

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 AUG 30 AM 7:41

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.

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, the United States of America and the State of New Mexico ("Settling Parties").

DESCRIPTIVE SUMMARY: Settling Parties' proposed edits to the decrees attached to the *Order Granting Motion Concerning Preparation and Entry of Decrees*, August 28, 2013.

NUMBER OF PAGES: 9.

DATE OF FILING: Fax filed on August 29, 2013.

SETTLING PARTIES' PROPOSED EDITS TO THE PROPOSED DECREES

Pursuant to the *Order Granting Motion Concerning Preparation and Entry of Decrees*, entered on August 28, 2013, the Settling Parties propose edits to the Proposed Decrees attached to that order, shown as a redline/strikeout, first accepting the changes proposed by the Court.¹

¹ The Settling Parties appreciate the Court's modifications to the Proposed Decrees necessitated by the Court's decision to enter the two decrees simultaneously rather than in separate proceedings as contemplated by Paragraph 4.3 of the Settlement Agreement and subsection 10701(e)(1)(v) of the authorizing legislation, P.L. 111-11. The majority of the edits proposed by the Settling Parties expand on the Court's proposed changes to the Proposed Decrees to ensure consistency between the Decrees.

1. **Partial Final Judgment and Decree of the Water Rights of the Navajo Nation ("Decree"), at page 1, second paragraph:**

This matter comes before the Court on the Settlement Motion of United States, Navajo Nation and State of New Mexico for the Entry of Partial Final Decrees, filed January 3, 2011 ~~by the State of New Mexico, the Navajo Nation and the United States.~~

Explanation: Superfluous language.

2. **Decree at page 2, First and Second Full Paragraphs:**

~~has~~ ENTERED *the Order Granting the Settlement Motion for Entry of Partial Final Decrees Describing the Water Rights of the Navajo Nation on August 16, 2013;* and

FINDS that there is no just reason for delay in accordance with Rule 1-054(CB) NMRA and directs the entry of this Decree adjudicating the water rights of the Navajo Nation within the San Juan River Basin.

Explanation: The first change is grammatical. (Note: italics deleted for "on August 16, 2013.") The second change corrects the citation to the appropriate rule.

3. **Decree, Paragraph 8, starting at the sixth line down from top of page 25:**

Pursuant to paragraph 20 of this Decree and paragraph 4.0 of the Settlement Agreement, the Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo Nation, ~~may petitioned~~ the Court for entry of the Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation ~~as~~ ("Supplemental ~~d~~Decree") quantifying and adjudicating reserved rights of the Navajo Nation for historic and existing uses that are not included in paragraph 3 or subparagraph 7(a), based on the United States Hydrographic Survey of Navajo Lands in the San Juan River Basin in New Mexico dated December 2010 ("US Survey Report") ~~upon completion by the United States of a Hydrographic Survey Report as accepted by the State of New Mexico that describes such historic and existing uses.~~ Entry of this Decree or ~~any such the s~~Supplemental ~~decree~~ Decree shall not be intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's reserved

rights under Federal law. Except as otherwise provided, the conditions under which the Navajo Nation may make such changes are specified in paragraph 17, and are subject to the Court's continuing jurisdiction to interpret and enforce this Decree as provided in paragraph 14.

Explanation: References to the future adjudication of the Supplemental Decree are inapposite, given that the Court will enter the Supplemental Decree contemporaneous with the Decree.

4. **Decree, Paragraph 9, starting at the bottom of page 25:**

The Navajo Nation ~~may have~~ has water rights acquired under New Mexico state law pursuant to decreed rights or to permits or licenses issued by the New Mexico State Engineer, and for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee ownership by the Navajo Nation, quantified and adjudicated in the Supplemental Decree. Such rights ~~would exclude~~ any rights to the use of water historically made by non-Navajo entities on Navajo lands under permits issued by the New Mexico State Engineer that have not been acquired from said entities by the Navajo Nation. Water rights for historic municipal, industrial, commercial or domestic uses, except for *de minimus* uses under paragraph 10, that have been made on lands which are held in fee ownership by the Navajo Nation and that have not been made pursuant to decreed rights, or to permits or licenses issued by the New Mexico State Engineer, are included in the total water right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20 of this Decree ~~and paragraph 4.0 of the Settlement Agreement~~, the Navajo Nation may petition the Court for entry of a supplemental decree quantifying and adjudicating the additional water rights of the Navajo Nation under state law, acquired after the entry of this Decree and the Supplemental Decree. Entry of this Decree, ~~and the Supplemental Decree, or any additional supplemental decrees, shall not be~~ shall not be intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor shall they be intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer additional water rights perfected under state law.

Explanation: References to the future adjudication of the Supplemental Decree are inapposite, given that the Court will enter the Supplemental Decree contemporaneous

with the Decree. This language is necessary to distinguish the Supplemental Decree from additional supplemental decrees that may be necessary in the future. The reference to paragraph 4.0 of the Settlement Agreement should be deleted because that provision references petitioning the Court for the entry of the Supplemental Decree, which has already occurred.

5. **Decree, Paragraph 11, second sentence on page 27:**

This Decree does not quantify the nature, extent or priority of such rights; however, historic and existing water uses on such allotted lands shall be determined by the ~~Hydrographic US Survey Report to be completed by the United States and as~~ accepted by the State of New Mexico pursuant to paragraph 4.0 of the Settlement Agreement. To the extent that water rights are adjudicated by the Court for such allotted lands that are in excess of the historic and existing water uses on those lands as described in the ~~Hydrographic US Survey Report~~, such water rights for allotted lands shall be fulfilled or serviced by rights of the Navajo Nation quantified in this Decree, or the depletions of flow of the San Juan River resulting from the use of water under such rights for allotted lands shall be fully offset by a forbearance of use of rights of the Navajo Nation quantified in this Decree.

Explanation: The Hydrographic Survey has already been prepared by the United States.

6. **Decree, Paragraph 12, beginning at the first line on page 28:**

... rights described in this Decree, the Supplemental Decree, or any additional supplemental decrees that may be entered by the Court pursuant to paragraph 20, or either decreed rights or rights under New Mexico State Engineer permits or licenses that are acquired after the date of entry of this Decree ~~and the or any~~ sSupplemental decreesDecree. Beneficial use shall be the limit of the rights to use water adjudicated to the Navajo Nation by this Decree.

Explanation: This language is necessary to distinguish the Supplemental Decree from additional supplemental decrees that may be necessary in the future.

7. **Decree, Paragraph 14, page 29, first sentence:**

This Decree is a final order under Rule 1-054(~~CB~~) NMRA, and it may be modified only pursuant to Rule 1-060(B).

Explanation: Corrects the citation to the appropriate rule.

8. **Decree, Paragraph 15(a), penultimate line on page 29:**

... adjudicated in the Supplemental Decree, which shall be governed by the terms thereof, and additional supplemental decrees pursuant to paragraphs 8 and 9, within ...

Explanation: This language is necessary to distinguish the Supplemental Decree from additional supplemental decrees that may be necessary in the future.

9. **Decree, Paragraph 17(b), ninth line down from top of page 33:**

The Court retains jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the State Engineer or other parties to this case regarding whether the Navajo Nation is properly regulating use of water in compliance with the rights adjudicated by this Decree, the Supplemental Decree, or ~~by any~~ supplemental decrees that may be entered by the Court pursuant to paragraph 20, or with any rights acquired after the date of entry of this Decree and the ~~or any~~ Supplemental Decrees, or in compliance with applicable conditions of a water rights transfer made in accordance with this Decree.

Explanation: This language is necessary to distinguish the Supplemental Decree from additional supplemental decrees that may be necessary in the future.

10. **Decree, Paragraph 17(h), second line down from top of page 38:**

... with the Navajo Nation's rights to divert as adjudicated by this Decree, the Supplemental Decree, or any supplemental decrees that may be entered by the Court pursuant to paragraph 20, ~~or as subsequently acquired.~~

Explanation: This language is necessary to distinguish the Supplemental Decree from additional supplemental decrees that may be necessary in the future. The reference to rights "subsequently acquired" is superfluous.

11. Decree, Paragraph 20, page 41:

(a) Appropriations it may make or rights it may acquire after entry of this Decree; or

(b) rights that may derive from additional allocations of water made to the Navajo Nation pursuant to paragraph 8.0 of the Settlement Agreement.

Explanation: Clarification that a supplemental decree is required if the Navajo Nation acquires additional water rights in addition to perfecting water rights through appropriation.

12. Decree at Paragraph 22, last sentence on page 42:

The Navajo Nation's right to present to the Court cause to revoke this ~~Partial Final~~ Decree and ~~the any s~~Supplemental ~~d~~Decree under this paragraph shall expire on December 31, 2025, unless the deadlines set forth in paragraph 5.2 of the Settlement Agreement are extended, in which case, this right shall expire one year following the date of the last deadline, including extensions pursuant to paragraph 5.2.2 of the Settlement Agreement.

Explanation: Clarification that the ability of the Navajo Nation to seek revocation of the Supplemental Decree is also limited.

13. Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation ("Supplemental Decree") at page 2:

This matter comes before the Court on the Settlement Motion of United States, Navajo Nation and State of New Mexico for the Entry of Partial Final Decrees, filed January 3, 2011. The Court finds that the Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation ("Supplemental Decree") is the product of a negotiated settlement by the

aforesaid parties. Notice of the deadline for filing and serving objections to the water rights described in this decree was served on the parties to this case and potential water right claimants pursuant to the expedited *inter se* procedures adopted by the Court. The Court, having considered the parties' motion, the United States' Hydrographic Survey of Navajo Lands in the San Juan River Basin in New Mexico dated December 2010 that identifies, among other things, water uses for which water rights are to be adjudicated in this decree ("US Survey"), the water rights described in this decree, the objections thereto, the evidence in support thereof, and for good cause shown:

has ENTERED the *Order Granting the Settlement Motion for Entry of Partial Final Decrees Describing the Water Rights of the Navajo Nation*; on August 16, 2013; and

FINDS FURTHER that the Partial Final Judgment and Decree of the Water Rights of the Navajo Nation ("Decree") entered concurrently with this Supplemental Decree, provides for this Supplemental Decree to further describe rights for uses determined by survey as per paragraphs 8 and 9 of the Decree, and directs the entry of this decree adjudicating water rights of the Navajo Nation within the San Juan River Basin.

Explanation: Added a definition of "Supplemental Decree" in addition to minor grammatical language (see edit #2 above).

14. Supplemental Decree, Paragraph 2, page 3:

This Supplemental Decree is entered ~~contemporaneously with pursuant to paragraph 20 of the Decree and is hereby incorporated herein.~~

Explanation: Paragraph 20 of the Decree contemplated a separate proceeding for entry of the Supplemental Decree.

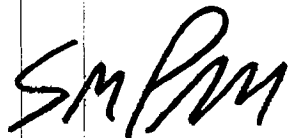
15. Supplemental Decree, Paragraph 9 at page 26, first sentence:

This Supplemental Decree is a final order under Rule 1-054(~~CB~~) NMRA, and it may be modified only pursuant to Rule 1-060(B).

Explanation: Corrects the citation to the appropriate rule.

Respectfully submitted, this 29th day of August 2013.

NAVAJO NATION




Stanley M. Pollack
M. Kathryn Hoover
Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-7510

Samuel D. Gollis
Samuel D. Gollis, Attorney at Law, P.C.
901 Rio Grande Boulevard, Suite F-144
Albuquerque, New Mexico 87104
(505) 883-4696

Attorneys for the Navajo Nation

UNITED STATES OF AMERICA



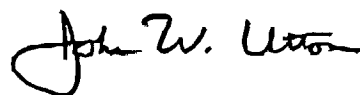
Andrew J. "Guss" Guarino
U.S. Department of Justice
Environment & Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1343

Attorney for the United States of America

STATE OF NEW MEXICO



Arianne Singer
Misty M. Braswell
Special Assistants Attorney General
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150



John W. Utton
Special Assistant Attorney General
Sheehan & Sheehan, P.A.
Post Office Box 271
Albuquerque, New Mexico 87103
(505) 247-0411

Attorneys for the State of New Mexico

CERTIFICATE OF SERVICE

On this 29th day of August, 2013, an electronic version of *Settling Parties' Proposed Edits to the Proposed Decrees* 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).



Stanley M. Pollack