

**DISTRICT COURT
SAN JUAN COUNTY NM
FILED**

2013 FEB -8 PM 12: 56

**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.**

**D-1116-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: The Navajo Nation.

DESCRIPTIVE SUMMARY: The Navajo Nation concurs with *The United States' Objection to the Community Ditch Defendants' Notice of Filing*, filed February 6, 2013.

NUMBER OF PAGES: 4, including Certificate of Service.

DATE OF FILING: February 8, 2013.

**THE NAVAJO NATION'S CONCURRENCE
WITH THE UNITED STATES' OBJECTION
TO THE COMMUNITY DITCH DEFENDANTS' NOTICE OF FILING**

The Navajo Nation gives notice of its concurrence with *The United States' Objection to the Community Ditch Defendants' Notice of Filing*, filed February 6, 2013 ("US Objection") in response to the February 5, 2013, filing by the Community Ditch Defendants -- *Filing of Exhibit: Allocation of Water under Colorado River Compacts* ("Ditch Exhibit"). This concurrence is filed to demonstrate fatal flaws in the Ditch Exhibit.

The Ditch Exhibit includes the audacious and inaccurate claim that it "demonstrate[s] how the waters of the Colorado are allocated by law" *inter alia*. The Ditch Exhibit is riddled with inaccurate interpretations and statements concerning the allocation of waters under

5 ✓

Colorado River compacts and applicable laws. Perhaps the most egregious is the unsupported statement that 759,293 acre-feet per year is “[r]equired water for endangered species at Bluff UT” and the treatment of this number as a depletion that diminishes the amount of water available for consumptive uses in New Mexico. As a result of this fundamental error, there is no scenario described in the Ditch Exhibit where *any* water user in the State of New Mexico can make *any* consumptive use of water without causing a deficit in New Mexico’s interstate compact obligations, with or without the Navajo settlement.

Even if a valid reason existed for filing the Ditch Exhibit, the unsubstantiated, unverified, erroneous, and extraneous information contained therein provides a sufficient basis for the Court to strike the Ditch Exhibit pursuant to the *Order Denying the Navajo Nation’s Motion to Strike*, Nov. 6, 2012 (“[N]otices that provide the Court with *extraneous information* or reports events beyond the scope of this proceeding *may create unnecessary confusion* and will not be considered by the Court. Future Notices of this variety may be stricken by the Court *sua sponte.*”) (Emphasis added.)

Respectfully submitted this 8th day of February, 2013.

NAVAJO NATION



Stanley M. Pollack
Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-7510

Samuel D. Gollis
Samuel D. Gollis, Attorney at Law, P.C.
901 Rio Grande Boulevard, Suite F-144
Albuquerque, New Mexico 87104
(505) 883-4696

Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I certify that on this 8th day of February, 2013, an electronic version of *The Navajo Nation's Concurrence with the United States' Objection to the Community Ditch Defendants' Notice Of Filing* was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the attached distribution list.



Stanley M. Pollack

DISTRIBUTION LIST

| Name | Representing | e-mail |
|--------------------------|---|------------------------------------|
| Seth R. Fullerton | ABCWUA & City of Espanola | srfullerton@newmexicowaterlaw.com |
| Jay F. Stein | ABCWUA & City of Espanola | jfstein@newmexicowaterlaw.com |
| Thomas C. Bird | Cities of Aztec & Bloomfield | tcb@keleher-law.com |
| Richard B. Cole | Cities of Aztec & Bloomfield | rbc@keleher-law.com |
| Cassandra R. Malone | Cities of Aztec & Bloomfield | crm@keleher-law.com |
| Richard T. Tully | B-Square Ranch | tullylawfirm@qwestoffice.net |
| Maria O'Brien | BHP Navajo Coal and Enterprise Field Services | mobrien@modrall.com |
| Christina C. Sheehan | BHP Navajo Coal and Enterprise Field Services | ccs@modrall.com |
| Rebecca Dempsey | Bloomfield Schools | rdempsey@cuddymccarthy.com |
| Victor R. Marshall | Community Ditch Defendants | victor@vrmarshall.com |
| Adam G. Rankin | Conoco Phillips & EPNG | agrarkin@hollandhart.com |
| Mark Sheridan | Conoco Phillips & EPNG | msheridan@hollandhart.com |
| James C. Brockmann | City of Gallup | jcbrockmann@newmexicowaterlaw.com |
| Kyle Harwood | HMC Leasing | kyle@harwood-consulting.com |
| Herbert A. Becker | Jicarilla Apache Nation | herb.becker@jaassociatesnm.com |
| Natasha Cuylear | Jicarilla Apache Nation | natasha.cuylear@jaassociatesnm.com |
| Gary Risley | La Plata Acequia Assn. | gary@risleylaw.net |
| Priscilla A. Shannon | McCarty Trust | pshannonlaw@yahoo.com |
| Arianne Singer | State of New Mexico | arianne.singer@state.nm.us |
| John W. Utton | State of New Mexico | jwu@sheehansheehan.com |
| Robert E. Oxford | Pro Se | bjoxford@yahoo.com |
| Gary L. Horner | Pro Se | ghorner@zianet.com |
| Jolene L. McCaleb | San Juan Water Commission | jmccaleb@taylormccaleb.com |
| Liz N. Taylor | San Juan Water Commission | etaylor@taylormccaleb.com |
| David Gehlert | United States | david.gehlert@usdoj.gov |
| Andrew J. "Guss" Guarino | United States | guss.guarino@usdoj.gov |
| Leander Bergen | Ute Mountain Ute Tribe | lbergen@nativeamericanlawyers.com |
| Celene Hawkins | Ute Mountain Ute Tribe | chawkins@utemountain.org |
| Peter Ortego | Ute Mountain Ute Tribe | portego@utemountain.org |