

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED

2013 JUN 26 AM 7:17

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 United States of America and the Navajo Nation.

DESCRIPTIVE SUMMARY: Motion to Strike Community Ditch Objectors' "Notices" of (1) their intention to amend their Answer, Objections, and Counterclaim, and (2) filing an excerpt from the June 12 hearing concerning BOR contract water.

NUMBER OF PAGES: 5.

DATE OF FILING: June 25, 2013.

**MOTION OF THE NAVAJO NATION AND UNITED STATES TO STRIKE NOTICES  
IMPROPERLY FILED BY THE COMMUNITY DITCH OBJECTORS**

The Court has previously admonished the parties that "that notices that provide the Court with extraneous information ... may create unnecessary confusion and may not be considered by the Court. Future notices of this variety may be stricken by the Court *sua sponte*." *Order Denying the Navajo Nation's Motion to Strike* ("November 6, 2012 Order") (filed November 6, 2012) at 2. Subsequent to the hearing on dispositive motions held on June 11 and 12, the Community Ditch Objectors filed two "notices" that add nothing to these proceedings and should be stricken.

**A. Community Ditch Objectors' Notice That Community Ditch Defendants Will Amend Their "Answer, Objections, and Counterclaim" should be Stricken**

First, in a filing styled *Notice That Community Ditch Defendants Will Amend Their "Answer, Objections, and Counterclaim"* ("Notice of Amendment") (filed June 20, 2013), the Community Ditch Objectors purport to inform the Court of the need to amend their *Answer, Objections, and Counterclaim* (filed Oct. 19, 2012). See Notice at 1 (setting forth the bases of the need). In actuality, the Community Ditch Objectors use the Notice to make supplementary legal and factual arguments to the Court that are inexcusably untimely. The Community Ditch Objectors' Notice was filed without leave of the Court, serves no legitimate purpose, improperly attempts to reiterate arguments previously made at oral argument, and simply clutters the record in this proceeding with information neither requested nor authorized by the Court. Accordingly, the Navajo Nation and United States ask the Court to strike the Notice from the record and not consider it.

While the Community Ditch Objectors acknowledge that their attempt to file an answer and counterclaim in this proceeding was disallowed by the Court, they argue nonetheless that "[t]his pleading needs to be amended." Notice at 1. The Community Ditch Objectors' *Answer, Objection and Counterclaim* was stricken by the Court on February 15, 2013, subject to allowing the "assertions made therein shall be treated as objections to the Settlement Agreement to the extent permissible." *Order Striking Community Ditch Defendants' Answer and Counterclaim* (filed February 15, 2013) at 4. The Community Ditch Objectors clearly state in the Notice that it is not their intent to seek this Court's permission to amend the *Answer, Objections, and Counterclaim*. See Notice at 1 (Objectors "give notice that they will amend their "*Answer, Objections, and Counterclaim*"). The Navajo Nation and United States oppose any effort of the Community Ditch Objectors to amend their stricken pleading. As noted above, the bases stated

in the Community Ditch Objectors' Notice are utterly without merit. Objections filed in this proceeding may only be modified by permission of the Court. *See Order Denying the Navajo Nation's Motion to Dismiss and Addressing Participation of Certain Non-Settling Parties* (filed Nov. 6, 2012) ("any Non-Settling Party who wishes to file or modify an objection or response to the Proposed Decrees after October 25, 2012 must receive permission from the Court to do so") at 2.<sup>1</sup> To the extent the Notice constitutes the Community Ditch Objectors' clumsy attempt to obtain this Court's leave to amend the *Answer, Objections, and Counterclaims*, the Navajo Nation and United States oppose the request.

**B. Community Ditch Objectors' Notice of Filing Excerpt from June 12 Hearing about BOR Contract Water for the Navajo Nation in Addition to Reserved Rights Should be Stricken**

The Community Ditch Objectors' second filing, *Notice of Filing Excerpt from June 12 Hearing about BOR Contract Water for the Navajo Nation in Addition to Reserved Rights* ("Notice of Filing") (filed June 25, 2013) again attempts to reargue matters addressed in the hearing on dispositive motions. Included with this argument is a two-page (self-generated) excerpt from the hearing, reiterating (with emphasis supplied by the Community Ditch Objectors) the colloquy between the Court and counsel for the Navajo Nation and the United States. Again, the Community Ditch Objectors do not seek leave of Court to supplement their argument by way of this Notice, and no authority for such supplementation is offered. The excerpt from the hearing (assuming it is an accurate transcription) provides nothing that is not

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<sup>1</sup> As a procedural matter, there is no pleading before the Court, and Rule 1-015, NMRA, is inapplicable. Any objections that remain after the striking of the Community Ditch Objectors' answer and counterclaim do not constitute a "pleading" subject to amendment pursuant to Rule 1-015(A). *See* Rule 1-007(A), NMRA (identifying papers filed with the court that constitute "pleadings").

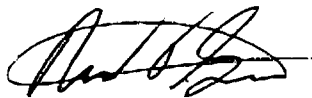
already in the record. The Community Ditch Objectors' Notice of Filing, like their Notice of Amendment, should be stricken consistent with the Court's November 6, 2012 Order.

### CONCLUSION

For the reasons set forth above, the Navajo Nation and United States ask the Court to strike (1) the *Notice That Community Ditch Defendants Will Amend Their "Answer, Objections, and Counterclaim,"* and (2) the *Notice of Filing Excerpt from June 12 Hearing about BOR Contract Water for the Navajo Nation in Addition to Reserved Rights* from the record in this proceeding.<sup>2</sup> In addition, the Navajo Nation and United States oppose any request by the Community Ditch Objectors seeking leave to amend the *Answer, Objections, and Counterclaim* at this late date.

Respectfully submitted this 25th day of June, 2013.

UNITED STATES OF AMERICA



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<sup>2</sup> Pursuant to Local Rule 104 and Rule 1-007.1(C) NMRA, concurrence of counsel was sought. Only the Jicarilla Apache Nation responded. The Nation concurred with the motion.

**CERTIFICATE OF SERVICE**

I certify that on this 25th day of June, 2013, an electronic version of *Motion of the Navajo Nation and the United States to Strike Notices Improperly Filed by the Community Ditch Objectors* was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccai@nmcourts.gov and to the list of parties identified on the *Notice of Amended Service List* (filed Feb. 25, 2013).



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Stanley M. Pollack