

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2012 NOV 20 PM 4:41

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

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

Plaintiff,

vs.

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

Defendants.

CV 75-184
HON. JAMES J. WECHSLER
Presiding Judge

San Juan River Adjudication

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

NAME OF PARTY: City of Aztec and City of Bloomfield (the "Cities").
DESCRIPTIVE SUMMARY: The Cities' answers and responses to the State of New Mexico's discovery requests.
NUMBER OF PAGES: 24
DATE OF FILING OR MAILING: November 13, 2012.

CITY OF AZTEC AND CITY OF BLOOMFIELD'S ANSWERS AND RESPONSES TO THE STATE OF NEW MEXICO'S DISCOVERY REQUESTS

The City of Aztec and the City Bloomfield, by and through their attorneys of record, Keleher & McLeod, respond as follows to the State of New Mexico's Discovery Requests.

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Requests for Admission

Request for Admission No. 1: Admit that under the Settlement Agreement, the water supply for the Navajo-Gallup Water Supply Project (NGWSP) is the San Juan River above Navajo Dam, with supplemental water that may be available from inflows to the river below the dam.

City of Aztec: ADMIT _____ DENY X

City of Bloomfield: ADMIT _____ DENY X

The Cities object to Request for Admission No. 1 as the terms “water supply” and “supplemental water” are vague and ambiguous, such that the Cities cannot respond. The Cities also object to Request for Admission No. 1 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because it asks about information that is not relevant to any of the elements that the Settling Parties must prove in this matter. See Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof, filed in this matter on April 19, 2012. As the Cities object to Request for Admission No. 1, they also deny Request for Admission No. 1, so as not to waive their right to denial.

Request for Admission No. 2: Admit that the source of water supply that is the subject of OSE Application No. 4818 is the Animas River, which is separate and distinct from the San Juan River above Navajo Dam.

City of Aztec: ADMIT _____ DENY X

City of Bloomfield: ADMIT _____ DENY X

Please see the San Juan Water Commission's Application No. 4818, which lists the source of the water supply.

Request for Admission No. 3: Admit that the Cities, by or through their staff or through the San Juan Water Commission (SJWC) and its staff, had several opportunities to review and comment on various drafts of the *State of New Mexico Schedule of Anticipated Upper Basin Depletions* prepared to support the Bureau of Reclamation's planning for the NGWSP, including (1) drafts shared with the SJWC prior to 2003; and (2) drafts shared with the general public during the period 2003-2005.

City of Aztec:

ADMIT X

DENY

City of Bloomfield:

ADMIT X

DENY

The Cities object to Request for Admission No. 3 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because it asks about possible actions that are not one of the elements that the Settling Parties must prove in this matter. See Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof, filed in this matter on April 19, 2012.

Notwithstanding and without waiving these objections, the Cities state that there were opportunities to review and comment on the *State of New Mexico Schedule of Anticipated Upper Basin Depletions*. The Cities also state that they are unaware of any reviews or comments being adopted into the *State of New Mexico Schedule of Anticipated Upper Basin Depletions*.

Request for Admission No. 4: Admit that the Cities, by or through their staff or through the SJWC and its staff, had several opportunities to review, comment on and discuss draft terms of the Settlement Agreement, including: (1) a meeting with the State of New Mexico and non-Navajo stakeholders; (2) draft settlement documents made public in December 2003, July 2004 and December 2004; (3) written responses to public comments provided in December 2004; (4) public meetings of the Interstate Stream Commission (ISC) at which the ISC heard and received presentations from the State of New Mexico staff and comments from the public, including government entities, regarding drafts of the settlement during the period 2003-2005; and (5) a meeting of the Farmington City Council in 2005.

City of Aztec: ADMIT X DENY _____

City of Bloomfield: ADMIT X DENY _____

The Cities object to Request for Admission No. 4 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because it asks about possible actions that are not one of the elements that the Settling Parties must prove in this matter. See Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof, filed in this matter on April 19, 2012.

Notwithstanding and without waiving these objections, the Cities admit Request for Admission No. 4.

Request for Admission No. 5: Admit that the provisions of sections 9.1, 9.2 and 9.3 of the *San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement*: (1) reduce or eliminate impacts on junior water rights in the basin in New Mexico, including the SJWC and its member entities including the Cities; and (2) can be

provided only through settlement, and cannot be provided by the Court through litigation of the Navajo Nation's water right claims.

City of Aztec: ADMIT _____ DENY X

City of Bloomfield: ADMIT _____ DENY X

The Cities object to Request for Admission No. 5 on the grounds that it requests a legal conclusion. *Stark-Romero v. AMTRAK Co.*, 275 F.R.D. 551, 554 (D.N.M. 2011). The Cities also object to Request for Admission No. 5 on the grounds that it is compound. The Cities also object as the term "water right" is not defined making it vague, ambiguous and confusing. The Cities also object to Request for Admission No. 5 on the basis that the phrase "can be provided only through settlement, and cannot be provided by the Court through litigation of the Navajo Nation's water right claims" implies a different standard than set forth by the Court. See Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof, filed April 19, 2012. The Cities also object to Request for Admission No. 5 on the grounds that that it is premature, as discovery is still ongoing. As the Cities object to Request for Admission No. 5, they also deny Request for Admission No. 5, so as not to waive their right to denial.

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.

City of Aztec's Answer: Please see objections to Request for Admission No. 1, which sets forth the basis for the City of Aztec's denial.

City of Bloomfield's Answer: Please see objections to Request for Admission No. 1, which sets forth the basis for the City of Bloomfield's denial.

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.

City of Aztec's Answer: Please see objections and answers to Request for Admission No. 2, which sets forth the basis for the City of Aztec's denial.

City of Bloomfield's Answer: Please see objections and answers to Request for Admission No. 2, which sets forth the basis for the City of Bloomfield's denial.

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.

City of Aztec's Answer: The City of Aztec admitted Request for Admission No. 3.

City of Bloomfield's Answer: The City of Bloomfield admitted Request for Admission No. 3.

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.

City of Aztec's Answer: The City of Aztec admitted Request for Admission No. 4.

City of Bloomfield's Answer: The City of Bloomfield admitted Request for Admission No. 4.

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. Also identify all persons on whom the Cities may rely to provide expert testimony as to the meaning, interpretation and application to these provisions.

City of Aztec's Answer: Please see objections to Request for Admission No. 5, which sets forth the basis for the City of Aztec's denial.

City of Bloomfield's Answer: Please see objections to Request for Admission No. 5, which sets forth the basis for the City of Bloomfield's denial.

Interrogatory No. 6: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in the Cities' objection No. 2 of the *Preliminary Objections/Responses of the Cities of Aztec and Bloomfield (Cities) to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (2010) (the Navajo Settlement)* referred to herein as "Cities' Objections") that there is not adequate water supply available for the Settlement.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of

Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 13.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 13.

Interrogatory No. 7: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 3 of *Cities' Objections* that the 2007 Hydrologic Determination is based upon erroneous hydrologic assumptions and exceeds the State's apportionment.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 14.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 14.

Interrogatory No. 8: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 4 of the *Cities' Objections* that the Settlement illegally appropriated water from the down-sized Animas La Plata Project.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 15.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 15.

Interrogatory No. 9: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 5 of the *Cities' Objections* that quantities proposed by the Settlement Agreement for the Hogback-Cudei Irrigation Project exceed historic use.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 16.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 16.

Interrogatory No. 10: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 6 of the *Cities' Objections* that the Hogback-Cudei Irrigation and Fruitland-Cambridge Irrigation Projects are not entitled to a priority date of 1868.

City of Aztec's Answer: Some of the land in the Projects are not a part of the original reservation land of the Navajo Nation.

City of Bloomfield's Answer: Some of the land in the Projects are not a part of the original reservation land of the Navajo Nation.

Interrogatory No. 11: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 7 of the *Cities' Objections* that the Navajo Nation waived all of its *Winters* water rights beyond the rights allocated to the Navajo Irrigation Project.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 17.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 17.

Interrogatory No. 12: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 8 of the *Cities' Objections* that the Settling Parties' PIA analysis does not comply with *State v. Lewis*.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of

Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 18.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 18.

Interrogatory No. 13: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 9 of the *Cities' Objections* that no groundwater rights may be recognized under the *Winters* doctrine.

City of Aztec's Answer: Please see documents cited to in the Cities' Objections, ¶ 9. As discovery is ongoing, the City of Aztec may supplement this answer.

City of Bloomfield's Answer: Please see documents cited to in the Cities' Objections, ¶ 9. As discovery is ongoing, the City of Bloomfield may supplement this answer.

Interrogatory No. 14: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 10 of the *Cities' Objections* that the proposed Decrees allocate return flow from NIIP to the Navajo Nation and

explain how the Cities believe the proposed Decrees do not limit the consumptive use of NIIP to water reasonably necessary to irrigate the NIIP acreage.

City of Aztec's Answer: Please see documents cited to in the Cities' Objections, ¶ 10. As discovery is ongoing, the City of Aztec may supplement this answer.

City of Bloomfield's Answer: Please see documents cited to in the Cities' Objections, ¶ 10. As discovery is ongoing, the City of Bloomfield may supplement this answer.

Interrogatory No. 15: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 11 of the *Cities' Objections* that operation of the shortage sharing provisions of the Settlement Agreement is illusory and provides no protection for non-Indian users in the basin.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 19.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 19.

Interrogatory No. 16: Explain the basis, including any and all factual support, expert analysis or testimony or legal authority, for the contention in objection No. 12 of the *Cities' Objections* that the water rights proposed by the proposed Decrees greatly exceed the population needs and reservation boundaries under the *State v. Lewis* criteria.

City of Aztec's Answer: The City of Aztec objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 20.

City of Bloomfield's Answer: The City of Bloomfield objects to this interrogatory as duplicative, as it requests information already asked for in the United States' prior discovery requests to the Cities. Notwithstanding and without waiving this objection, please see City of Aztec and City of Bloomfield's Answers and Responses to the United States' Discovery Requests, Answer to Interrogatory No. 20.

Interrogatory No. 17: For every person who participated substantively in the preparation of answers to these interrogatories, state each such person's name, address, phone number, title or position, and the identify of each interrogatory, including any subpart, in which he or she participated answering.

City of Aztec's Answer: Joshua Ray reviewed these interrogatory answers, and was assisted with objections by undersigned counsel. Mr. Ray may be contacted through undersigned counsel.

City of Bloomfield's Answer: David Fuqua reviewed these interrogatory answers, and was assisted with objections by undersigned counsel. Mr. Fuqua may be contacted through undersigned counsel.

Request For Production of Documents

RFP No. 1: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 1.

City of Aztec's Response: Please see answer and objections to Interrogatory No. 1.

City of Bloomfield's Response: Please see answer and objections to Interrogatory No. 1.

RFP No. 2: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 2, including all documents in the Cities' possession supporting the information included in the SJWC's Application No. 4818 and the attachments thereto, and all documents in the Cities' possession relating to the SJWC's Repayment Contract and Amendatory Repayment Contract for the ALP.

City of Aztec's Response: In regard to the SJWC's Application No. 4818, please see all motions, pleadings and order in the case *San Juan Water Commission v. D'Antonio, Jr.*, No. CV-2008-1699-8, which is currently on appeal. The City of Aztec objects to producing these motions, pleadings and orders, as they are publically available and the burden on the State of New Mexico to obtain these documents is the same as the burden on the City of Aztec. The City of Aztec also believes that these documents are in the State of New Mexico's possession. The City of Aztec also states that the San Juan Water Commission prepared Application No. 4818.

In response to the request for documents relating to "the SJWC's Repayment Contract and Amendatory Repayment Contract for the ALP," the City of Aztec objects to Request for Production No. 3 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because it asks for documents that are not relevant to any of the elements that the Settling Parties must prove in this matter. *See* Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof, filed in this matter on April 19, 2012.

City of Bloomfield's Response: In regard to the SJWC's Application No. 4818, please see all motions, pleadings and order in the case *San Juan Water Commission v. D'Antonio, Jr.*, No. CV-2008-1699-8, which is currently on appeal. The City of Bloomfield objects to producing these motions, pleadings and orders, as they are publically available and the burden on the State of New Mexico to obtain these documents is the same as the burden on the City of Bloomfield. The City of Bloomfield also believes that these documents are in the State of New Mexico's possession. The City of Bloomfield also states that the San Juan Water Commission prepared Application No. 4818.

In response to the request for documents relating to “the SJWC’s Repayment Contract and Amendatory Repayment Contract for the ALP,” the City of Bloomfield objects to Request for Production No. 3 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, because it asks for documents that are not relevant to any of the elements that the Settling Parties must prove in this matter. See Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof, filed in this matter on April 19, 2012.

RFP No. 3: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 3.

City of Aztec’s Response: Please see answer to Interrogatory No. 3.

City of Bloomfield’s Response: Please see answer to Interrogatory No. 3.

RFP No. 4: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 4, including all documents in the Cities’ possession that relate to the Cities’ participation in the settlement process, including all correspondence and presentation materials used by the Cities or the SJWC to support or object to the Settlement Agreement and all documents in the Cities’ possession that relate in any way to introduction and consideration by Congress, and by New Mexico’s congressional delegation in particular, of legislation to approve the Settlement Agreement and authorize the NGWSP.

City of Aztec’s Response: Please see answer to Interrogatory No. 4.

City of Bloomfield’s Response: Please see answer to Interrogatory No. 4.

RFP No. 5: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 5, including all documents in the Cities' possession that support or do not support the Cities' answer and all documents in the Cities' possession that relate to the provisions of sections 9.1, 9.2 and 9.3, including to any evaluation of the reduction or elimination of impacts on junior water rights as a result of these provisions.

City of Aztec's Response: Please see objections to Interrogatory No. 5.

City of Bloomfield's Response: Please see objections to Interrogatory No. 5.

RFP No. 6: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 6 and produce all documents, maps, reports, analyses, studies, or communications that relate to your contention that there is not adequate water supply available for the Settlement.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 6. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 6. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 7: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 7 and

produce all documents, maps, reports, analyses, studies, or communications that relate to your contention that the 2007 Hydrologic Determination is based upon erroneous hydrologic assumptions and exceeds the State's apportionment.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 7. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 7. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 8: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 8 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that the Settlement illegally appropriated water from the down-sized Animas La Plata Project

City of Aztec's Response: Please see objections and answers to Interrogatory No. 8. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 8. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 9: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 9 and produce all documents, maps reports, analyses, studies, or communications that relate to your

contention that quantities proposed by the Settlement Agreement for the Hogback-Cudei Irrigation Project exceed historic use.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 9. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 9. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 10: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 10 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that the Hogback-Cudei Irrigation and Fruitland-Cambridge Irrigation Projects are not entitled to a priority date of 1868.

City of Aztec's Response: All boundary maps related to the Projects are in the Settling Parties' possession. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: All boundary maps related to the Projects are in the Settling Parties' possession. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 11: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 11 and

produce all documents, maps reports, analyses, studies, or communications that relate to your contention that the Navajo Nation waived all of its *Winters* water rights beyond the rights allocated to the Navajo Irrigation Project.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 11. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 11. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 12: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 12 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that the Settling Parties' PIA analysis does not comply with *State v. Lewis*.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 12. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 12. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 13: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 13 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that no groundwater rights may be recognized under the *Winters* doctrine.

City of Aztec's Response: Please see objections and answers to Request for Production No. 13. The City of Aztec objects to providing such documents, as they are publically available and the burden on the State of New Mexico to obtain these documents is the same as the burden on the City of Aztec. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Request for Production No. 13. The City of Bloomfield objects to providing such documents, as they are publically available and the burden on the State of New Mexico to obtain these documents is the same as the burden on the City of Bloomfield. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 14: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 14 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that the proposed Decrees do not limit the consumptive use of NIIP to water reasonably necessary to irrigate the NIIP acreage.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 14. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 14. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 15: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 15 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that operation of the shortage sharing provisions under the Settlement Agreement is illusory and provides no protection for non-Indian users in the basin.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 15. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 15. As discovery is ongoing, the City of Bloomfield may supplement this response.

RFP No. 16: Produce all documents, including council minutes, resolutions, memos, and reports relied upon, referred to, and/or identified in response to Interrogatory No. 16 and produce all documents, maps reports, analyses, studies, or communications that relate to your contention that the water rights proposed by the proposed Decrees greatly exceed the population needs and reservation boundaries under the *State v. Lewis* criteria.

City of Aztec's Response: Please see objections and answers to Interrogatory No. 16.

As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see objections and answers to Interrogatory No. 16. As discovery is ongoing, the City of Bloomfield may supplement this response.

Respectfully submitted,

KELEHER & McLEOD, P.A.

By: 

RICHARD B. COLE

JUSTIN B. BREEN

CASSANDRA R. MALONE

PO Box AA

Albuquerque, NM 87103

*Attorneys for Cities of Aztec and
Bloomfield*

00170448

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

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

Plaintiff,

vs.

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

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184
HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

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

NAME OF PARTY: State of New Mexico

DESCRIPTIVE SUMMARY: The State's Response to Cities' Answers and Responses to the State's Discovery Requests

NUMBER OF PAGES: 5

DATE OF SERVICE: November 20, 2012

**THE STATE OF NEW MEXICO'S RESPONSE TO THE CITIES OF
AZTEC AND BLOOMFIELD'S ANSWERS AND RESPONSES
TO THE STATE'S DISCOVERY REQUESTS**

The State of New Mexico (the "State") submits this response to the *City of Aztec and City of Bloomfield's Answers and Responses to the State of New Mexico's Discovery Requests*, served November 13, 2012 ("*Cities' Responses*"), a copy of which is attached as Exhibit 1. The Court's *Second Amended Order Setting Schedule Governing Discovery on Non-Settling Parties and Remaining Proceedings*, entered November 6, 2012, set a deadline of November 20, 2012 for Settling Parties to respond to objections of non-Settling Parties to initial discovery requests.

In general, the Cities object and do not answer or respond to the State's initial discovery requests. As described below, the State asks the Court to direct the Cities to answer and respond.

Interrogatory No. 1. The State asks the Cities to describe the basis for their denial regarding the source of supply for the Navajo-Gallup Water Supply Project. The Cities object on the basis of vagueness and relevance but do not answer. The State asks the Court to direct the Cities to answer.

Interrogatory No. 5. The State asks the Cities to explain their denial that sections 9.1, 9.2 and 9.3 of the Settlement Agreement (1) reduce or eliminate impacts on junior water rights in the basin in New Mexico, including the SJWC and its member entities including the Cities; and (2) can be provided only through settlement, and cannot be provided by the Court through litigation of the Navajo Nation's water right claims. The Cities object to this interrogatory and provide no answer on the grounds that the request seeks a pure legal conclusion and the request is premature, and that the term "water right" is vague, ambiguous, and confusing. The State disagrees and believes that the term is not vague, ambiguous or confusing in a water rights adjudication proceeding and that the Cities can answer this question based on facts and opinion known or available to them. The State asks the Court to direct the Cities to answer.

Interrogatories Nos. 6-9, 11, 12 & 14-16 (regarding bases for Cities' preliminary objections to settlement). The State asks the Cities to explain the bases for contentions made by the Cities in *Preliminary Objections/Responses of the Cities of Aztec and Bloomfield (Cities) to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (2010) (the Navajo Settlement)* (referred to herein as "Cities' Objections"). The Cities either provide no answer or provide an inadequate answer. The United States has served similar interrogatories regarding the Cities' Objections. See U.S. Interrogatories Nos. 13-20. In order to coordinate resolution of this issue, the State agrees that its Interrogatories Nos. 6-9, 11, 12 & 14-16 can be appropriately answered if the Court directs the Cities to answer U.S. Interrogatories Nos. 13-20.

Interrogatory No. 13 (regarding groundwater rights). The State asks the Cities to explain the basis for their contention that no groundwater rights may be recognized under the *Winters* doctrine. The Cities refer to documents and do not answer. They state that discovery is ongoing. The State asks the Court to direct the Cities to answer.

RFP No. 1. In conjunction with Interrogatory No. 1, the State asks the Cities to produce documents related to the Cities' explanation of the basis for their denial regarding the source of supply for the Navajo-Gallup Water Supply Project. The Cities object to Interrogatory No. 1 and do not respond. The State asks the Court to direct the Cities to respond.

RFP No. 5. In conjunction with Interrogatory No. 5, the State asks the Cities to produce documents related to the Cities' explanation of their denial that sections 9.1, 9.2 and 9.3 of the Settlement Agreement (1) reduce or eliminate impacts on junior water rights in the basin in New Mexico, including the SJWC and its member entities including the Cities; and (2) can be

provided only through settlement, and cannot be provided by the Court through litigation of the Navajo Nation's water right claims. The Cities object to Interrogatory No. 5 and do not respond. The State asks the Court to direct the Cities to respond.

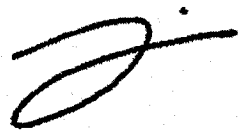

RFP Nos. 6-9, 11, 12 & 14-16 (regarding bases for Cities' preliminary objections to settlement). In conjunction with Interrogatories Nos. 6-9, 11, 12 & 14-16, the State asks the Cities to produce documents related to the Cities' explanation of the bases for contentions made by the Cities in *Cities' Objections*. The Cities do not respond. The United States has served similar RFPs regarding the Cities' Objections. See U.S. RFP Nos. 13-20. In order to coordinate resolution of this issue, the State agrees that its RFP Nos. 6-9, 11, 12 & 14-16 can be appropriately answered if the Court directs the Cities to respond to U.S. RFP Nos. 13-20.

RFP No. 10. (regarding priority date of Hogback and Fruitland Projects). In conjunction with Interrogatory No. 10, the State asks the Cities to produce documents related to the Cities' contention that the Hogback-Cudei Irrigation and Fruitland-Cambridge Irrigation Projects are not entitled to a priority date of 1868. The Cities state that discovery is ongoing and that they may respond later. The State asks the Court to direct the Cities to respond.

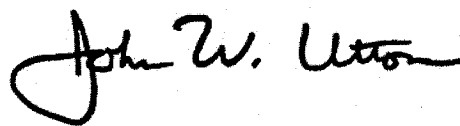
RFP No. 13. (regarding groundwater rights). In conjunction with Interrogatory No. 13, the State asks the Cities to produce documents related to the Cities' contention that no groundwater rights may be recognized under the *Winters* Doctrine. The Cities do not identify the documents they rely on and state that discovery is ongoing and that they may respond later. The State asks the Court to direct the Cities to respond.

Respectfully submitted, this 20th day of November 2012.

STATE OF NEW MEXICO



Arianne Singer
Special Assistant Attorney General
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
827-6150



John W. Utton
Special Assistant Attorney General
Sheehan & Sheehan, P.A
Post Office Box 271
Albuquerque, New Mexico 87103 (505)
(505)247-0411

CERTIFICATE OF SERVICE

I certify that on this 20th day of November 2012, at approximately 4:00 pm, an electronic copy of this State's Response to Cities' Answers and Responses to State's Discovery Requests was served by attaching an electronic copy to an email sent to: wrnavajointerse@nmcourts.gov.

/s/ Arianne Singer