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Santa Fe, New Mexico  
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ACEQUIAS FILE MOTION TO DISQUALIFY JUDGE FROM NAVAJO WATER CASE  
BECAUSE HE PREVIOUSLY REPRESENTED THE NAVAJO NATION.

More than 20 acequias and community ditches on the San Juan River have filed a motion asking the New Mexico Court of Appeals to disqualify Judge James Wechsler from adjudicating the water claims of the Navajo Nation.

In 2013 Judge Wechsler awarded 635,729 acre-feet of water to the Navajo Nation, without a trial. According to the motion, that is roughly one quarter of all the river water in New Mexico.

In 2018 an investigation revealed that Judge Wechsler had worked for the Navajo Nation as an attorney for almost six years. Judge Wechsler and the Navajo Nation did not disclose their prior relationship, as required by Rule 21-211 of the Code of Judicial Conduct.

Rule 21-211 provides that “a judge shall disqualify himself or herself from any proceeding in which the judge’s impartiality might reasonably be questioned.” The motion states that the public would reasonably doubt that Judge Wechsler could be impartial, since he previously represented the Navajo Nation, one of the adversaries in the case.

“There can be no doubt that Mr. Wechsler acted as a zealous, effective, loyal, and dedicated advocate for his clients – just as he was required to do by the Rules of Professional Conduct for lawyers.”

“But that is exactly why Judge Wechsler cannot sit on this case. As a lawyer for the Navajo Nation, he had a duty to act with zeal and undivided loyalty as a champion for the interests of the Navajo Nation. That is the polar opposite of the duty of impartiality which is imposed on every judge in every case.”

Because Judge Wechsler worked as a lawyer for the Navajo Nation, he has personal knowledge about key contested issues in the case, according to the motion. Rule 16-109 prohibits lawyers from using information against their former clients, so Judge Wechsler has a built-in one-way bias imposed by law.

“All we have ever asked for was honesty and fairness through the judicial system,” said Mike Sullivan, chairman of the San Juan Agricultural Water Users Association. “How could this have happened? ”

The acequias filed their motion and brief in the Court of Appeals on February 26, 2018. Copies are attached with highlighting added.

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