

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 FEB -6 PM 3:42

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

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

Plaintiff,

D-1116-CV-75-184
HON. JAMES J. WECHSLER
Presiding Judge

vs.

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

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Defendants,

AB-07-1
Claims of the Navajo Nation

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

NAME OF PARTY: The United States of America

DESCRIPTIVE SUMMARY: The United States' Objection to the Community Ditch Defendants' Notice of Filing.

NUMBER OF PAGES: 3

DATE OF SERVICE: February 6, 2013

**THE UNITED STATES' OBJECTION TO
THE COMMUNITY DITCH DEFENDANTS' NOTICE OF FILING.**

The United States objects to the *Filing Of Exhibit: Allocation of Water Under Colorado River Compacts*, Feb. 5, 2013 ("Notice of Filing") submitted by the Community Ditch Defendants for two reasons.

First, the Community Ditch Defendants have filed their "exhibit" in direct contravention of this Court's instructions. When Mr. Marshall presented this worksheet during oral argument, both the United States and the State of New Mexico objected. This Court

informed the parties that it would not treat the worksheet as evidence. Yet, now the Community Defendants have “filed” this alleged “exhibit” and apparently seek to have the “exhibit” treated as evidence.

Second, the worksheet is not evidence. Nor is it even an exhibit. It is not a pre-existing document with a verifiable foundation and authenticity. It is not the product of a hydrologist or other qualified expert. Rather, it is the product of an attorney and includes footnotes that amount to legal argument. Even worse, it is inaccurate in both fact and law and misrepresents the United States’ position.¹ Indeed, as this Court is well aware, during oral argument Mr. Marshall admitted that he could not attest to its accuracy.

¹ As one glaring example, the worksheet ends up with a Compact deficit under every scenario because it treats 759,293 acre-feet of water, alleged to be delivered for Endangered Species Act concerns, as a depletion, rather than as a non-consumptive use. Assuming *arguendo* 759,293 acre-feet of water were required at Bluff, UT, that water would be a non-consumptive instream flow which would be delivered to the Lower Basin as part of the 7.5 million identified in the worksheet.

Further, the United States has never represented that the Settlement will “reduce calls on the San Juan River to once every 20 years or so.” Rather, consistent with the analysis in the State’s Technical Assessment, the United States has represented that calls should be less frequent under the Settlement than they would be if the Navajo Nation’s claims were litigated.

DATED this 6th day of February, 2013.

Respectfully Submitted,

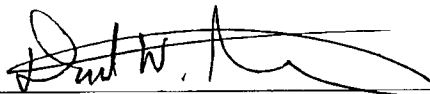
UNITED STATES OF AMERICA



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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2013, a true and correct copy of the forgoing was served on all parties by attaching a copy of said document to an email sent to wnavajointerse@nmcourts.gov.



DAVID W. GEHLERT