

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED  
2012 FEB -3 PM 3: 07

1 STATE OF NEW MEXICO  
2 SAN JUAN COUNTY  
3 THE ELEVENTH JUDICIAL DISTRICT COURT

4 STATE OF NEW MEXICO, *ex rel.* STATE  
5 ENGINEER,  
6 Plaintiff,

CV-75-184  
HON. JAMES J. WECHSLER  
PRESIDING JUDGE

7 v.

SAN JUAN RIVER  
ADJUDICATION

8  
9 THE UNITED STATES OF AMERICA,  
10 *et al.*,

Claims of Navajo Nation  
Case No.: AB-07-1

11  
12 Defendants

13 **ORDER ESTABLISHING THE LEGAL STANDARDS FOR EVALUATING THE**  
14 **PROPOSED DECREES AND RESPECTIVE BURDENS OF PROOF**

15 THIS MATTER comes before the Court on the issues regarding the standard by which the  
16 Partial Final Decrees on the Navajo Nation water rights will be evaluated and approved for entry and  
17 the respective burdens of proof in this proceeding. The issues have been briefed extensively by the  
18 signatories to the Settlement Agreement (the United States of America, the State of New Mexico,  
19 and the Navajo Nation, or "the Settling Parties") and other claimants to the waters of the San Juan  
20 River Basin ("the Objectors"). Having reviewed the briefs and other submissions and the arguments  
21 of counsel at the November 14, 2011, and January 4, 2012, hearings, and being otherwise fully  
22 advised in the premises, the Court orders that the following will govern the remainder of these  
23 proceedings.

24 **I. Legal Standard for Approval**

25 The Settling Parties must demonstrate that the Proposed Decrees are "fair, adequate, and  
26 reasonable, and consistent with the public interest and applicable law." Scheduling Order for  
27 Proceedings on Objections to the Entry of the Jicarilla Apache Tribe Partial Final Decree, August

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1 11, 1998; Order Granting Joint Motion for Entry of a Partial Final Judgment and Decree on Water  
2 Rights of the Jicarilla Apache Tribe, February 24, 1999.

3       The Settling Parties have proposed that they comply with the standard enunciated in Jicarilla  
4 by showing that (a) the Settlement Agreement is the product of good faith, arms-length negotiations,  
5 (b) the provisions contained therein will reduce or eliminate impacts on junior water rights, (c) the  
6 settlement is less than the potential claims that could be secured at trial, and (d) the settlement is  
7 consistent with public policy and applicable law. Settling Parties' Supplemental Brief, January 3,  
8 2012, p. 6. With the addition of the specific requirement of the settlement being "fair, adequate and  
9 reasonable," this proposal encompasses the standard used by the Jicarilla Court.

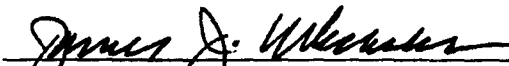
10       In addition, under the particular factual circumstances in this case, and with the inclusion of  
11 the "fair, adequate and reasonable" language, the public interest is served by adopting the elements  
12 of proof as proposed. In this regard, the Court has considered the relevant circumstances, which  
13 include the nature of this *inter se* proceeding addressing the water rights of the Navajo Nation in a  
14 single phase; the relatively brief, two-year time frame within which, according to the terms of the  
15 Settlement Agreement, a final decree on the Navajo Tribe's water rights must be entered; the large  
16 number of participants (over 2500), many of them filing *pro se*; and the large amount of water  
17 claimed relative to the San Juan Basin's total water supply.

## 18 **II. Respective Burdens**

19       The Settling Parties shall have the burden of production and the burden of persuasion to  
20 demonstrate that (a) the Settlement Agreement is the product of good faith, arms-length negotiations,  
21 (b) the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or  
22 eliminate impacts on junior water rights, (c) the settlement is less than the potential claims that could

1 be secured at trial, and (d) the settlement is fair, adequate and reasonable, and consistent with public  
2 policy and applicable law. The Settling Parties must first demonstrate that the Proposed Decrees  
3 satisfy these four elements by prima facie evidence to meet their burden of production. If the  
4 Settling Parties satisfy the initial burden of production, the burden of rebutting the Settling Parties'  
5 evidence shall shift to the Objectors. The Settling Parties, however, shall retain the burden of  
6 persuasion by a preponderance of the evidence. The Objectors need not demonstrate injury to their  
7 own water rights claims in order to state a cognizable objection.

8 **IT IS SO ORDERED.**

9  
10   
11 James J. Wechsler  
12 Presiding Judge