

STATE OF NEW MEXICO  
SAN JUAN COUNTY  
ELEVENTH JUDICIAL DISTRICT COURT

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED  
2017 NOV -3 PM 2:38

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

D-1116-CV-75-184  
Hon. James J. Wechsler  
Presiding Judge

Plaintiff,

SAN JUAN RIVER STREAM SYSTEM  
ADJUDICATION

v.

THE UNITED STATES OF AMERICA

*et al.*,

Defendants,

vs.

THE JICARILLA APACHE TRIBE and the  
NAVAJO NATION,

Defendant-Intervenors.

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**STATEMENT OF THE STATE NEW MEXICO CONCERNING BRIEFING ON THE  
FIFTH AMENDED CASE MANAGEMENT ORDER**

As directed by the Court's September 29, 2017 *Order Concerning Briefing on the Fifth Amended Case Management Order*, Plaintiff, State of New Mexico, ("State") provides its Statement.

The *Fifth Amended Case Management Order* ("5<sup>th</sup> CMO") should be amended to omit the requirement for re-adjudication of "[s]urface water irrigation rights, that arise under state law and that were formerly adjudicated in the Echo Ditch Decree" for the remaining sections of the San Juan River stream system or basin ("SJRB"). 5<sup>th</sup> CMO at 3.

The 5<sup>th</sup> CMO divided the SJRB into five sections, and identified six "general categories of water rights claims within each section that must be adjudicated." *Id.* The five sections are:

(1) La Plata, (2) Animas, (3) San Juan, (4) Los Pinos and Navajo Rivers, and (5) the lands and water rights within the Hammond Conservancy District. The six general categories of water rights identified in the 5<sup>th</sup> CMO should be modified as follows:

1. La Plata Section (Section 1) only:

A. Completion of Surface water irrigation rights that arise under state law ~~and that were formerly adjudicated~~ (but not quantified) in the Echo Ditch Decree;

B.2. Surface water domestic and stock water rights that arise under state law and that were adjudicated (but not quantified) in the Echo Ditch Decree.

32. -All Sections: Permitted and pre-basin groundwater rights and all surface water rights that arise under state law and which were not adjudicated in the Echo Ditch Decree.

43. All Sections: Claims of the United States.

5. Surface Water Rights.

6. Other Claims.

Except for the surface water irrigation rights in the La Plata section, all non-federal surface water irrigation rights existing as of 1948 were finally adjudicated as to all elements of a water right required by statute, NMSA 1978, Section 72-4-19 (1907), in the Echo Ditch Decree. The Office of the State Engineer has been and is currently administering all of the water rights in the SJRB according to the adjudication of those rights in the Echo Ditch Decree and permits and licenses issued by the State Engineer. Re-adjudicating water rights already finally and completely determined in the EDD would only create uncertainty for those water rights owners in the SJRB, and for the administration of those water rights by the OSE.

The substantive issues underlying whether any water rights might be affected in a legally cognizable way by reducing the scope of the adjudication to exclude water rights previously adjudicated will need to be briefed by the parties at a later date, and may result in further amendments to the 5<sup>th</sup> CMO.

Respectfully submitted,

/s/ Kelly Brooks Smith  
Kelly Brooks Smith  
Edward C. Bagley  
Arianne Singer  
Special Assistant Attorneys General  
Office of the State Engineer  
P. O. Box 25102  
Santa Fe, NM 87504-5102  
505/827-6150; 505/827-3887 (fax)

#### CERTIFICATE OF SERVICE

I certify that I have caused a copy of the above to be served by E-mail to to all Counsel on the Electronic Service List for D-1116-CV-7500184 by using wrattorney-gip@nmcourts.gov on November 3, 2017.

/s/ Kelly Brooks Smith  
Kelly Brooks Smith