

**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: *Motion Hearing*

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**

3/8/2013 **Location** Court of Appeals

Time	Speake	Note
12:02:30 PM	J	LETS BEGIN WITH APPEARANCES
12:05:25 PM		CALLED THIS BECAUSE I HAD SOME QUESTIONS THAT I WANTED TO ASK IN PARTICULAR WITH RESPECT TO THE MOTION TO COMPEL THAT WAS FILED BY MR TULLEY AND I NOTE THAT MR MARSHALL FILED ONE AS WELL
12:05:43 PM		I WOULD CONSIDER THE TWO OF THEM TOGETHER
12:05:47 PM		IF THERE IS TIME A QUESTION CONCERNING THE NAVAJO NATIONS IMPASSE CONCERNING DISCOVERY WITH RESPECT TO MR MARSHALLS CLIENTS VERIFICATION OF DISCOVERY REQUEST
12:06:11 PM		FIRST THE MOTION FOR EXTENSION OF TIME
12:06:23 PM		WOULD LIKE TO STATE SOME CONCERNS THAT I HAVE AND ASK SOME QUESTIONS
12:06:27 PM		NOT CONTEMPLATING THAT THIS BE A FULL BLOWN ARGUMENT GIVEN THE RESTRAINT ON TIME
12:06:39 PM		THE PRINCIPLE CONCERN THAT I HAVE IS THAT AS EVERYBODY IS AWARE THERE WERE NON-SETTLING PARTIES WHO WERE TAKING THE LEAD WITH RESPECT TO PARTICULAR DISCOVERY ISSUES WHO SEEM TO BE ENTERING INTO SETTLEMENTS OF SOME NATURE AND WILL NOT BE PARTICIPATING
12:07:23 PM		THAT HAS POSED SOME DIFFICULTIES AS SET FORTH BY MR TULLY IN HIS MOTION
12:07:37 PM		I AM NOT INTERESTED IN ADDRESSING YOUR MOTION MR TULLY AND MR MARSHALL WITH RESPECT TO THE EXTENSION OF TIME OF FOUR MONTHS, THE COURT IS NOT GOING TO REVISIT ITS PREVIOUS ORDER THAT WE ARE GOING TO PROCEED TO FOLLOW THE END OF THE YEAR DEADLINE BUT I AM CURIOUS BECAUSE OF THIS HITCH THAT MAY HAVE DEVELOPED BECAUSE OF PREVIOUS EXPECTATIONS THE PROBLEMS THAT HAS CAUSED
12:08:16 PM		WHAT PROBLEMS WITH RESPECT TO DISCOVERY THAT MAY HAVE CAUSED AND WHAT MIGHT BE POSSIBLE SOLUTIONS THAT CAN ADDRESS THAT ISSUE
12:08:37 PM		I HAVE 2 OTHER ITEMS THAT PEAK MY INTEREST IN YOUR MOTION MR TULLY, ONE OF THEM HAS TO DO WITH THE STATEMENT THAT YOU MAKE THAT THE NON-SETTLING PARTIES NEED TIME TO MAKE A KNOWLEDGABLE AND INFORMED DECISION WHETHER TO APPROVE OR OPPOSE THE PROPOSED SETTLEMENT AGREEMENT
12:09:11 PM		THE OTHER IS WHAT TIME MAY BE NEEDED IF ANY FOR NON-SETTLING PARTIES TO SUPPLEMENT PREVIOUS RESPONSES TO DISCOVERY REQUESTS THAT THE COURT ADDRESSES PREVIOUSLY AND NOTED THAT THE PARTIES WILL MAKE THEIR OWN DECISIONS AS TO WHETHER THEY NEED TO RESPOND BUT THEY DO SO AT THE RISK OF SUBSEQUENT MOTION THAT WOULD OBIATE THEIR ABILITY TO CONTINUE WITH OBJECTIONS THAT THEY HAVE FILED

12:10:07 PM		TURN TO YOU MR TULLY
12:10:38 PM	RICK TULLY	THERE HAVE BEEN PARTIES THAT HAVE BEEN ACTIVELY INVOLVED IN THIS MATTER FOR MANY YEARS AND OTHERS SUCH AS MY CLIENT THAT HAVE FAIRLY RECENTLY GOT INVOLVED IN THIS PARTICULAR MATTER
12:10:58 PM		PREVIOUSLY THE COURT STOPPED ALL OF THE NON-SETTLING PARTIES FOR A PERIOD OF 7 MONTHS FROM CONDUCTING DISCOVERY AND THAT WAS SPECIFICALLY DISCUSSED AT MY FIRST APPEARANCE BEFORE THIS COURT IN THE FALL OF 2011
12:11:16 PM		THE COURT WOULD NOT ALLOW THE NON-SETTLING PARTIES TO CONDUCT DISCOVERY FOR A PERIOD OF ABOUT 7 MONTHS
12:11:31 PM		WHEN WE DID FINALLY GET THE DISCOVERY PROCESS GOING THE VERY FIRST ROUND OF DISCOVERY THAT OCCURRED IS THE SETTLING PARTIES AS FAR AS MY CLIENTS ARE CONCERNED DID NOT PRODUCE A SINGLE DOCUMENT
12:11:49 PM		THERE WAS SOME OBJECTIONS WHERE WE HAD SOME OBJECTIONS THAT WE HAD COURT HEARINGS THAT THE COURT STATED THAT SOME OF THE DISCOVERY THAT WE WERE REQUESTING WAS NOT GOING TO BE PROPOSED
12:12:09 PM	J	IN THE INTEREST OF TIME I AM NOT INTERESTED NOW IN GOING OVBER THE HISTORY WE HAVE ALL BEEN THERE AND WORKED THROUGH THE PROCESS. I AM INTERESTED IN AS OF THIS TIME RIGHT NOW WAS THE DISCOVERY COMPLETE, WHAT WAS NOT COMPLETED, AND IF SO WHY NOT
12:12:43 PM	TULLY	ANSWERS
12:13:48 PM		JUST THIS YEARS IN RESPONSE TO A REQUEST FOR SUPPLEMENTAL PRODUCTION THERE HAVE NOW BEEN SUPPLEMENTAL REPORTS BY THE EXPERT WITNESSES OF THE SETTLING PARTIES THAT WERE GIVEN ON THE EVE OF DEPOSITIONS TO BE CONDUCTED FOR THOSE EXPERT WITNESSES
12:14:14 PM		THOSE REPORTS WERE FAIRLY LONG
12:14:24 PM		THE NON-SETTLING PARTIES HAVE BEEN COORDINATING EFFORTS PURSUANT TO THE STRONG RECOMMENDATION OF THE COURT
12:14:34 PM		THE COMPANIS THAT SCHEDULED THE DEPOSTITIONS AND THEY DID NOT SCHEDULE ALL OF THE DEPOSITION OF THE EXPERT WITNESSES IDENTIFIED BY THE SETTLING PARTIES BECAUSE TIME WAS RUNNING OUT BUT AGAIN ALMOST ON THE EVE OF THOSE DEPOSITIONS AFTER THEY HAD BEEN SCHEDULED
12:15:09 PM		THAT THEN PUT ALL THE REST OF US NON-SETTLING PARTIES BEHIND BECAUSE WE WERE GOING TO PARTICIPATE AND ATTEND THOSE DEPOSITIONS BUT THE LEAD ON THOSE WERE GOING TO BE THE SJWC AND THEN CONOCO PHILLIPS

12:15:24 PM		THEN THERE WAS NO WAY FOR US REMAINING NON-SETTLING PARTIES TO CONDUCT THOSE DEPOSITIONS
12:15:34 PM		MR MARSHALL ON BEHALF OF THE COMMUNITY DITCH DEFENDANTS TRIED TO PICK THE BALL UP AND GO WITH IT BUT BECAUSE OF HIS ONGOING OTHER DISCOVERY DISPUTES WITH THE SETTLING DISPUTES AS WELL AS THIS BIGNG DROPPED HE WAS NOT ABLE TO CONDUCT THESE DEPOSITIONS AND NONE OF THE REST OF ARE
12:16:00 PM	J	WERE THE DEPOSITIONS CONDUCTED
12:16:03 PM	TULLY	THEY HAVE NOT BEEN CONDUCTED
12:16:10 PM	J	CAN YOU TELL ME WHY
12:16:14 PM	TULLY	MR MARSHALL CAN PROBABLY ADDRESS WHY BECAUSE HE TRIED TO PICK UP THE LEAD
12:16:28 PM	J	I WILL ASK MR MARSHALL
12:16:57 PM		IN THE INTEREST OF TIME I AM TRYING TO MOVE QUICKLY AND THAT IS DIFFICULT IN A TELEPHONE CONVERSATION BUT GO AHEAD
12:17:15 PM	TULLY	WITH ALL DEFERRANCE TO THE COURT I AM NOT REALLY INTEREST IN THE COURT WANTING TO MOVE QUICKLY ON THIS WE ARE SETTING A RECORD HERE FOR A DENIAL OF FUNDAMENTAL DUE PROCESS AND I WOULD LIKE TO BE ABLE TO GET MY RESPONSES IN
12:17:28 PM		WHAT I WOULD LIKE TO DO NOW IF IT WOULD BE APPROPRIATE IS TELL YOU ABOUT THE CURRENT DISCOVERY THAT MY CLIENTS ARE INVOLVED IN INSOFAR AS REVIEWING SOME RECORDS AT SOME UNITED STATES GOVERNMENTAL AGENCIES HERE IN FARMINGTON TO SHOW YOU HOW WE ARE NOT GOING TO BE ABLE TO CONDUCT DISCOVERY OR ARE WE GOING TO BE ABLE TO COMPLETE THE DISCOVERY THAT WE BELIEVE THAT WE NEED TO SUPPORT ANY DISPOSITIVE MOTIONS
12:17:58 PM		I CAN EASILY GIVE YOU A QUICK SUMMARY OF THAT OR I CAN TELL YOU IN CONCLUSION THAT WE ARE WANTING AND WE ARE CURRENTLY ATTEMPTING TO REVIEW RECORDS AT THE NAVAJO INDIAN IRRIGATION PROJECT AS WELL AS THE BUREAU OF RECLAMATION THAT ARE LOCATED HERE IN FARMINGTON
12:18:21 PM		I HAVE ONLY BEEN ABLE TO REVIEW ONE AND A HALF FILING CABINETS OUT OF ABOUT 9 OR 10 THAT ARE AVAILABLE AT THE NIIP OFFICE AND I HAVE NOT YET BEEN ABLE TO GO OVER TO THE BUREAU OF RECLAMATION OFFICE
12:18:38 PM	J	YOU HAVE NOT BEEN ABLE TO BECAUSE?
12:18:42 PM		EXPLAINS WHY
12:19:17 PM	J	CAN YOU TELL ME WHEN IF WAS THAT YOU FITST WAS ABLE TO GO TO THE NIIP OFFICE
12:19:23 PM	TULLY	FEBRUARY 25TH AND FERBRUARY 26TH
12:19:58 PM		WE HAVE TO TAKE IN OUR OWN COPY MACHINE AND CAN ONLY HAVE ONE PERSON THERE TO BE MAKING COPIES

12:20:25 PM		I HAVE ALREADY MARKED ABOUT 600 TO 800 PAGES OF DOCUMENTS THAT I WANT TO HAVE COPIED THIS COMING MONDAY MORNING
12:20:39 PM		THAT IS JUST A SPECIFIC EXAMPLE OF HOW DISCOVERY IS NOT COMPLETED IN THIS MATTER. WE CAN NOT PUT A SQUARE PEG IN A ROUND HOLE AND BE ABLE TO COMPLETE OUR DISCOVERY AND ALSO PREPARE AND FILE DISPOSITIVE MOTIONS UNDER THE CURRENT SCHEDULING ORDERS BY THIS COURT
12:20:58 PM		WE APPRECIATE THIS COURT WANTS TO COMPLY BY THE DECEMBER 31 DEADLINE BUT YOUR HONOR THERE ARE DISCUSSIONS AND AN ISSUE AS TO WHETHER THAT IS A FIRM DATE
12:21:11 PM		WE REQUESTED A 120 DAYS IN OUR MOTION, I SHORTENED THAT DOWN. I REALLY WOULD HAVE LIKED TO HAVE HAD 150 TO 180 DAYS TO COMPLETE THE REVIEW THAT I AM MAKING
12:21:28 PM	J	MR MARSHALL
12:21:34 PM	MARSH ALL	WE WERE RELYING ON THE SJWC TO HANDLE MOST OF THE HYDROLOGY
12:22:06 PM		WHEN THEY DECIDED NOT TO GO FORWARD THERE WAS NO WAY THAT WE COULD PICK THAT UP IN THE FEW DAYS LEFT
12:22:19 PM		PIA ANALYSIS AT THE HOGBACK CUDAI WAS AN ISSUE THAT MR RANKIN AND OTHERS WERE TAKING THE LEAD ON AND IT IS MY UNDERSTANDING ON THAT THEY HAD RETAINED AN EXPERT TO DEAL WITH THAT
12:22:46 PM		THEY DISCONTINUED THEIR EFFORTS IN THE MIDDLE OF THE MONTH
12:23:14 PM		WE WERE GOING TO RELY ON THEM TO TAKE THE LEAD AND DO ALL OF THE EXTENSIVE PREP THAT IS NECESSARY TO CONDUCT A MEANINGFUL DEPOSITION OF AN EXPERT
12:23:29 PM		WITH RESPECT TO OTHER DOCUMENTS AND INSPECTION OF DOCUMENTS
12:24:01 PM		THE ANSWER WAS BASICALLY NO THAT IT COULD NOT BE DONE ON SUCH SHORT NOTICE
12:24:06 PM		WE DID MAKE GOOD FAITH EFFORTS BE IN FARMINGTON WHILE UP THERE TO LOOK AT DOCUMENTS
12:24:28 PM		MR TULLY AGREED SINCE HE IS LOCAL TO PICK UP THE BALL THERE AND HE HAS DONE A GOOD JOB
12:25:11 PM	J	WHAT HAPPENED WITH THE DEPOSITIONS
12:25:14 PM	MARSH ALL	ON SHORT NOTICE WE TRIED TO SET THEM UP BUT A COMBINATION OF THINGS
12:26:06 PM		WE HAVE NONE OF THE PREPARATORY INFORMATION THAT SJWC OR CONOCO PHILLIPS HAS DEVELOPED FOR THE DEPOSITION
12:26:23 PM		THE OTHER THING IS THAT WE ARE WORKING TO TRY TO MEET THE MARCH 15TH DEADLINE FOR DISPOSITIVE MOTIONS
12:26:40 PM		IT TAKES WEEKS TO PREPARE FOR THESE EXPERT DEPOSITIONS AND WE WERE RELYING ON OTHERS TO DO THAT
12:26:53 PM	J	TURN TO SETTling PARTIES FOR SUMMARY

12:27:09 PM	STANLEY POLLACK	NOTE FOR THE RECORD THAT WE UNDERSTAND THAT THE NON-SETTLING PARTIES DIVIDED UP RESPONSIBILITIES AND AT ALL TIMES MR MARSHALL HAD RESPONSIBILITIES FOR THE NIIP PROJECT, HE CONTACTED MR GUARINO MONTHS AGO TO SET UP DEPOSITIONS AGO BUT DID NOT FOLLOW THROUGH
12:28:21 PM		MR MARSHALL SET UP 4 DEPOSITIONS FOLLOWING THE FEBRUARY 21ST HEARING, 3 OF THOSE DEPOSITIONS WE CONFIRMED
12:28:58 PM		MR MARSHALL OPTED NOT TO HOLD THOSE DEPOSITIONS
12:29:01 PM		AS FAR AS INSPECTING NIIP DOCUMENTS IN FARMINGTON
12:29:17 PM		REPOSITORY IS IN FORT DEFIANCE
12:29:35 PM		DISCOVERY HAS BEEN ONGOING FOR A VERY LONG TIME, OPENING IN APRIL OF LAST YEAR
12:29:47 PM		THE NON-SETTLING PARTIES HAVE NOT AVAILED THEMSELVES TO TAKE ADVANTAGE OF THE DISCOVERY MADE AVAILABLE
12:29:56 PM		MR TULLY VISITED THE REPOSITORY THE VERY LAST WEEK OF DISCOVERY FOR 2 DAYS
12:30:07 PM		THERE IS NO GOOD CAUSE TO EXTEND THE DEADLINES OR TO EXTEND THE THE PERIOD OF DISCOVERY
12:30:26 PM	GUARINO	I AGREE WITH WHAT MR POLLACK SAID
12:31:04 PM		IF THE COURT IS INTERESTED IN DOING SOMETHING MORE WITH REGARDS TO DISCOVERY I WOULD URGE THE COURT TO NOT TAKE ANY ACTION AT THIS TIME AND DEFER THE MATTER UNTIL BRIEFING IS DONE ON THE DISPOSITIVE MOTIONS
12:32:44 PM	JOHN UTTON	WE AGREE WITH THE COMMENTS THAT MR POLLACK AND GUARINO HAVE MADE
12:34:01 PM		WE WERE READY WILLING AND ABLE FOR THE DEPOSITION
12:34:48 PM		TALKING ABOUT MR WHIPPLES REPORT AND TESTIMONY
12:35:32 PM		WE SHOULD NOT BE PENALIZED IF WE HAVE BEEN ABLE TO RESOLVE THE CONCERNS OF SOME OF THE OBJECTORS AND THEY DROP OUT
12:36:10 PM		THE COURT HAS SET THESE DEADLINE LONG IN ADVANCE. PARTIES HAVE TO TAKE RESPONSIBILITY FOR REPRESENTING THEIR OWN CLIENT WITHIN THE TIMELINE SET BY THE COURT
12:36:45 PM	GARY HORNER	RECENTLY I HAVE BEEN GOING THROUGH A LOT OF STUFF AND PART OF THE STUFF WAS THE TRANSCRIPT FROM THE NOVEMBER 17TH 2009 HEARING BEFORE THE SPECIAL MASTER
12:37:10 PM		AT THAT TIME THE SPECIAL MASTER WAS CONCERNED THAT THERE WAS NOT ENOUGH INFORMATION AVAILABLE TO THE PEOPLE IN THE BASIN TO MAKE A DETERMINATION OF HOW THE NAVAJO SETTLEMENT EFFECTED THEM
12:37:27 PM		HE WAS ASKING A LOT OF QUESTIONS ABOUT HOW THAT INFORMATION WOULD BE MADE AVAILABLE

12:37:36 PM		THE WHOLE ISSUE OF HOW THE SETTLEMENT EFFECTS PEOPLE HAS BEEN OUT THERE SINCE THEY FIRST STARTED TALKING ABOUT THE SETTLEMENT
12:37:51 PM		DISCOVERY WAS DENIED FOR A LONG TIME AND WHEN DISCOVERY WAS STARTED I ASKED FOR A LOT OF INFORMATION THAT IS GOING TO PRODUCE THE INFORMATION THAT TALKS ABOUT AVAILABLE WATER AND HOW THIS SETTLEMENT IS GOING TO EFFECT EVERYBODY
12:38:09 PM		THE COURT DENIED A LOT OF THAT DISCOVERY
12:38:15 PM		THE DISCOVERY PROVIDED BY THE UNITED STATES IS BASICALLY UNDESCIPHERABLE
12:38:33 PM		PEOPLE WITHOUT AN EXTENSIVE BACKGROUND IN WATER ARE IN TROUBLE
12:38:39 PM		TO AN EXTENT THEY HAVE TRIED TO RELY ON THE WATER COMMISSION ... AND NOW THE WATER COMMISSION DOES THEIR OWN SETTLEMENT
12:39:25 PM		TO STATE THE POSITION THAT SOEMHOW THAT THEY HAVE SOMEHOW BEEN NEGLIGENT OR HAVE NOT DONE A DECENT JOB OR THAT THESE DEADLINES SHOULD NOT BE EXTENDED OR THEY SHOULD NOT BE ACCOMODATED SOMEHOW IS REALLY UNREASONABLE
12:39:55 PM		THEY NEED SOME TIME TO GET ON TOP OF IT
12:40:01 PM	J	MR TULLY I WILL LET YOU CLOSE
12:40:08 PM	RICK TULLY	A STATEMENT THAT WAS JUST MADE BY THE UNITED STATES ATTORNEY JUST FLOORS ME THAT SAYS GO AHEAD AND COMPLETE YOUR DISCOVERY AFTER YOU HAVE FILED A DISPOSITIVE MOTION
12:40:32 PM		MY CLIENTS AT THIS TIME ARE NOT ABLE TO EVEN TRY TO PREPARE A DISPOSITIVE MOTION
12:40:38 PM		WE WOULD HAVE TO RELY UPON OTHER PARTIES WE WOULD HAVE TO JOIN IN THEM
12:40:49 PM		WE HAVE SOME DISPOSITIVE MOTIONS ON OUR OWN THAT WE WOULD LIKE TO SECURE DISCOVERY AND THEN FILE THOSE DISPOSITIVE MOTIONS
12:41:04 PM		GIVING EXAMPLE OF WAIVER OF WINTERS RIGHTS
12:41:28 PM		TOM BOLACK WAS ACTIVELY INVOLVED IN THE FORMATION OF THE NIIP PROJECT AND HOW THAT ALL CAME ABOUT
12:41:58 PM		WE HAVE DISCOVERED THAT THERE WERE SOME DOCUEMENTS THAT APPEARED TO BE RELEVANT IN THIS MATTER AND THEY WERE PRODUCED TO ALL OF THE PARTIES ON THE DISCOVERY DEADLINE DATE OR THE DAY BEFORE THAT
12:42:26 PM		IN ADDITION TO THAT WE CAN NOT AT THIS TIME WHETHER THIS SETTLEMENT AGREEMENT IS REASONABLE
12:43:00 PM		NOW SOME OF THE BIG PLAYERS IN THIS GAME ARE NO LONGER AVAILABLE AND THE SLACK HAS TO BE PICKED UP
12:43:35 PM		WE DO NOT BELIEVE THAT AN EXTENSION OF 120 DAYS FOR DISCOVERY AND DISPOSITION MOTIONS TO BE FILED IS GOING TO UNREASONABLY CRAMP THIS COURT

12:44:26 PM	J	WHAT I AM PREPARED TO DO AT THIS POINT, I DO HAVE SOME CONCERN AS I EXPRESSED AT THE OUTSET THAT THERE HAS BEEN A CHANGE IN WHO HAS BEEN DOING SOME OF THE WORK FOR THE NON-SETTLING PARTIES. I UNDERSTAND THAT HAS CAUSED A SHIFT OF SOME NATURE. AND I AM CONCERNED THAT THE DEPOSITIONS THAT WERE SCHEDULED DID NOT TAKE PLACE
12:45:06 PM		I CAN SEE THAT THERE NEEDS TO BE SOME ADDITIONAL TIME FOR THE PREPARATION OF THE DISPOSITIVE MOTIONS
12:45:14 PM		I HAVE LOOKED AT THE SCHEDULE AND AM PREPARED TO SQUEEZE WHAT I THINK IS THE LITTLE BIT OF BREATH OUT OF THE SCHEDULE IN ORDER TO EXTEND THE TIME PERIOD BY 30 DAYS, THAT IS THE TIME PERIOD FOR DISCOVERY AND THAT IS THE TIME PERIOD FOR DISPOSITIVE MOTIONS AND THAT IS THE TIME PERIOD FOR EVERYTHING THAT ENSUES THERE AFTER
12:45:52 PM		I JUST THINK THAT THERE NEEDS TO BE A LITTLE BIT MORE ROOM GIVEN THE CIRCUMSTANCES THAT HAVE OCCURRED AND I AM NOT TRYING TO ATTRIBUTE ANY FAULT TO ANY PARTY IT IS JUST THE WAY THIS PROCEEDING HAS EVOLVED
12:46:23 PM		THAT IS WHAT I AM PREPARED TO DO. THE REASON I WANTED TO HOLD THIS CONFERENCE ON SHORT NOTICE IS THAT IF I FELT IT WAS APPROPRIATE AFTER HEARING WHAT YOU ALL HAD TO SAY WAS TO LET YOU KNOW THAT THE TIME FRAME WOULD BE ADJUSTED SO THAT YOU COULD ADJUST YOUR SCHEDULES ACCORDINGLY
12:47:02 PM	GUARIN O	I WOULD LIKE TO OBJECT TO WHAT THE COURT IS DOING AND WOULD LIKE TO MAKE A RECORD BECAUSE THIS APPEARS TO BE THE ONLY TIME THAT WE CAN DO SO. THE COURT HAS BEEN PRESENTED WITH A WRITTEN MOTION BY MR TULLY AND UNDER THE NORMAL RULES OF RESPONDING TO SUCH A MOTION SETTLING PARTIES HAVE A PERIOD OF TIME TO RESPOND IN WRITING WITH REPLY BY MR TULLY. WE WERE PREPARED TO DO SO EVEN UNDER THE SCHEDULE THAT THE COURT HAS ARTICULATED
12:47:40 PM		THE COURT HAS BASICALLY READ THE MOTION, FOUND SOME MERIT, AND HAS DECIDED TO RULE ON SOME SUBSTANTIVE ISSUES AND I THINK ON SOME SUBSTANTIVE ISSUES AND I THINK ON SOME FAIRLY DECENT MISREPRESENTATIONS AND MISCHARACTERIZATIONS MADE BY MR TULLY TODAY IN THE HEARING WE ARE NOT PREPARED TO ADDRESS THOSE NOR IS THIS COURT INTERESTED IN HEARING MUCH DETAIL
12:49:26 PM		I AM GOING TO OBJECT AND ASK THE COURT FOR CLARIFICATION

12:50:22 PM	TULLY	WOULD LIKE CLARIFICATION ALSO. IT SEEMS APPROPRIATE THAT IF THE COURT IS GOING TO EXTEND OUR DISCOVERY FOR A PERIOD OF TIME THAT IR ALSO SHOULD HAVE A GAP BETWEEN THE END OF THE DISCOVERY AND THE TIME PERIOD TO FILE THE DISPOSITIVE MOTIONS
12:51:15 PM	J	CLARIFYING WITH RESPECT TO TULLY QUESTIONS... DISCOVERY WOULD CLOSE MARCH 31ST AND THE DISPOSITIVE MOTIONS WOULD BE DUE 15 DAYS THERE AFTER
12:51:56 PM		WITH RESPECT TO DISCOVERY THOUGH WHEN I TALK ABOUT THE CLOSE OF DISCOVERY WHAT I HAD IN MIND WAS THESE DEPOSITIONS IN PARTICULAR THE DEPOSITIONS THAT WERE NOT TAKEN
12:54:04 PM		I AM NOT OPENING IT UP TO DISCOVERY THAT CONTEMPLATES INTERROGATORIES THAT CONTEMPLATES A 30 DAY RESPONSE TIME
12:54:19 PM		MR GUARINO YOU RAISE A QUESTION THAT I HAD NOT THOUGHT ABOUT AND THAT IS A QUESTION AND THAT IS A QUESTION OF THE REPOSITORIES
12:54:42 PM	GUARIN O	TALKING ABOUT REPOSITORIES
12:55:57 PM		THEY HAVE BEEN AVAILABLE FOR 8 MONTHS
12:56:16 PM		THERE IS NO GOOD CAUSE FOR THEM NOT GOING TO LOOK AT THE RECORDS THAT HAVE BEEN THERE FOR 8 MONTHS AND THE REPOSITORIES CLOSED AND THE PERSONELL ARE CARRYING ON WITH THEIR DUTIES
12:56:28 PM	HORNE R	YOU CAN SEE WHAT A PROBLEM THE SETTLING PARTIES ARE BEING HERE. ALL OF THAT INFORMATION SHOULD BE AVAILABLE TO ANYONE AT ANY TIME UNDER THE FREEDOM OF INFORMATION ACT
12:57:15 PM		MR GUARINO IS TALKING ABOUT HOSE REPOSITORIES HAVE CLOSED AND THAT IS REDICULIOUS ++++
12:57:31 PM	J	END THIS DISCUSSION I AM PREPARED TO RULE ON IT
12:57:43 PM		MR GUARINO WHAT I WOULD WANT IS THAT FOR THE COMPLETION OF THE DISCOVERY PERIOD, THE EXTENSION OF THE DISCOVERY PERIOD, THAT THE REPOSITORIES BE AVAILABLE BY APPOINTMENT MUCH THE SAME AS YOU NEED TO SCHEDULE A DEPOSITION THAT THE PARTIES BE ENTITLED TO SCHEDULE APPOINTMENTS FOR THE REPOSITORIES, WE ARE TALKING ABOUT ANOTHER LESS THAN 30 DAYS FOR THE END OF THE DISCOVERY PERIOD
12:59:13 PM	GUARIN O	CLARIFICATION I WILL CONTACT THE DEPARTMENT OF THE INTERIOR
12:59:37 PM	J	I AM TALKING ABOUT THROUGH MARCH 31ST
12:59:47 PM	TULLY	MR GUARINO IS AGAIN WANTING TO REESTABLISH THE PROCEDURES THAT THEY FOLLOW WHICH
1:00:01 PM		COULD WE HAVE MORE THAN ONE PERSON REVIEWING RECORDS
1:00:54 PM		EXPAND OF THE TIME WITHIN WE CAN REVIEW THE DOCUMENTS AT THE REPOSITORIES
1:01:06 PM		WE CAN NOT EVEN TAKE IN A PEN OR A PENCIL OR PAPER TO TAKE NOTES, WE HAVE TO EMPTY OUT OUR POCKETS

<u>1:02:04 PM</u>	J	MR GUARINO DO YOU WANT TO ADDRESS THE REASONS FOR THE RULES
<u>1:02:09 PM</u>	GUARIN O	RESPONDS
<u>1:02:44 PM</u>		HE IS ASKING THE COURT TO PUT FURTHER BURDEN ON THE US AND COMPROMISE THE US POSITION AS A RESULT OF HIS FAILURE TO LOOK AT THESE DOCUMENTS EARLIER
<u>1:04:07 PM</u>	J - TULLY	LET MR GUARINO FINISH AND THEN I WILL LET YOU RESPOND
<u>1:04:13 PM</u>	GUARIN O	CONTINUES
<u>1:04:52 PM</u>	J	I UNDERSTAND YOUR POSITION WITH EXCEPTION WITH THE NUMBER OF PEOPLE IN THE ROOM
<u>1:05:23 PM</u>	GUARIN O	BECAUSE THOSE PEOPLE HAVE TO BE OBSERVED GOING THROUGH OUR FILES. THESE ARE RECORDS THAT WE ARE RESPONSIBLE FOR
<u>1:06:26 PM</u>	J	MR TULLY THERE WAS A QUESTION ABOUT COPYING, THE QUESTION WAS WRITING DOWN
<u>1:06:41 PM</u>	TULLY	EXPLAINS
<u>1:07:32 PM</u>		AS FAR AS THE NOTE TAKING
<u>1:08:56 PM</u>	J	I THINK THAT THESE RULES HAVE BEEN IN PLACE SINCE THE OUTSET. THERE HAS BEEN NO MOTION BEFORE, ONLY DISCUSSION
<u>1:09:26 PM</u>		GOING TO ASK MR GUARINO TO ADDRESS WITH THE AGENCIES WHETHER AN ADDITIONAL PERSON CAN BE ALLOWED IN THE RULE AND OTHERWISE PROCEED WITH THE RULES AS SET OUT
<u>1:10:21 PM</u>		I AM ORDERING IT NOW SO THAT YOU KNOW THE DEADLINES ARE BEING EXTENDED 30 DAYS. I WILL ISSUE AND ORDER
<u>1:10:40 PM</u>	JOHN UTTON	JUST TO CLARIFY, IF THERE WOULD BE A NEED FOR A HEARING THAT WOULD BE PUSHED BACK TO THE LAST WEEK OF AUGUST OR FIRST 2 WEEKS OF SEPTEMBER
<u>1:10:50 PM</u>	J	THAT IS CORRECT, ALL OF THE DATES GET 30 DAYS ATTACHECD TO THEM
<u>1:11:14 PM</u>		THE DECEMBER 31 DEADLINE WHICH I DO NOT CONSIDER SELF IMPOSED WHICH I HAVE IMPOSED THAT DEADLINE BECAUSE OF THE LEGISLATION AS WE HAVE DISCUSSED BEFORE
<u>1:12:06 PM</u>		THERE IS SOMETHING ON THAT SCHEDULE I WANT TO ADDRESS
<u>1:12:36 PM</u>		ON THE POST HEARING BRIEFING I AM GOING TO CHANGE THAT FROM 30 DAYS TO 20 DAYS
<u>1:13:11 PM</u>		WITH REGARD TO THE SCHEDULING I EXPECT THERE ARE GOING TO BE MOTIONS IN LIMINE AND I AM OPEN TO SUGGESTIONS AS TO WHEN WOULD BE BEST FOR THOSE TO BE FILED AND ADDRESSED
<u>1:13:41 PM</u>		BECAUSE I AM INTRODUCING THIS TO YOU FOR THE FIRST TIME LET ME GIVE YOU SOME TIME TO SUBMIT SOMETHING TO THE COURT BY NEXT WEEK
<u>1:14:23 PM</u>	GUARIN O	THERE IS NO GUARANTEE TO AN EVIDENTUARY HEARING IN THISW MANNER AND I THINK IT IS VERY PREMATURE

<u>1:14:43 PM</u>		THE COURT IS ABOUT TO GET DISPOSITIVE MOTIONS FROM ALL OF THE PARTIES AND AT THE END OF THAT PROCESS IS THERE ANY EVIDENTUARY ISSUES FOR WHICH AN EVIDENTUARY HEARING IS REQUIRED
<u>1:15:21 PM</u>	J	THAT IS FAIR
<u>1:15:34 PM</u>		THE ONLY OTHER ITEM I WANTED TO ADDRESS HAS TO DO WITH THE CONTINUED DISPUTE BETWEEN THE NAVAJO NATION AND THE COMMUNITY DITCH DEFENDANTS SPECIFICALLY ON THE VERIFICATION OF THE INTERROGATORIES
<u>1:16:36 PM</u>		PRACTICALLY I AM WONDERING IF YOU CAN DESCRIBE THE PREJUDICE
<u>1:16:47 PM</u>	POLLACK	YOUR HONOR ORDERED MR MARSHALL BACK ON NOVEMBER 30, 2011 TO SUBMIT A LIST OF CLIENTS THAT HE REPRESENTS
<u>1:17:07 PM</u>		HE REPRESENTED APPEARANCES ON BEHALF OF 26 DITCHES. HE ALSO SAID HE REPRESENTED INDIVIDUALS WHICH HE DID NOT NAME
<u>1:17:22 PM</u>		TALKING ABOUT VERIFICATION REQUIREMENT
<u>1:18:12 PM</u>		WE RECEIVED ANSWERS TO THOSE INTERROGATORIES SIGNED BY MR MARSHALL NOT SIGNED BY ANY OF HIS CLIENTS
<u>1:18:30 PM</u>		WE ARE TRYING TO DISCERN WITHER OR NOT THESE ARE OBJECTIONS OF HIS CLIENTS OR THESE ARE THE OBJECTIONS OF MR MARSHALL
<u>1:18:45 PM</u>	J	ROLL IN THE QUESTION OF THE AUTHORITY OF THE 40 SOME ODD PEOPLES WHO DID SIGN VERIFICATIONS WHETHER THEY WERE SIGNING THEM ON THEIR OWN BEHALF OR THEY ARE REPRESENTATIVES OF THE ENTITIES THAT YOU REPRESENT
<u>1:19:11 PM</u>	MARSHALL	THOSE DISCOVERY RESPONSES HAVE BEEN VERIFIED
<u>1:19:37 PM</u>		IN ADDITION WE HAVE FILED 40 SOME ADDITIONAL VERIFICATIONS
<u>1:20:19 PM</u>		UNINCORPORATED ASSOCIATIONS BY LAW HAVE THE RIGHT TO REPRESENT THE INTEREST OF THEIR MEMBERS
<u>1:20:37 PM</u>		THEY HAVE TO BE ABLE TO REPRESENT THEIR INDIVIDUAL MEMBERS
<u>1:21:16 PM</u>		I CAN NOT REPRESENT TO THE COURT THAT WE HAVE EVERY SINGLE ONE BUT I AM SURE THAT WE HAVE MOST OF THEM
<u>1:21:39 PM</u>		IT APPEARS THAT THE US AND NN ARE SAYING THAT WE HAVE TO GET SEVERAL HUNDRED OR SEVERAL THOUSAND INDIVIDUAL SIGNED VERIFICATIONS BY PEOPLE MOST OF WHOM DO NOT HAVE ANY PERSONAL KNOWLEDGE
<u>1:21:50 PM</u>		THAT IS AN IMPOSSIBLE REQUIREMENT
<u>1:21:54 PM</u>		THEY ARE NOT JUST MY ANSWERS
<u>1:22:29 PM</u>	POLLACK	THE US DID NOT JOIN IN THESE MOTIONS BUT WE ARE BACK TO SQUARE ONE
<u>1:23:18 PM</u>		WANT THE RECORD TO REFLECT THAT WE HAVE RECEIVED A NUMBER OF AFFIDAVITS SIGNED BY INDIVIDUALS

<u>1:23:44 PM</u>	J	I AM GOING TO TAKE IT UNDER ADVISEMENT
<u>1:25:17 PM</u>		WRAPPING UP
<u>1:25:52 PM</u>		ADJOURNED