

San Juan River showdown

Critical water settlement under fire

Lawmakers say court should set aside compact with Navajo Nation because Legislature didn't approve it

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A massive 2010 settlement that awarded San Juan River water rights to the Navajo Nation is facing fresh legal challenges that raise issues concerning who has the authority to make water deals in New Mexico.

A group of Republican state legislators on Friday (June 15) asked the New Mexico Supreme Court to suspend the agreement, which former Gov. Bill Richardson signed off on with the Navajo Nation and the U.S. Secretary of Interior in an effort to resolve water rights disputes that had been pending for decades.

The state lawmakers say the court should set aside the compact because the Legislature never approved it.

The Navajo San Juan Settlement Agreement, which allocated about 635,000 acre-feet of water to the Navajo Nation, the country's largest tribe, prompted lawsuits from upstream water users worried about how it would affect them in drought years and the power it gave the Navajo Nation to potentially lease its portion of the water to out-of-state users.

However, an April 3 state Court of Appeals ruling essentially dismissed those challenges and affirmed the agreement.

On May 30, the Albuquerque Bernalillo County Water Utility Authority and the city of Gallup filed a joint petition with the state Supreme Court challenging legal conclusions reached in the appellate court ruling, arguing that the high court should revise the ruling by Judge Bruce Black because it gives the federal government too much power over New Mexico water rights.

"It all stems from his view that the state has no ownership interest in the water," said Santa Fe attorney Jay F. Stein, who filed the petition on behalf of the Albuquerque and Gallup area users.

Stein on Friday cited a line from Black's ruling which states: "Although the state has an interest in regulating water within its boundaries, it lacks any ownership claim in such water."

Flower, Stein contends that the state of New Mexico "owns its water rights in trust for its people."

Stein said his clients are particularly concerned about the effect Black's conclusions could have on existing state-approved water agreements to which they and numerous others are parties.

Meanwhile, the 10 Republican lawmakers who petitioned the state Supreme Court Friday (June 15) say the governor overstepped his authority by signing the deal without giving the Legislature a chance to debate and act on its provisions.

“The governor doesn’t have the authority to sign off on something as big as this,” said Sen. Steven Neville, R-Aztec, one of the petitioners representing legislative districts stretching from northwestern New Mexico to Albuquerque. “It’s a constitutional process, and that’s all we are asking for at this point. We are just asking for a legislative review as part of the process.” Neville likened the situation to former Gov. Gary Johnson’s decision to sign off on gambling compacts with New Mexico Indian tribes, agreements which Neville said were later subjected to legislative review.

The lawmaker said he doesn’t know how he would vote on the water rights agreement, but he wants legislators to be able to review the deal before it’s solidified as law.

The Interstate Stream Commission, State Engineer Tom Blaine and the Office of the State Engineer are named as respondents in the petition filed by the lawmakers.

Melissa Doshier-Smith, a spokeswoman for the state engineer and the commission, said in a statement Friday that the legislators’ arguments already have been raised and rejected in the courts. “We expect a similar outcome in response to this petition,” she wrote.

Stanley Pollack, an attorney for the Navajo Nation, told the Associated Press that the water settlement doesn’t need approval from the Legislature, unlike interstate water compacts cited in Friday’s filing.

“It’s exactly the same process that’s done in every other water case,” he told the wire service. “You reach a consent agreement with the state, then you open it up for objections by all the other water users. That’s exactly what we did here.”

Unlike the Court of Appeals, the state Supreme Court is not obligated to hear every petition asking for its review and could potentially decide not to hear any of the petitions regarding the Navajo San Juan Settlement Agreement.

Editor’s note: Victor Marshall, who represents a group of farmers that appealed the settlement, also is attorney for the Santa Fe New Mexican, a sibling newspaper to The Taos News.



The San Juan river slowly makes its way downstream along a lonely stretch of Archuleta County Road 500 road between Navajo Reservoir and Pagosa Springs, Colorado. State lawmakers are challenging a San Juan River water rights settlement reached between the Navajo Nation, federal government and former Gov. Bill Richardson.

Photo by Karl F. Moffatt