

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

STATE OF NEW MEXICO, ex rel.
State Engineer,

Plaintiff,

vs.

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

UNITED STATES OF AMERICA, et al.,

Defendants.

AB-07-1
Claims of the Navajo Nation

JICARILLA APACHE TRIBE and the
NAVAJO NATION,
Defendant-Intervenor.

ORDER DENYING CITIES' MOTION TO COMPEL DISCOVERY

This matter comes before the Court upon the September 14, 2012 motion to compel the United States and the Navajo Nation to respond to discovery requests concerning (1) five documents, including three Solicitor's opinions and two memoranda from counsel for the United States, that the United States claims are privileged and (2) a report titled, "Reconnaissance-Level Reserved Water Rights Quantification in the San Juan and Colorado River Basins for the Navajo Nation in New Mexico, Prepared for the Navajo Nation Department of Justice" ("NRCE Report"), dated March, 2004. Responses were filed separately by the Navajo Nation and the United States on October 16, 2012, and the Cities filed a reply on October 18, 2012.

The Court has determined that the five documents sought by the Cities are privileged as attorney-client communications concerning the legal opinions of counsel pursuant to Rule 11-503 NMRA. The Cities' motion to compel concerning those documents is hereby DENIED.


Regarding the NRCE Report, the Cities contend that the Navajo Nation has failed to meet its burden of establishing that the Report was prepared in anticipation of litigation. The Cities further argue that even if the Report was prepared in anticipation of litigation, they have a substantial need for the report for several reasons: (1) the report is relevant to whether good faith, arms-length negotiations occurred regarding the settlement; (2) the report was prepared in 2004, and is therefore

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relevant to the amount of water the Navajo Nation believed was available at that time; and (3) whether *Winters* rights were waived by the Navajo Nation.

After conducting an in camera inspection of the NRCE Report, the Court has determined that the Report is protected work product pursuant to Rule 1-026(B)(5). *S.F. Pacific Gold Corp. v United Nuclear Corp.*, 2007-NMCA-133, ¶ 38, 143 N.M. 215, 175 P.3d 309. ("The protection of an attorney's work product is important because it protects the attorney's privacy in doing whatever is necessary to properly prepare his case" (internal citations omitted)). The Cities have not established that they have a substantial need of the material or that they are unable to develop the substantial equivalent of the information in the 2004 Report by other means. The Cities' motion to compel concerning the NRCE Report is hereby DENIED.

IT IS SO ORDERED.


James J. Wechsler
Presiding Judge