

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Operation of the Missouri River
System Litigation

03-MD-1555 (PAM)

ORDER

On Thursday, July 24, 2003, the Judicial Panel on Multidistrict Litigation transferred to this Court five cases from various Districts. These cases all involve the Army Corps of Engineers' (the "Corps") management of the Missouri River System. As of the date of transfer, the Corps was facing: (1) an injunction entered by the District Court for the District of Columbia on July 12, 2003, requiring the Corps to lower water flows in the Missouri River; (2) an Order of Contempt from that same court, giving the Corps until 8:00 a.m. on Friday, July 25, 2003, to comply with the injunction or face sanctions of \$500,000 per day; and (3) an injunction entered by the District Court for the District of Nebraska on May 22, 2002, and affirmed by the Eighth Circuit Court of Appeals on June 4, 2003, requiring the Corps to maintain higher water flows in the Missouri River. The Nebraska court's injunction had been stayed by the Eighth Circuit during the pendency of the appeal, and the Corps had petitioned the Eighth Circuit for a reimposition of that stay, in light of the conflicting injunction issued by the D.C. court.

This Court has had extensive experience with multi-district litigation. That experience teaches that it takes time for the transferor courts to send files, docket sheets, and other

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RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD.
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necessary information to the transferee court. Because of the time needed to gather and transmit this information, and because that information is necessary to any ruling in the case, this Court sua sponte stayed all proceedings in the case on July 24, 2003, including specifically the threatened contempt sanctions, for 14 days.

On Friday, July 25, 2003, the Eighth Circuit determined that the stay it entered in May 2002 was still in effect and would remain in effect until at least August 20, 2003, when the time for requesting rehearing or rehearing en banc ended. Plaintiffs in the D.C. court case now seek to lift this Court's administrative stay with respect to the D.C. court's contempt order. As Plaintiffs point out, at this time the Corps is not subject to conflicting obligations, because the only injunction in effect is the D.C. court's injunction requiring lower flows. Not surprisingly, Defendants oppose Plaintiffs' request, and ask this Court to extend the administrative stay to allow more full briefing on the issues underlying this case.

Plaintiffs are correct that the only injunction currently in effect in the case is Judge Kessler's injunction entered on July 12, 2003. Plaintiffs are also correct that this injunction constitutes a substantive ruling that may not be overruled by this Court.

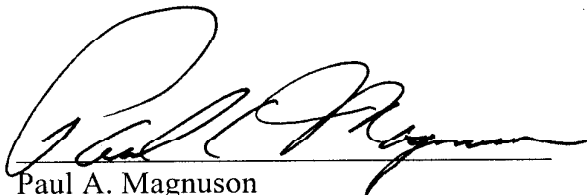
However, the contempt order is not a substantive order. It is a procedural order designed to insure compliance with the preliminary injunction. Plaintiffs ask the Court to reinstate this contempt order, but as discussed above, the Court has not yet received any files, docket sheets, or other information from the District Court for the District of Columbia. Absent this information, the Court simply cannot enforce a procedural order that threatens

such severe sanctions. Thus, the contempt order will continue to be stayed.

The Court recognizes that the stay does nothing to advance the issues in this case. The Court also recognizes that some of the issues are currently being considered by the Eighth Circuit Court of Appeals. That Court's mandate is expected to issue on August 27, 2003. The Court therefore orders the parties to appear before the Court for a status conference on Monday, September 8, 2003, at 10:00 a.m.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs' Emergency Motion to Lift the Stay is **DENIED**.

Dated: August 4, 2003


Paul A. Magnuson
United States District Court Judge