

ELEVENTH JUDICIAL DISTRICT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

DISTRICT COURT
SAN JUAN COUNTY NM
FILED *JS*

2012 NOV -5 PM 3: 02

STATE OF NEW MEXICO ex rel.
State Engineer,
Plaintiff,

v.
UNITED STATES OF AMERICA, et al.,
Defendants.

v.
THE JICARILLA APACHE TRIBE and the
NAVAJO NATION,
Defendant-Intervenors.

No. CV 75-184
SAN JUAN RIVER
ADJUDICATION SUIT

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

**GARY L. HORNER'S OBJECTIONS TO THE UNITED STATES' DISCOVERY
REQUESTS OF GARY L. HORNER**

SUMMARY

1. Name of party filing the present document: **Gary L. Horner**
2. Title of the present document: **GARY L. HORNER'S OBJECTIONS TO THE UNITED STATES' DISCOVERY REQUESTS OF GARY L. HORNER**
3. Descriptive summary of the relief sought: **This document represents Mr. Horner's objections to the U.S. Discovery Requests.**
- 4: Number of pages of the present document: **27**

COMES NOW Gary L. Horner, Esq., *In Propria Persona* (hereinafter referred to in the first person), in accordance with the AMENDED ORDER SETTING SCHEDULE GOVERNING DISCOVERY ON THE NON-SETTLING PARTIES AND REMAINING PROCEEDINGS, p. 3, ¶ 6, entered in the present matter on August 7, 2012 (hereinafter referred to as the "8/7/12 Scheduling Order"), and hereby submits my responses and objections to the UNITED STATES' DISCOVERY REQUESTS OF GARY L. HORNER, which were

*Horner's Objections to
U.S. Discovery Requests*

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propounded upon me by the United States (“U.S.”) on October 5, 2012.

Accordingly, I submit the following information:

PROCEDURAL COMPLICATIONS

Matters are complicated here by the procedures that are being used. That is, no Complaint has been filed by the Settling Parties. The Settling Parties only filed their cryptic SETTLEMENT MOTION OF UNITED STATES, NAVAJO NATION AND STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES, which was filed in the present matter on January 3, 2011 (hereinafter referred to as the “Settlement Motion”), with the Navajo Settlement and the Proposed Decrees attached thereto as Exhibits. The State of New Mexico did file the STATE OF NEW MEXICO’S STATEMENT OF LEGAL AND FACTUAL BASES FOR SETTLEMENT on April 12, 2012, and the STATE OF NEW MEXICO’S REVISED STATEMENT OF LEGAL AND FACTUAL BASES FOR SETTLEMENT on September 7, 2012. However, neither the U.S. nor the Navajo Nation joined in either Statement. Thus, there is no Complaint to work from where the Settling Parties would have set forth the averments necessary to support their requested relief (approval of the Navajo Settlement and Proposed Decrees).

Although I filed GARY L. HORNER’S OBJECTIONS: TO THE SETTLEMENT MOTION OF UNITED STATES, NAVAJO NATION AND STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES; AND THE PROPOSED DECREES ASSOCIATED WITH SAID SETTLEMENT MOTION, which was filed in the present matter on September 24, 2012 (“Horner’s Objections to Settlement Motion” or my “Objections to Settlement Motion”)

(which might be loosely compared to an Answer to a Complaint), the subject discovery requests do not track, or seek discovery regarding, any of the contentions I made in my Objections to Settlement Motion.

The Legal Standard for Approval of the Navajo Settlement and Proposed Decrees and the Respective Burdens of the Parties (“Burdens of the Parties”).

The Burdens of the Parties are referred to repeatedly herein below. For reasons of efficiency, the Burdens of the Parties are set forth here.

Pursuant to the AMENDED ORDER ESTABLISHING THE LEGAL STANDARDS FOR EVALUATING THE PROPOSED DECREES AND RESPECTIVE BURDENS OF PROOF, entered in the present matter on April 19, 2012 (“Order re Legal Standards”), the Court stated with respect to such Legal Standard for Approval that:

“The Settling Parties must demonstrate that the Proposed Decrees are ‘fair, adequate, and reasonable, and consistent with the public interest and applicable law.’ Order re Legal Standards, pp. 1-2.

Said Order re Legal Standards also provided, regarding the Respective Burdens of the parties, that:

“The Settling Parties shall have the burden of production and the burden of persuasion to demonstrate that (a) the Settlement Agreement is the product of good faith, arms-length negotiations, (b) the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights, (c) there is a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial, and (d) the Settlement Agreement is consistent with public policy and applicable law. The Settling Parties must first demonstrate that the Proposed Decrees satisfy these four elements by prima facie evidence to meet their burden of production. If the Settling Parties satisfy the initial burden of production, the burden of rebutting the Settling Parties’ evidence shall shift to the Objectors. The Settling Parties, however, shall retain the burden of persuasion by a preponderance of the evidence. The Objectors need not demonstrate injury to their own water rights claims in order to state a cognizable objection.” Order re Legal Standards, p. 3.

GENERAL OBJECTIONS

General Objection No. 1. The U.S. does not seek to discover admissible evidence or

information that is reasonably calculated to lead to the discovery of admissible evidence.

Most of the subject discovery requests are objectionable because the U.S. does not seek to discover admissible evidence or information that is reasonably calculated to lead to the discovery of admissible evidence (NMRA Rule 1-026 B), and therefore, the subject discovery requests are not permissible under NMRA Rules 1-033 D, 1-034 A, or 1-036 A. The discovery rules intend a liberal discovery to enable the parties to obtain the fullest possible knowledge of the facts before trial. *Griego v. Grieco*, 90 N.M. 174, 561 P.2d 36 (Ct.App. 1977). However, in most instances, the U.S. does not seek the discovery of any facts whatsoever.

General Objection No. 2. The discovery requests that I admit to a legal conclusion.

Most of the discovery requests request that I admit to a legal conclusion. I am not obligated to admit or deny the truth of a legal conclusion. *Stark-Romero v. Nat'l R.R. Passenger Co. (AMTRAK)*, 275 F.R.D. 551, 554 (D.N.M. 2011) (“[O]ne party cannot demand that the other party admit the truth of a legal conclusion.”) (internal quotation marks and citations omitted).

General Objection No. 3. The information sought is protected by the attorney work product rule.

In most instances, the U.S. seeks that I disclose my mental impressions, conclusions, opinions or legal theories regarding the present litigation that are clearly protected by the attorney work product rule. (NMRA Rule 1-026 B(5).)

General Objection No. 4. The Settling Parties seek to impermissibly shift the burden of proof.

Most of the subject discovery requests do not even track the allegations in my Objections to Settlement Motion. That is, most of the U.S. discovery requests do not track, or are not specific to my Objections to Settlement Motion (or pleading?) In the present matter. Rather, most of the subject discovery requests track the legal standard for approval of the Navajo Settlement and Proposed Decrees, or the Settling Parties' burdens of proof in the present matter.

For instance, RFA No. 1, Interrogatory No. 1, and RFP No. 1, all ask me to admit, explain my denial, or produce documents regarding, whether the:

"Settlement Agreement was the product of good faith, arms-length negotiations between the Navajo Nation, the United States, and the State of New Mexico."

In that regard, the Settling Parties have asserted that, and the Court has established that the Settling Parties have the burden of proof with respect to the issue of whether or not, the Settlement Agreement was the product of good faith, arms-length negotiations. To date, the Settling Parties have offered no evidence in support of such assertion. Rather than meeting the burden of proof with respect to such assertion, the Settling Parties now seek to impermissibly shift the burden of proof with respect to such issue to me (Objectors).

Therefore, the Settling Parties now request that I admit, explain my denial, and/or prove, their contested contention (not even my contention), in an attempt to avoid their legitimate burden regarding such issue.

General Objection No. 5. The subject discovery requests are overly broad and burdensome.

Many of the subject discovery requests are overly broad and burdensome, in that, they constitute contention interrogatories (or requests), they are broadly drafted, and they are being made early in the discovery process.

In *Lucero v. Valdez*, 240 F.R.D 591, 594 (D.N.M. 2007), the court noted that:

“Lucero next asserts that Defendants’ interrogatories are ‘blockbuster’ interrogatories which are improper as a matter of law. While some courts have criticized the indiscriminate use of contention interrogatories, no court has categorically prohibited their use in all cases.

“Contention interrogatories are interrogatories that seek to clarify the basis for or the scope of an adversary’s claims. *Starcher v. Corr. Med. Sys. Inc.*, 144 F.3d 418, 421 n. 2 (6th Cir.1998), *aff’d sub nom. Cunningham v. Hamilton County*, 527 U.S. 198, 119 S.Ct. 1915, 144 L.Ed.2d 184 (1999). The phrase ‘contention interrogatories’ has been used imprecisely to refer to several types of questions. *McCathy v. Paine Webber Group, Inc.*, 168 F.R.D. 448, 450 (D.Conn.1996). Contention interrogatories may ‘ask another party to indicate what it contends, to state all the facts on which it bases its contentions, to state all the evidence on which it bases its contentions, or to explain how the law applies to the facts.’ *Id.* Contention interrogatories are distinct from interrogatories that request identification of witnesses or documents that support a party’s contentions. *Id.*

“Some courts have criticized the use of contention interrogatories, especially if they are broadly drafted and served early in the discovery process. See *Roberts v. Heim*, 130 F.R.D. 424, 427-28 (N.D.Cal.1989); *In re Convergent Tech. Sec. Litig.*, 108 F.R.D. 328, 333-39 (N.D.Cal.1985). **Contention interrogatories that systematically track all of the allegations in an opposing party’s pleadings, and that ask for ‘each and every fact’ and application of law to fact that supports the party’s allegations, are an abuse of the discovery process because they are overly broad and unduly burdensome.** See *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D.Kan.1998); *Convergent Tech.*, 108 F.R.D. at 338. These same courts, however, have recognized the important benefits that result from clarifying and narrowing the issues in litigation as early as possible, and analyze contention interrogatories on an issue by issue basis. See *IBP, Inc.*, 179 F.R.D. at 321-23; *Roberts*, 130 F.R.D. at 427; *Convergent Tech.*, 108 F.R.D. at 337.

“Contention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. See *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D.Kan.1998); *Lawrence v. First Kansas Bank & Trust*, 169 F.R.D. 657, 663 (D.Kan.1996). Interrogatories may ask for the material or principal facts that support a party’s contentions, and contention interrogatories that do not encompass every allegation, or a significant number of allegations, made by a party are proper. See *Hiskett*, 180 F.R.D. at 405. Courts have considerable discretion in determining when contention interrogatories must be answered, and **there is considerable support for deferring answers to contention interrogatories until after a substantial amount of discovery has been completed.** See FED.R.CIV.P. 33(c); *McCarthy*, 168 F.R.D. at 450. **A party that wishes to serve contention interrogatories early in the discovery process must serve only a limited set of interrogatories and must be able to demonstrate that answers to the questions will clarify the issues in the case, narrow the scope of the dispute, set up early settlement discussions, or expose a substantial basis for a motion under Rule 11 or Rule 56.** *Convergent Tech.*, 108 F.R.D. at 338-39.” *Lucero* at 554. Bold typeface added.

Most of the subject discovery requests constitute contention interrogatories (or requests).

They are broadly drafted, and they are being made early in the discovery process. Such discovery requests do not even track the allegations of my Objections to Settlement Motion. The subject discovery requests ultimately request that I “describe completely and in all detail every basis for your denial that”, or that, I “provide every document on which you rely to deny (in whole or in part)”, with respect to each RFA. Therefore, according to *Lucero*, such discovery requests are an

abuse of the discovery process because they are overly broad and unduly burdensome. Further, according to *Lucero*, answers to such contention interrogatories (requests) should be deferred (if they need be answered at all) until after a substantial amount of discovery has been completed. Further, (also according to *Lucero*), the Settling Parties have not demonstrated “that answers to the questions will clarify the issues in the case, narrow the scope of the dispute, set up early settlement discussions, or expose a substantial basis for a motion under Rule 11 or Rule 56.” Accordingly, many of the subject discovery requests, as contention requests, are overly broad and burdensome.

SPECIFIC OBJECTIONS

Requests for Admission

RFA No. 1: Admit the Settlement Agreement was the product of good faith, arms-length negotiations between the Navajo Nation, the United States, and the State of New Mexico.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

RFA No. 2: Admit that the United States had a good faith legal and technical basis for the U.S. Statement of Claims.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, whether or not “the United States had a good faith legal and technical basis for the U.S. Statement of Claims” is not relevant in the present matter.

The issue of whether or not “the United States had a good faith legal and technical basis for the U.S. Statement of Claims” is not part of the Burdens of the Parties established by the Court. In fact, the U.S. Statement of Claims was not in any manner referenced by the Court with respect to such legal standards or burdens of the parties. Therefore, said issue is not relevant in

the present matter.

Further, the U.S. Statement of Claims, generally, is not relevant in the present matter. The present matter concerns the Court's consideration of the Navajo Settlement and associated Proposed Decrees. It appears that the U.S. submitted the U.S. Statement of Claims in an attempt to intimidate other water users into not objecting to the Navajo Settlement and Proposed Decrees by impliedly asserting that if the Navajo Settlement and Proposed Decrees were not approved by the Court, the U.S. on behalf of the Navajo Nation would seek even more water rights on behalf of the Navajo Nation.

The Settling Parties argued that the subject Decrees were smaller than the claims made by the U.S., and they intended to use a comparison between the subject Decrees and the larger Statement of Claims as evidence that the subject Decrees were "fair and reasonable" and "in the public interest." In that regard, the Settling Parties argued that by filing the U.S. Statement of Claims they had already met their burden under such "fair and reasonable" standard, and that the burden of proof should therefore shift to any objector to show that the subject Decrees are not fair, not reasonable, and not consistent with applicable law or the public interest.

In response, I asserted that the result of the Settling Parties' arguments is that they would never be required to show that the subject Decrees were consistent with any law. I have previously asserted, and continue to assert, that the Navajo Settlement and Proposed Decrees have no basis in any law. Certainly, if the Proposed Decrees have no basis in the law, neither does the much larger claim submitted by the U.S. (GARY L. HORNER'S OPTIONAL SUPPLEMENTAL BRIEF REGARDING WHAT LEGAL STANDARDS GOVERN THE COURT'S DECISION FOR APPROVAL OF THE PROPOSED DECREES, pp. 2-3, filed in the present matter on January 3, 2012 ("Horner's Optional Brief re Legal Standards").)

Specifically, the Settling Parties proposed to show the Court "(c) that the settlement is less than the potential claims of the Navajo Nation, both in quantity and priority." (Order re Legal Standards, p. 2.) Ultimately, the Court rejected such proposed showing and decided that "Under the particular factual circumstances in this case, the public interest is served by . . . modifying element (c) to relate to the potential claims that could be secured at trial rather than the potential claims of the Navajo Nation." (Order re Legal Standards, p. 2.) Therefore, pursuant to the Court's decision, the U.S. Statement of Claims has no relevance whatsoever, in the present matter.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

RFA No. 3: As compared to the water rights described in the U.S. Statement of Claims, admit that the provisions of the Settlement Agreement will reduce impacts on junior water rights.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to RFA No. 7, injury or harm (or impacts) to a third party's water right is not relevant with respect to any water right decreed in a water rights

adjudication suit. Therefore, my relevance objection to RFA No. 7 is hereby incorporated herein with respect to the subject RFA.

Further, as indicated in my objection to RFA No. 2, the U.S. Statement of Claims has no relevance in the present matter, and neither does any comparison between the Navajo Settlement and the U.S. Statement of Claims with respect to any adverse impacts on junior water users. Therefore, my relevance objection to RFA No. 2 is hereby incorporated herein with respect to the subject RFA.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

RFA No. 4: Admit that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those described in the U.S. Statement of Claims.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to RFA No. 2, the U.S. Statement of Claims has no relevance in the present matter, and neither does any comparison between the Navajo Settlement and the U.S. Statement of Claims with respect to the water rights associated with either document. Therefore, my relevance objection to RFA No. 2 is hereby incorporated herein with respect to the subject RFA.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I admit that the quantity of water rights proposed in the Settlement Agreement are less than the water rights described in the U. S. Statement of Claims. However, I deny that the provisions of the Settlement Agreement accurately or fairly describe the water rights with respect to which the Navajo Nation should be entitled.

RFA No. 5: Admit that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

RFA No. 6: Admit that the Settlement Agreement is consistent with public policy and

applicable law.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

RFA No. 7: Admit that your water right will suffer no harm as a result of the Court granting the Settlement Motion and entering the Partial Final Decree and the Supplemental Partial Final Decree.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, injury or harm to a third party's water use or water right is not relevant in the present matter, and such third parties should not be required to prove such injury or harm. I addressed this issue pursuant to THE BID AND GARY L. HORNER'S RESPONSE TO THE JOINT MOTION FOR ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, which was filed in the present matter on October 6, 2009 ("Horner's Response re Initial Procedures"). See also, Horner's Optional Brief re Legal Standards, pp. 3-5. Pursuant to Horner's Response re Initial Procedures, I stated:

"Objectors should not be required to prove injury or harm caused by the Navajo Decree because such injury or harm is irrelevant.

"Movants propose that Objections must include a description of the water rights claimed by the objector and how the objector will be injured or harmed by the proposed Navajo Decree in a legally cognizable way. Such requirements are irrelevant and should be eliminated. Specifically, Movants propose:

'This Court will approve the Navajo Decree if it finds that settlement is fair, adequate, and reasonable, and consistent with the public interest and applicable law. In addition to any other information that an Objection provides, an Objection must describe why you believe the proposed Navajo Decree does not meet this standard. An Objection must also include the following information: (a) name and address of the objector; (b) description of water rights claimed by the objector; (c) statement of the specific legal and factual basis of the objection; and (d) how the objector will be injured or harmed by the proposed Navajo Decree in a legally cognizable way. Objections that do not provide all of the required information will be subject to dismissal.' ([PROPOSED] [NOTICE OF EXPEDITED *INTER SE* PROCEEDING TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION ("Proposed Notice")], p. 4.) Emphasis added. (See also, [[PROPOSED] ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION ("Proposed Order")], p. 7, [JOINT MOTION FOR ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, filed in the present matter on September 6, 2009 ("Joint Memo")], p. 13.) [The Proposed Notice and Proposed Order were attached as exhibits to the Joint Memo.]

“Injury or harm to an objector is simply irrelevant, as is a description of an objector’s water rights.

“If the Court finds that the subject Navajo Settlement and Decree are fair, adequate, and reasonable, and consistent with the public interest and applicable law, said Settlement and Decree will be approved by the Court regardless of whether third parties are injured. Similarly, any water right found to be valid will be approved even if it is senior to another water right, and, therefore, harms, or diminishes the value of, a junior water right. That is simply the very nature of the doctrine of prior appropriation. In that regard, injury or harm to a third party is simply irrelevant to the determination of the validity of a person’s water right.

“So, the relevant inquiry should not be whether the subject Navajo Settlement and Decree injures or harms a third party water user, but rather whether the subject Settlement and Decree are fair, adequate, reasonable, or consistent with the public interest or applicable law.

“To further illustrate the point, if a hypothetical water user were to receive a priority date of 2010 with respect to a water right adjudicated in the present matter, no currently existing water user would be able to show harm or injury, since the currently existing water users’ priority dates must necessarily be earlier than 2010. However, if such hypothetical water user were to receive water rights of 400,000 afy more than they could beneficially use, every other water user in the Basin should be allowed to successfully object, even though they can show no injury or harm, simply on the basis that such hypothetical water right is not fair, reasonable or consistent with applicable law. (If third parties cannot have an objection sustained in such instance because they cannot prove injury or harm, I intend to submit a claim for 1,000,000 afy of water rights in the present matter with a priority date of 2010.)

“Further, injury or harm may be nearly impossible to prove. Of course, Movants are aware of such fact, that is why Movants want to require that third parties bear such burden. As shown by the *Lewis (2007)* case above, simply proving one’s own water right can be next to impossible where such water rights have not yet been determined in the present matter.

“But beyond that, to prove injury or harm, a third party must show: that the water rights of the Navajo Settlement exceed the Navajo current uses; what the current uses of the Navajo Nation are; what the availability of water in the Basin is; what the total water uses are in the Basin; where the third party stands within the total picture of priority dates assigned to all of the water rights; that there will not be sufficient water available to serve all of the Navajo rights and all of the existing rights; and that the BOR projects will be operated to the detriment of such third parties’ water right. Further, such third parties must prove that they will be harmed in the future, (rather than proving they are currently being harmed or that they have been harmed in the past) by virtue of the manner in which: the Navajo Nation will use its new water rights; the BOR will operate its facilities; and the OSE will administer the water of the Basin. In that regard, to prove injury, such third party must prove all of these things that have not happened yet.

“Therefore, the requirement that objectors prove they will be harmed represents a nearly insurmountable burden. Of course, that is Movants’ intent. However, as previously stated harm to third parties is simply irrelevant.

“Moreover, requiring objectors to bear such a burden violates their due process rights.

“Similarly, the requirement that an objection must state the description of the objector’s water right is irrelevant. If injury or harm to third parties is not relevant, neither is the nature and extent of such third parties’ water right. Every individual or entity in the Basin uses water, even if they do not hold a recognized water right. The grant of 400,000 afy of water rights “senior” to all other water rights in the Basin, pursuant to the Navajo Settlement and Decree, will adversely affect virtually every other water user in the Basin. Therefore, any individual or entity in the Basin should be allowed to object to the subject Navajo Settlement and Decree, without being required to describe their water rights.” Horner’s Response re Initial Procedures, pp. 86-89.

Subsequently, the Court considered the matter and eliminated any requirement that any objection to the Navajo Settlement or Proposed Decrees include any proof of an objector’s water rights, or any statement or showing with respect to how such objector’s water rights would be injured or harmed by the subject Navajo Settlement or Proposed Decrees. (See Order re Legal Standards, p. 3, where with respect to the respective burdens of the parties the Court did not

indicate any necessity for objecting parties to show injury or harm to their water rights, and specifically stated that "The Objectors need not demonstrate injury to their own water rights claims in order to state a cognizable objection." (See also the DRAFT NOTICE OF EXPEDITED *INTER SE* PROCEEDING TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION AND DEADLINE FOR FILING NOTICES OF INTENT TO PARTICIPATE, which was attached as Exhibit 1 to the Court's ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, which was entered in the present matter on August 19, 2010, wherein all references to the requirements for filing objections were removed; as well as the Court's February 3, 2012 ORDER (1) GRANTING SETTLING PARTIES' MOTION TO EXTEND CERTAIN DEADLINES AND (2) SETTING SCHEDULE GOVERNING DISCOVERY AND REMAINING PROCEDURES, ¶ 3, p. 3, and the Court's August 7, 2012 AMENDED ORDER SETTING SCHEDULE FOR DISCOVERY ON THE NON-SETTLING PARTIES AND REMAINING PROCEEDINGS, ¶ 2, p. 2, wherein all requirements, that objections to the Navajo Settlement and Proposed Decrees contain a statement of the Objector's water rights, or how such Objectors would be harmed by the Navajo Settlement and Proposed Decrees, were eliminated.) Therefore, the Court has already considered and established that the nature and extent of an objector's water rights, and whether an objector will be injured or harmed by the entry of the Proposed Decrees are simply not relevant in the present matter.

In fact, in a normal civil suit, it is the plaintiffs' duty to allege, and burden to prove, that *plaintiffs* have been harmed by *defendants*. In the present matter, Plaintiffs (the Settling Parties) have not alleged, and could not possibly prove, that plaintiffs have been in any manner harmed by defendants. So, any attempt by the Settling Parties in the present matter to require that adversely affected third parties prove that they have been harmed by the Settling Parties would represent a gross manipulation, and inappropriate shifting, of the burdens of proof and persuasion from the Settling Parties to Objectors.

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

RFA No. 8: Admit that if the Settlement Motion is denied and the Navajo Nation and the United States are required to litigate the water rights of the Navajo Nation, the harm to your water right(s) caused by the Navajo water rights decreed after a trial on the merits will be greater than any harm to your water right(s) that would be caused by the Navajo water rights to be decreed pursuant to the Settlement Agreement.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to RFA No. 7, injury or harm to a third party's water right is not relevant with respect to any water right decreed in a water rights adjudication suit. Therefore, my relevance objection to RFA No. 7 is hereby incorporated herein with respect to the

subject RFA.

The Court has set forth the legal standards and the respective burdens of the parties pursuant to the Court's Order re Legal Standards. Pursuant to said Order, there is no provision that Objectors demonstrate that harm to their water right(s) caused by the Navajo water rights decreed after a trial on the merits will be greater than any harm to their water right(s) that would be caused by the Navajo water rights to be decreed pursuant to the Settlement Agreement.

However, the Court's Order re Legal Standards, p. 3, ordered that the Settling Parties have the burden of production and persuasion to demonstrate that:

"(b) the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights, [and] (c) there is a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial"

In that regard, I expect the Settling Parties to make some minimal showing with respect to these two elements of their burden, and thus, according to the subject Order re Legal Standards, the burden of going forward with evidence will shift to Objectors to dispute such showing.

Subparagraph (b) - that "the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights" - was offered by the Settling Parties, and accepted by the Court, as a burden the Settling Parties were willing to assume. However, as indicated by the subject RFA, the Settling Parties would twist said subparagraphs (b) and (c) into a burden on Objectors that Objectors must prove that they will be harmed by the subject Navajo Settlement and Proposed Decrees. In fact, as indicated herein above, injury or harm to a third party's water rights is simply not relevant in the present matter.

Therefore, said subparagraph (b) really represents an inappropriate burden in the present matter. If the Settling Parties want to make such a showing, that is fine. However, if the Settling Parties make such a showing, Objectors should be allowed, but should not be required, to rebut such showing. In fact, the relevant inquiry, or burden, should be: whether "(c) there is a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial"; and in particular, whether "(d) the Settlement Agreement is consistent with public policy and applicable law."

Accordingly, I object to the subject RFA.

Answer: Without waiving the objections, I assert the following. I deny the subject RFA.

Interrogatories

Interrogatory No. 1: Unless your response to Request for Admission No. 1 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement was the product of good faith, arms-length negotiations.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

The negotiations regarding the Settlement Agreement were apparently conducted in secret between the State of New Mexico and the Navajo Nation. I was not invited, nor allowed, to

participate in, or monitor, such negotiations. The Settling Parties have asserted that the Settlement Agreement was the product of good faith, arms-length negotiations, and the Settling Parties have argued that based upon such assertion, the Settlement Agreement should be approved by the Court. Accordingly, the Court has established that the Settling Parties have the burden of establishing that the Settlement Agreement was the product of good faith, arms-length negotiations. To date, the Settling Parties have offered no evidence in support of such assertion. Rather than meeting the burden of proof the Settling Parties offered to assume with respect to such assertion, the Settling Parties now seek to impermissibly shift the burden of proof with respect to such issue to me (Objectors). That is, the Settling Parties now request that I produce evidence to disprove their legitimate burden regarding such issue.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 2: Unless your response to Request for Admission No. 2 was an unqualified admission, describe completely and in all detail every basis for your denial that the United States had a good faith legal and technical basis for the U.S. Statement of Claims.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, whether or not “the United States had a good faith legal and technical basis for the U.S. Statement of Claims” is not relevant in the present matter.

The issue of whether or not “the United States had a good faith legal and technical basis for the U.S. Statement of Claims” is not part of either the legal standard or the respective burdens of the parties established by the Court. In fact, the U.S. Statement of Claims was not in any manner referenced by the Court with respect to such legal standards or burdens of the parties. Therefore, said issue is not relevant in the present matter.

Further, the U.S. Statement of Claims, generally, is not relevant in the present matter. The present matter concerns the Court’s consideration of the Navajo Settlement and associated Proposed Decrees. The U.S. submitted the U.S. Statement of Claims in an attempt to intimidate other water users into not objecting to the Navajo Settlement and Proposed Decrees by impliedly asserting that if the Navajo Settlement and Proposed Decrees were not approved by the Court, the U.S. on behalf of the Navajo Nation would seek even more water rights on behalf of the Navajo Nation.

The Settling Parties argued that the subject Decrees were smaller than the claims made by the U.S., and they intended to use a comparison between the subject Decrees and the larger Statement of Claims as evidence that the subject Decrees were “fair and reasonable” and “in the public interest.” In that regard, the Settling Parties argued that by filing the U.S. Statement of Claims they had already met their burden under such “fair and reasonable” standard, and that the burden of proof should therefore shift to any objector to show that the subject Decrees are not fair, not reasonable, and not consistent with applicable law or the public interest.

In response, I asserted that the result of the Settling Parties’ arguments is that they would never be required to show that the subject Decrees were consistent with any law. I have previously asserted, and continue to assert, that the Navajo Settlement and Proposed Decrees have no basis in any law. Certainly, if the subject Decrees have no basis in the law, neither does

the much larger claim submitted by the U.S. (GARY L. HORNER'S OPTIONAL SUPPLEMENTAL BRIEF REGARDING WHAT LEGAL STANDARDS GOVERN THE COURT'S DECISION FOR APPROVAL OF THE PROPOSED DECREES, pp. 2-3, filed in the present matter on January 3, 2012 ("Horner's Optional Brief re Legal Standards"). See also, Horner's Objection to Settlement.)

Specifically, the Settling Parties proposed to show the Court "(c) that the settlement is less than the potential claims of the Navajo Nation, both in quantity and priority." (Order re Legal Standards, p. 2.) Ultimately, the Court rejected such proposed showing and decided that "Under the particular factual circumstances in this case, the public interest is served by . . . modifying element (c) to relate to the potential claims that could be secured at trial rather than the potential claims of the Navajo Nation." (Order re Legal Standards, p. 2.) Therefore, pursuant to the Court's decision, the U.S. Statement of Claims has no relevance whatsoever, in the present matter.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 3: Unless your response to Request for Admission No. 3 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement will reduce impacts on junior water rights.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to Interrogatory No. 7, injury or harm (or impacts) to a third party's water right is not relevant with respect to any water right decreed in a water rights adjudication suit. Therefore, my relevance objection to Interrogatory No. 7 is hereby incorporated herein with respect to the subject Interrogatory.

Further, with respect to the subject Interrogatory (whether "the provisions of the Settlement Agreement will reduce impacts on junior water rights"), the question arises: whether the Settlement Agreement will reduce impacts on junior water rights - as compared to what? If the U.S. intends that question is: whether the Settlement Agreement will reduce impacts on junior water rights as compared to the U.S. Statement of Claims - I have already indicated in my objection to Interrogatory No. 2, that the U.S. Statement of Claims has no relevance in the present matter. Similarly, any comparison between the Navajo Settlement and the U.S. Statement of Claims has no relevance with respect to any adverse impacts on junior water users. Therefore, my relevance objection to Interrogatory No. 2 is hereby incorporated herein with respect to the subject Interrogatory.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 4: Unless your response to Request for Admission No. 4 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those described in the U.S. Statement of Claims.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to Interrogatory No. 2, the U.S. Statement of Claims has no relevance in the present matter, and neither does any comparison between the Navajo Settlement and the U.S. Statement of Claims with respect to the water rights associated with either document. Therefore, my relevance objection to Interrogatory No. 2 is hereby incorporated herein with respect to the subject Interrogatory.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 5: Unless your response to Request for Admission No. 5 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 6: Unless your response to Request for Admission No. 6 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement is consistent with public policy and applicable law.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 7: Unless your response to Request for Admission No. 7 was an unqualified admission, describe completely and in all detail every basis for your denial that your water right will suffer no harm as a result of the Court granting the Settlement Motion and entering the Partial Final Decree and the Supplemental Partial Final Decree.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, injury or harm to a third party's water use or water right is not relevant in the present matter, and such third parties should not be required to prove such injury or harm. I addressed this issue pursuant to THE BID AND GARY L. HORNER'S RESPONSE TO THE JOINT MOTION FOR ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, which was filed in the present matter on October 6, 2009 ("Horner's Response re Initial Procedures"). See also, Horner's Optional Brief re Legal Standards, pp. 3-5. Pursuant to Horner's Response re Initial Procedures, I stated:

“Objectors should not be required to prove injury or harm caused by the Navajo Decree because such injury or harm is irrelevant.

“Movants propose that Objections must include a description of the water rights claimed by the objector and how the objector will be injured or harmed by the proposed Navajo Decree in a legally cognizable way. Such requirements are irrelevant and should be eliminated. Specifically, Movants propose:

‘This Court will approve the Navajo Decree if it finds that settlement is fair, adequate, and reasonable, and consistent with the public interest and applicable law. In addition to any other information that an Objection provides, an Objection must describe why you believe the proposed Navajo Decree does not meet this standard. An Objection must also include the following information: (a) name and address of the objector; (b) description of water rights claimed by the objector; (c) statement of the specific legal and factual basis of the objection; and (d) how the objector will be injured or harmed by the proposed Navajo Decree in a legally cognizable way. Objections that do not provide all of the required information will be subject to dismissal.’ ([PROPOSED] [NOTICE OF EXPEDITED *INTER SE* PROCEEDING TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION (“Proposed Notice”)], p. 4.) Emphasis added. (See also, [[PROPOSED] ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION (“Proposed Order”)], p. 7, [JOINT MOTION FOR ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, filed in the present matter on September 6, 2009 (“Joint Memo”)], p. 13.) [The Proposed Notice and Proposed Order were attached as exhibits to the Joint Memo.]

“Injury or harm to an objector is simply irrelevant, as is a description of an objector’s water rights.

“If the Court finds that the subject Navajo Settlement and Decree are fair, adequate, and reasonable, and consistent with the public interest and applicable law, said Settlement and Decree will be approved by the Court regardless of whether third parties are injured. Similarly, any water right found to be valid will be approved even if it is senior to another water right, and, therefore, harms, or diminishes the value of, a junior water right. That is simply the very nature of the doctrine of prior appropriation. In that regard, injury or harm to a third party is simply irrelevant to the determination of the validity of a person’s water right.

“So, the relevant inquiry should not be whether the subject Navajo Settlement and Decree injures or harms a third party water user, but rather whether the subject Settlement and Decree are fair, adequate, reasonable, or consistent with the public interest or applicable law.

“To further illustrate the point, if a hypothetical water user were to receive a priority date of 2010 with respect to a water right adjudicated in the present matter, no currently existing water user would be able to show harm or injury, since the currently existing water users’ priority dates must necessarily be earlier than 2010. However, if such hypothetical water user were to receive water rights of 400,000 afy more than they could beneficially use, every other water user in the Basin should be allowed to successfully object, even though they can show no injury or harm, simply on the basis that such hypothetical water right is not fair, reasonable or consistent with applicable law. (If third parties cannot have an objection sustained in such instance because they cannot prove injury or harm, I intend to submit a claim for 1,000,000 afy of water rights in the present matter with a priority date of 2010.)

“Further, injury or harm may be nearly impossible to prove. Of course, Movants are aware of such fact, that is why Movants want to require that third parties bear such burden. As shown by the *Lewis (2007)* case above, simply proving one’s own water right can be next to impossible where such water rights have not yet been determined in the present matter.

“But beyond that, to prove injury or harm, a third party must show: that the water rights of the Navajo Settlement exceed the Navajo current uses; what the current uses of the Navajo Nation are; what the availability of water in the Basin is; what the total water uses are in the Basin; where the third party stands within the total picture of priority dates assigned to all of the water rights; that there will not be sufficient water available to serve all of the Navajo rights and all of the existing rights; and that the BOR projects will

be operated to the detriment of such third parties' water right. Further, such third parties must prove that they will be harmed in the future, (rather than proving they are currently being harmed or that they have been harmed in the past) by virtue of the manner in which: the Navajo Nation will use its new water rights; the BOR will operate its facilities; and the OSE will administer the water of the Basin. In that regard, to prove injury, such third party must prove all of these things that have not happened yet.

"Therefore, the requirement that objectors prove they will be harmed represents a nearly insurmountable burden. Of course, that is Movants' intent. However, as previously stated harm to third parties is simply irrelevant.

"Moreover, requiring objectors to bear such a burden violates their due process rights.

"Similarly, the requirement that an objection must state the description of the objector's water right is irrelevant. If injury or harm to third parties is not relevant, neither is the nature and extent of such third parties' water right. Every individual or entity in the Basin uses water, even if they do not hold a recognized water right. The grant of 400,000 cfs of water rights "senior" to all other water rights in the Basin, pursuant to the Navajo Settlement and Decree, will adversely affect virtually every other water user in the Basin. Therefore, any individual or entity in the Basin should be allowed to object to the subject Navajo Settlement and Decree, without being required to describe their water rights." Horner's Response re Initial Procedures, pp. 86-89.

Subsequently, the Court considered the matter and eliminated any requirement that any objection to the Navajo Settlement or Proposed Decrees include any proof of an objector's water rights, or any statement or showing with respect to how such objector's water rights would be injured or harmed by the subject Navajo Settlement or Proposed Decrees. (See Order re Legal Standards, p. 3, where with respect to the respective burdens of the parties the Court did not indicate any necessity for objecting parties to show injury or harm to their water rights, and specifically stated that "The Objectors need not demonstrate injury to their own water rights claims in order to state a cognizable objection." (See also the DRAFT NOTICE OF EXPEDITED *INTER SE* PROCEEDING TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION AND DEADLINE FOR FILING NOTICES OF INTENT TO PARTICIPATE, which was attached as Exhibit 1 to the Court's ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, which was entered in the present matter on August 19, 2010, wherein all references to the requirements for filing objections were removed; as well as the Court's February 3, 2012 ORDER (1) GRANTING SETTLING PARTIES' MOTION TO EXTEND CERTAIN DEADLINES AND (2) SETTING SCHEDULE GOVERNING DISCOVERY AND REMAINING PROCEDURES, ¶ 3, p. 3, and the Court's August 7, 2012 AMENDED ORDER SETTING SCHEDULE FOR DISCOVERY ON THE NON-SETTLING PARTIES AND REMAINING PROCEEDINGS, ¶ 2, p. 2, wherein all requirements, that objections to the Navajo Settlement and Proposed Decrees contain a statement of the Objector's water rights, or how such Objectors would be harmed by the Navajo Settlement and Proposed Decrees, were eliminated.) Therefore, the Court has already considered and established that the nature and extent of an objector's water rights, and whether an objector will be injured or harmed by the entry of the Proposed Decrees are simply not relevant in the present matter.

In fact, in a normal civil suit, it is the plaintiffs' duty to allege, and burden to prove, that *plaintiffs* have been harmed by *defendants*. In the present matter, Plaintiffs (the Settling Parties) have not alleged, and could not possibly prove, that plaintiffs have been in any manner harmed by defendants. So, any attempt by the Settling Parties in the present matter to require that adversely affected third parties prove that they have been harmed by the Settling Parties would

represent a gross manipulation, and inappropriate shifting, of the burdens of proof and persuasion from the Settling Parties to Objectors.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 8: Unless your response to Request for Admission No. 8 was an unqualified admission, describe completely and in all detail every basis for your denial that if the Settlement Motion is denied and the Navajo Nation and the United States are required to litigate the water rights of the Navajo Nation, the harm to your water right(s) caused by the Navajo water rights decreed after a trial on the merits will be greater than any harm to your water right(s) that would be caused by the Navajo water rights to be decreed pursuant to the Settlement Agreement.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to Interrogatory No. 7, injury or harm to a third party's water right is not relevant with respect to any water right decreed in a water rights adjudication suit. Therefore, my relevance objection to Interrogatory No. 7 is hereby incorporated herein with respect to the subject Interrogatory.

The requested information being not relevant, such information will not be admissible in the present matter. Since, the subject discovery request does not seek to discover admissible evidence or information that is reasonably calculated to lead to the discovery of admissible evidence, said discovery request is not appropriate pursuant to NMRA Rule 1-026 B, and is therefore, not permissible under NMRA Rule 1-033 D.

The Court has set forth the legal standards and the respective burdens of the parties pursuant to the Court's Order re Legal Standards. Pursuant to said Order, there is no provision that Objectors demonstrate that harm to their water right(s) caused by the Navajo water rights decreed after a trial on the merits will be greater than any harm to their water right(s) that would be caused by the Navajo water rights to be decreed pursuant to the Settlement Agreement.

However, the Court's Order re Legal Standards, p. 3, ordered that the Settling Parties have the burden of production and persuasion to demonstrate that:

"(b) the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights, [and] (c) there is a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial"

In that regard, I expect the Settling Parties to make some minimal showing with respect to these two elements of their burden, and thus, according to the subject Order re Legal Standards, the burden of going forward with evidence will shift to Objectors to dispute such showing.

Subparagraph (b) - that "the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights" - was offered by the Settling Parties, and accepted by the Court, as a burden the Settling Parties were willing to assume. However, as indicated by the subject Interrogatory, the Settling Parties would twist said subparagraphs (b) and (c) into a burden on Objectors that Objectors must prove that they will be harmed by the subject Navajo Settlement and Proposed Decrees. In fact, as indicated herein above, injury or harm to a third party's water rights is simply not relevant in the present matter.

Therefore, said subparagraph (b) really represents an inappropriate burden in the present

matter. If the Settling Parties want to make such a showing, that is fine. However, if the Settling Parties make such a showing, Objectors should be allowed, but should not be required, to rebut such showing. In fact, the relevant inquiry, or burden, should be: whether “(c) there is a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial”; and in particular, whether “(d) the Settlement Agreement is consistent with public policy and applicable law.”

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 9: Describe completely and in all detail the nature and extent of any water right you own in the San Juan River Basin of New Mexico. Your response should include, but is not limited to describing the source of water for your water right, the quantity of water for your water right (diversion and depletion), the priority of your water right, and frequency of current water use associated with each water right. If you do not own water rights in the San Juan River Basin, please describe completely and in all detail the nature and extent of any related right to the water rights in the San Juan River Basin.

Objections: General Objections No.s 1, 4 and 5 are hereby incorporated herein by reference.

As indicated in my objection to Interrogatory No. 7, the nature and extent, or even the existence, of a third party’s water right is not relevant in the present matter. Thus, by the elimination of the requirement that Objectors show the nature and extent of their water rights when making an objection to the Navajo Settlement and Proposed Decrees, the Court has already sustained said relevance objection. Therefore, my relevance objection to Interrogatory No. 7 is hereby incorporated herein with respect to the subject Interrogatory.

Further, the requested information is obtainable from some other source that is more convenient, less burdensome, or less expensive (NMRA Rule 1-026(B)(2)(a)), and the requested information is already in the possession custody or control of the Settling Parties, specifically, the requested information is publicly available through the Office of the State Engineer. *See Cabot v. Wal-Mart Stores, Inc.*, 2012 WL 592874 *12 (D.N.M. No. 11-0260 Feb. 16, 2012) (ordering that documents “publicly available” are not required to be produced because a “court must limit the frequency or extent of discovery” when “the discovery sought . . . can be obtained from some other source that is more convenient, less burdensome, or less expensive.” (citing Fed. R. Civ. P. 26 (b)(2)(C))); *see also SEC v. Samuel H. Sloan & Co.*, 369 F. Supp. 994, 995 (S.D.N.Y. 1973) (discovery need not be required of documents of public record which are equally accessible to all parties and a party is not entitled to discovery and inspection of matters of public record); *Wright v. Vanderbilt Mortg. and Finance*, 2009 WL 6690308, *5 (N.M. App. 2009) (unpublished) (the district court could limit discovery if the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive).

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 10: Describe completely and in all detail any and all instances when an insufficient supply of water in the San Juan River Basin of New Mexico was available to

exercise your claimed water right described in response to Interrogatory No. 9.

Objections: General Objections No.s 1, 4, and 5 are hereby incorporated herein by reference.

As indicated in my objection to Interrogatory No. 7, injury or harm to a third party's water right is not relevant with respect to any water right decreed in a water rights adjudication suit. Therefore, my relevance objection to Interrogatory No. 7 is hereby incorporated herein with respect to the subject Interrogatory. Similarly, any instance when an insufficient supply of water in the San Juan River Basin of New Mexico was available to exercise my claimed water right is also not relevant in the present matter.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 11: Describe completely and in all detail any and all harm to your water right that will be suffered in the event the Court grants the Settlement Motion. Your response should include the basis or rationale for any harm described or your rationale for why no harm would be suffered.

Objections: General Objections No.s 1, 4, and 5 are hereby incorporated herein by reference.

As indicated in my objection to Interrogatory No. 7, injury or harm to a third party's water right is not relevant with respect to any water right decreed in a water rights adjudication suit. Therefore, my relevance objection to Interrogatory No. 7 is hereby incorporated herein by reference with respect to the subject Interrogatory.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 12: Describe completely and in all detail every action you have taken at any time to persuade the public or any governmental agency or entity (local, state, tribal, and/or federal personnel including employees or policy makers) to support or oppose the Settlement Agreement or the Settlement Act. Such actions may include (and if they occurred your response should describe) correspondence efforts, written comments, press releases, letters to the editor, newspaper editorials, personal meetings with individuals/the public/public officials, public hearing attendance, lobby efforts, and hearing testimony.

Objections: General Objections No.s 1, 4, and 5 are hereby incorporated herein by reference.

The legal standard for approval of the Navajo Settlement and respective burdens of the parties in the present matter have been established by the Court pursuant to the Order re Legal Standards. Said specific standards and burdens have been set forth herein above. Therefore, the information requested pursuant to the subject Interrogatory is not relevant to any issue in the present matter.

Further, the requested information does not appear reasonably calculated to lead to the discovery of admissible evidence. NMRA Rule 1-026 B (1). In that regard, the subject

Interrogatory is unreasonable, overly broad, oppressive and the production of such information is unduly burdensome particularly in light of the lack of relevance of the requested information in the present matter.

Further, the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. NMRA Rule 1-026 B (2) (c).

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 13: Identify with specificity, providing all description and detail, each item of evidence (whether a document, physical evidence, or expert/lay testimony) that you intend to introduce at any time to support your objections in these proceedings and describe completely and in all detail how you contend each item of evidence supports your objections.

Objections: General Objections No.s 1, 4, and 5 are hereby incorporated herein by reference.

Pursuant to the Court's 2/3/2012 Scheduling Order, p. 4, and the 8/7/2012 Scheduling Order, the parties have until June 24, 2013 to submit witness lists and exchange exhibits. Further, in response to the discovery requests I propounded upon the Settling Parties on June 1, 2012, regarding requests for witnesses and exhibits, the Navajo Nation and the U.S. objected, stating that such requests were:

"Not relevant. The Court has not made a decision on the need for an evidentiary hearing in this matter. Order (1) Granting Settling Parties Motion to Extend Certain Deadlines and (2) Setting Schedule Governing Discovery and Remaining Proceedings (Feb. 3, 2012) at ¶8." OBJECTIONS OF THE NAVAJO NATION AND THE UNITED STATES TO DISCOVERY REQUESTS, Attachment B, p. 1, filed in the present matter on June 15, 2012.

On July 9, 2012, the Court overruled said objection. See ORDER CONCERNING THE OBJECTIONS OF THE NAVAJO NATION, THE UNITED STATES AND THE STATE OF NEW MEXICO TO DISCOVERY REQUESTS, p. 10.

Then, on August 17, 2012, the Navajo Nation responded to such discovery requests only by stating that:

"Without waiving the objections previously made, the Navajo Nation asserts the following. The non-settling parties have not yet responded to the Settlement Motion and the Court has not identified any issue associated with the Settlement Motion that requires presentation of testimony. Therefore, no witnesses have been identified at this time. In the event that non-settling parties object to the Settlement Motion and the Court identifies issues that require the presentation of witnesses, the Navajo Nation will supplement this response." Navajo Nation Response to my Interrogatory No. 2.

The Navajo Nation similarly responded to requests for expert witnesses and exhibits. The August 17, 2012 response of the U.S. to such discovery requests were in essence identical to the Navajo Nation responses. Therefore, neither the Navajo Nation nor the U.S. have provided such information although it is their burden to prove that Navajo Settlement and Proposed Decrees should be approved by the Court. Therefore, in all fairness, it is not appropriate that I be required to produce such information before the Settling Parties have produced their information. In fact, until the Settling Parties produce such information, it is very difficult, if not impossible, to

determine what will be required to rebut the information to be provided by the Settling Parties. Once again, the Settling Parties inappropriately seek to shift their legitimate burdens of production and persuasion to Objectors.

It should be noted that the June 24, 2013 deadline for the exchange of witness lists and exhibits is more than four months after the February 1, 2013 deadline for the close of discovery. See 2/3/2012 Scheduling Order, p. 4, and the 8/7/2013 Scheduling Order, p. 3. Therefore, there will be no opportunity whatsoever to seek any discovery (depositions or otherwise) with respect to the witnesses and exhibits identified pursuant to the June 24, 2012 deadline.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 14: Pursuant to Rule 30(B)(6), designate one or more persons who may be deposed or testify regarding the substance of your response to RFA Nos. 1 - 8, Interrogatories Nos. 1 - 13, and RFP Nos. 1 - 12. If more than one person is identified, describe with reasonable particularity those matters to which each person is capable of testifying.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 13 herein above.

Accordingly, I object to the subject Interrogatory.

Request for Production of Documents

RFP No. 1: Unless your response to Request for Admission No. 1 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 1.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 1 herein above.

Accordingly, I object to the subject RFP.

RFP No. 2: Unless your response to Request for Admission No. 2 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 2.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 2 herein above.

Accordingly, I object to the subject RFP.

RFP No. 3: Unless your response to Request for Admission No. 3 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for

Admission No. 3.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 3 herein above.

Accordingly, I object to the subject RFP.

RFP No. 4: Unless your response to Request for Admission No. 4 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 4.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 4 herein above.

Accordingly, I object to the subject RFP.

RFP No. 5: Unless your response to Request for Admission No. 5 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 5.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 5 herein above.

Accordingly, I object to the subject RFP.

RFP No. 6: Unless your response to Request for Admission No. 6 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 6.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 6 herein above.

Accordingly, I object to the subject RFP.

RFP No. 7: Unless your response to Request for Admission No. 7 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 7.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 7 herein above.

Accordingly, I object to the subject RFP.

RFP No. 8: Unless your response to Request for Admission No. 8 was an unqualified

admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 8.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 8 herein above.

Accordingly, I object to the subject RFP.

RFP No. 9: As associated with Interrogatory No 9, provide every document in your possession that describes the nature and extent of any water right you own in the San Juan River Basin of New Mexico.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 9 herein above.

Accordingly, I object to the subject RFP.

RFP No. 10: As associated with Interrogatory No 10, provide every document in your possession that describes any and all instances when an insufficient supply of water in the San Juan River Basin of New Mexico was available to exercise your claimed water right described in response to Interrogatory No. 9.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 10 herein above.

Accordingly, I object to the subject RFP.

RFP No. 11: As associated with Interrogatory No 11, provide every document in your possession that describes any and all harm to your water right that will be suffered in the event the Court grants the Settlement Motion.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 11 herein above.

Accordingly, I object to the subject RFP.

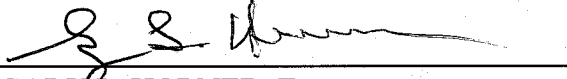
RFP No. 12: As associated with Interrogatory No 12, provide every document in your possession that describes any and all action you have taken to persuade any other governmental agency or entity (local, state, tribal, and/or federal including personnel or policy makers) to support or oppose the Settlement Agreement or the Settlement Act.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 12 herein above.

Accordingly, I object to the subject RFP.

I reserve the right to supplement these objections and responses in the future as necessary.

Respectfully, submitted by:


GARY L. HORNER, Esq.,
In Propria Persona
Post Office Box 2497
Farmington, New Mexico 87499
(505) 326-2378

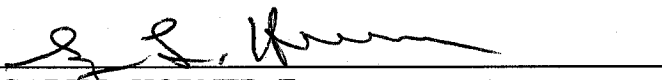
November 5, 2012

Date

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was emailed and mailed by first-class postage, or delivered, to the following individuals this 5th day of November, 2012:

Attorney for the U.S. Department of Justice
Andrew J. "Guss" Guarino, Esq.
Environment & Natural Resources Div.
999 18th Street, South Terrace, #370
Denver, Colorado 80202
(303) 844-1343 (Office)
(303) 229-7256 (Cell)
(303) 844-1350 (Fax)
gus.guarino@usdoj.gov


GARY L. HORNER, Esq.

PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

I HEREBY CERTIFY - in accordance with the ORDER MANDATING ALTERNATIVE METHOD FOR SERVICE OF ORDERS, MOTIONS, NOTICES AND OTHER COURT PAPERS, entered in the present matter on September 28, 2011 by the Honorable James Wechsler, Presiding Judge - that a true copy of the foregoing was served on the parties and

Claimants in the present matter, by attaching a copy of said document to an email sent to the following email list server(s) maintained by the Court, this 5th day of November:

wrnavajointerse@nmcourts.gov

Further, in accordance with the Court's February 3, 2012 ORDER (1) GRANTING SETTling PARTIES' MOTION TO EXTEND CERTAIN DEADLINES AND (2) SETTING SCHEDULE GOVERNING DISCOVERY AND REMAINING PROCEDURES, ¶2(a)(i), p. 2, that a true copy of the foregoing was emailed to the Discovery Document E-Repository regarding the water rights claims of the Navajo Nation, c/o Darcy Bushnell, the Stell Water Ombudsman Program of the Utton Center at the University of New Mexico School of Law, this 5th day of November, 2012, at:

bushnell@law.unm.edu



GARY L. HORNER