

Navajo water ruling will be appealed to NM Supreme Court

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SANTA FE – An attorney for non-Indian water users in northwest New Mexico says he will appeal a decision by the New Mexico Court of Appeals upholding an agreement between the Navajo Nation and state government settling Navajo water rights claims in the San Juan River basin.

Lawyer Victor Marshall of Albuquerque, who represents acequia and ditch associations in the area, said he will take the case to the state Supreme Court. “We will appeal this decision because this decision destroys New Mexico’s remaining water supply,” said Marshall.

On Tuesday, a panel of the Court of Appeals affirmed a 2013 decision by James Wechsler, a former appeals court judge who was sitting as a presiding district court judge in the Navajo water case.

Wechsler approved a tribal-state agreement recognizing the Navajo Nation’s right to divert 635,729 acre-feet of water per year, which translates to consumption of 325,756 acre-feet annually. Consumption is defined under state law as the total amount of water diverted, minus what’s returned for use by others downstream.

Supporters of the settlement said it removes major uncertainties over water availability for non-Indians in the San Juan basin, because of the risk that the Navajo Nation might have gone to court and won a substantially larger amount of water.

Marshall notes that under the agreement, the Navajo Nation gets six times more water than the Albuquerque metro area. He maintains that the agreement also will reduce the amount of so-called San Juan-Chama water — San Juan basin water piped across the continental divide to flow into the Rio Grande — for Santa Fe and Albuquerque.

And the deal “means tribes throughout New Mexico are entitled to huge amounts of water at the expense of everyone else,” said Marshall.

The New Mexico Office of the State Engineer disputes Marshall’s assertions. “The decision from the court does not have any impact on San Juan-Chama water deliveries. Indian Water Rights settlements are negotiated case by case based on the merits of their claims,” said an OSE statement.

The agreement’s defenders call comparing the Navajo Nation’s water rights to those of big cities an apples-to-oranges comparison, because all of New Mexico’s agricultural water agencies use substantially more water for irrigation than is used by cities.

The settlement increases the Navajo Nation’s share of the state’s water from 6 percent to 10 percent, according to a 2013 Journal analysis.

Marshall said he had no comment on the Court of Appeals sanctioning him in strongly critical language for accusations he made about Wechsler’s actions in the case and what Marshall contended was a conflict of interest for the judge. “That’s not what’s important,” he said.