

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2013 SEP -5 PM 4: 07

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.

DESCRIPTIVE SUMMARY: State's Motion to Correct August 16 Order to clarify that the alternate water provision under Section 9.2 of the Settlement Agreement is not conditioned upon the Navajo Reservoir containing at least one million acre feet of storage water.

NUMBER OF PAGES: 3

DATE OF FILING: Filed on September 5, 2013.

**STATE'S MOTION TO CORRECT ORDER GRANTING THE SETTLEMENT
MOTION FOR ENTRY OF PARTIAL FINAL DECREES
DESCRIBING THE WATER RIGHTS OF THE NAVAJO NATION**

Pursuant to the *Order Granting Community Ditch Defendants' Motion Regarding Time to File Motions to Address the Order Granting the Settlement Motion*, entered on August 28, 2013, the State hereby requests the Court correct the August 16, 2013 *Order Granting the Settlement Motion for Entry of Partial Final Decrees Describing the Water Rights of the Navajo Nation* ("August 16 Order") to clarify that the alternate water provision under Section 9.2 of the

SCANNED

Settlement Agreement is not conditioned upon the Navajo Reservoir containing at least one million acre feet of storage water.

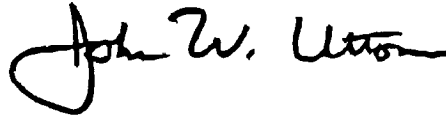
The August 16 Order contains a section addressing the second element of proof established in this case, which requires the Settling Parties to produce *prima facie* evidence that the settlement will reduce or eliminate impacts on junior water rights. Paragraph 3(b) of that section includes a statement that before the Navajo Nation asserts its senior direct flow rights for municipal uses at Shiprock and the Hogback-Cudei and Fruitland-Cambridge irrigation projects, it must first utilize up to 12,000 afy of stored water from Navajo Reservoir, "provided that at least one million acre feet is stored in the reservoir." August 16 Order at p. 21. This statement is incorrect. The requirement that the Navajo Nation provide alternate water under Section 9.2 of the Settlement Agreement is not conditioned upon the Navajo Reservoir containing at least one million acre feet of storage water. *See Supplemental Affidavit of John J. Whipple*, attached to the *State's Consolidated Reply to Responses Filed by Community Ditch Defendants, Gary L. Horner, Robert E. Oxford and Defendants B Square Ranch, LLC.*, filed May 29, 2013, at ¶ 14. The one million acre feet condition applies only to the 225 cfs minimum direct flow provision in paragraph 9.1 of the Settlement Agreement. *See Id.* The alternate water under Section 9.2 is conditioned instead upon the availability of water from Navajo Reservoir subject to the conditions set forth in paragraph 9.2 of the Settlement Agreement.

Therefore, the State requests the Court modify the last sentence of paragraph 3(b) on page 21 of the August 16 Order to read as follows:

"Under the Settlement Agreement, the Navajo Nation must first utilize up to 12,000 afy of stored water from Navajo Reservoir, subject to the conditions set forth in paragraph 9.2 of the Settlement Agreement. Settlement Agreement ¶ 9.2; Leeper Aff. ¶¶ 63, 73."

Respectfully submitted, this 5th day of September 2013.

STATE OF NEW MEXICO





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CERTIFICATE OF SERVICE

I certify that on this 5th day of September 2013, at approximately 4:00 pm, an electronic copy of this Motion to Correct Order was served by attaching an electronic copy to an email sent to: wrnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the February 25, 2013 Amended Service List.

Arianne Singer