

DISTRICT COURT
SAN JUAN COUNTY NM
FILED *DJK*
2017 DEC 20 AM 11:10

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

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

Plaintiff,

v.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

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

San Juan River Adjudication

vs.

THE JICARILLA APACHE TRIBE and
the NAVAJO NATION,

Defendants-Intervenors.

**SAN JUAN WATER COMMISSION'S RESPONSE TO THE NAVAJO NATION'S
PROPOSED MODIFICATION
TO THE FIFTH AMENDED CASE MANAGEMENT PLAN**

Pursuant to the Court's September 29, 2017, *Order Concerning Briefing on the Fifth Amended Case Management Order* ("Order"), San Juan Water Commission ("SJWC") hereby responds to the *Navajo Nation's Proposed Modification to the Fifth Amended Case Management Order*.¹ SJWC suggests further consideration of the Navajo Nation's proposal. Given the Court's admonition (Order at 1) that "[t]he parties shall not brief or address any substantive issue underlying the rights of any party," SJWC's response does not brief any underlying legal issue. SJWC respectfully requests that, should this Court elect to entertain any particular modification

¹ The Order refers to a "Fifth Amended Case Management Order," but that document actually is titled "Fifth Amended Case Management Plan." SJWC will use the Court's current nomenclature (abbreviated as "5th CMO"), as have the other parties.

to the 5th CMO, it provide the parties an opportunity to fully brief the legality of the modification.

Response to the Navajo Nation's Proposed Modification of the 5th CMO

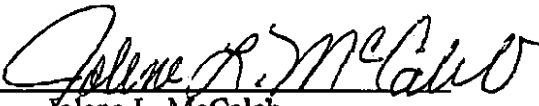
1. The Navajo Nation proposes (at 6-7) a procedure to expedite the re-adjudication of certain Echo Ditch Decree ("EDD") water rights. Basically, whenever the owner of an EDD water right applies to the State Engineer to transfer the water right to a new purpose of use, place of use, or point of diversion, he will jump to the front of the adjudication line and have the validity and elements of his water right determined by the Court before the State Engineer administrative action proceeds.

2. SJWC supports any effort to expedite this adjudication, including prompt Court consideration of any EDD water right that may be transferred through State Engineer administrative proceedings. The Court's adjudication of such rights will assure the Navajo Nation, SJWC and all other water right claimants in the San Juan River Basin that the validity and elements of transferred EDD rights will be determined by the Court, in accordance with state law, using uniform standards.

3. SJWC currently takes no position on the practicality or legality of the specific procedure set out in the Navajo Nation's proposal, including (at 7) the ability of all interested parties "to participate in the subfile proceedings to challenge any aspect of the water rights in the subfile" However, SJWC does support further consideration and analysis of the Navajo Nation's proposal by the parties and this Court.

Respectfully submitted,

TAYLOR & McCALEB, P.A.

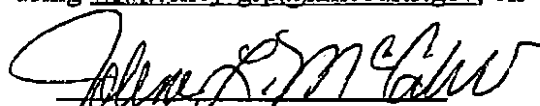
By: 
Jolene L. McCaleb
Elizabeth Newlin Taylor

P.O. Box 2540
Corrales, NM 87048-2540
(505) 888-6600
(505) 888-6640 (fax)
Attorneys for San Juan Water Commission

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the above to be served by e-mail to all counsel on the Electronic Service List for D-1116-CV-7500184 by using wrattorney-grp@nmcourts.gov, on December 6, 2017.

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Jolene L. McCaleb