

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED  
2013 FEB 12 AM 10:30

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

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

Plaintiff,

vs.

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

Defendants.

**AB-07-1**

Claims of Navajo Nation

No. CV 75-184

Honorable James J. Wechsler  
Presiding Judge

DESCRIPTIVE SUMMARY: Notice of impasse and filing the responses and objections to the additional interrogatories about NIIP that were ordered by the court. The Navajo Nation has not answered the interrogatories. Once again, it has referred to documents from which the answers cannot be ascertained with reasonable effort by the defendants.

NUMBER OF PAGES: 3 +23 pages attached

DATE OF MAILING: February 11, 2013

**NOTICE OF IMPASSE AND  
FILING OF NAVAJO NATION'S RESPONSES AND OBJECTIONS  
TO ADDITIONAL INTERROGATORIES ON NIIP**

The Community Ditch Defendant-counterclaimants and other cooperating defendants file herewith the responses and objections of the Navajo Nation to the additional interrogatories on NIIP. Per instructions from the court, the defendants propounded additional interrogatories concerning NIIP on December 4, 2012. On or about January 7, 2013, the Navajo Nation serve the attached responses and objections. Rather than answering the interrogatories fully, the Navajo Nation continues the same tactic – pointing



to a mass of documents which do not provide coherent, consistent, and complete answers to the questions.

For the convenience of the court and the parties, certain significant portions of the responses and objections are highlighted. In particular, and without limitation, the Community Ditch Defendant-counterclaimants draw the court's attention to the following interrogatory and answer:

**Interrogatory No. 7, Part 4:** Does the United States or the Navajo Nation contend that the Navajo Nation is entitled to water which has never been or never will be put to beneficial use at NIIP?

[Objections partially omitted]. To the extent that this interrogatory seeks information concerning Navajo Nation claims to water that is held for NIIP, but that has not been or will not be used for beneficial use at NIIP, the answer is "yes."

This is a rather astounding assertion which has no basis in fact or in the laws of the United States and New Mexico. This issue is brought to the court's attention because the court has asked the parties to identify topics that will require further discovery and briefing.

The discovery impasse concerning NIIP continues, because complete and accurate answers to the interrogatories cannot be found with reasonable effort in the materials referenced in the materials cited by the Navajo Nation. The Navajo Nation is refusing to answer the interrogatories. Without proper answers, the defendants cannot complete the depositions and other discovery about NIIP.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall  
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#### CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2013, a true and correct copy of the foregoing was served on the parties and claimants by attaching a copy of said document to an email sent to the following list server: [wrvajointerse@nmcourts.gov](mailto:wrvajointerse@nmcourts.gov) and to the filing list referred to in paragraph 8 of the court's November 19, 2012 Corrected Order.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.

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

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

**vs.**

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

**D-1116-CV-75-184  
HON. JAMES J. WECHSLER  
Presiding Judge**

**SAN JUAN RIVER  
GENERAL STREAM  
ADJUDICATION**

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

NAME OF PARTY: Navajo Nation

DESCRIPTIVE SUMMARY: The Navajo Nation submits its Responses to the Marshall Parties' Additional Interrogatories on NIIP.

NUMBER OF PAGES: 23 (with verifications attached)

DATE OF MAILING: January 7, 2013

**RESPONSES AND OBJECTIONS OF THE NAVAJO NATION  
TO THE MARSHALL PARTIES' ADDITIONAL INTERROGATORIES ON NIIP**

On December 4, 2012, those non-settling parties represented by Victor R. Marshall and Victor R. Marshall and Associates, P.C. (the "Marshall Parties"), pursuant to the Court's *Order Concerning the Community Ditch Parties Discovery Requests Regarding NIIP* (filed Nov. 30, 2012) ("NIIP Discovery Order"), served the Navajo Nation and United States with requests for discovery, denominated *Additional Interrogatories on NIIP*, "as a continuation and supplementation of the earlier joint discovery concerning NIIP which was originally served on May 7, 2012." In the NIIP Discovery Order, the Court authorized the Marshall Parties to propound upon "the Navajo Nation and the United States a total of ten (10) interrogatories including all discrete subparts regarding NIIP." NIIP Discovery Order at 1.

Pursuant to the NIIP Discovery Order, the *Order Concerning Objections to Discovery Requests Ruled "Overly Broad"* (filed July 24, 2012) ("July Discovery Order"), and Rules 1-026, 1-033, and 1-034, NMRA, the Navajo Nation hereby responds to the Marshall Parties' *Additional Interrogatories on NIIP*.

### **GENERAL OBJECTIONS**

The Navajo Nation objects generally to the Marshall Parties' entire discovery request for the reasons explained below. *See Pulsecard, Inc. v. Discover Card Services, Inc.*, 168 F.R.D. 295, 304 (D. Kan. 1996) ("General objections occasionally may serve as an efficient response. The court may consider and rule upon general objections raised against sets of interrogatories or requests for production.") (citation omitted).

**General Objection No. 1:** The number of interrogatories propounded by the Marshall Parties exceeds the express limit of "ten (10) interrogatories including all discrete subparts" authorized by the Court in the NIIP Discovery Order. The Marshall Parties constructed their discovery request to contain seven numbered interrogatories. However, all but two of the interrogatories consist of either compound questions, multiple questions, multiple subparts, or a combination of these. *See Parker v. Kitzhaber*, 1989 WL 131240, \*1 (D. Or. 1989) (concluding that set of interrogatories containing "compound questions and numerous subparts" violated local rule limiting number of interrogatories). Specifically, Interrogatory No. 2 consists of a compound question resulting in three separate interrogatories. Interrogatory No. 4 similarly contains a compound question resulting in three separate interrogatories. Interrogatory No. 5 consists of a compound question resulting in two separate interrogatories. Interrogatory No. 6 contains three distinct questions, one of which is a four-part compound question, resulting in six separate interrogatories. Interrogatory No. 7 also contains three distinct questions, one of which

consists of three subparts, resulting in five separate interrogatories. In total, the Marshall Parties have propounded twenty-one interrogatories, in violation of the NIIP Discovery Order.

**General Objection No. 2:** Although the discovery request authorized by the Court in the NIIP Discovery Order is expressly limited to interrogatories, the *Additional Interrogatories on NIIP* contains a Request for Production and a Request for Designation of Witnesses Under Rule 30(B)(6). Both requests are contrary to the plain language of the Order.

### **RESPONSES AND SPECIFIC OBJECTIONS TO INTERROGATORIES**

**Instructions:** As with the earlier discovery, NIIP or the NIIP Project “means the Navajo Indian Irrigation Projects near Bloomfield and Farmington, New Mexico, and all related enterprises such as Navajo Agricultural Products Industries (“NAPI”), and any other enterprises which have used water from the Project.” Since NIIP and NAPI and others divide up the functions which are necessary to generate revenue for the irrigation project, the discovery looks at NIIP and NAPI as an integrated enterprise. The purpose of the discovery seeks to identify and quantify all of the costs, expenses or other economic inputs which are necessary for the enterprise to produce and sell agricultural products, or generate other revenues.

**Interrogatory No. 1:** With respect to NIIP, who provided what functions at what times? Please identify the specific agencies or contractors which have performed particular functions for NIIP at various times, such as the BOR, the BIA, NIIP, NAPI, other agencies of the United States or the Navajo Nation, and government contractors.

**Specific Objections and Response to Interrogatory No. 1:** The Navajo Nation specifically objects to Interrogatory No. 1 because it fails to include sufficient information upon which an answer can be formulated; it fails to define or specify either the “functions” into which inquiry is made or the relevant time period; and it is overly broad insofar as the time period of the inquiry is unlimited and thus exceeds the limits imposed by the Court in the July Discovery Order.

Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation states that the answer to this interrogatory may be derived or ascertained from certain

business records of NAPI that the Navajo Nation previously provided to the Marshall Parties in response to the *Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (May 7, 2012). Rule 1-033(E), NMRA. See *Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (Aug. 17, 2012); *Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 17, 2012); *Amended Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 20, 2012); and *Certificate of Service for Navajo Nation's Supplemental Discovery Responses to Community Ditch Defendants' Discovery Requests Concerning the NIIP Project* (Nov. 27, 2012).

Answering this interrogatory by reference to the previous provided documents is appropriate and “sufficient” within the meaning of Rule 1-033(E) because those documents have been provided to the Marshall Parties and, as explained in more detail below, the answer to this interrogatory is contained in the documents. See Rule 1-033(E) (“A specification shall be in sufficient detail to permit the interrogating to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.”). See also *Mullins v. Prudential Ins. Co. of America*, 267 F.R.D. 504, 514 (W.D.Ky. 2010) (“A party who seeks to rely upon the Rule must not only certify that the answer may be found in the records referenced by it, but also ‘must specify where in the records the answers [can] be found.’”) (quoting *Cambridge Electronic Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 322-23 (C.D.Cal. 2004) (citing *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Investment Corp.*, 711 F.2d 902, 906 (9<sup>th</sup> Cir. 1983)) (interpreting the analogous federal rule).

Specifically, the responsibilities of the entities providing particular functions to NIIP during particular time periods are discussed in the series of documents constituting NAPI's annual status reports. Those annual reports, all prepared by NAPI, consist of the following:

- Annual Report for Operations, Maintenance & Replacement, Calendar Year 2011;
- Annual Report for Operations, Maintenance & Replacement, Calendar Year 2010;
- FY 2008 Annual Report;
- 2003 Annual Reports for NAPI;
- Annual Report for Fiscal Year 1998;
- Annual Report FY 1994;
- Annual Report FY 1993;
- Annual Report FY 1992;
- 1992 Annual Report, On-Farm Irrigation Development;
- Annual Report for Fiscal 1991;
- Status Report for Fiscal 1990;
- Status Report for Fiscal 1989;

- Status Report for Fiscal 1987;
- Status Report for FY 1986; and
- Status Report 1985.

Each of the aforementioned annual reports or status reports provides a description of the general functions and responsibilities assigned to the specific agencies involved in NIIP. For example, the Annual Report for Operations, Maintenance & Replacement, Calendar Year 2011, states, in the Foreword, at page 2:

The Fiscal year (FY) 2011 report is the thirty-third in a series of annual reports that document water delivery from the Navajo Indian Irrigation Project (NIIP) to the user, the Navajo Agricultural Products Industry (NAPI). The two entities, NIIP and NAPI, have separate origins but are closely integrated to achieve NAPI's mission.

NAPI Mission: NAPI uses its natural resources, workforce and infrastructure to produce superior quality Navajo Pride products, and market its products globally to generate profits, self-sufficiency, and opportunities for the Navajo Nation.

The NIIP is the water storage, carriage and distribution system. In addition, lands, roads, and utilities make up the infrastructure for the irrigation project. NAPI is an enterprise of the Navajo Nation, a business entity created in 1970 to develop, farm, operate and manage the NIIP lands and to operate and maintain the NIIP for the Navajo Nation.

During the first ten years of NIIP operation, the Bureau of Reclamation (BOR) [per]formed the NIIP Operation and Maintenance functions. In early 1985, the constructed facilities were formally transferred from the BOR to the Bureau of Indian Affairs (BIA). The BIA contracted with the Navajo Nation, acting through NAPI, for the NIIP Operation and Maintenance.

The Calendar Year 2011 Report further provides, in Section 1.0, Project Setting and Development, at page 3:

The Bureau of Indian Affairs-Navajo Area Office and Bureau of Reclamation-Farmington Construction Office have overall responsibility for the development of NIIP. This includes the securing of construction funding requirements to complete the NIIP project and the Operation and Maintenance, and Replacement (OM&R) of the constructed facilities.



The Bureau of Reclamation, Upper Colorado River Regional Office, Farmington Construction Office in Farmington, New Mexico is responsible for the planning, design and construction of the NIIP.

NAPI manages the farm operations and since October 1985, the OM&R of the NIIP by virtue of [a] Public Law 93-638 contract with the Bureau of Indian Affairs.

In addition, the Calendar Year 2011 Report provides a detailed discussion of specific functions and activities undertaken by NAPI personnel and contractors in Section 6.0, Achievements & Discussion. *See* pp. 12-22. Finally, Section 7.0, Cooperative Agreements and Deficiency Corrections contains a detailed discussion of particular projects completed by NAPI during the calendar year pursuant to agreements with the various federal agencies involved in NIIP. *See* pp. 22-23.

The format of the annual status reports has remained consistent over time so, by reviewing each report, the reader is able to ascertain on a year by year basis the particular entities responsible for particular functions at NIIP.

**Interrogatory No. 2:** Who paid for what expenses of NIIP at what times, and out of which appropriations or other funds?

**Specific Objections and Response to Interrogatory No. 2:** The Navajo Nation specifically objects to Interrogatory No. 2 because it is overly broad insofar as the time period of the inquiry is unlimited and thus exceeds the limits imposed by the Court in the July Discovery Order. In addition, the Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 2 contains compound questions.

Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation states that the answer to this interrogatory may be derived or ascertained from certain business records of NAPI that the Navajo Nation previously provided to the Marshall Parties in response to the *Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (May 7, 2012). Rule 1-033(E), NMRA. *See Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (Aug. 17, 2012); *Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 17, 2012); *Amended Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 20, 2012);

and *Certificate of Service for Navajo Nation's Supplemental Discovery Responses to Community Ditch Defendants' Discovery Requests Concerning the NIIP Project* (Nov. 27, 2012).

Answering this interrogatory by reference to the previous provided documents is appropriate and “sufficient” within the meaning of Rule 1-033(E) because those documents have been provided to the Marshall Parties and, as explained in more detail below, the answer to this interrogatory is contained in the documents. *See* Rule 1-033(E) (“A specification shall be in sufficient detail to permit the interrogating to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.”). *See also Mullins*, 267 F.R.D. at 514 (“A party who seeks to rely upon the Rule must not only certify that the answer may be found in the records referenced by it, but also ‘must specify where in the records the answers [can] be found.’”) (quoting *Cambridge Electronic Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 322-23 (C.D.Cal. 2004) (citing *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Investment Corp.*, 711 F.2d 902, 906 (9<sup>th</sup> Cir. 1983)) (interpreting the analogous federal rule).

Specifically, information concerning responsibility for the payment of NAPI’s expenses and the source of the funds used for such payments may be found in NAPI’s annual status reports. *See* Response to Interrogatory No. 1, *supra*. Each of the annual reports or status reports contains a section (Section 2.0 of each report) detailing funding sources and the annual expenditures for each category of expense. Because the format of the annual status reports has remained consistent over time, the reader is able to ascertain from Section 2.0 of each report the specific funding sources and the annual expenditures for each category of expense.

**Interrogatory No. 3:** What were the “sources and uses of funds” for NIIP since inception? (“Sources and uses of funds” refers to a basic accounting concept.)

**Specific Objections and Response to Interrogatory No. 3:** The Navajo Nation specifically objects to Interrogatory No. 3 because it fails to include sufficient information upon which an answer can be formulated; it fails precisely to define the “sources and uses of funds” into which inquiry is made; and it is overly broad insofar as the time period of the inquiry exceeds the limits imposed by the Court in the July Discovery Order. Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation first states, as a preliminary matter, that it understands the basic accounting concept “sources and uses of funds”

to be synonymous with a “cash flow statement”—a record of cash inflows and outflows over a specific period of time. No other definition having been provided by the Marshall Parties, the Navajo Nation responds to this interrogatory on the basis of the Navajo Nation’s understanding of the term.

The Navajo Nation states that the answer to this interrogatory may be derived or ascertained from certain business records of NAPI that the Navajo Nation previously provided to the Marshall Parties in response to the *Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (May 7, 2012). Rule 1-033(E). See *Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (Aug. 17, 2012); *Notice of the Navajo Nation of Response to Non-Settling Parties’ Requests for Discovery* (Aug. 17, 2012); *Amended Notice of the Navajo Nation of Response to Non-Settling Parties’ Requests for Discovery* (Aug. 20, 2012); and *Certificate of Service for Navajo Nation’s Supplemental Discovery Responses to Community Ditch Defendants’ Discovery Requests Concerning the NIIP Project* (Nov. 27, 2012).

Answering this interrogatory by reference to the previous provided documents is appropriate and “sufficient” within the meaning of Rule 1-033(E) because those documents have been provided to the Marshall Parties and, as explained in more detail below, the answer to this interrogatory is contained in the documents. See Rule 1-033(E) (“A specification shall be in sufficient detail to permit the interrogating to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.”). See also *Mullins*, 267 F.R.D. at 514 (“A party who seeks to rely upon the Rule must not only certify that the answer may be found in the records referenced by it, but also ‘must specify where in the records the answers [can] be found.’”) (quoting *Cambridge Electronic Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 322-23 (C.D.Cal. 2004) (citing *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Investment Corp.*, 711 F.2d 902, 906 (9<sup>th</sup> Cir. 1983)) (interpreting the analogous federal rule).

Specifically, information concerning “sources and uses of funds” are found in two discrete sets of documents previously provided to the Marshall Parties. The first set are those documents constituting NAPI’s annual status reports. See *Response to Interrogatory No. 1*. Each of the annual reports or status reports contains a section (Section 4.0 of each report) detailing the specific costs of NAPI’s use of natural gas and electricity. For example, the Annual Report for Operations, Maintenance & Replacement, Calendar Year 2011, provides, at pages 8-

11, information regarding NAPI's total energy consumption, total capacity and energy cost, historical energy costs, and natural gas costs. Because the format of the annual status reports has remained consistent over time, the reader is able to ascertain from Section 4.0 of each report the specific costs of NAPI's use of natural gas and electricity on an annual basis.

The second set are those documents constituting annual audits of NAPI. Those annual audits, all prepared by independent auditors, consist of the following:

- Single Audit Reporting Package, May 31, 2012 and 2011;
- Financial Statements and Report of Independent Auditor, May 31, 2011 and 2010;
- Single Audit Reporting Package, May 31, 2010 and 2009;
- Single Audit Reporting Package, May 31, 2009 and 2008;
- Single Audit Reporting Package, May 31, 2008;
- Basic Financial Statements and Financial Information, May 31, 2007 and 2006;
- Single Audit Reporting Package, May 31, 2006 and 2005; and
- Single Audit Reporting Package, May 31, 2005 and 2004.

By their nature, the audit documents provide a detailed, comprehensive look at NAPI's "sources and uses of funds." Each audit package contains basic financial statements, which include statements of net assets, statements of revenues, expenses, and changes in net assets, and statements of cash flows. Additionally, to the extent that NAPI was the recipient of federal funding during a particular year, the audit package contains a schedule of expenditures of federal awards. Each audit package contains a table of contents identifying the precise location of the aforementioned information in each document.

**Interrogatory No. 4:** What are the total capital costs for NIIP since inception, and who has paid them, and from what appropriations or other sources? This includes the costs of all infrastructure, including Navajo Dam; the diversion structures, canals, siphons, pipes, pumps, tanks, and sprinklers that convey water to NIIP; roads; controls; computers and software; farm machinery; and buildings, plant, and equipment.

**Specific Objections and Response to Interrogatory No. 4:** The Navajo Nation specifically objects to Interrogatory No. 4 because it is overly broad insofar as the time period of the inquiry exceeds the limits imposed by the Court in the July Discovery Order. In addition, the Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 4 contains compound questions.

Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation states that the answer to this interrogatory may be derived or ascertained from certain business records of NAPI that the Navajo Nation previously provided to the Marshall Parties in response to the *Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (May 7, 2012). Rule 1-033(E). See *Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (Aug. 17, 2012); *Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 17, 2012); *Amended Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 20, 2012); and *Certificate of Service for Navajo Nation's Supplemental Discovery Responses to Community Ditch Defendants' Discovery Requests Concerning the NIIP Project* (Nov. 27, 2012).

Answering this interrogatory by reference to the previous provided documents is appropriate and “sufficient” within the meaning of Rule 1-033(E) because those documents have been provided to the Marshall Parties and, as explained in more detail below, the answer to this interrogatory is contained in the documents. See Rule 1-033(E) (“A specification shall be in sufficient detail to permit the interrogating to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.”). See also *Mullins*, 267 F.R.D. at 514 (“A party who seeks to rely upon the Rule must not only certify that the answer may be found in the records referenced by it, but also ‘must specify where in the records the answers [can] be found.’”) (quoting *Cambridge Electronic Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 322-23 (C.D.Cal. 2004) (citing *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Investment Corp.*, 711 F.2d 902, 906 (9<sup>th</sup> Cir. 1983)) (interpreting the analogous federal rule).

Specifically, the Navajo Nation states that information concerning NAPI’s annual “capital costs” can be found in those documents constituting NAPI’s annual audits. See Response to Interrogatory No. 3. As stated in the Response to Interrogatory No. 3, the audit documents contains basic financial statements, which include statements of net assets, statements of revenues, expenses, and changes in net assets, and statements of cash flows. As the Navajo Nation understands the term, the capital costs are necessarily included in these financial statements. In addition, each audit package contains a section entitled “Management’s Discussion and Analysis,” which specifically discusses capital costs and assets. In the Annual Report for Operations, Maintenance & Replacement, Calendar Year 2011, for example, this

discussion is found at pages 10-12. Each annual status report contains a table of contents identifying the precise location of the aforementioned discussion and analysis in each document.

**Interrogatory No. 5:** Who incurred labor and management costs for NIIP at what times?

**Specific Objections and Response to Interrogatory No. 5:** The Navajo Nation specifically objects to Interrogatory No. 5 because it is overly broad insofar as the time period of the inquiry is unlimited and thus exceeds the limits imposed by the Court in the July Discovery Order. In addition, the Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 5 contains compound questions.

Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation states that the answer to this interrogatory may be derived or ascertained from certain business records of NAPI that the Navajo Nation previously provided to the Marshall Parties in response to the *Joint Request for Documents and Designation of 30(B)(6) Witnesses Concerning the NIIP Project* (May 7, 2012). Rule 1-033(E). See *Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (Aug. 17, 2012); *Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 17, 2012); *Amended Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 20, 2012); and *Certificate of Service for Navajo Nation's Supplemental Discovery Responses to Community Ditch Defendants' Discovery Requests Concerning the NIIP Project* (Nov. 27, 2012).

Answering this interrogatory by reference to the previous provided documents is appropriate and "sufficient" within the meaning of Rule 1-033(E) because those documents have been provided to the Marshall Parties and, as explained in more detail below, the answer to this interrogatory is contained in the documents. See Rule 1-033(E) ("A specification shall be in sufficient detail to permit the interrogating to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained."). See also *Mullins*, 267 F.R.D. at 514 ("A party who seeks to rely upon the Rule must not only certify that the answer may be found in the records referenced by it, but also 'must specify where in the records the answers [can] be found.' ") (quoting *Cambridge Electronic Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 322-23 (C.D.Cal. 2004) (citing *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Investment Corp.*, 711 F.2d 902, 906 (9<sup>th</sup> Cir. 1983)) (interpreting the analogous federal rule).

Specifically, the Navajo Nation states that information concerning NAPI's annual "labor and management costs" can be found in those documents constituting NAPI's annual audits. *See* Responses to Interrogatory Nos. 3 and 4. As stated in the Response to Interrogatory No. 3, the audit documents contains basic financial statements, which include statements of net assets, statements of revenues, expenses, and changes in net assets, and statements of cash flows. As the Navajo Nation understands the terms, the costs of labor and management are necessarily included in these financial statements. In addition, each of the annual reports or status reports contains a section (Section 2.0 of each report) detailing funding sources and the annual expenditures for each category of expense. Among the expense categories in each report are several relating to labor and management costs. These categories include "Labor & Fringe," "Travel and Per Diem," "Tuition & Training Fees," and "Outside Services—Sub Contractor, Consultants." Because the format of the annual status reports has remained consistent over time, the reader is able to ascertain from the expense categories in Section 2.0 of each report NAPI's labor and management costs on a year by year basis.

**Interrogatory No. 6, Part 1:** In terms of construction and capital costs, what else needs to be done to complete NIIP and extend it to approximately 110,000 acres of irrigated land?

**Specific Objections and Response to Interrogatory No. 6, Part 1:** The Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 6 contains multiple and compound questions. Subject to and without waiving its specific objection to this interrogatory, the Navajo Nation states that the construction of NIIP is not and never has been a function within the purview of NAPI and the Navajo Nation does not know what else needs to be done to complete NIIP and extend it to its full statutorily-mandated acreage. *See* P.L. 87-483. Given that various federal agencies are responsible for the development and construction of NIIP, *see* Response to Interrogatory No. 1, the Navajo Nation anticipates that the United States will state its position in its response to this interrogatory.

**Interrogatory No. 6, Part 2:** What are the planned stages, when will those stages occur, how much will completion cost, and when will NIIP be completed?

**Specific Objections and Response to Interrogatory No. 6, Part 2:** The Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 6 contains multiple and compound questions. Subject to and without waiving its specific objection to this interrogatory, the Navajo Nation states that because the construction of NIIP is not and never has been a function within the purview of NAPI, the Navajo Nation does not know the current status of the planned stages for NIIP, the current schedule for the completion of the stages, or the cost of completion. Given that various federal agencies are responsible for the development and construction of NIIP, *see* Response to Interrogatory No. 1, the Navajo Nation anticipates that the United States will state its position in its response to this interrogatory.

**Interrogatory No. 6, Part 3:** What is the probability that NIIP will be fully completed?

**Specific Objections and Response to Interrogatory No. 6, Part 3:** The Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 6 contains multiple and compound questions. Subject to and without waiving its specific objection to this interrogatory, the Navajo states that Congress, pursuant to P.L. 87-483, authorized the construction and development of 110,630 acres. Presently, almost 80,000 acres have been developed. Unless and until Congress de-authorizes further construction of NIIP, it is the expectation of the Navajo Nation that NIIP will be fully completed.

**Interrogatory No. 7, Part 1:** What happens to the water which the United States and the Navajo Nation are claiming for NIIP (A) if NIIP is never fully completed ... ?

**Specific Objections and Response to Interrogatory No. 7, Part 1:** The Navajo Nation objects to this interrogatory on the ground that it poses a hypothetical question. *See Union Carbide Corp. v. Travelers Indem. Co.*, 61 F.R.D. 411, 413 (W.D.Pa. 1973) (noting that “[q]uestions calling for an opinion based on hypothetical facts have been held improper” and sustaining objections to interrogatories “on the basis that the contingent and uncertain nature of” the subject matter of the inquiry made the questions “tantamount to hypothetical questions”) (citing *Tobacco & Allied Stocks, Inc. v. Transamerica Corp.*, 16 F.R.D. 537 (D. Del. 1954)). Congress, pursuant to P.L. 87-483, authorized the construction and development of 110,630



acres. Presently, almost 80,000 acres have been developed. Unless Congress de-authorizes further construction of NIIP, it would be impossible to say at any given time that “NIIP is never fully completed.” In addition, the Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 7 consists of multiple questions and subparts. Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation responds that, under the terms of the settlement, the Navajo Nation can use the water for NIIP for any purpose consistent with section 10402 of P.L. 111-11. In accordance with Paragraph 6 of Contract No. 10-WC-40-384 and Paragraph 5(e) of the proposed Partial Final Decree, the Navajo Nation may change the place of use and purpose of use of water for NIIP. The Navajo Nation can also enter into subcontracts with third parties for the use of NIIP water on lands other than those comprising NIIP.

In the event there is no settlement, and NIIP is not completed, the unused water for NIIP is still retained by the Secretary of the Interior under OSE Permit 2849. The Secretary is free to issue contracts for that water from the Navajo Reservoir supply, consistent with the purposes of the permit (irrigation, industrial and other purposes), subject to the requirements for contracts from Navajo Reservoir as described in P.L. 87-483, as amended.

**Interrogatory No. 7, Part 2:** What happens to the water which the United States and the Navajo Nation are claiming for NIIP ... (B) if the water claimed for NIIP is not used on NIIP during the years until NIIP is completed ... ?

**Specific Objections and Response to Interrogatory No. 7, Part 2:** The Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 7 consists of multiple questions and subparts. Subject to and without waiving its specific objection to this interrogatory, the Navajo Nation states that, under the terms of the settlement, the Navajo Nation can use the water for NIIP, prior to NIIP’s completion, in the same manner as described in the Response to Interrogatory No. 7, Part 1. In the event there is no settlement, the Secretary may issue a temporary contract for the water to be used by NIIP in the same manner described in the Response to Interrogatory No. 7, Part 1, including a contract with the Navajo Nation.

**Interrogatory No. 7, Part 3:** What happens to the water which the United States and the Navajo Nation are claiming for NIIP ... (C) if some or all of the water used for NIIP is wasted?

**Specific Objections and Response to Interrogatory No. 7, Part 3:** The Navajo Nation specifically objects to Interrogatory No. 7, Part 3 because it fails to include sufficient information upon which an answer can be formulated and it fails to define the precise meaning of the term “wasted.” In addition, the Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 7 consists of multiple questions and subparts. Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation states that the water used at NIIP is not wasted within any meaning of that term of which the Navajo Nation is aware.

**Interrogatory No. 7, Part 4:** Does the United States or Navajo Nation contend that the Navajo Nation is entitled to water which has never been or never will be put to beneficial use at NIIP?

**Specific Objections and Response to Interrogatory No. 7, Part 4:** The Navajo Nation specifically objects to Interrogatory No. 7, Part 4 because it fails to include sufficient information upon which an answer can be formulated; it fails to define the precise meaning of the term “entitled;” and it poses a hypothetical question. *See Union Carbide Corp.*, 61 F.R.D. at 413. In addition, the Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 7 consists of multiple questions and subparts.

Subject to and without waiving its specific objections to this interrogatory, the Navajo Nation first states, as a preliminary matter, that it interprets the term “entitled,” as used this interrogatory, to mean “claimed,” and no other definition having been provided by the Marshall Parties, the Navajo Nation responds to this interrogatory on the basis of the Navajo Nation’s understanding of the term. The Navajo Nation has claims to water that has never been or never will be put to beneficial use at NIIP. For example, the water claimed for the Hogback and Fruitland irrigation projects has never been nor will ever be put to beneficial use at NIIP. To the extent that this interrogatory seeks information concerning Navajo Nation claims to water that is held for NIIP, but that has not been or will not be used for beneficial use at NIIP, the answer is “yes.”

**Interrogatory No. 7, Part 5:** If so, what is the factual and legal basis for such a claim?

**Specific Objections and Response to Interrogatory No. 7, Part 5:** The Navajo Nation specifically incorporates by reference General Objection No. 1 to the extent that Interrogatory No. 7 consists of multiple questions and subparts. Subject to and without waiving its general objection to this interrogatory, the Navajo Nation responds that, under the terms of the settlement, the Navajo Nation can use the water for NIIP for the reasons described in the Response to Interrogatory No. 7, Part 1. In the event there is no settlement, water that is held for NIIP that has not been or will be used for beneficial use at NIIP is subject to the claims of the Navajo Nation, as asserted by the United States on behalf of the Navajo Nation, or to the claims that will be asserted by the Navajo Nation on its own behalf in the San Juan River General Stream Adjudication.

#### **RESPONSES AND SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION**

**RFP No. 1:** Please produce the records which pertain to your answers to the foregoing interrogatories.

**Specific Objections and Response to RFP No. 1:** The Navajo Nation specifically incorporates by reference General Objection No. 2 because RFP No. 1 exceeds the scope of discovery permitted pursuant to the NIIP Discovery Order. Subject to and without waiving its specific objection to this RFP, the Navajo Nation states that it previously provided to the Marshall Parties all of the records pertaining to its answers to the foregoing interrogatories. *See Responses of the Navajo Nation to Joint Request Concerning the NIIP Project* (Aug. 17, 2012); *Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 17, 2012); *Amended Notice of the Navajo Nation of Response to Non-Settling Parties' Requests for Discovery* (Aug. 20, 2012); and *Certificate of Service for Navajo Nation's Supplemental Discovery Responses to Community Ditch Defendants' Discovery Requests Concerning the NIIP Project* (Nov. 27, 2012).

**RESPONSES AND SPECIFIC OBJECTIONS TO  
REQUEST FOR DESIGNATION OF WITNESSES UNDER RULE 30(B)(6)**

**Request for Designation No. 1:** Please identify witnesses who have personal knowledge of the matters above who can testify under Rule 30(B)(6), and identify the particular matters about which each witness can testify.

**Specific Objections and Response to Request for Designation No. 1:** The Navajo Nation specifically incorporates by reference General Objection No. 2 because Request for Designation No. 1 exceeds the scope of discovery permitted pursuant to the NIIP Discovery Order. Subject to and without waiving its general objection to this Request for Designation of Witnesses, the Navajo Nation designates the following witnesses pursuant to Rule 1-030(B)(6):

With respect to Interrogatory Nos. 1 through 6:

Lionel Haskie, P.E., LEED AP  
Operations & Maintenance Manager  
Navajo Agricultural Products Industry  
c/o Stanley M. Pollack  
Navajo Nation Department of Justice  
P.O. Drawer 2010  
Window Rock, Navajo Nation (AZ) 86515

With respect to Interrogatory No. 7:

John Leeper, Ph.D., P.E.  
Senior Project Manager  
AMEC Environmental and Infrastructure Inc.  
c/o Stanley M. Pollack  
Navajo Nation Department of Justice  
P.O. Drawer 2010  
Window Rock, Navajo Nation (AZ) 86515

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RESPECTFULLY SUBMITTED this 7th day of January, 2013.

NAVAJO NATION



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Stanley M. Pollack  
M. Kathryn Hoover  
Navajo Nation Department of Justice  
Post Office Drawer 2010  
Window Rock, Navajo Nation (AZ) 86515  
(928) 871-7510

Samuel D. Gollis  
901 Rio Grande Blvd., N.W. Suite F-144  
Albuquerque, NM 87104  
(505) 883-4696

*Attorneys for the Navajo Nation*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 7<sup>th</sup> day of January, 2013, a true and correct copy of the foregoing was served by attaching an electronic copy of the document to an e-mail sent to the following address: [wnavajointerse@nmcourts.gov](mailto:wnavajointerse@nmcourts.gov). In addition, pursuant to the *Corrected Order Summarizing Discovery Activities Discussed at the November 6, 2012 Discovery Conference* (filed Nov. 19, 2012), also on this 7th day of January, 2013, a copy of the foregoing document was e-mailed to the list of individuals described on the Distribution List on the following page.



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Stanley M. Pollack

### Distribution List

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

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

Plaintiff,

vs.

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

Defendants.

D-1116-CV-75-184  
HON. JAMES J. WECHSLER  
Presiding Judge

SAN JUAN RIVER  
GENERAL STREAM  
ADJUDICATION

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


**VERIFICATION OF NAVAJO NATION'S RESPONSES  
TO THE MARSHALL PARTIES' ADDITIONAL INTERROGATORIES ON NIIP**

I, Lionel Haskie, P.E., LEED AP, being first duly sworn, state under oath:

1. I am employed as Operations and Maintenance Manager with Navajo Agricultural Products Industry, P.O. Drawer 1319, Farmington, New Mexico 87499.

2. I have participated in the preparation of the Navajo Nation's responses to Interrogatory Nos. 1 through 6 of the *Responses and Objections of the Navajo Nation to the Marshall Parties' Additional Interrogatories on NIIP*, and have reviewed the responses to Interrogatory Nos. 1 through 6 set forth therein.

3. Based on my personal knowledge, all of the factual assertions contained in the responses of the Navajo Nation to Interrogatory Nos. 1 through 6 of the *Responses and Objections of the Navajo Nation to the Marshall Parties' Additional Interrogatories on NIIP* are true and correct.

  
Lionel Haskie, P.E., LEED AP

SUBSCRIBED and SWORN TO before me this 7<sup>th</sup> day of January, 2013,  
by Lionel Haskie.



Beulah C. John  
Notary Public

My Commission Expires:

12/30/2013



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

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

**Plaintiff,**

**vs.**

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

**Defendants.**

**D-1116-CV-75-184  
HON. JAMES J. WECHSLER  
Presiding Judge**

**SAN JUAN RIVER  
GENERAL STREAM  
ADJUDICATION**

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

**VERIFICATION OF NAVAJO NATION'S RESPONSES  
TO THE MARSHALL PARTIES' ADDITIONAL INTERROGATORIES ON NIIP**

I, John Leeper, Ph.D., P.E., being first duly sworn, state under oath:


1. I am licensed as a Professional Engineer, with a Ph.D. in Civil Engineering from Colorado State University.
2. I am employed as a Senior Project Manager with AMEC Environmental and Infrastructure Inc. ("AMEC"), P.O. Box 445, 415 West Abeyta Street, Suite A, Socorro, New Mexico 87801.
3. Between 1995 and 1997, I was employed as a Civil Engineer with the Water Management Branch ("WMB") of the Navajo Nation Department of Water Resources and, from 1997 until December 2011, I served as the Branch Manager.
4. The WMB includes a staff of approximately twenty technical professionals. The responsibilities of the WMB include the water monitoring and inventory program, which operates the hydro-meteorological network for the Navajo Nation and provides drought response and mitigation. The WMB also provides planning and pre-development assistance for local and regional Navajo water projects and technical support for the Navajo Nation's water rights litigation and negotiations.

5. In my current position I continue to provide technical support to the Navajo Nation in water rights matters pursuant to a contract between the Navajo Nation and AMEC.

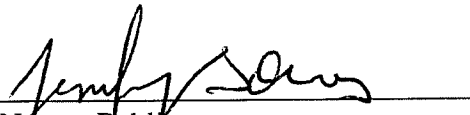
6. Based upon my experience, I have personal knowledge of current and future Navajo Nation water demands, historic and current water use, sources of supply, and plans for water infrastructure development. I have been directly involved in the negotiations that resulted in the settlement of the Navajo Nation's water rights claims in the San Juan River Basin in New Mexico.

7. I have participated in the preparation of the Navajo Nation's responses to Interrogatory No. 7, Parts 1 through 5, of the *Responses and Objections of the Navajo Nation to the Marshall Parties' Additional Interrogatories on NIIP*, and have reviewed the responses to Interrogatory No. 7, Parts 1 through 5, set forth therein.

8. Based on my personal knowledge, all of the factual assertions contained in the responses of the Navajo Nation to Interrogatory No. 7, Parts 1 through 5, of the *Responses and Objections of the Navajo Nation to the Marshall Parties' Additional Interrogatories on NIIP*, are true and correct.

  
John Leeper, Ph.D., P.E.

SUBSCRIBED and SWORN TO before me this 07 day of January, 2013,  
by John Leeper.

  
Notary Public

My Commission Expires:

7/27/15

