

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 FEB -1 PM 1:36

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

CV-75-184

Plaintiff,

HON. JAMES J. WECHSLER
Presiding Judge

vs.

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

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Claims of the Navajo Nation

Defendant-Intervenors.

Case No. AB-07-1

NAME OF PARTY: United States of America

DESCRIPTIVE SUMMARY: United States' notice of discovery disputes with non-settling parties.

NUMBER OF PAGES: 9 (+ 80 pages for Attachments A through F)

DATE OF FILING: January 31, 2013

THE UNITED STATES' NOTICE OF DISCOVERY DISPUTES WITH NON-SETTLING PARTIES AND MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to the Court's order of July 24, 2012, the United States informs the Court of the remaining discovery disputes between the United States and the non-settling parties identified in the paragraphs below. The United States has attempted to resolve these disputes with each non-settling party in advance but the parties have not reached resolution. The United States request that this Court compel the identified non-settling parties below to respond to the identified discovery requests pursuant to Rule 1-037(A), NMRA.

PROCEDURAL BACKGROUND

Pursuant to the Court's order, the United States submitted discovery requests on October 5, 2012 to non-settling parties who have objected to the Settlement Motion. *See Amender Order Setting Schedule Governing Discovery on the Non-Settling Parties and Remaining Proceedings* (August 7, 2012) ("Amended Scheduling Order") at pg. 2, ¶ 5. On November 5, 2012, non-settling parties submitted objections and responses to the United States discovery requests.¹ On November 16, 2012, the United States submitted responses to the objections to discovery request. After hearing, the Court issued its *Order Concerning the Responses and Objections of the Non-Settling Parties to Discovery Requests* (November 30, 2012) ("Discovery Objections Order"). In the Discovery Objections Order, the Court overruled objections and sustained objections. *Id.* Further, the Court found that for specific discovery the "[d]iscovery sought is relevant, supplemental responses, if any, due December 21, 2012." *Id.* The Court defined what it meant here by describing that this "means that the Non-Settling Parties' responses that may be inadequate may be supplemented with information no later than December 21, 2012." *Id.* at pg. 4 (emphasis added). On either December 14 or 21, 2012, non-settling parties submitted additional responses to the United States' discovery requests.

REMAINING DISCOVERY DISPUTES BETWEEN THE UNITED STATES AND NON-SETTLING PARTIES

For a number of non-settling parties, examination of discovery responses of November 5th and December 14th/21st reveals that some non-settling parties have not adequately responded to the identified discovery requests. As such, and particularly with respect to interrogatories, the United States is left with no response to its discovery request and the United States must turn to this Court for help to get the relevant information to which it is entitled. The United States has

¹ Although both objections and responses were due on November 5th, a number of non-settling parties chose to simply file objections to the United States discovery requests.

contacted each of the non-settling parties identified below. The United States and the non-settling parties are unable to resolve their discovery dispute as described below.

In support of its position, the United States relies particularly on *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), which outlines the parameters of a party's basic responsibility to respond to discovery requests. Further, the New Mexico Rules of Civil Procedure make clear that "an evasive or incomplete answer is to be treated as a failure to answer." Rule 1-037(A)(3). Finally, the United States more generally relies upon the extensive rule and case law authority already extensively cited to the Court by the parties since June 15, 2012. Fundamentally though, the basic question that the United States brings to this Court is – are the non-settling parties required to respond to discovery requests? For the discovery requests identified below, the United States contends that the non-settling parties identified have simply not responded to discovery requests. The Court must now determine whether they have.

A. Gary Horner– Interrogatory Nos. 3, 5, and 6, and RFP Nos. 5 and 6

On November 30, 2012, the Court overruled Mr. Horner's objections to Interrogatory Nos. 3, 5, and 6, and RFP Nos. 5 and 6. Discovery Objections Order at pg. 6. On December 21, 2012, Mr. Horner issued additional responses with respect to these discovery requests. Copies of Mr. Horner's November 30th and December 21st discovery responses relevant to this discovery dispute and motion to compel have been attached as Attachment A.

Examination of Mr. Horner's November 30th and December 21st responses reveal the following. With respect to Interrogatory Nos. 3, 5, and 6, Mr. Horner has provided no response to these interrogatories. Instead, he has repeatedly, and bewilderingly, referred to no less than 19 pleadings that he has issued over the course of almost a decade that have no discernible connection to the questions asked. Each interrogatory specifically asks Mr. Horner to answer

straight forward questions that seek relevant information necessary to narrow the scope of these proceeding and in his immediate possession/knowledge. With respect to RFP Nos. 3, 5, and 6, the United States requested for a very specific, isolated set of documents (e.g., for RFP No. 5, those documents that Mr. Horner relies upon to deny that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial). Yet, for each RFP Mr. Horner has issued a series of generic, obfuscating statements that on the one hand are simply not a response to the requests at all but, on the other hand, identify every document that has been produced in discovery.

In communications, between counsel for the United States and Mr. Horner, Mr. Horner has expressed that his responses are complete and he will not provide any further information concerning the above described discovery requests. The United States requests that this Court issue an order compelling Mr. Horner to responds to these discovery requests.

B. The Community Ditch Defendants – Interrogatory Nos. 1, 2, 4, 6, and 7, and RFP Nos. 1, 5, and 6

On November 30, 2012, the Court overruled Community Ditch Defendants’ objections to RFP No. 5 and further ordered them to supplement its responses with respect to Interrogatory Nos. 1, 2, 4, 6, and 7 and RFP Nos. 1, 5 and 6. Discovery Objections Order at pg. 6. On December 14, 2012, the Community Ditch Defendants issued additional responses with respect to RFP No. 5 only. Copies of the Community Ditch Defendants November 30th and December 14th discovery responses relevant to this discovery dispute and motion to compel have been attached as Attachment B.

Examination of the Community Ditch Defendants’ November 5th and December 14th responses reveal the following. With respect to Interrogatory Nos. 1, 2, 4, 6, and 7 Community Ditch Defendants have provided no response to these interrogatories. Each interrogatory

specifically asks each of the Community Ditch Defendants to answer straight forward questions that seek relevant information necessary to narrow the scope of these proceeding and in their immediate possession/knowledge. In each instance, the Community Ditch Defendants either provided no response (Interrogatory No. 1) or they generically reference their *Answer, Objections, and Counterclaim by Community Ditch Defendant-Counterclaimants* (October 19,2012), which simply does not answer the questions presented nor is it possible for the United States to divine an answer to the interrogatories. With respect to RFP Nos. 1, 5, and 6 the United States requested for a very specific, isolated set of documents (e.g., for RFP No. 5, those documents that the Community Ditch Defendants rely upon to deny that - the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial). Yet, for each RFP the Community Ditch Defendants have intentionally issued a series of generic, obfuscating statements that are simply not a response to the requests at all.

In communications, between counsel for the United States and counsel for the Community Ditch Defendants, the Community Ditch Defendants have expressed that their responses are complete and that they will not provide any further information concerning the above described discovery requests. The United States requests that this Court issue an order compelling the Community Ditch Defendants to responds to these discovery requests.

C. The Cities of Aztec and Bloomfield - Interrogatory Nos. 15, 16, 18, 20 and RFPs Nos. 15, 16, 18, 20

On November 30, 2012, the Court overruled the Cities of Aztec and Bloomfield (“Cities”) objections to Interrogatory No. 3 and RFP Nos. 1, 5, 6, and 20 and further ordered them to supplement its responses with respect to Interrogatory Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and RFPs Nos. 13, 14, 15, 16, 17, 18, 19 and 20. Discovery Objections Order at pg. 7.

On December 21, 2012, the Cities issued additional responses with respect to these discovery requests. Copies of the Cities' November 30th and December 21st discovery responses relevant to this discovery dispute and motion to compel have been attached as Attachment C.

Examination of the Cities' November 5th and December 21st responses reveal the following. With respect to Interrogatory Nos. 15, 16, 18, and 20 the Cities have provided no response to these interrogatories. Each interrogatory specifically asks the Cities to answer straight forward questions that seek relevant information necessary to narrow the scope of these proceeding and in their immediate possession/knowledge. In each instance, the Cities make reference to documents that quite simply do not answer the question. With respect to RFP Nos. 15, 16, 18, and 20, the United States requested for a very specific, isolated set of documents (e.g., for RFP No. 15, those documents that support the Cities' specific, previously articulated objection). Yet, for each the Cities either sweeping describe every document in an unrelated case or provide no response at all.

In communications between counsel for the United States and the Cities (January 16th, 28th, and 30th), as of the date of this filing the Cities have not indicated whether they will satisfactorily supplement their responses. Given that the Court has scheduled the final discovery status hearing on February 4, 2013, the United States is identifying this matter as a potential discovery dispute between the United States and the Cities.

D. LPAA, *et al.* - Interrogatory Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22

On November 30, 2012, the Court ordered the LPAA, *et al.* parties ("LPAA") to supplement its responses with respect to Interrogatory Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22. Discovery Objections Order at pg. 7. LPAA parties have provided no supplemental

unresponsive of any of the interrogatories presented. Further, with respect to RFP Nos. 1, 5, 6, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 25, B Square Ranch neither provide nor identify a single document upon which the interrogatory responses were based.

In communications between counsel for the United States and B Square Ranch (January 16th, 17th, 18th, 21st, and 30th), as of the date of this filing the B Square Ranch have not indicated whether they will satisfactorily supplement their responses. Given that the Court has scheduled the final discovery status hearing on February 4, 2013, the United States is identifying this matter as a potential discovery dispute between the United States and the B Square Ranch.

F. Robert Oxford - Interrogatory Nos. 14 and RFP Nos. 1, 5, 6, and 9

On November 30, 2012, the Court the Court overruled Mr. Oxford's objections with respect to Interrogatory Nos. 14 and RFP Nos. 1, 5, 6, and 9. Discovery Objections Order at pg. 8. On December 14, 2012, the Mr. Oxford issued additional responses with respect to these discovery requests. Copies of Mr. Oxford's November 30th and December 14th discovery responses relevant to this discovery dispute and motion to compel have been attached as Attachment F.

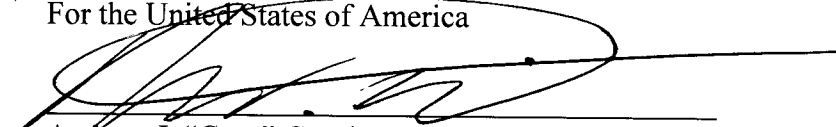
Examination of Mr. Oxford's November 5th and December 14th responses reveal the following. With respect to Interrogatory Nos. 14, Mr. Oxford provides no response to the interrogatory and refers to a document that cannot be identified. With respect to RFP Nos. 1, 5, 6, and 9, Mr. Oxford has not identified any responsive documents associated with the specific discovery requests.

Undersigned counsel has made two attempts to communicate with Mr. Oxford through the e-mail address provided by Mr. Oxford previously (bjoxford@yahoo.com) (January 16th and 30th), but undersigned counsel has received no response from Mr. Oxford. Undersigned counsel

assumes that Mr. Oxford believes his responses complete and will not willingly supplement his discovery responses without further order from the Court. Therefore, the United States requests that this Court issue an order compelling Mr. Oxford to respond to these discovery requests.

Respectfully submitted this 31st day of January, 2013.

For the United States of America



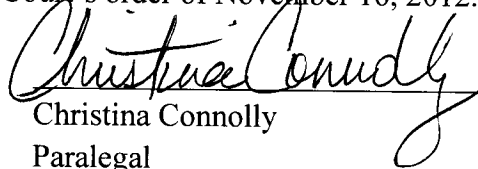
Andrew J. "Guss" Guarino
U.S. Department of Justice
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1343

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2013, a true and accurate copy of

THE UNITED STATES' NOTICE OF DISCOVERY DISPUTES WITH NON-SETTLING PARTIES AND MOTION TO COMPEL DISCOVERY RESPONSES

was served by attaching an electronic copy to an email sent to the following address: wrvajointerse@nmcourts.gov. In addition, an electronic copy of this document was sent by e-mail to the list of persons identified in the Court's order of November 16, 2012.



Christina Connolly
Paralegal

ATTACHMENT A

GARY L. HORNER’S OBJECTIONS TO THE UNITED STATES’ DISCOVERY REQUESTS
OF GARY L. HORNER (November 5, 2012)..... 2

GARY L. HORNER’S RESPONSES TO THE UNITED STATES’ DISCOVERY REQUESTS
OF GARY L. HORNER (December 21, 2012) 4

GARY L. HORNER'S OBJECTIONS TO THE UNITED STATES' DISCOVERY REQUESTS OF GARY L. HORNER (November 5, 2012)

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.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Further, as indicated in my objection to Interrogatory No. 7, injury or harm (or impacts) to a third party's water right is not relevant with respect to any water right decreed in a water rights adjudication suit. Therefore, my relevance objection to Interrogatory No. 7 is hereby incorporated herein with respect to the subject Interrogatory.

Further, with respect to the subject Interrogatory (whether "the provisions of the Settlement Agreement will reduce impacts on junior water rights"), the question arises: whether the Settlement Agreement will reduce impacts on junior water rights - as compared to what? If the U.S. intends that question is: whether the Settlement Agreement will reduce impacts on junior water rights as compared to the U.S. Statement of Claims - I have already indicated in my objection to Interrogatory No. 2, that the U.S. Statement of Claims has no relevance in the present matter. Similarly, any comparison between the Navajo Settlement and the U.S. Statement of Claims has no relevance with respect to any adverse impacts on junior water users. Therefore, my relevance objection to Interrogatory No. 2 is hereby incorporated herein with respect to the subject Interrogatory.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 5: Unless your response to Request for Admission No. 5 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject Interrogatory.

Interrogatory No. 6: Unless your response to Request for Admission No. 6 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement is consistent with public policy and applicable law.

Objections: General Objections No.s 1 through 5 are hereby incorporated herein by reference.

Accordingly, I object to the subject Interrogatory.

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.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 5 herein above.

Accordingly, I object to the subject RFP.

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.

Objections: I hereby incorporate by reference my objections to Interrogatory No. 6 herein above.

Accordingly, I object to the subject RFP.

GARY L. HORNER'S RESPONSES TO THE UNITED STATES' DISCOVERY REQUESTS OF GARY L. HORNER (December 21, 2012)

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.

Answer: Without waiving the General and Specific Objections to the subject Interrogatory I previously made, pursuant to Horner's Objections to U.S. Discovery Requests, I hereby answer said Interrogatory by stating:

I hereby incorporate by reference: my MOTION TO ENJOIN THE EXECUTION OF THE NAVAJO WATER RIGHTS SETTLEMENT, which was filed in the present matter on June 23, 2004 ("Motion to Enjoin"), in its entirety; GARY HORNER'S BRIEF REGARDING MOTION TO ENJOIN THE EXECUTION OF THE NAVAJO WATER RIGHTS SETTLEMENT, which was filed in the present matter on August 13, 2004 ("Brief re Motion to Enjoin"), in its entirety; THE BID AND GARY L. HORNER'S RESPONSE TO THE JOINT MOTION FOR ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF A PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION, which was filed in the present matter on October 6, 2009 ("Horner's Response re Initial Procedures"), in its entirety; THE BID AND GARY L. HORNER'S COMMENTS AND OBJECTIONS REGARDING: THE SETTLING PARTIES' REVISIONS TO PREVIOUSLY SUBMITTED EXHIBITS; the [SPECIAL MASTER'S PROPOSED] ORDER MANDATING THE COMMENCEMENT OF AN EXPEDITED *INTER SE* PROCEEDING FOR THE RESOLUTION OF ALL WATER RIGHTS CLAIMS OF THE NAVAJO NATION; and the

SETTLING PARTIES' SUGGESTIONS CONCERNING SPECIAL MASTER'S PROPOSED ORDER MANDATING THE COMMENCEMENT OF AN EXPEDITED *INTER SE* PROCEEDING FOR THE RESOLUTION OF ALL WATER RIGHTS CLAIMS OF THE NAVAJO NATION, which was filed in the present matter on January 4, 2010 ("Horner's Comments re Proposed Order Mandating Expedited *Inter Se* Proceeding"), in its entirety; THE BID AND GARY L. HORNER'S SUGGESTIONS REGARDING: the SPECIAL MASTER'S REPORT CONCERNING JOINT MOTION FOR ORDER GOVERNING INITIAL PROCEDURES FOR ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION; and the [SPECIAL MASTER'S PROPOSED] ORDER DIRECTING THE COMMENCEMENT OF AN EXPEDITED *INTER SE* PROCEEDING FOR THE RESOLUTION OF ALL WATER RIGHTS CLAIMS OF THE NAVAJO NATION, which was filed in the present matter on March 8, 2010 ("Horner's Suggestions re Special Master's Report re Initial Procedures"), in its entirety; THE BID AND GARY L. HORNER'S COMMENTS AND OBJECTIONS REGARDING: the [SETTLING PARTIES' REVISED] NOTICE OF EXPEDITED *INTER SE* PROCEEDING TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION AND DEADLINE FOR FILING OBJECTIONS; and the [SPECIAL MASTER'S PROPOSED] ORDER DIRECTING THE COMMENCEMENT OF AN EXPEDITED *INTER SE* PROCEEDING FOR THE RESOLUTION OF ALL WATER RIGHTS CLAIMS OF THE NAVAJO NATION, filed in the present matter on April 8, 2010 ("Horner's Comments re Revised Notice"), in its entirety; THE BID AND GARY L. HORNER'S OBJECTIONS TO: the [FINAL] SPECIAL MASTER'S

PROCEDURES FOR ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER RIGHTS OF THE NAVAJO NATION; COMMENTS AND OBJECTIONS REGARDING: the [SPECIAL MASTER'S PROPOSED] ORDER DIRECTING THE COMMENCEMENT OF AN EXPEDITED *INTER SE* PROCEEDING FOR THE RESOLUTION OF ALL WATER RIGHTS CLAIMS OF THE NAVAJO NATION; and the [Special Master's Proposed] NOTICE OF EXPEDITED *INTER SE* PROCEEDING TO ADJUDICATE THE WATER RIGHTS OF THE NAVAJO NATION AND DEADLINE FOR FILING NOTICES OF INTENT TO PARTICIPATE, which was filed in the present matter on April 29, 2010 ("Horner's Objections to Special Master's Report"), in its entirety; THE BID AND GARY L. HORNER'S SUPPLEMENTAL BRIEF REGARDING QUESTIONS RELATING TO DUE PROCESS ISSUES, which was filed in the present matter on July 2, 2010 ("Horner's Brief re Due Process Issues"), in its entirety; GARY L. HORNER'S COMMENTS AND OBJECTIONS REGARDING THE [SETTLING PARTIES' PROPOSED] SCHEDULING ORDER, which was filed in the present matter on September 30, 2011 ("Horner's Comments re SP Proposed Scheduling Order"), in its entirety; GARY L. HORNER'S COMMENTS AND OBJECTIONS REGARDING THE SCHEDULING ORDER GOVERNING PRETRIAL ACTIVITIES, which was filed in the present matter on October 14, 2011 ("Horner's Comments

re Scheduling Order re Pretrial Activities”), in its entirety; GARY L. HORNER’S OPTIONAL SUPPLEMENTAL BRIEF REGARDING WHAT LEGAL STANDARDS GOVERN THE COURT’S DECISION FOR APPROVAL OF THE PROPOSED DECREES, which was filed in the present matter on January 3, 2012 (“Horner’s Brief re Legal Standards”), in its entirety; GARY L. HORNER’S OBJECTIONS: TO THE SETTLEMENT MOTION OF UNITED STATES, NAVAJO NATION AND STATE OF NEW MEXICO FOR ENTRY OF PARTIAL FINAL DECREES; AND THE PROPOSED DECREES ASSOCIATED WITH SAID SETTLEMENT MOTION, which was filed in the present matter on September 24, 2012 (“Horner’s Objection to Settlement Motion”), in its entirety; GARY L. HORNER’S MOTION FOR THE DETERMINATION OF THE APPLICABLE STANDARD FOR THE DETERMINATION OF FEDERAL RESERVED WATER RIGHTS, which was filed in the present matter on November 8, 2012 (“Horner’s Motion re Reserved Rights”), in its entirety; GARY L. HORNER’S BRIEF IN SUPPORT OF GARY L. HORNER’S MOTION FOR THE DETERMINATION OF THE APPLICABLE STANDARD FOR THE DETERMINATION OF FEDERAL RESERVED WATER RIGHTS, which was filed in the present matter on November 8, 2012 (“Horner’s Brief re Reserved Rights”), in its entirety; GARY L. HORNER’S RESPONSE TO THE SETTLING PARTIES’ MOTION FOR CLARIFICATION AND MOTION FOR EXTENSION OF TIME TO REPLY TO THE HORNER MOTION, which was filed in the present matter on November 28, 2012 (“Horner’s Response to SP Motion for Extension”), in its entirety; and GARY L. HORNER’S RESPONSE TO CONOCOPHILLIPS AND EL PASO NATURAL GAS COMPANY’S JOINT MOTION WITH THE SAN JUAN WATER COMMISSION TO STAY CONSIDERATION OF GARY L. HORNER’S MOTION

ON THE APPLICABLE STANDARD FOR DETERMINATION OF FEDERAL RESERVED WATER RIGHTS, which was filed in the present matter on December 11, 2012 (“Horner’s Response to CP/EPNG Motion to Stay”), in its entirety.

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: Without waiving the General and Specific Objections to the subject Interrogatory I previously made, pursuant to Horner’s Objections to U.S. Discovery Requests, I hereby answer said Interrogatory by stating:

I hereby incorporate by reference: my Motion to Enjoin, in its entirety; Brief re Motion to Enjoin, in its entirety; and Horner’s Objection to Settlement Motion, in its entirety.

Interrogatory No. 5: Unless your response to Request for Admission No. 5 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.

Answer: Without waiving the General and Specific Objections to the subject Interrogatory I previously made, pursuant to Horner’s Objections to U.S. Discovery Requests, I hereby answer said Interrogatory by stating:

I hereby incorporate by reference: my Motion to Enjoin, in its entirety; Brief re Motion to Enjoin, in its entirety; and Horner’s Objection to Settlement Motion, in its entirety.

Interrogatory No. 6: Unless your response to Request for Admission No. 6 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement is consistent with public policy and applicable law.

Answer: Without waiving the General and Specific Objections to the subject Interrogatory I previously made, pursuant to Horner's Objections to U.S. Discovery Requests, I hereby answer said Interrogatory by stating:

I hereby incorporate by reference: my Motion to Enjoin, in its entirety; Brief re Motion to Enjoin, in its entirety; Horner's Response re Initial Procedures in its entirety; Horner's Comments re Proposed Order Mandating Expedited *Inter Se* Proceeding in its entirety; Horner's Suggestions re Special Master's Report re Initial Procedures, in its entirety; Horner's Comments re Revised Notice, in its entirety; Horner's Objections to Special Master's Report, in its entirety; Horner's Brief re Due Process Issues, in its entirety; Horner's Comments re SP Proposed Scheduling Order, in its entirety; Horner's Comments re Scheduling Order re Pretrial Activities, in its entirety; Horner's Brief re Legal Standards, in its entirety; Horner's Objection to Settlement Motion, in its entirety; Horner's Motion re Reserved Rights, in its entirety; Horner's Brief re Reserved Rights, in its entirety; Horner's Response to SP Motion for Extension, in its entirety; and Horner's Response to CP/EPNG Motion to Stay, in its entirety.

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.

(**RFA 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.)

Response: Without waiving the General and Specific Objections to the subject RFP I previously made, pursuant to Horner's Objections to U.S. Discovery Requests, I hereby respond to said RFP by stating:

Pursuant to the 11/30/12 Discovery Order, ¶ 5, p. 3, the Court stated that:

"Parties are permitted to respond to a request for production of documents by adopting a response of another party to the same request if the other party has properly responded to the same request."

Here, the Settling Parties have peculiar knowledge and control of critical evidence - such evidence includes, but is not limited to: the nature and extent of existing Navajo water uses, Navajo diversions from the San Juan River, available water supply, total water use in the Basin, available unappropriated water supply, and the nature and extent of all other water uses in the Basin. Accordingly, pursuant to *Duke City Lumber Co. v. N.M. Environmental Improvement*

Board, 95 N.M. 401, 405-406, 622 P.2d 709, 713-14 (1980 NMCA), the burden falls on the Settling Parties to produce such evidence. Please see Horner's Response re Initial Procedures, pp. 39-49.

Accordingly, I will rely extensively upon documents already in the possession, custody and control of the Settling Parties. More specifically, I hereby respond to the subject RFP by incorporating herein all of the discovery responses of the Settling Parties to the discovery requests by the Non-Settling Parties. Beyond that, I will rely on other documents filed in the present matter by the Settling Parties, or otherwise obtained from the Settling Parties, that similarly are already in the possession, custody and control of the Settling Parties. Further, I will rely on documents produced by other Parties to the present matter.

Specific documents are not listed here because it is not fair, not practical, and nearly impossible to do so at this point. It makes little sense to cull through the information provided by the Settling Parties, and provide back to the Settling Parties (pursuant to the present RFP) lists of the documents the Settling Parties have already produced. Further, the United States has already identified broad subject matter categories for each of the PDF documents it produced.

For instance, the United States alone has produced nearly 39,000 separate documents consisting of more than 400,000 pages of information in the form of electronic (digital) files in PDF format. These numbers do not include vast quantities of information (electronic digital files) the United States has also provided such as maps and Geographic Information System ("GIS") data. The United States produced all of such information on a portable hard drive (the hard drive was provided at my expense). Such information required approximately 170 GB of storage space on said hard drive, with the PDF portion of such data requiring only approximately

49 GB of storage space. Each of the documents provided in PDF format by the United States was only identified by Bates numbers and by broad category. That is, none of such information was identified by a title or date, or by reference to any specific discovery request. Further, the maps and GIS data was provided in formats that could only be opened and read by highly sophisticated GIS software, and I am not aware of any of the Non-Settling Parties who have been able to open and view said maps and GIS data to date.

The State of New Mexico and the Navajo Nation have also produced large quantities of information in the form of electronic files. The State of New Mexico produced their discovery responses by posting individual documents on the Office of the State Engineer's website. The Navajo Nation produced their discovery responses by providing a thumb drive with such information to the Utton Center (I was required to go to the Utton Center to digitally copy said thumb drive). While the information provided by the State of New Mexico and the Navajo Nation is somewhat better in terms of descriptive file names, neither the State nor the Navajo Nation have referenced such information to specific discovery requests.

The result is that, to date, I have been unable to review the vast majority of the information produced by the Settling Parties, and I have not been able to specifically and completely identify all of the documents that I will use to support my positions. However, much of the information I have reviewed to date is highly relevant in the present matter, and will be useful at trial.

The only documents that I can currently think of that are not currently in the possession, custody and control of the Settling Parties would be summaries (prepared by me) of information obtained from the Settling Parties, prepared for the purpose of making such information easier to understand. Further, such summaries are either already in the possession of the Settling Parties

(by virtue of filings previously made in the present matter), or they have not been prepared or completed to date.

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.

(“**RFA No. 5:** Admit that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.”)

Response: Without waiving the General and Specific Objections to the subject RFP I previously made, pursuant to Horner’s Objections to U.S. Discovery Requests, I hereby respond to said RFP by stating:

Please see my response to RFP No. 1.

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.

(“**RFA No. 6:** Admit that the Settlement Agreement is consistent with public policy and applicable law.”)

Response: Without waiving the General and Specific Objections to the subject RFP I previously made, pursuant to Horner’s Objections to U.S. Discovery Requests, I hereby respond to said RFP by stating:

Please see my response to RFP No. 1.

ATTACHMENT B

RESPONSE BY COMMUNITY DITCH DEFENDANT-COUNTERCLAIMANTS TO
UNITED STATES' DISCOVERY REQUESTS (November 5, 2012) 2

COMMUNITY DITCH DEFENDANTS' SUPPLEMENTAL RESPONSE TO REQUEST FOR
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RESPONSE BY COMMUNITY DITCH DEFENDANT-COUNTERCLAIMANTS TO UNITED STATES' DISCOVERY REQUESTS (November 5, 2012)

Interrogatory No. 1: Identify specifically the non-settling party for whom these RFAs, Interrogatories, and RFPs are being answered for. Provide the name, address and telephone number of the identified non-settling party. If the non-settling party is an organization and not a natural person, identify the organizational representative for the purposes of these proceedings.

RESPONSE: The Community Ditch Defendant-Counterclaimants. See also response to Interrogatory No. 11.

Interrogatory No. 2: 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.

RESPONSE: See the Answer, Objections and Counterclaim filed on October 19, 2012.

Interrogatory No. 4: 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.

RESPONSE: See the Answer, Objections and Counterclaim filed on October 19, 2012.

Interrogatory No. 6: Unless your response to Request for Admission No. 5 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.

RESPONSE: See the Answer, Objections and Counterclaim filed on October 19, 2012.

Interrogatory No. 7: Unless your response to Request for Admission No. 6 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement is consistent with public policy and applicable law.

RESPONSE: See the Answer, Objections and Counterclaim filed on October 19, 2012.

Interrogatory No. 11: Describe completely and in all detail the nature and extent of any water right you own in the San Juan River Basin of New Mexico. Your response should include, but is not limited to describing the source of water for your water right, the quantity of water for your water right (diversion and depletion), the priority of your water right, and frequency of current water use associated with each water right.

RESPONSE: Objection.

1. The court has already ruled that objectors are not required to provide this information; it is sufficient for them to allege that they own water rights in the San Juan Basin.

2. The interrogatory is overbroad, burdensome, and irrelevant to the subject matter of this lawsuit, which is the water rights claimed by the Navajo Nation.

3. The water rights of other parties are reserved for a future inter se in the main case.

4. The interrogatory is intended to increase the cost of this litigation, on tangential issues, in order to deplete the resources which defendants have to spend on contesting the merits of this case.

5. The interrogatory is designed to chill and intimidate the defendants with the implicit threat that their water rights can be in jeopardy if they oppose the United States (and the BOR) and the State Engineer. See *San Juan Agricultural Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶¶ 32-33, 150 N.M. 64, 257 P.3d 884 (“Requiring a person to state the reason for a request . . . could have a chilling effect on the free flow of information. . . . While we hope that all public servants will act in good faith in complying with their statutory obligations under IPRA. ‘New Mexico’s policy of open government is intended to protect the public from having to rely solely on the representations of public officials that they have acted appropriately.’”), *reversing* 2010-NMCA-012, ¶¶ 14-15, 25, 27 and 31, 147 N.M. 643, 227 P.3d 612 (where the Court of Appeals had erroneously dismissed the Association’s concerns about the chilling and intimidation of water rights owners).

6. See the Echo Ditch Decree for an identification of some of the water rights owned by the Community Ditch Defendant-Counterclaimants.

7. It is the duty of the State Engineer and the other plaintiffs to assemble this information before embarking on this litigation. The State Engineer was required by law to assemble this information in a complete hydrographic survey, but has not done so. See the following statutes:

§ 72-4-13. Hydrographic survey of state stream systems; duty of state engineer; dam and reservoir sites; cooperation with United States

The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and obtaining and recording all available data for the determination, development and adjudication of water supply of the state including the location and survey of suitable sites for dams and reservoirs and the determination of the approximate water supply, capacity and cost of each. He is authorized to cooperate with the agencies of the United States engaged in similar surveys and investigations and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of his office, and may accept and use in connection with the operations of his office the results of the agencies of the United States.

§ 72-4-15. Determination of water rights; copies of hydrographic surveys; suites to determine right of appropriation

Upon the completion of the hydrographic survey of any stream system, the state engineer shall deliver a copy of so much thereof as may be necessary for the determination of all rights to the use of the waters of such system together with all other data in his possession necessary for such determination, to the attorney general of the state who shall, at the request of the state engineer, enter suit on behalf of the state for the determination of all rights to the use of such water, in order that the amount of unappropriated water subject to disposition by the state under the terms of this chapter may become known, and shall diligently prosecute the same to a final adjudication: provided, that if suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit: provided, however, that the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the state, if notified by the state engineer that in his opinion the public interest requires such action.

§ 72-4-17. Suits for determination of water rights; parties; hydrographic survey; jurisdiction; unknown claimants

In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties. When any such suit has been filed the court shall, by its order duly entered, direct the state engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided in this article, in order to obtain all data necessary to the determination of the rights involved. Money heretofore spent on hydrographic surveys by the state

engineer, but not assessed against the water users on the effective date of this act, shall not be assessed against the water users. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved; and may submit any question of fact arising therein to a jury or to one or more referees, at its discretion; and the attorney general may bring suit as provided in Section 72-4-15 NMSA 1978 in any court having jurisdiction over any part of the stream system, which shall likewise have exclusive jurisdiction for such purposes, and all unknown persons who may claim any interest or right to the use of the waters of any such system, and the unknown heirs of any deceased person who made claim of any right or interest to the waters of such stream system in his lifetime, may be made parties in such suit by their names as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person and said unknown persons by the name and style of unknown claimants of interest to water in such stream system, and service of process on, and notice of such suit, against such parties may be made as in other cases by publication.

8. See the Answer, Objections and Counterclaim filed on October 19, 2012.
9. See Response to Interrogatory 14.

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: The documents relating to negotiations 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. The defendants have asked for such documents in preliminary discovery or under IPRA, but plaintiffs have not yet produced them.

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.

See documents referenced, cited, or quoted in the Answer and Counterclaim. 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.

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.

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 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.

See document attached from the 2010 census, which asserts that there were 42,127 persons living on the Navajo reservation who identified themselves as Native Americans to the census. [FactFinder query GCT-PL2 P.L.94-171 summary file geography New Mexico, query date 11/28/2011.] The number of persons living on the reservation in New Mexico who are enrolled members of the Navajo Tribe is less than 42,127.

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: Documents that might be used at trial by the plaintiffs are in the possession and control of the plaintiffs. The plaintiffs have not yet identified those documents. Most of the documents which they have assembled are not admissible as evidence.

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.

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.

See documents referenced, cited, or quoted in the Answer and Counterclaim. 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.

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.

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 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.

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: See the documents, laws and cases which are referenced, cited, or quoted in the Answer and Counterclaim. 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.

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 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.

Further legal authorities will be provided during the briefing process, after the plaintiffs each file a reply to the Counterclaim.

COMMUNITY DITCH DEFENDANTS' SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION (December 21, 2012)

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 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.

ATTACHMENT C

CITY OF AZTEC AND CITY OF BLOOMFIELD’S SUPPLEMENTAL ANSWERS AND
SUPPLEMENTAL RESPONSES TO THE UNITED STATES’ DISCOVERY REOUESTS
(December 21, 2012) 2

CITY OF AZTEC AND CITY OF BLOOMFIELD'S SUPPLEMENTAL ANSWERS AND SUPPLEMENTAL RESPONSES TO THE UNITED STATES' DISCOVERY REQUESTS (December 21, 2012)

Interrogatory No. 15: Describe completely, in all detail, and all aspects of your basis for stating "The Settlement illegally appropriated water from the down-sized Animas La Plata Project contrary to the San Jun Water Commission's Application No. 4818 and NMSA 72-S-33(A)(2) (1995)." Cities' Objections at ¶ 4.

City of Aztec's Answer: For clarification, the City of Aztec states that it cited to NMSA 1978, § 72-5-33(A)(2) in its Objections at ¶ 4 and presumes that the United States has simply made a scrivener's error.

As answer to Interrogatory No. 15, please see all motions, pleadings and orders in the case *San Juan Water Commission v. D'Antonio, Jr.*, No. CV-2008-1699-8, which is currently on appeal. Such documents are publically available and the burden on the United States to obtain these documents is the same as the burden on the City of Aztec. Therefore, the City of Aztec is not providing them. Please also see attached Order Granting San Juan Water Commission's Motion for Summary Judgment, Bates labeled AZTEC/BLOOMFIELD 000009-000015. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Answer: For clarification, the City of Bloomfield states that it cited to NMSA 1978, § 72-5-33(A)(2) in its Objections at ¶ 4 and presumes that the United States has simply made a scrivener's error.

As answer to Interrogatory No. 15, please see all motions, pleadings and orders in the case *San Juan Water Commission v. D'Antonio, Jr.*, No. CV-2008-1699-8, which is currently on appeal. Such documents are publically available and the burden on the United States to obtain these documents is the same as the burden on the City of Bloomfield. Therefore, the

City of Bloomfield is not providing them. Please also *see* attached Order Granting San Juan Water Commission's Motion for Summary Judgment, Bates labeled AZTEC/BLOOMFIELD 000009-000015. As discovery is ongoing, the City of Bloomfield may supplement this response.

SUPPLEMENTAL ANSWERS:

City of Aztec's Supplemental Answer: The City of Aztec states that it has fully answered this interrogatory.

City of Bloomfield's Supplemental Answer: The City of Bloomfield states that it has fully answered this interrogatory.

Interrogatory No. 16: Describe completely, in all detail, and all aspects of your basis for stating "The historic water use by the Navajo Nation on the Hogback – Cudei Irrigation project under the Settlement Agreement exceed the actual historic irrigation of those projects (3,400 actual acres irrigated vs. claim of 8,830 acres)." Cities' Objections at ¶ 5.

City of Aztec's Answer: Please see documents cited to in the Cities' Objections, ¶ 5. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Answer: Please see documents cited to in the Cities' Objections, ¶ 5. As discovery is ongoing, the City of Bloomfield may supplement this response.

SUPPLEMENTAL ANSWERS:

City of Aztec's Supplemental Answer: Please see attached documents, Bates labeled AZTEC/BLOOMFIELD 000016-000017.

City of Bloomfield's Supplemental Answer: Please see City of Aztec's Supplemental Answer.

Interrogatory No. 18: Describe completely, in all detail, and all aspects of your basis for stating “Settling Parties’ PIA analysis does not comply with the New Mexico criteria set forth in *State v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993).” Cities’ Objections at ¶ 8.

City of Aztec’s Answer: *Martinez v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993) sets forth the criteria for a PIA analysis. It is the City of Aztec’s position that the Settlement Agreement grants the Navajo Nation water rights in excess of those that could be proved under the criteria set forth in *Martinez v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993). As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield’s Answer: *Martinez v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993) sets forth the criteria for a PIA analysis. It is the City of Bloomfield’s position that the Settlement Agreement grants the Navajo Nation water rights in excess of those that could be proved under the criteria set forth in *Martinez v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993). As discovery is ongoing, the City of Bloomfield may supplement this response.

SUPPLEMENTAL ANSWERS:

City of Aztec’s Supplemental Answer: The City of Aztec states that it has fully answered this interrogatory.

City of Bloomfield’s Supplemental Answer: The City of Bloomfield states that it has fully answered this interrogatory.

Interrogatory No. 20: Describe completely, in all detail, and all aspects of your basis for stating “The Settlement of the Navajo Nation PIA claims greatly exceeds the population needs and reservation boundaries.” Cities’ Objections at ¶ 12.

City of Aztec's Answer: Please see documents referred to in the Cities' Objections at ¶ 12. Additionally, see the criteria set forth in *Martinez v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993). As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Answer: Please see documents referred to in the Cities' Objections at ¶ 12. Additionally, see the criteria set forth in *Martinez v. Lewis*, 116 N.M. 194, 861 P.2d 235 (Ct. App. 1993). As discovery is ongoing, the City of Bloomfield may supplement this response.

SUPPLEMENTAL ANSWERS:

City of Aztec's Supplemental Answer: The City of Aztec states that it has fully answered this interrogatory.

City of Bloomfield's Supplemental Answer: The City of Bloomfield states that it has fully answered this interrogatory.

RFP No. 15: As associated with Interrogatory No. 15, provide every document in your possession on which you rely to base your objection described in paragraph 4 of the Cities' Objections. In responding to this RFP, the following documents need not be provided:

- 1) San Juan Water Commission's Application No. 4818;
- 2) NMSA 72-S-33(A)(2) (1955); and
- 3) Colorado Ute Settlement Act Amendments of 2000. P.L. 106-554, § 302(a)(I)(A)(i) – (ii), 114 Stat. at 2763A-280.

City of Aztec's Response: Please see all motions, pleadings and orders in the case *San Juan Water Commission v. D'Antonio, Jr.*, No. CV-2008-1699-8, which is currently on appeal. The City of Aztec objects to providing such documents, as they are publically

available and the burden on the United States to obtain these documents is the same as the burden on the City of Aztec. Please also *see* attached Order Granting San Juan Water Commission's Motion for Summary Judgment, Bates labeled AZTEC/BLOOMFIELD 000009-000015. As discovery is ongoing, the City of Aztec may supplement this response.

City of Bloomfield's Response: Please see all motions, pleadings and orders in the case *San Juan Water Commission v. D'Antonio, Jr.*, No. CV-2008-1699-8, which is currently on appeal. The City of Bloomfield objects to providing such documents, as they are publically available and the burden on the United States to obtain these documents is the same as the burden on the City of Bloomfield. Therefore, the City of Bloomfield is not providing them. Please also *see* attached Order Granting San Juan Water Commission's Motion for Summary Judgment, Bates labeled AZTEC/BLOOMFIELD 000009-000015. As discovery is ongoing, the City of Bloomfield may supplement this response.

SUPPLEMENTAL RESPONSES:

City of Aztec's Supplemental Answer: The City of Aztec states that it has fully responded to this request.

City of Bloomfield's Supplemental Answer: The City of Bloomfield states that it has fully responded to this request.

RFP No. 16: As associated with Interrogatory No. 16, provide every document in your possession on which you rely to base your objection described in paragraph 5 of the Cities' Objections. In responding to this RFP and in addition to any other responsive documents provided, the following documents should be included:

- 1) Table 2 (December 14, 2009) Navajo Water Rights to be Adjudicated and Proposal Partial Final Decree; and
- 2) 2003 New Mexico interstate Stream Commission San Juan River Shortages Sharing Agreement Table 2 (8-12-2003).

City of Aztec's Response: The City of Aztec objects to providing these listed tables, as it is the City of Aztec's understanding that they are already in the possession of the United States. If the City of Aztec is incorrect, the City of Aztec will provide the listed tables. As discovery is ongoing, the City of Aztec may also supplement this response.

City of Bloomfield's Response: The City of Bloomfield objects to providing these listed tables, as it is the City of Bloomfield's understanding that they are already in the possession of the United States. If the City of Bloomfield is incorrect, the City of Bloomfield will provide the listed tables. As discovery is ongoing, the City of Bloomfield may also supplement this response.

SUPPLEMENTAL RESPONSES:

City of Aztec's Response: The City of Aztec states that it has fully responded to this request.

City of Bloomfield's Response: The City of Bloomfield states that it has fully responded to this request.

RFP No. 18: As associated with Interrogatory No. 18, provide every document in your possession on which you rely to base your objection described in paragraph 8 of the Cities' Objections.

City of Aztec's Response: The City of Aztec objects to RFP No. 18 on the grounds that it is premature, as discovery is ongoing. As discovery is ongoing, the City of Aztec may supplement this Response.

City of Bloomfield's Response: The City of Bloomfield objects to RFP No. 18 on the grounds that it is premature, as discovery is ongoing. As discovery is ongoing, the City of Bloomfield may supplement this Response.

SUPPLEMENTAL RESPONSES:

City of Aztec's Response: The City of Aztec states that it has fully responded to this request.

City of Bloomfield's Response: The City of Bloomfield states that it has fully responded to this request.

RFP No. 20: As associated with Interrogatory No. 20, provide every document in your possession on which you rely to base your objection described in paragraph 12 of the Cities' Objections. In responding to this RFP and in addition to any other responsive documents provided, the following documents should be included (this document was described in paragraph 12 of the Cities Objections): "U.S. Census Bureau, New Mexico – American Indian Area Act – PHI, Population, Housing Units [http/factfinder.census.gov](http://factfinder.census.gov)."

City of Aztec's Response: The City of Aztec objects to RFP No. 20 on the grounds that it requests documents which are publically available and the burden on the United States to obtain these documents is the same as the burden on the City of Aztec. The City of Aztec also objects to RFP No. 20 on the grounds that it is premature, as discovery is ongoing. As discovery is ongoing, the City of Aztec may supplement this Response.

City of Bloomfield's Response: The City of Bloomfield objects to RFP No. 20 on the grounds that it requests documents which are publically available and the burden on the United States to obtain these documents is the same as the burden on the City of Bloomfield. The City of Bloomfield also objects to RFP No. 20 on the grounds that it is premature, as discovery is ongoing. As discovery is ongoing, the City of Bloomfield may supplement this Response.

SUPPLEMENTAL RESPONSES:

City of Aztec's Supplemental Response: Please see U.S. Census Bureau, New Mexico – American Indian Area Act – PHI, Population, Housing Units <http://factfinder.census.gov>.

City of Bloomfield's Supplemental Response: Please see the City of Aztec's supplemental response.

City of Aztec
and
City of Bloomfield's
Supplemental Response to Interrogatory #16

Table 2. Historic Irrigated Acres under the Hogback-Cudel Irrigation Projects and the Fruitland-Cambridge Irrigation Projects Based on Data Available to the State of New Mexico

Year	Acres Irrigated under Hogback-Cudel Projects			Acres Irrigated under Fruitland - Cambridge Projects		
	Hogback Project	Cudel Project	Total	Fruitland Project	Cambridge Project	Total
1908	767					
1936	2,910			495		
1937	2,279	380	2,659	549		
1938						
1939	2,589	569	3,158	730		
1940						
1941	2,859	172	3,031	1,534	78	1,612
1942	2,233	124	2,357	1,461	40	1,501
1943	2,724	150	2,874	1,525	52	1,577
1944	2,323	267	2,590	1,513	29	1,542
1945	2,368	272	2,640	1,436	32	1,468
1946		259		2,108		
1947	2,808	320	3,128	2,102	43	2,145
1948	2,670	310	2,980	2,210	50	2,260
1949	2,440	289	2,729	2,250	68	2,318
1950	2,683	306	2,989	2,519	63	2,582
1951	2,692	337	2,929	2,479	55	2,534
1952	2,574	356	2,930	2,620	65	2,685
1953	3,227	226	3,453		67	
1954						
1955	3,042	234	3,276		61	
1956				2,739		
1957	5,088	263	5,351	2,253	40	2,293
1958	3,066	114	3,180	1,974	36	2,010
1959	3,498	190	3,688	2,296	44	2,340
1963			4,503			2,574
1964			4,925			2,542
1965			5,729			3,120
1966			6,327			2,661
1967			5,314			2,562
1968			3,463			2,519
1994	3,065	336	3,401	2,299	29	2,328
2000	2,832	312	3,144	2,084	55	2,139
2003	2,776	393	3,169	1,982	33	2,015
2004	2,578	298	2,876	1,941	64	2,005
2005	2,827	286	3,112	1,925	22	1,947
2006	2,796	266	3,062	1,649	48	1,697
2007	3,517	375	3,892	1,985	46	2,031
2008	2,706	176	2,882	1,567	55	1,722
2009	2,448	286	2,734	1,669	52	1,741
2010	2,234	262	2,496	1,708	58	1,766

Table 2 Data Sources:

1908: Report of Herbert V. Clotts, dated June 30, 1943.

1936-1959: Annual Crop Reports prepared by the US Bureau of Indian Affairs (the reported net area irrigated shown herein may differ from the sum of the reported acres by crop type).

1963-1968: Annual Irrigation Land Data reports prepared by the US Bureau of Indian Affairs.

1994: 1994 San Juan Basin Water-Related Land Use Inventory for New Mexico prepared by the US Bureau of Reclamation as part of its Upper Colorado Irrigated Lands Assessment.

2000 and 2003-2010: Interstate Stream Commission field survey and inventory of irrigated crops. See the following memoranda:

- (1) Memorandum on 2000 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and dated November 8, 2000, last revised December 7, 2004;
- (2) Memorandum on 2003 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and dated September 13, 2004, last revised December 7, 2004;
- (3) Memorandum on 2004 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and dated May 19, 2005, last revised October 6, 2005;
- (4) Memorandum on 2005 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and dated April 5, 2006;
- (5) Memorandum on 2006 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and dated October 18, 2007;
- (6) Memorandum on 2007 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and dated August 7, 2008, revised September 4, 2008; and
- (7) Memorandum on 2008 San Juan River Basin Acreage Inventory, prepared by Patricia Turney and Paul Harms, and dated July 9, 2009.

ATTACHMENT D

LCAA PARTIES' RESPONSES TO THE UNITED STATES' DISCOVERY REOUESTS
(November 5, 2012)..... 2

LPAA PARTIES' RESPONSES TO THE UNITED STATES' DISCOVERY REQUESTS
(November 5, 2012)

Interrogatory No. 13: On October 4, 2012, you attempted to join without restriction the Preliminary Objections/Responses of the Cities of Aztec and Bloomfield to the San Juan River Basin in New Mexico Navajo Water Rights Settlement Agreement (2010). *See LPAA Parties' Objections to the Navajo Nation Water Rights Settlement and Proposed Decrees* ("LPAA Tendered Objections") at pg. 2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "There is not adequate water supply available in the San Juan Basin pursuant to New Mexico's allocation under the Upper Colorado River Basin Compact to meet the water requirements of the Settlement as required under the Northwestern New Mexico Rural Water Projects Act (the Settlement Act) and state law." *See Preliminary Objections/Responses of the Cities of Aztec and Bloomfield (Cities to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (2012) (The Navajo Settlement) (September 20, 2012) ("Cities' Objections")* ¶ 2.

Answer: The Cities' response will answer in greater detail, and the matter of inquiry will be subject to expert testimony. From a lay perspective, and based upon information and belief, the modified hydrologic determination utilizes erroneous or inaccurate information and the determination appears to have been modified to make the settlement water allocations would work.

Interrogatory No. 14: On October 1, 2012, you attempted to join without restriction the Cities' Objections. *See LPAA Tendered Objections* at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The 2007 Hydrologic Determination of water availability from Navajo Reservoir and the Upper Colorado River Basin for use in New Mexico, prepared by the USBR and approved by the Secretary on May 23, 2007 (2007 Hydrologic Determination) is based upon erroneous hydrologic assumptions and exceeds the consumptive use apportionment made and available to the State of New Mexico under the Upper Colorado River Basin Compact." *Cities' Objections* at ¶ 3.

Answer: The Cities' response will answer in greater detail, and the matter of inquiry will be subject to expert testimony. From a lay perspective, and based upon information and

belief, the modified hydrologic determination utilizes erroneous or inaccurate information and the determination appears to have been modified to make the settlement water allocations work. Instead of utilizing the currently existing determination, the modified one was prepared. Either the original or the modified determination is based upon erroneous data since both cannot be correct, and since the modified determination was done, it appears, to justify the water allocated in the Settlement, its basis is suspect.

Interrogatory No. 15: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See LPAA Tendered Objections at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The Settlement illegally appropriated water from the down-sized Animas La Plata Project contrary to the San Juan Water Commission's Application No. 4818 and NMSA 72-S-33(A)(2) (1995)." Cities' Objections at 4.

Answer: The pleadings and other documents filed by the San Juan Water Commission with regard to that issue fully and completely set out the basis for the illegal appropriation claim. The United States is referred to those publically available documents. See also the responses filed by the San Juan Water Commission.

Interrogatory No. 16: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See LPAA Tendered Objections at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The historic water use by the Navajo Nation on the Hogback - Cudei Irrigation Project under the Settlement Agreement exceed the actual historic irrigation of those projects (3,400 actual acres irrigated vs. claim of 8,830 acres)." Cities' Objections at ¶ 5.

Answer: The stated objection basically sets forth the facts. The historic use of the Hogback-Cudei project has never, to the understanding of the LPAA Parties, irrigated 8,830 acres of land, and it is the understanding, on information and belief, that a maximum of 3,400 acres has been utilized for irrigation purposes. Upon information and belief, the balance of the claimed land has not yet been developed so that it might be used for irrigation purposes.

Interrogatory No. 17: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See LPAA Tendered Objections at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The Navajo Nation waived all of its *Winters*' water rights beyond the rights allocated to it under the Navajo Indian Irrigation Project. Cities' Objections at ¶ 7.

Answer: The Cities will provide more detail. The substance of the objection is that the Navajo Nation, in exchange for the NIIP project, agreed to accept the NIIP project in settlement of its *Winters*' water right claims. There is an article published in a natural resource journal by Charles Dumar which references correspondence to that effect by the Navajos. Upon information and belief, there are recorded public statements and comments of leading New Mexico and federal officials that refer to the NIIP water would be "in parity", and which could imply the intention of waiver of *Winters* water rights by the Navajos. The San Juan Water Commission responses lay out further details with regard to the issue.

Interrogatory No. 18: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See LPAA Tendered Objections at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "Settling Parties' PIA analysis does not comply with the New Mexico criteria set forth in *State v. Lewis*, 116 N.M. 194,861 P.2d. 235 (Ct. App. 1993)." Cities' Objections at ¶ 8.

Answer: The Cities will provide more detail, and the subject matter is one that will require expert witness testimony. In essence, the standard for the award of *Winters*' rights for Indian tribes is set forth in *State v. Lewis*. The Settling Parties, upon information and belief, did not prepare a PIA analysis prior to the Settlement being reached. The PIA analysis presented appears to have been completed for purposes of litigation. This answer will be supplemented upon further information becoming available.

Interrogatory No. 19: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See LPAA Tendered Objections at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The operation of the shortage sharing provisions under the Settlement Agreement is illusory and provides no protection for non-Indian users in the San Juan Basin." Cities' Objections at ¶ 11.

Answer: The term “illusory” is a legal term and the analysis of the provision calls for a legal conclusion. On a factual basis, the shortage sharing agreement does not appear to deliver the total benefits described by the agreement.

Interrogatory No. 20: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See LPAA Tendered Objections at pg.2. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement “The Settlement of the Navajo Nation PIA claims greatly exceeds the population needs and reservation boundaries.” Cities' Objections at ¶ 12.

Answer: The technical assessments prepared appear to use flawed data, incorrect assumptions, and are not statistically sound. For example, the projected population growth analysis seems to utilize only one year of population information and then tries to extrapolate a significant growth of on-reservation Indian residents when it appears based upon local community information and observation that the reservation population is no more than remaining steady or may have suffered a decline over the past 20 to 30 years. This will be the subject of expert opinion testimony and the Cities' responses may also provide a more detailed answer.

Interrogatory No. 21: Identify with specificity, providing all description and detail, each item of evidence (whether a document, physical evidence, or expert/lay testimony) that you intend to introduce at any time to support your objections in these proceedings and describe completely and in all detail how you contend each item of evidence supports your objections.

Answer: This answer will be supplemented at such time as witnesses and physical and documentary evidence is identified for the purposes of the trial of this matter.

Interrogatory No.22: Pursuant to Rule 30(B)(6), designate one or more persons who may be deposed or testify regarding the substance of your response to RFA Nos. 1 - 8, Interrogatories Nos. 1 – 21, and RFP Nos. 1 – 21. If more than one person is identified, describe with reasonable particularity those matters to which each person is capable of testifying.

Answer: Steve Dunn for the La Plata Acequia Association, and Lloyd D. Ayliffe for North Star Water Users and the Blanco Water Users.

ATTACHMENT E

OBJECTIONS, RESPONSES AND ANSWERS TO UNITED STATES DISCOVERY
REQUESTS TO B SQUARE RANCH, LLC ET AL. (November 5, 2012) 2

RESPONSES AND ANSWERS TO UNITED STATES DISCOVERY REQUESTS TO
DEFENDANTS B SQUARE RANCH, LLC ET AL. PURSUANT TO THE COURT’S ORDER
FILED NOVEMBER 30, 2012 (December 21, 2012)..... 17

**OBJECTIONS, RESPONSES AND ANSWERS TO UNITED STATES DISCOVERY
REQUESTS TO B SQUARE RANCH, LLC ET AL. (November 5, 2012)**

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.

Objections, Responses and Answers to Interrogatory No. 1:

See above Introduction and General Objections.

Specific Objections: This RFA requires B Square Ranch, LLC et al. to deal in speculation and calls for a legal conclusion.

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.

Objections, Responses and Answers to Interrogatory No. 3:

See above Introduction and General Objections.

Specific Objections: This RFA requires B Square Ranch, LLC et al. to deal in speculation and calls for a legal conclusion.

Interrogatory No. 5: Unless your response to Request for Admission No. 5 was an unqualified admission, describe completely and in all detail every basis for your denial that the provisions of the Settlement Agreement describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial.

Objections, Responses and Answers to Interrogatory No. 5:

See above Introduction and General Objections.

Specific Objections: This RFA requires B Square Ranch, LLC et al. to deal in speculation and calls for a legal conclusion.

Interrogatory No. 6: Unless your response to Request for Admission No. 6 was an unqualified admission, describe completely and in all detail every basis for your denial that the Settlement Agreement is consistent with public policy and applicable law.

Objections, Responses and Answers to Interrogatory No. 6:

See above Introduction and General Objections.

Specific Objections: This RFA requires B Square Ranch, LLC et al. to deal in speculation and calls for a legal conclusion.

Interrogatory No. 13: On October 1, 2012, you attempted to join without restriction the Preliminary Objections/Responses of the Cities of Aztec and Bloomfield to the San Juan River Basin in New Mexico Navajo Water Rights Settlement Agreement (2010). See Defendant B Square Ranch, LLC et al.'s Preliminary Objections to Proposed Settlement Agreement ("B Square Ranch Objections") at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "There is not adequate water supply available in the San Juan Basin pursuant to New Mexico's allocation under the Upper Colorado River Basin Compact to meet the water requirements of the Settlement as required under the Northwestern New Mexico Rural Water Projects Act (the Settlement Act) and state law." See Preliminary Objections/Responses of the Cities of Aztec and Bloomfield (Cities to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (2012) (The Navajo Settlement) (September 20, 2012) ("Cities' Objections") ¶ 2.

Objections, Responses and Answers to Interrogatory No. 13:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 14: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The 2007 Hydrologic Determination of water availability from Navajo Reservoir and the Upper Colorado River Basin for use in New Mexico, prepared by the USBR and approved by the Secretary on May 23, 2007 (2007 Hydrologic Determination) is based upon erroneous hydrologic assumptions and exceeds the consumptive use apportionment made and available to the State of New Mexico under the Upper Colorado River Basin Compact." Cities' Objections at ¶ 3.

Objections, Responses and Answers to Interrogatory No. 14:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or

duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 15: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The Settlement illegally appropriated water from the down-sized Animas La Plata Project contrary to the San Juan Water Commission's Application No. 4818 and NMSA 72-S-33(A)(2) (1995)." Cities' Objections at 4.

Objections, Responses and Answers to Interrogatory No. 15:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 16: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The historic water use by the Navajo Nation on the Hogback - Cudei Irrigation Project under the Settlement Agreement exceed the actual historic irrigation of those projects (3,400 actual acres irrigated vs. claim of 8,830 acres)." Cities' Objections at ¶ 5.

Objections, Responses and Answers to Interrogatory No. 16:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 17: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The Navajo Nation waived all of its *Winters* water rights beyond the rights allocated to it under the Navajo Indian Irrigation Project. Cities' Objections at ¶ 7.

Objections, Responses and Answers to Interrogatory No. 17:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 18: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "Settling Parties' PIA analysis does not comply with the New Mexico criteria set forth in *State v. Lewis*, 116 N.M. 194,861 P.2d. 235 (Ct. App. 1993)." Cities' Objections at ¶ 8.

Objections, Responses and Answers to Interrogatory No. 18:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 19: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The operation of the shortage sharing provisions under the Settlement Agreement is illusory and provides no protection for non-Indian users in the San Juan Basin." Cities' Objections at ¶ 11.

Objections, Responses and Answers to Interrogatory No. 19:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 20: On October 1, 2012, you attempted to join without restriction the Cities' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining the statement "The Settlement of the Navajo Nation PIA claims greatly exceeds the population needs and reservation boundaries." Cities' Objections at ¶ 12.

Objections, Responses and Answers to Interrogatory No. 20:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 21: On October 1, 2012, you attempted to join without restriction *ConocoPhillips and El Paso Natural Gas Company's Objections and Responses to the Proposed Decrees* (ConocoPhillips' Objections). See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining ConocoPhillips' assertion that lands identified by the Proposed Decrees as within the Fruitland-Cambridge Irrigation Project have not been historically irrigated. ConocoPhillips' Objections at ¶ 2.

Objections, Responses and Answers to Interrogatory No. 21:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or

duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 22: On October 1, 2012, you attempted to join without restriction ConocoPhillips' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining ConocoPhillips' assertion that lands identified by the Proposed Decrees as within the Hogback-Cudei Irrigation Project have not been historically irrigated. ConocoPhillips' Objections at ¶ 3.

Objections, Responses and Answers to Interrogatory No. 22:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 23: On October 1, 2012, you attempted to join without restriction ConocoPhillips' Objections. See B Square Ranch Objections at pg. 4. Describe completely, in all detail, and all aspects of your factual and legal basis, if any, for joining ConocoPhillips' assertion that "[t]he Fruitland-Cambridge Irrigation Project is not entitled to a priority date of 1868." ConocoPhillips' Objections at ¶ 4.

Objections, Responses and Answers to Interrogatory No. 23:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. object to this Interrogatory because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Interrogatory No. 24: Identify with specificity, providing all description and detail, each item of evidence (whether a document, physical evidence, or expert/lay testimony) that you intend to introduce at any time to support your objections in these proceedings and describe completely and in all detail how you contend each item of evidence supports your objections.

Objections, Responses and Answers to Interrogatory No. 24:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Defendants B Square Ranch, LLC et al. object to designation of any witnesses who may testify at trial or documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Interrogatory No. 25: Pursuant to Rule 30(B)(6), designate one or more persons who may be deposed or testify regarding the substance of your response to RFA Nos. 1 - 8, Interrogatories Nos. 1 – 24, and RFP Nos. 1 – 24. If more than one person is identified, describe with reasonable particularity those matters to which each person is capable of testifying.

Objections, Responses and Answers to Interrogatory No. 25:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Interrogatory.

Defendants B Square Ranch, LLC et al. object to the designation of any witnesses who may testify at trial or documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

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.

Objections, Responses and Answers to RFP No. 1:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

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.

Objections, Responses and Answers to RFP No. 5:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

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.

Objections, Responses and Answers to RFP No. 6:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

RFP No. 13: As associated with Interrogatory No. 13, provide every document in your possession on which you rely to join objection described in paragraph 2 of the Cities' Objections. In responding to this RFP, the following documents need not be provided:

- 1) P.L. 111-11, Title X, (2010), 123 Stat. 1400-01; and
- 2) NMSA 72-4-13 (1978).

Objections, Responses and Answers to RFP No. 13:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. object to this Request for Production because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

RFP No. 14: As associated with Interrogatory No. 14, provide every document in your possession on which you rely to join the objection described in paragraph 3 of the Cities' Objections. In responding to this RFP and in addition to any other responsive documents provided, the following document should be included : deposition of John Whipple and exhibits attached thereto, Consultant to State of New Mexico - OSE in *San Juan Water Commission v. John D'Antonio*, 11th Judicial District Court, CV-2008-1699.

Objections, Responses and Answers to RFP No. 14:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. object to this Request for Production because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

RFP No. 15: As associated with Interrogatory No. 15, provide every document in your possession on which you rely to join the objection described in paragraph 4 of the Cities' Objections. In responding to this RFP, the following documents need not be provided:

- 1) San Juan Water Commission's Application No. 4818;
- 2) NMSA 72-S-33(A)(2) (1995); and
- 3) Colorado Ute Settlement Act Amendments of 2000. P.L. 106-554, § 302(a)(1)(A)(i) - (ii), 114 Stat. at 2763A-280.

Objections, Responses and Answers to RFP No. 15:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. object to this Request for Production because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

RFP No. 16: As associated with Interrogatory No. 16, provide every document in your possession on which you rely to join the objection described in paragraph 5 of the Cities' Objections. In responding to this RFP and in addition to any other responsive documents provided, the following documents should be included:

- 1) Table 2 (December 14, 2009) Navajo Water Rights to be Adjudicated and Proposal Partial Final Decree; and
- 2) 2003 New Mexico Interstate Stream Commission San Juan River Shortages Sharing Agreement Table 2 (8-12-2003).

Objections, Responses and Answers to RFP No. 16:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed

and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. object to this Request for Production because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

RFP No. 17: As associated with Interrogatory No. 17, provide every document in your possession on which you rely to join the objection described in paragraph 7 of the Cities' Objections. In responding to this RFP and in addition to any other responsive documents provided, the following documents should be included:

- 1) Testimony on H.R. 2352, H.R. 2494 and S.72 (May 20, 1960) Before the House Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, 86th Congo 64 (1960);
- 2) H.R. 2552, H.R. 6541 and S. 107 (April 24, 25, 26 and June 1, 1961) Before the House Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, 87th Congo 33 (1961); and
- 3) All Dept. of Interior Solicitor opinions on which you rely.

Objections, Responses and Answers to RFP No. 17:

See above Introduction and General Objections.

Specific Objections: Defendants B Square Ranch, LLC et al. have not completed investigation of the facts related to the above-styled action, they have not completed discovery, and they have not completed preparations for trial. Accordingly, additional evidence may be discovered that could affect these Defendants' responses or answers to this Request for Production.

Defendants B Square Ranch, LLC et al. object to the designation of any documents that may or will be used at trial because discovery has not been completed and the Court has not issued a decision whether there will be an evidentiary hearing in the above-styled action.

Defendants B Square Ranch, LLC et al. object to this Request for Production because the requested information is unreasonably cumulative or duplicative, and obtainable from another source that is more convenient, less burdensome and less expensive, e.g., the records of other Non-Settling Parties.

RFP No. 18: As associated with Interrogatory No. 18, provide every document in your possession on which you rely to join the objection described in paragraph 8 of the Cities' Objections.

Objections, Responses and Answers to RFP No. 18:

See above Introduction and General Objections.

