

Lawsuit against Mexico heads for arbitration

Texas farmers seek \$500 million for non-payment of water debt

By LAURA B. MARTINEZ
The Brownsville Herald

July 8, 2005 — A \$500 million lawsuit filed by South Texas farmers and irrigation districts against Mexico will proceed to arbitration after an international group this month certified that the farmers' claim was legitimate.

Seventeen Texas irrigation districts, 29 independent water rights holders and the North Alamo Water Supply Corp. in August filed the \$500 million claim for economic damages against Mexico for the country's failure to abide by the 1944 water-sharing treaty between the United States and Mexico.

The International Center for Settlement Investment Disputes certified the claim on July 1 and a three-member arbitration panel will be seated within 60 days.

"The treaty is very clear that we are entitled to this water and the evidence that we have been able to collect is very compelling as well that the water was available, that Mexico had it. It just simply didn't release it," said Nancie G. Marzulla, an attorney for the claimants.

The arbitration, also referred to as a trial, should take nine months, Marzulla said.

"What we are seeking is damages for Mexico's failure to deliver the water it should have delivered for all the years in the past time period," Marzulla said.

Mexican officials could not be reached for comment Thursday.

Mexico's non-compliance began around 1993.

The lawsuit against Mexico spurred from nearly a decade of noncompliance said Jo Jo White, general manager of the Mercedes irrigation district and a plaintiff in the lawsuit, in a previous Brownsville Herald report.

On Thursday, White said the certification just reiterated what the farmers and irrigation districts had claimed all along.

"We have very good grounds that we are standing on and a hell of a lot of evidence to back it up," White said.

The ruling by the arbitrators will be final with no appeal. If they rule in favor of the claimants, they can order Mexico to pay all of the \$500 million or a portion of it. In some cases arbitrators have increased the amount of money claimants have sought, White said.

A 1944 treaty requires Mexico to pay an annual average of 350,000 acre-feet from six Rio Grande tributaries. At one time, Mexico's debt to the United States was as high as 1.5 million acre-feet. An agreement reached between the United States and Mexico in March called for Mexico's 717,000-acre foot debt elimination by Sept. 30.

As of July 2, Mexico owed 170,608 acre-feet to pay off the remaining deficit from the 1992-1997 and 1997-2002 five-year water delivery cycles, said Sally Spener of the International Boundary Water and Commission.

According to a Texas A&M Agriculture Department study, the loss of water had a \$73 million annual impact and cost the region nearly \$1 billion.

The lawsuit was filed in August 2004 under the North American Free Trade Agreement. The claim was submitted to the ICSID in January.

A Chapter 11 provision under NAFTA allows people who have property rights at stake in another country to file their claims with an arbitrator, Marzulla said. Once a claim is filed it is reviewed by ICSID to determine if it is legitimate and

meets the necessary criteria.

The next step will be for each side to select a three-member panel to hear the allegations. The arbitration is similar to that of a trial in which each side gets the chance to present its side before arbitrators.

Marzulla said the claimants have plenty of evidence indicating Mexico had water in its reservoirs but refused to hand it over. Some of the evidence includes aerial photos of lush green fields and crops growing that are “highly water dependent.”

Mexico reportedly disputed some of the allegations stating that the lawsuit should never have been filed, that it had started to re-pay the water and not been notified of the lawsuit.

“It really got very picky. ... We spent a lot of time dealing with things that had nothing to do with the merit,” Marzulla said.

lmartinez@brownsvilleherald.com

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