

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED

2013 FEB 27 PM 4: 24

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

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

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

vs.

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

SAN JUAN RIVER  
GENERAL STREAM  
ADJUDICATION

THE JICARILLA APACHE TRIBE AND THE  
NAVAJO NATION,

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

Defendant-Intervenors.

NAME OF PARTY: State of New Mexico *ex rel.* State Engineer ("the State").  
DESCRIPTIVE SUMMARY: State's Motion to Strike Improperly Filed Exhibit  
NUMBER OF PAGES: 4  
DATE OF FILING: Filed on February 27, 2013.

**STATE'S MOTION TO STRIKE FILING OF EXHIBIT  
BY COMMUNITY DITCH DEFENDANTS**

The State of New Mexico *ex rel.* State Engineer ("State") submits this Motion to Strike the *Filing of Exhibit: Allocation of Water Under Colorado River Compacts filed by Community Ditch Defendants* filed on February 4, 2013 and the *Revised Calculations About Allocation of Water Under Colorado River Compacts*, filed on February 15, 2013 (collectively "*Filing of Exhibit*"). This Motion is based on the following grounds:

1. On February 4, 2012 a discovery conference was held in this matter. During the discovery conference, the Court heard arguments concerning a *Motion for Protective Order* filed by the United States on January 2, 2013.

2. During the discovery conference, Community Ditch Defendants sought to introduce an exhibit providing documentary evidence in support of its response to the United States' *Motion for Protective Order*.

3. Following an objection to admission of the exhibit by the State, counsel for Community Ditch Defendants asserted he was not seeking to introduce the exhibit into the record but merely offered it for demonstrative purposes in making legal argument against granting the United States' *Motion for Protective Order*.

4. Based on that representation by counsel for Community Ditch Defendants, the State did not pursue its objection.

5. A copy of the exhibit was provided to the Court during the discovery conference.

6. Copies of the exhibit were not provided to the other parties present at the discovery conference.

7. Later that same day, February 4, 2013, Community Ditch Defendants filed the *Filing of Exhibit* with the Court, which included an exhibit titled "Allocation of Water Under Colorado River Compacts".

8. On February 15, 2013, Community Ditch Defendants filed a document titled *Revised Calculations About Allocation of Water Under Colorado River Compacts*. This filing includes a revised version of the exhibit filed on February 4.

9. The exhibit purports to illustrate flow allocations under the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact if the Settlement Agreement is implemented and contains various inaccurate factual allegations.

10. The *Filing of Exhibit* by Community Ditch Defendants is an improper attempt to enter into the record evidence that is not properly before the Court.

11. By Community Ditch Defendants' own admission, the *Filing of Exhibit* is intended to provide factual information to the Court and is not intended as legal argument (see February 27, 2013 electronic mail from Victor Marshall, counsel for Community Ditch Defendants, attached to this Motion as Exhibit A).

12. The *Filing of Exhibit* violates the Rules of Civil Procedure and is not in accordance with any established practice of law.

13. In violation of the Rules of Civil Procedure, Rule 1-007.1(C) NMRA, the *Filing of Exhibit* is not offered in support of any motion or pleading filed by the Community Ditch Defendants.

14. In violation of the Rules of Civil Procedure, Rule 1-056(B) NMRA, the *Filing of Exhibit* is not submitted with a motion for summary judgment.

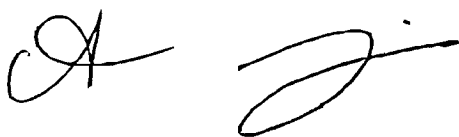
15. The State has contacted counsel regarding this Motion, and counsel for the Navajo Nation and the Jicarilla Apache Nation concur in the Motion. Counsel for the United States do not oppose the Motion, Gary Horner and counsel for San Juan Water Commission, ABCWUA and Espanola take no position on the Motion, and counsel for Community Ditch Defendants have indicated they oppose the Motion.

For the foregoing reasons, the State respectfully requests that the Court deem the *Filing of Exhibit* improperly filed and enter an Order striking Community Ditch Defendants *Filing of*

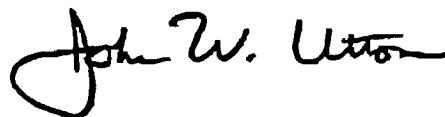
*Exhibit: Allocation of Water Under Colorado River Compacts filed by Community Ditch Defendants and the Revised Calculations About Allocation of Water Under Colorado River Compacts.*

Respectfully submitted, this 27<sup>th</sup> day of February 2013.

STATE OF NEW MEXICO



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CERTIFICATE OF SERVICE

I certify that on this 27<sup>th</sup> day of February 2013, at approximately 4:00 pm, an electronic copy of this *Motion to Strike Exhibit by Community Ditch Defendants* was served by attaching an electronic copy to an email sent to: [wnavajointerse@nmcourts.gov](mailto:wnavajointerse@nmcourts.gov) and [aoccaj@nmcourts.gov](mailto:aoccaj@nmcourts.gov) and to the February 25, 2013 Amended Service List.

/s/ Arienne Singer

**Singer, Arianne, OSE**

**From:** Victor R. Marshall [victor@vmmarshall.com]  
**Sent:** Wednesday, February 27, 2013 9:27 AM  
**To:** Singer, Arianne, OSE  
**Cc:** Tully, Richard; jwu@sheehansheehan.com; Guarino, Guss (ENRD); Gehlert, David (ENRD); smpollack@nndoj.org; khoover@nndoj.org; agollis@hotmail.com; rbc@keleher-law.com; crm@keleher-law.com; jbb@keleher-law.com; tcb@keleher-law.com; 'agrarkin@hollandhart.com'; srfullerton@newmexicowaterlaw.com; jfstein@newmexicowaterlaw.com; jmccaleb@taylormccaleb.com; etaylor@taylormccaleb.com; gary@risleylaw.net; pshannonlaw@yahoo.com; chawkins@utemountain.org; iberger@nativeamericanlawyers.com; portego@utemountain.org; herb.becker@jaassociatesnm.com; rdempsey@cuddymccarthy.com; mobrton@modrall.com; kyle@harwood-consulting.com; bjoxford@yahoo.com; ghorner@zlanet.com; 'Mark Sheridan, Esq.'; James C. Brockmann; Braswell, Misty, OSE; Sheri Heying; Shirley Meridith; Victor Marshall  
**Subject:** Re: State of NM v. USA, et al. CV-75-184

The Community Ditch Defendants oppose the motion, which is frivolous and interposed for delay and harassment. The court has already allowed the exhibit, and this is just a revision. If you have some corrections, please tell us what they are, and we might adopt them.  
 If you would read the rules, you'll see that motions to strike are not to be used as a remedy for filings that set forth information you might disagree with.

On 2/26/2013 3:52 PM, Singer, Arianne, OSE wrote:

Counsel,

Please review the attached *Motion to Strike Exhibit* and let me know whether I may note your concurrence.

Thank you,

Arianne Singer  
 Special Assistant Attorney General  
 New Mexico Office of the State Engineer  
 (505) 827-6150

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