

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

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

Plaintiff,

v.

THE UNITED STATES OF AMERICA,
et al.,

Defendants.

CV-75-184
HON. JAMES J. WECHSLER
PRESIDING JUDGE

SAN JUAN RIVER
ADJUDICATION

Claims of Navajo Nation
Case No.: AB-07-1

**ORDER STRIKING COMMUNITY DITCH DEFENDANTS' ANSWER AND
COUNTERCLAIM**

THIS MATTER comes before the Court on the State of New Mexico's December 3, 2012 motion to dismiss the answer and counterclaim by Community Ditch Defendants.¹ The Community Ditch Defendants' response to the motion to dismiss was filed December 18, 2012, and the State's reply was filed January 4, 2013. The State requests the Court to dismiss the answer, objections, and counterclaim by the Community Ditch Defendants filed October 19, 2012.

Community Ditch Defendants' Answer, Objections, and Counterclaim

The Community Ditch Defendants' answer, objection and counterclaim includes a general denial of the Settling Parties' claims and a series of statements, arguments and objections regarding the proposed Settlement Agreement. The counterclaim is asserted as both a compulsory and permissive counterclaim under Rule 1-013(A)-(B) NMRA. The counterclaim, when read in conjunction with the prayer for relief, requests the Court to disapprove the proposed Settlement Agreement and "proceed to quantify and prioritize the Navajo and United States [sic]

¹The United States and Navajo Nation filed a joinder to the State's motion on December 3, 2012.

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claims to the San Juan River, relative to the community ditch defendant-counterclaimants.” The Court construes the latter phrase, “relative to the community ditch defendant-counterclaimants,” to mean that the current proceedings should include an adjudication of the Community Ditch Defendants’ water rights claims.

This request for inclusion is explained and amplified in the Community Ditch Defendants’ response to the State’s motion to dismiss. The Community Ditch Defendants read Rule 1-071 to require a “complete *inter se*,” or the determination of all objections to all water rights in the system. In other words, all water rights in the system should be adjudicated at this time so the Community Ditch Defendants have the opportunity to demonstrate their water rights claims as well as assert their objections to the Navajo claims.

The State’s motion to dismiss relies on the Court’s orders described above which define the scope of this proceeding and urges the Court to dismiss (1) the Community Ditch Defendants’ answer because under these proceedings there has been no statement of claims to answer, and (2) the Community Ditch Defendants’ counterclaim pursuant to Rule 1-012B(6) NMRA because no counterclaim is appropriate in the context of this expedited *inter se* proceeding.

Procedural Background

The proceeding to resolve the water rights claims of the Navajo Nation is a subproceeding within the San Juan River Basin adjudication, which encompasses all rights within the San Juan River Basin. Contrary to the Community Ditch Defendants’ suggestion, the adjudication process of determining the water rights in the San Juan River Basin is ongoing, occurring contemporaneously with the Navajo *inter se*. The general adjudication will continue

after the conclusion of the Navajo *inter se*.

However, the purpose and requirements of Rule 1-071 NMRA, the water adjudication rule governing stream system-wide issues and *inter se* procedures, more directly address the Community Ditch Defendants' concern about inclusion. Due to the scope of the proposed Settlement Agreement, the Navajo *inter se* is conducted pursuant to Rule 1-071 and several case management and procedural orders entered to guide the progress of the adjudication. Rule 1-071.2 defines an expedited *inter se* proceeding as "a proceeding in which a water rights claim is resolved in a stream system adjudication suit conducted pursuant to Section 72-4-17 NMSA 1978 both as between the plaintiff and the defendant and as among the defendant and other water rights claimants." Rule 1-071.2 sets forth the procedure for allowing all claimants in a basin to participate in the resolution of a *water rights claim*. The purpose and function of the rule would be nullified if the claim at issue could not be resolved until all other claims in the basin were first resolved.

Courts also maintain the authority to develop special procedures for unique situations pursuant to Rule 1-016(C)(10) NMRA. In this case, the Court determined that the Navajo Nation's water rights claims to the San Juan River would be adjudicated in an expedited *inter se* proceeding to "promote judicial efficiency and the expeditious completion of this adjudication" August 19, 2010 order establishing initial procedures for entry of a partial final judgment and decree of the water rights of the Navajo Nation. This order, and subsequent procedural and scheduling orders,² outline in detail each element of the expedited proceeding:

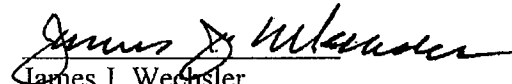
² See, e.g., Order Approving Final Forms of Notice of Navajo *Inter Se* and Notices of Intent to Participate in Navajo *Inter Se* and Setting Deadlines for Service and Filing of Notices (March 16, 2011); Scheduling Order Governing Initial Pretrial Activities (September 29, 2011); and Amended Order Setting Schedule Governing Discovery on the Non-Ssettling Parties and Remaining Proceedings (August 7, 2012), as amended.

basin-wide notice; disclosures of the terms of the Settlement Agreement entered into by the United States, the State of New Mexico, and the Navajo Nation; the filing of a statement of claims summarizing the water rights claimed on behalf of the Navajo Nation; the process by which water rights claimants could participate in the *inter se* proceeding; the filing of objections to the proposed Settlement Agreement; and discovery and briefing deadlines. As explained above, under the Court's orders, this proceeding concerns only the claims of the Navajo Nation. Further, the detailed case management procedures developed by the Court and by the parties to guide this proceeding by necessity diverge from the usual rules of civil procedure, as permitted by Rule 1-016(C)(10) NMRA. These procedures only call for objections by parties that oppose the Settlement Agreement. Because there is no "complaint" as in the traditional civil case, an answer is neither required nor appropriate. And, because the Community Ditch Defendants' water rights claims will be adjudicated in future proceedings, the priorities of all water rights, including those adjudicated for the Navajo Nation, will be administered in the post-decree period pursuant to the Office of the State Engineer's statutory authority.

Therefore, IT IS ORDERED that:

1. the Community Ditch Defendants' answer and counterclaim are stricken, except that assertions made therein shall be treated as objections to the Settlement Agreement to the extent permissible; and
2. the objections asserted in the Community Ditch Defendants' pleading will be resolved pursuant to the procedural and scheduling orders entered by this Court.

IT IS SO ORDERED.


James J. Wechsler
Presiding Judge