

Description	<p>AB-07-1</p> <p>STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT</p> <p>STATE OF NEW MEXICO, ex rel. STATE ENGINEER, Plaintiffs, vs. THE UNITED STATES OF AMERICA, et al. Defendant. and THE JICARILLA APACHE TRIBE and the NAVAJO NATION, Defendant-Intervenors, and COMMUNITY DITCH DEFENDANTS Counter-Defendants</p> <p>JUDGE: JAMES J WECHSLER TYPE OF PROCEEDINGS: DISCOVERY CONFERENCE FOR THE PLAINTIFF: VARIOUS FOR THE DEFENDANT: VARIOUS MONITOR: LORESSA BACHERT MACHINE TYPE: FTR GOLD REPORTER</p> <p>LEGEND: D - Defendant's Atty DEF - Defendant DEX - Direct Exam EX - Exhibit J - Judge M - Monitor P - Plaintiff's Atty PLA - Plaintiff W - Witness</p>
Date	<p>2/4/2013 Location Court of Appeals</p>

Time	Speake	Note
9:03:59 AM	J	CALLS CASE
9:04:28 AM		ADDRESSING NOISE (FEEDBACK)
9:10:48 AM		STARTS AGAIN
9:12:46 AM	COUNSEL IN AZTEC	ENTERING APPEARANCES
9:13:24 AM	COUNSEL IN SANTA FE	ENTERING APPEARANCES
9:14:39 AM	J	GOING OVER AGENDA FOR DAY
9:15:48 AM	GUARINO	US FILED A NOTICE OF DISCOVERY DISPUTE
9:16:52 AM		WE HAVE GONE THROUGH THE DISCOVERY RESPONSES THAT CAME BACK IN DECEMBER AND HAVE IDENTIFIED 6 NON-SETTLING PARTIES THAT WE FEEL HAVE NOT PROVIDED SUFFICIENT RESPONSE
9:17:30 AM	J	DISCOVERY STATUS FIRST
9:17:42 AM	GUARINO	WITH RESPECT TO DISCOVERY SINCE JANUARY
9:18:18 AM		HAVE BEEN WORKING TO SETTLE A NUMBER OF DISPUTES
9:18:28 AM		MOVING FORWARD FROM THIS POINT
9:19:06 AM		TALKING ABOUT DEPOSITIONS
9:20:02 AM		CONOCOPHILLIPS IDENTIFIED AT LEAST 3 EXPERT WITNESSES
9:22:01 AM		CONOCO PHILLIPS CONTACTED SETTLING PARTIES WITH REGARD TO 30-B-6 DEPOSITIONS OF THE SETTLING PARTIES
9:22:43 AM		I THINK THAT THERE IS TIME FOR THE US TO DEPOSE THE WITNESS WE ARE IDENTIFYING FOR 30-B-6 PURPOSES BUT I HAVE NOT BEEN ABLE TO FOLLOW UP WITH COUNSEL
9:23:04 AM		GIVEN THE ACTIVITIES THAT ARE GOING FORWARD AND AS WE CLOSE OUT DISCOVERY THERE IS NOT A LOT OF TIME LEFT
9:23:20 AM		HE ONLY OTHER MATTERS THAT I THINK REMAIN ARE THE MATTERS ASSOCIATED WITH
9:23:40 AM		PASSES
9:23:46 AM	ADAM RANKIN	AS MR GUARINO REPORTED WE HAVE BEEN IN DISCUSSIONS WITH THE US PRIMARILY OVER THE STATUS OF OUR DISCOVERY
9:24:41 AM		SPENDING A LOT OF TIME OVER THE LAST FEW WEEKS CONTINUING TO LOOK AT THE SETTLEMENT AGREEMENT
9:24:49 AM		TRYING TO EVALUATE OUR POSITION IN THIS CASE
9:25:17 AM		WE HAVE IDENTIFIED SEVERAL ISSUES THAT WE WOULD LIKE TO CONTINUE TO TALK TO WITH THE US ABOUT
9:25:26 AM		EXPLAINING CONCERNS
9:25:58 AM		WE ARE CONCERNED THAT WE DO NOT HAVE THAT IN A RESPONSE TO INTERROGATORY FORM

<u>9:26:39 AM</u>		WE FEEL LIKE IT IS THEIR BUREDN TO PUT FORARD THEIR CASE AND TELL US WHAT THEIR THEORY IS
<u>9:27:22 AM</u>		WE RECEIVED ON FRIDAY AND ADDITIONAL REPORT FROM THE NN
<u>9:27:46 AM</u>		IT IS A QUANTIFICATION ANALYSIS OF SOME OF THEIR WATER RIGHT CLAIMS
<u>9:28:00 AM</u>		LAST WEDNESDAY WE GOT 2 ADDENDUMS
<u>9:28:42 AM</u>		WE HAVE THE LEEPER DEPOSITION SCHEDULED
<u>9:29:08 AM</u>		WOULD CONFIRM WHAT MR GUARINO REPORTED
<u>9:29:16 AM</u>		WE HAVE IDENTIFIED 3 WITNESSES WHO WILL BE OUR EXPERTS
<u>9:29:39 AM</u>		WITHDRAWN DR FULLERTON AS AN EXPERT WITNESS
<u>9:29:52 AM</u>		WE ARE GOING TO BE RELYING ON DR SNYDER
<u>9:30:07 AM</u>		TALKING ABOUT DEPOSTIONS
<u>9:30:24 AM</u>		NOTHING FURTHER
<u>9:30:25 AM</u>	J	WHILE YOUR HERE MAYBE YOU ARE GOING TO ADRESS WHAT I AM GOING TO ASK ABOUT DR LEEPER'S REPORT. WILL THAT BE PREPARED PRIOR TO HIS DEPOSITION
<u>9:30:33 AM</u>	GUARIN O	YES
<u>9:30:51 AM</u>		TO CLARIFY ONE THING
<u>9:31:04 AM</u>		THERE IS 2 OTHER DISCOVERY MATTERS THAT ARE OUTSTANDING
<u>9:31:36 AM</u>		THE US HAS SPECIFICALLY PROPOUNDED UPON THE CONOCOPHILLIPS AND EL PASO NATURAL GAS WRITTEN DISCOVERY AS IT RELATES SPECIFICALLY TO THE EXPERTS THAT THEY HAVE IDENTIFIED
<u>9:32:49 AM</u>	VICTOR MARSH ALL	TO FLAG SOME OF THE ISSUES, NOT TO ARGUE THEM JUST TO FLAG THEM. WE STILL SOME SIGNIFICANT OUTSTANDING ISSUES ABOUT NIIP PIA AND BENEFICIAL USE
<u>9:33:12 AM</u>		WE HAVE SOME OUTSTANDING ISSUES ABOUT RECORDS INSPECTIONS
<u>9:33:28 AM</u>	J	WHAT IS THE DIFFICULTY THERE
<u>9:33:30 AM</u>	MARSH ALL	NOT SURE I WANT TO CHARACTERIZE
<u>9:33:33 AM</u>	J	IS THERE SOMETHING THAT THE COURT CAN DO TO FACILITATE THAT
<u>9:33:39 AM</u>	MARSH ALL	PROBABLY SO, EXPLAINS
<u>9:34:27 AM</u>		I SECOND WHAT EVERYBODY ELSE HAS SAID WITH REGARD TO UNRESOLVED DISCOVERY ISSUES
<u>9:34:46 AM</u>		TALKING ABOUT COORDINATION OF DISCOVERY
<u>9:34:57 AM</u>		EXAMPLE OF HOW CREATES PROBLEMS
<u>9:35:49 AM</u>		ONE OF THE THINGS THAT I HAVE CONCENTRATED ON HAS BEEN THE 2012 BOR STUDY THAT JUST CAME OUT ON DECEMBER 12TH
<u>9:36:31 AM</u>		IN DECEMBER ALL OF A SUDDEN WE GOT A WHOLE BUNCH OF VERY PERTINANT INFORMATION ABOUT THE ACTUAL WATER SUPPLIES IN THE SJ RIVER ETC.

<u>9:37:10 AM</u>	GUSS GUARIN O	TO FOLLOW UP ON MR MARSHALLS COMMENTS
<u>9:37:29 AM</u>		ON AUGUST 17 THE US SET 3 REGIONAL REPOSITORIES FOR RECORDS
<u>9:38:20 AM</u>		IT HAS BEEN AVAILABLE TO EVERY NON-SETTLING PARTY TO TAKE ADVANTAGE OF THOSE REPOSITORIES
<u>9:38:31 AM</u>		LAST WEEK I GOT AN EMAIL FROM MR MARSHALL SAYING I WANT YOU TO MAKE ARRANGEMENTS FOR ME TO GO TO THE REPOSITORY
<u>9:39:27 AM</u>		WHEN MR MARSHALL TALKS ABOUT THAT WE ARE HAVING DIFFICULTIES THAT, THERE ARE NO DIFFICULTIES. THERE HAS NOT EVEN BEEN AN INQUIRY SENT OVER TO ANY ONE OF THESE REPOSITORIES AT ANY TIME
<u>9:39:44 AM</u>	J	NEEDS CLARIFICATION ABOUT THE INQUIRY
<u>9:39:49 AM</u>	GUARIN O	ALL NON-SETTLING PARTIES
<u>9:39:55 AM</u>		IT WILL BE CLOSING ON MARCH 1ST BECAUSE THAT IS WHEN DISCOVERY CLOSES
<u>9:40:42 AM</u>	GARY HORNE R	WE DO NEED TO UNDERSTAND THAT THE NON-SETTLING PARTIES ASKED FOR A LOT OF INFORMATION FROM THE SETTLING PARTIES BACK IN JUNE
<u>9:41:13 AM</u>		THE US CAME UP WITH SO MUCH INFORMATION THAT THEY ASKED ME TO SEND THEM A HARD DRIVE AND THEY PUT THE INFORMATION ON THE HARD DRIVE
<u>9:41:30 AM</u>		THEY INITIALLY FILED A RESPONSE THAT WAS ABOUT 3200 PAGES LONG
<u>9:41:37 AM</u>		1000 PAGES OF THAT WAS A TABLE THAT LISTED CERTAIN DOCUMENTS AND CATEGORIES BUT IT WAS ALL BY BATES NUMBERS SO YOU COULD NOT IDENTIFY ANY OF THE DOCUMENTS AND WHAT THEY WERE TALKING ABOUT JUST THAT IT RELATED TO SOME SORT OF BATES NUMBER
<u>9:42:10 AM</u>		2000 PAGES WAS ANOTHER TABLE THAT LISTED INFORMATION THAT MAY BE OF SIGNIFICANCE IN THEIR ARCHIVES
<u>9:42:30 AM</u>	J	MR GUARINO LET ME HEAR MR HORNER THEN YOU CAN SPEAK
<u>9:42:31 AM</u>	HORNE R	CONTINUES, THEN COMES THE HARD DRIVE
<u>9:43:29 AM</u>		THERE IS NO SPECIFIC DIRECT REFERENCE TO ANY PARTICULAR DISCOVERY REQUEST THAT THEY HAVE PROVIDED AND NO IDENTIFIER WITH REGARD TO ANY OF THESE DOCUMENTS OTHER THAN THE BATES NUMBERS
<u>9:43:49 AM</u>		THE PDFS AMOUNT TO ABOUT 400,000 PAGES OF INFORMATION
<u>9:44:18 AM</u>		SENT OUT ANOTHER SECOND SET OF DVD'S
<u>9:44:47 AM</u>		THEY SENT US 600,000 PAGES OF INFORMATION
<u>9:44:57 AM</u>		YOU HAVE TO GO THROUGH EVERY SINGLE DOCUMENT TO FIGURE OUT WHAT IT IS

<u>9:45:15 AM</u>		MORE INFORMATION AVAILABLE IN THE REPOSITORIES
<u>9:45:49 AM</u>		NOBODY HAS DONE IT, NOBODY CAN GET THROUGH THAT INFORMATION TO FIGURE OUT IF THEY NEED MORE INFORMATION
<u>9:46:27 AM</u>		AS EVERYBODY TALKS ABOUT WE ARE COMING TO THE END OF DISCOVERY AND NOW EVERYBODY IS BEING REASONABLE
<u>9:46:42 AM</u>		I BROUGHT THIS UP SOME TIME AGO AND YOU TOLD US TO GO COOPERATE, GO PLAY NICE. THESE GUYS ARE NOT PLAYING NICE INTENTIONALLY
<u>9:46:58 AM</u>		I AM IN A POSITION WHERE I HAVE BEEN WORKING ON THIS FOR A LOT OF YEARS SO I HAVE A LOT OF MY INFORMATION
<u>9:47:03 AM</u>		THESE OTHER FOLKS WHO ARE RELATIVELY NEW TO IT, THEY HAVE ASKED FOR INFORMATION, THEY ARE NOT GETTING IT, WHAT EVER THEY GOT THEY DO NOT KNOW WHAT IS IN THERE
<u>9:47:19 AM</u>		IN THE MEAN TIME LIKE MR MARSHALL SAID SOME OF THIS EFFORT WAS PARCELLED OUT BETWEEN THE NON-SETTLING PARTIES
<u>9:47:27 AM</u>		WE NOW HAVE PEOPLE LIKE THE SAN JUAN WATER COMMISSION WHO ARE MAKING THEIR OWN DEAL WITH THE STATE, THE NN, AND THE US AND SWITCHING SIDES IN THE MIDDLE OF THIS WHOLE PROCESS
<u>9:47:52 AM</u>		YOU REALLY NEED TO UNDERSTAND THAT WHAT EVERY KIND OF ORDER THAT YOU THINK YOU SEE IN THIS DISCOVERY PROCESS IS NOT THERE
<u>9:48:19 AM</u>	GUARIN O	THE ISSUE THAT MR HORNER HAS RAISED THIS MORNING IS NOT AN ISSUE THAT HE HAS DEISCUSSED WITH ME OR ANY OTHER SETTLING PARTY THAT I AM AWARE OF
<u>9:49:08 AM</u>		THEY HAVE BEEN PROVIDED WITH THE DISCOVERY MATERIAL THAT THEY REQUESTED
<u>9:49:20 AM</u>	J	MR HORNER IS ADDRESSING THE DIFFICULTY OF ACCESS AND THE NEED TO GO THROUGH EVERY SINGLE PAGE
<u>9:49:42 AM</u>	GUARIN O	IT IS NOT ACCURATE, EXPLAINS
<u>9:52:49 AM</u>	J	TURN TO MR TULLYS MOTION
<u>9:53:10 AM</u>		I HAVE READY ALL OF THE MATERIALS THAT YOU HAVE PROVIDED
<u>9:53:29 AM</u>	RICK TULLY	SINCE THE COURT HAS REVIEWED OUR MOTION FOR DISQUALIFICATION
<u>9:53:48 AM</u>		WOULD LIKE TO BRING TO THE COURTS ATTENTION THAT THE NM SUPREME COURT AS WELL AS THE STATE BAR OF NM HAVE DONE A THOROUGH JOB IN SO FAR AS THE PRACTICE OF LAW IN NM
<u>9:54:24 AM</u>		RULES OF PROFESSIONAL CONDUCT ARE IN ADDITION TO THE RULES OF CIVIL PROCEDURE
<u>9:54:47 AM</u>		RULES RELATE BACK AND FORTH TO EACH OTHER
<u>9:55:36 AM</u>		TALKING ABOUT THE REPLY BRIEF FROM THE US OR THE ANSWER OR RESPONSE WENT SPECIFICALLY INTO A US STATUTE

<u>9:55:49 AM</u>		THERE WAS THE CLAIM THAT WE DID NOT ADDRESS THAT, THAT IS TRUE WE DID NOT ADDRESS THAT IN OUR ORIGINAL MOTION BUT WHEN IT WAS PRESENTED IN THE RESPONSE BY THE US WE ADDRESSED THAT FEDERAL STATUTE
<u>9:56:31 AM</u>		THE ATTORNEY GENERAL HAS ADOPTED RULES AND REGULATIONS
<u>9:57:02 AM</u>		ALL THE US ATTORNEYS HAVE TO DO TO RESOLVE THIS IS FILE A REGISTRATION CERTIFICATION OR CERTIFICATE WITH THE STATE BAR OF NM
<u>9:57:14 AM</u>		ALL THEY HAVE TO DO NOW IS ASSOCIATE WITH A NM LICENSED ATTORNEY AND THIS MATTER WOULD BE OVER WITH
<u>9:58:17 AM</u>		I HAVE NOTICED THAT IN SOME OF THE CORRESPONDENCE THAT HAS BEEN PROVIDED BY THE US ATTORNEYS, THERE IS AN ATTORNEY THAT IS ON THEIR DISTRIBUTION OR COPY LIST THAT IS A NM LICENSED ATTORNEY, SUE UMSHLER
<u>9:59:02 AM</u>		THE CURRENT US ATTORNEYS ARE NOT AUTHORIZED TO PRACTICE LAW IN THE NM WITHOUT ASSOCIATION
<u>9:59:09 AM</u>		WE WOULD REQUEST THAT UNLESS THEY COMPLY WITH THE STATUETE AND THE RULES THAT THEY NOT BE ALLOWED TO PARTICIPATE ANY FURTHER IN THIS ACTION
<u>9:59:24 AM</u>	J	QUESTION ABOUT 28-USC-530B, WHY SHOULD I NOT READ THAT SECTION TO PERTAIN TO THE ? RULES RATHER THAT THE LICENSING RULES, PARTICFULARLY IN CONJUNCTION WITH 28 USC 517
<u>9:59:58 AM</u>	TULLY	EXPLAINS
<u>10:02:20 AM</u>		MUST BE IN COMPLIANCE WITH APPLICABLE REGISTRATION REQUIREMENTS
<u>10:02:49 AM</u>	J	DO YOU FEEL, AND I APPRECIATE THAT YOU SUBMITTED YOUR REPLY ON SHORT NOTICE
<u>10:03:03 AM</u>		DO YOU FEEL THAT YOU NEED ANY ADDITIONAL TIME TO RAISE ISSUES TO FURTHER RESPOND TO THE RESPONSE
<u>10:03:19 AM</u>	TULLY	I AM HESITATING BECAUSE... I HAVE NOT BEEN ABLE TO GO THROUGH THAT SPECIFIC INFORMATION
<u>10:04:28 AM</u>		I DID NOT HAVE THE OPPORTUNITY DOWN THAT LINE
<u>10:05:11 AM</u>		EXPLAINING WHY HE WOULD LIKE ADDITIONAL TIME
<u>10:05:21 AM</u>	J	I NOTE IN YOUR REPLY THAT YOU STATE SOMETHING WITH RESPECT TO THE COURTS ORDER REGARDING THE MOTION AND THE WAIVER ISSUE THAT YOU RAISED. I AM NOT SURE I UNDERSTAND WHERE YOU ARE COMING FROM WHEN YOU STATE...
<u>10:06:12 AM</u>	TULLY	WE WERE IN A VERY TIGHT TIME PRESSURE

<u>10:06:40 AM</u>		A WAIVER HAS TO BE AN INTENTIONAL RELINQUISHMENT OF A RIGHT AND BASED ON THAT LEGAL RESEARCH I BELIEV THAT PERTICULAR COMMENT THAT WAS MADE, THE COURT DOES NOT NEED TO ADDRESS THAT BECAUSE I BELIEVE THE COURTS RULINGS THAT WE HAVE NOT WAIVED OUR POSITION IS PROTECTED IN THE RECORD BASED UPON THE ADDITIONAL RESEARCH THAT I DID YESTERDAY AFTERNOON THAT A WAIVER HAS TO BE AN INTENTIONAL RELINQUISHMENT AND WE HAVE NOT WAIVED THAT
<u>10:07:23 AM</u>		WE WOULD CONTINUE TO OBJECT TO ANY FURTHER PARTICIPATION OF THE US ATTORNEYS IN THIS MATTER AND WE WOULD LIKE FOR THAT OBJECTION TO BE NOTED IN THE RECORD AND BE ALSO CONTINUING UNTIL SUCH TIME AS THE COURT ENTERS ITS ORDER PERTAINING TO OUR CLIENTS MOTION FOR DISQUALIFICATION
<u>10:07:50 AM</u>	J	MR GUARINO ARE YOU GOING TO ADDRESS THIS FOR THE US
<u>10:07:50 AM</u>	GUARIN O	INAUDIBLE
<u>10:07:57 AM</u>	J	I AM CONSIDERING BASED ON THE SHORTNESS OF THE TIME, I WILL HEAR YOUR ARGUMENT NOW. EXPLAINS WHAT IS ON HIS MIND, I HAVE HEARD THE ARGUMENTS THAT HE WANTS TO COMPLETE HIS RESEARCH AND SUBMIT A SUPPLEMENT BY THE FEBRUARY 7TH DATE WHICH WOULD BE THE FULL TIME FOR HIM TO REPLY, BUT DURING THAT TIME THE ORDER REGARDING DISQUALIFICATION IS IN EFFECT AND MR TULLY YOU NEED TO PARTICIPATE FULLY IN THE DISCOVERY IN THIS CASE. THIS IS NOT A BASIS FOR YOU NOT TO PARTICIPATE THEN I DO NOT KNOW THAT THERE IS ANY DIFFICULTY IN GIVING MR TULLY HIS FULL OPPORTUNITY TO RESPOND
<u>10:09:02 AM</u>	GUARIN O	INAUDIBLE
<u>10:09:31 AM</u>	J	I WANT THE ISSUE RESOLVED ON THE OTHER HAND I UNDERSTAND MR TULLY WAS PUSHED IN HIS RESPONSE
<u>10:10:00 AM</u>		IN MY MIND WE ARE HAVING THE ARGUMENT NOW, I DO NOT KNOW THAT MR TULLY IS GOING TO BE ABLE TO PROVIDE ANY ADDITIONAL INFORMATION TO THE COURT
<u>10:10:13 AM</u>		I DO NOT SEE ANY HARM IN LETTING IT GO FOR A WHILE LONGER TO GIVE HIM TIME TO RESPOND
<u>10:10:22 AM</u>	GUARIN O	IF WE FEEL THAT IT IS NECESSARY TO REPLY WE WILL LET THE COURT KNOW
<u>10:10:49 AM</u>		INAUDIBLE
<u>10:11:26 AM</u>		THE LENGTH OF TIME THAT WE HAVE BEEN INVOLVED IN THIS CASE...
<u>10:14:05 AM</u>		TALKING ABOUT 5 30 B
<u>10:14:33 AM</u>		WE ARE NOT BOUND BY THE PROCEDURAL RULES
<u>10:15:36 AM</u>		WE ARE NOT REQUIRED TO DO SO FOR VERY GOOD REASONS

10:15:59 AM		THAT IS A SERIOUS INTERFERENCE WITH THE US ABILITY TO CONDUCT BUSINESS
10:16:11 AM		MR TULLY SAYS THAT IT IS NO BIG DEAL TO ASSOCIATE WITH LOCAL COUNSEL BUT THAT IN NOT ACTUALLY CORRECT
10:16:35 AM		WHAT WE ARE TALKING ABOUT HERE IS FOCING THE US TO DOUBLE UP ON ATTORNEYS THAT APPEAR IN NM
10:17:10 AM	J	PLEASE SUM UP, I UNDERSTAND YOUR POSITION VERY WELL FROM YOUR RESPONSE
10:17:18 AM	GUARIN O	ONLY THING THAT I WOULD HAVE TO ADD AND EMPHASIZE AT THIS POINT IS MR TULLYS INTERPRETATION OF 28-USC-5-30-B IS JUST WRONG ANHD HE IGNORES THE VERY LANGUAGE WITHIN THE RULES THAT CLEARLY SAY THAT WE ARE NOT REQUIRED TO FOLLOW SUCH PROCEDURES THAT HE HAS POINTED OUT TO THE COURT ABOUT REGISTRATION AND ASSOCIATION
10:17:48 AM		IF THE COURT TAKES A LOOK AT CERN? CASE. ... IT A SPECIFIC INTERPRETATION OF 5-30-B
10:18:26 AM		THERE IS FEDERAL SUPREMACY IF IT APPLIES AND WE ARGUE IN THIS CASE IT DOES APPLY
10:18:32 AM		WE ARE ASKING THE COURT TO DENY THE MOTION
10:18:45 AM	J - TULLY	I WILL GIVE YOU THE LAST WORD
10:18:49 AM	TULLY	IF THE COURT DEEMS IT APPROPRIATE FOR MY CLIENTS TO HAVE THE TIME TO FILE SOME ADDITIONAL INFORMATION
10:19:01 AM		I HAVE A PROCEDURAL QUESTION FOR THE COURT, ARE YOU GOING TO REQUIRE US TO FILE A MOTION TO FILE A SUR-REPLY OR WILL WE JUST BE ABLE TO FILE A SUPPLEMENTAL REPLY BRIEF
10:19:13 AM	J	I AM GOING TO GIVE YOU THE OPPORTUINTY TO FILE A SUPPLEMENTAL REPLY BRIEF BY FEBRUARY 7TH
10:20:06 AM		THEN I WILL GIVE THE US 5 DAYS TO RESPOND TO THE NEW MATERIAL, THIS ADDITIONAL TIME IS JUST FOR NEW MATERIAL
10:20:32 AM		IF YOU HAVE NEW AUTHORITY THAT YOU WISH TO PROVIDE TO THE COURT YOU MAY SUPPLEMENT
10:20:55 AM	GUARIN O	MR TULLY INDICATED EARLIER THAT MRS UMSHLER WAS A NM ATTORNEY BUT THAT IS NOT TRUE, EXPLAINS
10:21:33 AM	J	BREAK UNTIL 10:30 BUT BEFORE THAT QUESTION FOR MR GUARINO
10:22:28 AM	GUARIN O	EXPLAINS IT IS AT THE BACK
10:23:17 AM	J	RECESS FOR 10 MINUTES
10:38:40 AM	J	BACK ON THE RECORD. THANK YOU MR GUARINO FOR HELPING ME SORT OUT THAT PROBLEM
10:38:50 AM		LETS TURN TO THE MOTION FOR PROTECTIVE ORDER
10:39:00 AM		I HAVE READ THE SUBMISSIONS AND WANT TO LIMIT THE ARGUMENTS TO 10 MINUTES, WANT TO MAKE SURE WE FINISH BY NOON

10:39:20 AM	MARSH ALL	THE MOTION FOR PROTECTIVE ORDER SHOULD BE DENIED BECAUSE THE DISCOVERY SOUGHT IS GERMAIN TO ANY NUMBER OF ISSUES...LISTING ISSUES
10:40:16 AM		THAT CONDITION HAS NOT BEEN MET, IN FACT THERE IS NOT ENOUGH WATER IN THE RIVER
10:41:03 AM		READING FROM US BRIEF
10:41:37 AM		THE SETTLEMENT PACKAGE IF IT GOES THROUGH WILL ELIMINATE EVERYBODY ELSE'S WATER RIGHT AS BEST AS WE CAN TELL
10:41:50 AM		IT GOES TO REFUTE THE ARGUMENT WHICH THE US MADE IN ITS RESPONSES AND REPLY
10:42:05 AM		THAT IS LEGALLY AND FACTUALLY INCORRECT BECAUSE
10:43:41 AM	GEHLE RT	I OBJECT TO MR MARSHALL INTRODUCING ALLEGED EVIDENCE
10:43:52 AM	MARSH ALL	IT IS NOT EVIDENCE YOUR HONOR, IT IS LEGAL ARGUMENT
10:43:55 AM	GEHLE RT	IT IS INACCURATE AT THAT
10:44:00 AM	J	I WILL RECEIVE THIS FOR PURPOSES OF THE ARGUMENT ON THE MOTION, NOT AS EVIDENCE
10:44:10 AM	MARSH ALL	EXPLAINING NOTE
10:44:35 AM	UTTON	OBJECTION... IT IS PREJUDICIAL TO OUR POSITION ABOUT SUPPLY AND DEMAND
10:45:00 AM	J	I AM GOING TO ENTERTAIN IT JUST FOR THE PURPOSE OF THE MOTION ... AGAIN I AM NOT GOING TO CONSIDER THIS AS EVIDENCE IN THIS PROCEEDING
10:45:22 AM	(UNIDENTIFIED) SINGER?	OBJECTION
10:45:46 AM	J	I HAVE RULED ALREADY YOU MAY PROCEED MR MARSHALL
10:45:50 AM	MARSH ALL	CONTINUES
10:46:14 AM		TALKING ABOUT VIRGIN FLOW
10:47:09 AM		TALKING ABOUT PRIORITIES
10:48:28 AM		THE CRUCIAL LEGAL POINT IS THAT IT IS A SHARE OF WHAT EVER THE UPPER BASIN HAS LEFT
10:50:30 AM		UNDER EVERY REASONABLE SCENARIO, WOULD LEAVE NO SAN JUAN RIVER WATER FOR USE FOR NON-INDIANS IN NM
10:51:08 AM		DURING DROUGHT YOU HAVE TO MAKE UP THE ACCUMULATED DEFICIT
10:51:28 AM		THIS IS CLOSER TO THE TRUTH THAN ANYTHING THAT HAS BEEN PRESENTED TO THE COURT BEFORE
10:52:03 AM		THEY SAY IN THEIR RESPONSE THAT THEY HAVE RESPONDED WITH RESPECT TO THE SAN JUAN RIVER IN NEW MEXICO, THEY HAVE NOT
10:52:26 AM		INTERROGATORY #10 IS CRUCIAL. HERE IS WHAT IT SAID

10:53:03 AM		HERE IS THE NEXT BIG QUESTION, DO ALL OF THESE DEDUCTS TAKE PRIORITY AND IF SO OVER WHOM
10:53:53 AM		HERE WE ARE TALKING ABOUT 500 CFS MINIMUM
10:54:04 AM		TALKING ABOUT SILVERY MINNOW WATER
10:54:10 AM		WHEN THEY STAND UP AND SAY THAT NONE OF THIS IS RELEVANT IT ALL GOES TO THE QUESTION OF WHETHER THERE IS ANY WATER FOR ANYBODY ELSE
10:54:31 AM		THIS GETS BACK TO THIS NO JURISDICTION THING
10:54:38 AM		READING FROM PAGE 6 OF RESPONSE
10:55:22 AM		THE MCCARREN AMMENDMENT DOES NOT ASSERT OR IMPLY THAT A STATE COURT WOULD HAVE JURISDICTION TO REVIEW THE DECISION MAKING PROCESS OF FEDERAL ENTITIES
10:55:36 AM		THE SUPPOSED BENEFITS OF THIS DEAL ARE ILLUSORY AND APPARENTLY UNENFORCIBLE
10:56:01 AM	J	ISN'T THAT AN ADMINISTRATIVE PROBLEM MR MARSHALL
10:56:02 AM	MARSH ALL	NO
10:56:06 AM	J	WHEN I HEAR YOU SAYING...IS THAT THERE IS A LEVEL OF MATHEMATICAL CERTAINTY THAT YOU WANT THE COURT TO LOOK AT
10:56:35 AM		SUCH THAT THERE IS ONLY SO MUCH SUPPLY AND EVERYBODY UNDERSTANDS THAT AND THAT IN THIS PROCEEDING IT IS THIS COURTS OBLIGATION TO BE DIVYING OUT THAT SUPPLY IN SUCH A MANNER THAT IT WORKS
10:56:57 AM		I AM VIEWING THAT AS THAT IS AN ADMINISTRATION OBLIGATION, THAT IS FOR THE STATE ENGINEER TO DO
10:57:04 AM		THE JOB OF THIS COURT IS TO LOOK AT WHO HAS WHAT IN TERMS OF THEIR WATER RIGHTS AND THESE ARE YOUR CLIENTS AS WELL BY VIRTUE OF HISTORICAL USE OR BY VIRTUE OF SETTLEMENTS THAT ARE ENTERED INTO WITH THE STATE
10:57:22 AM		AFTER THAT IS DETERMINED, AS LONG AS THAT IS THE PROPER AMOUNT IT IS GOING TO BE OVER APPROPRIATED AND THEN THAT IS FOR THE STATE ENGINEER TO ADMINISTER IN SUBSEQUENT PROCEEDINGS
10:57:39 AM		IF I AM NOT UNDERSTANDING THAT CORRECTLY PLEASE TELL ME WHY
10:57:56 AM	MARSH ALL	YOU ARE HALF RIGHT, THE LAST PART OF YOUR STATEMENT ABOUT WHAT THIS COURT IS SUPPOSED TO DO IS CORRECT, THAT IS FIGURE OUT WHO HAS WHAT WATER RIGHTS
10:58:35 AM		DETERMINING THE WATER RIGHTS AND THE RELATIVE PRIORITY IS EXCLUSIVELY THE PROBLEM OF THE COURT
10:58:58 AM		THAT IS SO IMPORTANT THAT IT WAS WRITTEN INTO OUR CONSTITUTION IN 1967 WHERE IT SAYS ANYTHING THAT THE STATE ENGINEER DOES IS SUBJECT TO DE NOVO REVIEW

10:59:14 AM		THAT IS WHY WE HAVE OUR COUNTER-CLAIM. WE WANT OUR RIGHTS DETERMINED AND WE CAN SHOW THAT WE ARE ENTITLED TO A BETTER PRIORITY AND A BETTER AMOUNT THAN THESE CLAIMS WHICH ARE NOT FOUNDED
10:59:28 AM		TALKING ABOUT ADMINISTRATION
10:59:34 AM		THE US CONTROLS NAVAJO DAM
10:59:42 AM		THEY ARE IN HERE SAYING THAT YOU DO NOT HAVE JURISDICTION
10:59:43 AM		IF YOU DO NOT HAVE JURISDICTION, THEN A STATE ENGINEER CERTAINLY DOES NOT HAVE JURISDICTION
10:59:48 AM		THEY SAY THAT THEY HAVE SOVEREIGN IMMUNITY
11:00:16 AM		WE ARE NOT TALKING ABOUT WHAT HAPPENS ONCE THINGS GET ADJUDICATED, WE ARE TALKING ABOUT THE RIGHTS BEING DETERMINED JUDICIALLY AS THE CONSTITUTION REQUIRES AMOUNT AND PRIORITY
11:00:35 AM		THE BOTTOM LINE IS...
11:00:40 AM		THEY WOULD LIKE YOU TO RUBBER STAMP THE DEAL BECAUSE THAT WOULD MAKE IT REALLY TOUGH FOR US, BUT IF YOU DO NOT THEY SAID RIGHT HERE ON PAGE 6 THEY WILL DO WHAT EVER WE WANT
11:01:04 AM		THE STATE ENGINEER IS FOUR SQUARE WITH THE UNITED STATES AND THE NAVAJOS
11:02:35 AM	GARY HORNE R	MAY I ADDRESS THE COURT ON THIS ISSUE
11:02:39 AM	J	I THINK THIS IS AN ISSUE THAT IS BETWEEN THE US AND THE COMMUNITY DITCH DEFENDANTS
11:02:49 AM		IN THE INTEREST OF TIME I AM GOING TO NEED TO MOVE FORWARD
11:02:58 AM	HORNE R	I FILED DISCOVERY REQUESTS WITH REGARD TO THE SAME INFORMATION WAY BACK WHEN
11:03:04 AM	J	THAT IS CORRECT AND THOSE HAVE BEEN RULED ON
11:03:40 AM	DAVID GEHLE RT	BEGINS
11:04:09 AM		MR HORNERS RAISED AN EXCELENT POINT. HE SERVED ESSENTIALLY EXACTLY THE SAME DISCOVERY BACK IN JUNE AND YOUR ORDER REJECTED ALL OF THAT
11:04:22 AM		YOUR ORDER SPECIFICALLY REJECTED DISCOVERY REQUESTING THE US TO EXPLAIN ITS ACTIONS
11:04:37 AM		LISTING OTHER SPECIFIC REJECTIONS
11:04:45 AM		YOU HAVE ALREADY DECIDED ALL OF THE ISSUES THAT ARE IN THIS MOTION FOR PROTECTIVE ORDER
11:05:02 AM		YOU WERE RIGHT TO DO THAT
11:05:19 AM		AS TO CLAIMS OUTSIDE OF THE SJ RIVER BASIN, THEY TOO ARE INDEPENDANT OF THE SETTLEMENT

11:05:40 AM	J	I AM SURE YOU HAVE HEARD WHERE MR MARSHALL IS GOING AND WE ARE NOT TALKING ABOUT SMALL CLAIMS ALTHOUGH SMALL CLAIMS ADD UP BUT IF THE US AND OTHERS HAVE LARGE CLAIMS WITHIN THE SJ BASIN AND WITHIN THE COLORADO RIVER BASIN THEN THERE IS AT LEAST AN INDIRECT EFFECT ON THE SUPPLY THAT IS AVAILABLE FOR THE PURPOSES OF THIS SETTLEMENT
11:06:26 AM		I WOULD ASK YOU TO PLEASE FOCUS ON WHAT MR MARSHALL IS ARGUING
11:06:28 AM	GEHLE RT	MR MARSHALL IS MOSTLY ENGAGING IN SPECULATION ABOUT THE PROBABILITY OF A COLORADO RIVER COMPACT
11:06:37 AM		LET ME TALK A LITTLE BIT ABOUT THE DEMAND STUDY
11:06:39 AM		MR MARSHALL SEEMS TO THINK THAT IT INDICATES THAT THE SKY IS FALLING. YOU NEED TO UNDERSTAND WHAT THE DEMAND STUDY IS AND IS NOT
11:06:49 AM		EXPLAINING WHAT IT IS NOT
11:07:01 AM		IT DOES NOT TALK ABOUT WATER RIGHTS AT ALL
11:07:04 AM		EXPLAINS WHAT IT IS, AN ASSESSMENT OF POTENTIAL TOOLS THAT MIGHT BE AVAILABLE TO ENHANCE THE WATER SUPPLY WITHIN THE COLORADO RIVER BASIN
11:07:18 AM		LISTING TOOLS
11:07:40 AM		IT LOOKS AT THESE POTENTIAL TOOLS ON THE WATER SUPPLY SIDE AND IT APPLIES THOSE IN THE CONTEXT OF 4 DIFFERENT SENARIOS
11:08:33 AM		READING FROM LAST PAGE OF EXECUTIVE SUMMARY OF THE STUDY
11:08:56 AM		THIS PROCEEDING IS ABOUT THE SETTLEMENT. IT IS NOT ABOUT WHETHER THE US MAY EXERCISE ITS ENDANGERED SPECIES OBLIGATIONS
11:09:16 AM		AS TO POTENTIAL WATER RIGHTS CLAIMS OF THE US....
11:09:24 AM		WE DID IDENTIFY THE POTENTIAL CLAIMS WE THINK THAT WE WOULD BE EXPECTED TO FILE IN THIS ADJUDICATION
11:09:33 AM		NAMING WHAT WAS IDENTIFIED
11:09:41 AM	J	WHAT IS THE STATUATORY AUTHORITY WITH REGARD TO THIS SETTLEMENT, WHAT DOES IT SAY WITH REGARD TO THE COLORADO RIVER BASIN
11:10:04 AM	GEHLE RT	HE TALKING ABOUT THE HYDROLOGIC DETERMINATION
11:10:19 AM	J	WHAT IS THE STATUATORY LANGUAGE
11:10:22 AM	GEHLE RT	I DO NOT HAVE THE STATUATORY LANGUAGE. I CAN TELL YOU AS A GENERAL MATTER, THE HYDROLOGIC DETERMINATION IS A PROCESS THAT IS NOT PARTICULAR TO THIS SETTLEMENT. IN FACT THERE HAVE BEEN 6 HYDROLOGIC DETERMINATIONS SINCE THE 1960'S
11:10:45 AM		IT IS ESSENTIALLY WHEN RECLAMATION WANT TO BUILD ANOTHER PROJECT, THEY HAVE TO DO AN ASSESSMENT OF THE WATER SUPPLY AVAILABLE WITHIN THE CO RIVER

11:10:57 AM	J	I AM FAMILIAR WITH THE HYDROLOGIC DETERMINATION
11:11:00 AM	GEHLE RT	IT BASICALLY SAYS YES OR NO DOES THE SECRETARY OF THE INTERIOR BELIEVE THAT THERE IS ENOUGH WATER ACCOMODATE THAT PROJECT
11:11:09 AM		THIS IS A PRE-EXISTING REGULATORY REQUIREMENT THAT HAS BEEN APPLIED IN MANY CONTEXTS OUTSIDE OF THE SETTLEMENT
11:11:14 AM		IT APPLIES TO THIS SETTLEMENT SIMPLY BECAUSE THE NAVAJO GALLUP WATER SUPPLY PROJECT
11:11:21 AM		THE POINT THAT THE US HAS BEEN TRYING TO MAKE TO MR MARSHALL FOR THE PAST 5 YEARS IS NOT THAT WE ARE WAIVING OUR NOSE AT MR MARSHALLS CONCERNS
11:11:42 AM		THIS COURT HAS THE JURISDICTION TO REVIEW THE PROPOSED SETTLEMENT AND THE WATER RIGHTS CLAIMS OF THE US
11:11:48 AM		WITH ALL DUE RESPECT YOU DO NOT HAVE JURISDICTION TO REVIEW A FEDERAL DECISION
11:12:02 AM	J	WHAT ABOUT THE DISCUSSION, MR MARSHALL WAS RESPONDING TO THE INQUIRY THAT I HAD WITH REGARD TO ADMINISTRATION, AND AFTER THE ADJUDICATION IS COMPLETE THE JURISDICTION OF THE OSE AND THIS COURT WITH REGARD TO THE US ADJUDICATED INTERESTS. DO YOU AGREE WITH WHAT MR MARSHALL SAID
11:12:29 AM	GEHLE RT	I AM NOT SURE I UNDERSTOOD WHAT MR MARSHALL SAID
11:12:34 AM	J	WHAT IS YOUR UNDERSTANDING ABOUT THE STATE ENGINEERS ADMINISTRATIVE JURISDICTION AFTER THE WATER RIGHTS ARE ADJUDICATED IN THIS PROCEEDING WITH RESPECT TO THE US
11:12:50 AM	GEHLE RT	LET ME SPEAK WITH RESPECT TO MY CLIENTS...IN PARTICULAR MR GUARINO REPRESENTS THE BIA AND THE INDIAN ASPECTS OF THE US OBLIGATIONS. I REPRESENT THE NON-INDIAN FEDERAL AGENCIES, THE BUREAU OF RECLAMATION, FOREST SERVICE, PARK SERVICE...WHICH IS WHY I AM ONLY SPORADICALLY INVOLVED IN THIS PARTICULAR PROCEEDING BECAUSE MY CLIENTS ARE NOT DIRECTLY INVOLVED IN THE SETTLEMENT
11:13:32 AM		FOR INSTANCE
11:13:45 AM	J	WHAT ABOUT ADMINISTRATIVELY BY THE OSE
11:13:50 AM	GEHLE RT	WHEN I SAY STATE COURTS I MEAN GENERALLY STATE LAW WHICH WOULD INCLUDE ADMINISTRATE IF THAT IS THE WAY THAT THE PROCESS WORKS IN NM
11:14:01 AM		I PRACTICE IN 5 DIFFERENT STATES AND THEY ALL HAVE A DIFFERENT APPROACH TO HOW THEY ADMINISTER THEIR WATER RIGHTS
11:14:33 AM	UTTON	IN THE PROPOSED DECREE AND IN THE SETTLEMENT AGREEMENT THERE ARE PROVISIONS THAT DEAL WITH THE SUBJECT THAT YOUR HONOR IS RAISING

11:14:39 AM		THE SETTLEMENT AGREEMENT PROVIDES THAT THE STATE ENGINEER WILL HAVE THE AUTHORITY TO ADMINISTER THE WATER RIGHTS AFTER THE DECREE IS ENTERED
11:14:55 AM		SECTION 14 OF THE PROPOSED DECREE SAYS THAT THIS COURT RETAINS JURISDICTION TO INTERPRET AND ENFORCE THIS DECREE SUBJECT TO THE PROVISIONS OF....
11:15:28 AM		THE US AND THE NAVAJOS HAVE SPECIFICALLY AGREED THAT THE STATE ENGINEER IS THE WATER MASTER OF THE SJ BASIN
11:15:40 AM	GEHLE RT	IN JULY YOU EXPLAINED THAT DISCOVERY NEEDS TO BE FOCUSED
11:16:28 AM		THE NN IS NOT GOING TO GO AWAY IF THE SETTLEMENT IS NOT APPROVED THE FALL BACK OPTION IS THAT THEY LITIGATE THEIR CLAIMS WHICH ARE MUCH LARGER THAN WHAT THEY ARE WILLING TO SETTLE FOR
11:17:08 AM		THAT MATERIAL IS ALREADY AVAILABLE AND THERE IS NO NEED FOR DISCOVERY
11:17:31 AM	POLLAC K	TALKING ABOUT THE 1962 ACT
11:18:49 AM		WE HAVE HEARD A LOT DURING THE PAST SEVERAL MONTHS ABOUT THE NAVAJO SETTLEMENT DOING THIS THAT AND THE OTHER
11:18:55 AM		WE SHOULD NOT LOSE SIGHT OF IS WHEN WE HEAR ALL OF THE CONCERNS THAT THE ST OF NM IS GOING TO BE EXCEEDING ITS COMPACT ALLOCATION
11:19:13 AM		IF THE HYDROLOGIC DETERMINATION IS WRONG THAT RISK FALLS ON THE NN
11:19:22 AM		WE WILL BE AMONGST THE MOST JR WATER USERS IN THIS BASIN
11:19:58 AM	MARSH ALL	CLOSING
11:20:39 AM		3 KINDS OF WATER
11:21:52 AM		IF YOU APPROVE THIS SETTLEMENT THEY WILL BE BACK IN HERE WITH OTHER CLAIMS
11:22:05 AM		THE EFFECT OF THE ENDANGER SPECIES ACT IS NOT CLEAR
11:22:59 AM		CONGRESS INTENDED NOT TO DO THIS DEAL UNLESS THERE WAS ENOUGH WATER IN THE BASIN, THAT IS WHY THEY REQUIRED A HYDROLOGIC DETERMINATION
11:23:50 AM		I WOULD POINT OUT AS A MATTER OF SEPERATION AND POWER, CONGRESS HAS NO POWER TO DECIDE FACTS IN A JUDICIAL CONTEXT
11:24:04 AM		ONLY THE COURT UNDER OUR SYSTEM OF SEPERATION OF POWERS CAN FIND THE FACTS AND THAT IS WHAT YOU ARE DOING
11:24:25 AM		HOW COULD THE STATE ENGINEER HAVE JURISDICTION OVER WHAT THE US DOES IN THE FUTURE IF THIS COURT DOES NOT
11:24:47 AM		9.5 IS AN ILLUSORY PROVISION

11:24:51 AM		IT SOUNDS GOOD BUT WHEN YOU READ IT IT IS CAREFULLY WRITTEN TO CREATE THE MISIMPRESSION THAT YOU WILL HAVE JURISDICTION AND THEY WILL SAY DOWN THE ROAD YOU WILL NOT
11:25:02 AM	GEHLE RT	YOU HAVE INDICATED THAT WE ARE UNDER SOME TIME PRESSURE HERE AND MR MARSHALL IS NOW DISECTING THE SETTLEMENT AGREEMENT
11:25:18 AM		I DO NOT SEE THE POINT OF THIS ARGUMENT
11:25:22 AM	J	I THINK HE HAS MADE HIS POINT AND I WILL GO BACK AND LOOK AT THEM BECAUSE IT WAS RELEVANT TO WHAT WE WERE DISCUSSING BEFORE
11:25:38 AM	MARSH ALL	WHEN WE GET TO BRIEFING WE HAVE A LOT TO SAY ABOUT THESE VARIOUS PROVISIONS
11:26:08 AM	VARIOU S	OBJECTION
11:26:25 AM	MARSH ALL	REGARDING INTERROGATORY WE ASKED THE NN. (READING INTERROGATORY) AND RESPONSE
11:27:12 AM		MY POINT IS THA THEY NEED TO ANSWER THESE QUESTIONS BECAUSE IF THIS DEAL IS APPROVED BY THIS COURT, THERE IS NO WATER THAT WE CAN SEE
11:27:33 AM	J	I WILL GO AND LOOK AT THE PROVISIONS THAT HAVE BEEN QUOTED AND ISSUE AND ORDER WITH RESPECT TO THIS HOPEFULLY BY THE END OF THE WEEK
11:27:44 AM		TURN NOW TO BOTH THE MOTIONS OR ISSUES THAT HAVE BEEN RAISED BY THE NN AND THE US CONCERNING DISCOVERY
11:28:02 AM		AS I UNDERSTAND IT BOTH PARTIES ARE ADDRESSING THE COURTS NOVEMBER 30TH ORDER THAT GRANTED ADDITIONAL TIME TO THE NON-SETTLING PARTIES TO RESPOND TO DISCOVERY AND THAT THE SUBSTANTIVE DISCOVERY RESPONSES OR LACK OF RESPONSES ON THE PART OF THE NON-SETTLING PARTIES
11:28:39 AM		WHAT IS THE PLEASEURE OF THE PARTIES, WE ARE NOW IN THE LAST MONTH OF DISCOVERY
11:29:09 AM	GUARIN O	WE HAVE IDENTIFIED VERY SPECIFICALLY THE DISCOVERY REQUEST THAT WE FEEL HAVE NOT BEEN ANSWERED
11:29:23 AM		WE DO NOT NEED ARGUMENT ABOUT WHETHER THE COURT THINKS THEY HAVE BEEN ANSWERED, THE COURT CAN ANALYZE IT UNDER THE RELEVANT LAW, STANDARDS OF DISCOVERY
11:29:38 AM		WITH RESPECT TO THE PARTIES THAT WE HAVE IDENTIFIED, THE ONLY THING THAT I HAVE TO ADD IS WITH RESPECT TO THE CITIES OF AZTEC AND BLOOMFIELD AND WITH RESPECT TO THE LPAA PARTIES IT SEEMS THEY ARE CONTINUING TO LOOK AT THE DISCOVERY REQUEST TO SUPPLEMENT
11:30:14 AM	J	I AM LOOKING FOR MY COPY OF THE NOV. 30TH ORDER
11:30:15 AM	GUARIN O	I CAN PROVIDE YOU WITH A COPY, APPROACHES
11:30:42 AM	POLLAC K	OUR NOTICE OF DISCOVERY DISPUTE WAS DIRECTED AT THE COMMUNITY DITCH DEFENDANTS
11:30:51 AM		THERE ARE REALLY 2 ISSUES HERE

11:30:52 AM		NUMBER OF RESPONSES THAT WERE NOT RESPONSES AND WE BELIEVE THAT WE ARE ENTITLED TO THE RESPONSES
11:31:01 AM		AS A GENERAL PROPOSITION THE DISCOVERY THAT WE SOUGHT FROM THE COMMUNITY DITCH DEFENDANTS RELATED TO THE MATTERS THAT THEY RAISED AND THEIR OBJECTIONS ANSWERS AND COUNTERCLAIMS
11:31:14 AM		RECEIVED A GENERIC RESPONSE
11:31:23 AM	J	NOT EXPECTING YOU TO ARGUE IT NOW, WHAT ARE YOU EXPECTING BY HAVING FILED THIS PRIOR TO THIS DISCOVERY CONFERENCE, WHAT ARE YOU EXPECTING TODAY
11:31:29 AM	POLLAC K	WE ARE EXPECTING THEM TO RESPOND TO THE INTERROGATORIES THAT WERE NOT RESPONDED TO, TO RESPOND TO THE REQUEST FOR PRODUCTION OF DOCUMENTS, AND WE ARE ASKING THAT THE RESPONSES TO THE INTERROGATORIES BE ANSWERED UNDER OATH AND BE VERIFIED PURSUANT TO YOUR ORDER OF NOVEMBER 30TH BY EACH OF THE DEFENDANTS THAT ARE PROPORING TO RESPOND TO THE DISCOVERY
11:31:51 AM	J	WHAT TIME FRAME ARE YOU LOOKING AT
11:31:56 AM	POLLAC K	THE RESPONSES WERE REALLY DUE DECEMBER 21ST, BUT I AM THINKING BY THE CLOSE OF DISCOVERY AT THE VERY LATEST, WHICH WOULD BE MARCH 1ST
11:32:11 AM	J	WITH RESPECT TO THE FIRST QUESTION, IS WITH RESPECT TO THE VERIFICATION OF THE INTERROGATORIES
11:32:19 AM		I RESPECT THAT YOU JUST GOT THIS AND YOU HAVE NOT HAD A CHANCE TO FORMALLY RESPOND TO IT
11:32:31 AM	MARSH ALL	WE HAVE BEEN GOING BACK AND FORTH ON THIS AND THE COURT HAS NOT SEEN ALL OF THE CORRESPONDENCE THAT WE HAVE HAD
11:32:43 AM		I DO NEED THE OPPORTUNITY TO RESPOND
11:32:49 AM		CLARIFYING
11:33:04 AM		YOU OVERRULLED ALL OF THE OTHER OBJECTIONS
11:33:17 AM		WE FILED A SUPPLEMENTAL ANSWER WHICH HAD NEW INFORMATION IN IT INCLUDING THE 700 PAGES OF THE BOR STUDY
11:33:30 AM	J	AGAIN I DO NOT WANT TO GO INTO THAT
11:33:31 AM	MARSH ALL	THE BOTTOM LINE IS THAT WE HAVE ANSWERED
11:33:36 AM		THEY HAVE BEEN VERIFIED BY JIM ROGERS WHO IS THE SECRETARY TREASURER
11:33:46 AM		THEY SEEM TO BE SAYING THAT WE HAVE TO GO OUT AND COLLECT VERIFIED SWORN SIGNATURES
11:33:59 AM	J	WHO IS ANSWERING THE INTERROGATORIES
11:34:01 AM	MARSH ALL	THEY WERE ANSWERED BY JAMES ROGERS, EXPLAINS
11:34:24 AM	J	DOES HE HAVE THE AUTHORITY TO ACT ON THEIR BEHALF

11:34:24 AM	MARSH ALL	YES
11:34:56 AM		I WOULD LIKE THE OPPORTUNITY TO BRIEF ALL OF THAT
11:35:05 AM	J	WHEN WILL YOU BE ABLE TO RESPOND
11:35:09 AM	MARSH ALL	WITHIN THE PERIOD ALLOWED BY THE RULES
11:35:13 AM		I NEED TIME TO BE ABLE TO RESPOND TO THAT BECAUSE WE ARE BEING DRAGGED BACK INTO THIS, I NEED TO FILE A MAJOR BRIEF ON THIS ISSUE
11:35:29 AM		I NEED THE FULL 2 WEEKS
11:35:39 AM		THIS IS MAKE WORK, WE HAVE PROVIDED THE INFORMATION AND WE HAVE SUPPLEMENTED IT
11:35:46 AM		WE ARE SAYING THEY ARE THE ONES THAT HAVE THE INFORMATION
11:35:59 AM	J	I WILL GIVE YOU THE TIME AND I WILL ENTERTAIN IT, BUT I DO NOT WANT YOU TO...WHEN I HEAR YOU SAY A MAJOR BRIEF I HAVE SOME CONCERN ABOUT THAT BECAUSE YOU ARE RESPONDING TO THAT ISSUE AND YOU HAVE OTHER THINGS THAT WE ALL KNOW THAT YOU NEED TO DO
11:36:23 AM		MY PERCEPTION IS THAT IT IS NOT A MAJOR BRIEF
11:36:38 AM	MARSH ALL	WE WILL RESPOND WITHIN THE TIME PERIOD ALLOWED
11:36:49 AM	J	WHAT IS THE DATE
11:36:59 AM	MARSH ALL	WAS THERE A MOTION FILED
11:37:03 AM	J	ANSWERS
11:37:04 AM	GUARIN O?	WE CAPTIONED OURS IN THE FORM OF A MOTION
11:37:26 AM	J	I HAVE MY OWN THOUGHTS ABOUT THE COMPEL ASPECT OF IT, I WILL GET TO THAT IN A MINUTE
11:37:35 AM		ASKING FOR THE DATE
11:37:41 AM	HORNE R	THE US MOTION WAS FILED LAST THURSDAY
11:38:06 AM	POLLAC K?	THE NN DID NOT FILE THEIRS AS A FORMAL MOTION
11:38:28 AM	HORNE R	WOULD LIKE TO POINT OUT THAT I THINK ALL OF THIS STUFF CAN BE RESOLVED TODAY. MY CONCERN IS A LOT OF WORK NEEDS TO BE DONE TO RESPOND AND I HAVE A LOT OF OTHER THINGS THAT NEED DONE, LISTING
11:39:23 AM		THOSE MOTIONS WERE NOT TIMELY AND SHOULD BE DENIED JUST ON THE BASIS THAT THEY WERE NOT TIMELY
11:39:52 AM		ALL THEY HAVE DONE IN THEIR MOTION IS THEY DID NOT ANSWER THE QUESTIONS. THEY DO NOT SAY WHY OR COME UP WITH ANY BASIS FOR IT
11:40:08 AM		I ANSWERED THE QUESTIONS, THE ANSWERS ARE THERE
11:40:24 AM		IT LOOKS LIKE THIS COULD BE DECIDED TODAY BUT THEIR MOTION TO COMPEL SHOULD BE DENIED
11:40:35 AM	J	EXPLAINS HIS THINKING

11:41:22 AM		IT IS UP TO THE RESPONDING PARTIES ON WHETHER THEY WANTED TO SUPPLEMENT THEIR RESPONSES
11:42:03 AM		I AM GOING TO LEAVE IT AT THAT
11:42:37 AM		YOU MAY WANT TO SUPPLEMENT THAT REQUEST AT THIS POINT
11:42:44 AM		IF THERE IS GOING TO BE AN OBJECTION TO EVIDENCE BEING INTRODUCED WITH RESPECT TO THAT OBJECTION, THEN THE COURT WILL RULE AT THAT TIME WHEN THE LATER OBJECTION IS MADE
11:43:07 AM		SOME OF THOSE INTERROGATORY ANSWERS HAVE BEEN SUPPLEMENTED TO SOME DEGREE
11:43:15 AM		I AM NOT PLANNING TO GO BACK AND LOOK AT THOSE SUPPLEMENTED RESPONSES AND MATCH THEM UP AT THIS LATE TIME
11:43:36 AM		IF YOU THINK YOUR SUPPLEMENTED RESPONSE IS SUFFICIENT TO COVER YOUR OBJECTION THEN YOU DO NOT NEED TO SUPPLEMENT
11:43:56 AM		ON THE OTHER HAND IF IT IS NOT SUFFICIENT AND YOU DO NOT SUPPLEMENT IT, AND THERE IS A MOTION MADE ON THE SETTLING PARTIES THEN I AM GOING TO RULE IN FAVOR OF THE SETTLING PARTIES AND YOU WILL NOT BE ABLE TO SUBMIT IT
11:44:24 AM		WHEN I SAY IT IS UP TO YOU I EMPHASIZE THAT THERE BE CONTINUED COOPERATION AMONG THE PARTIES
11:45:06 AM		EXPLAINS WHAT HE IS EXPECTING IN THE FUTURE
11:46:11 AM	MARSH ALL	2 QUESTIONS AND POINTS OF CLARIFICATION
11:46:23 AM	J	EVERYBODY HAS GOT A DUTY TO SUPPLEMENT
11:47:04 AM	MARSH ALL	I THINK THE RULE OF CIVIL PROCEDURE ON THE DUTY TO SUPPLEMENT SAYS YOU ARE SUPPOSED TO SUPPLEMENT SEASONABLY OR REASONABLE AND IT DOES NOT SAY EXACTLY WHEN
11:47:19 AM		IF YOU COME ACROSS SOMETHING AND IT LOOKS PROMISING THEN YOU HAVE TO DO IT THAT DAY
11:47:32 AM	J	WE HAVE THE END OF DISCOVERY. WHEN I AM TALKING ABOUT SUPPLEMENT I AM NOT TALKING ABOUT SUPPLEMENTING WITH SOMETHING THAT YOU HAD IN OCTOBER
11:48:08 AM		I DO WANT ... YOU NEED TO RESPOND TO THE MOTION WITH RESPECT TO THE VERIFICATION AND WE ARE LOOKING AT THE 18TH OR 19TH IN THAT REGARD
11:48:49 AM		IF THAT DATE WORKS WITH THE NN AND THE US?
11:48:57 AM	GUARIN O	THAT IS FINE
11:49:01 AM	J	I WILL LEAVE IT AT THAT DATE
11:49:17 AM		I CAUTION THAT IS THE LAST SHOT
11:49:39 AM		MR MARSHALL YOU HAVE UNTIL, WELL THIS OBIVIATES THE US MOTION IF I UNDERSTAND IT
11:49:53 AM	GUARIN O	TRYING TO CLARIFY
11:50:04 AM	J - GUARIN O	IS THE RULING THAT I JUST MADE DISPOSITIVE TO YOUR MOTION TO COMPEL

11:50:21 AM	GUARIN O	ANSWERS
11:50:37 AM	J	MAYBE THEY HAVE CHANGED THEIR MIND, BUT AGAIN WHAT I AM SAYING IS THAT IF THEY DO NOT SUPPLEMENT THEY DO THAT AT THEIR OWN PERIL
11:50:52 AM	GUARIN O	I WILL TAKE THAT, RESPONSES ARE DUE BY THE END OF DISCOVERY
11:50:55 AM	J	WITH RESPECT TO THE NN MOTION, MR MARSHALL WILL HAVE THE OPPORTUNITY TO RESPOND WITH REGARD TO THE VERIFICATION ASPECT FEBRUARY 18TH
11:51:48 AM		WILL GO THE 19TH
11:52:05 AM		MR POLLACK THEN HOW LONG DO YOU THINK THAT YOU WILL NEED TO RESPOND TO THAT
11:52:10 AM	POLLAC K	I WILL HAVE MY RESPONSE FILED BY MARCH 1ST
11:52:36 AM	J	THE CLOSE OF DISCOVERY IS MARCH 1ST SO I WOULD LIKE TO SHORTEN THAT IF POSSIBLE SO I CAN RULE ON IT BY MARCH 1ST
11:52:56 AM	POLLAC K	I DO NOT THINK IT IS GOING TO TAKE VERY LONG TO RESPOND SO FEB. 25TH
11:53:12 AM	J	IF THE COURT NEEDS ARGUMENT ON THAT I WILL SET UP A TELEPHONIC ARGUMENT
11:53:19 AM	MARSH ALL	FOR THE RECORD DOES THE STATE ENGINEER JOIN IN THIS MOTION WITH RESPECT TO VERIFICATION
11:53:35 AM	??	WE DID NOT JOIN
11:53:42 AM	SINGER ?	REMINDE THE COURT THAT THE COURT ACTUALLY RULED IN THIS ISSUE EARLIER AND ORDERED MR MARSHALL TO FILE AN ENTRY OF APPEARANCE FOR EVERY PERSON OR PARTY FOR WHOM HE CLAIMED TO BE REPRESENTING, HE HAS NEVER DONE THAT
11:53:55 AM	GUARIN O	ELABORATING
11:54:09 AM	J	LET ME ASK YOU TO ADDRESS THAT WITH MR MARSHALL AGAIN
11:54:23 AM	GUARIN O	WE HAVE HAD EXCHANGES AND HE HAS DECLINED
11:54:27 AM	J	I HAVE NOT SEEN THAT BEFORE ME SO I AM NOT GOING TO DEAL WITH THAT NOW
11:54:32 AM		MR MARSHALL DID YOU HAVE ANY FURTHER CLARIFICATION THAT YOU NEED
11:54:37 AM	MARSH ALL	NO
11:54:39 AM	J	I WANTED TO ADDRESS IS DO WE NEED ANOTHER DISCOVERY CONFERENCE OF THIS NATURE BEFORE THE CLOSE OF DISCOVERY
11:54:57 AM	MARSH ALL	SHORT ANSWER IS YES AND PROBABLY MORE THAN ONE, THERE IS SO MANY ISSUE OUT THERE. WE NEED AT LEAST ONE
11:55:43 AM	J	CAN WE DO THAT BY TELEPHONE
11:55:51 AM	GUARIN O	THE SETTLING PARTIES ARE OF THE POSITION THAT WE DO NOT NEED A CONFERENCE LIKE THIS
11:56:05 AM		IF THERE IS A NEED FOR THE COURT TO PULL THE PARTIES I WOULD SUGGEST THAT WE DO THAT BY TELEPHONE

11:56:10 AM	J	THAT IS WHAT I AM ENCLINED TO DO
11:56:27 AM		I WOULD SAY IF THERE ARE OTHER ISSUES BRING IT TO THE COURTS ATTENTION
11:56:50 AM		I WILL GET YOU ORDERS OUT SHORTLY
11:56:57 AM	SINGER	THERE IS AN ORDER OUTSTANDING FROM THE COURT
11:57:02 AM	J	THERE IS, I AM PAINFULLY AWARE OF IT
11:57:10 AM		ADJOURNED