

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

SAN JUAN AGRICULTURAL WATER USERS ASSOCIATION,

Plaintiff,

v.

No.

JOHN D'ANTONIO, State Engineer, DL SANDERS, and
NEW MEXICO OFFICE OF THE STATE ENGINEER,

Defendants.

**COMPLAINT FOR INSPECTION OF PUBLIC RECORDS,
DAMAGES, AND DECLARATORY AND INJUNCTIVE RELIEF**

1. This is a complaint under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 through -12 ("IPRA"), for inspection of public records identified in Exhibit 1. Defendants have refused to produce most of the requested public records for inspection and/or copying, in violation of IPRA. This complaint also seeks damages and declaratory and injunctive relief under the Inspection of Public Records Act and other applicable law.
2. In support of the complaint, plaintiff alleges and states:
3. Plaintiff San Juan Agricultural Water Users Association ("the Association") is an association that represents approximately 15,000 persons who use water from the San Juan River in northwest New Mexico.
4. Defendant John D'Antonio is the New Mexico State Engineer. By statute, he is charged with various duties and responsibilities concerning the waters within the State of New Mexico, including the San Juan River. He is also charged with various duties concerning the public records requested by the Association.

5. Defendant DL Sanders is the Chief Counsel at the Office of the State Engineer.

6. Defendant Office of the State Engineer is an agency of the State of New Mexico which also has various duties and responsibilities concerning the waters of the State, including the San Juan River.

7. The defendants have custody, authority, or control over the requested records. Each of them has *de facto* or *de jure* authority to provide the requested records. Each of them has refused to do so.

8. On July 1, 2011 the Association requested inspection of records relating to the conditional "San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement" ("the Agreement"). The Agreement was signed by Governor Richardson on or about April 19, 2005, and witnessed by defendant D'Antonio. The Association also asked for records concerning the Northwestern New Mexico rural water projects act. *See* Exhibit 1, which is attached and incorporated as part of this complaint.

9. On August 11, 2011, a representative of the Association went to Santa Fe to inspect the records provided by defendants. Defendants produced a stack of papers approximately 2 feet high.

10. Many of the papers consisted of printed e-mails, even though the Association had requested such records in electronic form as set forth in § 14-2-9(B), which took effect on June 17, 2011. The defendants have violated that provision of IPRA.

11. Defendants did not produce most of the records that were requested, in violation of IPRA.

12. Inter alia, the defendants produced no records relating to the negotiation of the Agreement of April 19, 2005, even though these records had been specifically requested in Exhibit 1.

13. The defendants produced only a very few records which predate April 19, 2005.

14. The Association's representative specifically asked the OSE representative about the complete absence of records concerning the negotiation of the Agreement. The OSE person responded that she was surprised by the absence of such records. She said that no documents had been withheld on the grounds of privilege, and that all produced documents had been reviewed by DL Sanders.

15. The OSE person did not disclose what records the defendants had searched for, or what records the defendants had reviewed.

16. Upon information and belief, the defendants have not complied with IPRA because they have not forwarded the Association's request to other persons who might have the records, as required by § 14-2-8(E).

17. If it is carried out, the Agreement of April 19, 2005, would give the Navajo Nation approximately one third of all the stream water in New Mexico. According to some published reports, the San Juan River contains 60% of all the surface water in New Mexico. As a water source for New Mexico, the San Juan is bigger than the Rio Grande, the Pecos and the Gila combined. The proposed Agreement would give 56% of the San Juan's water to the tribe (roughly 33.6% of New Mexico's stream water) to settle the claims of roughly 40,000 tribal members who live on the reservation in New Mexico. This would create a

crisis for the other 2,000,000 people who live in New Mexico, including the members of other Indian tribes and pueblos.

18. The plaintiff and its members have been damaged by the actions of the defendants and their refusal to produce public records as required by law.

19. So long as the proposed Agreement is pending, the defendants have prohibited the Association and its members from appropriating and using more water from the San Juan River, in violation of their constitutional rights under Article XVI of the New Mexico Constitution; their rights under the Water Code of New Mexico; their rights under the common law and case law of New Mexico; and their rights under federal law.

20. In addition, the Agreement would impair and diminish the vested water rights belonging to the Association and its members, because there is not enough water in the San Juan-Colorado River system to fulfill those rights, and also the demands of the Agreement, and also the other demands on the river system.

21. The defendants' failure to produce all of the requested public records has thwarted the plaintiff's right and ability to obtain accurate, complete, and timely information about governmental activities.

22. The plaintiff has been damaged by defendants' illegal conduct and their continuing refusal to provide all of the requested public records, because this refusal prevents the plaintiff from exposing the invalidity of the Agreement. And this refusal prevents the plaintiff and its members from exercising their rights to water under the laws cited above. Defendants' conduct is causing actual and continuing damages which exceed \$1,000,000 per year.

23. Because of defendants' illegal conduct, the plaintiff has been required to engage the services of an attorney to assist in obtaining the records described in this complaint, and incurred attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, plaintiff prays the Court:

- A. To enter an order compelling each of the defendants to produce all records described in Exhibit 1, including but not limited to, the unproduced records described above;
- B. To oversee the production of records by defendants to ensure speedy and full compliance with the Inspection of Public Records Act;
- C. To award damages as provided in the Inspection of Public Records Act;
- D. To award attorneys' fees and costs as provided in the Inspection of Public Records Act;
- E. To enter preliminary and permanent injunctive and declaratory relief to protect plaintiff's rights to inspect public records concerning the proposed Navajo water rights settlement.
- F. To grant such other and further relief as may be necessary.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By: 

Victor R. Marshall
Attorneys for Plaintiff
12509 Oakland NE
Albuquerque, NM 87122
505-332-9400 / 505-332-3793 Fax

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(505) 332-9400 / Fax (505) 332-3793

July 1, 2011

Via Facsimile, Email, and First Class Mail

Mr. John D'Antonio
State Engineer
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504

Re: IPRA Request

Dear Mr. D'Antonio:

This firm represents the San Juan Agricultural Water Users Association. Under the New Mexico Inspection of Public Records Act, the Association requests inspection of the following records:

1. Any communications to or from you concerning the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement which you signed as a witness on or about April 19, 2005.
2. Any communications to or from you concerning the Northwestern New Mexico Rural Water Projects Act, Pub. L. No. 111-11, title X, subtitle B.

This request includes records in any form, including electronic records like e-mails, cell phone messages, text messages, recordings, computer data, etc. It also includes communications on which you were copied, even if you were not the primary sender or recipient. This request includes records concerning the negotiation of the agreement.

Here is the contact information to use:

San Juan Agricultural Water Users Association
c/o Victor R. Marshall & Associates, P.C.
12509 Oakland NE
Albuquerque, NM 87122
505-332-9400 phone • 505-332-3793 fax
victor@vrmarshall.com

We would like to inspect these records as soon as possible, and we are willing to look at the documents in batches rather than waiting for all of them to be assembled. We request that these records be provided in electronic form pursuant to 2011 N.M. Laws, ch. 181, codified as NMSA 1978, § 14-2-9(B) (effective Jun. 17, 2011).



Mr. John D'Antonio
State Engineer
July 1, 2011
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Please do not hesitate to contact us about this request. We are willing to discuss ways to make it easier for you to comply with this request, such as limiting the request to more specific records, but we will need feedback from you in order to do that.

Regards,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By



Victor R. Marshall

VRM/sch