

FILED
JUN 24 1977

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF SAN JUAN

Ramona J. Cottell
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STATE OF NEW MEXICO on the)
relation of S. E. REYNOLDS,)
State Engineer,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
et al.,)
)
Defendants.)

NO. 75-184

ANSWER OF INTERVENING DEFENDANT, THE NAVAJO NATION

I. Answer to Plaintiff's Complaint.

1. Intervening defendant is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. Paragraph 2 states conclusions of law to which intervening defendant is not required to respond.

3. In response to the allegations of paragraph 3, intervening defendant admits that it is a claimant of the right to impound, divert and/or use waters of the San Juan River Stream System in the State of New Mexico (as well as the states of Utah and Arizona). Intervening defendant is without information sufficient to form a belief as to whether all other defendants (or which of them) are claimants to said water. Further, the allegation that said waters are "public waters" states a conclusion of law to which intervening defendant is not required to respond.

4. In response to the allegations of paragraph 4, intervening defendant denies that this suit is a valid statutory adjudication, but alleges that plaintiffs have failed to adhere to the provisions of the statute under which this suit is purportedly brought.

1 5. In response to the allegations of paragraph 5,
2 intervening defendant admits that the San Juan River System
3 within the State of New Mexico lies principally in San Juan
4 County, New Mexico; denies information sufficient to form a
5 belief as to the principal location of uses of the waters of
6 the San Juan River System; and asserts that the remaining alle-
7 gations of this paragraph state conclusions of law to which
8 intervening defendant is not required to respond.

9 6. In response to the allegations of paragraph 6,
10 intervening defendant admits that its claims for reserved water
11 rights in and to the surface and ground waters of the San Juan
12 River System in New Mexico have never been judicially determined,
13 but is without information sufficient to form a belief as to whether
14 any other water rights claimed by intervening defendant or any
15 other party have ever been finally determined in any court.

16 7. In response to the allegations of paragraph 7,
17 intervening defendant admits that the United States, for and on
18 behalf of intervening defendant, as well as intervening defendant
19 itself claim the right to use, impound and/or divert substantial
20 surface and ground waters of the San Juan River Stream System
21 under the Constitution and laws of the United States and this
22 state. Except as revealed by the Answer and Supplemental Answer
23 and Statement of Federal Non-Indian Claims filed by the United
24 States, intervening defendant is without information sufficient
25 to form a belief as to the claims of the United States, the
26 Jicarilla Apache Tribe of Indians and the Ute Mountain Tribe
27 of Indians.

28 8. Intervening defendant is not required to respond
29 to paragraphs 8, 9 and 10 as they merely state conclusions of
30 law.

31 9. In response to the allegations of paragraph 11,
32 intervening defendant is without information sufficient to form

1 a belief as to the truth of the allegations.

2 10. Intervening defendant is not required to respond
3 to paragraphs 12 and 13 as they merely state conclusions of law.

4 II. Affirmative Defenses.

5 1. The complaint fails to state a claim against
6 intervening defendant upon which relief can be granted.

7 2. In view of the sovereign immunity of the interven-
8 ing defendant, the provisions of Section 2 of New Mexico's
9 Enabling Act (36 Stat. 557, 558-559) and Article XXI, Section
10 2 of the New Mexico Constitution, this Court is without juris-
11 diction to adjudicate intervening defendant's rights in this
12 action.

13 3. Because of the extent of intervening defendant's
14 rights, it is an entity in whose absence complete relief cannot
15 be accorded those already parties and since it claims an interest
16 relating to the subject matter of the action and is so situated
17 that the disposition of the action in its absence may as a
18 practical matter impair or impede its ability to protect that
19 interest, the action should be dismissed, intervening defendant
20 being indispensable.

21 4. Plaintiffs have failed to follow the applicable
22 state law regarding stream adjudications, §§ 75-4-4, et seq.,
23 N.M.S.A. (1953) and in particular § 75-4-4, in that, as admitted
24 in paragraph 11 of the complaint, the hydrographic survey of the
25 stream system is not complete, and, in fact upon information
26 and belief with respect to intervening defendant's lands, has
27 not even been begun. Consequently, the condition precedent
28 of § 75-4-4 has not been met.

29 5. Even if this Court were to adjudicate the water
30 rights of intervening defendant, the inability of this Court to
31 effectuate any decree makes the entry of a decree a brutum fulmen;
32 consequently, as a matter of sound judicial discretion, the action

1 should be dismissed insofar as it seeks to adjudicate intervening
2 defendant's rights.

3 III. Affirmative Claims.

4 Should this action not be dismissed, or not be dis-
5 missed as to intervening defendant, the Navajo Nation asserts
6 the following claims on its own behalf:

7 1. The lands of the Navajo Nation in New Mexico
8 have never been fully and finally determined.

9 2. Whatever the final determination of the extent
10 of the lands of the Navajo Nation in New Mexico is, it will in
11 all likelihood consist of only a small part of the historical
12 homeland of the Navajo people in New Mexico, lands occupied
13 for hundreds of years before any European exploration, let
14 alone European settlement and use.

15 3. While the rights of the Navajo Nation to lands
16 in New Mexico have not yet been finally determined, Navajo
17 Nation lands in New Mexico include those lands reserved by
18 the Treaty of 1868, 15 Stat. 667, those lands covered by
19 various Executive Orders and land withdrawals, including the
20 Executive Orders of January 6, 1880, April 24, 1886, November
21 9, 1907, January 28, 1908, December 30, 1908, January 16, 1911,
22 May 24, 1911, February 17, 1912, February 10, 1913, May 6,
23 1913, December 1, 1913, and January 15, 1917. Navajo Nation
24 lands also include those set forth in the Act of March 3, 1925,
25 43 Stat. 1114, 1115, Act of June 20, 1950, 64 Stat. 248, Act
26 of August 9, 1955 as amended July 11, 1956, 69 Stat. 555, 556,
27 70 Stat. 522, Act of April 9, 1960, 74 Stat. 40, 41, Act of
28 June 13, 1962, 76 Stat. 96, 43 U.S.C.A. §§ 615 ii et seq.
29 as amended by the Act of September 25, 1970, 84 Stat. 867,
30 43 U.S.C.A. §§ 615 kk et seq., and in particular 43 U.S.C.A.
31 § 615kk, the Act of February 14, 1968, 82 Stat. 15, and the
32 Act of October 17, 1975, 89 Stat. 577, 25 U.S.C.A. §§ 459 et seq.,

1 and in particular 25 U.S.C.A. § 459a.

2 Because the boundaries of the Navajo Nation in New
3 Mexico are not defined, there may be other relevant laws,
4 Executive Orders and Secretarial withdrawals which must be
5 interpreted.

6 4. With respect to the Navajo Nation lands in New
7 Mexico within the boundaries of the San Juan River System, the
8 Navajo Nation claims the right to use, divert, impound for any
9 and all purposes sufficient ground and surface water to satisfy
10 the present and future needs of the Navajo people for irrigation,
11 domestic, industrial, aesthetic, recreational and streamflow
12 purposes.

13 5. Since these lands have been the traditional home-
14 land for the Navajo people, a priority of "time immemorial"
15 is claimed for all such water rights.

16 6. The Navajo Nation, pursuant to the provisions of
17 the Act of June 13, 1962, 76 Stat. 96, 43 U.S.C.A. §§ 615ii,
18 et seq. as amended, claims the right to divert 508,000 acre-
19 feet per year pursuant to the terms of the Act, with a priority
20 date of June 17, 1955, the date the Notice of Intention was
21 filed with the New Mexico State Engineer. This claim is separate
22 and distinct and in addition to the other claims of the Navajo
23 Nation.

24 7. The Navajo Nation has purchased various lands
25 within the San Juan River water system with both appurtenant
26 and other water rights arising under state law. Accordingly,
27 the Navajo Nation claims the right to use, divert and impound
28 said waters pursuant to the laws of the State of New Mexico,
29 excepting only such laws as require filing or recording of
30 such rights.

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WHEREFORE, Intervening Defendant prays:

1. For an Order dismissing this Action, at least insofar as it seeks to adjudicate intervening defendant's rights.

2. Should this Court retain jurisdiction to determine intervening defendant's rights, for an Order requiring Plaintiffs to complete the hydrographic survey of intervening defendant's rights before intervening defendant is required to take further action in this proceeding.

3. Should this Court retain jurisdiction to determine intervening defendant's rights, for an Order declaring that the United States holds in trust for intervening defendant water rights sufficient to meet the present and future needs of the Navajo people for irrigation, domestic, industrial, aesthetic, recreational and streamflow maintenance purposes, said water rights to be derived from the surface and ground waters of the San Juan River Stream System and with a priority of "time immemorial".

4. For an Order that the United States also holds in trust for intervening defendant the right to divert 508,000 acre-feet annually to fulfill the purposes of the Act of June 13, 1962, with a priority of June 17, 1955.

5. For an Order that intervening defendant holds such water rights arising under state law as may appear from further proceedings in this action.

6. For such other orders as to the Court seem just and proper in the circumstances.

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DATED: June 20, 1977

Respectfully submitted,

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