IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

NAVAJO NATION, a federally recognized Indian tribe, et al., Plaintiffs, v. SAN JUAN COUNTY, a Utah governmental subdivision, Defendant.	**ORDER** Case No. 2:12-CV-00039-RJS-DBP Judge Robert J. Shelby Magistrate Judge Dustin B. Pead

Before the court is San Juan County's Rule 52(b), 59(e), and 60(b)(6) Motion to Alter or Amend Judgment, Including Findings of Fact and Conclusions of Law and Rule 58 Motion for Entry of Judgment.[1] As its title suggests, the County brings this Motion pursuant to Rules 52(b), 59(e), and 60(b)(6) of the Federal Rules of Civil Procedure. Because Judgment has yet to be entered in this case, a motion under Rule 52(b) and 59(e) is premature.[2]

The court, therefore, construes the County's Motion as one for relief from the court's Memorandum Decision and Order adopting the Special Master's remedial districts under Rule 60(b)(6). Rule 60(b) allows a court to relieve a party or its legal representatives from a final order for several enumerated reasons, including newly discovered evidence, fraud, or mistake. Rule 60(b) also includes subsection (6), which allows the court to relieve a party from a final

[1] Dkt. 444.

[2] *See* Fed. R. Civ. P. 52(b) (allowing a party to file a motion "no later than 28 days after the entry of judgment"); Fed. R. Civ. P. 59(e) ("A motion to alter or amend judgment must be filed no later than 28 days after the entry of judgment.").

order for "any other reason that justifies relief." This is the provision the County invokes. "A district court may grant a Rule 60(b)(6) motion only in extraordinary circumstances and only when necessary to accomplish justice."[3] Any "legal error that provides a basis for relief under Rule 60(b)(6) must be extraordinary."[4]

In its Motion, the County argues the court should amend its previous Order on two bases. First, the County argues the court failed to properly apply the governing legal standards when evaluating the Special Master's recommendation that special elections be held. Second, the County argues the court failed to properly assess whether race was a predominant factor in the Special Master's development of the remedial districts. The court will address these issues in turn.

First, the County argues its objection to the court ordered special elections was timely and meritorious. This issue was addressed in the court's previous Memorandum Decision and Order, and the County provides no extraordinary circumstances warranting revisiting this decision.[5] In that Order, the court explained that the County's objection to special elections was untimely. Dr. Grofman recommended special elections in his Final Report. The County failed to object to the special election recommendation in its Objection to Dr. Grofman's Final Report,[6] doing so only in its later filed Objection to Plaintiffs' Motion for Entry of Judgment.[7]

Still, the County argues "the holding of special elections [did not] appear[] to be a serious recommendation since Dr. Grofman did not 'discuss the facts and legal analysis' underlying the

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[3] *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 580 (10th Cir. 1996).

[4] *Pedroza v. Lomas Auto Mall, Inc.*, 304 F.R.D. 307, 329 (D.N.M. 2014) (citing *Van Skiver v. United States*, 952 F.2d 1241, 1244–45 (10th Cir. 1991)).

[5] Dkt. 441 at 37–38.

[6] *See* dkt. 432.

[7] *See* dkt. 439.

need for special elections." For that reason, the County argues it was not required to object to the special election recommendation until its response to Plaintiffs' Motion for Entry of Judgment.[8] This argument is unpersuasive. The County was well aware of Dr. Grofman's recommendation, which was clearly set forth in his Final Report. Further, the court discussed with the County the need for a special election at the hearing on Dr. Grofman's Preliminary Report on November 15, 2017.[9] This issue was also raised during the public meetings on the Preliminary Report. Moreover, the County cites no legal authority for the proposition that a party is not required to respond to a recommendation in a special master's final report and recommendation if the special master does not discuss that recommendation with sufficient facts or legal analysis.

Further, the County's objection to special elections fails on the merits. The County faults the court for failing to "grapple with all interests involved" as required by the applicable legal standards. The court, however, can only grapple with the interests that are in the record before it and this is what the court did in its previous Order.[10] The court, however, cannot hypothesize about the effect of special elections on the County. Nor may the court advocate for a party before it by advancing and considering arguments that party failed to raise. It is the County's responsibility to put these facts before the court and discuss how they weigh in the court's analysis. This the County failed to do.

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[8] Dkt. 444 at 4–5.

[9] Dkt. 428 at 23–24 (the court discussing the need for special election with the County's attorney).

[10] Dkt. 441 at 37–38.

Second, the County argues race was a predominant factor in Dr. Grofman's development of his recommended, now adopted, remedial plans. The court discussed this issue in its Order[11] and the County does not raise any new arguments in the current Motion.

In sum, the County has failed to satisfy its heavy burden to warrant relief under Rule 60(b)(6). Instead, the County has presented arguments already addressed by the court in its Order and failed to identify any extraordinary circumstances or extraordinary legal errors that necessitate relief in order to accomplish justice. The County's Motion is DENIED.

SO ORDERED this 11th day of January, 2018.

BY THE COURT:

ROBERT J. SHELBY
United States District Judge

[11] *Id.* at 20–21.