

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

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

Plaintiff,

vs.

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

Defendants.

AB-07-1

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler
Presiding Judge

DESCRIPTIVE SUMMARY: Community Ditch Defendants supplement their response to U.S. RFP No. 5.

NUMBER OF PAGES: 4

DATE OF FILING: December 21, 2012

**COMMUNITY DITCH DEFENDANTS' SUPPLEMENTAL
RESPONSE TO REQUEST FOR PRODUCTION**

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:

1. Documents that might be used by the plaintiffs to prove their claims at trial are in the possession and control of the plaintiffs. The plaintiffs have not yet identified those documents. Defendants cannot speculate about what documents the plaintiffs will try to

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introduce, and what documents the court might allow into evidence, and what documents the court might consider probative on the elements which plaintiffs must prove at trial.

2. Most of the documents which plaintiffs have assembled are not admissible as evidence.

3. See the documents referenced, cited, or quoted in the Answer and Counterclaim. These have been provided or are available to plaintiffs.

4. Additional documents are in the possession and control of the plaintiffs, except to the extent that they have been destroyed or spoliated. The water rights described in the settlement and the statement of claims are made up, imaginary, exaggerated, contrary to the law, and contrary to the actual facts, so there are very few documents which support the rights claimed in either document.

5. Documents for the basis of the statement of claims are in the possession of the United States, and/or the other plaintiffs. Apparently, some of these documents have been spoliated, e.g., the emails concerning the 2007 BOR hydrologic determination, and emails involving Governor Richardson and his office. The defendants have asked for such documents in preliminary discovery or under IPRA, but plaintiffs have not yet produced them.

6. The documents relating to the 2007 BOR determination are in the possession and control of the plaintiffs. Apparently, some of these documents have been spoliated, e.g., the emails concerning the 2007 BOR hydrologic determination, and emails involving Governor Richardson and his office. This spoliation occurred after the Community Ditch Defendant-Counterclaimants sought these documents in 2007, and the court said that this would be the subject of discovery as soon as the inter se was filed. See No. D-1116-CV-75-

184, Motion for Limited Discovery Concerning 2007 BOR Hydrologic Determination (Oct. 2, 2007) and Order Denying Motion of San Juan Ag. Water Users Ass'n for Leave To Propound Limited Discovery (Dec. 26, 2007). At that point, the plaintiffs were under a duty to preserve all this evidence, and they have breached that duty.

7. The defendants have asked for any such documents in preliminary discovery or under IPRA, but plaintiffs have not yet produced them, for example: complete data on Navajo population on the reservation over time; financial data on NIIP; documents relating to the 2007 BOR hydrologic determination; and documents relating to negotiations.

8. The defendants have asked for documents which disprove the Navajo claims, or which prove the Answer and Counterclaim, in preliminary discovery or under IPRA. However the plaintiffs have not yet produced all of them. For example: complete data on Navajo population on the reservation over time; financial data on NIIP; documents relating to the 2007 BOR hydrologic determination; and documents relating to negotiations. To the extent that plaintiffs have already produced documents to defendants, the plaintiffs already have those documents.

9. Concerning the applications for permits from the State Engineer by the US and Navajo Nation, see the responses by plaintiffs to the discovery propounded by defendants.

10. See also the "Colorado River Basin Water Supply and Demand Study – Final Study Reports," released on December 12, 2012 by the United States Department of the Interior and Bureau of Reclamation. Copies of these reports and supporting documents can be obtained at the following link
<http://www.usbr.gov/lc/region/programs/crbstudy/finalreport/index.html>.

11. The Community Ditch Defendant-Counterclaimants also refer to and incorporate the documents being produced by other defendants as part of their joint discovery efforts.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
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Association; Hammond Conservancy District;
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2012, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: wrtavajointerse@nmcourts.gov and to the filing list referred to in paragraph 8 of the court's November 19, 2012 Corrected Order.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.