

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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WJL

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.

D-1116-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: Navajo Nation

DESCRIPTIVE SUMMARY: The Navajo Nation joins in *The United States' Response to Discovery Objections of Non-Settling Parties* and responds to the objections of non-settling parties to the discovery propounded by the Navajo Nation.

NUMBER OF PAGES: 50 (12 pages plus 38 page attachment).

DATE OF FILING: Filed on November 20, 2012.

**THE NAVAJO NATION'S JOINDER IN THE UNITED STATES'
RESPONSE TO DISCOVERY OBJECTIONS OF NON-SETTLING PARTIES**

The Navajo Nation concurs and joins in *The United States' Response to Discovery Objections of Non-Settling Parties* ("U.S. Response"), filed November 20, 2012. The Navajo Nation files a separate joinder for the purpose of specifically identifying the insufficient discovery responses that the Navajo Nation received from certain non-settling parties and requesting that the Court order that the non-settling parties respond to the identified discovery requests.

BACKGROUND

Pursuant to the *Amended Order Setting Schedule Governing Discovery on the Non-Settling Parties and Remaining Proceedings* (Aug. 7, 2012) ("Amended Order"), the Settling

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Parties were to serve discovery on non-settling parties no later than October 5, 2012. However, many of the non-settling parties had not complied with the requirements in the Amended Order to file objections/ responses to the settlement (§ 2) or file initial disclosures (§ 3) by September 21, 2012, nor had they filed the required documents by October 5, 2012. *See Navajo Nation's Motion to Dismiss Certain Non-Settling Parties for Failure to Comply with Court's Scheduling Orders* (filed Oct. 4, 2012) at 2, n. 2.

Subsequent to the hearing on October 25, 2012, and in accordance with the *Second Amended Order Setting Schedule Governing Discovery on the Non-Settling Parties and Remaining Proceedings* (Nov. 6, 2012) ("Second Amended Order"), on November 2, 2012, the Navajo Nation served discovery on certain non-settling parties or groups of non-settling parties "who did not file objection[s] or responses to the Proposed Decrees by September 21, 2012."

Second Amended Order at 2, § 4. Specifically, the Navajo Nation served discovery on:

1. The Marshall Interests (inclusive of all clients represented by Victor Marshall who objected to the Settlement Motion);
2. La Plata Acequia Association *et al.* (inclusive of all clients represented by Gary Risley who objected to the Settlement Motion) (collectively, "LPAA");
3. B Square Ranch, LLC *et al.* (inclusive of all clients represented by Richard Tully who objected to the Settlement Motion) (collectively, "B Square Ranch"); and
4. Robert E. Oxford, *pro se* ("Mr. Oxford").

(collectively, "the Four Agricultural Groups").¹

The discovery on each of the Four Agricultural Groups consisted of an identical one request for admission ("RFA") and four requests for production ("RFP"). The Marshall Interests

¹ To ensure that non-settling parties were not presented with duplicative discovery requests, the Navajo Nation issued its discovery requests only on those non-settling parties that have agricultural water rights and the State of New Mexico issued discovery requests on parties possessing non-agricultural rights.

were also served with additional discovery not served on the other three entities in the Four Agricultural Groups.

Timely responses to the discovery were served on the Navajo Nation by the Four Agricultural Groups on November 13, 2012, with some combination of objections and responses to the Navajo Nation's discovery request. In order for the Court to be able to review the specific discovery requests and the objections made by the non-settling parties, the Navajo Nation has attached the responses and objections received from non-settling parties as attachments to this response. *See* Attachments A through E (containing the specific discovery requests of the Navajo Nation). To the extent that a non-settling party has not responded to a discovery request, the Navajo Nation shall respond to the non-settling party's objection and articulate the basis on which the non-settling party must respond, relying to the greatest extent possible upon the bases set forth in the U.S. Response.

**SPECIFIC INSTANCES OF FAILURE TO RESPOND
TO THE NAVAJO NATION'S DISCOVERY REQUESTS**

In the paragraphs below, the Navajo Nation describes only those specific instances of failure properly to respond to discovery requests. In each instance, the non-settling parties fail to articulate a privilege, immunity, objection, or other basis that obviates their affirmative obligation to respond. Like the United States, on those occasions where a non-settling party's response is essentially non-responsive, the Navajo Nation generally does not raise as an issue the sufficiency of the non-settling parties' response.

A. Response to the Objections and Responses of the Marshall Interests

On November 2, 2012, the Navajo Nation issued the following discovery to each Marshall Interest: twenty-eight interrogatories; one RFA; and thirty-two RFPs. *See* Attachment A. The Marshall Interests provide responses to some, but not all, of the discovery requests

presented. *Id.* For the interrogatories, the Marshall Interests fail adequately to respond to Interrogatory Nos. 8, 11 through 13, 15, 18 through 20, 22, and 26, and identify no person in response to Interrogatory No. 28 for Rule 1-036(B)(6) purposes. The Marshall Interests provide conclusory and incomplete responses that, given the specificity of the interrogatories, cannot be considered sufficient.² For the RFPs, the Marshall Interests provide no actual, responsive documents, but rather simply reference their answers to interrogatories. As more fully described below, the Marshall Interests have not sufficiently provided responses to many interrogatories and RFPs. Each instance of the Marshall Interests' failure to respond will be briefly addressed. The Marshall Interests should be ordered to respond by a date certain to the discovery requests described below.

a. Interrogatory Nos. 8, 11 through 13, 15, 18 through 20, 22, 26, and 28 to the Marshall Interests

With respect to Interrogatory Nos. 8, 11, 13, 15, 18 through 20, and 22, the Marshall Interests' repeated reference to documents allegedly in the possession of the Navajo Nation or United States is plainly inadequate to constitute a sufficient response to any interrogatory. Rule 1-033(E). *See also Pascale v. G. D. Searle & Co.*, 90 F.R.D. 55, 60-61 (D.R.I., 1981) (reference to a document as an interrogatory response is not acceptable unless the interrogated party first establishes that the interrogatory imposes a burden well beyond the normal burden associated with providing a written response to an interrogatory). Review of the documents referenced in the interrogatory answers reveals that the documents either contain little information related to

² In determining whether any response to the interrogatories was sufficient, the Navajo Nation, like the United States, employed a very low threshold. The Navajo Nation takes the position that, unless an interrogatory answer or other discovery response is properly supplemented within the applicable discovery period, the Navajo Nation, along with the other Settling Parties, will consider all discovery responses to constitute the complete, final response of the non-settling party providing the response.

the interrogatories presented or shed no light whatsoever on how the document might be responsive to each of the discovery requests.

With respect to Interrogatory Nos. 12, 22, and 26, the Marshall Interests' provide no answer at all, or an answer consisting of a conclusory statement of fact that does not respond directly to the question presented. Finally, with respect to Interrogatory No. 28, the Marshall Interests fail to identify any organizational representatives that might be deposed concerning the basis for the discovery responses

b. RFP Nos. 1 through 32 to the Marshall Interests

The Marshall Interests' responses to the Navajo Nation's RFPs are of two types. In the first type, which constitute the responses to RFP Nos. 1-4 and 9, the Marshall Interest provide no substantive response and object on the grounds that those requests are irrelevant, burdensome, or not reasonable calculated to lead to admissible evidence and provide no substantive responses. In the second type, which constitute the responses to RFP Nos. 5 through 8 and 10 through 32, the Marshall Interests merely refer to their interrogatory answers, again providing no substantive responses.

With respect to the objections to RFP Nos. 1 through 4 and 9, the Marshall Interests' apparent claim that the Navajo Nation's request for production, which concern the water rights that the Marshall Interests claim, are "not relevant" inquiries simply disregards the relevant inquiries identified by the Court. Whether provisions of the Settlement Agreement will reduce impacts on junior water rights has been identified by this Court as a central inquiry of these proceedings. *See Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof* (Apr. 19, 2012) at 3. It therefore should be beyond argument that whether junior water rights holders (such as the Marshall Interests) would suffer any harm as a result of the Settlement Agreement is a relevant inquiry for discovery. Quite

simply, if non-settling parties such as the Marshall Interests would experience less negative impacts under the Settlement Agreement than under a possible litigated result, then such information is powerful evidence that the Settlement Agreement is fair and reasonable.

With respect to RFP Nos. 5 through 8 and 10 through 32, the Marshall Interests provide no responsive documents, but rather refer to their interrogatory answers. In the best light, for a number of the responses, the Marshall Interests' incorporation of their interrogatory answers could constitute a sufficient response under the low threshold the Navajo Nation is employing to determine sufficiency. *See* n. 2, *supra*. However, the Navajo Nation is unable to make that determination because of the Marshall Interests' failure to provide any explanation for their responses beyond the terse references to the interrogatory answers.

B. Response to the Objections and Responses of LPAA

On October 5, 2012, the Navajo Nation issued one request for admission and four RFPs to LPAA. *See* Attachment B. Identical requests were issued on each of the other three Agricultural Groups. LPAA did not produce the documents requested and objected to each request on the following grounds:

The information requested is not relevant nor reasonably related to lead to discoverable evidence with regard to the Navajo subfile adjudication. By way of further objection, the responding parties are not subject to a PIA standard with regard to the utilization of their water rights, the requested information is not publically available information and it would be invasive of the privacy of the responding parties while the information to be obtained would not be relevant or admissible in the adjudication with regard to the Navajo settlement.

LPAA's objections to all Navajo Nation discovery requests are non-specific, conclusory, and boilerplate. *See Order Concerning the Objections of the [Settling Parties] to Discovery Requests* (July 9, 2013) ("Order Concerning Objections") at 2 and 3 (objections that simply

repeat conclusory, non-specific objections using boilerplate language do not relieve a party from responding to discovery requests) (quoting *Lackey v. Mesa Petroleum Co.* 90 N.M. 65, 68, 559 P.2d 1192, 1195 (Ct. App. 1976)). As such, LPAA's objections in no way obviate their obligation to completely respond to all discovery requests of the Navajo Nation.

Moreover, there is simply no basis for the objections raised by LPAA. Each of the RFPs are virtually identical to the discovery requested by the Marshall Interests concerning the Navajo Indian Irrigation Project. See *Second Motion to Compel Discovery Concerning NIIP* (filed Sept. 26, 2012). The discovery requested is relevant since the irrigation practices of the Navajo Indian Irrigation Project ("NIIP") and Hogback and Fruitland are being called into question by the non-settling parties, including LPAA, who concurs with the objections to the settlement filed by other non-settling parties.

C. Response to the Objections and Responses of B Square Ranch

On October 5, 2012, the Navajo Nation issued one request for admission and four RFPs to B Square Ranch. See Attachment C. Identical requests were issued on each of the other three Agricultural Groups.

In response to the Navajo Nation's discovery requests, B Square Ranch issued only objections and no substantive responses or documents to the discovery requests. B Square Ranch appears to rest on their objections to justify their failure to respond to the discovery requests presented. B Square Ranch's failure to respond is briefly addressed in the paragraphs below. B Square Ranch's objections do not justify their failure to respond and they should be ordered to respond to the discovery requests described below.

In the course of their responses to the Navajo Nation's discovery requests, B Square Ranch provide an introduction that questions the very due process being provided in this proceeding. See Attachment C at 1 – 5. These objections appear to be a verbatim repetition of

their objections to the United States' discovery. Next, B Square Ranch assert, without explanation, the following "general objections:" 1) attorney-client privilege, 2) attorney work-product privilege, 3) discovery beyond the scope permitted by the rule of civil procedure, 4) overly-broad, 5) unreasonably cumulative or duplicative, 6) calling for a legal conclusion, 7) serving no purpose or vague or ambiguous, and 8) discovery not complete . See *id.* at 5 – 7. Finally, B Square Ranch provide a specific response after each discovery request that first incorporated the general objections and then restates one of the general objections by re-wording it. Again, these objections appear to be a verbatim repetition of their "general objections" to the United States' discovery. Like their responses to the United States' discovery requests, B Square Ranch add no additional specificity to their general objections.

All of B Square Ranch's objections to all Navajo Nation discovery requests are non-specific, conclusory, and boilerplate. See Order Concerning Objections at 2 and 3 (objections that simply repeat conclusory, non-specific objections using boilerplate language do not relieve a party from responding to discovery requests) (quoting *Lackey*, 90 N.M. at 68, 559 P.2d at 1195). As such, B Square Ranch's objections in no way obviate their obligation to completely respond to all discovery requests of the Navajo Nation.

a. RFA to B Square Ranch

The RFA to B Square Ranch requests that it admit that it claims a water right for agricultural or irrigation purposes. The purpose of this RFA was simply to establish the applicability of the RFPs that follow. If B Square Ranch does not claim a water right for agricultural or irrigation purposes, there is no need for B Square Ranch to respond to any of the RFPs. B Square Ranch denied the RFA based on its Introduction and General Objections. Objection to the RFA is not a basis for denial, and B Square Ranch should be ordered to answer the RFA.

b. RFPs to B Square Ranch

Each of the responses to the RFPs contain identical boilerplate language reasserting their general objections and specific objections.

B Square Ranch's first specific objection is that B Square Ranch only needs to claim ownership of a water right in the San Juan Basin to participate in this action, a position the Navajo Nation does not dispute. This objection does not provide a basis for failing to respond to the discovery.

B Square Ranch's second specific objection is that the discovery requested attempts to shift the burden of production and persuasion. This objection is unintelligible and does not provide a basis for failing to respond to the discovery.

B Square Ranch's third specific objection is that the documents requested are "documents are obtainable from other sources that are more convenient, less burdensome or less expensive." The documents requested concern B Square Ranches' specific water uses. It is hard to imagine a more convenient source of documents concerning B Square Ranch's water uses than from B Square Ranches themselves. Nor does the response provide any indication of where such documents might be obtained from other sources. This objection does not provide a basis for failing to respond to the discovery.

B Square Ranch's fourth specific objection is it is "overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence." Each of the RFPs are virtually identical to the discovery requested by the Marshall Interests concerning the Navajo Indian Irrigation Project. *See Second Motion to Compel Discovery Concerning NIIP* (filed Sept. 26, 2012). The discovery requested is relevant since the irrigation practices of the Navajo Indian Irrigation Project (NIIP) and Hogback and Fruitland are being called into question by the non-

settling parties including the B Square Ranches who concur with the objections to the settlement filed by other non-settling parties. *See Defendant B Square Ranch, LLC et al.'s Preliminary Objections to Proposed Settlement Agreement* (filed Oct. 1, 2012) at 4. The Navajo Nation is entitled to information from the other agricultural water users to show that its use of water for agricultural uses is consistent with those of other water users in the basin and is per se reasonable and practicable.

B Square Ranch's objections do not justify their failure to respond and they should be ordered to respond to the discovery requests.

D. Response to Mr. Oxford

On October 5, 2012, the Navajo Nation issued one request for admission and four requests for production of documents (RFPs) to Mr. Oxford. Identical requests were issued on the other three Agricultural Groups. Although Mr. Oxford had no documents to produce, he fully responded to the Navajo Nation's discovery.

CONCLUSION

Based on the foregoing, the Navajo Nation has demonstrated the failure of the SJWC, the Community Ditches, LPAA, B Square Ranch, and Mr. Oxford to properly respond to the Navajo Nation's discovery requests of November 2, 2012. Accordingly, the Navajo Nations asks this Court to order the aforementioned non-settling parties to respond to the specific discovery requests identified herein.

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Respectfully submitted this 20th day of November, 2012.



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2012, an electronic version of *The Navajo Nation's Joinder in the United States' Response to Discovery Objections of Non-Settling Parties* was served by electronic mail to the following addresses:

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A handwritten signature in black ink, appearing to read "SM Pollack". The letters are stylized and cursive.

Stanley M. Pollack

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

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

Plaintiff,

vs.

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

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler
Presiding Judge

DESCRIPTIVE SUMMARY: Responses by Community Ditch
Defendant-counterclaimants to Navajo Nation's Discovery.

NUMBER OF PAGES: 23

DATE OF FILING: November 13, 2012

**RESPONSES BY COMMUNITY DITCH DEFENDANT-
COUNTERCLAIMANTS TO NAVAJO NATION'S DISCOVERY**

Attachment A

Interrogatories

Pursuant to Rule 1-033, NMRA, the Navajo Nation issues the following interrogatories to each Marshall Interest.

Interrogatory No. 1: Describe completely and in all detail every basis you have for the statement found in paragraph 69 of the Answer, Objections, and Counterclaim that the Navajos have not been irrigating from rivers for a long time.

RESPONSE:

This interrogatory mischaracterizes and misquotes paragraph 69, which reads as follows:

The pueblos, unlike the Navajos, have been irrigating from rivers for a long time, so they have substantial water rights under the strict rules of prior appropriation and beneficial use, with a very early priority. Unfortunately, these rights have not yet been adjudicated.

As compared with the pueblos, relatively few Navajos irrigated from the San Juan River on a permanent basis prior to the construction of irrigation works by the US.

Most Navajos do not live close to the San Juan River, so they cannot irrigate from the river, unlike many pueblos.

For more on this topic, see Hampton Sides, *Blood and Thunder: The Epic Story of Kit Carson and the Conquest of the American West*, at 26 (2006):

Mainly, though, the Navajo raiders were interested in obtaining sheep and goats. The Navajo, almost alone among American Indians of the West, were primarily a pastoral people—shepherds, shearers, eaters of mutton, drinkers of goat's milk, master spinners of wool. Navajos followed the slow and watchful life known among anthropologists as *transhumance*, a methodical seminomadism built around the seasonal moving of flocks to higher and lower ground in search of grass. This way of life was, in fact, an ancient and widespread practice throughout the world but nearly unheard of

in North America. As pastoralists, the Navajo lifestyle was in some sense more akin to that of ancient Greeks, Hebrews, and Arabs than to contemporary tribes of Native Americans.

Interrogatory No. 2: Describe completely and in all detail every basis you have for the statement found in paragraph 78 of the Answer, Objections, and Counterclaim that the Navajo Nation has waived its water rights.

RESPONSE:

The federal legislation in the 1950s was intended to satisfy all of the Navajo Nation's potential claims to the Colorado River system, including its claims, for all Navajo lands, which are located in Utah, Arizona, and New Mexico.

Interrogatory No. 3: Describe completely and in all detail every basis you have for the statement found in paragraph 92 of the Answer, Objections, and Counterclaim that the Settlement Agreement is inconsistent with the Echo Ditch Decree and would impair water rights which were decreed by the court in the Echo Ditch Decree.

RESPONSE:

The Echo Ditch Decree establishes water rights which cannot be directly or collaterally challenged. All of the water rights confirmed by the Echo Ditch Decree take priority over any water claims by or on behalf of the Navajo Nation, except perhaps for some relatively small amounts based on prior appropriation and beneficial use in the Hogback-Cudei and Fruitland areas.

Interrogatory No. 4: Describe completely and in all detail every basis you have for the statement found in paragraph 94 of the Answer, Objections, and Counterclaim that the Settlement Agreement must be rejected because the Navajo Nation and the United States did not apply for and obtain valid permits and licenses for the diversion or consumption of water in accordance with New Mexico law.

RESPONSE:

The proposed agreement must be rejected because the Navajo Nation and the United States did not apply for and obtain valid permits and licenses for the diversion or

consumption of water in accordance with New Mexico law. They applied for various permits, but those applications were never published as required by New Mexico law. Those applications were not approved by the State Engineer in accordance with the mandatory procedures and standards set forth in New Mexico's water code. Some of the applications were merely endorsed as received by the State Engineer.

The files relating to these applications cannot be relied upon as accurate or complete, because the OSA has no system for ensuring the integrity, accuracy and completeness of those files. For many years the files have been open to anyone who insisted on looking at them, without any system to prevent persons from destroying, altering, or adding documents in the file.

Inter alia, the plaintiffs have never complied with the application and permit requirements set forth in NMSA 1978, §§ 72-5-1, -2, -3, -4 (publication), -5, -6, -7, -21, -31. See Exhibit 1 to the answer and counterclaim.

In particular, the plaintiffs did not publish notice of the applications as required by § 72-5-4, so that objections or protests could be filed under § 72-5-5. Upon information and belief, the plaintiffs may have colluded to evade publication, so that they could incorrectly claim that the river was fully appropriated by virtue of the applications, and so that they could deprive other water users of proper notice and the right to challenge the applications.

Because the procedures in §§ 72-5-1, *et seq.* were not followed, the Navajo Nation and the U.S. are not entitled to a 1955 priority date. The last sentence of § 72-5-4 specifically governs this situation, as follows:

In case of failure to file satisfactory proof of publication in accordance with the rules within the time required, the

application shall be treated as an original application filed on the date of receipt of proofs of publication in proper form.

See also the pending requests for admission to the plaintiffs, asking them to admit that the permit applications were never published.

Interrogatory No. 5: Describe completely and in all detail every basis you have for the statement found in paragraph 101 of the Answer, Objections, and Counterclaim that all of the water used for NIIP is wasted.

RESPONSE:

Decades of actual experience have proved that NIIP is not practicably irrigable acreage (PIA) under the criteria in *State ex rel. Martinez v. Lewis*, 116 N.M. 194, 861 P.2d. 235 (Ct. App. 1993), and other PIA cases.

PIA is one specific application of the more general concept of beneficial use/prohibition of waste, as applied to irrigation.

Interrogatory No. 6: Describe completely and in all detail every basis you have for the statement found in paragraph 102 of the Answer, Objections, and Counterclaim that there are a variety of factors that make NIIP impracticable for irrigation.

RESPONSE:

Some of the various factors are set forth in paragraphs 101 through 110 of the Answer, Objections, and Counterclaim.

Additional factors are set forth in the NIIP financial statements.

Other additional factors will be found in the documents on undisclosed NIIP expenses which the defendants have requested from the plaintiffs, and which have not yet been provided, for example, the costs for pumping water uphill, maintaining roads, and maintaining and repairing the canal infrastructure.

Interrogatory No. 7: Describe completely and in all detail every basis you have for the statement found in paragraph 103 of the Answer, Objections, and Counterclaim that the lands occupied by NIIP are too far from the San Juan River in horizontal terms.

RESPONSE:

This geographical information can be found in maps in the possession of the plaintiffs, including the United States Geographical Survey (USGS) topographic maps for NIIP and the surrounding area.

The geographical information can also be viewed by going on Google Earth, <http://www.google.com/earth/index.html>, and flying to NIIP. Google Earth contains a wealth of geographical information, including aerial photos, oblique views, maps, elevations, etc.

Also, the geographic facts can be observed by driving on United States Highway 550 south of Bloomfield, stopping and getting out of the car, and looking around.

Interrogatory No. 8: Describe completely and in all detail every basis you have for the statement found in paragraph 104 of the Answer, Objections, and Counterclaim that the climate at NIIP makes it impracticable for sustained irrigation at reasonable cost.

RESPONSE:

The United States, including the United States weather service and the Navajo Nation have climate records for NIIP and the surrounding area. The community ditch defendant-counterclaimants do not have these climate records.

Interrogatory No. 9: Describe completely and in all detail every basis you have for the statement found in paragraph 105 of the Answer, Objections, and Counterclaim that the soil at NIIP is poor, sandy, and low on natural nutrients.

RESPONSE:

The United States and the Navajo Nation and NIIP probably assemble records in the ordinary course of business about the soil conditions at NIIP.

The soil conditions can also be observed by going to NIIP and walking around.

Interrogatory No. 10: Describe completely and in all detail every basis you have for the statement found in paragraph 106 of the Answer, Objections, and Counterclaim that NIIP has high percolation rates, so much of the water is lost rather than being captured by the crops.

RESPONSE:

The soil at NIIP is sandy, so it has high percolation rates compared with richer soils. The United States and the Navajo Nation and NIIP probably have records about percolation rates, because they irrigate that land. The community ditch defendant-counterclaimants do not.

Interrogatory No. 11: Describe completely and in all detail every basis you have for the statement found in paragraph 107 of the Answer, Objections, and Counterclaim that because NIIP is far from the river, there is very little return surface flow or recharge of the river or underground water in the alluvium in the river valley.

RESPONSE:

The United States and the Navajo Nation and NIIP and the state engineer have records about surface or subsurface return flows. The community ditch defendant-counterclaimants do not.

Interrogatory No. 12: Describe completely and in all detail every basis you have for the statement found in paragraph 108 of the Answer, Objections, and Counterclaim that because of NIIP's geographical location, NIIP's transportation costs are high, which increases its costs and reduces the prices buyers will pay for its products.

RESPONSE:

NIIP is located many miles from a railway, an interstate, or a navigable river. These facts can be obtained from <https://maps.google.com/> or www.MapQuest.com/ or apple maps.

Interrogatory No. 13: Describe completely and in all detail every basis you have for the statement found in paragraph 109 of the Answer, Objections, and Counterclaim that since its inception and annually ever since, the actual costs of NIIP have always been greater than its revenues.

RESPONSE:

This information is in the possession of the plaintiffs, including the United States, the Navajo Nation, NIIP, NAPI, BIA, BOR, and the state engineer. Defendant-counterclaimants have been seeking this information in discovery for months, and have been met with of refusals and evasions from the plaintiffs. Plaintiffs have not yet provided all of the financial and operating statements, or the information about all the expenses which are not reflected in the operating statements. Counsel for the defendant-counterclaimants asked to go inspect the records at NIIP during his trip to Aztec for the last hearing on October 25, 2012, but the Navajo Nation refused to make these arrangements. Defendant-counterclaimants are seeking yet another order from Judge Wechsler, so that they can depose the employees and contractors of the plaintiffs who have actual knowledge about these matters.

Interrogatory No. 14: Describe completely and in all detail every basis you have for the statement found in paragraph 110 of the Answer, Objections, and Counterclaim that NIIP has never been an economically viable irrigation project, so it is a waste of money as well as water.

RESPONSE:

See the responses to the above interrogatories.

See also Answer, Objections, and Counterclaim, paragraphs 102-110.

NIIP has not created family farms, as originally intended, or much employment for the Navajo Nation. Some of NIIP's functions have been outsourced to non-Navajo contractors.

Interrogatory No. 15: Describe completely and in all detail every basis you have for the statement found in paragraph 111 of the Answer, Objections, and Counterclaim that, in the river valley, the Navajo Nation has claimed amounts of acreage and amounts of water and priority dates which are grossly excessive and not supported by the facts.

RESPONSE:

These facts would be found in an objective hydrographic survey of actual historical uses, which the state engineer was legally required to do by law, but did not. The U.S. and the Navajo Nation have claimed acreage and water in excess of their actual uses. The purported hydrographic survey prepared for this case cannot be trusted, because it was prepared by the Navajo Nation and the U.S., who are advocates for the Navajos.

Also, upon information and belief, the purported hydrographic survey is not based on any significant amount of new survey work in the field.

Interrogatory No. 16: Describe completely and in all detail every basis you have for the statement found in paragraph 114 of the Answer, Objections, and Counterclaim that there is not adequate water supply available in the San Juan Basin pursuant to New Mexico's allocation under the two compacts governing the Colorado River to meet the water requirements of the Settlement Agreement, the Settlement Act, and state law.

RESPONSE:

Inter alia, the compacts overestimated the amount of water available. See also answers to Interrogatory Nos. 17 and 18.

Interrogatory No. 17: Describe completely and in all detail every basis you have for the statement found in paragraph 115 of the Answer, Objections, and Counterclaim that the

2007 BOR hydrographic determination was not based on sound science and does not meet *Daubert* standards.

RESPONSE:

The plaintiffs prepared the hydrologic determination, so they are the only ones who can explain how they arrived at their conclusions.

Upon information and belief, their logic runs something like this:

1. There is less water in the Colorado River reservoirs;
2. Therefore there is less evaporation from these reservoirs;
3. Therefore more water is available from the Colorado River system.

Also, the determination is based in part on the supposed availability of water from the downsized Animas La Plata project. Downsizing a paper project only creates paper water, not wet water. And Judge Rosier Sanchez has ruled on this issue. See answer to next interrogatory.

Also, the determination does not take into account the best and most current scientific studies on the past, present and future water supply in the Colorado River system.

Interrogatory No. 18: Describe completely and in all detail every basis you have for the statement found in paragraph 116 of the Answer, Objections, and Counterclaim that the hydrographic determination is incorrect and contrary to the ruling in *San Juan Water Commission v. D Antonio*, No. D-1116-CV-2008-1699, Order (Aug. 16, 2011), because the hydrographic determination is based in part on the availability of water from the downsized Animas La Plata project.

RESPONSE:

The plaintiffs have all of the documents relating to this case; the community ditch defendants do not. The San Juan Water Commission also has documents and first-hand knowledge of that case.

Interrogatory No. 19: Describe completely and in all detail every basis you have for the statement found in paragraph 117 of the Answer, Objections, and Counterclaim that the hydrographic determination is incorrect because it overestimates the current and future water supply in the Colorado River system and ignores the best available scientific data on global warming and its effects on the Southwest United States.

RESPONSE:

This information is available to the United States, which has a legal obligation to take it into consideration. These matters are the subject of ongoing discovery, which is barely started, including depositions of Mr. Whipple and others who were involved in the hydrologic determination.

Furthermore, the plaintiffs have spoliated evidence which would show that they ignored the mounting scientific evidence, such as BOR emails.

Interrogatory No. 20: Describe completely and in all detail every basis you have for the statement found in paragraph 118 of the Answer, Objections, and Counterclaim that the hydrographic determination adopts a defective and inconsistent method for calculating evaporation.

RESPONSE:

The plaintiffs prepared the hydrologic determination, so they are the only ones who can explain how they arrived at their conclusions.

Upon information and belief, their logic runs something like this:

1. There is less water in the Colorado River reservoirs;
2. Therefore there is less evaporation from these reservoirs;
3. Therefore more water is available from the Colorado River system.

Interrogatory No. 21: Describe completely and in all detail every basis you have for the statement found in paragraph 138 of the Answer, Objections, and Counterclaim that the San Juan River contains 60% of all the stream surface water in New Mexico.

RESPONSE:

This interrogatory misquotes and mischaracterizes paragraph 138, which reads as follows:

138. The San Juan River contains 60% of all the stream surface water in New Mexico. This is the best available estimate, as the OSE seems to have no real idea of the aggregate stream water in New Mexico.

The 60% figure comes from the Colorado River Users Association. <http://www.crwua.org/> "The Colorado River Water Users Association is a non-profit, non-partisan organization, formed to plan, study, formulate and advise on ways to protect and safeguard the interests of all who use the Colorado River."

Interrogatory No. 22: Describe completely and in all detail every basis you have for the statement found in paragraph 142 of the Answer, Objections, and Counterclaim that the proposed agreement would give the Navajo Nation far more water than is needed to meet the minimum needs of the Navajo population living on the reservation in New Mexico. Please identify and describe completely and in all detail the amount of water that is needed to meet the "minimum needs of the Navajo population living on the reservation in New Mexico."

RESPONSE:

That is one of the questions yet to be answered in this case. The Community Ditch Defendants cannot quantify this amount at this time, but the amount is far less than the amounts in the proposed agreement.

Interrogatory No. 23: Describe completely and in all detail every basis you have for the statement found in paragraph 143 of the Answer, Objections, and Counterclaim that there are approximately 42,000 Native Americans living on the Navajo Reservation.

RESPONSE:

See document attached to responses to U.S. discovery. According to 2010 census data – 42,127 people live on the Navajo Reservation in New Mexico who describe themselves as Native Americans, American Indian, Alaska native, etc.

The United States has or should have this information, because the Constitution requires the United States to conduct a census every 10 years. The Navajo Nation has or should have this information as well, because the Navajo Nation needs this information to function properly.

Interrogatory No. 24: Describe completely and in all detail every basis you have for the statement found in paragraph 144 of the Answer, Objections, and Counterclaim that fewer than 40,000 members of the Navajo Nation live on the Navajo Reservation in New Mexico.

RESPONSE:

Not all Native Americans are enrolled members of the Navajo Tribe. See previous response.

Interrogatory No. 25: Describe completely and in all detail every basis you have for the statement found in paragraph 145 of the Answer, Objections, and Counterclaim that the population of the Navajo Reservation is decreasing, not increasing.

RESPONSE:

See previous response. According to some news media accounts, the overall population of the Navajo reservation in all 3 states dropped about 3% from 2000 to 2010. Defendant-counterclaimants have requested the relevant census data, but plaintiffs have not produced it.

Interrogatory No. 26: Describe completely and in all detail every basis you have for the statement found in paragraph 147 of the Answer, Objections, and Counterclaim that the amount of water needed for the minimal needs of 40,000 people is much smaller than the amounts provided in the Settlement Agreement. Please identify and describe completely and in all detail the amount of water that is needed for the "minimal needs of 40,000 people."

RESPONSE:

This is an issue which will be determined by the court. Roughly 40,000 members of the Navajo Tribe do not need 608,000 acre feet of water in order to live on the reservation in New Mexico.

Interrogatory No. 27: Describe completely and in all detail every basis you have for the statement found in paragraph 148 of the Answer, Objections, and Counterclaim that the water needs of the Navajo Nation can and must be satisfied by conservation measures and please describe completely and in detail those conservation measures.

RESPONSE:

The United States and the Navajo Nation have information about the conservation measures that can be used to conserve water on the reservation. Furthermore, the Navajo Reservation has significant water resources within the reservation that can be used to meet local needs, including lakes, streams, and underground water. Most domestic and household needs can be met by drilling domestic wells, as is done throughout New Mexico, or by creating small community water systems supplied by a local well. In most instances, this is more water efficient and cost efficient than taking water from the San Juan River.

In addition, even if the *Winters* cases applied, which they do not, there is nothing in the *Winters* cases that impliedly reserves water for needs which can be met from water resources within the reservation, thus avoiding adverse impacts on non-Indians who rely on the San Juan River, such as the community ditch defendant-counterclaimants.

Interrogatory No. 28: Pursuant to Rule 30(B)(6), designate one or more persons who may be deposed or testify regarding the substance of your response to the RFA, Interrogatory Nos. 1 – 27, and RFP Nos. 1 – 32. If more than one person is identified, describe with reasonable particularity those matters to which each person is capable of testifying.

RESPONSE:

See preliminary identification of witnesses filed November 13, 2012.

Request for Admission

Admit that you claim a water right for agricultural or irrigation purposes.

RESPONSE:

Admit that the community ditch defendant-counterclaimants claim water rights for agricultural or irrigation purposes, including but not limited to those set forth in the Echo Ditch Decree. The community ditch defendant-counterclaimants also claim water rights for domestic, municipal, industrial and other beneficial uses

Request for Production of Documents

Pursuant to Rule 1-034, NMRA, the Navajo Nation issues the following RFPs to each Marshall Interest.

RFP No. 1: If your response to the Request for Admission was an admission, provide all records showing the amounts of water used in your operations since inception, including the amounts of water diverted, pumped, consumed, evaporated, lost, or returned to the San Juan River.

RESPONSE:

Objection. This information is irrelevant, burdensome, and not reasonably calculated to lead to admissible evidence. The court has already ruled that objectors do not need to prove their water rights in order to object. Furthermore, objectors' water rights are not the subject of this expedited inter se, case No. AB-07-1. Those water rights will be the subject of the general adjudication, case No. CV 75-184.

In this case, AB-07-1, the issue before the court is whether to approve or not approve the proposed settlement agreement exactly in its current form, without any changes or additions or conditions. This can be done without the discovery requested in this RFP

RFP No. 2: If your response to the Request for Admission was an admission, provide all financial and operating statements or reports for your operations since inception, whether audited or unaudited, including annual profit and loss statements, statements of assets and liabilities, and cash flow statements.

RESPONSE:

See response to RFP No. 1.

RFP No. 3: If your response to the Request for Admission was an admission, provide all records showing costs and expenses for your operations since inception which might not be fully reflected in the statements or reports requested in RFP No. 2, including construction costs, capital costs, interest costs, maintenance, depreciation, electricity and utility costs, and overhead, labor or other costs. This request includes costs and expenses which might be borne by other entities such as the federal government or State of New Mexico.

RESPONSE:

See response to RFP No. 1.

RFP No. 4: If your response to the Request for Admission was an admission, provide all reports or analyses of your operations since inception, such as agricultural or agronomic reports, economic performance reports, economic feasibility reports, and reports to government agencies.

RESPONSE:

See response to RFP No. 1.

RFP No. 5: As associated with Interrogatory No. 1, provide every document in your possession that describes every basis for the statement found in paragraph 69 of the Answer, Objections, and Counterclaim that the Navajos have not been irrigating from rivers for a long time.

RESPONSE:

See response to Interrogatory No. 1.

RFP No. 6: As associated with Interrogatory No. 2, provide every document in your possession that describes every basis for the statement found in paragraph 78 of the Answer, Objections, and Counterclaim that the Navajo Nation has waived its water rights.

RESPONSE:

See response to Interrogatory No. 2.

RFP No. 7: As associated with Interrogatory No. 3, provide every document in your possession that describes every basis for the statement found in paragraph 92 of the Answer, Objections, and Counterclaim that the Settlement Agreement is inconsistent with the Echo Ditch Decree and would impair water rights which were decreed by the court in the Echo Ditch Decree.

RESPONSE:

See response to Interrogatory No. 3.

RFP No. 8: As associated with Interrogatory No. 4, provide every document in your possession that describes every basis for the statement found in paragraph 94 of the Answer, Objections, and Counterclaim that the Settlement Agreement must be rejected because the Navajo Nation and the United States did not apply for and obtain valid permits and licenses for the diversion or consumption of water in accordance with New Mexico law.

RESPONSE:

See response to Interrogatory No. 4.

RFP No. 9: Provide all permits and/or licenses entitling you to divert or consume water in accordance with New Mexico law.

RESPONSE:

See response to RFP No. 1.

RFP No. 10: As associated with Interrogatory No. 5, provide every document in your possession that describes every basis for the statement found in paragraph 101 of the Answer, Objections, and Counterclaim that all of the water used for NIIP is wasted.

RESPONSE:

See response to Interrogatory No. 5.

RFP No. 11: As associated with Interrogatory No. 6, provide every document in your possession that describes every basis you have for the statement found in paragraph 102 of the Answer, Objections, and Counterclaim that there are a variety of factors that make NIIP impracticable for irrigation.

RESPONSE:

See response to Interrogatory No. 6.

RFP No. 12: As associated with Interrogatory No. 7, provide every document in your possession that describes completely and in all detail every basis you have for the statement

found in paragraph 103 of the Answer, Objections, and Counterclaim that the lands occupied by NIIP are too far from the San Juan River in horizontal terms.

RESPONSE:

See response to Interrogatory No. 7.

RFP No. 13: As associated with Interrogatory No. 8, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 104 of the Answer, Objections, and Counterclaim that the climate at NIIP makes it impracticable for sustained irrigation at reasonable cost.

RESPONSE:

See response to Interrogatory No. 8.

RFP No. 14: As associated with Interrogatory No. 9, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 105 of the Answer, Objections, and Counterclaim that the soil at NIIP is poor, sandy, and low on natural nutrients.

RESPONSE:

See response to Interrogatory No. 9.

RFP No. 15: As associated with Interrogatory No. 10, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 106 of the Answer, Objections, and Counterclaim that NIIP has high percolation rates, so much of the water is lost rather than being captured by the crops.

RESPONSE:

See response to Interrogatory No. 10.

RFP No. 16: As associated with Interrogatory No. 11, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 107 of the Answer, Objections, and Counterclaim that because NIIP is far from the river, there is very little return surface flow or recharge of the river or underground water in the alluvium in the river valley.

RESPONSE:

See response to Interrogatory No. 11.

RFP No. 17: As associated with Interrogatory No. 12, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 108 of the Answer, Objections, and Counterclaim that because of NIIP's geographical location, NIIP's transportation costs are high, which increases its costs and reduces the prices buyers will pay for its products.

RESPONSE:

See response to Interrogatory No. 12.

RFP No. 18: As associated with Interrogatory No. 13, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 109 of the Answer, Objections, and Counterclaim that since its inception and annually ever since, the actual costs of NIIP have always been greater than its revenues.

RESPONSE:

See response to Interrogatory No. 13.

RFP No. 19: As associated with Interrogatory No. 14, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 110 of the Answer, Objections, and Counterclaim that NIIP has never been an economically viable irrigation project, so it is a waste of money as well as water.

RESPONSE:

See response to Interrogatory No. 14.

RFP No. 20: As associated with Interrogatory No. 15, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 111 of the Answer, Objections, and Counterclaim that, in the river valley, the Navajo Nation has claimed amounts of acreage and amounts of water and priority dates which are grossly excessive and not supported by the facts.

RESPONSE:

See response to Interrogatory No. 15.

RFP No. 21: As associated with Interrogatory No. 16, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 114 of the Answer, Objections, and Counterclaim that there is not adequate water supply available in the San Juan Basin pursuant to New Mexico's allocation

under the two compacts governing the Colorado River to meet the water requirements of the Settlement Agreement, the Settlement Act, and state law.

RESPONSE:

See response to Interrogatory No. 16.

RFP No. 22: As associated with Interrogatory No. 17, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 115 of the Answer, Objections, and Counterclaim that the 2007 BOR hydrographic determination was not based on sound science and does not meet *Daubert* standards.

RESPONSE:

See response to Interrogatory No. 17.

RFP No. 23: As associated with Interrogatory No. 18, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 116 of the Answer, Objections, and Counterclaim that the hydrographic determination is incorrect and contrary to the ruling in *San Juan Water Commission v. D Antonio*, No. D-1116-CV-2008-1699, Order (Aug. 16, 2011), because the hydrographic determination is based in part on the availability of water from the downsized Animas La Plata project.

RESPONSE:

See response to Interrogatory No. 18.

RFP No. 24: As associated with Interrogatory No. 19, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 117 of the Answer, Objections, and Counterclaim that the hydrographic determination is incorrect because it overestimates the current and future water supply in the Colorado River system and ignores the best available scientific data on global warming and its effects on the Southwest United States.

RESPONSE:

See response to Interrogatory No. 19.

RFP No. 25: As associated with Interrogatory No. 20, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 118 of the Answer, Objections, and Counterclaim that the hydrographic determination adopts a defective and inconsistent method for calculating evaporation.

RESPONSE:

See response to Interrogatory No. 20.

RFP No. 26: As associated with Interrogatory No. 21, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 138 of the Answer, Objections, and Counterclaim that the San Juan River contains 60% of all the stream surface water in New Mexico.

RESPONSE:

See response to Interrogatory No. 21.

RFP No. 27: As associated with Interrogatory No. 22, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 142 of the Answer, Objections, and Counterclaim that the proposed agreement would give the Navajo Nation far more water than is needed to meet the minimum needs of the Navajo population living on the reservation in New Mexico.

RESPONSE:

See response to Interrogatory No. 22.

RFP No. 28: As associated with Interrogatory No. 23, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 143 of the Answer, Objections, and Counterclaim that there are approximately 42,000 Native Americans living on the Navajo Reservation.

RESPONSE:

See response to Interrogatory No. 23.

RFP No. 29: As associated with Interrogatory No. 24, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 144 of the Answer, Objections, and Counterclaim that fewer than 40,000 members of the Navajo Nation live on the Navajo Reservation in New Mexico.

RESPONSE:

See response to Interrogatory No. 24.

RFP No. 30: As associated with Interrogatory No. 25, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 145 of the Answer, Objections, and Counterclaim that the population of the Navajo Reservation is decreasing, not increasing.

RESPONSE:

See response to Interrogatory No. 25.

RFP No. 31: As associated with Interrogatory No. 26, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 147 of the Answer, Objections, and Counterclaim that the amount of water needed for the minimal needs of 40,000 people is much smaller than the amounts provided in the Settlement Agreement.

RESPONSE:

See response to Interrogatory No. 26.

RFP No. 32: As associated with Interrogatory No. 27, provide every document in your possession that describes completely and in all detail every basis you have for the statement found in paragraph 148 of the Answer, Objections, and Counterclaim that the water needs of the Navajo Nation can and must be satisfied by conservation measures.

RESPONSE:

See response to Interrogatory No. 27.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
Attorneys for San Juan Agricultural Water Users
Association; Hammond Conservancy District;
Bloomfield Irrigation District; various ditches; and
various members thereof.

12509 Oakland NE

Albuquerque, NM 87122

505-332-9400 / 505-332-3793 FAX

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2012, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: wrnavajointerse@nmcourts.gov.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.

**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: La Plata Valley Acequia Association; San Juan Development Corporation, MABE, LLC; North Star Mutual Domestic Water Association; Blanco Mutual Domestic Water Consumers & Mutual Sewage Works Association, Inc., Lloyd D. Ayliffe, and Patsy R. Ayliffe

DESCRIPTIVE SUMMARY: LPAA Parties' Responses to Navajo Nation's discovery requests.

NUMBER OF PAGES: 4

DATE OF Service: November 13, 2012

**LPAA PARTIES' RESPONSES TO THE
NAVAJO NATION'S DISCOVERY REQUESTS**

**To: The Navajo Nation
c/o Stanley M. Pollack
Navajo Nation Department of Justice
PO Drawer 2010
Window Rock, AZ 86515
928-871-7510**

La Plata Valley Acequia Association; San Juan Development Corporation, MABE, LLC; North Star Mutual Domestic Water Association; Blanco Mutual Domestic Water Consumers & Mutual Sewage Works Association, Inc., Lloyd D. Ayliffe, and Patsy R. Ayliffe (the "LPAA parties"), pursuant to Rules 26, 33, 34, and 36 of the New Mexico Rules of Civil Procedure,

respond to the discovery requests propounded by the Navajo Nation (request for admission (RFA) and requests for production of documents (RFP)) as set forth below.

Instructions

Specific Responses to Each Discovery Request By Each Objecting Party Required: Each person or entity identified above is instructed to respond to each and every RFP and RFA in writing and completely. Responses to interrogatories must be provided under oath. Rule 33(C)(1), NMRA. In the event you have an objection to any discovery request, you must specifically describe your objection and you must nonetheless respond to the discovery request. If you find any request vague or ambiguous, you must nonetheless respond to the discovery request to the best of your ability and state any assumptions or limitations that you made to formulate a response to the discovery request.

Request for Admission

RFA No. 1: Admit that you claim a water right for agricultural or irrigation purposes.

Response: This request is denied by North Star Mutual Domestic Water Association and Blanco Mutual Domestic Water Consumers & Mutual Sewage Works Association, Inc. This request is admitted by San Juan Development Corporation, MABE, LLC, Lloyd D. Ayliffe, Patsy R. Ayliffe, and Gary Risley. The members of the La Plata Valley Acequia Association admit they have water rights used for agricultural or irrigation purposes, but deny that their rights are exclusively so. The LPAA members as members of the La Plata Conservancy District possess municipal domestic rights.

Requests for Production

If your response to the Request for Admission was an admission, pursuant to Rule 1-034, NMRA, the Navajo Nations issues the follows RFPs to each of the participating, non-settling parties identified above. If you do not claim a water right for agricultural or irrigation purposes, there is no need to respond to the RFPs below.

RFP No. 1: All records showing the amounts of water used in your operations since inception, including the amounts of water diverted, pumped, consumed, evaporated, lost, or returned to the San Juan River.

Response: Objection. The information requested is not relevant nor reasonably related to lead to discoverable evidence with regard to the Navajo subfile adjudication. By way of further objection, the responding parties are not subject to a PIA standard with regard to the utilization of their water rights, the requested information is not publically available information and it would be invasive of the privacy of the responding parties while the information to be obtained would not be relevant or admissible in the adjudication with regard to the Navajo settlement.

RFP No. 2: All financial and operating statements or reports for your operations since inception, whether audited or unaudited, including annual profit and loss statements, statements of assets and liabilities, and cash flow statements.

Response: Objection. The information requested is not relevant nor reasonably related to lead to discoverable evidence with to the Navajo subfile adjudication. By way of further objection, the responding parties are not subject to a PIA standard with regard to the utilization of their water rights, the requested information is not publically available information and it would be invasive of the privacy of the responding parties while the information to be obtained would not be relevant or admissible in the adjudication with regard to the Navajo settlement.

RFP No. 3: All records showing costs and expenses for your operations since inception which might not be fully reflected in the statements or reports requested in RFP No. 2, including construction costs, capital costs, interest costs, maintenance, depreciation, electricity and utility costs, and overhead, labor or other costs. This request includes costs and expenses which might be borne by other entities such as the federal government or State of New Mexico.

Response Objection. The information requested is not relevant nor reasonably related to lead to discoverable evidence with regard to the Navajo subfile adjudication. By way of further objection, the responding parties are not subject to a PIA standard with regard to the utilization of their water rights, the requested information is not publically available information and it would be invasive of the privacy of the responding parties while the information to be obtained would not be relevant or admissible in the adjudication with regard to the Navajo settlement.

RFP No. 4: All reports or analyses of your operations since inception, such as agricultural or agronomic reports, economic performance reports, economic feasibility reports, and reports to government agencies.

Response: Objection. The information requested is not relevant nor reasonably related to lead to discoverable evidence with regard to the Navajo subfile adjudication. By way of further objection, the responding parties are not subject to a PIA standard with regard to the utilization of their water rights, the requested information is not publically available information and it would be invasive of the privacy of the responding parties while the information to be obtained would not be relevant or admissible in the adjudication with regard to the Navajo settlement.

THE RISLEY LAW FIRM, P.C.

A handwritten signature in cursive script, appearing to read "Gary Risley", is written over a horizontal line.

Gary Risley
4991 N. Butler Avenue
Farmington, NM 87401
505-326-1776

Attorney for La Plata Valley Acequia Association,
MABE, LLC, North Star Mutual Domestic
Water Association; Blanco Mutual Domestic
Association, Inc., Lloyd D. Ayliffe, and
Patsy R. Ayliffe

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

THE UNITED STATES OF AMERICA et al.,

Defendants.

D-1116-CV-75-184

Honorable James J. Wechsler
San Juan River Adjudication

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

DESCRIPTIVE SUMMARY: Objections/Responses/Answers to Navajo Nation's Discovery Requests of B Square Ranch, LLC et al.

NAME OF PARTY: Defendants B Square Ranch, LLC et al.

NUMBER OF PAGES: 11

DATE OF FILING: November 12, 2012 by electronic service and Certificate of Service of such Objections/Responses and Answers will be filed on November 13, 2012 with Court Clerk.

**OBJECTIONS, RESPONSES AND ANSWERS TO
NAVAJO NATION'S DISCOVERY REQUESTS TO
B SQUARE RANCH, LLC ET AL.**

Pursuant to the New Mexico Rules of Civil Procedure for the District Courts, the following are the objections, responses and answers to Navajo Nation's Discovery Requests by Defendants B Square Ranch, LLC et al.

Due to the recent Notice of Withdrawal of Participation by certain Defendants previously included in the group known as "Defendants B Square Ranch, LLC et al.", these Objections, Responses and Answers are being objected, responded to and answered by the following Defendants:

Attachment C

- A. B Square Ranch, LLC; Bolack Minerals Company a.k.a. Bolack Minerals Company Limited Partnership; Estate of Tom Bolack a.k.a. Thomas Felix Bolack, Deceased; Bolack Minerals Foundation and Tommy Bolack Revocable Trust
- B. Estate of Juanita Velasquez, Deceased
- C. David A. Pierce and Maxine M. Pierce
- D. David M. Drake and Shawna Drake

INTRODUCTION

Defendants B Square Ranch, LLC et al. timely filed their Notices of Intent to Participate in the Navajo *Inter Se* Proceeding and attended the mandatory scheduling conference on Monday, October 3, 2011.

At a Court hearing on October 26, 2011, counsel for Defendants B Square Ranch, LLC et al. objected to the scheduling of discovery and other matters that were being discussed at such hearing and requested the Court to allow the "Non-Settling Parties" to immediately commence discovery. By initiating discovery at that time, Defendants B Square Ranch, LLC et al. stated it would be able to better evaluate and decide if such Defendants should agree to the proposed Settlement Agreement and Decrees or oppose such Settlement Agreement and Decrees.

The Court entered an order on February 3, 2012 stating the Non-Settling Parties' discovery was to commence on June 1, 2012, over 7 months after the October 26, 2011 hearing.

Discovery was served on the Settling Parties on or about June 1, 2012 by Defendants B Square Ranch, LLC et al. as well as other Non-Settling Parties. In response to such discovery the Settling Parties on or about June 15, 2012 filed objections to the discovery and did not produce any documents nor did they provide any substantive answers to the interrogatories.

Defendants B Square Ranch, LLC et al. and other Non-Settling Parties then filed motions to compel discovery and the Court held a hearing on such motions. The Court granted certain of the motions to compel and denied other motions to compel. The Settling Parties thereafter produced certain documents and answered certain interrogatories. However, there are still pending subsequent motions to compel discovery by certain Non-Settling Parties since the Settling Parties did not produce certain documents or answer certain interrogatories.

In mid-September 2012, the City of Aztec and the City of Bloomfield filed their Motion to Extend All Scheduled Deadlines and the San Juan Water Commission filed its Motion to Extend Remaining Case Management Deadlines by 180 Days in the above-styled action. Defendants B Square Ranch, LLC et al. joined these two Motions to Extend All Scheduled Deadlines a few days later.

These Motions to Extend Deadlines requested the extension of all deadlines by either 120 days or 180 days to allow the Non-Settling Parties to manage pretrial discovery and to adequately develop their cases because Defendants B Square Ranch, LLC et al. and certain Non-Settling Parties do not believe in good faith they would be able to meet the current Court ordered discovery deadline of February 1, 2013.

These Motions to Extend Deadlines would also have allowed an extension for the Settling Parties to file the subject Discovery Requests upon Defendants B Square Ranch et al. as well as discovery requests upon other Non-Settling Parties.

The Settling Parties originally produced a large number of documents (300,000 to 400,000 pages) that they claim are relevant to the above-described discovery requests of the Non-Settling Parties. However, the Settling Parties have also indirectly

denied access to the Non-Settling Parties to review documents at agencies or offices of the Settling Parties.

The Settling Parties have recently produced a large number of additional documents on or about August 17, 2012, August 21, 2012 and September 12, 2012, and the Settling Parties continue to produce documents to the Non-Settling Parties. These documents have not yet been reviewed by Defendants B Square Ranch, LLC et al. and more than likely have not yet been reviewed by the other Non-Settling Parties.

It should be of **no surprise** to the Settling Parties that Defendants B Square Ranch, LLC et al. and the other Non-Settling Parties will not be able to adequately respond to the discovery requests by the Settling Parties at the present time. As stated in the above-described Motions to Extend Deadlines, Defendants B Square Ranch et al. and other Non-Settling Parties have not had sufficient time to review the documents originally, subsequently and currently being produced by the Settling Parties. Further, Defendants B Square Ranch et al. and other Non-Settling Parties have not been able to complete sufficient discovery to adequately prepare their cases.

Defendants B Square Ranch, LLC et al. became involved in the above-styled action through the Entry of Appearance by its counsel on October 19, 2011, a little over a year ago. Defendants B Square Ranch, LLC et al. and their counsel, unlike the Settling Parties, cannot devote full time and unlimited funds to the above-styled law suit because they have limited access to resources, personnel and counsel.

As a result, and pursuant to certain Court orders, Defendants B Square Ranch, LLC et al. have been meeting and conversing with counsel for other Non-Settling

Parties, joining in motions of other Non-Settling Parties such as the above-described Motions to Extend Deadlines, and coordinating with other Settling Parties on discovery matters. See Defendants B Square Ranch, LLC et al.'s joinder to the Discovery Report of Certain Non-Settling Parties in Regard to Notice of Discovery Conference filed on October 24, 2012.

In conclusion, the current scheduling orders entered in the above-styled action are denying fundamental due process to Defendants B Square Ranch et al. and the other Non-Settling Parties to: (i) fully protect their rights and interests in the above-styled action; (ii) comply with the orders of the Court; (iii) examine the discovery that has provided by Settling Parties; (iv) request additional discovery from the Settling Parties, if needed; (v) to adequately object, respond or answer the current discovery requests of the Settling Parties, (vi) fully develop objections or responses to the proposed Settlement Agreement; and (vii) make a knowledgeable and informed decision whether to approve or oppose the proposed Settlement Agreement.

GENERAL OBJECTIONS

Defendants B Square Ranch, LLC et al. object to the United Navajo Nation's Discovery Requests to the extent they seek documents protected by the attorney-client privilege, documents prepared in anticipation of litigation, or documents which constitute attorney work product.

Defendants B Square Ranch, LLC et al. object to the Navajo Nation's Discovery Requests to the extent they require these Defendants to provide information outside the scope of discovery permitted by the New Mexico Rules of Civil Procedure.

Defendants B Square Ranch, LLC et al. object to the Navajo Nation's Discovery Requests to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

Defendants B Square Ranch, LLC et al. object to the Navajo Nation's Discovery Requests when they are unreasonably cumulative or duplicative, or obtainable from another source that is more convenient, less burdensome or less expensive.

Unless specifically stated otherwise, Defendants B Square Ranch, LLC et al. reserve all objections to the competence, relevance, materiality, admissibility, or privileged status of any information provided in response to the Navajo Nation's Discovery Requests.

Statements herein to the effect that Defendants B Square Ranch, LLC et al. will produce responsive documents do not constitute a representation that any responsive documents in fact exist or are in Defendants B Square Ranch, LLC et al.'s possession, custody, or control, and responsive documents shall only be produced to the extent that they do exist and are in these Defendants' possession, custody, or control.

Defendants B Square Ranch, LLC have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers. Defendants B Square Ranch, LLC et al. have endeavored to give responses or answers on the basis of the best information available at the time and without prejudice to the introduction of subsequent discovery evidence or of information omitted through good faith oversight. Defendants B Square Ranch, LLC et al. specifically reserve the right to supplement,

correct, amend or modify their responses, answers and objections at or before trial and to rely on such supplementation, correction, amendments or modifications in any trial or other proceeding.

Defendants B Square Ranch, LLC et al. object to the Navajo Nation's Discovery Requests to the extent they are speculative, call exclusively for a legal conclusion or request such Defendants to conduct analyses and provide information protected by the attorney-client privilege or confidential attorney work product.

Defendants B Square Ranch, LLC et al. object to discovery that serves no purpose; amounts to a mere fishing expedition; or is vague or ambiguous making such discovery impossible to respond or answer.

Defendants B Square Ranch, LLC et al. object to the designation of any witnesses who may testify at trial or documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. object to the attempts by the Settling Parties to shift the burden of production and the burden of persuasion that the subject Settlement Agreement is: (i) the product of good faith, arms-length negotiations, (ii) the provisions in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights, (iii) 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 (iv) the Settlement Agreement is consistent with public policy and applicable law.

Defendants B Square Ranch, LLC et al. object to the attempts by the Settling Parties to compel these Defendants to demonstrate injury to their own water rights in order to state a cognizable objection to the Settlement Agreement as these Defendants only need to claim ownership of a water right in the San Juan Basin to participate in the above-styled action.

These General Objections are applicable to, and incorporated in, Defendants B Square Ranch, LLC et al.'s specific objections, responses and answers stated below.

SPECIFIC OBJECTIONS, RESPONSES AND ANSWERS TO REQUEST FOR ADMISSION

Request for Admission

Admit that you claim a water right for agricultural or irrigation purposes.

Response to Request for Admission.

Deny. See above Introduction and General Objections.

Specific Objections:

Defendants B Square Ranch, LLC et al. only need to claim ownership of a water right in the San Juan Basin to participate in the above-styled action.

Defendants B Square Ranch, LLC et al. object to any attempt by the Settling Parties to shift the burden of production and the burden of persuasion concerning the subject Settlement Agreement.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

Request for Production of Documents

If your response to the Request for Admission was an admission, pursuant to Rule 1-034, NMRA, the Navajo Nation issues the following RFPs to each of the participating, non-settling parties identified above. If you do not claim a water right for agricultural or irrigation purposes, there is no need to respond to the RFPs below.

RFP No. 1: All records showing the amounts of water used in your operations since inception, including the amounts of water diverted, pumped, consumed, evaporated, lost, or returned to the San Juan River.

Response to RFP No. 1.

See above Introduction, General Objections and Response to Request for Admission.

Specific Objections:

Defendants B Square Ranch, LLC et al. only need to claim ownership of a water right in the San Juan Basin to participate in the above-styled action.

Defendants B Square Ranch, LLC et al. object to any attempt by the Settling Parties to shift the burden of production and the burden of persuasion concerning the subject Settlement Agreement.

Defendants B Square Ranch, LLC et al. object to RFP No. 1 because such documents are obtainable from other sources that are more convenient, less burdensome or less expensive.

Defendants B Square Ranch, LLC et al. object to the RFP No. 1 because it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RFP No. 2: All financial and operating statements or reports for your operations since inception, whether audited or unaudited, including annual profit and loss statements, statements of assets and liabilities, and cash flow statements.

Response to RFP No. 2.

See above Introduction, General Objections and Response to Request for Admission.

Specific Objections:

Defendants B Square Ranch, LLC et al. only need to claim ownership of a water right in the San Juan Basin to participate in the above-styled action.

Defendants B Square Ranch, LLC et al. object to any attempt by the Settling Parties to shift the burden of production and the burden of persuasion concerning the subject Settlement Agreement.

Defendants B Square Ranch, LLC et al. object to RFP No. 2 because such documents are obtainable from other sources that are more convenient, less burdensome or less expensive.

Defendants B Square Ranch, LLC et al. object to the RFP No. 2 because it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RFP No. 3: All records showing costs and expenses for your operations since inception which might not be fully reflected in the statements or reports requested in RFP No. 2, including construction costs, capital costs, interest costs, maintenance, depreciation, electricity and utility costs, and overhead, labor or other costs. This request includes costs and expenses which might be borne by other entities such as the federal government or State of New Mexico.

Response to RFP No. 3.

See above Introduction, General Objections and Response to Request for Admission.

Specific Objections:

Defendants B Square Ranch, LLC et al. only need to claim ownership of a water right in the San Juan Basin to participate in the above-styled action.

Defendants B Square Ranch, LLC et al. object to any attempt by the Settling Parties to shift the burden of production and the burden of persuasion concerning the subject Settlement Agreement.

Defendants B Square Ranch, LLC et al. object to RFP No. 3 because such documents are obtainable from other sources that are more convenient, less burdensome or less expensive.

Defendants B Square Ranch, LLC et al. object to the RFP No. 3 because it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RFP No. 4: All reports or analyses of your operations since inception, such as agricultural or agronomic reports, economic performance reports, economic feasibility reports, and reports to government agencies.

Response to RFP No. 4.

See above Introduction, General Objections and Response to Request for Admission.

Specific Objections:

Defendants B Square Ranch, LLC et al. only need to claim ownership of a water right in the San Juan Basin to participate in the above-styled action.

Defendants B Square Ranch, LLC et al. object to any attempt by the Settling Parties to shift the burden of production and the burden of persuasion concerning the subject Settlement Agreement.

Defendants B Square Ranch, LLC et al. object to RFP No. 4 because such documents are obtainable from other sources that are more convenient, less burdensome or less expensive.

Defendants B Square Ranch, LLC et al. object to the RFP No. 4 because it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

TULLY LAW FIRM, P.A.

/s/

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