

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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2012 DEC -5 AM 10:13

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.

D-1116-CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

AB-07-1

Claims of the Navajo Nation

NAME OF PARTY: The United States of America and Navajo Nation

DESCRIPTIVE SUMMARY: The United States' and Navajo Nations' joinder in the States' motion to dismiss the Marshall Interests' Counterclaim

NUMBER OF PAGES: 4

DATE OF FILING/SERVICE: December 3, 2012

**THE UNITED STATES' AND NAVAJO NATION'S JOINDER TO THE STATE'S
MOTION TO DISMISS ANSWER AND COUNTERCLAIM OF THE MARSHALL
INTERESTS**

The United States and the Navajo Nation joins the State of New Mexico in its *Motion to Dismiss Answer and Counterclaim by Community Ditch Defendants* filed on this same date. The United States and the Navajo Nation join separately to emphasize that the Marshall Interests' attempt to raise a counterclaim in this Navajo *Inter Se* proceeding is without any basis whatsoever.

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In the document titled “Answer, Objections, and Counterclaim by Community Ditch Defendant-Counterclaimants” (October 19, 2012) (“Answer”), the Marshall Interests appear to articulate what they describe as their “counterclaim” as follows:

The [unidentified] defendant-counterclaimants have water rights in the San Juan River Basin which are superior to the water rights claimed by the Navajo Nation, except for those water rights which the Navajo Nation acquired through actual prior appropriation and beneficial use in compliance with all of the laws cited in this pleading. Those rights have yet to be quantified and prioritized by the court, but those rights are not entitled to a blanket 1868 priority. For the reasons stated above, the proposed agreement is illegal, not supported by the facts, and not fair, adequate, and reasonable, and consistent with the public interest and applicable law.

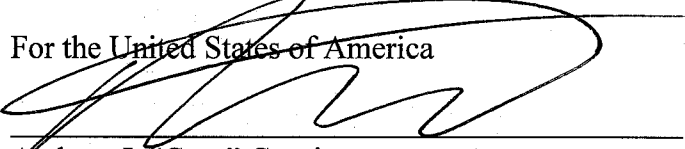
Answer at ¶ 180. The Marshall Interests assert that this is a permissive counterclaim as contemplated by Rule 1-013, NMRA. *Id.* at ¶178.

As this Court and all parties are aware, this proceeding is expedited *inter se* proceedings associated with the water rights of the Navajo Nation. More specifically, this proceeding is exclusively focused on the Settlement Motion which was filed jointly by the State of New Mexico, the Navajo Nation, and the United States (commonly referred to as the “Settling Parties”) on January 3, 2011. This proceeding focuses exclusively on whether the Court should enter the proposed partial final decrees contemplated under the Settlement Agreement between the Settling Parties (signed December 17, 2010). This proceeding does not require the Court to address any “claim” of the Marshall Interests or any other non-settling party. On the contrary, the numerous, longstanding, and express orders of this Court make abundantly clear that this proceeding is not intended to resolve any “claim” of the Marshall Interests or any other non-settling party. *See e.g., Order Establishing Initial Procedures for Entry of a Partial Final Judgment and Decree of the Water Rights of the Navajo Nation* (August 10, 2010).

To the extent that the Marshall Interests seek to litigate a "counterclaim" of any kind in this Navajo *Inter Se* proceeding, the Court should dismiss such a claim. Going forward, the Court should treat the paragraphs of the Marshall Interests' Answer constituting their so-called counterclaim (¶¶ 174 through 180) as nothing more than part of the Marshall Interests' objections to the Settlement Motion.

Respectfully submitted this 3rd day of December 2012.

For the United States of America



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For the Navajo Nation

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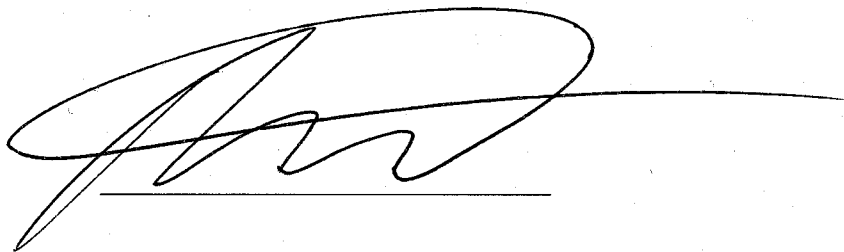
CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2012, a true and accurate copy of

**THE UNITED STATES' AND NAVAJO NATION'S JOINDER TO THE STATE'S
MOTION TO DISMISS ANSWER AND COUNTERCLAIM OF THE MARSHALL
INTERESTS**

was served by attaching an electronic copy to an email sent to the following addresses:

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A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the person certifying the service.