

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2012 DEC -3 PM 4: 52

STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Claims of the Navajo Nation
Case No. AB-07-1

NAME OF PARTY: State of New Mexico *ex rel.* State Engineer ("the State").

DESCRIPTIVE SUMMARY: The State's *Motion to Dismiss Answer and Counterclaim by Community Ditch Defendants.*

NUMBER OF PAGES:

DATE OF FILING: Filed on December 3, 2012.

**STATE'S MOTION TO DISMISS ANSWER AND COUNTERCLAIM BY
COMMUNITY DITCH DEFENDANTS**

The State of New Mexico *ex rel.* State Engineer ("State") moves to dismiss the Answer and Counterclaim in the *Answer, Objections and Counterclaim by Community Ditch Defendant-Counterclaimants* filed by Community Ditch Defendants in this *inter se* proceeding for failure to state a claim upon which relief can be granted in this expedited *inter se* proceeding pursuant to

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Rule 1-012.B(6) NMRA, and as outside the scope and procedure set by the Court in this subproceeding.

The only claims before the Court in this subproceeding are those of the Navajo Nation. On August 19, 2010, the Court entered its *Order Establishing Initial Procedures for Entry of a Partial Final Judgment and Decree of the Water Rights of the Navajo Nation* ("Order"), establishing an expedited *inter se* proceeding to adjudicate the water rights of the Navajo Nation. The order provided that in the Navajo *inter se* proceeding, the Court shall "(1) determine whether to approve the settlement of the Navajo Nation's water rights claims by entering the two proposed partial final decrees attached as Appendix 1 and Appendix 2 to the Settlement Agreement, and (2) if the settlement is not approved, resolve the water rights claims of the Navajo Nation on the merits." *Order* p. 11.



The Court further "severed" the issue of whether the Court should approve the settlement of the Navajo Nation's claims from all other issues in the proceeding. *Id.* The Court ordered the United States to file "Additional Disclosures" to "assist the Court and other water rights claimants in evaluating the settlement." *Id.* These disclosures included the Statement of Claims filed by the United States on December 29, 2010.

The Court's *Order* expressly provided that the United States and the Navajo Nation "shall be permitted to file more detailed statements concerning the water rights claimed by the Navajo Nation under federal and state law before this Court schedules proceedings for the resolution of the Navajo Nation's claims on the merits." *Order* p. 14, emphasis added. The *Order* further provided that if the Court does not approve the Settlement Agreement by entering the proposed decrees, it will conduct a Rule 1-016 scheduling conference "to determine the procedure for resolving the Navajo Nation's claims on the merits." *Id.*

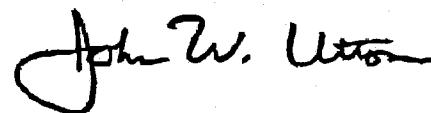
The only water rights claims to be determined in this proceeding are those of the Navajo Nation, and the only issue currently before the Court in this expedited *inter se* proceeding is the "Severed Issue" of whether to adjudicate the Navajo Nation's water rights by entry of the proposed decrees. There is no Statement of Claims currently filed with the Court for the Community Ditch Defendants to file an Answer to, nor can any Counterclaim be considered in this expedited *inter se* proceeding. Therefore, the State moves the Court to dismiss the Answer as outside the scope and procedure established by the Court in its *Order* for consideration of this "Severed Issue", and to dismiss the Counterclaim pursuant to Rule 1-012.B(6) for failure to state a claim upon which relief can be granted in this expedited *inter se* proceeding to adjudicate the water rights of the Navajo Nation, and to consider only the Objections as relevant in this *inter se* proceeding.

Respectfully submitted, this 3rd day of December 2012.

STATE OF NEW MEXICO



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CERTIFICATE OF SERVICE

I certify that on this 3rd day of December 2012, at approximately 4:00 pm, an electronic copy of the *State's Motion to Dismiss Answer and Counterclaim* was served by attaching an electronic copy to an email sent to: wnavajointerse@nmcourts.gov.

/s/ Arienne Singer