

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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STATE OF NEW MEXICO 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: The Navajo Nation, United States and State of New Mexico ("Settling Parties")

DESCRIPTIVE SUMMARY: The Settling Parties request clarification from the Court as to the date responses are due to *Gary L. Horner's Motion for the Determination of the Applicable Standard for the Determination of Federal Reserved Water Rights* and in the event responses are not due in March 2013, the Settling Parties move for an extension of time to reply to the Horner Motion and request that the matter be discussed at the November 28, 2012 Discovery Conference.

NUMBER OF PAGES: 4.

DATE OF FILING: Fax filed November 21, 2012.

**SETTLING PARTIES' REQUEST FOR CLARIFICATION AND MOTION FOR
EXTENSION OF TIME TO REPLY TO THE HORNER MOTION**

The Navajo Nation, United States and State of New Mexico ("Settling Parties") request clarification from the Court as to the date that responses are due to *Gary L. Horner's Motion for the Determination of the Applicable Standard for the Determination of Federal Reserved Water Rights* ("Horner Motion").

The Horner Motion was filed on November 8, 2012. At the time the Horner Motion was filed the procedures for filing responses were governed by the *Order Mandating Alternative*

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Method for Service of Orders, Motions, Notices and Other Court Papers (Sept. 28, 2011)

("September 2011 Order"). That order provides:

3. **Computation of Time Prescribed by Rules:** Unless otherwise ordered by the Court, whenever the Rules of Civil Procedure, or a notice given pursuant to those Rules, requires that an act be done, or paper filed, within a specified time, the time period shall (a) commence on the date the Court Paper pertaining thereto first appears in the *Inter Se* Report and (b) three days shall be added to the prescribed period, to allow for service of the *Inter Se* Report by first class mail.

September 2011 Order at 5, ¶ 3 (emphasis in original).¹ Pursuant to the September 2011 Order, it appears that the time for filing a response to the Horner Motion would be December 3, 2012.² However, at the November 6, 2012 Discovery Conference the Court appeared to suggest that the time for responses to motions concerning "common issues of fact or law that are ripe for resolution"³ would be April 10, 2013, consistent with the *Second Amended Order Setting Schedule Governing Discovery on the Non-Settling Parties And Remaining Proceedings* (Nov. 6, 2012) ("November 6, 2012 Order") at 3, ¶ 9.b.

Request for Clarification

Because the appropriate time for filing responses to the Horner Motion appears ambiguous under the aforementioned procedural orders governing this proceeding, the Settling

¹ Subsequent to the filing of the Horner Motion, the Court amended the September 2011 Order "to specify that the time period for responding to motions, notices, or other court papers *filed after the date of this order* shall be triggered by electronic service of the court paper rather than by the Bi-Weekly Report and shall otherwise conform to the Rules of Civil Procedure. Service of all pleadings and other court papers shall continue to be made electronically through the Court's electronic distribution list." *Corrected Order Summarizing Discovery Activities Discussed at the November 6, 2012 Discovery Conference* ("Corrected Order") (Nov. 16) at 2, ¶ 6.

² The Horner Motion first appeared in the November 9, 2012 Bi-Weekly Navajo *Inter Se* Report, which was filed with the Court on November 13, 2012.

³ See Order (1) *Granting Settling Parties' Motion to Extend Certain Deadlines and (2) Setting Schedule Governing Discovery and Remaining Proceedings* (Feb. 3, 2012) at 4, ¶ 5.

Parties request clarification from the Court as to the date responses are due. Moreover, the Settling Parties request that the Court generally clarify response and reply times for motions, like the Horner Motion, that address legal or factual issues to be determined by the Court. Although facially the Horner Motion does not appear to be a "dispositive motion" as that term is used in the Corrected Order (*see* page 2, ¶ 5), the Settling Parties respectfully request that the Court clarify the process for bringing motions based upon "common issues of fact or law that are ripe for resolution" as contemplated in prior orders of the Court, including the November 6, 2012 Order.

Motion for Extension of Time

Notwithstanding the desire of the Settling Parties to expedite these proceedings, in the event the Court determines that December 3, 2012 is the date for filing of responses, the Settling Parties hereby move for an extension of time within which to file their responses to the Horner Motion. This motion is made in recognition of the fact that the parties are engaged in extensive discovery and the Horner Motion, which raises numerous broad legal issues, was accompanied by a 58 page brief, excluding attachments. The Settling Parties respectfully suggest that this matter, including the date responses to the Horner Motion are due be discussed at the November 28, 2012 Discovery Conference.

Concurrence of Counsel

Pursuant to Rule 1-007.1 NMRA and LR 11-104, counsel of record in the Navajo *Inter Se* were provided electronic copies of this proposed motion. ConocoPhillips Company, El Paso Natural Gas Company, the Jicarilla Apache Nation, and the Ute Mountain Ute Tribe concur in the motion. Bloomfield Schools, LPAA, and the San Juan Water Commission do not object to

the motion for an extension of time or the proposal to address the issue at the November 28, 2012 hearing. Mr. Gary L. Horner does not concur in the motion.

Respectfully submitted, this 21st day of November 2012.

NAVAJO NATION



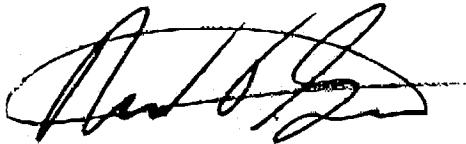
Stanley M. Pollack
M. Kathryn Hoover
Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-7510

STATE OF NEW MEXICO

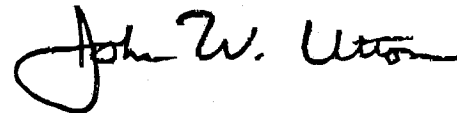


Arienne Singer
Special Assistant Attorney General
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

UNITED STATES OF AMERICA



Andrew J. "Guss" Guarino
U.S. Department of Justice
Environment & Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1343



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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November 2012, at approximately 12:00 noon, an electronic version of this *Settling Parties' Request for Clarification and Motion for Extension of Time to Reply to the Horner Motion* was served by electronic mail to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov.



Stanley M. Pollack