

**Description** AB-07-1 Mtn to Extend

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

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

Vs.

THE UNITED STATES OF AMERICA, et al.  
Defendant.

Vs.

THE JICARILLA APACHE NATION,,  
and

THE NAVAJO NATION  
Defendant-Intervenors.

JUDGE: JAMES J WECHSLER

TYPE OF PROCEEDINGS: Motions to extend deadlines

FOR THE PLAINTIFF: VARIOUS

FOR THE DEFENDANT: VARIOUS

MONITOR: LORESSA BACHERT

MACHINE TYPE: FTR GOLD REPORTER

**Date**

10/25/2012 **Location** Courtroom4

Time	Speaker	
10:31:06 AM	J	CALLS CASE AB-07-1
10:31:29 AM		VARIOUS MATTERS TO ADDRESS
10:31:35 AM	J	ASK COUNSEL TO ENTER APPEARANCE STARTING WITH COUNSEL IN COURTROOM
10:31:43 AM	GUSS GUARINO	UNITED STATES
10:32:02 AM	JOHN UTTON	STATE OF NM
10:32:05 AM	ARIANNE SINGER	STATE OF NM
10:32:12 AM	JOLENE MCCALED	SAN JUAN WATER COMMISSION
10:32:16 AM	LIZ TAYLOR	SAN JUAN WATER COMMISSION
10:32:20 AM	CASSAND RA MALONE AND DUSTIN BREEN	CITIES OF BLOOMFIELD AND AZTEC
10:32:27 AM	GARY RISLEY	LPAA
10:32:35 AM	RICK TULLEY	B SQUARE RANCH LLC ET AL
10:32:44 AM	GARY HORNER	PROPRIA PERSONA
10:32:48 AM	VICTOR MARSHAL L	NOW CALLING OURSELVES COMMUNITY DITCH DEFENDANTS
10:32:58 AM	HERB BECKER	JICARILLA APACHE
10:33:02 AM	JOE SAWYER	SAN JUAN COUNTY
10:33:05 AM	ROBERT E OXFORD	PRO SE
10:33:08 AM	PRISCILLA SHANNON	MCCARTY ESTATE
10:33:16 AM	J	WHO APPEARS ON THE TELEPHONE
10:33:27 AM	EVERYON E SPEAKI NG AT ONCE	
10:33:29 AM	J	OK HOLD ON A MINUTE LETS DO IT THIS WAY. MR RANKIN
10:33:45 AM	ADAM RANKIN	ENTERPRISE FIELD SERVICES ? (INAUDIBLE) AND EL PASO NATURAL GAS COMPANY

10:33:46 AM	J	OK MR RANKIN YOUR CONNECTION IS BREAKING UP SO WE WILL SEE IF THAT IMPROVES IF YOU NEED TO ADDRESS THE COURT LATER
10:33:58 AM	J	CALLS CELENE HAWKINS
10:33:59 AM	CELENE HAWKINS	I AM PRESENT
10:34:06 AM	J	CALLS CHRISTINA SHEEHAN
10:34:08 AM	SARA STEVENS ON	FOR CHRISTINA SHEEHAN (INAUDIBLE)
10:34:33 AM	J	CALLS DAVID GEHLERT
10:34:35 AM	DAVID GEHLERT	APPEARING ON BEHALF OF THE UNITED STATES AND SPECIFICALLY THE BUREAU OF RECLAMATION. I DO NOT PLAN ON MAKING ANY COMMENTS UNLESS NECESSARY
10:34:46 AM	J	CALLS JIM BROCKMAN
10:34:49 AM	JIM BROCKMAN	I AM HERE ON BEHALF OF THE CITY OF GALLUP
10:34:56 AM	J	CALLS JAY STEIN
10:34:57 AM	JAY STEIN	I AM HERE ON BEHALF OF ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
10:35:11 AM	J	CALLS KYLE HARWOOD
10:35:12 AM	KYLE HARWOOD	ON BEHALF OF HMC LEASING
10:35:17 AM	J	CALLS LEE BERGIN
10:35:19 AM	LEE BERGIN	NO
10:35:24 AM	UNIDENTIFIED	INAUDIBLE
10:35:33 AM	J	COULD NOT UNDERSTAND
10:35:38 AM	???	?? WILL BE JOINING US LATER IN THE HEARING IF IT GOES LATE ENOUGH THAT I HAVE TO DROP OFF THE CALL
10:35:45 AM	J	ASKING CLERK IF THERE IS SOMETHING WE CAN DO TO HELP WITH BREAKING UP
10:36:17 AM		TRYING TO DETERMINE WHY THE SPEAKER IS NOT CLEAR
10:36:18 AM		CONTINUES
10:36:25 AM		CALLS L ORTIZ
10:36:33 AM		CALLS MARIA OBRIEN
10:36:38 AM	SARA STEVENS ON	ALSO SARA STEVENSON APPEARING FOR MARIA OBRIEN ON BEHALF OF ?? (INAUDIBLE)
10:36:41 AM		AND YOU ARE COMING IN MUCH BETTER NOW TOO
10:36:48 AM		CALLS MOZELLE MICHAUX
10:36:53 AM	SARA STEVENS ON	MOZELLE IS MARIA OBRIEN'S ASSISTANT AND WILL NOT BE ENTERING AN APPEARANCE
10:37:00 AM	J	CALLS REBECCA DEMPSEY

10:37:07 AM	REBECCA DEMPSEY	REPRESENTING BLOOMFIELD SCHOOLS
10:37:14 AM	J	CALLS SETH FULLERTON
10:37:18 AM	SETH FULLERT ON	ON BEHALF OF THE CITY OF ESPANOLA-
10:37:32 AM	J	ANYONE ELSE ON THE PHONE WHO I HAVE NOT MENTIONED
10:37:47 AM		WOULD LIKE TO PROCEED JOINTLY ON THE MOTION FOR EXTENSION AND THE MOTION TO DISMISS
10:37:57 AM		I WOULD LIKE THE NAVAJO NATION TO PROCEED WITH ITS MOTION TO DISMISS ITS ARGUMENT AND THEN I GUESS ANY PARTY THAT I GUESS THE US JOINED IN THAT MOTION AS WELL AND THEN WE WOULD HEAR FROM THE NON- SETTLING PARTIES THAT RESPONDED TO THAT MOTION AND IN CONJUNCTION WITH THAT I WOULD LIKE TO ALSO HEAR FROM THE NON-SETTLING PARTIES WITH RESPECT TO THE MOTION FOR EXTENSION
10:38:28 AM		SO YOU WOULD BE COMBINING YOUR ARGUMENTS WITH RESPECT TO THE MOTION FOR EXTENSION
10:38:59 AM		AFTER WE ADDRESS THESE MOTIONS WE WILL TURN TO THE OTHER TWO MOTIONS WHICH WE HAVE BEFORE US
10:38:59 AM		I KNOW WE HAVE ONE WITH REGARD TO STRIKE NOTICES, I AM SORRY I AM GROUPING, AND THEN WE HAVE THE MOTIONS TO COMPEL
10:39:24 AM		MR POLLACK I BELIEVE YOU ARE FIRST UP
10:39:28 AM	STANLEY POLLACK	HERE THIS MORNING ON THE NAVAJO NATIONS MOTION TO DISMISS CERTAIN PARTIES FROM THIS PROCEEDING THAT DID NOT COMPLY WITH THE VARIOUS SCHEDULING ORDERS OF THE COURT REQUIRING OBJECTIONS OR RESPONSES TO BE FILED BY SEPTEMBER 21ST TOGETHER WITH DISCLOSURE STATEMENTS
10:40:02 AM		THESE ORDERS OF THE COURT HAVE BEEN IN PLACE FOR QUITE SOME TIME, THE PARTIES TO THIS ACTION HAVE KNOWN ABOUT THE NAVAJO NATION SETTLEMENT FOR A VERY LONG TIME,
10:40:15 AM		SPECIFICALLY THE SETTLING PARTIES THE FILED A MOTION FOR ENTRY OF THE SETTLEMENT DECREES BACK ON JANUARY 3RD OF LAST YEAR
10:40:30 AM		PARTIES HAVE BEEN AWARE OF THE SUBSTANCE OF THE NAVAJO NATION SETTLEMENT FOR A LONG TIME AND IN FACT THE SPECIFICS OF THE PARTIAL FINAL DECREE
10:40:41 AM		THIS COURT HAS ISSUED A SERIES OF SCHEDULING ORDERS, THE COURT HAS INHERANT AUTHORITY TO CONTROL THIS LITIGATION. WE ACKNOWLEDGE THAT THIS LITIGATION HAS A LOT OF PARTIES A LOT OF COMPLEX ISSUES
10:40:55 AM		THERE IS A LOT OF COMPLEXITY

10:41:03 AM	IN EACH OF THOSE SCHEDULING ORDERS THE PARTIES WERE ADVISED THAT FAILURE TO COMPLY WITH THE ORDERS AND THE SCHEDULES COULD RESULT IN DISMISSAL OF OBJECTIONS AND SPECIFICALLY THE FAILURE TO COMPLY WITH THE REQUIREMENT THAT OBJECTIONS OR RESPONSES AND DISCLOSURES BE FILED BY SEPTEMBER 21ST WAS MADE ABUNDANTLY CLEAR
10:41:23 AM	THE COURT DID THIS NOT ONCE...BUT ACTUALLY FOUR TIMES IN THE COURSE OF THREE SCHEDULING ORDERS, AND IN EACH CASE THE ADMONISION TO THE PARTIES WAS PUT IN BOLD LETTERS
10:41:46 AM	A NUMBER OF PARTIES CHOSE TO IGNORE THE SCHEDULING ORDER AT THEIR PERIL
10:41:52 AM	THE NAVAJO NATION BELIEVES UNDER THESE CIRCUMSTANCES, AND WE REALIZE THAT DISMISSAL IS IS A DRASTIC SANCTION
10:41:57 AM	BUT UNDER THESE CIRCUMSTANCES DISMISSAL IS AN APPROPRIATE SANCTION
10:42:06 AM	ALTHOUGH THERE SEEMS TO BE AN ABSENCE OF LAW IN NEW MEXICO RELATIVE TO THIS, WE WERE ABLE TO FIND FEDERAL CASES THAT DID INTERPRET THE FAILURE TO COMPLY WITH COURT SCHEDULING ORDERS
10:42:21 AM	THOSE CASES CITE 5 SETS OF STANDARDS
10:42:27 AM	THE FIRST CONSIDERATION FOR THE COURT IS WHETHER THE DISMISSAL WILL RESULT IN EXPEDITOUS RESOLUTION OF THE CASE
10:42:34 AM	HERE WE BELIEVE THAT DISMISSAL IS WARRANTED, THE COURT WARNED THAT DISMISSAL WAS A POSSIBLE SANCTION IN ORDER FOR THE COURT TO STAY ON SCHEDULE
10:42:42 AM	SECOND THE COURT NEEDS TO MANAGE ITS DOCKET
10:42:58 AM	THE POSSIBILITY OF DISMISSAL
10:43:00 AM	THE THIRD CONSIDERATION FOR THE COURT IS THETHER THERE IS A RISK OF PREJUDICE AND HERE ALTHOUGH THE PARTIES THAT FAILED TO COMPLY ALLEGE THAT THERE IS NO PREJUDICE TO THE SETTLING PARTIES
10:43:23 AM	HERE THE SEPTEMBER 21ST DEADLINE WAS FOLLOWED UP BY A VERY SHORT DEADLINE OF OCTOBER 5TH FOR THE SETTLING PARTIES TO FILE AND PROPOUND THEIR DISCOVERY ON THE PARTIES THAT ISSUED RESPONSES OR OBJECTIONS
10:43:36 AM	THE NON-SETTLING PARTIES HAD QUITE A LONG TIME IN WHICH THEY COULD PROPOUND DISCOVERY ON THE SETTLING PARTIES
10:43:50 AM	IN THIS INSTANCE THE SETTLING PARTIES HAD 14 DAYS BY OCTOBER 5TH
10:44:02 AM	THE PARTIES CHOSE NOT TO COMPLY WITH THE COURTS SCHEDULING ORDER AT GREAT PREJUDICE TO THE ABILITY OF THE SETTLING PARTIES TO PROPOUND DISCOVERY

10:44:07 AM		SO IN THE CASE OF THE NAVAJO NATION THE ONLY DISCOVERY THAT WE PROPOUNDED WE THE DISCOVERY ON THE SAN JUAN WATER COMMISSION WHICH IS AN ENTITY THAT FULLY COMPLIED WITH THE COURTS SCHEDULING ORDER
10:44:19 AM		THEY DID FILE THEIR OBJECTIONS AND DISCLOSURES BY SEPTEMBER 21ST
10:44:26 AM	J	WHAT ABOUT THE OTHER SETTLING PARTIES
10:44:39 AM	POLLACK	THE UNITED STATES FILED A VERY GENERAL DISCOVERY ON A NUMBER OF THE PARTIES. EVEN TO THIS DAY WE DO NOT EVEN KNOW WHO ALL OF THE OBJECTING PARTIES ARE
10:44:58 AM	J	BY THAT YOU ARE SAYING.... YOU KNOW THOSE WHO HAVE FILED EVEN THOUGH THEY HAVE FILED LATE, BUT YOU ARE SAYING THAT THERE ARE STILL THOSE WHO HAVE FILED NOTICES OF INTENT TO PARTICIPATE WHO MAY HAVE NOT FILED OBJECTIONS BUT MAY STILL HAVE OBJECTIONS
10:45:11 AM	POLLACK	YES, IN FACT YOUR HONOR ISSUED AN ORDER FIRST DIRECTING PEOPLE TO FILE OBJECTIONS IF THEY THEM BY OCTOBER 19TH AND THEN YOU WITHDREW THAT ORDER
10:45:26 AM		SO PRESUMABLY THE OCTOBER 19TH DIRECTIVE TO THE PARTIES THAT MIGHT WANT TO OBJECT IS NOW NULL AND VOID SO PRESUMABLY THERE ARE PEOPLE OUT THERE THAT DID NOT COMPLY
10:45:36 AM		WE DO KNOW WHO FILED OBJECTIONS AND A NUMBER OF THOSE PARTIES... THE SJWC TIMELY FILED BOTH THEIR OBJECTIONS AND THEIR DISCLOSURES AS DID CONOCO PHILLIPS AS DID MR HORNER AND A NUMBER OF PARTIES FILED IN SUPPORT OF THE SETTLEMENT THEY HAVE TIMELY FILED THE UTE MOUNTAIN UTE TRIBE, THE JICARILLA APACHE NATION...
10:46:03 AM	J	I HAVE GONE THROUGH THE LIST
10:46:07 AM		WHAT WE ARE LEFT WITH IS THE PARTIES THAT HAVE FILED IN A MATTER CONTRARY TO THE COURTS ORDER
10:46:20 AM		B SQUARE RANCH FILED THEIR OBJECTIONS ON OCTOBER 1ST
10:46:26 AM		THE LA PLATA INTERESTS FILED THEIRS ON OCTOBER 3RD ... 2 DAYS BEFORE WE WERE TO FILE DISCOVERY ON PEOPLE
10:46:39 AM		MR MARSHALL FILED HIS OBJECTIONS ON OCTOBER 12TH ON BEHALF OF THE COMMUNITY DITCHES
10:46:47 AM		MR OXFORD FILED HIS ON OCTOBER 19TH
10:46:57 AM		SJ COUNTY FILED THEIRS ON OCTOBER 10TH
10:47:00 AM		THE CITIES ACTUALLY MADE A TIMELY FILING OF THEIR OBJECTIONS BUT THEY WAITED UNTIL OCTOBER 9TH WELL AFTER THE OCTOBER 5TH DEADLINE IN TERMS OF FILING THEIR DISCLOSURES

10:47:14 AM		BLOOMFIELD SCHOOLS ALSO FILED AN OBJECTION ON A TIMELY MANNER, JOINING IN THE CITIES ON SEPTEMBER 21ST. THEY FILED THEIR DISCLOSURES AGAIN JOINING WITH THE CITIES ON OCTOBER 12TH
10:47:32 AM		ALL OF THESE PARTIES ARE OUT OF COMPLIANCE, MANY OF WHOM FILED OBJECTIONS OR DISCLOSURES AFTER THE OCTOBER 5TH DEADLINE THUS PREJUDICING OUR ABILITY TO PROPOUND DISCOVERY ON THEM
10:47:48 AM		THE ONLY PARTY THAT THE NAVAJO NATION PROPOUNDED DISCOVERY ON WAS SJ WATER COMMISSION THE OTHER PARTIES THAT WE MIGHT HAVE WANTED DISCOVERY FROM THE UNITED STATES FILED SUFFICIENT DISCOVERY FROM THOSE INDIVIDUALS SO THERE WAS PREJUDICE HERE
10:48:06 AM	J	I AM MISSING THAT ONE YOU SAID THE OTHER ONES THAT YOU MIGHT HAVE WANTED TO THE UNITED STATES DID
10:48:14 AM	POLLACK	ANSWERS GIVING EXAMPLES
10:48:33 AM	J	SO FOR WHOM IS THE US DISCOVERY NOT SUFFICIENT FOR THE NAVAJO NATION
10:48:55 AM	POLLACK	THOSE PARTIES THAT ARE OUT OF COMPLIANCE (LISTING)
10:49:01 AM	J	DID NOT THE THE US FILE DISCOVERY ON SOME OF THOSE
10:49:06 AM	POLLACK	THEY DID NOT FILE DISCOVERY...
10:49:21 AM	GUSS GUARINO	WHEN THE OCTOBER 5TH DEADLINE WAS APPROACHING THE COURT ORDERED THE SETTLING PARTIES TO FILE THEIR DISCOVERY REQUESTS
10:49:30 AM	J	REMINDS EVERYONE TO STATE NAME BEFORE SPEAKING
10:50:16 AM		I SERVED DISCOVERY REQUESTS BASED ON THE INFORMATION I HAD TO ... THE ALBUQUERQUE... THE B SQUARE RANCH...(LISTING PARTIES)
10:51:11 AM		BUT I FILED AS BEST I COULD BASED ON THE INFORMATION I HAD
10:51:14 AM		LA PLATA ACEQUIA FILED 2 DAYS BEFORE I WAS SUPPOSED TO SUBMIT DISCOVERY AND I MADE EXTREME EFFORT TO TRY TO INCORPORATE THEIR OBJECTIONS INTO WHAT WE WERE DOING
10:51:26 AM		WHAT THEY DID IS SAY I AM ADOPTING ALL OF THE OTHER OBJECTIONS THAT HAVE BEEN FILED WHICH IS SOMETHING THAT THEY COULD HAVE DONE ON THE 21ST AS WELL
10:51:32 AM		FOR FOLKS THAT I DID NOT HAVE OBJECTIONS FROM (LISTING) I ASKED QUESTIONS SPECIFICALLY TO EACH ONE WHO WERE GOING TO BE OBJECTING TO IDENTIFY A NUMBER OF THINGS
10:52:10 AM		SO THOSE WERE THINGS THAT WE SHOULD NOT HAVE HAD TO ASK ON THE 5TH OF OCTOBER WE SHOULD HAVE KNOWN

10:52:22 AM		POINT OUT THAT MR MARSHALL FILED 84 PAGES WORTH OF OBJECTION MATERIAL, 39 PAGES BEING SPECIFIC OBJECTIONS THAT HAD NOTHING TO DO WITH THE DISCOVERY THAT WE PROVIDED
10:52:45 AM		THOSE WERE ALL OBJECTIONS THAT WERE VERY CLEARLY IN HIS HANDS BY THE 21ST
10:52:53 AM	POLLACK	MR MARSHALLS DISCOVERY IS A GOOD CASE IN POINT (ELABORATES)
10:53:18 AM		WE WOULD WANT TO KNOW WHAT THE FACTUAL BASIS IS FOR ALL OF THOSE ALLEGATIONS, WHO HE INTENDS TO CALL
10:53:27 AM		WE WERE DENIED THE OPPORTUNITY
10:53:39 AM		CLEARLY THERE WAS PREJUDICE IN THE DELAY
10:53:39 AM		THE NON-SETTLING PARTIES THAT ARE OUT OF COMPLIANCE ARE ARGUING THAT THEY FILED A MOTION FOR EXTENSION OF TIME AND THAT THE MOTION ELIMINATED THE NEED FOR THEM TO COMPLY WITH THE COURTS SCHEDULING ORDER
10:53:58 AM		IT IS OUR POSITION THAT FILING A MOTION FOR EXTENSION OF TIME DOES NOT RELIEVE THEM OF THE OBLIGATION TO COMPLY WITH THE SCHEDULING ORDER
10:54:08 AM		IN THE MOTION FOR EXTENSION OF TIME THEY DO NOT EVEN MAKE REFERENCE TO THE SEPTEMBER 21ST DEADLINE ... THEY ASKED FOR A BLANKET EXTENSION OF 120 DAYS OR 180 DAYS
10:54:25 AM	J	I KNOW THAT THE MOTION DID INCLUDE OR A LEAST SJWC'S MOTION DID INCLUDE REFERENCE TO EXTENDING THE DATE FOR FILING THE DATE FOR OBJECTIONS AND RESPONSES
10:54:43 AM	POLLACK	I DO NOT RECALL THAT BUT EH POINT HERE IS THAT SJWC DID FULLY COMPLY WITH THAT DEADLINE
10:54:57 AM		THE PROPER COURSE IS SIMPLY TO OBEY THE SCHEDULING ORDER
10:55:02 AM		GIVING AN EXAMPLE IF PARTIES BEFORE SUPREME COURT
10:55:35 AM		PARTICULARLY WHEN THE COURT ON NO LESS THAN 4 OCCASIONS PLUS THE SPECIAL MASTER ADMONISHING THE PARTIES BACK AT THE SCHEDULING CONFERENCE ON OCTOBER 3RD THAT THEY NEEDED TO COMPLY WITH THE SCHEDULING ORDER OR FACE DISMISSAL FROM THIS ACTION
10:55:52 AM		THE CITIES SITE TO A NUMBER OF CASES THAT STAND FOR A UNREMARKABLE PROPOSITION THAT A PARTY THAT CAN NOT COMPLY WITH A SCHEDULING ORDER SHOULD FILE A MOTION FOR EXTENSION
10:56:04 AM		NONE OF THOSE CASES SUPPORT THE NOTION THAT FILING A MOTION FOR EXTENSION OF TIME ACTION IS ACTUALLY A EXCUSE OR ELIMINATES THE NEED TO COMPLY
10:56:22 AM		IN ADDITION A NUMBER OF PARTIES HAVE ARGUED THAT THROUGHOUT THIS LITIGATION... HAVE FILED FOR MOTIONS FOR EXTENSIONS OF TIME



10:56:44 AM		THERE IS A BIG DIFFERENCE BETWEEN THE EXTENSIONS OF TIME THAT WERE REQUESTED BY THE US AND THE STATE OF NM
10:56:52 AM		THOSE EXTENSIONS OF TIME DID NOT TRIP ANY OTHER RESPONSIBILITY OF THE PARTIES
10:57:05 AM		IT JUST MEANT THAT THEY WOULD BE LATE IN...
10:57:13 AM		IT DID NOT AFFECT ANY OF THE DEADLINES THAT ANY OTHER PARTY HAD
10:57:23 AM		IN THIS INSTANCE THE NN WAS PREJUDICED BECAUSE FILING THAT MOTION FOR EXTENSION OF TIME AND NOT FILING THE RESPONSES THAT WERE DUE ON THE 21ST OR THE DISCLOSURES PREJUDICED US BECAUSE WE COULD NOT COMPLY WITH OUT OCTOBER 5TH DEADLINE FOR PROPOUNDING DISCOVERY
10:58:08 AM		THE FACT THAT SO MANY OF THE PARTIES HERE FILED EXTENSIONS AFTER THE NAVAJO NATION FILED MOTIONS TO DISMISS IS AN INDICATION THAT THEY WERE FULLY CAPABLE OF FILING THOSE OBJECTIONS AND DISCLOSURES ON SEPTEMBER 21ST AND THAT THEY COULD DO THAT WITHOUT THE NEED FOR ANY ADDITIONAL DISCOVERY AS THEY ALLEGE IN THEIR MOTIONS FOR EXTENSION
10:58:47 AM		IN THIS INSTANCE WE UNDERSTAND THAT DISMISSAL IS A DRASTIC SANCTION
10:59:00 AM		IN THIS INSTANCE WE HAD NO WAY TO COMPLY WITH YOUR ORDER FOR US TO PROPOUND DISCOVERY BY OCTOBER 5TH
10:59:07 AM		WE WERE PREJUDICED AND IN THIS CASE UNLIKE OTHER CASES WHERE THE MATTER OF DISMISSAL IS SIMPLY A MATTER OF DISCRETION BEFORE THE COURT
10:59:20 AM		THE COURT HAD WARNED ON NUMEROUS OCCASIONS THE PARTIES THE IMPORTANCE OF COMPLYING WITH THAT SEPTEMBER 1ST DEADLINE
10:59:29 AM		THE LAST CONSIDERATION IS WHETHER OR NOT A DISMISSAL WILL ENSURE A DECISION ON THE MERITS
10:59:37 AM		THIS IS AN INTER SE OF THE NAVAJO NATIONS WATER RIGHTS. WE ARE NOT ADJUDICATING THE WATER RIGHTS OF ANY OTHER PARTY IN THIS CASE
10:59:53 AM		DISMISSAL OF THOSE PARTIES FROM THIS CASE WILL NOT PROHIBIT THE COURT FROM REACHING A FINAL JUDGMENT ON THE MERITS OF THE NAVAJO NATIONS CLAIMS AND WE SET THAT FORTH IN OUR MOTION AND THE BASIS FOR THAT
11:00:08 AM	J	DO I UNDERSTAND THAT THERE ARE NO LESSER SANCTIONS THAT WOULD SUFFICE IN THIS SITUATION
11:00:16 AM	POLLACK	LETS BE PRATICAL. IF THESE PARTIES ARE NOT DISMISSED FROM THE CASE AND THE COURT IS NOT OPEN TO TAKING NEW OBJECTIONS SO WE NOW HAVE A UNIVERSE OF PEOPLE WHO HAVE FILED, MANY OF THEM LATE, WE NOW HAVE TO DEAL WITH THE ISSUE OF HOW DO WE PROPOUND DISCOVERY

11:00:43 AM		WHAT WOULD BE THE DEADLINE FOR THE NAVAJO NATION TO PROPOUND THAT DISCOVERY ON THESE PARTIES THAT HAVE FILED LATE
11:00:53 AM		THE COURT HAS ALREADY DRASTICALLY REDUCED THE WINDOW OF OPPORTUNITY FOR THE SETTLING PARTIES TO CONDUCT DISCOVERY
11:00:57 AM		WE KNOW THAT DISCOVERY MUST BE COMPLETED BY FEBRUARY 1ST OF NEXT YEAR
11:01:02 AM		THE NON-SETTLING PARTIES HAVE A 7 MONTH WINDOW TO CONDUCT DISCOVERY AND THE SETTLING PARTIES HAVE APPROXIMATELY HALF OF THAT
11:01:18 AM		IF IN FACT THESE PARTIES ARE ALLOWED TO REMAIN IN THE CASE THAT WINDOW WILL SHRINK
11:01:40 AM	J	MR GUARINO
11:01:45 AM	GUSS GUARINO	I THINK WHAT IS BEFORE THE COURT IS A QUESTION WHETHER OR NOT A PARTY IS JUSTIFIED FOR NOT COMPLYING WITH A COURTS ORDER BASED UPON A MOTION FOR EXTENSION PREVIOUSLY FILED BUT NOT RULED ON
11:02:35 AM		IF YOU FAIL TO IGNORE IT YOU DO SO AT YOUR OWN PARRIL
11:03:00 AM		THAT IS THE APPROPRIATE SANCTION HERE
11:03:15 AM		WHEN THEY DID THIS, WHAT IS THE RISK OF PREJUDICE
11:03:39 AM		WE VE BRIEFED THIS SINCE LAST YEAR
11:03:48 AM		WE ALL KNEW WE HAD VERY COMPRESSED DEADLINES
11:04:05 AM		THE NON-SETTLING PARTIES HAD...
11:04:23 AM		THE RISK OF PREJUDICE FOR THEIR ACTIONS WAS EXTREME
11:04:55 AM		VERY RECENTLY WHAT THEY HAVE FILED IS
11:05:10 AM		MR OXFORD HAS ARTICULATED
11:05:27 AM		BUT WE HAVE HAD NOT OPPORTUNITY TO DEAL WITH THIS
11:05:49 AM		THERE IS A HOST OF FACTUAL ALLEGATIONS IN THERE
11:06:37 AM		I WOULD ASK THE COURT TO LOOK AT THE CITIES
11:06:49 AM		AND PARTICULARLY LOOK AT... I BELIEVE IT WAS A MAGISTRATE DECISION. I BELIEVE IT WAS A DISTRICT COURT
11:07:30 AM		THE RESPONDING PARTY ASKED FOR MORE TIME
11:07:43 AM		THE PL ATTORNEY SAID NO PROBLEM
11:08:02 AM		THE COURT IMMEDIATELY ACTED UPON THIS
11:08:26 AM		THIS CASE IS A GREAT EXAMPLE
11:08:36 AM		AND FOLLOWING THE COURTS ORDER PARTICULARLY AT THIS STAGE IN THE PROCEEDINGS WITH RESPECT TO THE OBJECTIONS OF THE NON-SETTLING PARTIES AND HOW IT EFFECTS THE SETTLING PARTIES ABILITY TO RESPOND

11:08:49 AM		THE SERIOUSNESS CAN NOT BE UNDERSTATED AND SO THEREFORE THE APPROPRIATE SANCTION HERE IS TO DISMISS THE OBJECTIONS THAT HAVE BEEN LATE FILED AND TO TREAT THEM AS THERE ARE NO OBJECTIONS FROM THESE PARTIES
11:08:58 AM		THIS MATTER WILL GO FORWARD AND BE HEARD TO THE EXTENT THAT THESE PROCEEDINGS SHOULD BE HEARD ON THE MERITS
11:09:21 AM		THE PARTIES WHO FAILED TO OBJECT AT THE TIME WHEN THEY WERE SUPPOSED TO OBJECT SHOULD NOTE BE FURTHER PARTICIPANTS IN THESE PROCEEDINGS
11:09:31 AM		I THINK I HAVE ADDRESSED ALL OF THE POINTS THAT I HAVE UNLESS THE COURT HAS QUESTIONS
11:09:55 AM	J	LETS TURN THEN TO I DO NOT BELIEVE THE STATE JOINED IN THAT, IS THAT CORRECT, OK
11:10:07 AM		MOVE ON TO THE NON-SETTLING PARTIES, ADDRESSING NOW BOTH MOTIONS YOU ARE RESPONDING WITH RESPECT TO THE MOTION TO DISMISS AND ADDRESSING AFIRMATIVELY THE MOTION FOR EXTENSION
11:10:27 AM	CASSANDRA MALONE	CITY OF AZTEC AND BLOOMFIELD
11:10:43 AM		FIRST POINT NEEDS TO BE MADE IS THAT THE CITIES DO UNDERSTAND THE NECESSITY OF FOLLOWING COURT ORDER
11:10:57 AM		THAT IS WHY THE CITIES FILED A MOTION FOR EXTENSION, AND IT WAS NOT ON THE 21ST. IT WAS PRIOR TO THAT. AND THAT WAS BECAUSE THE CITIES FELT THAT DUE TO THE WAY THAT THINGS HAD BEEN GOING THAT THERE WAS NOT ENOUGH INFORMATION TO FULLY DO THEIR INITIAL DISCLOSURES
11:11:14 AM		WHEN COUNSEL FOR THE NN WAS ADDRESSING THE PREJUDICE, HIS PREJUDICE ARGUMENT, HE MADE THE STATEMENT THAT HE DOES NOT KNOW WHO ALL OF THE PARTIES ARE
11:11:22 AM		I THINK IT IS IMPORTANT TO LOOK AT THE NON-SETTLING PARTIES BECAUSE ON THE ONE HAND YOU HAVE THE SAN JUAN WATER COMMISSION THAT FILED THEIR INITIAL DISCLOSURES AND OBJECTIONS ON OR BEFORE THE 21ST
11:11:42 AM		THEN YOU HAVE THE CITIES WHERE THE CITIES FILED OUR OBJECTIONS ON THE 20TH AND THEN PREVIOUSLY ASKED FOR AN EXTENSION AND THEN WHEN THIS COURT DID ITS COURT ORDER ON OCTOBER 5TH SAYING ALL PARTIES ARE TO FILE OBJECTIONS AND DISCLOSURES BY THE 19TH THEN FILED ON OCTOBER 9TH
11:12:16 AM	J	THERE IS NO QUESTION THAT THE NON-SETTLING PARTIES ARE NOT UNIFORM WITH RESPECT TO THESE ISSUES
11:12:17 AM	MALONE	CORRECT YOUR HONOR

11:12:17 AM	J	AND I AM SURE I AM GOING TO BE HEARING FROM THOSE WHO ARE A DIFFERENT POSITION FROM THE POSITION THAT THE CITIES ARE IN
11:12:29 AM	MALONE	MY POINT WITH THAT IS JUST THAT
11:12:49 AM		I THINK THE BIG QUESTIONS IS
11:13:04 AM		MY READING OF IT IS VERY DIFFERENT
11:13:16 AM		THE APPROPRIATE ACTION IS
11:13:24 AM		YESTERDAY THE NN FILED A REPLY
11:13:34 AM		I WOULD SAY THAT IT IS DISTINGUISHABLE
11:14:00 AM		THAT IS A COMPLETELY DIFFERENT SITUATION
11:14:22 AM		ANY EASY FIX FOR THAT IS TO EXTEND THE DEADLINE
11:14:42 AM		THIS DECEMBER 31ST DEADLINE CAN BE MOVED
11:15:06 AM		COUNSEL FOR THE US
11:15:20 AM		THE CITIES WOULD ASK
11:15:37 AM		SANCTION OF DISMISSAL IS VERY FINAL
11:16:05 AM		MY CLIENTS MAY HAVE
11:16:29 AM		UNDER THE 5 FACTORS THE
11:16:38 AM		THIS COURT HAS AN INTEREST
11:16:57 AM		DEADLINES ARE TOO TIGHT
11:17:05 AM		WHILE THERE MUST BE SPEEDY RESOLUTION THERE MUST ALSO BE JUST RESOLUTION
11:17:31 AM		AN EASY FIX WOULD BE TO EXTEND THAT OCTOBER 5 DEADLINE
11:18:07 AM		IT IS THE CITIES POSITION THAT NO SANCTIONS ARE WARRANTED
11:18:32 AM		MONOTARY SANCTIONS WHERE PARTIES, DENYING WITNESSES, DENYING
11:19:11 AM		THE CITIES ASKED FOR AND EXTENSION OF
11:19:23 AM		THE CITIES WOULD JOIN IN THEIR REQUEST
11:19:46 AM		THE STANDARD FOR WHETHER IT CAN BE
11:20:03 AM		THEY STATE THAT THE STANDARD
11:20:19 AM		THE REASON THAT WE ARE ASKING FOR AN EXTENSION
11:21:29 AM		THAT IS WHY WE ARE ASKING FOR ALL DEADLINES TO BE EXTENDED
11:21:55 AM		I DO NOT KNOW IF THE COURT WANTED TO HEAR THAT TODAY
11:22:11 AM	J	WELL WE ARE GOING TO HAVE A DISCOVERY CONFERENCE AFTER THE HEARING ON THE MOTION
11:23:04 AM	GARY RISLEY	KNOWN AS LPAA
11:23:20 AM		WILL BRIEFLY ADDRESS
11:23:39 AM		THE NON SETTLING PARTIES HAVE BEEN MEETING VERY FREQUENTLY
11:24:10 AM		WE ALL AGREED WE HAVE RECEIVED IN SOME DEGREE
11:25:37 AM		THE COURT HAS CONSIDERED NUMEROUS MOTIONS TO COMPEL

11:25:49 AM	J	LET ME ASK YOU IN TERMS OF, THIS CASE HAS BEEN AROUND FOR SOME TIME NOW AND YOU HAVE BEEN PARTICIPATING IN IT
11:25:56 AM	RISLEY	ABOUT 8 YEARS NOW
11:26:02 AM	J	I UNDERSTAND THERE ARE DOCUMENTS THAT YOU HAVE NOT SEEN AND THAT THEY HAVE BEEN PRODUCED IN THE COURSE OF DISCOVERY. I AM WONDERING IN TERMS OF FORMULATING YOUR POSITION THAT YOU ARE ELUDING TO AND I GUESS I CAN UNDERSTAND THAT YOU NEED TO REVIEW WHAT IS OUT THERE TO FULLY FORMULATE YOUR POSITION BUT WHY WERE YOU NOT ABLE TO FORMULATE A POSITION BY SEPTEMBER 21ST TO SET IT FORTH IN A OBJECTION OR A RESPONSE
11:26:53 AM	RISLEY	THE LIST THAT WAS FILED WITH THE COURT OF THE OBJECTION AND RESPONSE WAS PRETTY MUCH A GENERIC LIST AND WE WERE HOPING TO AVOID HAVING TO DO MULTIPLE SUPPLEMENTS TO THAT PARTICULAR LIST BASED ON THE INFORMATION. SOME OF THOSE MAY HAVE GONE AWAY IF WE HAD THE TIME TO DIGEST THE VOLUME OR IF WE HAD RECEIVED THE INFORMATION WE HAD REQUESTED
11:27:07 AM		IT HAS BEEN THE PRACTICE, MR TULLEY I THINK WILL AFFIRM AND MR HORNER PROBABLY WE HAVE BEEN PRACTICING IN THIS DISTRICT FOR A LONG TIME THAT A MOTION TO EXTEND IN GOOD FAITH IS GENERALLY CONSIDERED TO HAVE BEEN, THE EXTENSION IS GRANTED UNTIL THE COURT RULES UPON, STAYES OR TOLLS THE DEADLINE. SO WE WERE RELYING ON THE CUSTOMARY PRACTICE THAT WE WERE FAMILIAR WITH WE WERE CONCERNED ABOUT WAIVER OF THAT DEADLINE AND IF WE FILE SOMETHING DID WE WAIVE IT? BECAUSE WE FEEL THAT WE MAY HAVE OTHER OBJECTIONS THAT COME TO LIGHT BECAUSE OF WHAT WE DISCOVER IN THE DOCUMENTS THAT WE HAVE RECIEVED OR THE DOCUMENTS THAT WE HAVE NOT YET RECEIVED
11:28:14 AM		IF THE COURT WISHES TO SWITCH A LITTLE BIT TO THE MOTION TO DISMISS, THOSE MOTIONS WERE FILED IN GOOD FAITH
11:28:35 AM		WE DO NOT KNOW WHAT WE NEED YET BECAUSE WE DO NOT KNOW WHAT WE HAVE RECEIVED IN TOTAL AND OR WHAT WE HAVE NOT RECEIVED WITH REGARD TO DOCUMENTS THAT HAVE NOT BEEN PRODUCED OR QUESTIONS THAT HAVE NOT BEEN ANSWERED
11:29:02 AM	J	DOESNT THE PUT YOU AND WHEN I SAY YOU THE NON-SETTLING PARTIES WHO DID NOT FILE OBJECTIONS OR RESPONSES, DOESNT THAT PUT YOU IN A POSITION THAT YOU ARE UNILATERALLY DECIDING WHAT IS GOING TO HAPPEN IN THIS CASE WITH RESPECT TO THE DISCOVERY PERIOD WITH RESPECT TO WHETHER THERE AN EXTENSION IS NEEDED

11:29:26 AM		THE COURT HAS POINTED OUT THAT EVERYTHING IS INTEGRATED, THIS SCHEDULE IS AN INTEGRATED SCHEDULE. YOU HAVE HEARD THE SETTLING PARTIES ARGUE THIS MORNING AND IT IS TRUE, THAT THEIR DISCOVERY PERIOD WAS TIED IN A SHORT PERIOD OF TIME TIED TO THE OBJECTIONS. THE COURT HAS POINTED THAT OUT
11:29:50 AM		WHY SHOULD THE NON-SETTLING PARTIES, THOSE OF YOU WHO DID NOT FILE, DOES THAT NOT PUT YOU IN A POSITION OF MAKING UNILATERAL DECISIONS FOR THE COURT ABOUT WHAT IS GOING TO HAPPEN IN THIS CASE
11:30:17 AM	RISLEY	WE HAVE THE UTMOST RESPECT FOR THE COURT AND ITS ORDERS, AND I THINK THE ANSWER TO THAT QUESTION IS NO. NO MORE THAN WHEN THE SETTLING PARTIES EARLIER FILED MOTIONS AND REQUESTED EXTENSIONS OF TIME IN THE SAME PROCESS WAS INDULGED WITHOUT OBJECTION FROM US
11:30:27 AM	J	AND THE COURT NOTED ITS DISPLEASURE WITH THE STATE ON ONE OF THOSE MOTIONS FOR FILING A MOTION THE DAY THAT THE DOCUMENT WAS DUE
11:30:32 AM	RISLEY	THE MOTIONS WERE FILED I BELIEVE 7 TO 8 DAYS IN ADVANCE OF THIS DEADLINE. WE WERE LOOKING FOR A QUICK EXPEDITIOUS HEARING AND RULING UPON THOSE MOTIONS. WE THINK
11:30:45 AM	RISLEY	WE THINK THAT THERE
11:30:52 AM	J	SURE IT WOULD HAVE BEEN GREAT TO HAVE AND EXPEDITIOUS RULING BUT YOU NEED TO GIVE THE OTHER SIDE THE OPPORTUNITY TO RESPOND TO IT ALSO
11:31:03 AM	RISLEY	WHAT I THINK WE WOULD LOOK AT IS AGAIN WE ARE LOOKING AT THE OPPORTUNITY TO DO THIS IN AN EFFICIENT MANNER
11:31:17 AM		THE DID INITIALLY SAY FILE THEM BY THE 19TH AND WE ALL OBLIGED AND COMPLIED ALTHOUGH THE COURT DID WITHDRAW THAT ORDER
11:31:23 AM		WE DO WANT TO AVOID PREJUDICE. WE DID IN OUR PROPOSAL MOVE TO EXTEND DEADLINES FOR ALL PARTIES AND I WOULD STATE WITH REGARD TO THE CLAIM PREJUDICE WITH REGARD TO THE OCTOBER 5 DATE THAT THE APPROPRIATE ACTION BY THE COURT WOULD BE IF THEY CLAIM PREJUDICE THAT THEN THAT WOULD BE ADD THAT 15 DAYS TO THEIR DISCOVERY RESPONSE CUT OFF DEADLINES AND I DO NOT THINK THAT WOULD BE A MAJOR CHANGE OR EXPANSION OF THOSE RIGHTS, THAT WOULD ELIMINATE ANY CLAIM PREJUDICE
11:32:03 AM		CLARIFYING ABOUT RECOMMENDATION OF ADDING 15 DAYS
11:32:42 AM		I THINK THAT WOULD BE THE APPROPRIATE REMEDY AND PROTECTION IF THE COURT IF THE COURT DOES NOT CHOOSE TO GRANT THE MOTION FOR EXTENSION OF TIME THAT HAS BEEN FILED

<p>11:32:46 AM</p>	<p>WE HAVE BEEN AN ACTIVE PARTICIPANT IN THIS CASE WE HAVE BEEN ACTIVE, I THINK WE HAVE CONTRIBUTED FROM READING THE COURTS RULINGS IN THE PAST WITH REGARD TO OUR BRIEFING ETC AND OUR CLIENTS HAVE THAT SAME INTEREST.</p>
<p>11:33:00 AM</p>	<p>A LOT OF US ARE OF VERY LIMITED MEANS AND BUDGETS WITH REGARD TO WHATWE CAN DO AND TO DO THINGS 2 TO 3 TIMES CAN BE EXPENSIVE. WE WOULD LIKE THE OPPORTUNITY TO FULLY LITIGATE THE CASE AT THE SAME TIME WE WANT THE OPORTUNITY TO FAIRLY LITIGATE THE CASE WITHOUT PREJUDICE TO ANY OF THE PARTIES INVOLVED</p>
<p>11:33:16 AM</p>	<p>TO GO BACK TO THE MOTION TO EXTEND, THE STATE ARGUES THAT THE DECEMBER 31ST DEADLINE FOR VARIOUS REASON IS IN CONCRETE BUT IN FACT IT CAN NOT BE BECAUSE IF THIS COURT RULES, IF THERE IS A TRIAL, AND WE ANTICIPATE THERE WILL BE BECAUSE NOT EVERYBODY IS GOING TO AGREE NOT TO PURSUE THIS FURTHER AND I MAY BE ONE OF THEM</p>
<p>11:33:35 AM</p>	<p>IF THIS COURT RULES IN MID DECEMBER OR LATE DECEMBER THAT MAY MEET THE DECEMBER 31ST DEADLINE BUT DOES NOT ACCOUNT FOR THE APPEAL</p>
<p>11:33:52 AM</p>	<p>IF THERE IS AN APPEAL OF THIS CASE BY ANY PARTY THAT IS AGREAVED, I DO NOT THINK THE ORDER OF THIS COURT WILL NOT BE FINAL IN ANY WAY....</p>
<p>11:33:54 AM</p>	<p>SO AS WE LOOK FORWARD IS HOW TO MANAGE THIS TO MAKE SURE THAT ALL PARTIES ARE FULLY AND FAIRLY HAVE A CHANCE TO UNDERSTAND AND PRESENT THEIR CASE, THAT DECEMBER 31ST DEADLINE CAN NOT BE CONCRETE BECAUSE IF THERE IS AN APPEAL WHO KNOWS HOW LONG THAT WOULD TAKE</p>
<p>11:34:11 AM</p>	<p>I ASSUME THE COURT ORDER COULD NOT GO INTO EFFECT WITH REGARD OF THE NAVAJO NATION WATER RIGHTS UNTIL AFTER THAT APPEAL IS COMPLETE</p>
<p>11:34:26 AM</p>	<p>WE BELIEVE WHAT WE ARE ASKING FOR IS VERY REASONABLE IN LIGHT OF THE VOLUME</p>
<p>11:34:30 AM</p>	<p>WHAT THE MOVING PARTIES ARE ASKING FOR IS WHAT I CALL A TKO</p>
<p>11:34:38 AM</p>	<p>THERE IS NO SHOWING OF PREJUDICE, THEY DID NOT ALLEGE A SINGLE FACT OF PREJUDICE IN THEIR BRIEFS OTHER THAN TO SAY YOU ARE MESSING WITH OUR DISCOVERY DEADLINE GENERALLY. THE FIRST WE HEARD OF ANY FACTUAL ARGUMENT WAS HERE IN COURT TODAY</p>
<p>11:34:51 AM</p>	<p>THE COURT COULD ADJUST AND PROTECT THEM IF THE COURT DOES NOT GRANT THE MOTIONS TO EXTEND BY SHIFTING THOSE DATES BACK AND GIVING THEM A FEW MORE DAYS</p>

11:35:13 AM		MY CLIENTS THERE IS NO SURPRISE, THE UNITED STATES HAS ASKED US THE QUESTIONS BASED UPON OUR DISCLOSURE
11:35:23 AM		I DO FIND IT INTERESTING THAT THE NAVAJO NATION DID NOT FILE THEIR DISCOVERY WITH REGARD TO ANY OF THE OTHER PARTIES SO IF THE COURT DOES NOT GRANT THEIR MOTION TO DISMISS THESE PARTIES FROM THE CASE, HAVE THEY WAIVED THEIR RIGHT TO DISCOVERY WITH THOSE PARTIES. THEY DID NOT FILE A MOTION TO EXTEND, THEY DID NOT DO ANYTHING
11:35:45 AM		WE COULD PUT THE SHOE ON THE OTHER FOOT.
11:35:53 AM	J	THEIR ARGUMENT IS, IF YOU HAVE NOT FILED OBJECTIONS WE DO NOT KNOW WHAT WE NEED TO ASK YOU WE DO NOT EVEN KNOW IF YOU ARE OBJECTING. IT OPEN FOR OBJECTIONS OR RESPONSES
11:36:08 AM	RISLEY	THEY DID NOT FILE A MOTION TO EXTEND THE DEADLINE AND THEY CAN ASK QUESTIONS OF WHAT YOUR POSITION IS ON THE CASE THEY COULD ASK THE BASIC DISCOVERY QUESTIONS. THEY DID NOT
11:36:16 AM		I JUST WANT TO POINT OUT THAT THEY ARE BEING INCONSISTENT WITH WHAT THEY ARE ASKING FOR BECAUSE IF THE COURT DOES NOT GRANT THAT MOTION THEY COULD BE MAKING THE OPOSITE ARGUMENT TOMORROW WITH REGARD TO THEIR DISCOVERY REQUESTS
11:36:41 AM		WE HAVE EXTENSIVE DISCOVERY FROM THE UNITED STATES THAT WE ARE TRYING TO COMPLY WITH AND WE INTENT TO FILE A TIMELY RESPONSE TO THE DISCOVERY THAT WE RECEIVED FROM THE UNITED STATES THAT I BELIEVE IS DUE NEXT WEEK
11:37:04 AM		THE LOWRY CASE IS VERY INFORMATIVE OF NEW MEXICO PROCEDURE
11:37:24 AM		(SUMMARIZING) YOU LOOK AT THE COURSE OF CONDUCT OF AND INDIVIDUAL BEFORE YOU GO THROUGH THE EXTREME SANCTION OF KICKING SOMEBODY OUT OF THE LAWSUIT. THERE HAS BEEN NO COURSE OF REFUSAL TO COMPLY WITH COURT ORDERS
11:37:53 AM		SO THAT SANCTION IS EXTRIORDINARILY SEVERE
11:38:02 AM		THE OTHER THINGS THE NAVAJOS ARGUE
11:40:27 AM		WE ARE GOING TO HAVE DIFFERENT VIEWS
11:40:40 AM		IT IS EXTREMELY DIFFICULT TO RELY ON OTHER PARTIES
11:41:12 AM		WE ARE DOING ARE
11:41:17 AM		WE WOULD REQUEST THAT YOU GRANT THE MOTION
11:41:48 AM	VICTOR MARSHAL L	INDICATES NOT PLANNING ON SPEAKING
11:42:02 AM	J	YOU ARE NOT PLANNING ON ADDRESSING THE ISSUE
11:42:20 AM		ASKS FOR POINTS NOT TO BE REPEATED



11:42:43 AM	RICK TULLEY	B SQUARE RANCH
11:45:24 AM		APPEARED A YEAR AGO, REQUEST THE COURT TO APPEAR FOR DISCOVERY, SHOULDN'T HAVE HAD A DELAY
11:46:29 AM		OUR CLIENTS TIMELY JOINED IN
11:47:26 AM		FILED DISCLOSURE FOR PRELIMINARY OBJECTIONS
11:47:54 AM		SERVED DISCOVERY ON NOVEMBER 5TH
11:48:41 AM	J	MS. MCCALED
11:49:01 AM	KELLY	ADDRESS MOTION TO DISMISS
11:49:26 AM	UNKNOW N??	(ADDRESS THE COURT ON MOTION) IS
11:49:51 AM	J	DO YOU WANNA RESPOND
11:49:56 AM	KELLY	REPRESENT OUR CLIENTS SAN JUAN WATER COMMISSION
11:50:30 AM	J	UNDERSTAND YOUR REPRESENTING THE SAN JUAN WATER COMMISSION
11:50:55 AM	KELLY	HIGHLIGHT COUPLE OF EVENTS, NAVAJO NATION AND STATE OF NEW MEXICO TOOK ADVANTAGE
11:51:26 AM		ISSUED ORDER ON 3RD
11:51:45 AM	J	THAT IS NOT
11:51:55 AM	UNKNOW N??	OBJECT THIS LINE OF ARGUMENT
11:52:14 AM	J	WILL HEAR THE ARGUMENT, CAN UNDERSTAND THIS IS PROCEDURE
11:52:54 AM		PARTY, GO AHEAD WITH ARGUMENT
11:53:31 AM	KELLY	WILL MOVE ON
11:53:54 AM		ONE PREJUDICE IS THAT
11:54:10 AM		ASKING FOR SAN JUAN WATER COMMISSION TO BE TRUSTEES, DON'T WANNA BE TRUSTEES. BURDON TO TAKE ON
11:55:40 AM		THE OTHER PREJUDICE IS THAT ISSUE OF COSTS AND RESOURCES
11:57:33 AM	JOLENE MCCALED	WILL REDUCE NUMBER OF COMMENTS I EXPECTED TO MAKE THIS MORNING BUT THERE ARE SOME IMPORTANT CONCEPTS THAT I THINK NEED TO BE ADDRESSED WITH RESPECT TO THE WATER COMMISSIONS MOTION TO EXTEND THE DEADLINES 180 DAYS
11:57:59 AM		LIKE TO BEGIN WITH A BRIEF REFERENCE TO THE SCOPE OF THIS AMTTER THAT IS BEFORE US. ON APRIL 19TH YOUR HONOR ENTERED AN ORDER THAT SET FORTH THE BURDENS THAT NEED TO BE MET BY THE SETTLING PARTIES IN THIS MATTER, THOSE INCLUDE PROVING THAT THE SETTLEMENT IS THE PRODUCT OF A GOOD FAITH ARMS LENGTH NEGOTIATION, THAT IT REDUCES OR ELIMINATES THE IMPACTS ON JR WATER RIGHTS, THAT THE SETTLEMENT PROVIDES LESS THAN THE CLAIMS THAT COULD BE SECURED AT TRIAL, AND THAT THE SETTLEMENT IS CONSISTANT WITH PUBLIC POLICY AND APPLICABLE LAW

11:58:34 AM	LIKE ANY OTHER LAWSUIT THE PARTIES TO THIS CASE ARE ENTITLED TO FULLY EXPLORE THOSE BURDENS AND THE FACTUAL BASIS THAT THE SETTLING PARTIES WILL PUT FORTH TO ESTABLISH THAT THEY HAVE MET THEIR BURDEN
11:58:48 AM	IN OTHER WORDS TO BE ABLE TO FULLY PREPARE THIS CASE FOR LITIGATION AND PROVIDE YOUR HONOR WITH ALL OF THE RELEVANT INFORMATION FOR MAKING THOSE DECISIONS
11:59:02 AM	THIS CASE HAS BEEN ARTIFICIALLY CONSTRAINED BY THE CONGRESSIONAL DEADLINE OF DECEMBER 31ST 2013 HOWEVER THAT DEADLINE HAS NO REAL CONSEQUENCE EXCEPT TO ALLOW THE NAVAJO NATION TO BACK OUT OF THE SETTLEMENT AGREEMENT IF THE DEADLINE IS NOT SUBSTANTIALLY MET AND THIS COURT ALLOWS THE NAVAJO NATION TO DO SO
11:59:27 AM	DISPITE THE WARNINGS OF THE SETTLING PARTIES THAT WILL NEVER HAPPEN YOUR HONOR. AS A RESULT OF A MODEST EXTENSION OF THE DEADLINE TO ENSURE A FULL AND FAIR LITIGATION IN THIS CASE THERE IS NO WAY THAT THE SETTLING PARTIES COULD ARGUE THAT THE DEADLINES WERE NOT REASONABLY MET AND THEREFORE THE SETTLEMENT SHOULD BEEN ABOLISHED
12:00:01 PM	IT IS NOONES FAULT THAT THIS CASE HAS PROVEN TO INVOLVE A MASSIVE AMOUNT OF DISCOVERY. IN FACT THE NON-SETTLING PARTIES HAVE BEEN WARNING FOR YEARS THAT THERE WAS SIGNIFICANT DISCOVERY THAT NEEDED TO BE UNDERTAKEN AND HAVE ASKED BEGINNING BACK IN 2004 WITH MR. FELIX BRIONES THAT CERTAIN DISCOVERY BE ALLOWED TO PROCEED
12:00:21 PM	I BELIEVE THE COURT AT THAT TIME FAIRLY DETERMINED THAT BEFORE THE NAVAJO SETTLEMENT WAS ACTUALLY IN FRONT OF THE COURT THERE SHOULD BE NO DISCOVERY.
12:00:31 PM	THE SETTLEMENT MOTION WAS FILED IN JANUARY OF 2011, AND DISCOVERY IN THIS MATTER DID NOT REALLY PROCEED UNTIL AUGUST 17TH WHEN WE RECEIVED THE FIRST DISCOVERY RESPONSES FROM THE SETTLING PARTIES. THAT ESSENTIALLY LEAVES US WITH 5 AND 1/2 MONTHS TO REVIEW THE INFORMATION WE OBTAINED AND PREPARE OUR CASE FOR TRIAL INCLUDING PROVIDING INFORMATION TO EXPERT WITNESSES, TAKING DEPOSITIONS OF EXPERT WITNESSES, AND FACT WITNESSES
12:01:02 PM	THE UNITED STATES HAS PROVIDED 17 TECHNICAL ASSESSMENTS IN SUPPORT OF ITS STATEMENT OF CLAIMS.

12:01:10 PM	<p>THE PIA ISSUES ARE QUITE COMPLICATED. WE HAVE 400,000 DOCUMENTS TO REVIEW. THERE ARE MORE DOCUMENTS AVAILABLE AT VARIOUS LOCATIONS AROUND THE STATE, SOME OF WHICH MRS. TAYLOR AND I HAVE OBTAINED FROM THE NAVAJO NATION AT FORT DEFIANCE</p>
12:01:33 PM	<p>THIS IS A VERY COMPLEX CASE AND IT IS NOT ONE IN WHICH ISSUES CAN BE FAIRLY INVESTIGATED AND DECIDED AND A TRIAL PREPARED FOR IN A PERIOD OF 5 AND 1/2 MONTHS OF DISCOVERY</p>
12:01:49 PM	<p>TYPICALLY PREJUDICE TO THE OPPOSING PARTY IS NOT AN ISSUE THAT IS CONSIDERED WHEN THERE IS A REQUEST TO EXTEND DEADLINES, UNDER THE GOOD CAUSE STANDARD SAN JUAN WATER COMMISSION CHOSE TO ADDRESS IT IN ITS MOTION BECAUSE THAT IS THE MONTRA THAT WE HAVE HEARD CONTINUOUSLY IN THIS CASE IS THE PREJUDICE THAT WOULD RESULT IF THE CONGRESSIONAL DEADLINE IS NOT MET AND INDEED THAT IS THE BASIC RESPONSE THAT THE SETTLING PARTIES HAVE MADE TO OUR MOTION</p>
12:02:25 PM	<p>FOR SEVERAL REASONS THAT PREJUDICE IS COMPLETELY (INAUDIBLE)</p>
12:02:40 PM	<p>THE DECEMBER 31, 2013 DEADLINE FLOWS FROM THE PROVISIONS OF THE ORIGINAL 2005 SETTLEMENT AGREEMENT THAT WAS ENTERED INTO BETWEEN THE STATE OF NEW MEXICO AND THE NAVAJO NATION. ATTACHED TO THAT SETTLEMENT AGREEMENT WAS DRAFT LEGISLATION TO PRESENT TO CONGRESS THAT SET OUT THE SAME LITANY OF DEADLINES THAT ACTUALLY APPEAR IN THE CONGRESSIONAL LEGISLATION NOW. HOWEVER THE DEADLINES HAD MUCH EARLIER DATES ATTACHED TO THEM AND IN OUR REPLY BRIEF WE PROVIDED A CHART WITH THAT INFORMATION</p>
12:03:15 PM	<p>WHAT THAT SHOWS IS THAT WHEN THE NAVAJO NATION AND THE STATE OF NEW MEXICO ENTERED INTO A SETTLEMENT AGREEMENT THOSE KEY TERMS HAD DATES ANYWHERE FROM 3 TO 4 YEARS EARLIER THAN THE DATES THAT ARE NOW PRESENT IN THE FEDERAL LEGISLATION AND IN THE 2010 SETTLEMENT AGREEMENT</p>
12:03:35 PM	<p>THAT TELLS US THAT THOSE KEYS TERMS ARE NOT SO KEY AND WHEN IT IS IN THE NAVAJO NATIONS BEST INTEREST THEY HAVE NO PROBLEM EXTEND THOSE DEADLINES BY 3 TO 4 YEARS BUT THEY ARE NOW TRYING TO ARTIFICIALLY CONSTRAIN THIS LITIGATION TO THE DETRIMENT OF EVERY OTHER PARTY</p>

<p>12:04:02 PM</p>	<p>I FIND IT HARD TO BELIEVE THAT THE SETTLING PARTIES WITH A STRAIGHT FACE GIVEN THE PAST HISTORY OF THE EXTENSION OF THOSE DEADLINES WOULD ARGUE THAT THE NAVAJO NATION WOULD CHOOSE TO ABOLISH THE SETTLEMENT AGREEMENT, GIVE UP THE TRUST FUND, GIVE UP THE \$1 BILLION PIPELINE THAT IS NOW UNDER CONSTRUCTION SIMPLY BECAUSE THIS COURT ALLOWS THE NON-SETTLING PARTIES AN ADDITIONAL 6 MONTHS TO FAIRLY DEVELOP THEIR CASE</p>
<p>12:04:44 PM</p>	<p>THERE WERE A FEW OTHER PREJUDICE ARGUMENTS THAT WERE MADE BY THE SETTLING PARTIES. I ALREADY MENTIONED THAT IT IS IMPOSSIBLE TO BELIEVE THAT THE SETTLEMENT AGREEMENT WILL BE CANCELLED. THERE IS NOTHING IN THE LEGISLATION THAT INDICATES THAT THE NAVAJO SETTLEMENT AUTOMATICALLY EVAPORATES IF THE DECEMBER 31ST 2000 DEADLINE PASSES. (2013)</p>
<p>12:05:12 PM</p>	<p>WITH THE RESPECT TO THE ALLEGED INABILITY TO USE NIIP WATER IN NEW WAYS. THE SETTLING PARTIES CONTEND THAT THE NAVAJO NATION WILL SUFFER PREJUDICE BECAUSE THEY WILL NOT BE ABLE TO USE NIIP WATER FOR PURPOSES OTHER THAN AGRICULTURE OR IN PLACES OFF OF NAVAJO LANDS UNTIL THE PROPOSED DECREES ARE ENTERED</p>
<p>12:05:35 PM</p>	<p>THAT IS TRUE, HOWEVER FOR THE LAST FOUR YEARS THEY HAVE NOT HAD THAT RIGHT THEREFORE THERE IS NO PREJUDICE IN MAKING THEM WAIT AN ADDITIONAL 6 MONTHS TO GET THAT RIGHT</p>
<p>12:05:47 PM</p>	<p>MORE THAN THAT THERE IS NO EVIDENCE THAT THERE IS A SINGLE PROJECT WAITING IN THE WINGS FOR THEM TO USE THE NIIP WATER FOR NON-AGRICULTURAL PURPOSES LIKE HYDROPOWER GENERATION OR AQUACULTURE OR THE OTHER ISSUES THAT THEY HAVE RAISED</p>
<p>12:06:05 PM</p>	<p>BEFORE THEY CAN EVEN USE THE NIIP WATER OFF OF NAVAJO LANDS THE NAVAJO NATION HAS TO DEVELOP AN ADMINISTRATIVE PROTEST PROCESS AND ALLOW THE PROPOSED CHANGE IN PLACE AND PURPOSE OF USE TO FOLLOW THROUGH THAT PROCESS. THAT PROCESS DOES NOT YET EXIST SO THERE IS NO PREJUDICE WAITING AN ADDITIONAL 6 MONTHS</p>
<p>12:06:41 PM</p>	<p>SETTLING PARTIES HAVE NOT BEEN SHY IN ASKING FOR EXTENSIONS OF TIME IN THIS CASE, EVEN THOUGH THE RESULT OF THOSE EXTENSIONS WAS TO SQUEEZE THE AMOUNT OF TIME AVAILABLE FOR THE NON-SETTLING PARTIES TO CONDUCT DISCOVERY AND PREPARE FOR TRIAL</p>

12:06:50 PM		THE SETTLING PARTIES ASKED FOR AND RECEIVED EXTENSIONS OF TIME TO FILE THE PROPOSED SUPPLEMENTAL DECREE, TIME FILE THEIR INITIAL DISCLOSURES, AND TO FILE THE STATES STATEMENT OF LEGAL AND FACTUAL BASIS
12:07:02 PM		EACH OF THOSE DOCUMENTS WAS INTEGRAL TO THIS CASE
12:07:44 PM		THE SAN JUAN WATER COMMISSION HAS A GOOD FAITH BASIS FOR STATING IT IS SIMPLY NOT POSSIBLE TO COMPLETE DISCOVERY IN THE REMAINING TIME THAT WE HAVE
12:08:01 PM	J	YOUR GROUP OF NON-SETTLING PARTIES HAVE SUBMITTED A REPORT IN CONNECTION WITH THE DISCOVERY CONFERENCE THIS AFTERNOON AND AS PART OF THE SCHEDULE IT TALKS ABOUT THE OUTSET 150 DAYS FOR REVIEW OF THE PRODUCED DOCUMENTS .... AND WORK WITH EXPERT WITNESSES
12:08:42 PM		MY QUESTION IS CAN YOU JUSTIFY THAT 150 DAYS
12:08:51 PM	MCCALED	THE FIRST COMMENT THAT I HAVE TO MAKE AND IT IS AN ISSUE THAT WAS RAISED BY THE SETTLING PARTIES IS THAT IT IS NOT POSSIBLE FOR ANY OF US TO DEVOTE 100 PERCENT OF OUR TIME TO THIS INTER SE PROCEEDING
12:09:11 PM		OUR FIRM HAS HIRED A CONTRACT PARALEGAL TO HELP US ORGANIZE THE DOCUMENTS
12:09:19 PM		EVERY WEEK THE STATE OF NEW MEXICO IS POSTING NEW DOCUMENTS TO ITS WEBSITE BUT THERE IS NO WAY TO KEEP TRACK OF WHAT IS NEW AND WHAT IS NOT
12:09:29 PM		WE ARE HAVING TO CREATE A SYSTEM WHEREBY WE PRINT OUT DOCUMENTS, BATES NUMBER THEM AND THEN HAVE TO COMPARE THEM WITH NEW THINGS
12:09:41 PM	J	WE CAN ADDRESS THAT IN THE DISCOVERY CONFERENCE, WAYS OF STREAMLINING THAT
12:09:46 PM	MCCALED	BUT ALL OF THESE TASKS TAKE TIME
12:10:06 PM		MS TAYLOR AND I WENT TO FORT DEFIANCE TO OBTAIN DOCUMENTS FROM THE NAVAJO NATION.
12:10:13 PM		THAT WAS A 3 DAY TRIP
12:11:02 PM		ALTHOUGH THE SETTLING PARTIES KEEP SAYING WE HAVE GIVEN THEM INFORMATION, THEY HAVE WHAT THEY NEED. THE STATEMENT OF CLAIMS FILED BY THE UNITED STATES AND ALL OF THE SUPPORTING TECHNICAL REPORTS AND ANALYSIS ARE AFTER THE FACT JUSTIFICATIONS FOR A 7 YEAR OLD SETTLEMENT
12:11:27 PM		WE BELIEVE THERE IS MORE DATA OUT THERE THAT WE COULD USE TO CHALLENGE THE INFORMATION THAT HAS BEEN PROVIDED BY THE UNITED STATES WHO WAS NOT EVEN A PARTY TO THE INITIAL SETTLEMENT AGREEMENT

12:11:43 PM		WE ARE HAVING TO NOT JUST USE AND LOOK AT THE INFORMATION THAT THEY HAVE SPOON FED TO US BUT ACTUALLY GO...
12:11:47 PM	J	WELL NOT NECESSARILY SPOON FED THOUGH, IT IS IN RESPONSE TO YOU DISCOVERY REQUESTS
12:11:51 PM	MCCALED	I AM TALKING ABOUT, THE ARGUMENT THAT WE HAVE HAD EVERYTHING THAT WE NEEDED FOR A LONG TIME BECAUSE THEY PROVIDED THE US STATEMENT OF CLAIMS AND THE US TECHNICAL REPORT AND THE STATES TECHNICAL ASSESSMENT
12:12:05 PM	J	OK UNDERSTOOD BUT YOU HAVE ALSO HAD, NOW YOU HAVE HAD THE BENEFIT OF PROMELGATING DISCOVERY.
12:12:12 PM	MCCALED	THAT IS CORRECT
12:12:13 PM	J	YOU ARE IN THE PROCESS OF LOOKING THROUGH THE RESPONSES TO THE DISCOVERY AND YOU HAVE VOLUMINOUS DOCUMENTS AS WE KNOW SO IT IS NOT JUST MATERIAL THAT IS SPOON FED TO YOU. SO I GUESS MY NEXT QUESTION IS, I CAN UNDERSTAND THAT IS GOING TO TAKE TIME TO GO THROUGH THAT BUT INCLUDED WITHIN THIS 150 DAYS IS FOLLOWUP DISCOVERY SO... AND I THINK YOU WERE STARTING TO DISCUSS THAT. SO WHAT KIND OF FOLLOW UP DISCOVERY DO YOU ANTICIPATE
12:12:44 PM	MCCALED	MR. JOHN WHIPPLE WHO REPRESENTED THE STATE OF NEW MEXICO FOR MORE THAN A DECADE OR PERHAPS THAT IS NOT QUITE CORRECT... 6 OR 7 YEARS BEFORE THE ORIGINAL SETTLEMENT WAS SIGNED, HE WAS THE PRIMARY TECHNICAL ADVISOR TO THE STATE. HE HELPED PREPARE THE NEW MEXICO DEPLETION SCHEDULE AND AS WE GO THROUGH HIS NEW TECHNICAL ASSESSMENT THAT WAS FILED WE NEED TO BE ABLE TO COMPARE THAT WITH OTHER DATA THAT WE RECEIVED AND DOCUMENTS WE RECEIVED IN DISCOVERY TO DETERMINE WHETHER THERE ARE DISCREPENCIES AND IF THERE ARE THE ADDITION INFORMATION WE NEED TO GET
12:13:31 PM	J	BUT YOU ARE INTENDING TO DEPOSE MR WHIPPLE
12:13:31 PM	MCCALED	YES THAT IS CORRECT
12:13:36 PM	J	SO WHY IS ADDITIONAL PAPER DISCOVERY NECESSARY IF YOU ARE GOING TO DEPOSE HIM AND YOU CAN ASK HIM BY WAY OF, IN THE COURSE OF THE DEPOSITION
12:13:45 PM	MCCALED	BECAUSE YOU GET THE INFORMATION TO ASK HIM FROM THE PAPER DISCOVERY, ESPECIALLY WHEN YOU ARE DEALING WITH VERY TECHNICAL ISSUES AND THE HYDROLOGICAL ISSUES, UNLESS YOU HAVE THE DOCUMENTS IN FRONT OF YOU WITH THE CALCULATIONS AND THE BACKGROUND, YOU DO NOT EVEN KNOW WHERE TO START

12:14:04 PM	J	I THOUGH YOU WERE GETTING TO THE QUESTION OF MISSING DOCUMENTS, AM I NOT
12:14:09 PM	MCCALED	THAT IS ANOTHER ISSUE, I AM SORRY IF I MISUNDERSTOOD. WITH RESPECT TO MISSING DOCUMENTS, SAN JUAN WATER COMMISSION WAS AWARE THAT THERE WERE DOCUMENTS MISSING. THAT WE HAD NOT BEEN PROVIDED IN A PREVIOUS LAWSUIT AND WE HAD REQUESTED THOSE. THE STATE HAS NOW PRODUCED ALL OF THOSE
12:14:28 PM	J	I UNDERSTAND THAT... IS THAT NOT SOMETHING THAT YOU CAN ADDRESS IN THE COURSE OF A DEPOSITION
12:14:44 PM	MCCALED	ABOUT WHETHER THERE ARE MISSING DOCUMENTS
12:14:47 PM	J	ABOUT THE DOCUMENTS THAT YOU ANTICIPATED THAT HE KNOWS ABOUT THAT WERE NOT PRODUCED
12:14:55 PM	MCCALED	IF I DO NOT FIND OUT ABOUT THOSE DOCUMENTS UNTIL THE DEPOSITION THEN I NEED TO REQUEST THE DOCUMENTS AND THEN I NEED TO REDEPOSE MR WHIPPLE. SO TYPICALLY WHAT WE TRY TO DO TO MAKE EVERYTHING AS QUICK AND CONCISE AS POSSIBLE AND LESS BURDENSOME AS POSSIBLE IS TO GET THE DOCUMENTS UP FRONT SO THAT YOU HAVE EVERYTHING THAT YOU NEED BEFORE YOU ACTUALLY DEPOSE THE PERSON, ESPECIALLY AND EXPERT WITNESS
12:15:27 PM	J	IN THE DESIRED WORLD THAT IS THE WAY WE WANT TO DO IT AND I GUESS THE QUESTION IS WHEN WE HAVE DISCOVERY RESTRAINTS ON THE TIME PERIODS THAT ARE INVOLVED... THE POINT THAT I AM TRYING TO MAKE IS THAT WE HAVE WAYS OF DOING IT THAT MAY NOT BE THE DESIRED WAY BUT CAN NEVER THE LESS GET THE JOB DONE
12:15:51 PM	MCCALED	OF COURSE IN WHAT EVERY AMOUNT OF TIME WE HAVE WE WILL DO WHAT IS NECESSARY TO TRY TO COMPLETE AS MUCH DISCOVERY AS POSSIBLE. BUT JUST GIVEN OUR EXPERIENCE AND THE WAY THAT WE HAVE FOUND IT TYPICALLY WORKS BEST WE THOUGHT THAT WAS A LEGITIMATE REASON TO ASK FOR AN EXTENSION OF TIME IN ORDER TO HAVE FULL TIME TO THOROUGHLY REVIEW THE DOCUMENTS AND TO PREPARE FOR DEPOSITIONS
12:16:18 PM	MCCALED	I APPOLOGIZE FOR MISUNDERSTANDING
12:16:19 PM	J	MAYBE I AM CLIPPING MY THOUGHTS BECAUSE I AM TRYING TO EXPEDITE THINGS AS WELL
12:16:33 PM	J	MR HORNER
12:16:51 PM	GARY HORNER (UNIDENTIFIED)	APPEARS THAT ONE OF THE PRIMARY ARGUMENTS THAT THE SETTLING PARTIES ARE MAKING WITH REGARD TO PREJUDICE IS THAT BY THE NON-SETTLING PARTIES NOT HAVING FILED BY SEPTEMBER 21ST, THEY HAD DIFFICULTY WITH THEIR OCTOBER 5TH DEADLINE TO SERVE DISCOVERY...

12:17:18 PM	GUARINO	(OBJECTION) I OBJECT, IT IS THE SAME OBJECTION I HAD WITH REGARDS TO THE MOTION TO DISMISS. (INAUDIBLE)
12:17:24 PM	J	YOUR OBJECTION IS WELL TAKEN. I WILL SUSTAIN THE OBJECTION BECAUSE YOU DID NOT EVEN FILE AND IT IS NOT DIRECTED TO YOU AND YOU DID NOT EVEN FILE. BUT IF YOU HAVE SOMETHING THAT IS GOING TO BENEFIT THE ISSUE I WILL GIVE YOU A MOMENT TO ADDRESS IT
12:17:51 PM	GARY HORNER	MY CONCERN IS IF ALL THESE OTHER PEOPLE GO AWAY I MAY BE THE ONLY ONE LEFT. I DO NOT LIKE THAT AT ALL
12:17:56 PM	J	WELL YOU DO AN EXCELLENT JOB OF STANDING UP FOR YOURSELF MR HORNER
12:18:03 PM	HORNER	IT LOOKS LIKE ONE OF THEIR PRIMARY ARGUMENTS WAS THE PROBLEM THAT THEY WERE TALKING ABOUT WAS THE PEOPLE THAT DID NOT FILE BY SEPTEMBER 21ST THEIR OBJECTIONS THAT THEY HAD DIFFICULTY WITH THEIR DISCOVERY THAT THEY WERE PROPOUNDING ON PEOPLE BY OCTOBER 5TH
12:18:25 PM		THE ONLY DISCOVERY THAT THE NAVAJO NATION FILED OR PROPOUNDED WAS TO THE SJWC AND IT IS THE SAME WITH REGARD TO THE STATE OF NEW MEXICO SO THOSE 2 PARTIES DID NOT PROPOUND DISCOVERY ON ANYBODY ELSE
12:18:46 PM	GUARINO	MY OBJECTION IS ONGING
12:18:56 PM	JOHN UTTON	(OBJECTION) THE STATE DID NOT JOIN IN THE MOTION TO DISMISS AND MR HORNER IS REPRESENTING THAT WE DID AND ARGUING AGAINST POSITIONS THAT WE HAVE TAKEN AND SO I OBJECT TO THAT
12:19:25 PM	HORNER	I AM SORRY IF THAT WAS PERCEIVED BUT THAT IS NOT WHAT I AM TRYING TO SAY
12:19:27 PM	J	LET ME ASK YOU THEN BECAUSE THEIR POSITIONS ARE WELL TAKEN. WE HAVE A VERY SHORT TIME NOW BECAUSE WE HAVE A LOT WE NEED TO ADDRESS SO IF YOU HAVE ONE POINT YOU WANT TO MAKE TO THE COURT AND WANT
12:19:29 PM	HORNER	... I HAVE TWO PRIMARY POINTS IF YOU WILL ALLOW ME. IF I CAN FINISH THIS LINE OF THOUGHT, THE DISCOVERY THAT THE US PROPOUNDED ON EVERYBODY WAS THE SAME, IT WAS NOT UNIQUE. IT DID NOT GO TO THE SPECIFICS OF ANYBODYS OBJECTIONS. IT WAS ALL GENERAL STUFF
12:19:50 PM	J	MR GUARINO, I HAVE YOU AS A YOUR CONTINUING OBJECTION
12:19:52 PM	MR GUARINO	FOR ALSO MISREPRESENTING WHAT I FILED, THEY WERE VERY UNIQUE DISCOVERY STATEMENTS MADE TO EACH INDIVIDUAL OBJECTING PARTY OR POTENTIALLY OBJECTING PARTY. IT WAS TAYLORED VERY SPECIFICALLY TO THE OBJECTIONS THAT WERE FILED
12:20:06 PM	J	THEN I MISUNDERSTOOD THAT



12:20:14 PM	HORNER	WE CAN LOOK AT IT AND SEE WHAT THEY DID BUT THE OTHER PRIMARY ARGUMENT THAT THEY ARE MAKING WITH REGARD PREJUDICE IS THIS DECEMBER 31ST 2013 DEADLINE. IN FACT I THINK EVERYBODY AGREES THAT THE WATER RIGHTS OF THE NAVAJO NATION ARE UP TO YOU TO DECIDE
12:20:31 PM		THAT IS NOT UP TO CONGRESS OR ANYTHING ELSE. SO IF YOU EXTEND THE DEADLINES AND GO PAST 2013 THAT DOES NOT EFFECT ANYTHING
12:20:42 PM		TO ME THE REALLY BIG THING THAT HAS NOT BEEN GONE INTO IN DETAIL IS THE POTENTIAL FOR THE NAVAJO GALLUP WATER SUPPLY PROJECT WHICH IS THE BILLION DOLLAR PROJECT, IS THAT AT RISK IF WE GO PAST 2013. IN FACT IT IS NOT. WE NEED TO VERY CLEAR ON THAT. EVEN IF THE COURT SHOTS DOWN COMPLETELY THIS NAVAJO SETTLEMENT, AND THROWS OUT EVERYTHING THEY HAVE GOT HERE WITH REGARD TO WATER RIGHTS, THAT NAVAJO GALLUP WATER SUPPLY PROJECT STANDS
12:21:16 PM	J	THOSE ARE QUESTIONS THAT I INTEND TO ASK OF THE SETTLING PARTIES
12:21:20 PM	HORNER	THE ONLY WAY THAT THE NAVAJO GALLUP WATER SUPPLY PROJECT IS AT RISK IS IF THE NAVAJO NATION TERMINATES OR NULLIFIES THE SETTLEMENT
12:21:30 PM		SO THERE IS THIS HUGE DIS-INCENTIVE FOR THE NAVAJO NATION TO TERMINATE THE SETTLEMENT OR FOR THE NAVAJO NATION TO OBJECT TO EXTENDING THE DEADLINES
12:21:45 PM	HORNER	I JUST WANT TO MAKE IT VERY CLEAR THAT IF YOU COMPLETELY THROW THE NAVAJO SETTLEMENT, THAT NAVAJO GALLUP WATER SUPPLY PROJECT AND THE BILLION DOLLAR PROJECT CONTINUES THE WAY THE CONGRESSIONAL LEGISLATION HAS BEEN WRITTEN
12:22:04 PM	MARSHAL L (UNIDENTIFIED)	I FEEL THERE ARE A COUPLE OF SPECIFIC THINGS THAT I NEED TO ADDRESS BECAUSE
12:22:22 PM	MARSHAL L	THEY JOINED IN IN A TIMELY MOTION TO EXTEND ALL DEADLINES INLCUDING THAT DEADLINE FILED BY THE CITIES OF AZTEC AND BLOOMFIELD
12:22:38 PM		WE FILED OUR JOINDER TIMELY. WE ALSO FILED A TIMELY JOINDER IN THE TIMELY MOTION TO EXTEND FILED BY THE SAN JUAN WATER COMMISSION. THAT WAS PURSUANT TO AN AGREEMENT AMOUNG PARTIES THAT WE WOULD TRY TO COOPORATE WHERE EVER POSSIBLE
12:22:59 PM		IT IS THE PRACTICE... THEN I THINK ON THE DEADLINE SOME FOLKS FILED SOME INITIAL DISCLOSURES AND SOME OBJECTIONS, SOME OF THE NON-SETTLING PARTIES.
12:23:26 PM		WE DID NOT JOIN IN THOSE PLEADINGS JUST THEN BECAUSE WE HAD NOT HAD A CHANCE TO READ THEM, WE DID JOIN IN THEM LATER

12:23:49 PM		EVEN THOUGH IT IS A ME TOO YOU LOOK TO SEE WHETHER YOU THINK IT IS WELL TAKEN, RULE 11 REQUIRES ME TO DO THAT
12:24:15 PM		IN ADDITION WE FILED INITIAL DISCLOSURES, AFTER THE DEADLINE BUT WHILE OUR MOTION TO EXTEND WAS PENDING
12:24:28 PM		WE ALSO IN RELIANCE WITH THE COURTS OCTOBER 5TH ORDER WHICH THE COURT ENTERED SAYING NON-SETTLING PARTIES FILE BY OCTOBER 19TH, WE CAME BACK AND GOT TO WORK ON OUR ANSWER OBJECTIONS AND COUNTERCLAIM WHICH WE DID FILE BY THE 19TH
12:24:48 PM		NOW GRANTED THE COURT HAD WITHDRAWN THAT ORDER IN THE MEANTIME
12:24:53 PM		WE HAVE FILED ANSWERS OBJECTIONS AND A COUNTER-CLAIM. WE HAVE FILED INITIAL DISCLOSURES.
12:25:03 PM		WE HAVE IN GOOD FAITH RELIED UPON THE MOTIONS FILED BY OTHERS AND EVEN IF THOSE MOTIONS WERE DENIED THE UNIVERSAL PRACTICE IS TO SAY IS I AM NOT GOING TO GIVE YOU ANY MORE EXTENSIONS YOU HAVE GOT 2 DAYS TO FILE SOMETHING
12:25:20 PM		WE ARE ALREADY PAST THAT, WE HAVE FILED OUR ANSWERS OBJECTIONS AND COUNTER-CLAIM
12:25:39 PM		WE HAD PENDING MOTIONS FOR DISCOVERY ON ALL THOSE BASIC ITEMS WHICH ARE STILL OUTSTANDING
12:25:48 PM		WE ACTED IN GOOD FAITH, WE ARE NOT PLAYING A GAME OF GOT YA
12:25:57 PM		THE OVER ARCHING RULE OF CIVIL PROCEDURE IS THAT YOU DO SUBSTANTIAL JUSTICE, YOU TRY CASES ON THE MERITS, AND YOU DO NOT HAVE A GAME OF GOT YA
12:26:03 PM		WE DID NOT COME IN AND ASK TO DEFAULT THE SETTLING PARTIES WHEN THEY REPEATEDLY MISSED THOSE DEADLINES
12:26:31 PM	J	WE HAVE PEOPLE ON THE TELEPHONE WHO HAVE RESPONDED AND LET ME JUST ASK IF ANYBODY ON THE TELEPHONE THAT HAS RESPONDED TO THESE MOTIONS HAS ANYTHING THAT IS NEW TO ADD TO THE ARGUMENT THAT HAS BEEN MADE
12:26:50 PM	SARAH STEVENS ON	NOTHING TO ADD
12:26:57 PM	J	DO NOT NEED TO HEAR FROM ANYONE THAT DOES NOT HAVE ANYTHING TO ADD, DOES ANYBODY HAVE ANYTHING TO ADD
12:27:13 PM		GOING TO MOVE AHEAD AND MOVE BACK TO THE SETTLING PARTIES WITH RESPECT TO BOTH MOTIONS, THE MOTION TO DISMISS AND THE MOTION FOR EXTENSION
12:27:24 PM	TULLEY	CAN ONLY SIT FOR SO LONG CAN WE HAVE A 5 OR 10 MINUTE BREAK

12:28:22 PM	J	HAVE ON MY MIND TO ASK ABOUT THE NAVAJO GALLUP PIPELINE PROJECT AND THE STATUS OF THE FUNDING WHAT HAPPENS IN THE EVENT THAT THE SETTLEMENT IS NOT APPROVED. HOW DOES THAT EFFECT THE DEADLINE OF 12-31-13, SO THOSE ARE THE QUESTIONS THAT ARE ON MY MIND
12:28:46 PM	POLLACK	WOULD YOU LIKE ME TO ADDRESS THAT NOW
12:28:47 PM	J	YOU CAN ADDRESS THEM IN THE COURSE OF YOUR ARGUMENT
12:28:54 PM	STANLEY POLLACK	LETS LEAVE THAT TIL LATER BECAUSE WHAT I AM HEARING THE COURT IS PONDERING THE ISSUE OF WHAT IS AN APPROPRIATE SANCTION FOR THE NON-SETTLING PARTIES WHO FAILED TO COMPLY
12:29:07 PM		WHAT WE HAVE HEARD FROM THE NON SETTLING PARTIES IS THERE IS REALLY NO NEED FOR A SANCTION BECAUSE ALL THE COURT NEEDS TO DO IS EXTEND THE DEADLINE. EXTEND THE DEADLINE THAT HAS MANDATED BY CONGRESS THAT WAS PART OF THE SETTLEMENT AGREEMENT THAT THE NAVAJO NATION, THE UNITED STATES AND THE STATE OF NEW MEXICO AGREED TO
12:29:23 PM		SO BASICALLY THE PARTIES THAT ARE OUT OF COMPLIANCE ARE ASKING THE COURT TO COME UP WITH A SANCTION THAT PENALIZES THE SETTLING PARTIES
12:29:32 PM		WE HAVE THE RIGHT UNDER THE SETTLEMENT AGREEMENT AND UNDER CONGRESSIONAL LAW TO HAVE THE COURT CONSIDER ONE WAY OR ANOTHER THE ENTRY OF THE DECREE BY THE END OF NEXT YEAR
12:29:51 PM		WE HAVE HEARD A LOT OF DISCUSSION THAT THIS IS NOT A REAL DEADLINE THE FACT THAT CONGRESS IMPOSED A DEADLINE DOES NOT MAKE IT REAL IT CAN EASILY BE CHANGED AND THEY ARE ASKING THIS COURT TO IGNORE AN ACT OF CONGRESS AND IMPOSE AN EXTENSION OF TIME FOR THE RESOLUTION OF THIS CASE
12:30:18 PM		AS WE POINTED OUT IN OUR JOINDER TO THE UNITED STATES RESPONSE ONE OF THE THINGS THAT DOES NOT PROTECT THE SETTLING PARTIES IN THAT MATTER IS IF THE IS TO UNILATERALLY DEFY THE MANDATE OF CONGRESS WHETHER ANY OF THE NON-SETTLING PARTIES COULD THEN COLLATERALLY CHALLENGE THE ENTRY OF THE DECREE SAYING IT WAS NOT ENTERED IN COMPLIANCE WITH AN ACT OF CONGRESS
12:30:40 PM		THAT PUTS THE ENTIRE SETTLEMENT AT RISK
12:30:50 PM		LET ME GO BACK TO THE IDEA OF WHAT IS THE APPROPRIATE SANCTION
12:30:55 PM		WE HAD SUGGESTED THAT THE APPROPRIATE SANCTION IN THIS INSTANCE WAS DISMISSAL

<u>12:31:19 PM</u>	WE ARE NOT ALLEGING THAT THEY ARE ENGAGED IN ANY WILLFUL CONDUCT OTHER THAN TO WILLFULLY IGNORE THE SCHEDULING ORDER TO FILE THEIR RESPONSES ON SEPTEMBER 21ST
<u>12:31:36 PM</u>	WE HAVE ALREADY ESTABLISHED THAT WE ARE PREJUDICED BECAUSE WE HAVE NOT BEEN ABLE TO PROPOUND DISCOVERY ON THOSE PARTIES. WE DID NOT EVEN KNOW WHO THE OBJECTING PARTIES WERE ON SEPTEMBER 21ST
<u>12:31:48 PM</u>	MR RISLEY ARGUES THAT THIS IS THE FIRST THEY HAVE EVER HEARD OF ANY POSSIBLE PREJUDICE TO THE NAVAJO NATION
<u>12:31:52 PM</u>	PAGE 7 OF OUR MOTION TO DISMISS ... THAT WAS SOMETHING THAT WAS RAISED PRIOR TO THIS COURT HEARING THIS MORNING
<u>12:32:21 PM</u>	ALSO HEARD FROM MS MCCALED THAT THE SETTLING PARTIES HAVE PREJUDICED THEIR ABILITY TO CONDUCT DISCOVERY BY FILING FOR MOTIONS FOR EXTENSIONS OF TIME FOR FILING THE SUPPLEMENTAL PARTIAL FINAL DECREE
<u>12:32:42 PM</u>	BACK TO THE COURTS ORDER, ORIGINALLY WE HAD A MARCH 2ND DEADLINE FOR THE NON-SETTLING PARTIES TO FILE THEIR OBJECTIONS. WHEN THE SETTLING PARTIES ASKED FOR ADDITIONAL TIME TO FILE THE PARTIAL FINAL DECREE, WE MOVED TO EXTEND THE TIME PERIOD FOR THE NON-SETTLING PARTIES TO FILE THEIR OBJECTIONS
<u>12:33:09 PM</u>	WHAT THE COURT ULTIMATELY DID WAS GIVE THEM AN EXTENSION ALL THE WAY TO SEPTEMBER 21ST. THEY ARE ARGUING THAT THEY WERE PREJUDICED BY THE FILING OF THAT MOTION WHEN IN FACT THEY GOT ADDITIONAL TIME TO FILE THEIR OBJECTIONS
<u>12:33:33 PM</u>	WITH RESPECT TO THE ISSUE OF SANCTION, MR RISLEY ARGUES THAT THE CASE OF LOWREY IS THE CASE THAT SHOULD CONTROL IN THIS PARTICULAR INSTANCE.
<u>12:33:42 PM</u>	THAT IS THE CASE THAT DEALT WITH THE PLAINTIFFS FAILURE TO PROSECUTE OR COMPLY WITH A COURT ORDER. THE COURT FOUND THAT THE PLAINTIFF HAD NOT PROSECUTED THE CASE PROPERLY
<u>12:33:58 PM</u>	IN THIS INSTANCE WE DO NOT HAVE A PLAINTIFF NOT PROSECUTING THE CASE WE HAVE THE RESPONDING PARTIES THAT DID NOT COMPLY WITH THE COURT ORDER
<u>12:34:02 PM</u>	BUT THE LANGUAGE OF LOWRY IS PARTICULARLY INSTRUCTIVE WHERE THE COURT SAID PLAINTIFFS INACTIVITY IS MORE LIKELY TO JUSTIFY DISMISSAL IF COUPLED WITH A PRIOR WARNING OF THE COURT
<u>12:34:32 PM</u>	IN THIS INSTANCE THERE WERE 4 WARNINGS OF THE OCURT

12:34:44 PM	SJWC ARGUES AND RELIES ON THE CASE OF D'ANTONIO V GARCIA FOR THE NOTION THAT DISMISSAL SHOULD BE USED SPARINGLY. HOWEVER THAT COURT QUOTING FROM THE NEWSOME DECISION SAYS "WE STRESS HOWEVER THAT WHEN A PARTY WILLFULLY FAILS TO COMPLY WITH A COURT ORDER DISMISSAL MAY BE APPROPRIATE
12:35:11 PM	THESE CASE DO NOT TALK ABOUT WRONGFUL ACTIVITY. THEY DO NOT TALK ABOUT WILLFUL DISOBEYING PATTERNS AND PRACTICES. THEY DO TALK ABOUT WILLFULLY DISOBEYING AN ORDER OF THE COURT
12:35:32 PM	QUOTING FROM THE LOWRY DECISION
12:35:43 PM	A PARTY IS REQUIRED TO OBEY A COURT ORDER. IN SHORT THAT IS THE APPROPRIATE SANCTION
12:36:00 PM	WE ARE NOT ALLEGING THAT THERE IS MISCONDUCT BY THESE PARTIES, WE ARE ALLEGING THAT THEY FAILED TO HONOR THE SCHEDULING ORDER CREATING PREJUDICE TO THE NAVAJO NATION
12:36:08 PM	WE THINK THE SOLUTION SUGGESTED BY THE NON-SETTLING PARTIES WHICH IS TO FURTHER PREJUDICE THE SETTLING PARTIES BY GRANTING AN EXTENSION OF TIME SO THAT WE CAN THEN PROPOUND DISCOVERY IS NOT AN APPROPRIATE SANCTION
12:36:24 PM	THE UNITED STATES HAS ARGUED IN THE MAIN THE RESPONSE TO THE MOTION FOR EXTENSION OF TIME AND WE HAVE JOINED IN THAT SO I WILL LEAVE THE BULK OF THAT ARGUMENT TO THE UNITED STATES
12:36:43 PM	I DO WANT TO STATE A FEW THINGS THAT I BELIEVE HAVE BEEN OVERLOOKED
12:36:47 PM	MR RISLEY ARGUES THAT THE DECEMBER 31ST DEADLINE IS NOT A REAL DEADLINE BECAUSE PARTIES WILL FILE AN APPEAL AND THE COURT, WE WILL NOT HAVE A FULL AND FINAL JUDGMENT. THAT IS NOT THE STANDARD THAT CONGRESS SET OUT
12:37:02 PM	THE DECEMBER 31ST DEADLINE WAS FOR THIS COURT TO ENTER AN ORDER TO APPROVE THE SETTLEMENT DECREES. IT WAS NOT A FULL AND FINAL NON-APPEALABLE ORDER. SO THE STANDARD IN THIS INSTANCE HAS BEEN MISSTATED
12:37:21 PM	THE NON-SETTLING PARTIES WHO ARGUE FOR THE EXTENSION OF TIME CONTINUE TO SAY THAT THE EXTENSION IS SOMETHING THAT THE SETTLING PARTIES CAN EASILY AGREE TO
12:37:31 PM	THE SETTLING PARTIES IN THIS INSTANCE REPRESENT 3 SOVERN GOVERNMENTS AND AS WE POINTED OUT IN OUR RESPONSE, THOSE SOVEREIGN GOVERNMENTS HAVE THEIR OWN PROCEDURES FOR APPROVING AGREEMENTS AND CHANGES IN AGREEMENTS DEALING WITH THEIR SOVEREIGN RESOURCES.

12:37:49 PM		TO SUGGEST THAT WE HAVE THE POWER TO AGREE TO THIS EXTENSION OF TIME IS NOT THE CASE
12:38:01 PM		I HAVE MEMBERS OF THE NAVAJO NATION COUNSEL HERE AND I AM SURE THAT THEY WOULD NOT LIKE ME TO ADVISE THE COURT THAT SOMEHOW AS AN ATTORNEY FOR THE NAVAJO NATION I HAVE ABILITY TO CHANGE AN AGREEMENT THAT WAS APPROVED BY THE COUNSEL AND AGREE TO EXTEND IT TO THE COURT
12:38:17 PM	J	BUT THE NAVAJO NATION DOES HAVE THE ABILITY
12:38:22 PM	POLLACK	THE NAVAJO NATION HAS THE ABILITY YES AND I CAN NOT TELL YOU WHAT THE NAVAJO NATION WOULD OR WOULD NOT DO WHEN PRESENTED WITH THE QUESTION DO YOU WANT TO EXTEND THIS PERIOD
12:38:44 PM	J	LETS JUST UNDERSTAND WHAT THE ACT SAYS, AND MY UNDERSTANDING IS THAT IT IS FROM THE WAY THAT IT READS AT LEAST IN PRACTICALITY THAT IT IS UP TO THE NAVAJO NATION BECAUSE IT IS UP TO THE NAVAJO NATION IF THE TIME HAS NOT BEEN SUBSTANTIALLY COMPLIED WITH TO FILE WITH THIS COURT SOME SORT OF PLEADING, PETITION, MOTION OR WHAT EVER THAT WILL SEEK TO... WELL I DO NOT KNOW AT SOME POINT THE NAVAJO NATIONS DISCRETION IF IT BELIEVES THAT THE TIME HAS NOT BEEN SUBSTANTIALLY COMPLIED WITH TO FILE SOME KIND OF PETITION
12:39:29 PM	POLLACK	THAT IS TRUE... IT IS IN THE NAVAJO POWERS TO FILE A PETITION TO NULLIFY THE SETTLEMENT. IT IS NOT IN THE NAVAJO NATIONS POWER TO FORCE THE STATE AND THE UNITED STATES TO ACTUALLY AGREE WITH US ON AN EXTENSION. SO THAT IS SOMETHING THAT IS BEYOND THE POWER OF THE NAVAJO NATION
12:39:50 PM	J	SUPPOSE THERE IS NO AGREEMENT, SUPPOSE THE UNITED STATES THE NAVAJO NATION AND THE STATE MAKE NO AGREEMENT, THE COURT SAYS I AM GRANTING AN EXTENSION, THE EXTENSION THEN GOES INTO AFFECT, DOES THERE NEED TO BE ANY AGREEMENT IS IT NOT THEN UP TO THE NAVAJO NATION TO FILE A MOTION OR PETITION IF IT FEELS THAT FOR SOME REASON THAT THE PROCESS IS NOT BEING FOLLOWED AND SHOULD NOT BE FOLLOWED
12:40:22 PM	POLLACK	YOU ARE CORRECT THAT THE STATUTE ALLOWS THE NAVAJO NATION TO FILE SUCH A PETITION TO NULLIFY THE SETTLEMENT AGREEMENT BUT WHAT IS MISSING IN THIS CONVERSATION IS WHETHER ANY OTHER PARTY HAS THE ULTIMATE RIGHT TO COLLATERALLY CHALLENGE THE ENTRY OF ANY ORDER OF THIS COURT BECAUSE IT VIOLATED THE MANDATE IN THE LAW THE THE SETTLEMENT HAD TO HAVE BEEN ENTERED BY THE END OF DECEMBER 31ST

12:40:59 PM	J	THAT IS AN INTERESTING QUESTION. THIS HAS NOT BEEN BRIEFED, I AM THINKING OFF THE TOP OF MY HEAD HERE, IF CONGRESS SETS FORTH THE MANNER IN WHICH THE SETTLEMENT AGREEMENT CAN BE APPROVED BY THE COURT AND SETS FORTH THE MANNER IN WHICH IT GETS CONTESTED, AND THERE IS NO SUCH CONTEST, WHY ARE OTHER PARTIES IN A POSITION TO COLLATERALLY ATTACK IT
12:41:31 PM	POLLACK	THERE ARE A LOT OF PARTIES OUT HERE THAT DO NOT WANT TO SEE THIS SETTLEMENT ENTERED. SO TO THE EXTENT THAT IF THE COURT WERE TO ENTER THE SETTLEMENT AFTER 2013 WITHOUT THE CONSENT OF THE SETTLING PARTIES THAT ORDER COULD BE CONCEIVABLY SUBJECT TO COLLATERAL ATTACK BY THOSE PARTIES THAT DO NOT WANT TO SEE THE SETTLEMENT
12:41:59 PM	J	PARTIES TO THIS PROCEEDING, OR OUTSIDE
12:42:05 PM		I DO NOT THINK IT IS LIMITED TO PARTIES IN THIS PROCEEDING BECAUSE THEY COULD CLAIM THAT AN ACTION WAS TAKEN IN VIOLATION OF THE STATUTE. PARTIES TO THIS PROCEEDING ARE PARTIES THAT HAVE WATER RIGHTS THAT MAY BE EFFECTED BY THE ENTRY OF THE DECREE, THAT IS WHERE THEIR STANDING IS. BUT ANYONE THAT IS SIMPLY SEEKING AN ATTACK ON THE SETTLEMENT IN GENERAL COULD CONCEIVABLY COLLATERALLY ATTACK IT
12:42:37 PM		THE SETTLEMENT CONTAINS A LOT OF TERMS AND CONDITIONS IN IT AND THE DATES THAT WERE NEGOTIATED THE PARTIES FELT THAT THOSE DATES WERE SO IMPORTANT THAT THEY WERE NOT ONLY INCLUDED IN THE AUTHORIZING LEGISLATION THAT CONGRESS PASSED BUT THEY WERE ALSO INCLUDED IN THE SETTLEMENT AGREEMENT ITSELF
12:43:00 PM		IF YOU CHANGE THE DATES YOU CHANGE THE SETTLEMENT
12:43:02 PM		THE NON-SETTLING PARTIES MIGHT LATER SAY THE NAVAJO NATION HAS THE ABILITY TO TAKE LESS WATER, THAT IS TRUE. WE MIGHT AGREE TO TAKE LESS WATER AS AN AMENDMENT. WE MIGHT AGREE TO DO ANYTHING UNDER THEIR THEORY THAT THE NAVAJO NATION CAN DO ANYTHING, WE CAN CHANGE THE DATES OF THE SETTLEMENT
12:43:24 PM		BUT THAT WAS NOT THE DEAL THAT WAS NEGOTIATED
12:43:39 PM		WE NEGOTIATED A SETTLEMENT THAT WAS BASED ON THE ENTRY OF IT BY THE END OF 2013
12:43:45 PM		MS MCCALED IS CORRECT THAT THE ORIGINAL DATES HAD TO BE CHANGED
12:43:59 PM		EXPLAINS WHY

12:44:15 PM		WE DO NOT THINK THAT THE COURT COULD CHANGE THOSE DATES ANY MORE THAN THE COURT COULD CHANGE THE AMOUNT OF WATER THAT IS AUTHORIZED PURSUANT TO THS SETTLEMENT
12:44:33 PM		IT IS A TERM OF THE SETTLEMENT ITSELF
12:44:38 PM		IF WE TAKE YET YET ANOTHER STEP BACK WE INITIATED THE MOTION FOR THIS INTER SE PROCEEDING IN SEPTEMBER OF 2009
12:45:00 PM		THE COURT HAD MORE THAN 4 YEARS TO SET UP A PROCESS TO GET THE ULTIMATE APPROVAL OF THIS SETTLEMENT DONE
12:45:32 PM		THE TRUTH IS THAT THIS IS A RELATIVE SIMPLE CASE
12:45:39 PM		THE REASON IT IS SIMPLE WITHOUT GETTING INTO THE MERITS BUT THE BASIC OVERVIEW OF THIS CASE IS THAT THE WATER RIGHTS OF THE NAVAJO NATION IN THIS SETTLEMENT OTHER THAN THE EXISTING AND HISTORIC USES, ALL OF THE REMAINING WATER RIGHTS ARE TAKEN OUT OF A NAVAJO RESIVOIR CONTRACT WITH A PRIORITY OF 1955
12:46:00 PM	J	DO NOT WANT TO START GETTING INTO THE MERITS NOW BUT I WANT TO MOVE ON SO IF YOU HAVE ANYTHING TO CONCLUDE WITH RESPECT TO THIS ARGUMENT
12:46:26 PM	POLLACK	LETS GO BACK TO YOUR ORIGINAL QUESTIONS REGARDING THE PIPELINE
12:46:32 PM		LET ME SEE IF I UNDERSTAND YOUR QUESTION CORRECTLY
12:46:34 PM		IF THE SETTLEMENT IS DISAPPROVED BY THE COURT THE STATUTE IS VERY CLEAR THAT TITLES 1 AND 3 OF THE FEDERAL LEGISLATION BECOME VOID AND ARE OF NO EFFECT SO THAT THE AUTHORIZATION FOR THE NAVAJO GALLUP PROJECT GOES AWAY IF THE COURT REJECTS THE SETTLEMENT
12:46:58 PM		I BELIEVE THE COURT IS ASKING A SLIGHTLY DIFFERENT QUESTION WHICH IS IF THE NAVAJO NATION DOES NOT MOVE TO NULLIFY THE SETTLEMENT WILL CONSTRUCTION CONTINUE
12:47:15 PM		AS A LEGAL MATTER LEAVING ASIDE THE ISSUE THAT PERHAPS THERE ARE PEOPLE OUT THERE THAT COULD COLLATERALLY ATTACK IT
12:47:28 PM		AS A PRACTICAL MATTER IT IS NOT CLEAR THAT CONSTRUCTION OF THE PIPELINE CONTINUES AT PACE. THE NAVAJO NATION HAS TO GO TO CONGRESS TO GET THE FUNDING NECESSARY TO BUILD THE PIPELINE
12:47:46 PM		FUNDING IS NOT GUARANTEED FOR THIS PROJECT IT IS DEPENDANT UPON DISCRETIONARY FUNDS OF THE UNITED STATES



12:47:50 PM		THE REASON THAT WE HAVE THOSE NULLIFICATION PROCEDURES IN THE ACT IS THAT ULTIMATELY THE UNITED STATES MAY DECIDE WE ARE NOT GOING TO SPEND THE MONEY
12:48:00 PM		THE MONEY IS NOT GUARANTEED
12:48:24 PM		WE HAVE TO GO TO CONGRESS AND THE FIRST THING THAT COMES UP IS THE COURT WAS SUPPOSED TO ENTER THE SETTLEMENT BY THE END OF 2013, THE COURT HAS NOT DONE THAT WHY SHOULD WE CONTINUE TO FUND THIS IF THE COURT IS NOT GOING TO ULTIMATELY APPROVE THE SETTLEMENT
12:48:49 PM		I THINK IT PUTS THE FUNDING, AND AGAIN THIS IS SPECULATION, IT PUTS THE FUNDING AT RISK. THE OTHER THING THAT IT DOES WHEN YOU PUT THE FUNDING AT RISK THERE ARE NAVAJO PEOPLE OUT THERE THAT NEED DRINKING WATER, IT DELAYS THE FINAL CONSTRUCTION OF THAT PROJECT
12:49:01 PM		THERE IS PREJUDICE INVOLVED WHEN WE TALK ABOUT TRYING TO EXTEND THESE DEADLINES
12:49:11 PM	J	MR GUARINO
12:49:17 PM	GUSS GUARINO	THE ONLY THING GOING TO ADDRESS AT THIS POINT IS THE PREJUDICE TO THE UNITED STATES. THE PREJUDICE TO THE UNITED STATES IF THE COURT DOES NOT ISSUE A DECISION ON THE SETTLEMENT MOTION AND THE ISSUE OF THE PARTIAL FINAL DECREE SUPPLEMENTAL FINAL DECREE BY DECEMBER 31ST 2013
12:49:47 PM		WHAT WE HAVE RIGHT NOW IS WE HAVE AN AGREEMENT. THE UNITED STATES HAS AN AGREEMENT THAT IT ENTERED ON DECEMBER 17TH 2010 AND THAT IS BETWEEN THE UNITED STATES, THE NAVAJO NATION, AND THE STATE OF NEW MEXICO. WE ARE LOCKED IN. IT IS NOT A VOIDABLE AGREEMENT. IT IS NOT SOMETHING WE CAN BACK OUT OF, IT IS SOMETHING WE HAVE TO COMPLY WITH.
12:50:13 PM		IT THE COURT DOES NOT ISSUE A PARTIAL FINAL DECREE BY DECEMBER 31ST YOU ARE TAKING AN AGREEMENT AND YOU ARE TURNING IT FROM A NON-VOIDABLE AGREEMENT AND TURNING IT INTO A VOIDABLE AGREEMENT
12:50:24 PM		UNDER A VOIDABLE AGREEMENT THE NAVAJO NATION AT ANY TIME AFTER DECEMBER 31ST CAN MOVE TO WITHDRAW ITSELF OUT OF THE SETTLEMENT AGREEMENT

12:50:57 PM		DURING THAT TIME THE UNITED STATES IS SPENDING A VAST AMOUNT OF RESOURCES. IT IS COMMITTED ITSELF TO ENSURE IT HAS THE RESOURCES TO COMPLETE THE SETTLEMENT PROJECT. IF THE SETTLEMENT IS VOIDED AFTER THE UNITED STATES HAS SPENT THE RESOURCES TO COMPLETE THE PROJECT WE WILL HAVE AN EXPENDATURE OF RESOURCES WITHOUT ANY BENEFIT TO THE UNITED STATES WHICH IS RESOLUTION OF THE NAVAJO NATIONS WATER RIGHTS IN THE SAN JUAN RIVER BASIN
12:51:25 PM		THAT IS NOT IMAGINARY. THAT IS A VERY EXTREME PREJUDICE TO THE UNITED STATES.
12:51:32 PM		IN THE EVENT THAT THE COURT DOES NOT ISSUE A PARTIAL FINAL DECREE BY DECEMBER 31ST, MR POLLACK HAS ELLUDED TO IT, IT WILL IN ESSENCE PIT THE UNITED STATES AGAINST THE NAVAJO NATION
12:51:48 PM		THE POLITICAL PROCESS THAT MR POLLACK DESCRIBED IS ACCURATE SO THERE WILL BE AN INHERANT TENSION IN THE ABILITY TO KEEP THIS PROJECT MOVING FORWARD IN THE UNITED STATES
12:52:03 PM		WE WILL BE BOUND BY THE AGREEMENT ITSELF YET AT THE SAME TIME WE WILL SEE THAT THE DEADLINES ARE BEING MISSED WE WILL SEE THAT THERE ARE BASIS FOR VOIDING THIS AGREEMENT AND SO COMMITMENT TO THIS AGREEMENT WILL UNDERSTANDIBLY BEGIN TO WAIVER
12:52:28 PM		THIS PREJUDICE IS REAL
12:52:32 PM	J	MR UTTON
12:52:38 PM	JOHN UTTON	WE DID NOT PARTICIPATE IN THE BRIEFING OF THE MOTION TO DISMISS BUT WE DID FILE A RESPONSE BRIEF TO THE MOTIONS TO EXTEND THE DEADLINE
12:52:53 PM	J	YOU CAN STATE THE STATES POSITION ON IT YES
12:52:57 PM	UTTON	WITH RESPECT TO THE LAST DISCUSSION THAT YOUR HONOR HAD WITH MR GUARINO AND ALSO MR POLLACK, THE STATE IS ALSO CONTRIBUTING A SIGNIFICANT AMOUNT OF MONEY ABOUT 60 MILLION DOLLARS TO THE SETTLEMENT. MOST OF THAT GOING TO THE NAVAJO GALLUP PIPELINE
12:53:16 PM		THE STATE IS DOING THAT IN CONJUNCTION WITH THE SETTLEMENT OF THE NAVAJO CLAIMS. THE BASIC FRAMEWORK OF THE NAVAJO SETTLEMENT IS THAT IN EXCHANGE FOR GIVING UP EXTENSIVE FEDERAL RESERVE FUTURE CLAIMS THAT THE NAVAJO NATION COULD ASSERT, THEY ARE NOT MAKING THOSE CLAIMS. THEY ARE ESSENTIALLY AGREEING TO WHAT THE STATE BELIEVES IS THEIR CURRENT WATER RIGHT, THE QUANTITY OF THEIR CURRENT WATER RIGHT, PLUS SOME ADDITIONAL PROTECTIONS THAT THE NAVAJO NATION IS CONCEIDING AS WE DESCRIBED IN THE STATEMENT OF FACTS AND LEGAL BASIS IN SUPPORT OF THE LEGAL SETTLEMENT

12:53:53 PM	WHY DID THE NAVAJO NATION DO THAT, IT DID THAT TO GET THAT PROJECT
12:54:03 PM	WHILE THE STATE SUPPORTS THAT PROJECT IT DOES BRING DRINKING WATER TO NAVAJO MEMBERS TO THE JICARILLA APACH NATION, TO THE CITY OF GALLUP. IT IS A GOOD THING IT BRINGS IN ECONOMIC DEVELOPMENT. IT IS ALSO PART OF A TRADE FOR THE NAVAJO NATION TO REDUCE ITS CLAIMS AND SETTLE FOR WHAT WE BELIEVE IS POTENTIALLY THEIR CURRENT RIGHT
12:54:36 PM	TO GET AT THE QUESTION THAT YOU WERE ASKING MR POLLACK, WHAT WOULD HAPPEN IF THE COURT THREW OUT THE SETTLEMENT AND THE NAVAJO NATION DID NOT ACT TO NULLIFY THE LEGISLATION OR THE AUTHORIZATION AND THE PROJECT WERE TO CONTINUE TO BE BUILT
12:54:42 PM	THE STATE FOR ONE WOULD HAVE TO SERIOUSLY CONSIDER WHAT OUR POSITION WOULD BE WITH RESPECT TO THAT ALTHOUGH WE APPRECIATE THE BENEFITS OF THE SETTLEMENT
12:54:52 PM	ONE OF THE BENEFITS TO THE STATE AND THE NON-NAVAJO MEMBERS WAS THE SETTLEMENT OF THEIR CLAIMS
12:55:05 PM	WE WOULD NOT BE HAPPY ABOUT A SITUATION WHERE THE PROJECT CONTINUES TO BE BUILT WITHOUT THIS SETTLEMENT GOING FORWARD AND THE NAVAJO NATION BEING ABLE TO CLAIM VERY LARGE AMOUNTS OF WATER AND GET THE BENEFIT OF THE SETTLEMENT
12:55:21 PM	LASTLY WITH RESPECT THE MOTIONS TO EXTEND THE DEADLINES 120 TO 180 DAYS, THE STATE IS NOT AS OPTIMISTIC AS HAS BEEN DESCRIBED BY OTHER PEOPLE HERE THAT THE DEADLINES CAN BE EXTENDED
12:55:36 PM	WE WENT THROUGH THE PROCESS OF NEGOTIATING THE SETTLEMENT AGREEMENT STARTING IN 2002, IT WAS A DIFFICULT PROCESS
12:55:57 PM	WE NOW HAVE A WHOLE NEW GROUP OF GOVERNMENT OFFICIALS AT ALL 3 GOVERNMENTS BUT INCLUDING THE NAVAJO NATION WHO WOULD NOT NECESSARILY APPROVE AN EXTENSION. THEY MIGHT DECIDE THAT THEY DO NOT LIKE THIS SETTLEMENT

<p>12:56:13 PM</p>	<p>MY EYES WERE OPENED WHEN WE HAD THOSE PUBLIC MEETINGS THAT THE COURT ORDERED IN JUNE OF 2011. WE HAD 3 PUBLIC MEETINGS IN THE AXTEC BLOOMFIELD AND FARMINGTON AREA AND WE HAD 2 ON THE NAVAJO NATION. THE MEETINGS OFF THE NAVAJO NATION GENERALLY PEOPLE WHO DID NOT LIKE THE SETTLEMENT WOULD COME UP AND SAY THE STATE GAVE AWAY ALL OF THE WATER. THEN WE WENT OVER TO SHIPROCK AND TO CROWNPOINT AND THE NAVAJOS CAME AND SAID THE NAVAJO NATION AND THE UNITED STATES GAVE AWAY ALL OF THE WATER AND THEY DID NOT LIKE THE SETTLEMENT. THEY DID NOT LIKE THE SETTLEMENT, THEY WANTED TO LITIGATE</p>
<p>12:56:46 PM</p>	<p>THE NAVAJO COUNSEL THIS SUMMER REJECTED THE PROPOSED SETTLEMENT ON THE ARIZONA SIDE. THEY FELT THAT IT WAS NOT A GOOD ENOUGH DEAL</p>
<p>12:57:02 PM</p>	<p>I AM NOT OPTIMISTIC AND DO NOT WANT TO PUT OURSELVES IN THE POSITION OF PUTTING THIS AGREEMENT BACK IN THE HANDS OF PUBLIC OFFICIALS TO REJECT BY NOT AGREEING TO AN EXTENSION OF A DEADLINE</p>
<p>12:57:19 PM</p>	<p>EVEN THOUGH THERE MAY HAVE BEEN SOME DEADLINES THAT WERE EXTENDED DURING THE PROCESS OF THE LEGISLATION WAS BEING CONSIDERED. WHAT WE KNOW TODAY IS WE HAVE AN ENFORCIBLE AGREEMENT. IT WAS SIGNED IN DECEMBER OF 2012. IT HAS THE CURRENT DEADLINES. THE STATE CAN ENFORCE THOSE</p>
<p>12:57:56 PM</p>	<p>GOING OVER THE PARTIES THAT SUPPORT THE AGREEMENT</p>
<p>12:58:14 PM</p>	<p>THE TERMS OF THE SETTLEMENT AGREEMENT HAVE BEEN KNOW SINCE 2003</p>
<p>12:58:23 PM J</p>	<p>I APPRECIATE YOUR POSITION IN THE INTEREST OF TIME I DO HAVE A QUESTION FOR YOU AND IF YOU HAVE ANOTHER POINT THAT YOU WANT TO MAKE THEN THAT IS FINE</p>
<p>12:58:33 PM</p>	<p>THE QUESTION THAT I HAVE IS A RESPONSE TO THE QUESTION OF OR THE THE ARGUMENT THAT THE STATE ASKED FOR AN EXTENSION OF TIME AND THE SETTLING PARTIES ASKED FOR AN EXTENSION OF TIME, THAT CUT INTO THE TIME OF THE EXAMINATION AND OUR DISCOVERY</p>

12:58:52 PM	UTTONE	ONE OF THE EXTENSIONS WAS BECAUSE A NUMBER OF THE OPPOSING PARTIES OBJECTED TO THE SUPPLEMENTAL DECREE BEING CONSIDERED IN A SECOND PROCEEDING. AS YOU KNOW THE LEGISLATION ALLOWS THAT TO BE APPORVED AS LATE AS 2016 AND SO WE AGREE TO GO AHEAD AND UNIFY THE PROCESS AND INCLUDE THAT AND THE TASK THAT WAS OCCURING LAST YEAR TO THE END OF 2011 AND INTO THE EARLY OF 2012 OF COMPLETING THE PROCESS OF THAT SUPPLEMENTAL PARTIAL FINAL DECREE AMONG THE SETTLING PARTIES WHICH WE HAD THOUGH WE WOULD HAVE 3 MORE YEARS TO DO TOOK SOME MORE TIME
12:59:36 PM		WE DID END UP ASKING FOR AN EXTENSION OF TIME OF 30 DAYS TO COMPLETE THAT BUT THAT WAS BECAUSE ALL OF THE OTHER PARTIES WANTED ALL OF THE INFORMATION IN FRONT OF THEM
12:59:53 PM		THE STATEMENT OF LEGAL AND FACTUAL BASIS IN SUPPORT OF THE SETTLEMENT THAT THE STATE PREPARED, WE VOLUNTEERED TO PROVIDE THAT TO TRY AND HELP DISTIL SOME OF THE INFORMATION AND EXPLAIN WHAT WE HAD DONE AND WHY WE SUPPORTED THE SETTLEMENT SO OTHER PEOPLE WOULD UNDERSTAND THAT
1:00:17 PM		NEITHER ONE OF THOSE WERE EXTENSIVE ADDITIONS OF TIME AND THEY WERE DONE TO TRY TO ADVANCE THE PROCESS
1:00:53 PM		TALKING ABOUT REPORTS THAT THEY VOLUNTEERED TO DO
1:01:23 PM		IN TERMS OF THE TIME FRAME, WE DID NOT JOIN IN THE MOTION TO DISMISS WE DO NOT THINK THAT THE PARTIES WHO FAILED TO FILE BY THE DEADLINE SHOULD BE DISMISSED OUT OF THE CASE WE THINK THAT THEY SHOULD PARTICIPATE
1:01:39 PM		WE THINK THAT THEIR PARTICIPATION NEEDS TO BE WITHIN THE TIME FRAME THAT WE HAVE BEEN DISCUSSING THAT THE COURT HAS SET FORTH THAT ALLOWS FOR YOU TO MAKE A DECISION BEFORE THE END OF 2013
1:01:52 PM		WE WOULD ASK THAT THE COURT SET A DEADLINE FOR PROMPT FILING OF OBJECTIONS AND DISCOVERY INFORMATION BY THE OTHER PARTIES IF THEY HAVE NOT DONE SO ALREADY AND WE THINK THAT ANY CONSIDERATION BY THE COURT OF ADDITIONAL TIME FOR DISCOVERY NEEDS TO FIT WITHIN THE SCHEDULE THE COURT HAS ALREADY CREATED
1:02:45 PM	J	MR HORNER I AM NOT GOING TO HEAR YOU ON THE MOTIONS NOW YOU HAD THE OPPORTUNITY BEFORE. I DO WANT TO HEAR FROM MS MCCALBE AND OR MS MALONE WITH RESPECT TO THE RESPONSE WITH RESPECT TO THE MOTIONS FOR EXTENSION
1:03:05 PM	HORNER	THE ONLY THING I WOULD LIKE TO ADDRESS

1:03:17 PM	J	MR HORNER WE ARE REALLY CUT ON TIME NO SO I AM SORRY I AM GOING TO NEED TO ENFORCE THE RULE NOW THAT IF YOU ARE NOT A PARTY TO THE MOTIONS THEN I AM NOT GOING TO BE ABLE ENTERTAIN YOU ARGUMENT
1:03:19 PM	HORNER	WE HAVE BEEN DISCUSSING STUFF OTHER THAN THAT
1:03:23 PM	J	I UNDERSTAND THAT BUT WE ARE NOW AT 1:05 AND WE HAVE A LOT TO DO THIS AFTERNOON YET SO I AM SORRY
1:03:33 PM	J	MS MCCALED
1:03:37 PM	JOLENE MCCALED	THE RESOLUTION OF THIS CASE WILL IMPACT EVERYONE IN THIS BASIN
1:03:48 PM		THE NAVAJO NATION THE US AND THE STATE HAVE BEEN ATLTKING ABOUT THEIR AGREEMENT TO HAVE THIS COURT ENTER THE PROPOSED DECREES BY THE END OF 2013 BUT NOONE ELSE IN THIS BASIN IS A PARTY TO THAT AGREEMENT AND THEY SHOULD NOT BE BOUND BY IT IF IT PREJUDICES THEIR RIGHTS TO FULLY LITIGATE THIS MATTER
1:04:11 PM		WITH RESPECT OF THE IMPACT OF THE MISSING OF ANY DEADLINE, FEDERAL STATUTE ITSELF RECOGNIZES THAT DEADLINES MAY BE MISSED
1:04:22 PM		CONGRESS STATES THAT IF IT IS A DEADLINE IS MISSED IT IS UP TO THE NN TO CONVINCCE THIS COURT THAT A DEADLINE WAS NOT SUBSTANTIALLY MET AND THEREFORE THE NAVAJO SETTLEMENT SHOULD BE REVOKED
1:04:37 PM		THE STATUTE IS SECTION 107.01E2B STATES THERE WILL BE NO REVOCATION OF THE SETTLEMENT OR THE NAVAJO GALLUP PIPELINE UNLESS THIS COURT RESPONDS TO A REQUEST BY THE NN DECIDES TO TAKE THAT ACTION
1:04:52 PM	J	WHAT IS YOUR RESPONSE TO THE ARGUMENT THAT MR POLLACK MADE ABOUT COLLATERAL ATTACK
1:05:03 PM	MCCALED	DO NOT BELIEVE THERE CAN BE ANY COLLADERAL ATTACK. THE STATUE ITSELF RECOGNIZES THAT THERE MAY BE DEADLINES THAT ARE MISSED. IT SAYS THAT IF A DEADLINE IS MISSED THAT THE ONLY WAY THIS LEGISLATION IS GOING TO BE TERMINATED IS IF THERE IS AN ISSUANCE OF AN ORDER TO TERMINATE THE AGREEMENT AND CONTRACT PURSUANT TO THE NN'S REQUEST. THEREFORE THE LEGISLATION ITSELF SPEAKS TO THAT, IT ALLOWS FOR DEADLINES AND SAYS THAT NOTHING WILL IMPACT IT UNLESS THE NN CHOOSES TO SEEK THAT ACTION
1:05:37 PM		THEREFORE I SEE NO LEGAL BASISFOR A COLLATERAL ATTACK FOR A MISSED DEADLINE
1:05:43 PM	J	MS MALONE
1:05:48 PM	CASSANDRA MALONE	NOTHING UNLESS YOUR HONOR HAS QUESTIONS FOR ME
1:05:51 PM	J	MR RISLEY I AM GOING TO CUT IT OFF HERE

<u>1:05:58 PM</u>	ARIANNE SINGER	WOULD LIKE TO CORRECT ONE MISTAKE BY MS MCCALED. THE COURT IS NOT BEING ASKED TO MAKE THE SETTLEMENT AGREEMENT BINDING ON ANYONE BUT THE SETTLING PARTIES
<u>1:06:12 PM</u>	J	I UNDERSTOOD WHAT THE ARGUMENTS ARE
<u>1:06:24 PM</u>		LETS TAKE A BREAK, HOW MUCH TIME DO WE NEED
<u>1:06:55 PM</u>		WE NEED TO ADDRESS STILL THE MOTION TO STRIKE THE MOTIONS TO COMPEL AND THEN I WANT TO HAVE A DISCOVERY CONFERENCE
<u>1:07:26 PM</u>		RECESS UNTIL 2:15
<u>2:19:00 PM</u>	J	BACK ON THE RECORD JUDGE RECALLING CASE
<u>2:19:23 PM</u>		HAVE MOTIONS TO ADDRESS WITH REGARD TO A MOTION TO STRIKE AND MOTIONS TO COMPEL DISCOVERY
<u>2:19:33 PM</u>		MOVE FORWARD WITH MOTION TO STRIKE
<u>2:19:46 PM</u>		I HAVE GONE THROUGH THIS WE DO NOT NEED TO SPEND A LOT OF TIME ON THIS MOTION
<u>2:19:50 PM</u>	POLLACK	VERY LITTLE TO ADD TO THE MOTION TO ITSELF. I KNOW MR MARSHALL RESPONDED AND SAID THAT HE WAS NOT EXPRESSING HIS OPINIONS HE WAS EXPRESSING FACTS. THAT IS NOT TRUE
<u>2:20:10 PM</u>		HE EXPRESSED AN OPINION THAT IF THE NN DID NOT APPROVE THE ARIZONA SETTLEMENT THAT IT MIGHT RENDER THIS SETTLEMENT HERE IN THE SAN JUAN MOOT
<u>2:20:19 PM</u>		I POINTED OUT SPECIFIC LANGUAGE IN THE CONGRESSIONAL ACT TO THE CONTRARY CONGRESS EXPRESSLY SAID IN ORDER TO MEET THE CONDITIONS... IF THE CONDITIONS FOR DELIVERY OF WATER TO WINDOW ROCK ARE NOT MET IT DOES NOT EFFECT THE VALIDITY OF THE SETTLEMENT
<u>2:20:45 PM</u>		CONTRARY TO THE MATERIAL THAT WAS IN THE NOTICE FILED BY MR MARSHALL THE EXACT LANGUAGE OF CONGRESS SAYS THE EXACT OPPOSITE, THAT IT DOES NOT EFFECT THE SETTLEMENT
<u>2:21:04 PM</u>	MARSHALL	WE FILED THOSE 2 NOTICES TO APPRISE THE COURT OF CERTAIN LOOMING DEVELOPMENTS THAT THE COURT NEEDED TO BE AWARE OF NOT TO DECIDE THE ISSUE
<u>2:21:30 PM</u>		WE DO NOT KNOW WHAT ALL OF THOSE DEVELOPMENTS MEAN OURSELVES
<u>2:21:44 PM</u>		WE FILED THOSE MOTIONS TO PUT THEM ON THE COURTS RADAR SCREEN. TODAY WE STARTED TALKING ABOUT THOSE ISSUES FOR A VERY GOOD REASON. THEY HAVE TO DO WITH THE NAVAJO GALLUP PIPELINE AND WHAT HAPPENS IF THE PIPELINE IS BUILT OR NOT BUILT
<u>2:22:18 PM</u>		WE AGREE THEY ARE NOT EVIDENCE, WE ARE NOT AT THE EVIDENCE STAGE AT ALL
<u>2:22:32 PM</u>		PARTIES FILE NOTICES ALL OF THE TIME, THEY HAVE FILED ALL SORTS OF NOTICES, THERE IS A PROVISION FOR IT

