

Federal, state rights clash in Navajo water dispute

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State Engineer Tom Blaine and his predecessor as New Mexico's chief water administrator, Tom Turney, are among those challenging the state Court of Appeals approval of a deal awarding San Juan River water rights to the Navajo Nation, one of the largest such settlements in state history.

Along with a group of Republican state legislators and lawyers for various water users, they are asking the state Supreme Court to review an April 3 appellate court decision affirming the 2010 Navajo San Juan Settlement agreement.

That agreement, which former Gov. Bill Richardson signed along with the U.S. Secretary of the Interior, allocated more than 635,000 acre feet of water to the Navajo Nation.

However, challengers contend the appellate decision muddies the water with regard to who has authority to control water in New Mexico.

Blaine's petition says Judge Bruce Black's ruling incorrectly grants the federal government powers belonging to the state, which "radically departs from existing law and undermines the State's and the court's ability to resolve Indian water rights claims through settlement rather than litigation."

In a motion for leave to file an amicus brief in the case, Turney, who served as state engineer from 1995 to 2003, calls it the most significant water case "both in terms of legal issues and quantity of water rights" in the past three decades.

Like Blaine, Turney says the Court of Appeals ruling makes grave legal errors concerning the state and federal government's respective roles when it comes to adjudicating water issues in New Mexico.

Among the errors, Turney says, is the failure to distinguish between the legal concepts of "water rights" and "rights to water."

"The judiciary governs water right adjudication proceedings," Turney wrote. "The allocation of water resources is a political action governed by the legislature. By failing to distinguish between the adjudication of water rights and the allocation of water resources the court's opinion may violate the separation of power provision in the New Mexico Constitution."

Turney says of the court ruling, "It's not going to work. It is too complex. It is doomed for failure and will ultimately lead to excessive litigation."

A group of Republican senators on Friday (June 15) also filed a petition challenging the Court of Appeals ruling, asking the state Supreme Court to stay the settlement because the Legislature never got a chance to review it before Richardson signed off on it.

The Albuquerque Bernalillo County Water Utility Authority and the city of Gallup filed a joint petition May 30 that raises arguments similar to those cited by Blaine and Turney.