

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2012 DEC 21 PM 4:03

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

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: ConocoPhillips, its subsidiaries and affiliates, ConocoPhillips Company, Burlington Resources Oil and Gas Company LP, and El Paso Natural Gas Company.

DESCRIPTIVE SUMMARY: Supplemental Responses to United States' Discovery Requests.

NUMBER OF PAGES: 10.

DATE OF SERVICE: December 21, 2012.

**CONOCOPHILLIPS AND EL PASO NATURAL GAS COMPANY'S
SUPPLEMENTAL RESPONSES TO THE UNITED STATES' DISCOVERY REQUESTS**

Defendants ConocoPhillips, its subsidiaries and affiliates, ConocoPhillips Company, Burlington Resources Oil and Gas Company LP, and El Paso Natural Gas Company submit the following Supplemental Responses to the United States' Discovery Requests pursuant to the Court's Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests, filed November 30, 2012, and Rules 1-026, 1-033, 1-034, and 1-036 NMRA.

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REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit the Settlement Agreement was the product of good faith, arms-length negotiations between the Navajo Nation, the United States, and the State of New Mexico.

SUPPLEMENTAL RESPONSE: Pursuant to the Court's Order filed November 30, 2012, Request for Admission No. 1 is deemed denied.

REQUEST FOR ADMISSION 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.

SUPPLEMENTAL RESPONSE: Pursuant to the Court's Order filed November 30, 2012, Request for Admission No. 3 is deemed denied.

INTERROGATORIES

INTERROGATORY NO. 1: Unless your response to Request for Admission No. 1 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement was the product of good faith, arms-length negotiations.

SUPPLEMENTAL RESPONSE: At the November 28, 2012 hearing on the non-settling parties' responses and objections to discovery, the Court indicated that COP/EPNG should consider this interrogatory, relating to Request for Admission No. 1, as a contention interrogatory. As such, COP/EPNG object to Interrogatory No. 1 as overbroad to the extent it requests "in all detail every basis" for COP/EPNG's contentions. As a matter of law, COP/EPNG are not required to "describe completely" the basis for their contentions. *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) ("Contention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact,

details of testimony of supporting witnesses, and the contents of supporting documents.”). Moreover, discovery is ongoing and therefore it is not possible for COP/EPNG to provide complete contentions. In addition, contention interrogatories propounded at an early stage of discovery are considered premature. *See Fischer & Porter Co. v. Tolson*, 143 F.R.D. 93, 95 (E.D. Pa. 1992) (“The interests of judicial economy and efficiency for the litigants dictate that contention interrogatories are more appropriate after a substantial amount of discovery has been conducted.” (internal quotation marks and citations omitted)); *see also* 7 Moore’s Federal Practice 33, Civil § 33.41[4] (“The usual practice . . . is for the courts to defer contention interrogatories until a later stage of discovery unless the propounding party shows that an earlier response would assist the goals of discovery.”). Furthermore, COP/EPNG object to this interrogatory to the extent it asks for a legal conclusion.

Subject to and without waiving any of the foregoing objections, COP/EPNG state that at present they lack sufficient information to state whether or not the Settlement Agreement was the product of good faith, arms-length negotiations. COP/EPNG are aware of the following information that appears relevant to whether the Settlement Agreement was the product of good faith, arms-length negotiations: (1) the United States did not participate in the negotiations of the Settlement Agreement; (2) after the Settlement Agreement was signed, the United States prepared the Statement of Claims which may be an after-the-fact justification for the Settlement Agreement; (3) neither the State of New Mexico nor the Navajo Nation ever prepared during the settlement negotiations a practicably irrigable acreage analysis, which is the only legal basis for adjudicating the Navajo Nation’s water rights claims; and (4) the Settlement Agreement does not provide a final, complete quantification of the Navajo Nation’s water rights. COP/EPNG expect to obtain through discovery additional information that is relevant to the foregoing, as well as

other facts relevant to this interrogatory. COP/EPNG reserve the right to supplement this response based upon documents and information obtained in discovery.

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.

SUPPLEMENTAL RESPONSE: COP/EPNG maintain and incorporate by reference all of their prior objections to Interrogatory No. 3, and in further support of those objections, COP/EPNG rely upon the Court's orders of November 30, 2012 and December 20, 2012 concerning discovery in this case. In its November 30, 2012 Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests, the Court ruled that the United States' "Statement of Claims is not a basis for evaluating any prong of the legal standard," and it sustained objections relating to the "United States' good faith legal and technical basis for its Statement of Claims." *See* Order at 2-3. In the Court's December 20, 2012 Order Denying the United States' Motion for Reconsideration and Clarifying the Court's November 30 Discovery Order, the Court ruled that discovery requests relating to "the *comparison* of the Statement of Claims with the Settlement Agreement" are not "relevant to the legal standard in this proceeding." *See* Order at 1-2, filed on December 20, 2012 (emphasis added).

At the November 28, 2012 hearing on the non-settling parties' responses and objections to discovery, the Court indicated that COP/EPNG should consider this interrogatory, relating to Request for Admission No. 1, as a contention interrogatory. As such, COP/EPNG object to Interrogatory No. 1 as overbroad to the extent it requests "in all detail every basis" for COP/EPNG's contentions. As a matter of law, COP/EPNG are not required to "describe completely" the basis for their contentions. *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M.

2007) (“Contention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents.”). Moreover, discovery is ongoing and therefore it is not possible for COP/EPNG to provide complete contentions. In addition, contention interrogatories propounded at an early stage of discovery are considered premature. *See Fischer & Porter Co. v. Tolson*, 143 F.R.D. 93, 95 (E.D. Pa. 1992) (“The interests of judicial economy and efficiency for the litigants dictate that contention interrogatories are more appropriate after a substantial amount of discovery has been conducted.” (internal quotation marks and citations omitted)); *see also* 7 Moore’s Federal Practice 33, Civil § 33.41[4] (“The usual practice . . . is for the courts to defer contention interrogatories until a later stage of discovery unless the propounding party shows that an earlier response would assist the goals of discovery.”). Furthermore, COP/EPNG object to this interrogatory to the extent it asks for a legal conclusion.

Notwithstanding the foregoing rulings, the Court also ruled in its November 30, 2012 order that Interrogatory No. 3 propounded by the United States to COP/EPNG is relevant apparently because the Statement of Claims will serve as the factual “basis for the United States’ evidentiary presentation,” and therefore it has a “bearing on the potential claims that could be secured at trial.” *See* December 20 Order at 2. Accordingly, subject to and without waiving any of the foregoing objections, COP/EPNG provide the following answer to Interrogatory No. 3. COP/EPNG state that at present they lack sufficient information to state whether or not the provisions of the Settlement Agreement, as compared to the water rights described in the U.S. Statement of Claims, will reduce impacts on junior water rights. Assuming that this interrogatory is intended to ask whether the Settlement Agreement will reduce impacts on junior

water rights because the settlement provides the Navajo Nation with less water rights than are asserted in the U.S. Statement of Claims, the answer is that any reduction in the quantity of water rights provided to the Navajo Nation by the Settlement Agreement will not necessarily reduce any impacts on junior water rights. Any reduction in the impacts on junior rights will depend on the manner and method in which the water rights provided to the Navajo Nation by the Settlement Agreement are exercised, including the effectiveness of any settlement provisions intended to mitigate such impacts. Whether any mitigation provisions included in the Settlement Agreement will be effective to mitigate impacts on junior water rights requires information that COP/EPNG do not yet have and analysis that COP/EPNG have not yet done, both of which COP/EPNG expect to obtain and develop through discovery, including from expert witnesses. COP/EPNG reserve the right to supplement this response based upon documents and information obtained in discovery.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION 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: Every document relied upon by COP/EPNG in response to RFA No. 1 has been produced in this matter and is in the custody and control of the Settling Parties. In particular, COP/EPNG relied on the documents produced by the State under the heading "Settlement Documents" and "Agreements and Contracts" and available at the following URL: http://www.ose.state.nm.us/LAP/NNWRS/legal_nnwrs.html.

SUPPLEMENTAL RESPONSE: COP/EPNG relied on the documents produced by the State under the heading "Settlement Documents," "Agreements and Contracts," "Navajo

Nation Expedited Inter Se Proceeding,” which are available at the following URL:

http://www.ose.state.nm.us/LAP/NNWRS/legal_nnwrs.html. COP/EPNG reserve the right to supplement this response as it continues discovery on this subject.

REQUEST FOR PRODUCTION 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: Every document relied upon by COP/EPNG in response to RFA No. 1 has been produced in this matter and is in the custody and control of the Settling Parties. In particular, COP/EPNG relied on the State’s Technical Assessment, the State of New Mexico’s Revised Statement of Legal and Factual Bases for Settlement, and documents produced by the State under the heading “United States Statement of Claims,” “United States Technical Reports,” and the “United States Hydrographic Survey” available at the following URL:

http://www.ose.state.nm.us/LAP/NNWRS/legal_nnwrs.html.

SUPPLEMENTAL RESPONSE: COP/EPNG relied on the State’s Technical Assessment, the State of New Mexico’s Revised Statement of Legal and Factual Bases for Settlement, and documents produced by the State under the heading “United States Statement of Claims,” “United States Technical Reports,” and the “United States Hydrographic Survey” available at the following URL: http://www.ose.state.nm.us/LAP/NNWRS/legal_nnwrs.html. COP/EPNG reserve the right to supplement this response as it continues discovery on this subject.

REQUEST FOR PRODUCTION NO. 13: The following persons were identified as persons “have discoverable information that ConocoPhillips and El Paso [], respectively may use to support their position:”

1) Paula Joy [El Paso]

Initial Disclosures at pg. 3. Provide all documents used to prepare your response to Interrogatory No. 14. As well, provide all documents in whatever form that reflect the opinion of, analysis of, or information held by Ms. Joy concerning any aspect of any objection described by ConocoPhillips and/or El Paso. The documents requested through this RFP include any opinion and/or analysis made at anytime in the past concerning the subject matter of the objections articulated by ConocoPhillips and El Paso in their Objections and Responses. The documents requested through this RFP also includes all supporting information, analysis, and data that was relied upon to formulate any ultimate opinion and/or analysis concerning any aspect of any objection described by ConocoPhillips and El Paso.

RESPONSE: EPNG objects to this request to the extent that it seeks communications protected against discovery by the attorney-client privilege and tangible things shielded from production by the work product doctrine.

Notwithstanding this objection, EPNG will review its records, and non-privileged communications or tangible things not protected by the work product doctrine identified that reflect the opinion of, analysis of, or information held by Ms. Joy concerning any aspect of any objection described by ConocoPhillips and/or El Paso to the Settlement Agreement and Proposed Decrees will be produced. A privilege log will be provided, pursuant to Rule 1-026(B)(7), if any privileged communications or work product that is otherwise responsive to this interrogatory is withheld from production. All documents used or relied on to answer Interrogatory No. 14 and

to prepare the objections and responses to the Settlement Agreement and Proposed Decrees have been produced by the Settling Parties and already are in their possession, custody, or control.

SUPPLEMENTAL RESPONSE: COP and EPNG have each conducted a reasonable review of their respective records, documents, and communications for responsive documents, but have located no documents that are responsive to this request.

DATED: DECEMBER 21, 2012.

Respectfully Submitted,

HOLLAND & HART LLP

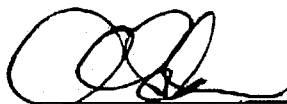
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**ATTORNEYS FOR CONOCOPHILLIPS AND
EL PASO NATURAL GAS COMPANY**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December 2012, a copy of the foregoing was served on all parties by emailing to wrvajointerse@nmcourts.gov and by separate email transmission to aoccaj@nmcourts.gov, and the list of parties identified on the Court's Corrected Order Summarizing Discovery Activities Discussed at the November 6, 2012 Discovery Conference, filed on November 19, 2012.



Adam G. Rankin

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