

< DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED

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

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

Plaintiff,

vs.

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

Defendants.

**AB-07-1**

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler

Presiding Judge

**DESCRIPTIVE SUMMARY:** Supplemental authority from the *Tri-State* case, concerning the nature of an inter se proceeding under Rule 1-071.2, in support of the Counterclaim filed by the Community Ditch Defendant-counterclaimants.

**NUMBER OF PAGES:** 3

**DATE OF FILING:** February 14, 2013

**SUPPLEMENTAL AUTHORITY CONCERNING INTER SE PROCEEDINGS,  
IN SUPPORT OF COUNTERCLAIM**

As supplemental authority, the Community Ditch Defendant-counterclaimants submit herewith the following excerpt from a recent decision by the New Mexico Supreme Court:

Inter se is defined as "between or among themselves." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 463 (2d ed. 1995). In terms of water rights, inter se adjudications provide the opportunity for parties to dispute the determination of their water rights among each other and not simply challenge their individual claims with the State Engineer. *See, e.g.*, Rule 1-071.2 NMRA (defining inter se procedures for the adjudication of stream system priorities).

*[Handwritten mark]*

*Tri-State Generation and Transmission Ass'n v. D'Antonio*, 2012-NMSC-039, ¶ 7, n.1, \_\_\_ N.M. \_\_\_, 289 P.3d 1232.

So this inter se proceeding must afford the Community Ditch Defendant-counterclaimants (and all other defendants) the opportunity to dispute the Navajo Nation water claims, and to establish that defendants' water rights are superior. In this particular inter se proceeding, the Navajo Nation, the United States, and the State Engineer are seeking a judgment that the Navajo Nation's rights have a superior priority vis-vis the community ditches. Conversely, the community ditches have filed a counterclaim seeking a determination that their rights and priorities are superior relative to the rights of the Navajo Nation, at least for the most part. And the Community Ditch Defendant-counterclaimants are seeking enforcement of their superior rights as against the Navajo Nation, the United States, and the State Engineer. In their prayer for relief, the community ditches are asking for a court judgment that can be enforced against the Navajo Nation, the United States, and the State of New Mexico, so that the community ditches actually receive the wet water to which they are legally entitled. Otherwise, what's the point?

In this inter se, the counterclaim is the flip side of the Navajo claim, so it would be reversible error under *Tri-State* and Rule 1-071.2 to dismiss the counterclaim.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2013, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: [wmavajointerse@nmcourts.gov](mailto:wmavajointerse@nmcourts.gov) and to the filing list referred to in paragraph 8 of the court's November 19, 2012 Corrected Order.

/s/ Victor R. Marshall  
Victor R. Marshall, Esq.