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 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,

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 responds to statements made by the
 Community Ditches in their *Supplemental Authority Concerning Inter Se Proceedings, in
 Support of Counterclaim*, filed February 14, 2013.

NUMBER OF PAGES: 4, including Certificate of Service.

DATE OF FILING: Fax-filed on February 21, 2013.

**THE NAVAJO NATION'S RESPONSE TO
 THE COMMUNITY DITCH SUPPLEMENTAL AUTHORITY**

The Navajo Nation submits its response to the Community Ditches' *Supplemental
 Authority Concerning Inter Se Proceedings, in Support of Counterclaim* (filed Feb. 14, 2013)
 ("Supplemental Authority"). Specifically, the Navajo Nation is compelled to clarify the record
 with regard to gross inaccuracies contained in the Supplemental Authority. The Community
 Ditches allege:

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 [*sic*] the
 community ditches.

Supplemental Authority at 2.

The Settling Parties (the Navajo Nation, the United States, and the State of New Mexico) have never sought and are not now seeking such a judgment. In the proposed Partial Final Judgment and Decree of the Water Rights of the Navajo Nation (“Partial Final Decree”), filed January 3, 2011, and the proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation (“Supplemental Partial Final Decree”), filed April 2, 2012 (collectively “Proposed Decrees”), the Settling Parties do not seek a declaration of superior priority vis-à-vis any party in the adjudication. The Partial Final Decree describes 325,670 acre-feet per year of total depletions for the Navajo Nation, of which 293,120 acre-feet, or approximately 90%, would be administered with a priority date of June 17, 1955 or later. That priority date effectively makes such rights junior to all rights described in the 1948 Echo Ditch Decree. *See* Technical Assessment of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Sept. 6, 2012) at 29.

The Supplemental Partial Decree identifies existing and historic Navajo water uses on ephemeral tributary drainages that do not rely on the water supply utilized by the Community Ditches. *See* Quantification Analysis for the Supplemental Partial Final Decree (Apr. 2, 2012). Since none of the Community Ditches are located on ephemeral tributary drainages within the Navajo Nation, the rights described in the Supplemental Partial Decree are not “superior” to the rights of the Ditches.

Putting aside for a moment the priorities claimed in the Proposed Decrees, the Settling Parties neither assert that the above-described water rights have a priority superior to that of any other water user nor that the rights of the Community Ditches are before the Court in this proceeding. Indeed, the Court recently put a stop to the Community Ditches’ own assertion to the contrary. *See* Order Striking Community Ditch Defendants’ Answer and Counterclaim (Feb.

15, 2013) at 4 (“this proceeding concerns only the claims the claims of the Navajo Nation” and “the Community Ditch Defendants’ water rights claims will be adjudicated in future proceedings”).

Simply put, the allegation that the Settling Parties are seeking a judgment that the Navajo Nation’s rights have a superior priority to the Community Ditches is untrue.

Respectfully submitted this 21st day of February, 2013.

NAVAJO NATION



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CERTIFICATE OF SERVICE

I certify that on this 21st day of February, 2013, an electronic version of *The Navajo Nation’s Response to the Community Ditch Supplemental Authority* was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the attached distribution list.



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