

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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MCF

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

**STATE OF NEW MEXICO, *ex rel.*
State Engineer,**

Plaintiff,

vs.

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

UNITED STATES OF AMERICA, *et al.*,

Defendants.

**JICARILLA APACHE TRIBE and the
NAVAJO NATION,**

Defendant-Intervenor.

**AB-07-1
Claims of the Navajo Nation**

**ORDER DENYING THE UNITED STATES' MOTION FOR RECONSIDERATION AND
CLARIFYING THE COURT'S NOVEMBER 30, 2012 DISCOVERY ORDER**

This matter comes before the Court on the United States' Motion for Reconsideration of the Court's Order of November 30, 2012 and Request for Expedited Ruling filed December 14, 2012. The Court issues this order to clarify the November 30, 2012 order without further briefing in view of the existing discovery obligations of the parties.

The United States' motion requests this Court to reconsider a matter determined by the November 30, 2012 Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests. In that order, the Court sustained objections to discovery requests of the United States concerning the good faith of the United States with respect the legal and technical basis for its Statement of Claims and the comparison of the Statement of Claims with the Settlement Agreement. The Court determined that, "considering the needs of this proceeding, the limitations of the parties' resources, and the importance of the issues at stake in the litigation pursuant to Rule

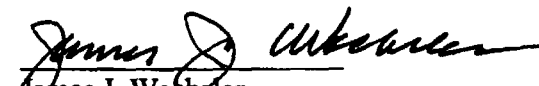
1-026(B)(2)(C),” the discovery requests were not generally reasonably calculated to lead to the discovery of admissible evidence, not relevant to the legal standard in this proceeding, or involved a burden or expense that outweighed their likely benefit. The November 30, 2012 order further stated, in connection with the United States’ good faith legal and technical basis for its Statement of Claims, that “the Statement of Claims is not a basis for evaluating any prong of the legal standard” established in this proceeding.

The United States construes this language as possibly (a) barring the United States from relying on its Statement of Claims during the course of this proceeding, and (b) presenting a conflict between the November Discovery Order and the April 19, 2012 Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof.

The Statement of Claims is relevant to these proceedings because it is the basis for the United States’ evidentiary presentation at trial, should the Settlement Agreement not be approved. It thus has bearing on the potential claims that could be secured at trial. The Statement of Claims is also a tool by which the Non-Settling Parties may compare the relative benefits of the Settlement Agreement with the risks of going to trial. The Court has overruled objections to interrogatories and requests for production concerning the water rights that could be secured by the Navajo Nation at trial because these discovery requests are directly related to prong 3 of the legal standard of whether there is “a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial.” Because the Statement of Claims, in and of itself, does not appear to be dispositive of the prongs of the legal standard at this stage of the proceeding, the Court determined that the burden or expense of the proposed discovery related to the Statement of Claims outweighed its likely benefit. Nothing in the November 30, 2012 order is intended to address or foreclose the propriety of the use of the Statement of Claims by the United States in this

proceeding. The United States' motion is denied.

IT IS SO ORDERED.


James J. Webster
Presiding Judge


1-026(B)(2)(C),” the discovery requests were not generally reasonably calculated to lead to the discovery of admissible evidence, not relevant to the legal standard in this proceeding, or involved a burden or expense that outweighed their likely benefit. The November 30, 2012 order further stated, in connection with the United States’ good faith legal and technical basis for its Statement of Claims, that “the Statement of Claims is not a basis for evaluating any prong of the legal standard” established in this proceeding.

The United States construes this language as possibly (a) barring the United States from relying on its Statement of Claims during the course of this proceeding, and (b) presenting a conflict between the November Discovery Order and the April 19, 2012 Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof.

The Statement of Claims is relevant to these proceedings because it is the basis for the United States’ evidentiary presentation at trial, should the Settlement Agreement not be approved. It thus has bearing on the potential claims that could be secured at trial. The Statement of Claims is also a tool by which the Non-Settling Parties may compare the relative benefits of the Settlement Agreement with the risks of going to trial. The Court has overruled objections to interrogatories and requests for production concerning the water rights that could be secured by the Navajo Nation at trial because these discovery requests are directly related to prong 3 of the legal standard of whether there is “a reasonable basis to conclude that the Settlement Agreement provides for less than the potential claims that could be secured at trial.” Because the Statement of Claims, in and of itself, does not appear to be dispositive of the prongs of the legal standard at this stage of the proceeding, the Court determined that the burden or expense of the proposed discovery related to the Statement of Claims outweighed its likely benefit. Nothing in the November 30, 2012 order is intended to address or foreclose the propriety of the use of the Statement of Claims by the United States in this

proceeding. The United States' motion is denied.

IT IS SO ORDERED.


James J. Wechsler
Presiding Judge