

Description AB-07-1

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
IN THE DISTRICT COURT

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

vs.

THE UNITED STATES OF AMERICA, et al.

Defendant.

and

THE JICARILLA APACHE TRIBE

and the NAVAJO NATION,

Defendant-Intervenors,

and

COMMUNITY DITCH DEFENDANTS

Counter-Defendants

JUDGE: JAMES J WECHSLER

TYPE OF PROCEEDINGS: Non-Settling Parties Responses and Objections to
Initial Discovery Requests and Discovery Conference

FOR THE PLAINTIFF: VARIOUS

FOR THE DEFENDANT: VARIOUS

MONITOR: LORESSA BACHERT

MACHINE TYPE: FTR GOLD REPORTER

LEGEND:

D - Defendant's Atty

DEF - Defendant

DEX - Direct Exam

EX - Exhibit

J - Judge

M - Monitor

P - Plaintiff's Atty

PLA - Plaintiff

W - Witness

Date

11/28/2012 **Location** Court of Appeals

✓

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>9:08:30 AM</u>	J	CALLS CASE
<u>9:09:10 AM</u>		HERE WITH RESPECT WITH TO OBJECTIONS WITH RESPECT TO DISCOVERY REQUESTS AND DISCOVERY CONFERENCE AND VARIOUS OTHER DISCOVERY MATTERS
<u>9:09:30 AM</u>		THIS IS A VIDEO CONFERENCE AND WE ALSO HAVE A TELEPHONE CONNECTION. I AM PRESENT IN SANTA FE AT THE STATE OF NM COURT OF APPEALS AND WE HAVE A VIDEO CONNECTION TO THE DISTRICT COURT IN AZTEC
<u>9:09:52 AM</u>		IN AZTEC CAN YOU HEAR
<u>9:09:55 AM</u>	LORESS A BACH ERT	ASKING JUDGE TO SPEAK UP AND FOR CAMERA TO BE ADJUSTED
<u>9:10:03 AM</u>	J	ASKS IT TO MAKE ADJUSTMENTS TO CAMERA
<u>9:10:51 AM</u>		WORKING ON VOICE LEVELS
<u>9:10:53 AM</u>	IN AZTEC	INDICATING CAN NOT HEAR WELL
<u>9:11:16 AM</u>	J	WE ARE WORKING ON IT
<u>9:13:47 AM</u>		CONTINUE TO WORK ON THE VOLUME
<u>9:15:32 AM</u>	J	CAN YOU HEAR ME NOW
<u>9:15:50 AM</u>		ASK COUNSEL TO ENTER APPEARANCES
<u>9:15:56 AM</u>	SANTA FE	COUNSEL ENTERING APPEARANCES
<u>9:15:57 AM</u>	GUSS GUARIN O	UNITED STATES
<u>9:15:59 AM</u>	STANLE Y POLLA CK	NAVAJO NATION
<u>9:16:05 AM</u>	JOHN UTTON & ARIAN NE SINGER	STATE OF NEW MEXICO
<u>9:16:12 AM</u>	ADAM RANKIN	CONOCO PHILLIPS AND EL PASO NATURAL GAS COMPANY
<u>9:16:18 AM</u>	AZTEC	INTICATING CAN NOT HEAR COUNSEL
<u>9:17:09 AM</u>	J	WE WILL PROCEED SEE IF MOVING THE TABLE (THAT HOLDS THE MIC) WILL HELP
<u>9:17:40 AM</u>	AZTEC	ANSWERS
<u>9:17:49 AM</u>	J	CAN YOU HEAR ME OK FOR NOW FOR THE NEXT 10 MINUTES
<u>9:17:51 AM</u>	AZTEC	YES
<u>9:17:56 AM</u>	J	MR RANKIN GIVE YOUR APPEARANCE AND SAY A FEW WORDS AND SEE IF THEY CAN HEAR YOU
<u>9:18:00 AM</u>	ADAM RANKIN	CONTINUES
<u>9:18:09 AM</u>	J	HOW IS THAT IN AZTEC

<u>9:18:11 AM</u>	AZTEC	WE CAN HEAR HIM SPEAKING BUT WHEN HE STARTS GETTING INTO ARGUMENTS WE ARE NOT GOING TO BE ABLE TO FOLLOW HIM
<u>9:18:20 AM</u>	J	OK WE ARE GOING TO GET ANOTHER MIC AND WILL BE ABLE TO IMPROVE THAT
<u>9:18:32 AM</u>	RICHARD COLE	CITIES OF BLOOMFIELD AZTEC
<u>9:18:39 AM</u>	JOLENE MCCAILE B & ELIZABETH TAYLOR	SAN JUAN WATER COMMISSION
<u>9:18:48 AM</u>	VICTOR MARSHALL	COMMUNITY DITCH DEFENDANT COUNTER CLAIMANTS
<u>9:18:52 AM</u>	SETH FULLERTON	CITY OF ESPANOLA
<u>9:18:57 AM</u>	JAY STEIN	ALBUQUERQUE BERNALILLO WATER UTILITY AUTHORITY
<u>9:19:04 AM</u>	SAM GOLLIS	CO COUNSEL FOR NAVAJO NATION
<u>9:19:09 AM</u>	RICHARD COLE	(INAUDIBLE) ? PINO
<u>9:19:12 AM</u>	REBECCA DEMPSEY	BOARD OF EDUCATION (INAUDIBLE)
<u>9:19:16 AM</u>	J	AZTEC ENTER APPEARANCES
<u>9:19:22 AM</u>	AZTEC	COUNSEL ENTERING APPEARANCES
<u>9:19:24 AM</u>	GARY RISLEY	LPAA ALSO THE LAST 3 OR 4 PEOPLE I WAS NOT ABLE TO UNDERSATND OR IDENTIFY WHO SPOKE
<u>9:19:38 AM</u>	J	OK I WILL READ THE LIST WHEN WE FINISH IN AZTEC
<u>9:19:44 AM</u>	CELENE HAWKINS	UTE MOUNTAIN UTE TRIBE
<u>9:19:48 AM</u>	GARY HORNER	PROPRIA PERSONA
<u>9:19:55 AM</u>	ROBERT OXFORD	PRO SE
<u>9:20:01 AM</u>	JOE SAWYER	SAN JUAN COUNTY
<u>9:20:07 AM</u>	J	IS THAT ALL
<u>9:20:08 AM</u>		ON THE TELEPHONE
<u>9:20:08 AM</u>	TELEPHONIC	COUNSEL ENTERING APPEARANCES
<u>9:20:15 AM</u>	DAVID GEHLER T	UNITED STATES BUREAU OF RECLAMATION

<u>9:20:20 AM</u>	SARAH STEVEN SON	FOR MARIA O'BRIEN AND CHRISTINA SHEEHAN BHP NAVAJO COAL CO AND ENTERPRISE FIELD SERVICES
<u>9:20:34 AM</u>	J	ANYBODY ELSE
<u>9:20:37 AM</u>		IN AZTEC WERE YOU ABLE TO HEAR THE TELEPHONIC APPEARANCES
<u>9:20:42 AM</u>	AZTEC	YES
<u>9:20:44 AM</u>	J	READING APPEARANCES ENTERED IN SANTA FE
<u>9:21:26 AM</u>		WOULD LIKE TO PROCEED, WE HAVE ANOTHER MIC COMING
<u>9:21:50 AM</u>		IF YOU CAN NOT HEAR ME OR WHO IS SPEAKING LET ME KNOW AND WILL MOVE THE MIC
<u>9:21:59 AM</u>		FIRST WOULD LIKE TO GO AHEAD AND HAVE THE HEARING WITH RESPECT TO THE OBJECTIONS
<u>9:22:08 AM</u>		I HAVE GONE THROUGH ALL OF THE MATERIALS
<u>9:22:15 AM</u>		WOULD LIKE TO LET YOU KNOW WHERE I STAND OR HOW I AM THINKING AT THE MOMENT
<u>9:22:25 AM</u>		I DO THIS SO WE DO NOT HAVE TO GO THROUGH EXTENSIVE ARGUMENTS THIS MORNING
<u>9:22:31 AM</u>		THE BEST WAY I WOULD THINK FOR YOU TO ARGUE WOULD BE FOR YOU TO ADDRESS MY CONCERNS. I HAVE AN OPEN MIND, NONE OF THIS IS CAST IN STONE
<u>9:23:08 AM</u>		I AM ADDRESSING ONLY THE DISCOVERY REQUESTS THAT HAVE BEEN OBJECTED TO AND THE WHICH THERE ARE RESPONSES AND REQUESTS THEREFORE FOR THE COURT TO ACT
<u>9:23:23 AM</u>		WITH RESPECT TO THE REQUEST FOR ADMISSION THERE HAVE BEEN SOME THAT HAVE BEEN ADMITTED EXCEPT AS TO THOSE MY THINKING IS THAT I WILL DEEM THEM TO BE DENIED SO THAT WE DO NOT TO SPENT TIME WITH RESPECT TO ARGUING THOSE OBJECTIONS AS TO WHETHER THEY NEED TO RESPONDED TO OR NOT
<u>9:23:49 AM</u>		I AM JUST TALKING ABOUT THE REQUEST FOR ADMISSION
<u>9:24:06 AM</u>		COURT IS PLANNING TO RULE WHICH ARE RELEVANT AND WHICH THE COURT WILL SUSTAIN THE OBJECTIONS TO AND WHICH THE COURT WILL NOT SUSTAIN THE OBJECTIONS TO
<u>9:24:35 AM</u>		GENERALLY SPEAKING THOSE ARE IN CATEGORIES AND WITH RESPECT TO THOSE CATEGORIES I AM THINKING AT THE MOMENT THAT THE REQUEST FOR THE NON-SETTLING PARTIES TO DESCRIBE THEIR WATER RIGHTS AND THE HARM TO THEIR WATER RIGHTS AND PAST SHORTAGES AND SUPPLY ARE NOT DIRECTLY RELEVANT TO THE ISSUES THAT WE HAVE BEFORE US
<u>9:25:08 AM</u>		WILL NOT SAY THEY ARE NOT RELEVANT, GIVEN THE TIME FRAME THAT WE HAVE AND WHAT WE NEED TO DO IN THIS PROCEEDING THAT I DO NOT THINK THE TIME FRAME WE HAVE PERMITS GOING INTO ISSUES SUCH AS THAT GIVEN THE FACT THAT THEY ARE NOT DIRECTLY RELEVANT
<u>9:25:47 AM</u>		I HAVE THE SAME THINKING WITH REGARD TO THE REQUEST FOR PREVIOUS STATEMENTS, OPINIONS, WRITINGS, ETC. OF PARTIES

<u>9:25:58 AM</u>		THAT IS NOT TO SAY WHEN WE GET TO PARTICULAR WITNESSES THAT I FEEL THE SAME WAY. I THINK THAT, AGAIN I AM GIVING MY PRELIMINARY THINKING, THAT THE SETTLING PARTIES ARE ENTITLED TO THOSE TYPES OF PUBLIC STATEMENTS OR POSITIONS THAT HAVE BEEN TAKEN BY WITNESSES
<u>9:26:19 AM</u>		BUT WITH RESPECT TO PARTIES IT MAY BE PREMATURE
<u>9:26:26 AM</u>		TAKE A BREAK FOR A MOMENT TO INSTALL AND TEST ADDITIONAL MICROPHONE
<u>9:30:16 AM</u>	J	CONTINUES
<u>9:30:17 AM</u>		THERE WAS A SERIES OF REQUESTS WITH REGARD TO THE STATEMENT OF CLAIMS OF THE UNITED STATES. MY INCLINATION IS TO CONSIDER THAT TO BE RELEVANT BUT I AM ANXIOUS TO HEAR WITH RESPECT TO THAT THIS MORNING
<u>9:30:43 AM</u>		THE REQUEST THAT THE UNITED STATES MADE WITH RESPECT TO ITS STATEMENT OF CLAIMS, THERE ARE A NUMBER OF REQUESTS BY THE UNITED STATES, THE NAVAJO NATION, AND THE STATE THAT ADDRESS THE SUFFICIENCY OF RESPONSES
<u>9:31:18 AM</u>		IN A NUMBER OF THOSE CIRCUMSTANCES I THINK THAT THE STATEMENTS OF THE SETTLING PARTIES ARE WELL TAKEN THAT THERE MAY BE A QUESTION ABOUT THE SUFFICIENCY OF THE RESPONSES
<u>9:31:33 AM</u>		I DO NOT WANT TO BE IN A POSITION OF TELLING NON-SETTLING PARTIES THAT THEY NEED TO CORRECT OR ADD TO THEIR RESPONSES IF THOSE ARE ISSUES THAT THEY SAID WHAT THEY ARE GOING TO SAY AND THEY ARE WILLING TO STAND BY THAT IF THERE IS A MOTION FILED AS TO WHETHER THAT IS SUFFICIENT TO STATE AN OBJECTION THEN THAT IS YOUR DECISION NON-SETTLING PARTIES. ON THE OTHER HAND I DO THINK THERE ARE NUMEROUS INSTANCES IN WHICH THE RESPONSES NEED TO BE SUPPLEMENTED IF YOU ARE GOING TO PURSUE THOSE OBJECTIONS
<u>9:32:49 AM</u>		WILL SET A DATE THINKING DECEMBER 21 FOR A CUT OFF FOR SUPPLEMENTING RESPONSES. AFTER THAT POINT WE NEED TO MOVE. WE NEED TO MOVE NOW
<u>9:33:27 AM</u>		AS OF NOW PARTIES CAN SUPPLEMENT THEIR RESPONSES TO DISCOVERY BUT I AM LOOKING AT A DEC 21 DATE AND I AM INTERESTED IN YOUR THOUGHTS AS TO THAT DATE AS A CUT OFF FOR SUPPLEMENTING RESPONSES WITHOUT LEAVE OF THE COURT
<u>9:33:55 AM</u>		THERE WERE SOME OTHER ISSUES RAISED, INTERROGATORIES RESPONSES THAT WERE NOT PRESENTED UNDER OATH. I DO THINK THAT IS A PROBLEM IF THEY ARE GOING TO BE USED AT TRIAL
<u>9:34:22 AM</u>		OATHS NEED TO BE ATTACHED
<u>9:34:37 AM</u>		ISSUE AT TO THE SAN JUAN WATER COMMISSION AND DOCUMENTS
<u>9:34:55 AM</u>		WITHOUT IDENTIFICATION, WITHOUT SUFFICIENT IDENTIFICATION I WOULD LIKE TO HEAR ARGUMENT ABOUT THAT TO KNOW WHICH WAY TO GO ON THAT

<p><u>9:35:04 AM</u></p>		<p>THERE WAS ALSO AN ISSUE ABOUT DOCUMENTS THAT ARE CURRENTLY SEALED IN THE SAN JUAN WATER COMMISSION CASE. I WOULD LIKE TO DISCUSS THAT AS WELL. IT WAS MY UNDERSTANDING AND I WAS NOT PART OF THAT CASE BU TIT WAS MY UNDERSTANDING THAT THE DOCUMENTS WERE SEALED BUT THE UNDERSTANDING WAS AND CORRECT ME IF I AM WRONG THAT ONCE THE CASE WAS COMPLETED THAT THE DOCUMENTS DID NOT NEED TO BE SEALED ANY LONGER SO I WOULD LIKE TO HEAR DISCUSSION ABOUT THAT AS WELL</p>
<p><u>9:36:00 AM</u></p>		<p>START WITH THE UNITED STATES, MR GUARINO IF YOU WOULD PROCEED</p>
<p><u>9:36:23 AM</u></p>	<p>GUSS GUARIN O</p>	<p>LETS TALK ABOUT THE FIRST THING THE COURT IDENTIFIED</p>
<p><u>9:37:04 AM</u></p>		<p>WITH RESPECT TO THE INTERROGATORIES THAT ...</p>
<p><u>9:37:25 AM</u></p>		<p>THE SETTLING PARTIES WANT TO KNOW WHAT THE NON-SETTLING PARTIES ARE GOING TO HIT US WITH, WE HAVE A RIGHT TO KNOW THAT AS IN EVERY OTHER CASE</p>
<p><u>9:37:47 AM</u></p>		<p>WE WENT THROUGHT WHAT WE THOUGHT WERE THE VERY CLEAR ELEMENTS THAT THE COURT IDENTIFIED PREVIOUSLY THAT ARE PART OF THE STANDARD OR THE ELEMENTS THAT MAKE UP THE STANDARD TO DETERMINE WHETHER OR NOT THE SETTLEMENT IS FAIR AND REASONABLE</p>
<p><u>9:38:04 AM</u></p>		<p>I UNDERSTAND THEY DO NOT WANT TO ADMIT ANYTHING AND THEY OBJECTED TO ALL THE RFA</p>
<p><u>9:38:13 AM</u></p>		<p>BUT IF THEY DENY SOMETHING THEY NEED TO EXPLAIN WHY THEY DENY AN RFA</p>
<p><u>9:38:42 AM</u></p>	<p>J</p>	<p>I THINK I HAVE COVERED THAT I HOPE. THERE ARE GOING TO BE RESPONSES TO THE OBJECTIONS THAT THE NON-SETTLING PARTIES INTEND TO PURSUE SO LETS START FROM THERE</p>
<p><u>9:39:06 AM</u></p>	<p>GUARIN O</p>	<p>THE OBJECTIONS NEAR AS I CAN TELL JUDGE NEED TO BE BASED UPON THE CRITERIA THAT THE COURT HAS IDENTIFIED THAT ARE RELEVANT TO THE STANDARD OF WHETHER OR NOT THE SETTLEMENT IS FAIR AND REASONABLE</p>
<p><u>9:39:17 AM</u></p>		<p>AND SO WHEN THE COURT SAYS THAT MOVING ON TO THIS NOTION OF HARM, THAT IS NOT RELEVANT, I THINK IT RELEVANT BUT GIVEN THE AMOUNT OF TIME THE COURT IS NOT INCLINED AT THIS TIME TO ORDER THE SETTLING PARTIES TO DESCRIBE WHAT THEIR WATER RIGHTS ARE IN THE SAN JUAN RIVER BASIN. WHAT THE HARM IS TO THOSE WATER RIGHTS IS IF ANY UNDER THE (INAUDIBLE) OF THE SETTLEMENT AGREEMENT AND WHETHER OR NOT THERE HAVE BEEN AS A RESULT OF CURRENT WATER USE BY FOLKS IN THE BASIN WHETHER OR NOT THERE HAVE BEEN SHORTAGES AS A RESULT</p>
<p><u>9:39:55 AM</u></p>		<p>VERY CLEARLY THE COURT HAS IDENTIFIED THAT HARM TO JR WATER USERS IS A RELEVANT INQUIRY</p>

<u>9:40:31 AM</u>	J	LET ME TELL YOU WHAT MY THINKING IS ON THAT AND OF COURSE I AM ANXIOUS TO HEAR YOUR RESPONSE THEN. I THINK WHAT WE HAVE IS SORT OF DIFFERENT WAYS OF LOOKING AT IT.
<u>9:40:41 AM</u>		WE HAVE THE MACRO AND THE MICRO WAY OF LOOKING AT WHAT THE IMPACTS WOULD BE
<u>9:40:51 AM</u>		I UNDERSTAND WHAT THE STANDARD IS CERTAINLY THE MACRO IS ATTACHED TO IT. FOR THE SETTLING PARTIES TO DEMONSTRATE THE REDUCED IMPACTS ON THE JR WATER USERS, THAT IS PART OF THE STANDARDS
<u>9:41:09 AM</u>		THAT DOES NOT NECESSARILY ENCOMPASS IN MY MIND THE MICRO LEVEL
<u>9:41:17 AM</u>		THE COURT HAS SAID THE NON-SETTLING PARTIES DO NOT HAVE THE OBLIGATION TO DEMONSTRATE IMPACTS IN ORDER TO DEMONSTRATE THAT THE SETTLEMENT AGREEMENTS ARE NOT REASONABLE
<u>9:41:39 AM</u>		IF IT IS YOUR BURDEN TO DEMONSTRATE AT THE MACRO LEVEL I AGREE THAT THERE IS A LEVEL OF RELEVANCE IF THE SETTLING PARTING CAN SHOW THE NON-SETTLING PARTIES CANTS SHOW HARM TO US OR TO THE COURT AND IF THEY CAN NOT ARE WE NOT PROVING OUR CASE. BUT THAT IS INDIRECT AND THAT IS NOT DIRECT.
<u>9:42:12 AM</u>		I THINK THE FOCUS IS AT THE MACRO LEVEL NOT THE MICRO LEVEL AND IF WE GET INTO THE MICRO LEVEL THEN WE ARE REALLY GETTING INTO SOME PROBLEMS THAT REALLY COULD SLOW DOWN THIS PROCESS.
<u>9:42:33 AM</u>		OUR LAST HEARING YOU VERY STRONGLY ARGUED THAT VERY STRONGLY ARGUED THAT WE CAN NOT SLOW DOWN THIS PROCESS, AND THE COURT RULED IN THAT WAY. THAT IS THE TYPE OF THINKING THAT IS ON MY MIND IN THINKING THAT WELL GEE WE CAN NOT GET INTO THIS ISSUE IF WE ARE GOING TO HAVE DISCOVERY CONCLUDED ON MARCH 1ST AND GOING TO HAVE A RULING BY THE COURT ON DECEMBER 31, 2013
<u>9:43:06 AM</u>	GUARIN O	I HEAR THE COURT, OBVIOUSLY THE SETTLING PARTIES HAVE TAKEN A DIFFERENT POSITION.
<u>9:43:28 AM</u>		WE ARE OF THE POSITION THAT THEY NEED TO SHOW HARM TO OBJECT TO THE SETTLEMENT
<u>9:43:35 AM</u>		I WILL PUT THAT ASIDE FOR A MOMENT
<u>9:43:40 AM</u>	UNIDEN TIFIED	CAN NOT HEAR/UNDERSTAND MR GUARINO
<u>9:43:51 AM</u>	GUARIN O	I WILL BACK UP BUT IT MIGHT HELP IF PEOPLE IN AZTEC MOVE CLOSER TO THE MICROPHONE
<u>9:44:10 AM</u>	J	SPEAK A LITTLE SLOWER AND RAISE YOUR VOICE A LITTLE BIT BUT I THINK WE ARE GETTING TOO CONVERSATIONAL
<u>9:44:24 AM</u>	GUARIN O	SUMMARIZING WHAT HE HAS SAID
<u>9:44:46 AM</u>		LET ME ADDRESS THE COURTS COURTS FOCUS HERE WHICH I THINK IS ON THE SPEED OF DISCOVERY
<u>9:44:53 AM</u>		WE SUBMITTED 3 INTERROGATORIES AND 3 RFP'S THAT VERY SUSTINCTLY AND DIRECTLY WENT TO THIS POINT. I DO NOT SEE HOW THE NON-SETTLING PARTIES COULD NOT RESPOND TO THESE INTERROGATORIES QUITE PROMPTLY BECAUSE...
<u>9:45:18 AM</u>		LISTING WHAT THEY ASKED FOR

<u>9:45:50 AM</u>		I WOULD ARGUE TO THE COURT THAT THIS INFORMATION IS NOT JUST INDIRECT EVIDENCE. I THINK IT IS VERY POWERFUL EVIDENCE THAT IF WHAT WE HAVE HERE ARE NON-SETTLING PARTY OBJECTORS WHO SUFFER NO HARM UNDER THIS SETTLEMENT AGREEMENT THAT IS VERY STRONG EVIDENCE THAT IS SETTLEMENT IS A FAIR AND REASONABLE SETTLEMENT AGREEMENT. THAT IS HAS BEEN CRAFTED WITH SUCH CARE THAT IT DOES NOT HARM THE VERY PEOPLE THAT ARE OBJECTING TO THE SETTLEMENT AGREEMENT
<u>9:46:21 AM</u>		I WOULD HAVE THE COURT RECONSIDER WHAT IT TAKES FOR THE NON-SETTLING PARTIES TO ADMIT OR DENY THE RFA'S, TO EXPLAIN... SORRY RFA'S ARE NOT TIED TO THIS, TO IDENTIFY WHAT THEIR WATER RIGHTS ARE AND WHAT THEIR HARM IS. TO PROVIDE ANY DOCUMENTATION THAT THEY MIGHT HAVE ASSOCIATED WITH THIS HARM
<u>9:47:41 AM</u>		THE FOCUS OF OUR RESPONSES TO THEOR OBJECTIONS OCUS ON THOSE INSTANCES WHERE THEY JUST DID NOT RESPOND
<u>9:48:09 AM</u>		THE CONOCOPHILLIPS INDICATED THAT WE DO NOT HAVE TO REALLY RESPOND BECAUSE ALL OF THE DOCUMENTS ARE IN THE STATES DATABASE
<u>9:48:28 AM</u>		THAT IS NOT REALLY RESPONSIVE TO ANYTHING. IT MAY BE TRUE THAT THE DOCUMENTS THAT THEY HAVE IDENTIFIED THAT ARE ASSOCIATED WITH THE STATES DATABASE THAT THEY REVEALED IN THEIR INITIAL DISCLOSURES ARE ALL THE WATER RIGHTS AND ALL THE DOCUMENTATION THAT CONOCOPHILLIPS HAS ASSOCIATED WITH ITS WATER RIGHTS THAT EXISTS. THEY DID NOT SAY THAT. THEY JUST SAID IT IS ALL IN THE DATABASE
<u>9:48:57 AM</u>		THERE IS NO WAY WE CAN GO THROUGH THE DATABASE AND FIND COCOPHILLIPS OR REALLY ANYBODYS WATER RIGHTS OR FIGURE OUT WHAT THEIR WATER RIGHTS ARE BECAUSE OF THE WAY THE DATABASE IS STRUCTURED
<u>9:49:35 AM</u>		THE SECOND... THE UNITED STATES WOULD WISH THE COURT WOULD RECONSIDER THE TRENDS THAT IT BELIEVES WITH REGARDS TO PRIOR STATEMENTS OF WITNESSES
<u>9:49:51 AM</u>	J	ARE WE TALKING ABOUT WITNESSES OR PARTIES
<u>9:49:52 AM</u>	GUARIN O	PARTIES
<u>9:49:52 AM</u>		IT IS DIFFICULT BECAUSE WE HAVE PARTY WITNESSES FOR INSTANCE MR. OXFORD IN AZTEC IS A PRO SE PARTY WHO HAS MADE INUMERABLE STATEMENTS ABOUT THE SETTLEMENT OVER THE COURSE OF YEARS
<u>9:50:19 AM</u>	J	I DREW THE LINE BEFORE AND IT STILL THIS WAY IN MY HEAD. WHY A PARTY AS OPPOSED TO A WITNESS. NOW IF MR OXFORD IS GOING TO TESTIFY, THEN HE BECOMES A WITNESS.
<u>9:50:47 AM</u>		IT IS A DIFFERENT SITUATION TO ME IF YOU HAVE A WITNESS THAT IS GOING TO TESTIFY THEN MY CURRENT THINKING IS THAT WITH RESPECT TO WITNESSES YOU ARE ENTITLED TO THIS TYPE OF INFORMATION
<u>9:51:05 AM</u>		BUT WHY OF PARTIES

<u>9:51:06 AM</u>	GUARIN O	BECAUSE MANY OF THE PARTIES THAT WE HAVE HERE ARE ORGANIZATIONS AND THEY ARE REPRESENTED IN THE PUBLIC BY ORGANIZATIONAL REPRESENTATIVES
<u>9:51:15 AM</u>		SAN JUAN WATER COMMISSION HAS COMMISSIONERS AND COMMISSIONER CHAIRS THAT MAKE REPRESENTATIONS WITH REGARDS TO THE SETTLEMENT IN THE PAST AND WE SHOULD BE ENTITLED TO SEE WHAT THE ORGANIZATION IS REPRESENTING TO THE PUBLIC
<u>9:52:01 AM</u>		THE ONLY WAY TO IMPEACH THAT POSITION IS TO HAVE THE PRIOR STATEMENTS OF THE ORGANIZATIONAL REPRESENTATIVES
<u>9:52:36 AM</u>		THE PRIOR STATEMENTS ALSO GOES TO WHETHER OR NOT ONE OF THE ELEMENTS THAT WE HAVE TO SHOW IS WHETHER OR NOT THE SETTLEMENT AGREEMENT WAS NEGOTIATED IN GOOD FAITH AND PUBLIC DISCUSSION BY THE NON-SETTLING PARTIES ABOUT WHAT AN ELEMENT DOES OR IS OR HOW IT MIGHT EFFECT IS... BECAUSE IT SHOWS THAT THE SETTLING PARTIES HAVE GONE TO GREAT EFFORTS TO MAKE SURE FOLKS IN THE SAN JUAN BASIN KNEW ABOUT THE SETTLEMENT AGREEMENT HAD INPUT IN THE SETTLEMENT AGREEMENT. THE SETTLEMENT AGREEMENT WAS CHANGED AS A RESULT OF INPUT THAT WE RECEIVED... IT GOES TO GOOD FAITH AS WELL
<u>9:53:53 AM</u>	J	IN REGARD WHERE I HEAR YOU TALKING NOT ONLY WITH RESPECT TO IMPEACHMENT OR HOW YOU MIGHT DEAL WITH WITNESSES BUT WHAT MAY BE THE DEMONSTRATION OF YOUR OWN CASE, YOUR ELEMENTS OF PROOF. DO YOU NOT HAVE THE ABILITY TO OTHERWISE TO PUT THAT TOGETHER YOURSELF
<u>9:54:17 AM</u>	GUARIN O	YES WE DO BUT WE SHOULD HAVE THE RIGHT TO BE ABLE TO DO NOT ONLY WITH THE INFORMATION THAT WE HAVE BUT ALSO TO SHOW THE RESULT OF OUR (INAUDIBLE)
<u>9:56:10 AM</u>		WITH REGARDS TO THE SUFFICIENCY OF THE ...
<u>9:56:19 AM</u>		THE COURT HAD A CONCERN ABOUT THE INTEROGATORIES WITH REGARDS TO THE STATEMENT OF CLAIMS AND THE SETTLEMENT OF THE STATEMENT OF CLAIMS ITSELF
<u>9:56:33 AM</u>		IT SEEMS FAIRLY STRAIGHT FORWARD THAT
<u>9:56:41 AM</u>	AZTEC	CAN NOT HEAR
<u>9:56:51 AM</u>	GARINO	CONTINUING...FAIRLY STRAIGHT FORWARD THAT THE UNITED STATES WILL BE ABLE TO USE STATEMENT OF CLAIMS AS ITS PRIMA FACIA BASIS FOR SHOWING THAT THE SETTLEMENT AGREEMENT SEEKS AND SECURES LESS WATER THAT WHAT COULD BE SECURED AT TRIAL
<u>9:57:59 AM</u>		FOLKS CAN CHALLENGE ELEMENTS OF THE STATEMENTS OF CLAIMS
<u>9:58:16 AM</u>		THIS WAS SOMETHING THE COURT ORDERED SEVERAL YEARS AGO TO BE PROVIDED BY THE UNITED STATES IN VERY SHORT ORDER SO THE NON-SETTLING PARTIES WOULD HAVE A BASIS TO COMPARE THE SETTLEMENT AGREEMENT TO
<u>9:58:29 AM</u>		WE CAN NOT LOSE SIGHT THAT THIS IS A FUNDAMENTAL COMPONENT OF THE STATEMENT OF CLAIMS

9:58:55 AM		WITH RESPECT TO THE SUFFICIENCY OF RESPONSE, I AGREE WITH YOU WHEN I WAS CRAFTING THE BRIEF IN RESPONSE WITH REGARDS TO THE SUFFICIENCY OF THE INTERROGATORY RESPONSES AND THE FRP RESPONSES,
9:59:11 AM	J	LET ME ASK YOU TO HOLD THAT UP
9:59:18 AM	GUARIN O	IT IS A DIFFICULT THING, WHEN SOMEONE MAKES A RESPONSE IF THEY SAY, WHEN THE UNITED STATES MAKES A RESPONSE TO AN INTERROGATORY AND SAYS THAT IS IT THAT IS MY RESPONSE, THAT IS EVERYTHING I HAVE GOT
9:59:38 AM		FOLKS MIGHT NOT LIKE THE RESPONSE BUT THAT IS THE RESPONSE AND THE UNITED STATES AND OTHER PARTIES AS WELL HAVE TO LIVE WITH THAT
9:59:51 AM		WE ARE GOING TO RELY UPON THOSE RESPONSES AND IF IN THE FUTURE THE NON-SETTLING PARTIES COME UP WITH SOMETHING DIFFERENT OR SOMETHING MORE OR A LOT MORE, IN DESCRIPTION OF WHAT THEIR OBJECTIONS ARE, WHAT THE BASIS OF THEIR OBJECTIONS ARE WELL THAT IS A VERY CLEAR DISCOVERY VIOLATION
10:00:08 AM		BECAUSE WE GET TO KNOW WHAT THAT INFORMATION IS NOW AND IF THEY DO NOT WANT TO PROVIDE IT THEY DO SO AT THEIR OWN PERIL
10:00:19 AM		I IDENTIFIED IN MY BRIEFING THOSE INSTANCES WHERE I THOUGH THAT THE DISCOVERY RESPONSES WERE NO RESPONSES AT ALL. THE COURT IS GOING TO HAVE TO LOOK AT THEM AS WELL AND DETERMINE THAT IS NOT A SUFFICIENT RESPONSE
10:00:56 AM		WITH RESPECT TO THESE RESPONSES THERE ARE DEFINATELY INSTANCES IN THE DISCOVERY RESPONSES THAT WE RECEIVED AND WE IDENTIFIED FOR THE COURT WHERE IT IS VERY CLEAR THAT THE PARTIES PROVIDED NO RESPONSES
10:01:20 AM	J	THE QUESTION FOR THE COURT IS AGAIN BECAUSE OF THE COMPRESSED TIME FRAME WO DO NOT HAVE MOTIONS TO COMPEL. YOU HAVE MADE REQUESTS IN EFFECT THAT THE PARTIES RESPOND. YOU DID NOT MOVE TO COMPEL. IT IS NOT CLEAR THAT A MOTION TO COMPEL WOULD NECESSARILY LIE BUT I DO NOT WANT TO LEAVE, I MEAN THERE IS NOT TIME FOR A MOTION TO COMPEL IT IS NOT A QUESTION OF WHETHER I WANT TO LEAVE IT OR NOT. SO THE QUESTION FOR ME IS HOW DOES THE COURT ADDRESS THIS
10:02:01 AM		DOES THE COURT GO AHEAD AND GO THROUGH THEM... (GIVING HIS THOUGHTS)
10:02:37 AM	GUARIN O	LETS USE THE B SQUARE RANCH INSTANCES. THEY ANSWERED NOTHING NEAR AS I CAN RECALL, TO THE DISCOVERY REQUESTS. THEY SIMPLY OBJECTED PRO FORMA AND SAID NOTHING.
10:02:51 AM		SO I THINK THOSE ARE VERY CLEAR INSTANCES WHERE THE COURT CAN SAY YOU DO NEED TO RESPOND TO DISCOVERY AND ORDER THEM TO DO SO

10:03:01 AM		THE CLOSER QUESTIONS THAT I CAN RECALL OFF THE TOP OF MY HEAD WERE WITH REGARD TO THE LPAA RESPONSES TO INTEROGATORIES WHERE I READ THEM, THEY DID NOT SEEM TO PROVIDE A RESPONSE AT ALL, THEY SEEMED TO RESTATE THE QUESTION
10:03:43 AM		I THINK THE COURT SHOULD JUST FOLLOW THE SUGGESTIONS THAT WE MADE AND TELL THE (INAUDIBLE) TO RESPOND TO THESE INTEROGATORIES AND THAT THEIR ANSWER AS PROVIDED IS INSUFFICIENT
10:04:03 AM		THE COURT NEEDS TO MAKE ITS OWN DETERMINATION
10:04:09 AM		MOVING ON TO THE COURTS NOTION THAT NON-SETTLING PARTIES HAVE UNTIL DECEMBER 21ST TO PROVIDE RESPONSES AS ORDERED BY THE COURT OR OTHERWISE REQUEST LEAVE TO SUPPLEMENT RESPONSES AND JUSTIFY WHY A RESPONSE WAS NOT PROVIDED EARLIER. I THINK THE DECEMBER 21ST DEADLINE IS APPROPRIATE FOR THEM TO DO SOMETHING LIKE THAT
10:05:05 AM		THE COURT IDENTIFIED THE SETTLING PARTIES ARE ENTITLED TO INTEROGATORIES THAT ARE ENTERED UNDER OATH
10:05:13 AM		MOST OF THE NON-SETTLING PARTIES DID NOT PROVIDE INTEROGATORIES (INAUDIBLE)
10:05:23 AM		WITH RESPECT TO THE SAN JUAN WATER COMMISSION AND THE DOCUMENTS, THE RULE CONTEMPLATES THAT...
10:05:29 AM	J	I DO NOT THINK THAT I NEED TO HEAR YOUR POSITION ON THAT NOW, LET ME HEAR FROM THEM
10:05:40 AM	GUARIN O	I GUESS I AM COMING TO THE END OF THE COURTS COMMENTS FROM THE BEGINNING OF THE HEARING. THE ONLY OTHER ISSUE IS IN REGARDS TO THE RECORDS THAT THE CITY OF AZTEC SEEM TO WANT TO RELY UPON YET CAN NOT DISCLOSE BECAUSE THEY ARE UNDER SEAL
10:05:57 AM		I DO NOT HAVE ANYTHING FURTHER TO SAY ABOUT IT THAN WHAT IS IN MY BRIEF
10:05:57 AM		MY UNDERSTANDING IS THAT THE ORDER SEALING THE RECORDS IS STILL IN EFFECT
10:06:08 AM	J	I WILL ASK THE STATE ABOUT THAT
10:06:24 AM	JOHN UTTON	I DO NOT WANT TO GO THROUGH ALL OF THE CATAGORIES
10:06:38 AM		WANT TO DISCUSS THE FIRST 2 CATEGORIES
10:06:51 AM		I THINK THE FIRST ONE IS THE ONE IF THERE IS NOT GOING TO BE ANY RESPONSES WITH RESPECT TO THE DESCRIPTION TO THE WATER RIGHT THAT WOULD MOST TROUBLING TO THE STATE
10:07:00 AM		WE UNDERSTAND YOUR HONORS DESIRE TO LOOK AT THE EFFECTS OF THE SETTLEMENT FROM A MACRO LEVEL WE THINK THAT IS APPROPRIATE
10:07:07 AM		I DO NOT THINK WE ARE TRYING TO DIG DOWN INTO EFERY LAST DETAIL OF EVERY WATER RIGHT OF EVERY MEMBER
10:07:20 AM		WE DO THINK THAT THERE ARE CHARACTERISTICS OF THE OBJECTORS WATER RIGHTS THAT THEY CAN FAIRLY READILY ARTICULATE THAT WOULD HELPFUL IN UNDERSTANDING THE MACRO EFFECTS

10:07:33 AM		I THINK THE QUESTION IN NUMBER 9 THAT ASKES FOR, THIS IS INTERROGATORY NUMBER 9 IN THE UNITED STATES REQUESTS, (READING)
10:07:57 AM		THOSE SORTS OF THINGS...I THINK THE SJWC SPECIFICALLY ZEROED IN ON THE PERMIT THAT THEY ARE CONCERNED ABOUT
10:08:21 AM		WHAT WE ARE LOOKING FOR IN ORDER FOR US TO MEET OUR BURDEN, THE ND ITEM IN THE COURTS ORDER WITH RESPECT TO NO INJURY TO OTHER WATER RIGHTS OWNERS, IT WOULD BE HELPFUL FOR US TO KNOW IN THEIR ARTICULATION OF THEIR OBJECTIONS AT LEAST IN A GENERALIZED BASIS THE CHARACTERISTICS OF THE WATER RIGHT THAT THEY THINK WOULD BE HARMED
10:09:04 AM		WE ARE NOT TRYING TO SHIFT THE BURDEN TO THEM BUT IN ORDER FOR US TO MEET OUR BURDEN WE WANT TO GET SOME INFORMATION FROM THESE OBJECTORS
10:09:16 AM		WE ARE NOT TRYING TO PILE ON HOURS AND HOURS OF RESEARCH FOR THEM BUT THEY OUGHT TO BE ABLE TO TELL US WHAT THEY THINK THE INTEREST IS THAT THEY HAVE THEY ARE ASSERTING IN THIS CASE
10:09:25 AM		TELL US WHAT YOUR INTERST IS, WHY ARE YOU HERE SO THAT WE CAN RESPOND TO IT
10:09:30 AM		WE GOT OBJECTIONS LIKE WE DO NOT UNDERSTAND WHAT THE TERM WATER RIGHT MEANS, THAT IS PRETTY SILLY
10:10:20 AM	J	SO HOW WHAT I AM CONCERNED ABOUT IS GETTING, GOING TO FAR DOWN THE ROAD AND HAVING ISSUES CONCERNING THE NON-SETTLING PARTIES WATER RIGHTS AND HARM TO THEIR WATER RIGHTS BECOME ISSUES IN THE CASE AS OPPOSED TO THE SETTLEMENT AGREEMENT
10:10:55 AM		THAT IS WHAT I AM TALKING ABOUT DIRECT AND NOT DIRECT, SURE IN THE OVERALL SENSE IT IS RELEVANT BUT WHEN YOU LOOK AT WHAT IS DIRECTLY RELEVANT AND WHAT IS NOT DIRECTLY RELEVANT I DO NOT VIEW IT AS BEING DIRECTLY RELEVANT
10:11:31 AM		WHAT KIND OF ASSURANCES CAN YOU GIVE ME
10:11:39 AM	UTTON	I THINK IT IS A MATTER OF THE SCOPE OF THE RESPONSE. I THINK THAT YOUR SUGGESTION OF SUPPLEMENTING RESPONSES BY DECEMBER 21ST SHOULD PROVIDE PLEANTY OF TIME FOR A PARTY TO STATE WHAT IS ITS INTEREST IT IS ASSERTING
10:11:55 AM	J	SO IT IS NOT ONLY THE QUESTION OF ANSWERING WE WILL TAKE WHAT EVER TIME IT IS ANSWER THAT AWAY FROM SOMETHING ELSE, THAT IS AN ISSUE CERTAINLY. BUT IT IS ALSO WHERE DOES IT LEAD AND THE TIME THAT IS GOING TO TAKE IN THE FUTURE
10:12:17 AM	UTTON	I THINK THAT IF WE GET ANSWERS THAT ARE BEYOND WE DO NOT UNDERSTAND THE MEANING OF THE TERM WATER RIGHT AND WE ACTUALLY GET A STRAIGHT FORWARD ANSWER, I THINK AT LEAST FROM THE STATES PERSPECTIVE I DO NOT THINK WE ARE GOING TO BE DELVING INTO IT FURTHER THAN THAT

10:12:49 AM		IF THERE NEEDS TO BE MORE INVESTIGATION OF THAT WE CAN ASK THAT IN DEPOSITIONS BUT FOR THE PURPOSES OF WRITTEN DISCOVERY WE WANT AT LEAST A MINIMUM BASIC UNDERSTANDING OF THE UNDERLYING FACTS OF THE OBJECTIONS THAT ARE BEING ASSERTED AND THE MOST FUNDAMENTAL THING IS WHAT IS THE WATER RIGHT THAT IS AT ISSUE THAT PARTIES ARE ASSERTING THAT MIGHT BE INJURED BY US
10:13:18 AM		IF THE BURDEN IS GOING TO BE ON US TO SHOW THAT WE ARE NOT HARMING THEIR INTEREST, WE WOULD LIKE THEM TO TELL US WHAT ARE THEIR INTEREST
10:13:49 AM		OTHERWISE WE ARE PUT IN A POSITION TO TRY TO DESCRIBE THEIR INTERESTS OURSELVES
10:14:01 AM	J	I HAVE A QUESTION BUT...
10:14:20 AM	UTTON	WE THINK IT WOULD BE HELPFUL TO UNDERSTAND IT IN TERMS OF HOW THE STATE VIEWS AND INTER SE PROCEEDING
10:15:13 AM		AT THIS POINT THE STATE WOULD BE HAPPY WITH A GENERAL STATEMENT OF THE DESCRIPTION OF THEIR WATER RIGHTS AND THE HARM
10:15:40 AM		THE SECOND POINT IS, WITH RESPECT TO PREVIOUS STATEMENTS OF PARTIES
10:17:11 AM		IF THERE ARE FACTS RELATED TO THAT PARTICIPATION WE WOULD LIKE TO HAVE THOSE SO WE CAN MEET OUR BURDEN
10:17:22 AM		EVEN THOUGH THEIR COMMENTS WERE MADE PART OF THE SETTLEMENT AGREEMENT THEY WERE NOT ASKED TO SIGN IT
10:18:07 AM	J	SWITCH TO THE SJWC FOR A MOMENT AND THE SEALED
10:18:28 AM	UTTON	THAT CASE IS STILL PENDING, MS SINGER IS MORE FAMILIAR WITH THAT CASE
10:18:35 AM	ARRIAN NE SINGER	THAT CASE IS CURRENTLY PENDING BEFORE THE COURT OF APPEALS SO IT IS NOT CONCLUDED. THOSE DOCUMENTS ARE STILL UNDER SEAL IS MY UNDERSTANDING
10:18:47 AM	J	WERE YOU CONSEL IN THE CASE
10:18:49 AM	SINGER	NO, IT WAS THE INTERSTATE STREAM COMMISSION
10:18:54 AM	J	DO YOU HAVE ANY UNDERSTANDING OF THE REASON WHY THE DOCUMENTS WERE SEALED AND WHAT THE COURTS THINKING WAS ABOUT HOW LONG THE DOCUMENTS WERE GOING TO BE SEALED
10:19:08 AM	SINGER	I COULD GET A COPY OF THAT ORDER THAT SEALED IT AND THE CONFIDENTIALITY AGREEMENT AND GIVE THAT TO YOU UNDER CONFIDENTIALITY AS WELL
10:19:22 AM	J	IS THE ORDER ITSELF CONFIDENTIAL
10:19:24 AM	SINGER	I THINK THERE IS A PUBLIC ORDER BUT THERE MAY BE SOME CONFIDENTIAL DOCUMENT / AGREEMENT ASSOCIATED WITH IT
10:19:37 AM		IT IS STILL PENDING
10:19:37 AM	J	I UNDERSTAND THAT I AM NOT GOING TO ASK FOR ANYTHING NOW BUT I WILL CHECK INTO IT AND IT MAY BE THAT I WOULD NEED SOME SUPPLEMENTATION TO THE RECORD

10:19:53 AM	SINGER	I WOULD JUST SAY FOR THE RECORD THAT THERE IS A COURT ORDER SEALING THOSE DOCUMENTS
10:20:18 AM	?? (UNIDENTIFIED) STANLEY POLLACK?	THE COURT DID NOT ADDRESS ISSUES THAT WERE RAISED WITH RESPECT TO THE DISCOVERY THAT THE NAVAJO NATION PROPOUNDED
10:20:29 AM	J	UNLESS I AM MISSING SOMETHING THE ONLY DOCUMENT THAT I HAVE BEFORE ME IS THE NN JOINDER ON THE US RESPONSE
10:21:17 AM	POLLACK	EXPLAINING HOW DID DISCOVERY
10:22:46 AM		WITH RESPECT TO THE AGRICULTURAL USERS
10:23:44 AM	J	WHAT IS THE RELEVANCE OF THOSE QUESTIONS AS TO THE NON-SETTLING PARTIES
10:23:53 AM	POLLACK	EXPLAINING RELEVANCE
10:26:10 AM		TALKING ABOUT THE LEWIS CASE AND PIA
10:27:22 AM		THE OBJECTORS ARE INSISTING THAT THE LEWIS CASE SETS THE STANDARD
10:28:13 AM		WE ASKED ADDITIONAL QUESTIONS OF THE MARSHALL INTERESTS BECAUSE THEY HAVE FILED A COUNTERCLAIM
10:28:52 AM		THE COURT IS OBVIOUSLY CONCERNED WITH WHAT YOU CALL THE CASCADING EFFECT
10:28:59 AM		WE ARE NOT HERE TO TRY ANY WATER CLAIMS OF ANY OF THE NON-INDIAN PARTIES OR ANY OF THE OBJECTING PARTIES
10:29:16 AM		I WOULD SUGGEST THAT RATHER THAN DENYING THE SETTLING PARTIES THE OPPORTUNITY TO LEARN WHETHER OR NOT THERE ARE THESE IMPACTS ON THEIR WATER RIGHTS THAT IF THESE PROCEEDING START GOING DOWN A SLIPPERY SLOPE THAT WE THINK IS NOT GOING TO ALLOW US TO KEEP ON SCHEDULE THEN THE COURT CAN TAKE CORRECTIVE ACTION
10:30:36 AM	J	GOOD TIME TO TAKE A BREAK, 10 MIN RECESS
10:44:40 AM	J	BACK ON THE RECORD, TURN TO THE NON-SETTLING PARTIES
10:45:14 AM	ADAM RANKIN	ADDRESS SOME OF THE STATEMENTS FROM THE BEGINNING OF THE HEARING
10:45:43 AM		STATEMENT OF CLAIMS SHOULD BE THE BASIS FOR WHAT CAN BE SECURED AT TRIAL
10:45:49 AM		A NUMBER OF ISSUES AND PROBLEMS WITH USING THE STATEMENT OF CLAIMS AS A BASIS, GIVES EXAMPLE
10:47:38 AM	J	IF US OR THE SETTLING PARTIES WANT TO PURSUE THE STATEMENT OF CLAIMS AS A PROXY FOR WHAT COULD BE SECURED AT TRIAL FOR THE PURPOSES OF DISCOVERY EVEN THOUGH IT MAY NOT GET THEM TO WHERE THEY WANT TO GO, WHY SHOULD THEY NOT BE ABLE TO OBTAIN DISCOVERY WITH RESPECT TO
10:48:11 AM	RANKIN	RESPONSE
10:49:23 AM		PROBLEM IS THAT FOR US TO BE RESPONDING TO THAT IT IS NOT APPROPRIATE

10:49:39 AM		WE THINK THAT THERE IS PROBLEMS WITH WHAT THEY ARE CLAIMING
10:49:57 AM		I THINK IT IS CLEAR THE STANDARD SHOULD BE WHAT THEY COULD SECURE AT TRIAL AND I THINK THAT IS WHAT THEIR QUESTION SHOULD ASK. IT SHOULD BE BASED ON THE STATEMENT OF CLAIMS
10:50:09 AM		TALKING ABOUT DEADLINE FOR SUPPLEMENTING RESPONSES
10:50:30 AM		I THINK DEC 21ST IS A LITTLE BIT EARLY TO PUT SUCH A HARD DEADLINE ON IT
10:51:12 AM	J	WHERE WE ARE RIGHT NOW WE NEED TO HAVE SOMETHING TO GO FORWARD
10:51:41 AM	RANKIN	I AGREE I JUST WANT TO MAKE THE POINT THAT THE NON-SETTLING PARTIES SHOULD BE GIVEN THE OPPORTUNITY TO SUPPLEMENT THEIR DISCOVERY RESPONSES
10:52:09 AM	J	I WANT THE BALL DISCLOSED AS QUICKLY AS POSSIBLE SO YOU CAN PROCEED
10:53:02 AM	RANKIN	TALKING ABOUT VERIFICATION
10:53:05 AM		WHEN THERE IS A PURELY LEGAL CONTENTION I DO NOT THINK THAT VERIFICATION IS NECESSARY
10:53:31 AM		ONE OF THE REASONS THAT WE DID NOT PROVIDE A VERIFIED STATEMENT IS BECAUSE ALL OF OUR RESPONSES...
10:53:41 AM	J	NOT GOING BACK TO LOOK AT THAT NOW BUT AS FAR AS I AM CONCERNED TO THE EXTENT THAT THE RULE REQUIRES IT, IT IS NECESSARY
10:54:09 AM	RANKIN	I WILL DISCUSS IT WITH THE SETTLING PARTIES AND MAKE SURE THAT THEY ARE SATASFIED WITH WHAT EVER STATEMENTS WE PROVIDE
10:54:20 AM		AS FAR AS THE HARM ISSUE, I THINK THE ORDER IS VERY CLEAR ON THE LAST LINE OF THE ORDER ON PAGE 3 (READS FROM ORDER)
10:54:42 AM		WE ARE BACKSLIDING INTO ARGUMENT OVER THAT ISSUE AGAIN AND I THINK IT IS NOT NECESSARY, THE ORDER IT CLEAR
10:54:50 AM		TALKING ABOUT THE ISSUE OF HARM
10:54:59 AM		THEY NEED TO DEMONSTRATE THAT THERE IS NOT GOING TO BE ANY HARM BECAUSE...
10:55:12 AM		AS FAR AS THE INDIVIDUAL WATER RIGHTS OF THE NON-SETTLING PARTIES, I THINK ALL THAT MATTERS IS THE BASIC ELEMENTS OF THE WATER RIGHTS ETC
10:55:29 AM		ALL OF THAT INFORMATION IS AVAILABLE ON THE WATERS DATABASE THAT THE STATE OPERATES
10:56:08 AM	J	WHAT ABOUT THE HARM, IS THERE A WAY OF SIMPLIFYING THE REQUEST FOR HARM
10:56:29 AM	RANKIN	RESPONSE...IT IS A THING WE ARE ALL TRYING TO FIGURE OUT RIGHT NOW
10:57:29 AM	J	WHAT I AM HEARING FROM THE SETTLING PARTIES IS WE HAVE THE BURDEN OF PROOF
10:57:50 AM	RANKIN	WHAT I HEARD FROM MR UTTON IS THAT WHAT WE WOULD LIKE IS A DESCRIPTION OR NARRATIVE OF WHAT THE BASIC ELEMENTS OF THE WATER RIGHTS ARE

10:58:11 AM	J	AND THE IMPACT, IF THE STANDARD IS THAT THE IMPACT IS ON THE JR USERS WOULD BE REDUCED THEN WHAT I HEAR THEY ARE LOOKING AT IS WHAT IS GOING TO BE THE IMPACT ON YOUR CLIENTS SUCH THAT PERHAPS THAT IS SOMETHING THAT WE USE IN DEMONSTRATING OUR BURDEN OF PROOF
10:58:45 AM	RANKIN	OBVIOUSLY THAT WOULD BE AN IDEAL ANSWER TO RECEIVE FROM US
10:58:57 AM		IF WE HAD THAT INFORMATION HANDY IT WOULD BE OUR OBLIGATION TO PROVIDE IT
10:59:52 AM		WHAT I DO NOT WANT TO DO IS TO HAVE US BE REQUIRED TO GO AND PROVIDE EVERY DOCUMENT RELATED TO OUR WATER RIGHTS, THAT WOULD BE OVERLY BURDENSOME
11:00:42 AM		SOING OVER SOME OF THE OTHER GENERAL COMMENTS, THERE WAS A DISCUSSION OVER STATEMENTS MADE BY A PARTY OR BY A POTENTIAL WITNESS
11:01:02 AM		MY SENCE IS THAT THAT KIND OF INFORMATION WOULD ONLY BE USED TO MAKE CONOCOPHILLIPS LOOK BAD
11:01:30 AM	J	BUT DOESN IT NOT FROM THE POINT OF VIEW OF CREDIBILITY , INDEED IN CASES SUCH AS THIS WITNESS CREDIBILITY HAS BERING
11:02:02 AM	RANKIN	I AGREE IN THE CASE THEN SHOULD WE CALL A WITNESS
11:02:11 AM		CONOCOPHILLIPS JUST THIS WEEK HAS IDENTIFIED ITS CORPORATE REPRESENTATIVE
11:02:20 AM		I WILL BE SUPPLEMENTING OUR DISCOVERY RESPONSES TO IDENTIFY THAT PERSON BY THE END OF THE WEEK
11:02:47 AM	J	WHAT IF AND IT IS DIFFERENT WITH CONOCOPHILLIPS. MAYBE IT IS NOT DIFFERENT FROM OTHERS
11:03:12 AM		IF THE LEFT HAND IS SAYING ONE THING AND THE RIGHT HAND IS SAYING THE OTHER THING, IS THAT NOT RELEVANT TO THE COURTS UNDERSTANDING OF WHERE CONOCOPHILLIPS IS COMING FRON
11:03:21 AM	RANKIN	I WOULD JUST SAY THAT THESE MAY BE INDIVIDUAL EMPLOYEES THAT MAY BE EXPRESSING THEIR OWN PERSONAL OPINIONS THEY ARE NOT SPEAKING FOR THE CORPORATION
11:03:34 AM	J	SURE IF SOMEONE GOES HOME AND TALKS TO RELATIVES THAT IS ONE THING BUT IF THERE IS A PUBLIC STATEMENT MADE BY A REPRESENTATIVE OF CONOCOPHILLIPS AT A PROCEEDING. THAT PERSON DOES NOT COME IN AS BUT YOU HAVE ANOTHER REPRESENTATIVE WHO IS SAYING SOMETHING ELSE
11:04:08 AM		WE ARE TALKING ABOUT REASONABLENESS HERE
11:04:15 AM	RANKIN	I WOULD BE TAKING A MORE NARROW APPROACH...I AM LOOKING AT THIS AS MORE OF A LEGAL ISSUE
11:04:58 AM		AS FAR AS THE INDIVIDUAL ISSUES THAT WERE RAISED BY THE UNITED STATES I UNDERSTAND THE COURTS POSITION WITH REGARDS TO THE REQUEST FOR ADMISSION
11:05:10 AM		OUR RESPONSE IS TO THOSE DENIALS WERE IN THE CONTEXT THAT THESE WERE REQUESTS FOR ADMISSIONS

11:05:23 AM		WERE WERE NOT RESPONDING TO THEM IN THE SENSE THAT THEY WERE INTERROGATORIES WE WERE RESPONDING TO THEM IN THE SENSE THAT WE WERE DENIED THESE REQUESTS FOR ADMISSIONS ON LEGAL GROUNDS
11:06:02 AM		THERE ARE NO FACTS IN THIS REQUEST FOR ADMISSION, AND UNDER RULE 36 FRA'S MUST BE TIED TO AN OPINION OR A FACT
11:06:20 AM		IT REQUIRES US TO SUPPOSE FACTS
11:06:28 AM	J	IS IT NOT BASED ON ... IS IT NOT BASED ON THE FACTS THAT YOU KNOW
11:07:03 AM	RANKIN	GENERALLY THE WAY THAT I THINK A RFA SHOULD BE DRAFTED IS SO THAT YOU PROVIDE THE FACTS
11:07:52 AM		I THINK MORE IMPORTANTLY THIS REALLY IS ASKING US TO PROVIDE A PURE LEGAL OPINION BASED ON NO FACTS PROVIDED IN THE RFA
11:08:04 AM		THAT WAS THE BASIS FOR OUR OBJECTION AND OUR RESPONSE
11:08:08 AM	J	LETS GET TO THE RESPONSE BECAUSE I UNDERSTAND AND WHERE I AM GOING AT THIS POINT IS THAT IT IS GOING TO BE DENIED ANYWAY
11:08:42 AM		IF THIS WERE ANOTHER CASE I COULD LOOK AT THAT AND I COULD SAY SURE IF YOU DO NOT HAVE THE BASIS TO RESPOND TO THE RFA THEN YOU DO NOT NEED TO RESPOND TO THIS EITHER
11:09:00 AM		UNFORTUNATELY WE HAVE A MARCH 1ST DISCOVERY CUT OFF
11:09:16 AM		BASICALLY THE WAY THAT I AM GOING TO NEED TO INTERPRET THIS IS AS A CONTENTION INTERROGATORY
11:09:49 AM		I DO NOT WANT TO BE POINTING THE FINGER AND SAY YOU REALLY NEEDED TO RESPOND TO THAT OR THEY REALLY NEEDED TO STATE THAT BETTER BUT ON A GOING FORWARD BASIS THAT INFORMATION NEEDS TO BE OUT THERE
11:10:02 AM	RANKIN	JUST WANTED TO MAKE SURE YOU UNDERSTOOD THE BASIS FOR OUR RESPONSE
11:10:17 AM	J	I UNDERSTAND AND MY COMMENTS WERE NOT NECESSARILY DIRECTED AT YOU
11:10:28 AM	RANKIN	THE NEXT ONE THAT THE UNITED STATES HAD ISSUES WITH WAS OUR RESPONSE TO RFA #3
11:11:12 AM		FOR THE CORRESPONDING REQUEST FOR PRODUCTION..WE HAVE IDENTIFIED ALL OF THE DOCUMENTS THAT WE RELIED ON ANSWERING THESE INTERROGATORIES AND RFA'S
11:11:40 AM		IF THERE ARE ANY OTHER ADDITIONAL DOCUMENTS WHICH I IMAGINE THERE WILL BE AS DISCOVERY GOES FORWARD WE CAN SUPPLEMENT THOSE FRP
11:12:04 AM	J	YOU SAY EVERY DOCUMENT THAT WAS RELIED ON HAS BEEN PRODUCED IN THE MANNER AND IS IN THE CUSTODY AND CONTROL OF THE SETTLING PARTIES
11:12:14 AM		THAT IS NOT IDENTIFYING DOCUMENTS THAT IS SAYING WE RELY ON THESE DOCUMENTS IN ORDER TO SAY THAT WAS NOT IN GOOD FAITH

11:12:30 AM		I DO NOT KNOW WHAT YOU HAVE PRODUCED I EXPECT THAT THERE ARE MULTIPLE DOCUMENTS
11:12:54 AM		I DO NOT THINK THAT IT IS RESPONSIVE TO SAY WE HAVE ALREADY PRODUCED THEM
11:12:58 AM	RANKIN	WHAT I THINK THE INTENT OF THAT FIRST SENTENCE WAS JUST TO INDICAT THAT WE ARE ONLY RELYING ON THE DOCUMENTS THAT AT THIS TIME WERE PRODUCED BY THE SETTLING PARTIES
11:13:13 AM		THE ONLY DOCUMENTS THAT WE LOOKED AT TO ANSWER THE QUESTIONS ARE THOSE IDENTIFIED SPECIFICALLY
11:13:18 AM	J	THOSE THAT HAVE BEEN PRODUCED, NOT THAT YOU HAVE PRODUCED
11:13:18 AM	RANKIN	RIGHT
11:13:38 AM	J	I THINK WE NEED TO, TALKING TO EVERYBODY
11:13:52 AM	RANKIN	I HAVE ALREADY SORT OF ADDRESSED THE ISSUES REGARDING INTERROGATORIES #9 AND 10
11:14:07 AM		IT IS BEYOND THE SCOPE OF WHAT IS NECESSARY IN THIS DISCOVERY TO SEEK ALL DOCUMENTS RELATING TO ALL THE WATER RIGHTS OF CONOCOPHILLIPS AND EL PASO NATURAL GAS COMPANY
11:14:16 AM	J	IN THE INTEREST OF TIME I DO NOT THINK THAT YOU NEED TO GO DOWN ITEM BY ITEM UNLESS YOU HAVE AN ADDITIONAL POINT THAT YOU WANT TO MAKE
11:14:33 AM	RANKIN	ON FRP #9 FOR EXAMPLE THEY ASK FOR ALL DOCUMENTS RELATING TO THE WATER RIGHTS
11:15:03 AM		THEY WANT TO KNOW THE FREQUENCY OF THE CURRENT WATER USE ASSOCIATED WITH EACH WATER RIGHT
11:15:16 AM		HARM SHOULD BE MEASURED BASED ON THE WATER RIGHT ELEMENTS NOT ACTUAL USE
11:15:38 AM		WHAT DOES NOT CHANGE ARE THE ELEMENTS OF THE WATER RIGHT
11:15:46 AM		INTERROGATORY #10 THEY WANT TO KNOW IF IT IS CONOCOPHILLIPS OR EL PASO NATURAL GAS EVER EXPERIENCED AND INSUFFICIENCY OF WATER SUPPLY
11:15:55 AM		THAT IS LOOKING TO THE PAST AND HAS NOT BEARING ON WHAT THE ELEMENTS OF THE LEGAL STANDARDS REQUIRE
11:16:30 AM		INTERROGATORY #18 IS A CONTENTION INTERROGATORY AND IT IS ASKING US TO PROVIDE ALL EVIDENCE AND EXHIBITS AND TESTIMONY
11:16:53 AM		CASE LAW IS VERY CLEAR THAT DISCOVERY SEEKING CONTENTION INTERROGATORIES THIS EARLY IN DISCOVERY ARE PREMATURE, SOMETHING THAT WE WOULD SUPPLEMENT DOWN THE ROAD
11:17:11 AM	J	LET ME RESPOND TO THAT AND AGAIN I AM NOT TALKING TO YOU NECESSARILY, I AM ADDRESSING THIS GENERALLY AS TO WHAT MY THINKING OF IT IS
11:17:21 AM		BECAUSE OF OUR PROCEEDING I CAN NOT NECESSARILY ABIDE BY THAT CONCEPT THAT THERE NEEDS TO BE ADDITIONAL TIME FOR CONTENTION, ADDITIONAL DISCOVERY FOR CONTENTION INTERROGATORIES TO BE RESPONDED TO
11:17:48 AM		THIS IS A CONTENTION INTERROGATORY THAT IN MY MIND FITS INTO THAT CATEGORY THAT YOU NEED ADDITIONAL DISCOVERY AND ADDITIONAL TIME TO RESPOND

11:18:02 AM		HOWEVER THERE ARE OTHER CONTENTION INTERROGATORIES THAT HAVE BEEN PROPOUNDED THAT THERE ARE GOING TO NEED TO BE RESPONSES TO. DECEMBER 21 IS THE DATE THAT WE ARE TALKING ABOUT THAT YOU ARE GOING TO NEED TO RESPOND TO
11:18:34 AM		THIS IS ONE THAT I THINK THAT YOU NEED TO EMBRACE THE DISCOVERY AND PUT TOGETHER AND WOULD NEED TO SUPPLEMENT
11:19:00 AM	RANKIN	WITH REGARDS TO THE CONTENTION INTERROGATORIES ... I JUST WANT TO MAKE THE POINT THAT IT IS PRETTY CLEAR IN THE CASE LAW THAT PARTIES ARE NOT REQUIRED TO PRODUCE ALL EVIDENCE OR ALL DOCUMENTS BUT JUST THE PRINCIPAL AND MATERIAL DOCUMENTS THAT THEY INTEND TO RELY ON
11:19:24 AM		IT IS OVERLY BURDENSOM TO REQUIRE US TO PRODUCE ALL DOCUMENTS OR ALL TESTIMONY
11:19:34 AM	J	WHEN I AM TALKING ABOUT RESPONDING TO CONTENTION INTERROGATORIES I AM TALKING ABOUT STATING THE BASIS FOR YOUR CONTENTION
11:19:48 AM		YOU NEED TO STATE THE BASIS FOR YOU CONTENTION
11:20:13 AM	RANKIN	FOR THE REST OF THE RFP'S WE HAVE INDICATED THAT WE WILL INVESTIGATE DOCUMENTS...AND WE WILL PRODUCE THOSE
11:20:38 AM	JOLENE MCCALE B	I HAVE TRIED TO MODIFY MY REMARKS THIS MORNING BASED ON THE CONVERSATIONS THAT YOU HAVE HAD PREVIOUSLY WITH OTHER COUNSEL
11:21:05 AM		THE SAN JUAN WATER COMMISSION HAS NO PROBLEM WITH DOING THAT WITH THE INTERROGATORIES, THE VERY FEW THAT WE DID NOT ANSWER TO BEGIN WITH, ON THE BASIS OF OBJECTION
11:21:22 AM	J	LET ME NOTE THAT IN THAT REGARD IN TERMS OF RESPONDING TO SOME OF THE CONTENTION INTERROGATORIES THAT THE SAN JUAN WATER COMMISSION DID EXACTLY WHAT I WOULD THINK WOULD BE EXPECTED
11:21:38 AM	JOLENE MCCALE B	WITH RESPECT TO THE ONES THAT WE DID NOT ANSWER THAT WE WILL NOW ANSWER I WOULD LIKE TO MAKE THE POINT AGAIN THAT MR RANKIN MADE. SOME OF THOSE ARE DIFFICULT TO ANSWER AT THIS PONT BEFORE DISCOVERY IS COMPLETED BECAUSE WE DO NOT KNOW IF WE TRUELY DO OBJECT OR ALL OF THE BASIS OF OUR OBJECTIONS
11:22:03 AM		GIVING EXAMPLE
11:22:18 AM		THROUGH THE DEPOSITION OF JOHN WHIPPLE WE HOPE TO GET MORE INFORMATION
11:22:33 AM		IF ADDITIONAL INFORMATION COMES AVAILABLE PAST DECEMBER 21ST WE WOULD LIKE AN OPPORTUNITY TO SUPPLEMENT OUR RESPONSES
11:22:46 AM	J	WHAT I MEAN IS THAT BY DECEMBER 21ST YOU HAVE TO PUT YOUR CARDS ON THE TABLE
11:23:00 AM		IT IS NOT ENOUGH TO SAY WE ARE STILL GOING THROUGH THE DOCUMENTS THAT HAVE BEEN PROVIDED BY THE SETTLING PARTIES

11:23:07 AM		BY THAT TIME YOU NEED TO BE THROUGH IT. ON THE OTHER HAND IF A DEPOSITION IS SUBSEQUENTLY TAKEN AND YOU HAVE INFORMATION ON THE BASIS OF THAT DEPOSITION THAT REQUIRES YOU TO SUPPLEMENT YOUR RESPONSE THEN ABSOLUTELY
11:23:25 AM		I AM NOT GOING TO REQUIRE LEAVE OF THE COURT TO DO SOMETHING LIKE THAT
11:23:32 AM		WE DO HAVE AN EVOLVING PROCESS BUT WE DO NOT HAVE THAT MUCH TIME TO EVOLVE
11:24:16 AM	MCCAILE B	IT WILL BE THE WATER COMMISSIONS INTENT TO FULLY COMPLY
11:24:22 AM		I DO HAVE ONE INTERROGATORY FROM THE UNITED STATES THAT I WOULD LIKE TO ADDRESS THAT WE DID NOT ANSWER BECAUSE WE HAD OBJECTED TO IT, #8
11:24:56 AM		THIS INTERROGATORY ASKS THE WATER COMMISSION TO DESCRIBE EVERY BASIS FOR THE DENIAL THAT IF THE SETTLEMENT IS DENIED AND THE NAVAJO NATIONS WATER RIGHTS ARE LITIGATED, EXPLAIN THE DENIAL ... GREATER THAN A HARM TO WATER RIGHTS CAUSE BY AN ENTRY OF THE SETTLEMENT AGREEMENT
11:25:26 AM		WE HAVE AN ADDITIONAL OBJECTION TO THIS INTERROGATORY WHICH IS HOW CAN WE ANSWER THIS QUESTION, WE HAVE NO IDEA WHAT THE OUTCOME OF TRIAL WILL BE
11:26:07 AM	J	I UNDERSTAND YOUR CONCERN
11:26:12 AM	MCCAILE B	AT THIS POINT IT WOULD BE THE WATER COMMISSIONS POSTION THAT THAT IT IS NOT CAPABLE OF ANSWERING THIS INTERROGATORY AND IT WOULD CONTINUE ITS OBJECTION
11:26:40 AM		WITH REGARD TO THE WATER COMMISSIONS PRODUCTION OF 10,000 DOCUMENTS AND MR GUARINOS ARGUMENT THAT THEY HAVE NOT BEEN CATEGORIZED... THE US ARGUES THAT IT CAN IDENTIFY NO CATEGORIZATION OR ORGANIZATION OF THE COLLECTION OF DOCUMENTS
11:27:10 AM		WHAT MR GUARINO FAILED TO TELL THE COURT IS THAT IN RESPONSE TO EVERY SINGLE RFP THAT WE ANSWER WE POINTED THE US TO DOCUMENTS BATES NUMBER
11:27:36 AM		GIVES EXAMPLE
11:28:07 AM	J	QUESTION REGARDING RFP #1
11:28:17 AM		IT SAYS THAT YOU ARE PRODUCING DOCUMENTS THAT ARE RESPONSIVE
11:28:40 AM		I AM WONDERING IF THE UNITED STATES IS CONCERNED..., ARE THESE THE ONES THAT YOU ARE SAYING IS THE PROBLEM
11:29:17 AM	MCCAILE B	SEE YOUR POINT AND YES WE HAVE COMPLIED WITH THE RULE, EXPLAINS
11:29:25 AM		RULE 34 DOES NOT REQUIRE CATEGORIZATION
11:29:44 AM		THE SAN JUAN WATER COMMISSION PRODUCED ITS DOCUMENTS IN THE MANNER IN WHICH THEY ARE KEPT IN THE ORDINARY COURSE OF BUSINESS
11:30:07 AM		EXPLAINING THE ORGANIZATION METHOD USED

11:30:28 AM	J	SO YOU HAVE IDENTIFIED THE DOCUMENTS THAT ARE RESPONSIVE TO THIS REQUEST, ARE SEPERATELY IDENTIFIED (NOT BY BATES NUMBER)
11:30:47 AM	MCCAILE B	NO WE DID NOT, EXPLAINING RULE 34 B 1
11:31:41 AM		BECAUSE OF THE VOLUME OF DOCUMENTS WE WENTS AN EXTRA STEP AND IDENTIFIED THE PRIMARY DOCUMENTS
11:31:55 AM	J	I WILL HEAR FROM THEM AGAIN BECAUSE MAYBE I AM NOT UNDERSTANDING WHAT THEIR CONCERN WAS
11:32:08 AM	MCCAILE B	TALKING ABOUT SEALED APPEAL CASE
11:32:28 AM		ONE ORDER DOES MAKE IT CLEAR THAT THEY REMAIN SEALED UNLESS THEY ARE OPENED BY ORDER OF THE COURT
11:32:38 AM		A WEEK OR SO BEFORE OUR DISCOVERY RESPONSES WERE DUE I REQUESTED OF MRS SINGER AND COUNSEL FOR THE ISC PERMISSION TO HAVE THOSE DOCUMENTS UNSEALED BECAUSE WE NEVER THOUGHT THEY SHOULD BE SEALED. THEY ARE RELEVANT TO THIS LAWSUIT
11:32:57 AM		THAT REQUEST HAS BEEN PENDING FOR MORE THAN 30 DAYS AND THE STATE HAS NOT RESPONDED TO IT
11:33:00 AM	J	I WONDER IF A MOTION TO THE COURT IS APPROPRIATE
11:33:09 AM	MCCAILE B	WE WOULD BE HAPPY TO PREPARE SUCH A MOTION
11:33:21 AM	J	IT WOULD SEEM THAT THE PARTY WHO IS INTERESTED IN HAVING THESE DOCUMENTS FOR THE PURPOSES OF THIS CASE NEXT QUESTION WOULD BE TO WHICH COURT IS IT APPROPRIATE
11:34:41 AM		DISCUSSION REGARDING WHICH COURT IS APPROPRIATE
11:35:58 AM		A COUPLE OF ISSUES I WOULD LIKE TO ADDRESS WITH REGARD TO THE STATES RESPONSE
11:36:04 AM	J	CONFIRMING THAT AZTEC CAN HEAR
11:36:38 AM	MCCAILE B	THREE QUICK POINTS ABOUT THE STATES RESPONSE.. OR TWO
11:36:50 AM		WITH REGARD TO INTERROGATORY #6
11:37:46 AM		WHICH CAN BE FOUND IN EXHIBIT #1 OF THE STATES RESPONSE AT PG 5
11:38:07 AM		THE STATE ASKS THE WATER COMMISSION TO EXPLAIN HOW POTENTIAL TESTIMONY THAT WE HAD DISCUSSED IN OUR INITIAL DISCLOSURES ABOUT THE HISTORY OF THE ANIMAS LA PLATA PROJECT AND THE ADOPTION OF SECTION 72 5 33 IS RELEVANT TO THIS PROCEEDING
11:38:28 AM		THE WATER COMMISSIONS RESPONSE GOES ON TO EXPLAIN WHY THE ANIMAS LA PLATA PROJECT AND SECTION 72 5 33 ARE RELEVANT TO THIS PROCEEDING
11:39:08 AM		WE POINTED OUT IN OUR INITIAL OBJECTIONS THAT WE MIGHT PUT ON TESTIMONY ON THESE 2 TOPICS
11:39:29 AM		WITH RESPECT TO THEIR REQUEST FOR PRODUCTION #8
11:39:51 AM		IN ITS RESPONSE THE COMMISSION STATED THAT IT MAY RELY ON A PIA ANALYSIS BY ITS EXPERT WITNESS
11:40:37 AM		WHAT THEY ARE TRYING TO DO HERE IN THEIR RESPONSE IS TURN THAT RFP INTO AN INTERROGATORY AND ARE ASKING THE COURT FOR AN ORDER

11:41:11 AM		THE WATER COMMISSION DID FULLY COMPLY WITH THE RFP AND WENT A STEP FURTHER
11:41:45 AM	RICHARD COLE	I BELIEVE YOU HAD CLARIFIED IN THE LAST DISCUSSION ONE OF MY CONCERNS RELATING TO THE DECEMBER 21 DATE
11:42:07 AM		IF WE HAVE THE ABILITY TO SUPPLEMENT FURTHER UP TO THE MARCH 1ST DATE THAT SATISFIES MY CONCERN ABOUT SUPPLEMENTING OUR OBJECTIONS
11:42:32 AM		I DO NOT KNOW ALL OF THE FACTUAL BASIS OF MY OBJECTIONS
11:42:58 AM	J	EXCEPT YES IF YOU LEARN SOMETHING DURING THE COURSE OF DISCOVERY THEN YOU ARE GOING TO NEED TO SUPPLEMENT TO INCLUDE THAT INFORMATION, BUT THAT DOES NOT MEAN THAT BECAUSE YOU FEEL ...
11:43:19 AM		TO THE EXTENT THAT YOU HAVE THEORIES THAT ARE YOUR OBJECTIONS THAT YOU HAVE NOW OR HAVE BY DECEMBER 21ST WHICH I EXPECT YOU HAVE THEN YOU NEED TO RESPOND TO THOSE CONTENTION INTERROGATORIES WITH THAT INFORMATION
11:43:40 AM		IN THE COURSE OF DEPOSITIONS YOU LEARN ADDITIONAL INFORMATION OR CORRECTIVE INFORMATION THEN YOU ARE GOING TO HAVE TO SUPPLEMENT IT IN ORDER TO BRING IT UP TO DATE
11:44:03 AM		I WANT TO MAKE CLEAR IS THAT DOES NOT MEAN THAT YOU CAN WAIT AND SAY I AM NOT QUITE SURE ABOUT THIS AND I AM GOING TO HAVE TO WAIT TO HAVE THAT DEVELOPED, YOU HAVE TO SET FORTH THOSE CONTENTIONS
11:44:26 AM	COLE	THAT WORKS FOR US. I MIGHT ADD THAT WE FILED OBJECTIONS ON SEPTEMBER 20TH WITHOUT HAVING THE ABILITY TO GO THROUGH SOME OF THE DISCOVERY
11:44:39 AM		THEY WANT US NOW TO EXPLAIN WHAT WE THOUGHT THEN AND WE DO NOT EVEN HAVE ALL OF THE ANSWERS YET
11:44:59 AM		ON THE ANTONIO CASE, WE WILL BE MORE THAN HAPPY ALONG WITH THE WATER COMMISSION TO FILE A MOTION TO UNSEAL
11:45:02 AM		I DO NOT UNDERSTAND WHEN THE STATE IS TRYING TO GET THIS APPROVED WHY THEY CAN NOT JUST CALL OR WRITE A LETTER TO THE COURT SAYING WE AGREE THAT ALL OF THESE DOCUMENTS CAN BE RELEASED
11:45:24 AM		WHY DO WE HAVE TO GO THROUGH THESE GAMES ALL OF THE TIME BETWEEN WHICH OFFICE WE ARE TALKING ABOUT
11:45:36 AM	J	I HAVE URGED THE PARTIES BEFORE AND I WILL URGE THEM AGAIN TO COOPERATE
11:45:53 AM		I DO NOT KNOW THE MERITS AS TO WHY THE SEALING OF THESE DOCUMENTS... THAT IS NOT BEFORE ME
11:46:42 AM	VICTOR MARSHALL	NOW THAT WE HAVE STARTED THE DISCOVERY PHASE I HAVE TRIED TO KEEP MY HEAD DOWN AND TAKE A PRACTICAL APPROACH
11:47:57 AM		AT ISSUE HERE IS THE WATER RIGHTS OF THE NAVAJO NATION

11:47:58 AM		WHAT WATER RIGHTS MY CLIENTS HAVE OR MIGHT NOT HAVE IS NOT THE QUESTION AND CAN NOT BE ADJUDICATED IN THIS CASE
11:48:08 AM		THAT ISSUE HAS ALREADY BEEN DEALT WITH WITH THE SPECIAL MASTER
11:48:11 AM		WHEN INDIVIDUAL WATER RIGHTS OWNERS WERE ASKED TO FILL OUT THAT PARTICIPATION FORM
11:48:24 AM		SPECIAL MASTER SNYDER ORDERED CORRECTLY THAT YOU JUST HAVE TO SIGN THAT YOU HAVE WATER RIGHTS IN THE BASIN
11:48:33 AM		THE SECOND TIME WAS IN THE ORDER RECITED HERE, SO THE COURT HAS ALREADY DEALT WITH THAT
11:49:12 AM		THE STATE ENGINEER IS REQUIRED BY LAW TO CONDUCT A COMPLETE HYDROGRAPHIC SURVEY OF THE ENTIRE BASIN BEFORE COMMENSING AN ADJUDICATION
11:49:23 AM		THE COURT HAS RULED OTHERWISE
11:49:48 AM		IT IS COMING BACK TO BITE US ALL NOW
11:49:58 AM		WHEN THE ECHO DITCH DECREE WAS DONE UNDER NEATH IT THERE WAS A COMPLETE FIELD SURVEY OF EVERY PARCEL OF LAND AND IT IS INCORPORATED IN THE ECHO DITCH DECREE ITSELF
11:50:34 AM		IF WE CALL SOME WITNESSES I IMAGINE THEY ARE GOING TO HAVE WATER RIGHTS
11:51:17 AM		TALKING ABOUT BACKSLIDING ISSUES
11:51:21 AM	J	WITH RESPECT TO THE ELEMENTS OF THE WATER RIGHT HOW DIFFICULT IS IT FOR YOUR CLIENTS TO PROVIDE THAT INFORMATION
11:51:31 AM	MARSHA LL	IT IS IMPOSSIBLE
11:51:40 AM		EXPLAINING
11:51:53 AM		THE STATE ENGINEER IS SUPPOSED TO MAKE SURE THAT HAPPENS
11:51:58 AM		IT DOES NOT HAPPEN
11:52:05 AM	J	BUT IF WE ARE TALKING ABOUT INDIVIDUALS AS TO WHAT THEIR UNDERSTANDING IS
11:52:11 AM	MARSHA LL	A WITNESS
11:52:14 AM	J	I AM NOT TALKING ABOUT A WITNESS I AM TALKING ABOUT THE PARTIES
11:52:18 AM	MARSHA LL	NO IN FACT MOST OF MY CLIENTS HAVE NO CONCEPTION
11:52:37 AM	J	SO THEY ARE NOT IN A POSITION TO SAY THAT THERE IS ANY HARM, THAT THE SETTLEMENT AGREEMENT IS GOING TO PROVIDE ANY HARM TO THEM
11:52:45 AM	MARSHA LL	THAT IS NOT CORRECT THEY CAN SAY BASED ON PERSONAL KNOWLEDGE I IRRIGATE MY 3 ACRES OUT OF THAT DITCH
11:53:43 AM		THEY ARE TRYING TO PUT A BURDEN ON MY CLIENTS
11:54:24 AM	J	ASKING MARSHAL TO RESPOND
11:54:30 AM		WHAT I AM HEARING FROM THE SETTLING PARTIES IS, IT IS EVIDENCE OF OUR BURDEN WITH RESPECT TO THE IMPACTS ON JR USERS IF THE NON-SETTLING APRTIES ARE UNABLE TO DEMONSTRATE THAT THERE IS HARM BY VIRTUE OF THE SETTLEMENT AGREEMENT

11:54:51 AM	MARSHA LL	THAT IS AN ISSUE THAT HAS ALREADY BEEN DEALT WITH
11:54:58 AM	J	NOT SURE THAT IT HAS BUT
11:55:02 AM	MARSHA LL	RESPONDING
11:56:30 AM		TALKING ABOUT CONTENTION INTERROGATORIES
11:56:53 AM		DISCOVERY HAS JUST BEGUN AND WE HAVE NOT GOTTEN THE INFORMATION THAT WE HAVE REQUESTED AND WHICH WE NEED
11:57:09 AM		THIS CASE ALTHOUGH IT HAS BEEN GOING FOR 37 YEARS IS NOT YET AT ISSUE. WE ARE STILL AT THE PLEADING STAGE. IT WILL NOT BE AT ISSUE UNTIL DECEMBER 4TH WHEN THEY RELPY TO THE VERY DETAILED COUNTERCLAIM WHICH WE FILED
11:58:29 AM		3 PURE QUESTIONS OF FACT
11:58:58 AM		LISTING QUESTIONS
11:59:09 AM	J	DO NOT KNOW WHERE YOU ARE GOING
11:59:17 AM	MARSHA LL	WE CAN NOT SUPPLEMENT OUR ANSWERS ON DECEMBER 21ST BECAUSE THE INFORMATION THAT WE HAVE BEEN SEEKING HAS NOT BEEN PROVIDED
11:59:33 AM	J	WE ARE GOING TO ADDRESS WHAT EVER IT IS SUBSEQUENT TO THIS HEARING
11:59:45 AM	MARSHA LL	THAT IS UNFAIR TO US BECAUSE WE ASKED FOR THIS LONG AGO
12:00:01 PM	J	I THINK I MADE IT CLEAR WITH MR COLE THOUGH AND I THINK MS MCCALED AS WELL, ADDRESSING EVERYONE. IF THERE IS ADDITIONAL INFORMATION THAT BECOMES AVAILABLE AFTER DECEMBER 21ST BY VIRTUE OF DISCOVERY THEN OF COURSE YOU ARE GOING TO BE ABLE TO SUPPLEMENT YOUR ANSWERS
12:00:25 PM	MARSHA LL	THAT IS NOT SUFFICIENT, THE CASE IS NOT AT ISSUE
12:00:30 PM	J	THAT IS NOT TRUE MR MARSHALL. THIS IS A SPECIAL PROCEEDING. THE RULES THAT YOU ARE REFERRING TO WITH REGARD TO A COMPLAINT AND ANSWER AND COUNTERCLAIM ARE NOT APPLICABLE IN THIS PROCEEDING AS I SEE IT
12:01:00 PM		I HAVE BEEN TAKING YOUR PLEADING AS AN OBJECTION
12:01:23 PM		IN MY MIND IT IS AT ISSUE
12:01:25 PM	MARSHA LL	WE RESPECTFULLY REQUEST THAT YOU WOULD REDUCE TO WRITING SO THAT WE CAN PURSUE AND INTERLOCUTORY APPEAL
12:01:34 PM	J	THAT IS NOT AN ORDER, I HAVE NOT BEEN ASKED TO DO ANYTHING
12:01:42 PM	MARSHA LL	DO WE HAVE THE RIGHTS IF A DEFENDANT UNDER THE RULES OF CIVIL PROCEDURE INCLUDING THE RIGHT TO FILE A COUNTERCLAIM
12:01:47 PM	J	IF YOU WANT TO BRIEF THE QUESTION FOR ME I WILL ADDRESS THE QUESTION
12:01:59 PM	MARSHA LL	QUESTION OF FACTS
12:03:08 PM		IS NIIP A BENEFICIAL USE OR IS IT A WASTE

12:03:25 PM		PIA IS NOTHING MORE THAN THE RULE, THE REQUIREMENT OF BENEFICIAL USE APPLIED TO IRRIGATION
12:03:49 PM	J	SORRY AGAIN TO INTERRUPT YOU BUT I DO NOT KNOW WHERE YOU ARE GOING IF YOU ARE GETTING BACK TO THE DECEMBER 21ST DATE...
12:04:19 PM	MARSHALL	AT THE PRESENT TIME IT IS NOT ONLY COMPLEX, IT IS IMPOSSIBLE
12:04:37 PM	J	EXPLAINING WHAT THE COURT NEEDS
12:06:17 PM	MARSHALL	THAT IS WHAT WE HAVE DONE
12:06:50 PM	J	LATER WE ARE GOING TO ADDRESS DISCOVERY ISSUES
12:07:20 PM	MARSHALL	THOSE DISCOVERY MOTIONS WERE FILED IN JUNE
12:07:38 PM		THE COURT HAS ALREADY RULED ON THEM YET WE DO NOT GET THE DOCUMENTS
12:08:34 PM		TALKING ABOUT BAD FAITH
12:09:18 PM	J	THE COURT WANTS TO HELP YOU CUT THROUGH TO THE FACTUAL ISSUES
12:09:29 PM	MARSHALL	WILL YOU ADDRESS THOSE, IN THE COURTS LAST ORDER WHICH WE COMPLIED WITH...
12:09:40 PM	J	THE PURPOSE OF OUR DISCUSSION RIGHT NOW IS TO ADDRESS THE SETTLING PARTIES DISCOVERY REQUESTS AND THE OBJECTIONS TO THAT. SUBSEQUENTLY AFTER THIS HEARING WE ARE GOING TO HAVE ANOTHER HEARING THAT ADDRESSES THE OUTSTANDING ISSUES
12:09:58 PM	MARSHALL	THE 2 ARE NOT SEPARATE... EXPLAINING
12:13:06 PM		MR HORNER HAS RAISED THE QUESTION ABOUT WHETHER YOU HAVE TO HAVE FUTURE RIGHTS FOR FUTURE GROWTH
12:14:13 PM		ASKING FOR DEADLINE DATE TO BE MOVED TO LATER IN THE FUTURE
12:14:21 PM		I DO WANT TODAY TO ADDRESS THE NIIP AND ??
12:14:41 PM		ONE OTHER ITEM I NEED TO MENTION IS THE ISSUE THEY WANTED DISCOVERY ABOUT STATEMENTS THAT MY CLIENTS MAY HAVE MADE WITH RESPECT TO THE SETTLEMENT. WHAT DOES THAT HAVE TO DO WITH WETHER THE NAVAJOS HAVE X AMOUNT OF WATER RIGHTS OR NOT
12:14:59 PM		IT IS PROTECTED BY THE FIRST AMMENDMENT
12:15:08 PM		EXPLAINING
12:15:18 PM		TALKING ABOUT WHEN PEOPLE TALK TO LEGISLATORS
12:15:28 PM		TRYING TO DISCOVERY WHAT WE MAY OR MAY NOT HAVE SAID TO ELECTED REPRESENTATIVES IS AN INFRINGEMENT OF THAT RIGHT
12:16:19 PM		WE SEEM TO BE BACKSLIDING ON THAT ISSUE... WE DO NOT WANT TO GET INTO MATTERS THAT ARE PROTECTED BY THE FIRST AMMENDMENT
12:17:12 PM	GARY RISLEY	START WITH THE COURTS OPENING STATEMENT
12:17:44 PM		I BELIEVE THAT THE COURTS IMPRESSION WAS CORRECT WITH REGARD TO THAT

<u>12:18:36 PM</u>		EVERYONE NO MATTER THEIR SOURCE OF THEIR WATER RIGHT IS JR TO AN 1868 PRIORITY
<u>12:18:41 PM</u>		THE HARM THAT COMES FROM THIS PROCESS IS BASED UPON TO A GREAT DEGREE A PRIORITY DATE THAT PLACES THE NAVAJO WATER CLAIMS AHEAD OF EVERYONE IN THE BASIN
<u>12:18:54 PM</u>		THE HARM THAT IS TO BE IDENTIFIED IS BASED UPON THE PRIORITY OF THE CLAIM AS WELL AS THE AMOUNT OF WATER THAT IS BEING ADJUDICATED WITH REGARD TO THAT PRIORITY CLAIM
<u>12:19:05 PM</u>		THE COURT ALSO RULED THAT WE WERE NOT GOING TO INVESTIGATE INDIVIDUAL CLAIMS OF HARM
<u>12:19:22 PM</u>		THE COURT HAS SET THE STANDARDS TO BE PROVED BY THE SETTLING PARTIES
<u>12:20:48 PM</u>		WE ARE NOT IN THE INTER SE WITH REGARD TO MY CLIENTS INDIVIDUAL RIGHTS
<u>12:21:06 PM</u>		THEY ARE BASICALLY USING AN INTIMIDATION TACTIC
<u>12:22:23 PM</u>		TALKING ABOUT PIA
<u>12:23:49 PM</u>		THE KEY ISSUE IN THIS CASE IS DOES THIS SETTLEMENT REDUCE THE IMPACT TO THE JR WATER USERS COMPARED TO WHAT THE NAVAJOS WOULD RECEIVE IF THIS CASE WERE LITIGATED WITH REGARD TO THEIR RIGHTS OTHERWISE
<u>12:24:46 PM</u>	GARY HORNER	NOT SURE WHAT THERE IS LEFT FOR ME TO TALK ABOUT
<u>12:25:04 PM</u>		THE COURT HAS LOOKED AT THE SETTLING PARTIES DISCOVERY REQUESTS AS CONTENTION INTERROGATORIES LOOKING FOR THE CONTENTIONS OF THE OBJECTORS
<u>12:25:26 PM</u>		SEVERAL PROBLEMS WITH THAT, EXPLAINS
<u>12:25:50 PM</u>		THE DISCOVERY REQUEST THAT THEY SENT TO ME HAD NOTHING TO DO WITH MY OBJECTION OR CONTENTIONS IN MY OBJECTION
<u>12:26:11 PM</u>		THEY ARE ASKING ME TO RESPOND TO THEIR CONTENTIONS
<u>12:27:19 PM</u>		THEY WANT TO LOCK ME IN AT THIS POINT
<u>12:28:00 PM</u>		THEY ARE TRYING TO USE THIS PROCESS TO LIMIT THE POSITIONS THAT PEOPLE CAN TAKE
<u>12:29:04 PM</u>		THEY WANT US TO EXPLAIN HOW WE HAVE BEEN HARMED IN THE SETTLEMENT
<u>12:29:33 PM</u>		THE HARM IS IN THE FUTURE
<u>12:30:02 PM</u>		I SUBMITTED SIMILAR INFORMATION WITH MY MOTION TO ENJOIN THE EXECUTION OF THE SETTLEMENT BACK IN 2004
<u>12:30:49 PM</u>		IF THEY DO SAY WHAT THE HARM IS GOING TO BE LIKE I DID THEY ARE GOING TO SAY THAT IS SPECULATION
<u>12:31:06 PM</u>		PRIOR APPROPRIATION DOCTRINE MEANS THAT THEY ARE ENTITLED TO THE WATER RIGHTS EVEN IF SOMEBODY ELSE IS HARMED
<u>12:32:16 PM</u>		WHAT WOULD THEY DO WITH THAT INFORMATION IF THEY HAD IT
<u>12:32:46 PM</u>		IT IS ALL IN BAD FAITH, NON OF IT HAS LEGITIMACY AT ALL
<u>12:32:51 PM</u>		I OBJECTED TO ESSENTIALLY EVERYTHING

12:32:54 PM		I DID NOT VERIFY ANYTHING BECAUSE ALL I SUBMITTED WAS OBJECTIONS
12:33:05 PM		IF THE COURT SHOULD DECIDE THAT THERE IS SOME SORT OF RESPONSE REQUIRED... OTHERWISE THE REST OF THIS IS JUST HARRASSMENT AND INTIMIDATION
12:33:25 PM		TALKING ABOUT THE STATEMENT OF CLAIMS
12:33:59 PM		I AM CHALLENGING THE BASIS FOR THE SETTLEMENT ITSELF
12:34:05 PM		IF THERE IS NO BASIS FOR THE SETTLEMENT THERE IS NO LIGITIMATE BASIS FOR THE STATEMENT OF CLAIMS THAT ASKS FOR EVEN MORE THAN THAT
12:34:57 PM	ROBERT OXFORD	TALKING ABOUT HIS ANSWER TO THE QUESTIONS FROM THE US
12:36:42 PM	J	I HAVE A COUPLE OF QUESTIONS TO ASK OF THE UNITED STATES
12:37:45 PM	GUARIN O	RESPONSE
12:39:19 PM		TALKING ABOUT 10000 DOCUMENTS
12:39:54 PM	J	LET ME ASK FOR YOU AND MS MCCALED TO CONFER ON A BREAK AND LET THE COURT KNOW IF YOU HAVE RESOLVED THIS ISSUE
12:40:13 PM		NEXT QUESTION TO DO WITH INTERROGATORY #8
12:41:03 PM		READING INTERROGATORY
12:41:30 PM		SO YOU ARE ASKING THAT IF THIS AGREEMENT IS NOT ACCEPTED AND IT GOES TO TRIAL AND THEN THERE IS A TRIAL THE RESULT OF THAT TRIAL WOULD BE GREATER THAN THE HARM CAUSE BY THE SETTLEMENT AGREEMENT
12:41:48 PM	GUARIN O	YES
12:41:55 PM	J	HOW DOES SOMEONE RESPOND TO THAT
12:41:57 PM	GUARIN O	ANSWERS
12:42:54 PM		WE WANT TO KNOW WHAT YOUR BASIS FOR SAYING THAT WE WILL NOT BE HARMED BY GOING TO LITIGATION OR WE WILL BE HARMED BY GOING TO LITIGATION OR WE WILL BE HARMED TO A GREATER DEGREE
12:43:09 PM		THIS IS THE INTERROGATORY THAT TIES TO THE REQUEST FOR ADMISSION WHICH MAKES IT A LITTLE BIT CONFUSING
12:44:49 PM		THAT WOULD BE WHAT I EXPECTED MR HORNER TO RESPOND TO BUT HE DID NOT DO THAT
12:45:17 PM		THAT GETS TO THE POINT WHAT ARE YOUR BASIS FOR THE OBJECTION AND HOW DO THOS OBJECTIONS FIT WITH THE CRITERIA THAT THE COURT HAS IDENTIFIED ASSOCIATED WITH THE STANDARD
12:46:09 PM		THE COURT HAS GRANTED DISCOVERY. THE COURT HAS GRANTED THE ABILITY FOR EACH PARTY TO PRESENT INFORMATION TO THE COURT
12:46:39 PM	J	I UNDERSTAND...THIS QUESTION IN PARTICULAR MIGHT BE DIFFICULT FOR SOMEBODY TO RESPOND TO BECAUSE OF THE UNCERTAINTY OR THE LACK OF UNDERSTANDING AS TO WHAT WOULD OCCUR AT TRIAL

<u>12:47:05 PM</u>	GUARIN O	REPLY
<u>12:48:06 PM</u>		IF THEY HAVE INFORMATION THAT THEY WANT TO IDENTIFY THIS IS THE TIME TO DO IT
<u>12:48:21 PM</u>	J	WANT TO CONCLUDE THE HEARING ON THE SETTLING PARTIES DISCOVERY AND OBJECTIONS. I WILL ISSUE A RULING BY THE END OF FRIDAY
<u>12:49:26 PM</u>		NOW WE HAVE SOME OTHER MATTERS THAT WE NEED TO DISCUSS
<u>12:49:51 PM</u>		ESTIMATING TIME NEXT HEARING WILL TAKE
<u>12:50:09 PM</u>		I WOULD LIKE TO HEAR THE STATUS OF DISCOVERY
<u>12:50:16 PM</u>		DO YOU WANT TO BREAK FOR LUNCH OR DO YOU WANT TO FORGE AHEAD
<u>12:50:32 PM</u>		RECONVIENE AT 2:00
<u>12:50:43 PM</u>		RECESS UNTIL 2:00
<u>2:03:27 PM</u>	J	BACK ON THE RECORD
<u>2:03:42 PM</u>		TALKING ABOUT WHAT NEEDS TO BE DISCUSSED
<u>2:04:15 PM</u>		LETS PROCEED FIRST TO THE MOTION FOR AND EXTENSION WITH RESPECT TO MR HORNERS MOTION
<u>2:04:28 PM</u>	HORNER	I HAVE PREPARED A RESPONSE TO THE NAVAJO NATIONS MOTION FOR EXTENSION
<u>2:04:43 PM</u>		I BROUGHT IT WITH ME TODAY BUT HAVE NOT FILED IT YET
<u>2:05:08 PM</u>		I DO HAVE A RESPONSE PREPARED ASKING IF THERE IS A WAY TO GET IT TO JUDGE
<u>2:05:23 PM</u>	J	IF IT WERE FILED , LORESSA IF IT WERE FILED HOW LONG WOULD IT TAKE TO GET UP
<u>2:05:36 PM</u>	LORESSA A	I CAN SEND IT TO YOU THIS AFTERNOON BUT YOU PROBABLY WOULD NOT HAVE A CHANCE TO REVIEW IT FOR THE HEARING TODAY
<u>2:05:45 PM</u>	J	IN FAIRNESS TO ALL PARTIES THE BEST WAY IS WE CAN HEAR WHAT YOU HAVE TO SAY AND I WILL ADDRESS ALSO THE QUESTION WHETHER YOU THINK I SHOULD NOT RULE ON THE MOTION TODAY
<u>2:06:15 PM</u>	STANLEY Y POLLA CK	I DO NOT WANT TO REHASH THE GROUNDS THAT WE PUT IN OUR MOTION
<u>2:06:33 PM</u>		THE ISSUES THAT MR HORNER IS RAISING ARE ISSUES THAT VARIOUS PARTIES CAN RAISE ONE WAY OR ANOTHER WITH RESPECT TO THE ULTIMATE BRIEFING ON THE SETTLEMENT MOTION ITSELF
<u>2:06:49 PM</u>		CONSISTANT WITH THE RELIEF THAT CONOCOPHILLIPS WAS REQUESTING
<u>2:07:32 PM</u>	J	TO WHAT EXTENT DO YOU BELIEVE THAT DISCOVERY IS GOING TO BE HELPFUL TO THIS MOTION
<u>2:07:40 PM</u>	POLLAC K	THAT IS THE CONOCOPHILLIPS POSITION, I CONCURRED IN THE RELIEF REQUESTED WHICH WAS TO DELAY THE BRIEFING. I DO NOT NECESSARITLY AGREE THAT DISCOVERY IS GOING TO BE ALL THAT HELPFUL
<u>2:08:02 PM</u>	ADAM RANKIN	WITH DUE RESPECT TO MR POLLACK I THINK THERE ARE STILL SOME ISSUES THAT WE ARE LEARNING ABOUT

<u>2:08:54 PM</u>	GARY HORNER	FIRST WOULD LIKE TO POINT OUT THAT PURSUANT TO THE COURTS ORDER OF NOVEMBER 19TH, THE CORRECTED ORDER SUMMARIZING DISCOVERY ACTIVITIES DISCUSSED AT THE NOVEMBER 6TH, 2012 DISCOVERY CONFERENCE, THE COURT ORDERED THAT FROM THIS POINT THAT THE RULES OF CIVIL PROCEEDURE APPLIED WITH REGARD TO THE FILING OF MOTIONS
<u>2:09:44 PM</u>		THE RULES OF CIVIL PROCEEDURE SAY 15 DAYS TO RESPOND
<u>2:10:02 PM</u>		THE DATE FOR FILING RESPONSES TO MY MOTION THE DEADLINE WAS MONDAY.
<u>2:10:13 PM</u>	J	MR HORNER AS I UNDERSTOOD IT, EXISTING MOTIONS WERE NOT CHANGED BY VIRTUE OF THAT ORDER
<u>2:10:34 PM</u>	HORNER	RESPONSE
<u>2:11:01 PM</u>	J	I THINK THAT ANSWERS THE FIRST QUESTION, YOUR ORIGINAL QUESTION FOR CLARIFICATION ABOUT WHAT IS THE DATE FOR THE RESPONSES
<u>2:11:16 PM</u>		LETS GO NOW TO THE QUESTION OF WHETHER MR POLLACK AND MR RANKINS MOTION WITH REGARD TO THE EXTENSION OF TIME TO COMPORT WITH THE TIME PERIOD FOR DISPOSITIVE MOTIONS
<u>2:11:35 PM</u>	HORNER	THE COURTS ORDER OF NOVEMBER 6TH 2012 THAT THE NAVAJO NATION WAS REFERRING TO WHERE IT TALKS ABOUT DISPOSITIVE MOTIONS BEING FILED
<u>2:13:16 PM</u>		TALKING ABOUT ORDER
<u>2:13:42 PM</u>		TO ALLOW THEM TO HAVE AN ADDITIONAL 5 MONTHS TO RESPOND TO THIS AND I GET 2 WEEKS
<u>2:14:17 PM</u>		I FILED THE SAME INFORMATION IN MY MOTION TO ENJOIN THE EXECUTION OF THE NAVAJO SETTLEMENT
<u>2:14:40 PM</u>		THIS IS NOTHING NEW TO THEM. THEY HAVE HAD 14 YEARS TO PREPARE FOR THIS. THEY SHOULD HAVE BEEN ON TOP OF THESE ISSUES DURING THE NEGOTION OF THIS SETTLEMENT
<u>2:15:02 PM</u>		NOW THEN TO SAY THAT THEY NEED AN EXTRA 5 MONTHS AND ULTIMATELY GIVE ME 2 WEEKS TO RESPOND TO STUFF THAT I HAVE NEVER SEEN BEFORE
<u>2:15:19 PM</u>		WOULD LIKE TO FILE A SERIES OF MOTIONS WITH REGARD TO COMMON ISSUES OF LAW AND FACT
<u>2:15:43 PM</u>		PRESENT THEM IN A STAGGERED MANNER
<u>2:15:56 PM</u>		BUT THEY DO NOT HAVE TO RESPOND TO ANY OF THEM
<u>2:16:00 PM</u>		THEN I WOULD HAVE TO RESPOND TO ALL OF THEIR REPLIES WITHIN A 2 WEEK PERIOD
<u>2:16:14 PM</u>		ANY LENGTH OF TIME THAT THEY GET TO RESPOND TO THIS MOTION I SHOULD HAVE AN EQUAL AMOUNT OF TIME TO REPLY TO THEIR RESPONSE
<u>2:16:46 PM</u>		MR POLLACK HAS ACCNOWLEDGED THAT HE REALLY DOES NOT SEE A NEED FOR THE DISCOVERY OF ANY ISSUES WITH REGARD TO MY MOTION
<u>2:17:04 PM</u>		MR RANKIN TALKS ABOUT NEEDING TO DISCOVER SOMETHING
<u>2:17:36 PM</u>		I WOULD LIKE TO SAY THAT IF THEY DO NOT, ONE OF THE THINGS THAT HAS HAPPENED IS A MONTH AGO OR WHEN EVER IT WAS WE WENT THROUGH THESE SAME ISSUES

<u>2:18:12 PM</u>		THE NAVAJO NATION ITSELF SAID THAT IF YOU DO NOT FILE BY THE DEADLINE, EVEN THOUGH YOU HAVE FILED A MOTION FOR EXTENSION, YOU DO SO IT YOUR OWN PERIL
<u>2:18:26 PM</u>		THE COURT SAID THE SAME THING
<u>2:18:42 PM</u>		THAT IS WHAT THEY HAVE DONE HERE, IS TAKEN THE POSITION THAT THEY DO NOT NEED TO RESPOND TIMELY BECAUSE THEY FILED A MOTION FOR EXTENSION
<u>2:19:06 PM</u>		TALKING ABOUT MOTION TO DISMISS PARTIES FOR MISSING DEADLINES
<u>2:19:13 PM</u>		I AM OFFERING TO THE COURT AT THIS POINT A LESSER SANCTION
<u>2:19:34 PM</u>	J	AM I MISSING SOMETHING, I THOUGHT THAT WE DECIDED THAT NOTHING WAS DUE YET
<u>2:19:39 PM</u>	HORNER	IF WE DECIDE IT IS DUE DECEMBER 3RD AND THEY DO NOT FILE ANYTHING BY DECEMBER 3RD
<u>2:19:59 PM</u>		THEY SHOULD BE DENIED THE OPPORTUNITY TO RESPOND AT ALL AND YOU SHOULD ENTER AN ORDER IN ACCORDANCE WITH THE RELIEF THAT I HAVE REQUESTED IN MY MOTION FOR FEDERAL RESERVED RIGHTS
<u>2:20:13 PM</u>	J	TELL ME AND I DO NOT WANT TO FORCE YOUR HAND BUT CAN YOU GIVE ME AN IDEA OF WHAT KIND OF MOTIONS THAT YOU ARE TALKING ABOUT
<u>2:20:26 PM</u>	HORNER	THE NEXT ONE HAS TO DO WITH...
<u>2:21:20 PM</u>		ONE OF THE THINGS IS THAT IF YOU WILL ADDRESS THESE IN A TIMELY FASHION ONE OF THE FIRST THING THAT HAPPENS IS THAT WE DO NOT NEED ALL OF THIS DISCOVERY
<u>2:21:31 PM</u>		IF WE CAN LIMIT THE ISSUES THAT WE ARE GOING TO BE DEALING WITH
<u>2:22:31 PM</u>		IF WE CAN BREAK THIS INTO BITE SIZED PIECES AN ALLOW YOU TO CONSIDER THESE THINGS IN A SERIES OF DIFFERENT MOTIONS WE CAN MAKE THIS THING A LOT SIMPLER
<u>2:22:56 PM</u>		IF WE PUSH EVERYTHING BACK UNTIL APRIL BEFORE ANYBODY HAS ANY KIND OF RESPONSIBILITY TO RESPOND TO THIS THING
<u>2:23:25 PM</u>		FUNDAMENTAL FAIRNESS IS COMPLETELY GONE
<u>2:23:38 PM</u>	J	DO YOU WANT TO RESPOND TO THAT MR POLLACK OR MR RANKIN
<u>2:23:56 PM</u>	POLLAC K	THE COURT PROPERLY NOTES THAT NO RESPONSES ARE DUE AT THIS TIME
<u>2:24:22 PM</u>		WE HAVE FILED A MOTION WITHIN THE APPROPRIATE TIME AND THE COURT IS GIVING CONSIDERATION TO IT
<u>2:24:31 PM</u>		I THINK THAT THE PROBLEM THAT WE HAVE HERE IS THAT IF ANY PARTY WHETHER THEY REALLY ARE A SETTLING PARTY OR THE NON-SETTLING PARTIES ARE ALLOWED TO START FILING MAJOR MOTIONS DURING THE DISCOVERY SCHEDULE IT REALLY UPSETS THE VERY CAREFUL BALANCE THAT THE COURT HAS TAKEN TO COME UP WITH A SCHEDULE

<u>2:24:55 PM</u>		I RECOGNIZE THAT IN THE COURTS SECOND AMENDED ORDER SETTING THE SCHEDULE THERE WAS THE DATE OF OCTOBER 5TH ANY PARTY MAY FILE A PROPOSED COMMON ISSUES OF LAW OR FACT THAT ARE RIPE FOR RESOLUTION
<u>2:25:22 PM</u>		THE SCHEDULING ORDER DOES NOT TALK AT ALL ABOUT ONCE SUCH PROPOSED ISSUES ARE RIPE FOR RESOLUTION WHAT THE SCHEDULE WOULD BE
<u>2:25:36 PM</u>		MR HORNER HAS ALREADY TOLD THE COURT THAT IF THE ISSUES RAISED IN HIS MOTION ARE CONSIDERED BY THE COURT THAT WE MIGHT ACTUALLY DISPOSE OF THIS CASE
<u>2:26:17 PM</u>		MR HORNER IS CLAIMING THAT HE IS PREJUDICED
<u>2:26:43 PM</u>		THE PREJUDICE I WOULD SUBMIT IS TO THE PROCESS THAT THE COURT HAS SET FORWARD TO HAVE AN ORDERLY DISCOVERY PROCESS NOT INTERRUPTED BY THE FILING OF DISPOSITIVE MOTIONS
<u>2:27:23 PM</u>	JOHN UTTON	WE AGREE WITH ALL THAT MR POLLACK SAID
<u>2:28:40 PM</u>		IF WE ALLOW THE PROCESS TO GO FORWARD JUST BY ONE PARTY DETERMINING WHAT ISSUES ARE OF INTEREST TO THEM (STATES EXAMPLE)
<u>2:29:51 PM</u>		I THINK THAT WE WOULD NEED GREATER CLARITY FROM THE COURT AS TO WHICH PARTIES ARE FILING AND WHEN AND WHO WOULD FILE FIRST
<u>2:30:14 PM</u>		IF IT IS NOT MANAGED BY THE COURT THIS COULD REALLY GET OUT OF HAND
<u>2:30:27 PM</u>	ADAM RANKIN	WANT TO EMPHASIZE THAT I SUPPORT WHAT MR POLLACK SAID ABOUT DISRUPTING THE COURSE OF A SHORT PERIOD OF DISCOVERY
<u>2:30:44 PM</u>		I THINK THAT IT IS IMPORTANT FOR DISCOVERY PURPOSES FOR US TO UNDERSTAND BETTER WHAT THEORIES (INAUDIBLE)
<u>2:31:27 PM</u>	CELINE HAWKIN S	WE CONCURRED WITH THE MOTION I JUST WANTED TO NOTE IN ADDITION TO WHAT MR POLLACK SAID WE WOULD LIKE TO NOTE THAT SOME OF THE ISSUES THAT MR HORNER HAS RAISED IT IS UNCLEAR WHETHER THEY ARE APPLICABLE TO THE UMUT OR LIMITED TO THE NN
<u>2:31:52 PM</u>		AT MINIMUM WE WOULD ASK YOUR HONOR TO CONSIDER AT MINIMUM EXTENDING THE DATE PAST DECEMBER 3RD BECAUSE OF THAT
<u>2:32:10 PM</u>	J	MR HORNER BECAUSE YOU FILED THE BRIEF I WILL GIVE YOU THE LAST WORD
<u>2:32:20 PM</u>	LORESS A	THE CONFERENCE CALL IS GOING TO BE ENDING SHORTLY SO LETTING PEOPLE ON THE PHONE KNOW THAT WHEN IT ENDS THEY CAN CALL BACK IN
<u>2:32:50 PM</u>	HORNER	AS FAR AS TIMING OF MOTIONS AND RESPONSES
<u>2:33:20 PM</u>		I HAVE BEEN TRYING TO GET THESE ISSUES BEFORE THE COURT FOR 14 YEARS SPECIFICALLY WITH REGARD TO THE NN SINCE 2004
<u>2:33:44 PM</u>		THE COURT DECIDED THAT THESE ISSUES SHOULD BE PUT OFF UNTIL THIS INTER SE
<u>2:33:56 PM</u>		THE FIRST OPORTUNITY FOR ME TO GET THESE MOTIONS BEFORE THE COURT WAS PURSUANT TO THE COURTS ORDER THAT SAID ON OR AFTER OCTOBER 5TH

<u>2:34:18 PM</u>		I DID NOT FILE ON OCTOBER 5TH BECAUSE
<u>2:34:37 PM</u>		I HAVE BEEN TRYING TO DO THIS FOR YEARS, THIS IS NO SURPRISE TO ANYBODY
<u>2:35:26 PM</u>		IT IS TIME TO ADDRESS IT NOW
<u>2:35:37 PM</u>	J	I AM PREPARED TO RULE ON IT
<u>2:35:39 PM</u>		I THINK THE TIMING IS NOT GOOD AND I AM TRYING TO LOOK AT THE ORDERLY PROCESS OF THINGS AS BEEN POINTED OUT. RIGHT NOW WE ARE IN DISCOVERY, EVERYBODY HAS A GOOD DEAL OF WORK TO DO, AND THAT IS AN UNDERSTATEMENT
<u>2:36:01 PM</u>		TO THROW INTO THE PROCESS AT THIS POINT A DISPOSITIVE MOTION WHICH IS RAISES SIGNIFICANT ISSUES I THINK IS JUST GOING TO THROW INTO DISARRAY THE PROCESS THAT IS NOW IN PLACE
<u>2:36:26 PM</u>		EXPLAINS FURTHER
<u>2:37:00 PM</u>		BECAUS EOF THE DISCOVERY THAT IS GOING ON AND WILL GO ON FOR THE NEXT 3 MONTHS WE NEED TO PUT OFF MOTIONS LIKE THIS. I ADDRESS NOT ONLY THIS MOTION BUT ALSO I THINK GENERALLY WE NEED TO BE ADDRESSING THOSE DISPOSITIVE MOTIONS AT THE END OF THE DISCOVERY PROCESS
<u>2:37:35 PM</u>		IF YOU HAVE A MOTION THAT YOU WANT TO FILE AND WANT TO BRING IT TO THE ATTENTION OF THE COURT AND LET THE COURT ADDRESS WHETHER IT IS APPROPRIATE TO FILE AND ADDRESS PRIOR TO THE CLOSE OF DISCOVERY I CAN CERTAINLY DO THAT AND ANALIZE EACH MOTION
<u>2:37:55 PM</u>		THIS ONE I THINK IS VERY SIGNIFICANT, IS GOING TO TAKE UP A GOOD DEAL OF TIME OF THE PARTIES AND THAT TIME IS NOW FOCUSED TOWARD DISCOVERY
<u>2:38:12 PM</u>	HORNER	RESPONSE REGARDING 2 WEEKS FOR HIS RESPONSE
<u>2:39:30 PM</u>		IF I GET AS MUCH TIME AS THEY GET TO RESPOND
<u>2:40:03 PM</u>	J	THE COURT WILL ENTER AN ORDER WITH RESPECT TO THE ISSUES RAISED IN CONNECTION TO THIS MOTION
<u>2:40:24 PM</u>		TURN NOW TO THE STATUS OF DISCOVERY
<u>2:40:58 PM</u>	GUSS GUARIN O	WITH RESPECT TO THE DISCOVERY (INAUDIBLE)
<u>2:41:37 PM</u>		WITH RESPECT TO THE SJWC WE HAVE IDENTIFIED 3 PEOPLE WHO WE ARE INTERESTED IN DEPOSING
<u>2:41:48 PM</u>		TALKING ABOUT DEPOSITIONS
<u>2:42:20 PM</u>	J	WHEN ARE YOUR NOTICING THESE DEPOSITIONS FOR
<u>2:42:20 PM</u>	GUARIN O	ANSWERS
<u>2:42:51 PM</u>	J	DO YOU ANTICIPATE STARTING DEPOSITIONS IN DECEMBER
<u>2:42:52 PM</u>	GUARIN O	JANUARY
<u>2:43:12 PM</u>	JOLENE MCCALE B	I CAN TELL YOU THAT THE NON-SETTLING PARTIES HAVE BEEN MEETING BY TELEPHONE REGULARLY TO IDENTIFY THE WITNESSES THAT MAY NEED TO BE DIPOSE
<u>2:43:30 PM</u>		LISTS WITNESSES

<u>2:43:36 PM</u>		WE ARE CURRENTLY WORKING WITH THE SETTLING PARTIES...
<u>2:44:01 PM</u>	J	HOW ABOUT ACCESS TO THE DOCUMENTS, AT OUR LAST CONFERENCE WE HAD A DISCUSSION CONCERNING THE ACCESS. I JUST WANT TO FOLLOW UP AND SEE IF THERE ARE ANY CONTINUING PROBLEMS
<u>2:44:14 PM</u>	MCCALE B	RECOLLECTION IS VAGUE AS TO WHAT THE ISSUE WAS WITH REGARD TO THE ACCESS
<u>2:44:21 PM</u>	J	THERE WAS A POSTING AND I UNDERSTOOD THAT THERE WAS GOING TO BE A REPORT TO THE COURT ABOUT THE MANNER IN WHICH THERE WAS GOING TO BE POSTING OF DOCUMENTS ON THE STATE WEBSITE
<u>2:44:37 PM</u>	MCCALE B	FOR THE PARTIES TO ALL HAVE ACCESS TO THE DOCUMENTS, WE HAVE NOT PURSUED THAT
<u>2:44:45 PM</u>		OW THAT THE NAVAJO NATION PROVIDED SOME ADDITIONAL DOCUMENTS TO MR MARSHALL AND SENT A NOTICE TO ALL OF US SO WE ARE WORKING TO MAKE SURE THAT EVERYONE RECEIVES NOTICE ABOUT WHERE THE DOCUMENTS ARE AVAILABLE
<u>2:45:21 PM</u>	J	SO THAT PROBLEM HAS SUBSIDED TO THE EXTENT THAT THERE WAS A PROBLEM
<u>2:45:42 PM</u>	RANKIN	THE NONSETTLING PARTIES HAVE BEEN IN DISCUSSION
<u>2:46:17 PM</u>		ASKING ABOUT EMAIL OF PRODUCTION OF DICUMENTS
<u>2:46:33 PM</u>	GUARIN O	ANSWERING
<u>2:46:57 PM</u>	DAVID GEHLER T	INDICATING THAT WHEN PHONE DISCONNECTED HE MISSED SOME INFORMATION SO NOT SURE WHAT THE ISSUE IS
<u>2:47:12 PM</u>	GUARIN O	WITH RESPECT TO ANY ISSUE THAT MIGHT BE ASSOCIATED WITH THESE MATERIAL MR GEHLERT HAS REPORTED BACK TO THE NON-SETTLING PARTIES THE RESULTS
<u>2:47:47 PM</u>		PROPOSE AT FIRST THEY SHOULD REVIEW WHAT MR GEHLERT HAS PROVIDED PREVIOUSLY, IF THERE IS STILL A PROBLEM THAT THEY SEE THEY SHOULD CONTACT US
<u>2:48:08 PM</u>	?? (UNIDENTIFIED)	I WAS NOT INVOLVED IN THIS ISSUE
<u>2:48:31 PM</u>	J	WHY DONT YOU MAKE EFFORTS TO RESOLVE IT AND IF YOU CAN NOT THEN BRING IT TO THE COURTS ATTENTION
<u>2:48:45 PM</u>		WE HAVE A DATE SET FOR JANUARY 9TH FOR A DISCOVERY CONFERENCE WILL HEAR AT THAT TIME ISSUES THAT COME BEFORE THE COURT
<u>2:49:03 PM</u>		WE ALSO HAVE A DATE IN FEBRUARY
<u>2:49:12 PM</u>	LORESS A	FEBRUARY 12TH
<u>2:49:30 PM</u>	?? UNIDENTIFIED)	THAT IS ONE OF THE DAYS THAT WE HAVE IDENTIFIED FOR THE DEPOSITION OF MR WHIPPLE
<u>2:49:34 PM</u>	J	OK WE WILL SWITCH THAT DATE THEN
<u>2:50:18 PM</u>	LORESS A	WE WANT TO GET IT IN BEFORE THE CLOSE OF DISCOVERY
<u>2:50:19 PM</u>	J	YES I WOULD LIKE TO HAVE THAT EARLY IN FEBRUARY

<u>2:50:47 PM</u>	LORESS A	CAN SEE ABOUT MONDAY THE 11TH
<u>2:51:10 PM</u>	J	OK THEN THE SECOND DATE IS THE 11TH
<u>2:51:23 PM</u>	VICTOR MARSHA LL	VERIFICATION REQUIREMENT APPLIES EQUALLY TO THE SETTLING PARTIES AS WELL
<u>2:51:33 PM</u>	J	FOLLOW THE RULES
<u>2:51:41 PM</u>	MARSHA LL	IN THAT REGARD IF A PARTICULAR PERSON IS ANSWERING ONE INTERROGATORY OR PART THEY SIGN AND IDENTIFY WHAT THEY ARE ANSWERING TO
<u>2:52:14 PM</u>	J	IS THERE ANY PROBLEM IN THAT REGARD
<u>2:52:19 PM</u>	GUARIN O	WE DID FILE OUR INTERROGATORIES (INAUDIBLE)
<u>2:52:52 PM</u>	MARSHA LL	I WILL LOOK AT THAT. WITH RESPECT TO STATUS OF DISCOVERY I WANTED LET THE COURT BE AWARE THAT WE HAVE ALREADY FILED SOME TARGETED DISCOVERY WITH RESPECT TO THE PUBLICATION OF THE STATE ENGINEER PERMITS
<u>2:53:09 PM</u>		WE HAVE ASKED THE PLAINTIFF SETTLING PARTIES TO ADMIT THAT AS BEST WE CAN TELL THOSE APPLICATIONS WERE NEVER PUBLISHED
<u>2:53:30 PM</u>		WE HAVE LOOKED AT THE FILES AND HAVE SEEN NO PROOF OF PUBLICATION AS REQUIRED BY LAW
<u>2:53:46 PM</u>		WE ARE GOING TO PROPOUND WRITTEN DISCOVERY TO UNITED STATES WITH RESPECT TO OTHER PRIORITY OR RESERVED RIGHT CLAIMS THAT THE UNITED STATES MIGHT MAKE TO THE SAN JUAN RIVER FOR EXAMPLE ENDANGERED SPECIES
<u>2:54:17 PM</u>		TALKING ABOUT ENDANGERED SPECIES
<u>2:54:29 PM</u>		WE HOPE TO FILE THEM MAYBE LATER THIS WEEK
<u>2:54:33 PM</u>		AS WE IDENTIFY TARGETED FACTUAL ISSUES THAT WE WANT INFORMATION ON WE WILL CONTINUE TO FILE
<u>2:54:41 PM</u>	J	WE ARE NOW AT THE POINT WHERE I WOULD LIKE TO ADDRESS YOUR ISSUES CONCERNING NIIP AND THE NAVAJO POPULATION
<u>2:54:59 PM</u>	MARSHA LL	WITH RESPECT TO THE EARLIER TARGETED DISCOVERY WHICH IS NOT YET RESOLVED WE HAVE 2 ISSUES
<u>2:55:19 PM</u>		LISTING CHRONOLOGY
<u>2:56:10 PM</u>		THESE ISSUES HAVE BEEN ADDRESSED BY THE COURT ON 2 OR 3 HEARINGS BUT THE COURT INDICATED IN GENERAL TERMS THOSE 2 WERE RELEVANT LINES OF DISCOVERY
<u>2:56:28 PM</u>		IN ADDITION ON THE NIIP ISSUE AT THE LAST CONFERENCE THE COURT SAID CONFER YET AGAIN. I DID THAT AND I PROVIDED THAT TO THE COURT
<u>2:56:54 PM</u>		TALKING ABOUT THE STATUS OF THE DISCOVERY ON THE NAVAJO POPULATION
<u>2:56:57 PM</u>		WE ARE LOOKING FOR CENSUS DATA AND TRIBAL ENROLLMENT DATA
<u>2:57:26 PM</u>		WE DID SOME TIME AGO GET SOME PARTIAL INFORMATION FROM MR POLLACK
<u>2:58:02 PM</u>		I WOULD LIKE TO DIRECT THE COURTS ATTENTION AND THIS DOES HAVE INFORMATION THAT IS EXTRACTED FROM THE 2000 CENSUS

<u>2:58:17 PM</u>		WE DO NOT HAVE THE MOST RECENT CENSUS
<u>2:58:27 PM</u>		TALKING ABOUT PUBLICATION
<u>2:59:06 PM</u>		SHOWING JUDGE DOCUMENT
<u>2:59:33 PM</u>		I HAVE SPENT MOR TIME THAN I SHOULD HAVE TRYING TO EXTRACT THIS INFORMATION
<u>2:59:48 PM</u>		MR POLLACK HAD INFORMED ME THAT THE TRIBE HAS NOT PUBLISHED A COMPARABLE BOOK LIKE THIS
<u>2:59:57 PM</u>		WENT BACK TO MR POLLACK AND SAID WHETHER YOU HAVE ACTUALLY PUBLISHED IT ON PAPER CAN WE GET THAT DATE
<u>3:00:10 PM</u>		WE HAVE HEARD BY WAY OF OBJECTION IS THAT ...
<u>3:00:43 PM</u>		WE ASKED WHAT IS THE POPULATION ON THE RESERVATION IN NM
<u>3:01:04 PM</u>		IT SAYS YOU CAN ONLY DO THAT IF THE BURDEN ON THE REQUESTING PARTY IS ESSENTIALLY THE SAME AS ON THE REQUESTED PARTY, IT IS NOT
<u>3:01:22 PM</u>		EXPLAINS WHY
<u>3:01:33 PM</u>		YOU HAVE TO KNOW THE DATABASE AND YOU HAVE TO KNOW THE QUERY SYSTEM
<u>3:02:07 PM</u>		THEN THEY SAID WELL MAYBE IT IS OUT THERE SOMEWHERE IN THE PUBLIC DOMAIN
<u>3:02:12 PM</u>		THAT IS NOT A SUFFICIENT ANSWER TO A DISCOVERY REQUEST
<u>3:02:51 PM</u>		IT IS ALSO NOT ENOUGH TO SAY THAT THAT IS SOME OTHER DEPARTMENT
<u>3:03:16 PM</u>		WE WOULD ASK THE COURT.. TO PRODUCE THAT INFORMATION
<u>3:03:32 PM</u>		THAT IS THE NAVAJO POPULATION, DO YOU WANT ME TO STOP THERE
<u>3:03:37 PM</u>	J	NO YOU CAN GO AHEAD
<u>3:03:42 PM</u>	MARSHALL	THE OTHER ISSUE IS NIIP THE CHRONOLOGY IS THE SAME
<u>3:03:50 PM</u>		WE THEN FILED SOME OTHER DOCUMENTS AND THEY PRODUCED SOME STUFF BUT THEY ARE NOT COMPLETE
<u>3:04:34 PM</u>		TALKING ABOUT REPORTS
<u>3:04:59 PM</u>		WE ARE MAKING PROGRESS BUT THIS IS 6 MONTHS AFTER I PROPOUNDED THE ORIGINAL INTERROGATORY AND WE ARE STILL A LONG WAY FROM HAVING THE COMPLETE DATA
<u>3:05:16 PM</u>		WE WOULD ASK THAT A MINIMUM GIVE US THAT 2010 DATA
<u>3:05:34 PM</u>		ON NIIP THE PROCESS IS CONTINUING BUT IT IS NOT COMPLETE
<u>3:05:44 PM</u>		ON NIIP THEY STILL HAVE NOT IDENTIFIED THE PEOPLE WHO CAN TESTIFY FROM PERSONAL KNOWLEDGE ABOUT WHO DOES WHAT FROM NIIP
<u>3:05:54 PM</u>		FROM THE DOCUMENTS THAT THEY HAVE SENT ME IT APPEARS THAT MAY HAVE CHANGED OVER TIME
<u>3:06:26 PM</u>	STANLEY POLLACK	ADDRESSING THE POPULATION ISSUE
<u>3:06:53 PM</u>		WITH RESPECT TO THE DOCUMENTS THAT HE IS REFERRING TO

<u>3:07:47 PM</u>		WITH RESPECT TO 2010 THERE IS NO REPORT
<u>3:08:08 PM</u>	J	IS THAT LSR
<u>3:08:10 PM</u>	POLLAC K	THAT IS CORRECT, LARRY ROGERS AGREED TO SEND ME A TABLE THAT HAD NOT JUST THE 3 TABLES THAT MR MARSHALL FOR THE LAST 3 CENSUSES THE TABLE INCLUDES THE 2010 CENSUS DATA
<u>3:08:34 PM</u>		THAT WAS SUPPLIED INITIALLY IN OUR INITIAL RESPONSES TO HIS DISCOVERY
<u>3:09:17 PM</u>		IT HAS BEEN PROVIDED
<u>3:09:37 PM</u>		IT IS TITLED 4 DECADES OF INDIAN POPULATION
<u>3:10:02 PM</u>		I BELIEVE WE HAVE FULLY COMPLIED AND THE COURT HAS ALREADY RULED THAT WE HAVE FULLY COMPLIED
<u>3:10:12 PM</u>	J	WILL TAKE YOU UP THEN ON YOUR OFFER IF YOU CAN GET ACCESS TO THE INTERNET REPROVIDE IT TO MR MARSHALL
<u>3:10:22 PM</u>	POLLAC K	I WILL
<u>3:10:38 PM</u>		WITH RESPECT TO NIIP
<u>3:11:42 PM</u>		ALL OF THOSE REPORTS WERE ORIGINALLY PROVIDED BY MR GUARINO AND ARE AVAILABLE AT THE FARMINGTON REPOSITORY
<u>3:11:55 PM</u>		HE SAYS THAT WE HAVE NOT PROVIDED DOCUMENTS BUT HE HAS NOT GONE TO THE REPOSITORY TO LOOK AT THE DOCUMENTS THAT HAVE BEEN PROVIDED
<u>3:12:02 PM</u>		THE INFORMATION THAT HE SEEKS HAS ALREADY BEEN PROVIDED
<u>3:12:32 PM</u>		THE IMPORTANT POINT HERE IS THE UNITED STATES AND THE NAVAJO NATION BELIEVE HE HAS GOT EVERYTHING THAT WE HAVE
<u>3:12:46 PM</u>		TO THE EXTENT THAT HE IS ASKING FOR REPORTS THAT SHOW THE VARIOUS THINGS THAT HE WANTS TO DEMONSTRATE
<u>3:13:02 PM</u>		I DO NOT BELIEVE THAT THERE IS A REPORT OUT THERE THAT TALKS ABOUT ALL OF THE ELECTRIC USES AT THE PROJECT
<u>3:13:18 PM</u>		HE IS ASKING US TO ESSENTIALLY GO OUT AND DO A REPORT ON SOMETHING THAT HAS NOT BEEN DONE
<u>3:13:23 PM</u>	J	WHAT ABOUT OTHER THAN REPORTS
<u>3:13:29 PM</u>	POLLAC K	RESPONSE
<u>3:14:07 PM</u>		ALL I CAN SAY IS THAT WE HAVE GIVEN HIM WHAT WE HAVE
<u>3:14:21 PM</u>	J	WHAT ABOUT IDENTIFICATION OF INDIVIDUALS THAT HAVE INFORMATION
<u>3:14:25 PM</u>	POLLAC K	AGAIN IT IS NOT CLEAR WHAT HE IS ASKING FOR
<u>3:14:33 PM</u>		I HEARD HIM SAY PLEASE IDENTIFY A WITNESS WHO COULD TESTIFY ABOUT ROADS
<u>3:15:02 PM</u>		LIONEL HASKIE
<u>3:15:27 PM</u>	J	THEN IF THE INFORMATION NEEDS TO GET MORE SPECIFIC THEN...
<u>3:15:42 PM</u>	POLLAC K	YES AND WE CAN CONFER ABOUT THAT. THE PROBLEM WITH MR MARSHALLS REQUEST IS...
<u>3:16:12 PM</u>		I BELIEVE THAT AS A GENERAL PROPOSITION WE HAVE FULLY COMPLIED WITH DISCOVERY

<u>3:16:16 PM</u>		WE HAD FILED A MOTION FOR PROTECTIVE ORDER WITH RESPECT TO VARIOUS ISSUES AT NIIP
<u>3:16:28 PM</u>		EXPLAINS
<u>3:17:18 PM</u>	J	MR GUARINO DO YOU HAVE ANYTHING THAT YOU WOULD LIKE TO ADD
<u>3:17:29 PM</u>	GUARINO	WITH RESPECT TO THE MATTERS THAT MR MARSHALL HAS RAISED WITH RESPECT TO NAVAJO POPULATION AND NAVAJO INDIAN IRRIGATION PROJECT
<u>3:17:43 PM</u>		THESE MATTERS WERE SUBJECT OF HIS PREVIOUS MOTIONS WHICH THE COURT HAS RULED AND FOUND THE UNITED STATES TO BE IN COMPLIANCE
<u>3:19:22 PM</u>		THIS IS NOT A QUESTION THAT ANYONE AT THE UNITED STATES HAS EVER ANALYSED
<u>3:20:29 PM</u>	J	HAS HE REQUESTED THE NAMES OF INDIVIDUALS WHO COULD TESTIFY
<u>3:20:32 PM</u>	GUARINO	YES HE DID AND WE GAVE HIM THE NAMES OF THE 2 FOLKS OVER AT BIA AND BOR WHO ARE IN CHARGE OF RECORDS
<u>3:21:44 PM</u>		WE CONTINUE TO TRY TO FACILITATE INFORMATION TO MR MARSHALL
<u>3:21:47 PM</u>		IT DOES NOT MEAN THAT WE ARE GOING TO GO OUT AND DO HIS ANALYSIS
<u>3:22:13 PM</u>	MARSHALL	WITH RESPECT TO VARIOUS REPRESENTATIONS I DO TRY, I CAN BE VIGOROUS IN MY ARGUMENTS, BUT I TRY TO VERY CAREFUL ABOUT THE REPRESENTATIONS I MAKE TO THE COURT ABOUT WHAT DID OR DID NOT HAPPEN
<u>3:22:30 PM</u>		THEY SAY I HAVE NOT GONE TO THE NIIP REPOSITORY
<u>3:22:36 PM</u>		I ASKED MR POLLACK IN ADVANCE OF THE HEARING IN AZTEC IF I COULD VISIT THE NIIP REPOSITORY WHILE I WAS MAKING THE TRIP UP THERE, THE ANSWER WAS NO
<u>3:22:47 PM</u>		I CAN PROVIDE THE EMAILS ON THAT
<u>3:22:59 PM</u>		WHAT WE HAVE HERE IS A CONTINUATION OF THE INTER AGENCY INTER DEPARTMENTAL DODGE
<u>3:23:09 PM</u>		FOR EXAMPLE MR POLLACK SAID I HAVE ASKED THE PEOPLE AT NAPI
<u>3:23:24 PM</u>		MY INTERROGATORY SPECIFICALLY ASKED ABOUT BOTH BECAUSE I DO NOT UNDERSTAND THE DISTINCTION IF THERE REALLY ANY
<u>3:24:29 PM</u>		TALKING ABOUT QUESTIONS THAT HE ASKED
<u>3:24:49 PM</u>	J	WAS THAT AN INFORMAL REQUEST OR AN INTERROGATORY
<u>3:25:05 PM</u>	MARSHALL	THAT AS MR GUARINO INDICATED WAS A FOLLOW UP
<u>3:25:18 PM</u>		IT WAS AN INFORMAL REQUEST
<u>3:25:55 PM</u>		WE ARE HAVING A DODGE BETWEEN THE NN AND THE US AND YET THE US IS HERE MAKING A CLAIM ON BEHALF OF THE NN
<u>3:26:52 PM</u>		WITH RESPECT TO POPULATION DATA WE HAVE NOT HEARD FROM THE US
<u>3:27:05 PM</u>		THE US IS THE ONE THAT KEEP THE OFFICIAL CENSUS DATA. WE HAVE NOT RECEIVED A RESPONSE FROM MR GUARINO
<u>3:27:11 PM</u>		WE WANT THEM TO VOUCH FOR THAT INFORMATION

<u>3:27:21 PM</u>	J	BEFORE YOU WERE ASKING FOR THE REPORT, YOU WANTED THE REPORT THAT MR POLLACK HAD PROVIDED TO YOU FOR EARLIER CENSUS
<u>3:27:35 PM</u>		WHAT I HEARD MR POLLACK SAY IS THAT HE HAS PROVIDED YOU THAT DATA FROM LARRY ROGERS
<u>3:27:57 PM</u>	MARSHALL	I HAVE NOT LOOKED AT ALL OF THE DOCUMENTS THAT MR POLLACK SENT ME. I WILL REPRESENT TO THE COURT SUBJECT TO CORRECTION THAT I DO NOT THINK THE RELEVANT INFORMATION IS IN THOSE DOCUMENTS
<u>3:28:24 PM</u>	J	HE SAID BEFORE THAT HE HAS IT AND WILL GIVE IT TO YOU TOMORROW
<u>3:28:29 PM</u>	MARSHALL	IF THAT IS THE CASE I WILL TAKE A LOOK AT IT, I AM SIMPLY SAYING THAT I DO NOT BELIEVE THAT THAT HAS THE DETAIL THAT I AM LOOKING FOR
<u>3:28:46 PM</u>		IT IS NOT JUST A QUESTION OF THE CENSUS DATA, EXPLAINS WHY
<u>3:30:49 PM</u>	J	CAN YOU TELL ME SPECIFICALLY, I HAVE HEARD MR POLLACK AND MR GUARINO TELL ME THAT THEY HAVE PROVIDED TO YOU THE INFORMATION THAT THEY HAVE THAT HAS BEEN MADE AVAILABLE TO THEM BY THEIR RESPECTIVE CLIENTS WITH RESPECT TO YOUR REQUEST
<u>3:31:11 PM</u>		CAN YOU IDENTIFY SPECIFICALLY WHAT IT IS, IN WHAT WAY THEY ARE NOT CORRECT IN WHAT THAT THEY HAVE NOT PRODUCED TO YOU FULLY
<u>3:31:27 PM</u>	MARSHALL	ANSWERS
<u>3:31:49 PM</u>	J	WHAT I HEARD MR POLLACK SAY IS THAT IF IT IS NOT IN IT THEY DO NOT HAVE IT
<u>3:31:57 PM</u>	MARSHALL	WHO IS THEY
<u>3:32:51 PM</u>	J	HAVE YOU ASKED THAT IN AN INTERROGATORY
<u>3:32:53 PM</u>	MARSHALL	NO
<u>3:33:01 PM</u>		I DID THIS IN RESPONSE TO THE COURTS DIRECTIVE
<u>3:34:08 PM</u>	J	A LITTLE FOLLOW UP
<u>3:34:57 PM</u>	??(UNIDENTIFIED)	ANSWERS
<u>3:35:25 PM</u>		MY CLIENT IS THE NN. THE PROJECT IS THE NAVAJO INDIAN IRRIGATION PROJECT
<u>3:36:08 PM</u>		EXPLAINING HOW HE COLLECTS INFORMATION
<u>3:37:03 PM</u>		TALKING ABOUT MR MARSHALLS REQUEST TO VISIT THE REPOSITORY
<u>3:37:49 PM</u>	J	DO THOSE DOCUMENTS INCLUDE BOR DOCUMENTS AS WELL
<u>3:37:56 PM</u>	POLLACK	NO ANSWER
<u>3:38:01 PM</u>	GUARINO	TRIES TO ANSWER QUESTION
<u>3:38:46 PM</u>		WHEN WAS IT TURNED OVER FROM BOR TO BI?
<u>3:38:51 PM</u>	GUARINO	BOTH AGENCIES ARE UP, OPERATING DIFFERENT PARTS
<u>3:38:57 PM</u>		WE HAVE 3 REPOSITORIES, TELLING WHERE

<u>3:40:06 PM</u>		MR MARSHALL HAS SHOWN A RESISTANCE TO UNDERSTAND...
<u>3:40:23 PM</u>		HE CONFLATES IT, MAKES NO ATTEMPT TO MAKE A DISTINCTION
<u>3:41:34 PM</u>	POLLAC K	JUST HERE FOR QUESTIONS
<u>3:41:45 PM</u>		THE NN DOES NOT POSESS EVERY DOCUMENT RELATIVE TO NIIP THAT THE US HAS PRODUCED
<u>3:41:54 PM</u>		THOSE DOCUMENTS THAT WE HAVE WE HAVE DISCLOSED
<u>3:41:55 PM</u>	J	AND THAT IS RESPECT TO NIIP AND NAPI
<u>3:41:58 PM</u>	POLLAC K	ANSWERS
<u>3:42:43 PM</u>	J	HE REPRESENTS THAT HE WAS DENIED ACCESS
<u>3:42:46 PM</u>	POLLAC K	HE WAS IN AZTEC AND ASKED IF HE COULD STOP BY THE NAPI OFFICES AND GO THROUGH THE NAPI OFFICES
<u>3:42:54 PM</u>		THERE IS NO REPOSITORY AT THE NAPI OFFICE
<u>3:42:58 PM</u>	J	SO WHAT IS THE AVAILABILITY OF THE DIFFERENT REPOSITORIES
<u>3:43:01 PM</u>	POLLAC K	ANSWER
<u>3:43:36 PM</u>		MR MARSHALL NEVER CONTACTED THE US ABOUT VISITING THE REPOSITORY IN FARMINGTON WHEN HE WAS IN AZTEC
<u>3:43:44 PM</u>	J	WHAT ABOUT MR MARSHALLS QUESTION ABOUT WHO PROVIDED WHAT FUNCTIONS AT WHAT TIME
<u>3:43:55 PM</u>	POLLAC K	AGAIN THAT IS A MATTER THAT I DO NOT HAVE THE ANSWER TO AND WAS NO FORMAL DISCOVERY ON THAT
<u>3:44:09 PM</u>	J	WHEN MR MARSHALL SAID IT WAS FROM PREVIOUS INTERROGATORIES
<u>3:44:27 PM</u>	POLLAC K	THE DISCOVERY THAT WE RECEIVED FROM MR MARSHALL THAT HE IS REFERRING TO, IT IS CALLED DISCOVERY, IT DOES NOT HAVE A MORE FORMAL LABEL BUT EFFECTIVELY WHAT IT WAS WAS A REQUEST FOR PRODUCTION
<u>3:45:06 PM</u>		TO THE EXTENT THAT HE IS NOW ASKING SPECIFIC QUESTIONS ... THAT HAS NEVER BEEN PRESENTED BEFORE
<u>3:45:14 PM</u>	J	HOW LONG WILL IT TAKE YOU TO GET RESPONSES TO SAY 10 QUESTIONS THAT ARE ALONG THE LINES OF WHO PROVIDED WHAT FUNCTIONS AT WHAT TIME IF PROPOUNDED IN FORMAL INTERROGATORIES
<u>3:45:35 PM</u>	POLLAC K	ASSUMING THAT THE NN HAS THE INFORMATION ... I ASSUME THE PEOPLE AT NAPI COULD RESPOND IN SHORT ORDER
<u>3:46:02 PM</u>	J	I AM ASKING YOU JUST ABOUT THE NN
<u>3:46:06 PM</u>	POLLAC K	ANSWERS
<u>3:46:19 PM</u>	J	DO YOU THINK YOU COULD HAVE IT IN 10 DAYS FROM THE DATE THAT YOU ARE SERVED
<u>3:46:21 PM</u>	POLLAC K	I WILL TRY
<u>3:46:38 PM</u>		WHAT EVER DEADLINE THE COURT GIVES I WILL ADVISE THEM TO COMPLY

