

DISTRICT COURT
SAN JUAN COUNTY NM
AB FILED
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STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*
State Engineer,

Plaintiff,

vs.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

JICARILLA APACHE TRIBE and the
NAVAJO NATION,
Defendant-Intervenor.

CV 75-184
Hon. James J. Wechsler
Presiding Judge

AB-07-1
Claims of the Navajo Nation

ORDER GRANTING IN PART MOTION FOR PROTECTIVE ORDER

THIS MATTER comes before the Court on the United States' motion for protective order filed January 2, 2013, in response to discovery propounded by the Community Ditch Defendants regarding other water rights claims of the United States and the potential exercise of the United States' regulatory rights or duties throughout the Colorado River Basin. The Community Ditch Defendants' joint response to the motion was filed January 14, 2013, and the United States' reply was filed January 25, 2013. The Court heard argument at the February 4, 2013 discovery conference.

Interrogatories

The Joint Discovery propounds ten interrogatories and one request for production relating to answers to each of the interrogatories. The United States has responded to the first five interrogatories, which ask whether the United States claims water rights other than those on behalf of the Navajo Nation and for the description of minimum flows that the United States

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requires or intends to require for the protection of endangered species. With respect to these interrogatories, the United States seeks a protective order affirming that the scope of these discovery responses is limited to the San Juan River Basin within the State of New Mexico.

The United States has not responded to Interrogatories 6 through 10. Interrogatory 6 asks whether the United States has any other claims, rights, duties, or obligations that might affect water flows in the San Juan River Basin and if so, to identify and describe each. Interrogatories 7, 8 and 9 relate to the United States' water rights claims or obligations outside the San Juan River Basin - the Upper Basin of the Colorado River, the Lower Basin of the Colorado River, and the Colorado River generally - that might directly or indirectly affect the amount of water available for diversion or use in New Mexico.

Interrogatory 10 states:

10. If the answer to any of the foregoing interrogatories is "yes," please identify and describe each water right claimed by the United States, including the nature, purpose, amount and priority of each such right or obligation, and identify a person or persons to testify about the right or obligation pursuant to Rule 1-30(B)(6), NMRA.

The United States seeks a protective order barring these interrogatories because they "are directed at the United States' exercise of its statutory and regulatory obligations unrelated to the Settlement Agreement . . . and are outside the scope of discovery as defined by this Court." The United States asserts further that responding to these interrogatories would be unduly burdensome. Finally, the United States objects to Interrogatory 10 on the grounds that all the discovery contained within the interrogatories is improper.

The Court has previously determined that:

1. Requests related to matters outside the San Juan River Basin in New Mexico are

overly broad. The July 9, 2012 Order Concerning the Objections of the Navajo Nation, the United States, and the State of New Mexico to Discovery Requests stated at pp. 2-3:

The Court considered the Settling Parties' objections concerning relevance in the following manner with respect to the category of information sought. In this regard, the Court has determined that requests concerning the following subject matter are generally reasonably calculated to lead to the discovery of admissible evidence in the following manner:

1. The available water supply in the San Juan Basin as it relates to the Settling Parties' obligation to demonstrate that the "provisions contained in the Settlement Agreement will reduce or eliminate impacts on junior water rights" (suggest removing emphasis because the narrow relevance of supply also seems important in this context, in addition to the physical origin of supply)

For this reason, the Court sustained objections to Gary Horner's June 1, 2012 Interrogatory 13, which asked about water supply and uses within the entire Colorado River Basin. The Court also determined that Gary Horner's Interrogatory 5, which requested information about the entire Colorado River Basin as well as matters relating to the San Juan River Basin in New Mexico, was overly broad.

2. Requests related to the United States' regulatory rights, duties, and obligations in matters not related to the Settlement Agreement or the four prongs of the legal standard are either irrelevant or not generally reasonably calculated to lead to the discovery of admissible evidence. In the July 9 Order, the Court ruled:

The Court has determined that requests concerning the following subject matter are not generally reasonably calculated to lead to the discovery of admissible evidence.

10. proceedings concerning future administration or remedies in the event of insufficient water supplies to fulfill the uses described in the Proposed Decrees because they are at best only tangentially related to the legal standard in this proceeding.

For this reason, the Court sustained objections to Gary Horner's Interrogatory 23, which sought information about the Endangered Species Act and the United States' application of the Act to the Settlement Agreement. Similarly, the Court sustained objections to Interrogatory 33, which asked about the State of New Mexico's regulatory authority over federal water projects.

The Community Ditch Defendants' interrogatories are similar to Gary Horner's interrogatories that the Court has previously ruled are overly broad. In view of the nature of this proceeding and the time frame for discovery, the Court has limited discovery to requests reasonably calculated to lead to the discovery of admissible evidence directly related to the legal standard to be used to determine whether the Settlement Agreement should be adopted. The discovery requests at issue seek information outside of the San Juan Basin in New Mexico and beyond the scope of the Settlement Agreement. The information requested is not directly related to the four prongs of the legal standard to be used in this proceeding to test the Settlement Agreement, and, as a result, the discovery requests are overly broad. Accordingly, the Court grants the United States' objections to the Marshall defendants' Interrogatories Nos. 6, 7, 8 and 9.

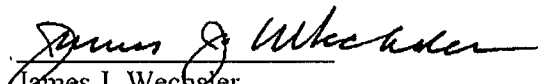
With respect to Interrogatory No. 10, regarding a description of water rights identified in responses to Interrogatories 1 through 5 and witnesses to testify to the subject matter of Interrogatories 1 through 9, the United States asks that the entire interrogatory be quashed. However, Interrogatories 1 through 5 ask about other water rights the United States claims for a variety of federal purposes or for other Native American tribes in the San Juan River Basin. The United States indicates that it has responded to these interrogatories to the extent they could be responded to without undue burden, and requests the Court to affirm that the scope of discovery

responses is properly limited to the San Juan River Basin in New Mexico. Motion p. 1. In order to fully respond to Interrogatories 1 through 5, the United States shall identify a person or persons who can testify with respect to their answers to Interrogatories 1 through 5

Therefore, IT IS ORDERED that:

1. the United States' motion is GRANTED with respect to Interrogatories 6 through 9;
and
2. with respect to Interrogatory 10, the United States shall identify a person or persons who can testify with respect to the answers to Interrogatories 1 through 5.

IT IS SO ORDERED.


James J. Wechsler
Presiding Judge