by projects built by the United States shall be administered with the priorities of State Engineer Permits for those projects. Consequently, of the total diversion and depletion amounts stated above, the following more junior priority dates would apply: 1955 for a diversion of 530,650 afy and depletion of 290,780 afy for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project; and 1956 for a diversion of 4,680 afy and a depletion of 2,340 afy for the Animas-La Plata Project. Of the total, a maximum diversion of 71,330 afy and depletion of 32,550 afy would be administered with the senior priority date of 1868 for the Hogback-Cudei and Fruitland-Cambridge Irrigation Projects, San Juan River municipal/industrial uses, and reserved ground water uses up to 2,000 afy. In addition, the Navajo Nation would be subject to certain restrictions on the use of its water rights designed to protect other water users in the San Juan River Basin.

The Settlement Agreement also calls for entry of the Appendix 2 Decree, which would adjudicate to the Navajo Nation additional water rights based on historic and existing stock, irrigation and recreational uses whose source of supply is from groundwater or ephemeral surface water generally located away from the San Juan River. Because these additional water rights are made up of numerous stock ponds and ephemeral surface water irrigation spread across Navajo lands in the San Juan River Basin, a lengthy Hydrographic Survey Report is currently being prepared by the United States in a manner acceptable to the New Mexico State Engineer. Until the Hydrographic Survey Report is completed, the precise location and other elements of these additional rights will not be available. Nonetheless, in order to provide notice of the maximum potential depletion quantity of these additional rights, the United States estimates a total potential at-site depletion of up to 34,789 afy, consisting of 21,801 afy for irrigation, and 12,977 afy for livestock uses primarily associated with storage in stock ponds scattered across Navajo lands within the San Juan River Basin. The general locations of these uses may be viewed on maps provided in the materials described below. The Settling Parties believe that actual depletions on the San Juan River caused by exercise of these additional rights will be substantially less than the United States' estimate provided above. For a more detailed discussion of the factors limiting the effects of these rights, please see the materials described below at the locations described below.

The above summary provides only a short description of the terms and conditions of the Settlement Agreement and of the proposed decrees. For a more detailed explanation of the settlement or to review all the Settlement documents, please see the information referenced below under "For further information / Settlement Documents."

Rights and Options of Water Right Claimants:

If you own water rights in the San Juan River Basin, you have the following rights and options:

1. You may do nothing. If you do not wish to file a Notice of Intent to Participate, you do not have to take any further action. Whether or not you file a Notice of Intent to Participate, you will be bound by the adjudication decree or decrees ultimately entered by the Court in the Navajo *Inter Se*, even though terms of the decree or decrees may be different from the terms of the decrees proposed by the Settlement Agreement.
2. You may file a Notice of Intent to Participate. If you wish to participate, you or your attorney must file a Notice of Intent to Participate with the Court Clerk for the Eleventh Judicial District Court, 103 South Oliver Drive, Aztec, NM 87410, on or before **SEPTEMBER 16, 2011**. There is no fee for filing a Notice of Intent to Participate. You may, but are not required to, be represented by an attorney.

A Notice of Intent to Participate must include the following information: (a) name of the persons submitting the notice; (b) mailing address; (c) telephone number; (d) email address (if any); and (e) description of ownership of water right in the basin or other statement of legal right to participate. Persons who do not provide all of the required information will be subject to dismissal. For convenience of those wishing to participate, a form of "Notice of Intent to Participate in the Navajo *Inter Se*" is attached hereto. The form may be filled out and filed with the Court.

IF YOU FILE A NOTICE OF INTENT TO PARTICIPATE YOU ARE AGREEING TO PARTICIPATE IN THE NAVAJO *INTER SE*. YOU WILL BE REQUIRED TO ATTEND OR HAVE YOUR LEGAL COUNSEL ATTEND ON YOUR BEHALF A MANDATORY PRE-HEARING SCHEDULING CONFERENCE TO BE HELD BEFORE THE COURT ON MONDAY OCTOBER 3, 2011, COMMENCING AT 9:00 A.M. AT THE MCGEE PARK CONVENTION CENTER, 41 COUNTY ROAD 5568, FARMINGTON NM 87401. If you have an objection to the proposed settlement decrees, a deadline for you to file your objection will be set at the scheduling conference. Further proceedings also will be scheduled at that scheduling conference.

Public Meetings:

The United States, the State and the Navajo Nation will be hosting a series of public meetings regarding the Settlement Agreement and the proposed decrees to adjudicate the Navajo Nation's water rights in the San Juan River Basin. The following is a list of times, dates and locations of the meetings:

Date	Time	Location
June 22	6-8 p.m	Shiprock Chapter House, off Highway 64, across the Catholic Church, Shiprock
June 23	2-4 p.m	San Juan County Building, Commission Chambers, 100 S. Oliver Drive, Aztec
June 23	6-8 p.m	Piedra Vista High School, Turano-Chrisman Performing Arts Theatre, 5700 College Blvd., Farmington
June 29	6-8 p.m	Bloomfield High School Auditorium, 520 North 1 st Street, Bloomfield
June 29	10 a.m. - noon	Navajo Technical College, Multipurpose Room, Lower Point Road, State Highway 371, Crownpoint

For further information / Settlement Documents:

This Notice provides only a brief summary of the water rights and settlement terms proposed to be decreed by the Court pursuant to the Settlement Agreement. Copies of the Settlement Agreement, the proposed Appendix 1 Decree, the proposed Appendix 2 Decree and the Settlement Act are available for you to review at the locations stated below. In addition, a Detailed Summary of the Navajo Settlement Water Rights is available for inspection at the same locations. Additional background information prepared by the United States includes: (1) a hydrographic survey report and maps of existing and historic water uses of the rights described in the Appendix 1 Decree and a preliminary hydrographic survey report and maps of existing and historic water uses of the rights described in the Appendix 2 Decree; and (2) a Statement of Claims. These documents describe water uses and potential water rights associated with the trust lands of the Navajo Nation. These documents were created exclusively and filed by the United States on behalf of the Navajo Nation to summarize minimum litigation claims that they would pursue if the Settlement Agreement fails.

Eleventh Judicial District Court
103 South Oliver Drive
Aztec, NM 87410

Office of the State Engineer
100 South Oliver Drive
Aztec, NM 87410

Bureau of Indian Affairs
Eastern Navajo Agency
Office of Real Estate Services
P. O. Box 328
Crownpoint, NM 87313

Bureau of Indian Affairs
Shiprock Agency
PO Box 966
(Highway 491, building is behind
First National Bank Building)
Shiprock, NM 87420

The documents described above - the Settlement Agreement, the proposed Appendix 1 Decree, the proposed Appendix 2 Decree, the Settlement Act and the Detailed Summary of the Navajo Settlement Water Rights - are also available for review at the Eleventh Judicial District Court's website (look under Navajo Settlement):

<http://sjrba.11thjdc.com/>

And the State Engineer's website at:

http://www.ose.state.nm.us/legal_ose_proposed_settlements_sj_notice2010.html

Information explaining the Navajo *Inter Se* and how to file a Notice of Intent to Participate may be obtained from the Joe M. Stell Water Ombudsman Program at the Utton Transboundary Center of the University of New Mexico School of Law. You may call the toll-free Water Adjudication Helpline at 1-866-822-6134 (press 1). Leave your name, phone number, and question. They will attempt to call you back by the next business day. Additional information may be found at the Center's website at:

http://uttoncenter.unm.edu/ombudsman_3.html



WELDON J. NEFF
COURT CLERK

By: *Louessa Bacher*
Deputy

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

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

Plaintiff,

v.

THE UNITED STATES OF AMERICA,
et al.,

Defendants,

CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
ADJUDICATION

Claims of Navajo Nation
Case No: AB-07-1

NOTICE OF INTENT TO PARTICIPATE IN NAVAJO INTER SE PROCEEDING

The person named below intends to participate in court proceedings to adjudicate the water rights of the Navajo Nation in the San Juan Basin (i) in accordance with the terms of the settlement agreement among the United States of America, the Navajo Nation and the State of New Mexico or (ii), if the court does not enter the settlement decree(s), by further proceedings ordered by the Court.

PLEASE TYPE OR PRINT

FULL NAME OF PARTY: _____

ATTORNEY, IF ANY, FOR PARTY: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

All attorneys who sign this notice on behalf of a party **MUST** provide their email address. All persons who sign this notice who are **NOT** attorneys **MUST** either provide an email address or certify they do not have access to email. Court papers will be served by email on all parties filing this notice, except for *pro se* parties certifying they do not have access to email.

Email address of attorney or party: _____

Confirm email address: _____

If no email address is provided, the person signing this form is **NOT** an attorney **AND** certifies s/he does not does have access to email.

Does the undersigned claim ownership of a water right in the San Juan Basin? Yes ___ No ___

In addition to filing this notice, the undersigned (or its attorney) **MUST** attend the scheduling conference to be held on **MONDAY, OCTOBER 3, 2011**, commencing at **9:00 a.m.** at the McGee Park Convention Center, 41 County Road 5568, Farmington N.M. 87401

Signature: _____
Party or Attorney for Party

Date: _____

This notice **MUST BE DELIVERED** to the Clerk's Office, Eleventh Judicial District Court, 103 South Oliver Drive, Aztec NM 87410 **BY 5:00 P.M. SEPTEMBER 16, 2011**