

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2012 DEC 20 PM 1:38

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

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

Plaintiff,

vs.

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

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

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

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

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

NAME OF PARTY: San Juan Water Commission
DESCRIPTIVE SUMMARY: San Juan Water Commission's Supplemental Responses to the United States' Discovery Requests
NUMBER OF PAGES: 8 + 2-page exhibit
DATE OF SERVICE: December 20, 2012

**SAN JUAN WATER COMMISSION'S SUPPLEMENTAL RESPONSES TO
THE UNITED STATES' DISCOVERY REQUESTS**

Pursuant to the Court's August 7, 2012, Amended Order Setting Schedule Governing Discovery on the Non-Settling Parties and Remaining Proceedings, the Court's November 30, 2012, Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests, and New Mexico Rules of Civil Procedure 1-026, 1-033, 1-034, and 1-036, San Juan Water Commission ("SJWC") hereby supplements its previous responses to the discovery requests propounded by the United States as follows:

*SJWC's Supplemental Responses to the
United States' Discovery Requests*

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Definitions

“**Settlement Act**” refers to the Northwestern New Mexico Rural Water Projects Act of 2009, Public Law 111-11, 123 Stat. 1367. Copies of the Settlement Act are publically available at numerous sources including www.gpo.gov/fdsys/pkg/PLAW-111publ11/pdf/PLAW-111publ11.pdf.

“**Settlement Agreement**” refers to the settlement agreement signed by the State of New Mexico, the Navajo Nation, and the United States on December 17, 2010 and includes the partial final decree and the supplemental partial final decree. A copy of the settlement agreement of December 17, 2010 and the Partial Final Decree were filed with the Court on January 3, 2011 as attachments to the *Settlement Motion of United States, Navajo Nation and State of New Mexico for Entry of Partial Final Decrees*. The final draft supplemental partial final decree was filed with the Court on April 2, 2012 as an attachment to the *Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation*.

“**Settlement Motion**” refers to the *Settlement Motion of United States, Navajo Nation and State of New Mexico for Entry of Partial Final Decrees* filed with the Court on January 3, 2010.

“**U.S. Statement of Claims**” refers to the *United States' Statement of Claims of Water Rights in the New Mexico San Juan River Basin on Behalf of the Navajo Nation* (filed with the Court on January 3, 2011).

Responses to Requests for Admission

RFA No. 3: As compared to the water rights described in the U.S. Statement of Claims, admit that the provisions of the Settlement Agreement will reduce impacts on junior water rights.

RESPONSE: SJWC objects to Request for Admission No. 3 because it seeks a pure legal conclusion, rather than (i) a statement or opinion of fact or (ii) the application of law to fact. Such a request is improper under New Mexico Rule of Civil Procedure 1-036(A). See *Stark-Romero v. National R.R. Passenger Co.*, 275 F.R.D. 551, 554 (D. N.M. 2011) (interpreting Federal Rule of Civil Procedure 36(a)). SJWC also objects to Request for Admission No. 3 because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The U.S. Statement of Claims is irrelevant because it is not related to any element of the Settling Parties' burden of proof, as set forth in the Court's Amended Order Establishing the Legal Standards for Evaluating the Proposed Decrees and Respective Burdens of Proof (Apr. 19, 2012).

Notwithstanding these objections, and in compliance with the Court's November 30, 2012, Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests, SJWC admits Request for Admission No. 3.

Answers to Interrogatories

Interrogatory No. 3: Unless your response to Request for Admission No. 3 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement will reduce impacts on junior water rights.

ANSWER: Based on SJWC's objections to Request for Admission No. 3, which are specifically incorporated, SJWC objects to this interrogatory. SJWC also objects to this interrogatory as overbroad to the extent it requests "in all detail every basis" for SJWC's "denial that the provisions of the Settlement Agreement will reduce impacts on junior water rights." Notwithstanding these objections, SJWC does not need to answer this Interrogatory No. 3 because SJWC has admitted Request for Admission No. 3.

Request for Production of Documents

General Objection

SJWC objects to each request for production to the extent it seeks documents protected by the attorney-client privilege or the work product doctrine. Subject to the specific objections set forth in the responses to each individual request below, SJWC has provided responsive, non-privileged documents. SJWC already has provided a privilege log identifying documents withheld from production on the basis of the attorney-client privilege or the work product doctrine.

RFP No. 1: Unless your response to Request for Admission No. 1 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 1.

RESPONSE: Based on SJWC's objections to Request for Admission No. 1 and Interrogatory No. 1, which are specifically incorporated, SJWC objects to this request. Without waiving these objections, SJWC previously produced the non-privileged documents within its custody or control that are responsive to this request. SJWC is now supplementing its previous response to this Request for Production No. 1 to specifically identify the Bates Nos. of the documents it may rely on to deny Request for Admission No. 1:

1. All documents identified in SJWC's previous answer to Interrogatory No. 1.
2. SJWC 00078-00084, 01070-01075, 01257-01295, 01296-01300, 01308, 01386, 01387-01390, 01554-01618, 01720, 01721-01833, 01849-01867, 01889-01893, 01894-01901, 01937-01940, 01941-01946, 01947-01953, 01955-01966, 01971-01980, 01981-02004, 02005, 02007-02025, 02029-02048, 02049-02051, 02052-02331, 02332-02417, 02418-04454, 06092-06100, 06306-06313, 06458-06464, 06967-07101, 07102-07229, 07230-07423, 07424-07958, 07959-08008, 08009-09853, 09854-09873, 09952-09975, 09987-09988, 10047-10095.

3. SJWC also intends to rely on (i) documents produced by the Settling Parties in this matter and (ii) documents otherwise within the custody and control of the Settling Parties.

Because discovery is continuing, SJWC has not yet identified all documents on which it will rely to support its position. SJWC will seasonably supplement its response to this request.

RFP No. 2: Unless your response to Request for Admission No. 2 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 2.

RESPONSE: Based on SJWC's objections to Request for Admission No. 2 and Interrogatory No. 2, which are specifically incorporated, SJWC objects to this request. Without waiving these objections, SJWC previously produced the non-privileged documents within its custody or control that are responsive to this request. SJWC is now supplementing its previous response to this Request for Production No. 2 to specifically identify the Bates Nos. of the documents it may rely on to deny Request for Admission No. 2:

1. See SJWC's supplemental response to Request for Production No. 1.
2. SJWC 00085-00154
3. SJWC also intends to rely on (i) documents produced by the Settling Parties in this matter and (ii) documents otherwise within the custody and control of the Settling Parties.

Because discovery is continuing, SJWC has not yet identified all documents on which it will rely to support its position. SJWC will seasonably supplement its response to this request.

RFP No. 3: Unless your response to Request for Admission No. 3 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 3.

RESPONSE: Based on SJWC's objections to Request for Admission No. 3 and Interrogatory No.3, which are specifically incorporated, SJWC objects to this request.

Notwithstanding these objections, SJWC does not need to answer this RFP No. 3 because SJWC has admitted Request for Admission No. 3.

RFP No. 5: Unless your response to Request for Admission No. 5 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 5.

RESPONSE: Based on SJWC's objections to Request for Admission No. 5 and Interrogatory No. 5, which are specifically incorporated, SJWC objects to this request. Without waiving these objections, SJWC previously produced the non-privileged documents within its custody or control that are responsive to this request. SJWC is now supplementing its previous response to this Request for Production No. 5 to specifically identify the Bates Nos. of the documents it may rely on to deny Request for Admission No. 5:

1. See SJWC's supplemental response to Request for Production Nos. 1 and 2.
2. SJWC also intends to rely on (i) documents produced by the Settling Parties in this matter and (ii) documents otherwise within the custody and control of the Settling Parties.

Because discovery is continuing, SJWC has not yet identified all documents on which it will rely to support its position. SJWC will seasonably supplement its response to this request.

RFP No. 6: Unless your response to Request for Admission No. 6 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 6.

RESPONSE: Based on SJWC's objections to Request for Admission No. 6 and Interrogatory No. 6, which are specifically incorporated, SJWC objects to this request. Without waiving these objections, SJWC previously produced the non-privileged documents within its custody or control that are responsive to this request. SJWC is now supplementing its previous response to this Request for Production No. 6 to specifically identify the Bates Nos. of the documents it may rely on to deny Request for Admission No. 6:

1. See SJWC's supplemental response to Request for Production Nos. 1 and 2.

2. SJWC also intends to rely on (i) documents produced by the Settling Parties in this matter and (ii) documents otherwise within the custody and control of the Settling Parties.

Because discovery is continuing, SJWC has not yet identified all documents on which it will rely to support its position. SJWC will seasonably supplement its response to this request.

RFP No. 7: Unless your response to Request for Admission No. 7 was an unqualified admission, provide every document on which you rely to deny (in whole or in part) Request for Admission No. 7.

RESPONSE: Based on SJWC's objections to Request for Admission No. 7 and Interrogatory No. 7, which are specifically incorporated, SJWC objects to this request. Without waiving these objections, SJWC previously produced the non-privileged documents within its custody or control that are responsive to this request. SJWC is now supplementing its previous response to this Request for Production No. 7 to specifically identify the Bates Nos. of the documents it may rely on to deny Request for Admission No. 7:

1. See SJWC's supplemental response to Request for Production Nos. 1 and 2.

2. SJWC also intends to rely on (i) documents produced by the Settling Parties in this matter and (ii) documents otherwise within the custody and control of the Settling Parties.

Because discovery is continuing, SJWC has not yet identified all documents on which it will rely to support its position. SJWC will seasonably supplement its response to this request.

RFP No. 11: As associated with Interrogatory No 11, provide every document in your possession that describes any and all harm to your water right that will be suffered in the event the Court grants the Settlement Motion.

RESPONSE: Based on SJWC's objections to Interrogatory No. 11, which are specifically incorporated, SJWC objects to this request. Without waiving these objections, SJWC previously produced the non-privileged documents within its custody or control that are

responsive to this request. SJWC is now supplementing its previous response to this Request for Production No. 11 to specifically identify the Bates Nos. of the documents that describe the harm that will be suffered by SJWC in the event the Court grants the Settlement Motion:

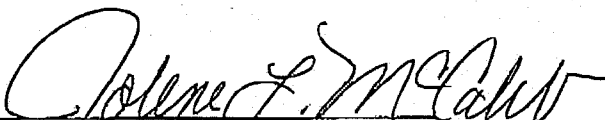
1. See SJWC's supplemental response to Request for Production Nos. 1 and 2.
2. SJWC also intends to rely on (i) documents produced by the Settling Parties in this matter and (ii) documents otherwise within the custody and control of the Settling Parties.

Because discovery is continuing, SJWC has not yet identified all documents on which it will rely to support its position. SJWC will seasonably supplement its response to this request.

A Verification signed by L. Randy Kirkpatrick, Executive Director of San Juan Water Commission, is attached hereto as Exhibit A.

Dated this 20th day of December, 2012.

TAYLOR & McCALEB, P.A.

By: 

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Attorneys for San Juan Water Commission

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

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

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
et al.,

Defendants,

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

SAN JUAN RIVER BASIN
ADJUDICATION

Subfile AB-07-1
Claims of the Navajo Nation

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

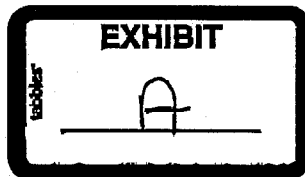
Defendants-Intervenors.

**VERIFICATION OF SJWC'S SUPPLEMENTAL RESPONSES TO THE
UNITED STATES' DISCOVERY REQUESTS**

I, L. Randy Kirkpatrick, being first duly sworn under oath, state:

1. I am Executive Director of San Juan Water Commission. I have held this position since 1993.

2. Based on my experience as Executive Director of San Juan Water Commission, I have personal knowledge of the history of the Animas-La Plata Project, SJWC's Application No. 4818 and the issues involved in the associated litigation, *San Juan Water Commission v. D'Antonio*, the amendment of NMSA Section 72-3-33, the development of the 2007 Hydrologic Determination and appended Depletion Schedule for the State of New Mexico, SJWC's repayment contracts with the Bureau of Reclamation, State Engineer Permit No. 2883, the Navajo Nation's protest of Application No. 4818, the State Engineer's rejection of the Application, the negotiation process for the Settlement Agreement, SJWC's water rights and



water permits, the supply of water available to meet SJWC's diversion demands, and SJWC's statements and actions taken concerning the Settlement Agreement.

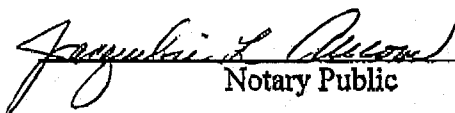
3. I have participated in the preparation of and reviewed the responses set forth in San Juan Water Commission's Supplemental Responses to the United States' Discovery Requests. The responses were prepared based on information contained within the records of San Juan Water Commission or within the documentation produced by other parties in this lawsuit.

4. The factual assertions in the San Juan Water Commission's Supplemental Responses to the United States' Discovery Requests are true and correct to the best of my knowledge.



L. Randy Kirkpatrick

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 17 day of December, 2012, by L. Randy Kirkpatrick.



Notary Public

My Commission Expires:
October 22, 2013

