

Description AB-07-1

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
IN THE DISTRICT COURT

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

JUDGE: JAMES J WECHSLER

TYPE OF PROCEEDINGS: Non-Settling Parties Responses and Objections
to Initial Discovery Requests and Discovery Conference

FOR THE PLAINTIFF: VARIOUS

FOR THE DEFENDANT: VARIOUS

MONITOR: LORESSA BACHERT

MACHINE TYPE: FTR GOLD REPORTER

LEGEND:

D - Defendant's Atty

DEF - Defendant

DEX - Direct Exam

EX - Exhibit

J - Judge

M - Monitor

P - Plaintiff's Atty

PLA - Plaintiff

W - Witness

Date

2/21/2013 **Location** Court of Appeals

Time	Speake	Note
8:03:45 AM	J	CALLS CASE
8:04:29 AM		WITH RESPECT TO CERTAIN DISCOVERY ISSUES
8:04:39 AM		CALLING LIST FOR APPEARANCES
8:04:49 AM	JOHN UTTON AND ARIANN E SINGE R	STATE OF NM
8:04:56 AM	GUSS GUARIN O	UNITED STATES / DOJ
8:04:59 AM	DAVID GEHLE RT	
8:05:04 AM	SUE UMSHL ER	DEPT OF THE INTERIOR
8:05:16 AM	STANLE Y POLL ACK	NAVAJO NATION
8:05:22 AM	SAMUEL GOLLIS	NN
8:05:43 AM	J	NON-SETTLING PARTIES
8:05:47 AM		WILL GO DOWN THE LIST
8:05:51 AM		MARSHALL, HERE
8:05:58 AM		RANKIN, HERE
8:06:09 AM		FULLERTON, HERE
8:06:21 AM		WHO IS HERE ON BEHALF OF THE CITIES OF AZTEC AND BLOOMFIELD
8:06:22 AM		CASSANDRA MALONE, HERE
8:06:30 AM		TULLY, HERE
8:06:45 AM		BHP NAVAJO COAL
8:06:50 AM		CHRISTINE SHEEHAN, HERE
8:06:58 AM		BLOOMFIELD SCHOOL, NOT PRESENT
8:07:09 AM		CITY OF GALLUP
8:07:13 AM		SETH FULLERTON, HERE
8:07:22 AM		RISLEY, NOT PRESENT
8:07:29 AM		OXFORD, NOT PRESENT
8:07:33 AM		HORNER, HERE
8:07:42 AM		SJWC, HERE
8:07:52 AM		ANYONE ELSE
8:08:01 AM	CELINE HAWKIN S	UMUT
8:08:26 AM	J	VERIFYING TIME LIMITS

8:08:51 AM		4 ITEMS I HAVE IDENTIFIED AS POSSIBLE ITEMS TO ADDRESS
8:09:00 AM	J - MARSH ALL	ON THE QUESTION OF THE MOTION TO STRIKE, THAT IS NOT SOMETHING THAT HAS A COMPELLING DISCOVERY TIME FRAME. DO YOU WANT TO ADDRESS THAT THIS MORNING OR DO YOU PLAN TO PROVIDE FURTHER RESPONSE
8:09:24 AM	MARSH ALL	ASKING FOR CLARIFICATION
8:09:30 AM	J	CLARIFYING, US OBJECTION TO THE COMMUNITY DITCH DEFENDANTS NOTICE OF FILING
8:09:56 AM	MARSH ALL	I DO NOT THINK THAT IS A PRESSING DISCOVERY MATTER
8:10:03 AM	J	I AGREE, DO YOU WISH TO RESPOND TO THAT IN WRITING OR DO YOU WANT TO AGUE THAT THIS MORNING
8:10:15 AM	MARSH ALL	BETTER TO FILE A RESPONSE
8:10:53 AM	J	START WITH THE FIRST NOTICE OF IMPASSE
8:11:20 AM	MARSH ALL	WE FILED A MOTION
8:12:23 AM		THIS GOES TO THE ADEQUACY OF THE SJ RIVER WITHIN NM
8:13:04 AM		THEY DID NOT ANSWER THE QUESTION...LOOK AT INTERROGATORY #5
8:13:33 AM		THEY ARE CLAIMING RESERVED WATER RIGHTS OR PERHAPS NON-RESERVED WATER RIGHTS BUT WE DO NOT KNOW
8:13:40 AM		THAT IS DISCOVERABLE INFORMATION
8:13:47 AM		#10 IS VERY IMPORTANT
8:14:07 AM		OUR POINT IS THAT WITH RESPECT TO THE SJ RIVER BASIN IN NM THEY HAVE NOT ASWERED THE QUESTIONS
8:14:26 AM	GUSS GUARIN O	WE FIND MR MARSHALLS' COMMENTS REMARKABLE ON MULTIPLE LEVELS
8:14:52 AM	J	BREAKING UP HERE
8:15:29 AM	GUARIN O	STARTING OVER
8:15:37 AM		HE READS WHAT HE WANTS TO READ FROM THE US RESPONSES AND HE IS DISINGENUOUS ON THE RECORD
8:16:03 AM	J	IT MIGHT BE HELPFUL IF YOU SPEAK A BIT SLOWER
8:16:34 AM	GUARIN O	THE US RESPONDED TO MR MARSHALLS INTERROGATORY
8:16:50 AM		QUOTING FROM RESPONSE
8:17:42 AM		TALKING ABOUT #5
8:18:09 AM		THE US IS NOT GOING TO BE ABLE TO DEVELOPE STATEMENT OF CLAIMS FOR EVERY FEDERAL INTEREST
8:18:29 AM		#10
8:18:53 AM		THIS IS NOT A LEGITIMATE COMPLAINT FROM MR MARSHALL

8:19:08 AM	MARSH ALL	RESPONSE
8:19:49 AM		IT IS NOT COMPLETE AND HE HAS ADMITTED THAT IT IS NOT COMPLETE
8:19:57 AM	GUARIN O	INAUDIBLE
8:20:05 AM	J	MR MARSHALL HAS THE LINE, LET HIM PROCEED
8:20:13 AM	MARSH ALL	CONTINUES
8:21:16 AM		THESE DOCUMENTS DO NOT PROVIDE A COMPLETE ANSWER TO THE QUESTION
8:21:21 AM	J	WHAT ARE THE SHORT COMINGS
8:21:29 AM	MARSH ALL	ANSWERS
8:22:20 AM		THEY NEED TO ESTIMATE OR PROJECT WHAT EVER THOSE CLAIMS ARE GOING TO BE
8:23:27 AM	DAVID GEHLE RT	WE HAVE HAVE FILED A STATEMENT OF POSITION
8:23:51 AM		THERE ARE MANY MORE PARTS OF THE BLM THAT HAVE NOT BEEN INTRODUCED INTO THE ADJUDICATION
8:24:24 AM		THIS PROCEEDING IS ABOUT THE SETTLEMENT OF THE NN WATER RIGHTS CLAIMS, NOT ABOUT THE US CLAIMS
8:24:58 AM		THE SETTLEMENT ITSELF CONTAINS PROVISIONS
8:26:20 AM	GUARIN O	RESPONSE
8:27:15 AM	J	MARSHAL I WILL GIVE YOU THE FINAL WORD TO ADDRESS THE QUESTION OF RELEVANCE
8:27:24 AM	MARSH ALL	IT IS LEGALLY RELEVANT AND ESSENTIAL
8:29:25 AM		THE ALLOCATION OF WATER UNDER THE COLORADO RIVER COMPACT BECAUSE YOU HAVE TO KNOW WHAT NM'S SHARE IS
8:29:35 AM		AS WE UNDERSTAND IT ALL OF THIS WATER THT THE NAVAJOS ARE ASKING FOR WOULD BE CHARGED TO NM'S SHARE OF THE COLORADO RIVER
8:30:10 AM		WHAT THEY HAVE SAID ABOUT PRIORITY AND THEIR REPRESENTATION ABOUT HOW THIS SETTLEMENT WOULD WORK ARE INCORRECT
8:30:43 AM	HORNE R	WOULD LIKE TO ADDRESS THE RELEVANCY FACTOR
8:31:17 AM		INAUDIBLE
8:33:20 AM	J	IF I UNDERSTAND YOU CORRECTLY AND UNDERSTAND MR MARSHALLS ARGUMENT AS WELL IT WOULD REQUIRE AN UNDERSTANDING OF NOT ONLY THE US WATER RIGHTS OR WHAT THE US MAY POTENTIALLY CLAIM BUT WHAT HAVE BEEN CLAIMED AND POTENTIALLY BE CALIMED BY EVERYBODY IN THE BASIN
8:33:47 AM	HORNE R	THAT IS RIGHT, RESPONSE
8:34:19 AM		STILL INAUDIBLE
8:35:24 AM	J	WHAT DIFFERENTIATES ANY POTENTIAL US CLAIMS VS CLAIMS OF OTHER USERS

8:35:43 AM	HORNE R	ANSWERS
8:38:34 AM		THE WHOLE CONCEPT OF INTER SE IS A JOKE
8:38:42 AM	J	LET ME ASK MR GEHLERT IF HE WANTS TO RESPOND TO THAT
8:38:54 AM	GEHLE RT	MR HORNER MADE HIS INTENTION CLEAR THAT HE WANTS TO HAVE THIS EXPEDITED INTER SE THAT IS DIRECTED AT THE NAVAJO NATIONS WATER RIGHT CLAIMS TURNED INTO A GENERAL INTER SE FOR EVERY BODYS CLAIMS
8:39:09 AM		HE MENTIONS THE 1948 DECREE BUT THINGS HAVE CHANGED
8:39:29 AM		THE SETTLEMENT NEEDS TO BE EVALUATED ON THE TERMS OF THE SETTLEMENT AS COMPARED TO WHAT THE NAVAJO NATION COULD BE ASSERTING IN A TRIAL IN LITIGATION OF ITS RIGHTS
8:39:54 AM	J	HOW DO YOU RESPOND TO MR MARSHALLS ARGUMENT THAT THE SETTLEMENT AGREEMENT ITSELF CONTEMPLATES THAT THERE BE SUFFICIENT SUPPLY TO ACCOMODATE THE SETTLEMENT
8:40:06 AM	GEHLE RT	REPLY
8:40:24 AM		IF MR MARSHALL THINKS THAT THE 2007 HYDROLOGIC DETERMINATION IS INCORRECT HE NEEDS TO GO TO FEDERAL COURT AND BRING AN ADMINISTRATIVE PROCEDURE THAT CHALLENGES THAT DETERMINATION
8:40:34 AM		THIS COURT DOES NOT HAVE JURISDICTION TO REVIEW THAT THAT DETERMINATION, THIS COURT MUST ACCEPT THAT IT IS CORRECT UNLESS MR MARSHALL GOES TO A COURT WITH JURISDICTION AND IS ABLE TO CONVINC THAT COURT THAT THE HYDROLOGIC DETERMINATION WAS DONE INCORRECTLY
8:40:53 AM		THAT IS NOT A RELEVANT ISSUE IN THIS PROCEEDING
8:41:07 AM		IN THE INTEREST OF LIMITING DISCOVERY DISPUTES WE HAVE FILED A STATEMENT OF DIVISION WHICH IDENTIIIES ALL OF THE CLAIM WHICH WE ANTICIPATE WOULD BE FILED WHEN THOSE SECTIONS OF THE SAN JUAN ADJUDICATION ARE BEFORE THE COURT
8:42:01 AM	J	TURN TO MR MARSHALL TO CLOSE
8:42:08 AM	JOHN UTTON	AT SOME POINT THE STATE WOULD LIKE AN OPPORTUNITY TO MAKE A COMMENT
8:42:20 AM		ONE OF THE REASON THAT WE BELIEVE THAT THESE REQUESTS HAVE GONE FAR AFIELD IS THAT THEY DO NOT FALL WITHIN THE PROCESS OF DETERMINING WATER RIGHTS
8:43:16 AM		THE WATER RIGHTS OF INDIVIDUAL CLAIMANTS IN THE BASIN, THE US OR SUPPLY ISSUES, THOSE ARE NOT EFFECTED, THOSE ARE NOT CHANGED BY THE SETTLEMENT. THEY WILL BE WHAT EVER THEY WILL BE
8:43:36 AM		THEY ARE NOT EFFECTED BY THE NAVAJO SETTLEMENT
8:43:56 AM		WE BELIEVE THERE ARE PROTECTIONS AGAINST SHORTAGES

8:44:09 AM		WE DO NOT KNOW WHAT EVERY WATER RIGHT WILL BE BUT WHAT EVER THEY ARE THEY WILL BE LESS EFFECTED BY WHAT THE NAVAJO RIGHTS DECREED
8:44:51 AM		UNDER THE SETTLEMENT THE NAVAJO WOULD TAKE THE BIGGEST HIT FOR SHORTAGES
8:45:40 AM	MARSH ALL	CLOSING
8:46:24 AM		TALKING ABOUT COURTS EARLIER ORDERS
8:47:08 AM		THE MCCARREN AMENDMENT GIVES THE COURT JURISDICTION AND THE OBLIGATION TO ADJUDICATE ALL OF THESE CLAIMS INCLUDING THE US CLAIMS
8:47:23 AM		THEY CLAIM THAT THE 2007 HYDROLOGIC DETERMINATION IS IMMUNE FROM JUDICIAL SCRUTINY
8:49:24 AM	J	NEED SHORT RECESS, BACK IN 5 MINUTES
8:55:18 AM		BACK ON THE RECORD
8:55:28 AM		NEXT NOTICE OF IMPASSE...NIIP
8:55:45 AM	MARSH ALL	CHRONOLOGY
8:56:27 AM		CONTINUING NOTICE OF IMPASSE FILED
8:56:28 AM		THERE WAS A HEARING WHERE COURT SAID THEY HAVE TO ANSWER IN NARRATIVE FORM
8:57:00 AM		DID NOT YIELD INTERROGATORY ANSWERS IN NARRATIVE FORM
8:59:39 AM		UNDER THE MESCALERO CASE, NIIP IS NOT PIA. IT CAN NOT BE IRRIGATED AT REASONABLE COST
9:00:28 AM		WE HAVE GOTTEN FOR A FEW YEARS ON MAIN UTILITY BILLS, THAT IS INCOMPLETE
9:02:11 AM		THE WHOLE POINT OF INTERROGATORIES IS THAT THEY ARE ANSWERED UNDER OATH BY THE OPPOSING PARTIES
9:04:34 AM	J	THE RULES DOES NOT CONTEMPLATE NARRATIVE ANSWERS IF DOCUMENTS WILL BE SUFFICIENT AND IF THE RESPONDING PARTY DIRECTS THE QUESTIONING PARTY TO THE DOCUMENTS
9:05:08 AM		IN READING THE RESPONSES SPECIFICALLY TO CAPITAL COSTS IF I RECALL IT SAYS THAT THE CAPIAL COSTS ARE LISTED IN THESE STATEMENTS THAT WERE PROVIDED TO YOU IN RESPONSE TO INTERROGATORIES
9:05:26 AM	MARSH ALL	THAT I WILL SAY IS NOT CORRECT, THEY ARE NOT PROVIDED IN ANY INTELLIGABLE FORM, LET ME FIND THAT RULE
9:05:41 AM	J	IT IS 33(E)
9:05:50 AM	MARSH ALL	THE CRUTIAL THING IS (READING FROM RULE) THAT PROVISION IS NOT MET
9:07:04 AM	J	IF YOU NEEDED TO DEPOSE SOMEBODY IN ORDER TO GET A MORE COMPLETE UNDERSTANDING
9:07:21 AM	MARSH ALL	YOU HAVE TO HAVE THE UNDERLYING MATERIAL..
9:08:42 AM		TALKING ABOUT NAVAJO DAM
9:09:04 AM		IT IS NOT OUR DUTY TO LEARN THE ACCOUNTING SYSTEM OF THE US
9:09:24 AM		YES WE DO INTEND TO TAKE DEPOSITIONS

9:09:37 AM	J	I HAVE READ THE RESPONSES THAT WERE PROVIDED TO YOU
9:10:02 AM		SORT OF AT A LOSS
9:10:18 AM		THEY ARE SAYING THEY PROVIDED IT
9:10:34 AM		ONE SIDE IS SAYING WE GOT IT AND THE OTHER SIDE IS SAYING WE DID NOT GET IT
9:10:48 AM		WHAT I AM HEARING YOU SAY IS THAT YOU CAN NOT INTERPRET IT. WHAT I AM UNDERSTANDING IS THAT THE FINANCIAL STATEMENTS WERE PROVIDED
9:11:11 AM		WHAT IS THE DEFICIENCY IN WHAT HAS BEEN PROVIDED
9:11:38 AM		I NEED TO HEAR FROM YOU SPECIFICALLY WHAT ARE THE DEFICIENCIES
9:12:09 AM	MARSH ALL	RULE 33(E) DEALS WITH THIS
9:13:26 AM		TALKING ABOUT REPORTS PROVIDED
9:13:53 AM		THE DOCUMENTS THEMSELVES SAY THEY DO NOT INCLUDE THE MAJOR CAPITAL COSTS AND OTHER MAJOR COSTS
9:14:34 AM		NAPPI DOES SOME OPERATIONS BUT IT DOES NOT DO, DOES NOT BUILD THE CAPITAL STRUCTURE LIKE NAVAJO DAM AND THE HUNDREDS MILES OF CANALS
9:15:35 AM		IF MR GUARINO COULD TELL US WHAT THE TOTAL COSTS ARE...
9:17:26 AM		IT IS CLEAR THEY ARE NOT GOING TO ANSWER THOSE QUESTIONS EVEN WHEN YOU SAID PUT THEM IN INTERROGATORY FORM
9:18:11 AM		OBJECTION TO MR GUARINO MAKING FACTUAL REPRESENTATIONS ABOUT DOCUMENTS
9:18:23 AM	J	COURT UNDERSTANDS
9:18:38 AM		TURN TO NAVAJO NATION
9:18:43 AM	STANLE Y POLL ACK	CONFUSED
9:19:06 AM		MR MARSHALL IS CORRECT...
9:19:27 AM		HE ASKED FOR OUR OPERATIONAL COSTS AND THAT IS WHAT WE PROVIDED HIM
9:19:35 AM	J	MR POLLACK I NEED TO ATTEND TO SOMETHING PLEASE GIVE ME A MINUTE
9:21:39 AM		BACK
9:21:50 AM	POLLAC K	INTERROGATORY #3 EXAMPLE
9:22:24 AM		MR MARSHALL THINKS THAT WE DID NOT GIVE HIM ENOUGH
9:22:41 AM		WE VERIFIED OUR RESPONSES UNDER OATH
9:23:32 AM		WE HAVE AN ANNUAL REPORT THAT SAYS HOW MUCH WE SPEND EACH YEAR
9:24:08 AM		WE HAVE PROVIDED ADEQUATE RESPONSES AND WE REST ON THOSE RESPONSES

9:24:18 AM	J	WHAT I UNDERSTAND MR MARSHALL TO BE SAYING IN PART IS... WELL LET ME ADDRESS THIS FIRST. THE AUDITORS REPORT SPECIFICALLY SAY THAT THE REPORTS ARE INCOMPLETE.... ADDRESS THAT ASPECT
9:24:50 AM	POLLAC K	ANSWERS. FROM MY READINGS OF THE MATERIALS FROM ONE OF THE OPERATING STATEMENTS WHERE WE FEEL THE INFORMATION WAS PROVIDED THERE WAS A FOOTNOTE SAYING THAT IN THAT ONE STATEMENT THAT IT DID NOT INCLUDE INFORMATION RELATIVE TO THE UTILITIES FOR THAT (INAUDIBLE)
9:25:46 AM		I DO NOT THINK THAT THERE IS ANYTHING SIGNIFICANT MISSING HERE
9:26:13 AM	J	IS THERE A PERSON WHO IS THE KNOWLEDGABLE PERSON WITH RESPECT TO THE COSTS AND EXPENSES OF NIIP
9:26:26 AM	POLLAC K	WE HAVE DESIGNATED A PERSON AT THE NAVAJO AGRICULTURAL PRODUCTS INDUSTRY THAT CAN TALK ABOUT THE COSTS ASSOCIATED WITH NIIP IN SO FAR AS NAPI IS CONCERNED
9:26:56 AM	J	AND THE UNITED STATES KNOWS ABOUT THAT
9:27:03 AM	POLLAC K	THE PROJECT WAS BUILT BY THE BUREAU OF RECLAMATION AND WHAT EVER EXPENSES THE BUREAU HAS INCURRED MY UNDERSTANDING IS THAT MATERIAL MR GUARINO HAS MADE AVAILABLE AT THE REPOSITORY
9:27:35 AM		WE DO NOT HAVE ANY COSTS ESTIMATE OF WHAT THE EXACT COSTS ARE TO DATE OF THE CONSTRUCTION OF THE NIIP PROJECTS
9:27:42 AM	J	WE MEANING NAPI
9:27:50 AM	POLLAC K	NEITHER THE NAVAJO NATION NOR NAPI ITS ENTERPRISE HAVE THAT INFORMATION. MY GUESS IS.....THE ONLY WAY TO DISCERN THAT NUMBER IS TO GO THROUGH THE DOCUMENTS AND HAVE AN EXPERT TOTAL UP
9:29:02 AM	GUARIN O	THE US HAS RECEIVED THE DISCOVERY RESPONSES OF MR MARSHALL. WE ANSWERED TO THE EXTENT WE HAD AN ANSWER
9:29:48 AM		WHAT IS CLEAR FROM MR MARSHALLS STATEMENT IS THAT HE EXPECTS THE UNITED STATES TO SPEND HUNDREDS OF THOUSAND OF DOLLARS AND HUNDRED OF EXPERT HOURS TO ANSWER THE QUESTIONS THAT HE HAS FORMULATED
9:30:02 AM		THE PURPOSE OF DISCOVERY IS TO PROVIDE THE INFORMATION THAT YOU HAVE, AND WE HAVE DONE THAT
9:30:26 AM		WE HAVE TOLD HIM VERY SPECIFICALLY WHERE IN DISCOVERY THOSE DOCUMENTS TO THE EXTENT THAT WE HAVE THEM ARE
9:30:40 AM		WHEN THE COURT INSTRUCTED MR MARSHALL TO ISSUE INTERROGATORIES... WHAT WAS HAPPENING AT THE HEARING IF THE COURT WILL RECALL WAS MR MARSHALL WAS APPEARING AT HEARINGS AND COMPLAINING. THAT IS WHY THE COURT INSTRUCTED MR MARSHALL TO PUT IN INTERROGATORY FORM
9:32:08 AM	J	BACK TO MR MARSHALL

9:32:15 AM	MARSH ALL	THE DISCOVERY RULES REQUIRE LITIGANTS TO ANSWER QUESTIONS AND THAT DOES THEM TO DO SOME WORK
9:32:47 AM		WHEN YOU GET INTERROGATORIES IT MIGHT REQUIRE A FAIR AMOUNT OF WORK
9:33:06 AM		WE ARE NOT ASKING FOR EXPERT OPINION, WE ARE ASKING FOR FACTS ABOUT THE OPERATING COSTS
9:33:51 AM		WHAT WE ALSO HAVE HERE IS THE NIIP NAPI EVASION
9:35:20 AM		PRIMARY IRRIGATION FACILITIES AND ROADS
9:36:09 AM		READING FROM FINANCIAL STATEMENT
9:37:23 AM	J	WHY DID YOU NOT ASK THOSE SPECIFIC QUESTIONS IN THE 10 SUPPLEMENTAL INTERROGATORIES
9:37:29 AM	MARSH ALL	WE DID... THESE ARE NOT PROBABLY THE ONLY ONES
9:38:39 AM	J	LETS MOVE TO THE LAST ITEM THAT WE NEED TO ADDRESS THIS MORNING, THAT IS THE MOTION TO COMPEL RESPONSES TO DISCOVERY ABOUT EVAPORATIVE AND OTHER LOSSES
9:39:00 AM	MARSH ALL	WE WOULD LIKE TO TAKE DEPOSITIONS. WE WOULD LIKE TO TAKE THEM TELEPHONICALLY. WE WILL GO AHEAD AND TAKE SOME DEPOSITIONS AND I GUESS WE WILL HAVE TO ASK THESE WITNESSES FOR THIS INFORMATION, WE WILL GO AHEAD AND DO THAT, BUT WE WOULD ASK THE COURT THAT IF THE WITNESS CAN NOT ANSWER THE QUESTIONS THAT WE BE AWARDED OUR FEES FOR TAKING THE DEPOSITIONS. WE DO WANT AND WE WOULD PROBABLY NEED THE COURTS ASSISTANCE IN ARRANGING TELEPHONIC DEPOSITIONS ABOUT SOME OF THESE TOPICS
9:39:48 AM		EVAPORATIVE AND OTHER LOSSES THE AVAILABILITY OF WATER IS A CONGRESSIONAL (INAUDIBLE)
9:42:22 AM		WHAT ARE THE ACTUAL PROJECTED EVAPORATION LOSSES FOR THESE RESERVOIRS AND WHO GETS CHARGED FOR THEM
9:42:43 AM		IS THERE OR IS THERE NOT ENOUGH WATER IN THE RIVER
9:44:22 AM		THERE IS AN UNRESOLVED DEFICIT OF AT LEAST A HALF A MILLION ACRE FEET ON THE SAN JUAN BASIN RIVER (INAUDIBLE)
9:45:04 AM		GIVE US SOME EVAPORATION NUMBERS AND TELL US HOW YOU THINK THEY ARE ALLOCATED
9:45:09 AM	J	TURN TO THE UNITED STATES
9:45:27 AM	GUSS GUARIN O	BACK UP A LITTLE BIT FROM WHERE MR MARSHALL STARTED. HE SAID HE WANTED TO DO TELEPHONIC DEPOSITIONS. TO MY KNOWLEDGE THE US IS THE ONLY ENTITY THAT MR MARSHALL HAS CONTACTED WITH REGARDS TO DEPOSITIONS
9:46:52 AM	J	THIS IS SOMETHING THAT YOU AND MR MARSHALL CAN ADDRESS I AM NOT ENTERTAINING ANY MOTION WITH RESPECT TO FEES AND COSTS AT THIS TIME, IT SEEMS PREMATURE AT THIS TIME

9:47:12 AM	GUARIN O	WITH RESPECT TO THE DISCOVERY THAT HE HAS SENT OVER TO THE UNITED STATES AND ALL SETTLING PARTIES HE HAS DIRECTED THESE REQUESTS TO THE UNITED STATES ON FEBRUARY 15TH. THE CUT OFF IS ON MARCH 1ST
9:47:56 AM		TALKING ABOUT SET DEADLINES
9:48:35 AM		WE ARE PREPARED TO FILE A MOTION FOR PROTECTIVE ORDER
9:48:52 AM		IT IS UNTIMELY AND UNREASONABLE
9:50:23 AM		WE WILL OBJECT AND ASK THE COURT TO ISSUE A PROTECTIVE ORDER WITH RESPECT TO DISCOVERY
9:50:33 AM	J	HOW DIFFICULT WOULD A RESPONSE BE
9:50:41 AM	GUARIN O	I HAVE TO SEND IT OUT TO MY AGENCIES. MY AGENCIES ARE THE PEOPLE THAT IF THERE IS AN ANSWER TO BE HAD FOR ANY OF THESE QUESTIONS THEN IT IS UP TO THEM
9:51:06 AM		IT TAKES A GREAT DEAL OF COORDINATION AND EFFORT
9:51:26 AM	J	DO YOU HAVE SUBSTANTIVE OBJECTIONS IN ADDITION TO THE TIMELINESS ONE
9:51:38 AM	GUARIN O	IF HISTORY PROVES TO BE CONSISTENT WE WOULD, MR MARSHALL HAS A TRACK RECORD OF ASKING QUESTIONS THAT ARE IRRELEVANT TO THESE PROCEEDINGS
9:52:23 AM	J	WITH RESPECT SPECIFICALLY TO THE NAVAJO RESERVOIR, WOULD EVAPORATION AND SEEPAGE EFFECT A PIA CLAIM OR EFFECT THE IMPACT THAT THE SETTLEMENT MIGHT HAVE ON JR USERS
9:52:53 AM	GUARIN O	ANSWERS
9:53:13 AM		TALKING ABOUT PIA
9:54:02 AM		WE HAVE NOT DONE ANY ANALYSIS OF PIA
9:54:56 AM	STANLEY POLL ACK	CONCUR WITH WHAT MR GUARINO HAS SAID BUT ALSO NOTE THAT THE DISCOVERY GOES BEYOND THE PARAMETERS OF WHAT THE COURT HAS ALREADY INDICATED IS SUBJECT TO DISCOVERY
9:56:27 AM		WHAT EVER THE EVAPORATION IS OFF OF THESE RESERVATIONS IS GOING TO OCCUR IN THE FUTURE WHETHER OR NOT WE HAVE A NAVAJO WATER RIGHTS SETTLEMENT
9:57:20 AM		IT IS THE NAVAJO NATION THAT BEARS ALL THE RISK
9:57:43 AM	J	HEAR FROM MR UTTON THEN MR HORNER
9:57:50 AM	JOHN UTTON	NUMBER OF PROBLEMS WITH THIS DISCOVERY REQUEST
9:58:59 AM		THIS IS A UNNECESSARY DISTRACTION
10:00:44 AM		WE SHOULD NOT BE REQUIRED TO RESPOND
10:00:50 AM	GARY HORNER	POINT OUT THAT MR GUARINO IN HIS ARGUMENT...NEGLECTED TO ADDRESS THE ISSUE OF INJURY TO JR WATER RIGHT HOLDERS
10:03:12 AM		THE WAY THEY HAVE IT WRITTEN IN THE SETTLEMENT THE WATER IN STORAGE COMES FROM EVERYBODY ELSE

<u>10:03:46</u> AM		TO TALK ABOUT THAT THEY ARE ASSUMING THE RISK AND NOT HARMING ANYBODY BECAUSE OF THE PRIORITY DATE... MISREPRESENTATION
<u>10:04:40</u> AM	MARSH ALL	CUT OFF IS MARCH 1
<u>10:05:16</u> AM	J	IF THE CUT OFF IS MARCH 1ST AND BRIEFS ARE DUE SHORTLY THERE AFTER HOW WOULD YOU CONTEMPLATE DISCOVERY THAT IS PROPOUNDED IN THE MIDDLE OF FEBRUARY BE COMPLETED IN TIME FOR A BRIEFING
<u>10:06:02</u> AM	MARSH ALL	ANSWERS
<u>10:06:14</u> AM	J	WOULD YOU BE ABLE TO NOTICE A DEPOSITION NOW FOR FOR 3 WEEKS FROM NOW
<u>10:06:21</u> AM	MARSH ALL	THAT WOULD BE UP TO THE COURT
<u>10:06:54</u> AM		THE COURT RECOGNIZED THAT THIS WAS A VERY AMBITIOUS DISCOVERY TIME AND THE COURT SAID IT WOULD SHORTEN THE TIME FOR RESPONSES AND THAT ACTUALLY HAS NOT HAPPENED, IN ALMOST EVERY CASE THE SETTLING PARTIES HAVE WAITED UNTIL THE DAY BEFORE THE LAST DAY TO RESPOND
<u>10:07:34</u> AM	J	I NEED TO ATTEND TO SOMETHING I WILL BE BACK IN A FEW MINUTES
<u>10:10:04</u> AM		BACK ON RECORD
<u>10:10:12</u> AM	MARSH ALL	COURT ORIGINALLY SAID THAT IT WOULD SHORTEN THE TIME AND IT SHOULD DO SO SO THAT WE ARE NOT PREJUDICED
<u>10:10:37</u> AM		IT CREATES ALL SORTS OF PROBLEMS, GIVING EXAMPLE OF INFORMATIONAL REPORT FILED FEB 12TH
<u>10:11:26</u> AM		MR LEEPERS REPORT RAISES A LOT OF THESE QUESTIONS
<u>10:14:09</u> AM		THEY HAVE THE BURDEN TO SHOW THAT NIIP IS PIA
<u>10:14:34</u> AM	J	WE ARE GETTING INTO WHAT MIGHT BE CONTAINED IN MOTIONS, ANYTHING ELSE REGARDING THIS MOTION TO COMPEL
<u>10:14:52</u> AM	MARSH ALL	FINISHES
<u>10:15:07</u> AM	J	DO HAVE A QUESTION OF MR GUARINO AND MAYBE OF MR POLLACK. MR MARSHALL WAS TALKING ABOUT TELEPHONIC DEPOSITIONS, IS THERE AN ISSUE ABOUT HAVING A TELEPHONIC DEPOSITION
<u>10:15:27</u> AM	GUARIN O	NOT FROM THE US
<u>10:15:34</u> AM	POLLAC K	WE HAVE NEVER OBJECTED TO A TELEPHONIC DEPOSITION WE HAVE JUST NEVER RECEIVED ANY NOTICE AT ALL OF ANY REQUEST FOR A DEPOSITION BY MR MARSHALL

<u>10:15:49</u> <u>AM</u>	J	I JUST WANT TO AIR OUT ANY DIFFICULTIES NOW
<u>10:16:30</u> <u>AM</u>		ANY PROBLEMS SETTING UP DEPOSITIONS PLEASE CONTACT THE COURT
<u>10:16:34</u> <u>AM</u>	POLLAC K	CURIOUS
<u>11:31:34</u> <u>AM</u>	J	BACK ON THE RECORD
<u>11:31:48</u> <u>AM</u>		CALLS CASE AGAIN
<u>11:32:07</u> <u>AM</u>		ROLL CALL
<u>11:33:09</u> <u>AM</u>		CASSANDRA MALONE NOT IN ATTENDANCE
<u>11:33:14</u> <u>AM</u>		I HAVE GONE THROUGH THE ISSUES THAT WE HAVE HAD BEFORE US THIS MORNING
<u>11:33:20</u> <u>AM</u>		THANK YOU COUNSEL FOR APPEARING ON SHORT NOTICE
<u>11:33:30</u> <u>AM</u>		RULINGS
<u>11:33:33</u> <u>AM</u>		REGARDING NOTICE OF IMPASSE AND FILING OF UNITED STATES OBJECTIONS AND RESPONSES TO DISCOVERY CONCERNING OTHER WATER CLAIMS BY THE UNITED STATES...
<u>11:34:39</u> <u>AM</u>		WE ARE INVOLVED IN AN EXPEDITED INTER SE THAT INVOLVES THE NAVAJO NATION CLAIMS. WHAT LEGAL STANDARD SETS OUT TO DO IS LOOK AT THE EFFECT OF THE SETTLEMENT AS AGAINST THE POTENTIAL NAVAJO NATION RIGHTS AS WELL AS THE OTHER PRONGS OF THE SETTLEMENT
<u>11:35:09</u> <u>AM</u>		WHAT IS ADDRESSED IN ADJUDICATIONS IS ALWAYS WHETHER THERE ARE CLAIMS THAT ARE SUPPORTED GENERALLY ON THE BASIS OF HISTORIC BASIS AND WHEN WE ADDRESS THE NAVAJO CLAIMS THE LEGAL STANDARD HAS BEEN SET UP IN ORDER TO SPECIFICALLY TO ADDRESS THE NAVAJO CLAIMS AND DOING THAT THESE OTHER ISSUES ADDRESSED BY THIS NOTICE OF IMPASSE ARE NOT DIRECTLY RELEVANT
<u>11:35:47</u> <u>AM</u>		IN THAT REGARD I THINK THAT THE DISCOVERY THAT HAS BEEN PROVIDED IS THE DISCOVERY THAT IS GOING TO STAND SUCH THAT THE OBJECTIONS WILL BE OVERRULLED
<u>11:36:07</u> <u>AM</u>		SECOND ISSUE IS THE NIIP ISSUE
<u>11:36:11</u> <u>AM</u>		NOTICE OF IMPASSE AND FILING OF NAVAJO NATIONS RESPONSES AND OBJECTIONS TO ADDITIONAL INTERROGATORIES ON NIIP
<u>11:36:20</u> <u>AM</u>		THIS HAS BEEN A TROUBLESOME ISSUE FOR SOME TIME NOW

<u>11:36:23</u> <u>AM</u>		THE PROBLEM THAT I HAVE NOW TODAY IS THE SAME PROBLEM THAT I FELT I HAD BACK IN NOVEMBER IS THAT
<u>11:36:52</u> <u>AM</u>	OXFOR D	ASKING HOW TO MUTE THE PHONE
<u>11:37:31</u> <u>AM</u>	J	NOTING MR OXFORD APPEARANCE
<u>11:37:44</u> <u>AM</u>		THE PROBLEM I HAD THIS MORNING IS SIMILAR TO THE PROBLEM I FELT I HAD IN NOVEMBER IN THAT I DID NOT HAVE THE DOCUMENTS BEFORE ME. EACH SIDE IS SAYING DIFFERENT THINGS.
<u>11:38:02</u> <u>AM</u>		I WAS HOPING THAT THE SUPPLEMENTAL INTERROGATORIES WERE GOING TO ADDRESS THE PROBLEM, IF THERE WAS ADDITIONAL INFORMATION THAT WAS NOT PROVIDED THAT THE INTERROGATORIES WOULD SPECIFICALLY ADDRESS THAT INFORMATION. I NOTE THAT NOW AS BEFORE THE NAVAJO NATION IS STATING THAT IT HAS PROVIDED ALL OF THE DOCUMENTS THAT IS HAS THAT IS RESPONSIVE TO THE INTERROGATORY REQUEST
<u>11:38:54</u> <u>AM</u>		I DO NOT SEE THAT THERE IS A RULE 33(E) PROBLEM. I DO NOT SEE THAT THE BURDEN IS SUBSTANTIALLY DIFFERENT FROM THE DOCUMENTS THAT ARE LISTED AS BEING RESPONSIVE
<u>11:39:08</u> <u>AM</u>		THOSE DOCUMENTS APPEAR TO BE FINANCIAL STATEMENTS AND AUDIT REPORTS THAT PERTAIN TO THE NIIP PROJECT WITH RESPECT NAPI. I DO NOT HAVE THEM IN FRONT OF ME.
<u>11:39:34</u> <u>AM</u>		I DO NOT ENVISION THEM TO BE THE TYPE OF DOCUMENTS THAT THE INFORMATION IS TOO DIFFICULT TO CULL
<u>11:39:41</u> <u>AM</u>		IT HAS BEEN REPRESENTED THAT THERE IS ADDITIONAL NIIP INFORMATION AT THE REPOSITORY
<u>11:39:55</u> <u>AM</u>		I AM GOING TO OVERRULE THE OBJECTIONS THAT ARE REFLECTED IN THE NOTICE OF IMPASSE, BUT I WILL REFLECT THAT I AM HOPEFUL THAT THE DEPOSITIONS THAT HAVE BEEN DISCUSSED WILL BE ABLE TO PROVIDE THE INFORMATION TO THE COMMUNITY DITCH DEFENDANTS BECAUSE THEY WILL HAVE THE OPPORTUNITY TO ADDRESS THEIR SPECIFIC QUESTIONS IN THE COURSE OF THE DEPOSITIONS
<u>11:40:32</u> <u>AM</u>		LASTLY WITH RESPECT TO THE MOTION TO COMPEL RESPONSES TO DISCOVERY ABOUT EVAPORATIVE AND OTHER LOSSES
<u>11:40:44</u> <u>AM</u>		I FORST NOTE THAT I DO VIEW THEM AS NOT BEING TIMELY WITHOUT A REQUEST OF THE COURT TO SHORTEN TIME FOR THEIR RESPONSES
<u>11:40:54</u> <u>AM</u>		WE DO HAVE A MARCH 1ST DISCOVERY DEADLINE AND DISCOVERY INTERROGATORY REQUEST THAT ARE SUBMITTED FEBRUARY 15TH WITHOUT ANY CONNECTING MOTION TO SHORTEN TIME ARE PROBLEMATIC

<u>11:41:18</u> AM		WITH RESPECT TO THE CONTENT OF THE REQUEST AS THE COURT HAS DISCUSSED IN OTHER ORDERS THE GENERAL REQUEST WITH REGARD TO THE COLORADO RIVER BASIN ARE OVERLY BROAD, NOT DIRECTLY RELATED TO THE LEGAL STANDARDS.
<u>11:41:39</u> AM		NEVER THE LESS, I DO FEEL THAT THERE MAY BE RELEVANCE TO THE LEGAL STANDARDS WITH RESPECT TO THE NAVAJO RESERVOIR IN PARTICULAR
<u>11:42:00</u> AM		CONSIDERING THE TIMING OF THE DISCOVERY CONSIDERING THE BREADTH OF THE REQUEST I AM GOING TO ORDER A RESPONSE TO INTERROGATORIES NUMBER 1 AND 3 WITH RESPECT TO THE NAVAJO RESERVOIR ONLY BY MARCH 1ST
<u>11:42:29</u> AM		THE QUESTION I HAVE IS I AM ASSUMING IS THIS DIRECTED TO THE UNITED STATES, MR MARSHALL DO YOU WANT TO ADDRESS THAT
<u>11:42:41</u> AM	MARSH ALL	IT IS ADDRESSES TO ANY OF THE SETTLING PARTIES THAT HAVE RESPONSIVE INFORMATION. THE STATE ENGINEER AND THE NAVAJO NATION MIGHT AS WELL HAVE RESPONSIVE INFORMATION
<u>11:42:54</u> AM	J	I WILL ORDER THAT WITH RESPECT TO THE SETTLING PARTIES OF WHO EVER HAS THE RESPONSIVE INFORMATION WITH RESPECT TO INTERROGATORIES 1 AND 3 IN CONNECTION TO THE NAVAJO RESERVOIR AND I WILL NOTE THAT IF IR HAS ALREADY BEEN PROVIDED YOU CAN INCLUDE THAT WITHIN YOUR RESPONSE
<u>11:43:40</u> AM		STRESS AGAIN THAT DISCOVERY CLOSES ON MARCH 1ST
<u>11:43:50</u> AM		IF IT IS NECESSARY, NOTHING WILL HAPPEN AFTER MARCH 1ST WITHOUT LEAVE OF THE COURT
<u>11:44:05</u> AM		ANY QUESTIONS
<u>11:44:13</u> AM	MARSH ALL	WITH RESPECT TO DEPOSITIONS LISTING INTENDED DEPOSITIONS
<u>11:44:38</u> AM	GUARIN O	INQUIRY REGARDING OTHERS THAT WERE NOT JUST LISTED
<u>11:44:52</u> AM	J	DO YOU WANT ME TO LEAVE THE ROOM SO THAT YOU CAN DISCUSS ISSUES
<u>11:45:01</u> AM	GUARIN O	WILL JUST GET NOTICES
<u>11:45:14</u> AM	J	THIS IS AS GOOD A TIME AS EVER TO DISCUSS BUT DO NOT WANT TO BE PART OF DISCUSSIONS
<u>11:46:22</u> AM		IF THERE ARE ANY ISSUES PLEASE CONTACT THE COURT
<u>11:46:38</u> AM	POLLAC K	THERE IS AN ONGOING DISPUTE WITH THE COMMUNITY DITCH DEFENDANTS ABOUT VERIFICATION OF THE INTERROGATORIES
<u>11:47:01</u> AM		I DID NOT FIND ANYTHING IN THE RESPONSE TO RESPOND DIRECTLY TO THE ORIGINAL NOTICE. NOT SURE THAT A REPLY IS NECESSARY AT THIS POINT. PERHAPS WE COULD RESOLVE THAT MATTER TODAY

<u>11:47:18</u> AM	MARSH ALL	THAT IS IN APPROPRIATE, NOT QUITE SURE WHERE WE ARE
<u>11:47:25</u> AM	POLLAC K	I WOULD WAIVE THE ABILITY TO FILE A REPLY
<u>11:47:29</u> AM	J	I DID SEE THAT IT CAME IN BUT I DID NOT READY MR MARSHALLS RESPONSE SO I AM NOT PREPARED TO ADDRESS IT
<u>11:47:41</u> AM	POLLAC K	OK SO I WILL PROCEED THEN TO FILE MY REPLY THE 25TH
<u>11:47:48</u> AM		THERE WAS A REQUEST FOR ADMISSION AND STIPULATION ABOUT WATER UNITS OF MEASUREMENT THAT MR MARSHALL SUBMITTED. IT IS DIRECTED TO THE US, THE NN, AND THE ST OF NM. IT APPEARS THAT HE IS LOOKING FOR A STIPULATION. HE IS NOT ASKING FOR A STIPULATION FROM ALL PARTIES, JUST FROM THE SETTLING PARTIES
<u>11:48:19</u> AM		AGAIN THIS WOULD BE SOMETHING THAT IS NOT TIMELY
<u>11:48:24</u> AM	J	I AM NOT SURE I UNDERSTAND WHY, IF HE IS REQUESTING TO STIPULATE FOR THE PURPOSE OF WHAT, I HAVE NOT READ IT
<u>11:48:37</u> AM	POLLAC K	IT IS A REQUEST FOR ADMISSION AND A REQUEST FOR STIPULATION
<u>11:48:45</u> AM	MARSH ALL	THIS IS ANOTHER THING THAT YOUR HONOR SHOULD LOOK AT
<u>11:48:58</u> AM	POLLAC K	THE ORDINARY COURSE WOULD BE TO CLOSE DISCOVERY ON MARCH 1ST AND THIS WAS FILED FEBRUARY 11TH
<u>11:49:06</u> AM	MARSH ALL	YOUR HONOR I THINK YOU OUGHT TO TAKE A LOOK AT IT, IT IS JUST MEASUREMENT
<u>11:49:30</u> AM	POLLAC K	I WOULD OBJECT BECAUSE NOT ALL OF THE MEASUREMENT THAT HE PUTS IN THERE ARE ACCURATE BUT IF WHAT WE ARE LOOKING FOR IS A STIPULATION AMONG THE PARTIES SO THAT WE CAN HAVE A COMMON BASIS FOR WHAT WATER MEASUREMENT SHOULD BE THEN THIS SHOULD BE AMONG ALL THE PARTIES
<u>11:49:58</u> AM	J	THAT IS SOMETHING THAT YOU CAN ADDRESS WITH MR MARSHALL
<u>11:51:36</u> AM	POLLAC K	IT JUST SEEMS TO ME THAT IF WE ARE GOING TO HAVE A HEARING WE CAN ALWAYS SIT DOWN AT A LATER DATE AND DISCUSS THINGS THAT WE CAN STIPULATE TO
<u>11:52:29</u> AM	J	CHECKING TO SEE IF MS SHEEHAN IS ON THE SERVICE LIST
<u>11:53:22</u> AM	MARSH ALL	ASKING IF COURT WILL ISSUE RULING
<u>11:53:24</u> AM	J	YES THE COURT WILL
<u>11:53:32</u> AM		RECESS