

Water groups, acequias challenge 2013 ruling for Navajo Nation

Phaedra Haywood

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A group of water districts in Northern New Mexico is asking that a pivotal state Court of Appeals decision that awarded the Navajo Nation “one quarter of all the stream water in the entire state” be vacated on the grounds that the appellate judge who made the ruling failed to disclose he had formerly done legal work on behalf of the Navajo Nation.

The case in question has been pending since 1975, but the rulings being challenged in the complaint filed in the state Court of Appeals were made in 2013 by Court of Appeals Judge James Wechsler, who retired from the court in June after 22 years on the bench.

The water districts are asking that Wechsler’s rulings be set aside and the issues he decided be considered again by a new judge.

“In 2013, without a trial, Judge James Wechsler granted summary judgment to the Navajo Nation on its claim for water in the San Juan River Basin in New Mexico,” the complaint says. “Judge Wechsler awarded the Navajo Nation 635,729 acre-feet of water per year, in perpetuity. That’s roughly one quarter of all the stream water in the entire State of New Mexico. It is more than six times the amount of water used by the Albuquerque metropolitan area, and twice as much as the city of Phoenix.”

According to the complaint, Wechsler should have disqualified himself from hearing arguments in the case because he lived and worked on the Navajo Nation for approximately six years (1970-76) when he first arrived in the state and represented the Navajo Nation in several important cases.

Administrative Office of the Courts spokesman Barry Massey said in an email Tuesday that Wechsler had worked not for the Navajo Nation itself but for an outfit called DNA — “a nonprofit legal aid organization, not a tribal government agency, Of the Navajo Nation.”

Lawyer Victor Marshall, who represents the water users, wrote in a brief in support of their appeal that DNA is “an agency or instrumentality of the Navajo Nation.”

Marshall wrote in the brief that DNA is an abbreviation for the Navajo phrase which means “Attorneys Who Contribute to the Economic Revitalization of the People.”

(Marshall has represented *The Santa Fe New Mexican*.)

Massey also said in the email that Wechsler worked for DNA for “not quite three years starting in 1970.”

Though retired, Wechsler still presides over some water disputes in the San Juan River Basin. He declined to comment Tuesday, citing the judicial code of conduct that prohibits judges from commenting on cases that could come before them.

The complaint, which was filed by the San Juan Agricultural Water Users Association, Hammond Conservancy District, Bloomfield Irrigation District and “various ditches and members thereof,” alleges the Navajo Nation also knew of Wechsler’s conflict but did not disclose that fact.

Stanley Pollack, a water rights attorney working on contract for the Navajo Nation, told The Associated Press that Marshall is “mischaracterizing Wechsler’s work and ‘trying to have a second bite of the apple.’”

“I don’t think there is any merit to the appeals, and hopefully the Court of Appeals will agree,” Pollack said.

Contact Phaedra Haywood at 505-986-3068 or phaywood@sfnewmexican.com. Follow her on Twitter @phaedraann.