

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 JAN -4 PM 4: 55

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 Reply in Support *Motion to Dismiss Answer and Counterclaim by Community Ditch Defendants.*
NUMBER OF PAGES: 4
DATE OF FILING: Filed on January 4, 2013.

**STATE'S REPLY IN SUPPORT OF MOTION TO DISMISS ANSWER AND
COUNTERCLAIM BY COMMUNITY DITCH DEFENDANTS**

The State of New Mexico *ex rel.* State Engineer ("State") submits this reply in support if its *Motion to Dismiss Answer and Counterclaim by Community Ditch Defendants* ("Motion") in the *Answer, Objections and Counterclaim by Community Ditch Defendant-Counterclaimants (Answer/Counterclaims)* 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

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pursuant to Rule 1-012.B(6) NMRA, and as outside the scope and procedure set by the Court in this subproceeding. The State hereby replies to the *Community Ditch Defendants' Response to Motion to Dismiss Counterclaim* filed by the Community Ditch Defendants on December 18, 2012 ("Response").

Defendants respond that the counterclaim asserted in their *Answer/Counterclaim* is compulsory, that the Defendants are entitled to relief against the Navajo Nation, the United States and the State Engineer, and that their claims must be heard in this *inter se* proceeding on the Navajo Nation's water rights. Defendants fundamentally misconstrue the scope and nature of a water rights adjudication, and of this expedited *inter se* proceeding.

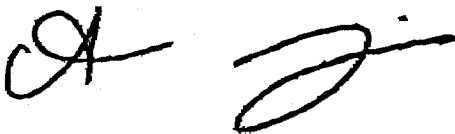
A water rights adjudication is a special proceeding to determine the elements of all water rights in a particular stream system. NMSA 1978, Section 72-4-15 (1907); Rule 1-071.2D, NMRA 2012. The Attorney General brings suit on behalf of the State for the determination of all water rights to the use of water in the stream system. Section 72-4-15 (1907). All those whose claims to water rights are of record, and all other claimants, so far as they can be ascertained, are made parties. NMSA 1978, Section 72-4-17 (1965). The only claims before the court in a water rights adjudication are the individual claims to water rights, which are resolved in individual subfile proceedings between the State, the plaintiff, and the water rights claimant, the defendant. There are no counterclaims against other claimants in a water rights adjudication, as each claim is between the State and the claimant, to determine each water right in the stream system. The purpose of an *inter se* proceeding is to resolve all possible objections to the determination of the water rights in the stream system, in order to enter a decree, declaring the elements of each water right in the stream system, that is binding upon all water rights claimants in the stream system. NMSA 1978, Section 72-4-19, Rule 1-071.2.D NMRA 2012.

As the caption in this case indicates, the only plaintiff in this adjudication is the State of New Mexico, not the United States or the Navajo Nation. The Navajo Nation and the United States are defendants in this adjudication, on the same basis as the Community Ditch Defendants. Just as has been done with hundreds of other water right claimants in this adjudication, the water rights of the Navajo Nation are being determined in an individual subfile proceeding. In addition, pursuant to Rule 1-071.2.B NMRA 2012, the court is conducting an expedited *inter se* proceeding, in order to finally resolve the Navajo Nation's water rights both as between the State and the Navajo Nation (and the United States in its trustee capacity), and as among the Navajo Nation and all other water rights claimants in the basin.

Defendants' claims to water rights in the San Juan stream system will be determined in their own individual subfile proceedings. *See* Rule 1-071.1 NMRA 2012. Each claimant will have a full opportunity to assert its claims and have them adjudicated, in accordance with the Court's case management of the adjudication. Since their water rights claims are not being determined in this expedited *inter se* proceeding, and the Navajo Nation is not a plaintiff but another defendant, it is neither compulsory nor appropriate for the Community Ditch Defendants to file an answer or counterclaim. Consequently, the Court should dismiss both the Answer and Counterclaim from the *Answer/Counterclaim*.

Respectfully submitted, this 4th day of January 2013.

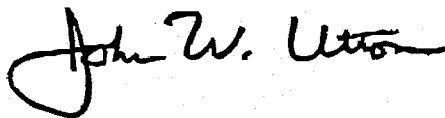
STATE OF NEW MEXICO



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CERTIFICATE OF SERVICE

I certify that on this 4th day of January 2013, at approximately 4:50 pm , an electronic copy of this *Reply in Support of Motion to Dismiss Answer and Counterclaim* was served by attaching an electronic copy to an email sent to: wrnava@interse@nmcourts.gov.

/s/ Arianne Singer