

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 MAY 30 PM 2:46

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,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

D-1116-CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Claims of the Navajo Nation
AB-07-1

NAME OF PARTY: The Navajo Nation and the United States of America

DESCRIPTIVE SUMMARY: Notice of Errata regarding Reply Memorandum in support of the Settlement Motion.

NUMBER OF PAGES: 4 (including exhibit)

DATE OF FILING: May 30, 2013

**NOTICE OF ERRATA REGARDING REPLY MEMORANDUM
OF THE NAVAJO NATION AND UNITED STATES
IN SUPPORT OF THE SETTLEMENT MOTION**

The Navajo Nation and the United States jointly submit this Notice of Errata for their Reply Memorandum, filed May 24, 2013, to correct two errors contained in the first full paragraph on page thirteen of that memorandum. First, the fourth sentence of the paragraph should be corrected as follows:

The current uses of the Navajo Nation, as determined by the State, are also ~~less than~~ greater than the Navajo water rights recognized in the Proposed Decrees. See State Memorandum at 4-5.

JUDGE

D✓

Second, the final sentence of that paragraph should be corrected as follows:

The record before the Court demonstrates establishes a reasonable basis to reach this conclusion.

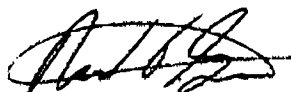
The Navajo Nation and United States submit as Exhibit A a corrected page thirteen of the Reply Memorandum of the Navajo Nation and United States in Support of the Settlement Motion, reflecting the two corrections described above.

Respectfully submitted this 30th day of May, 2013.

NAVAJO NATION

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I certify that on this 30th day of May, 2013, an electronic version of the *Notice of Errata Regarding Reply Memorandum of the Navajo Nation and United States in Support of the Settlement Motion* was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the list of parties identified on the Notice of Amended Service List (filed Feb. 25, 2013).



Samuel D. Gollis

Exhibit A

against fact-based assessments of the Nation's claims laid the foundation for the Court's adoption of Element Three.

To further assist the Court in its evaluation of the settlement, the State offered to prepare an analysis of the legal bases for the settlement, which the Court accepted. *See State's Bases; OSE Technical Assessment.* Around this same time, the United States filed the fifteen technical reports underlying the U.S. Statement of Claims.¹⁵ *See Technical Reports Supporting the United States' Statement of Claims of Water Rights in the New Mexico San Juan River Basin on behalf of the Navajo Nation and Disclosures of Individuals with Information concerning such Technical Reports* (filed Jan. 30, 2012). The claims asserted by the United States on behalf of the Navajo Nation far exceed the Navajo water rights recognized in the Proposed Decrees. *See Joint Memorandum at 31-32.* The current uses of the Navajo Nation, as determined by the State, are also greater than the Navajo water rights recognized in the Proposed Decrees. *See State Memorandum at 4-5.* In considering Element Three, the Court should limit its inquiry to whether the U.S. Statement of Claims, including the fifteen technical reports underlying it, and the State's Bases, supported by the OSE Technical Assessment, provide a "reasonable basis" to conclude that the water rights in the Settlement Agreement and Proposed Decrees are less than the potential claims that the Nation could secure at trial. The record before the Court establishes a reasonable basis to reach this conclusion.

In reliance on the same standard adopted by the Court in Element Three, the Arizona Supreme Court in *Gila VIII* concluded that because the settlement under consideration provided the Gila River Indian Community ("GRIC") with water rights that were less than the water

¹⁵ "U.S. Statement of Claims" refers to *The United States' Statement of Claims of Water Rights in the New Mexico San Juan River Basin on Behalf of the Navajo Nation* (filed Jan. 3, 2011).