

DISTRICT COURT
SAN JUAN COUNTY NM
FILED *ca*

2013 APR 16 PM 4: 45

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

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

Plaintiff,

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

vs.

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

Defendants,

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

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

Defendant-Intervenors.

NAME OF PARTY: State of New Mexico *ex rel.* State Engineer ("the State").

DESCRIPTIVE SUMMARY: State's Response to Motion to Compel

NUMBER OF PAGES: 3

DATE OF FILING: Filed on April 16, 2013.

**STATE'S RESPONSE TO MOTION TO COMPEL RESPONSE TO REQUEST FOR
ADMISSION CONCERNING WATER UNITS OF MEASUREMENT**

The State of New Mexico *ex rel.* State Engineer ("State") submits this Response to the *Motion to Compel Plaintiffs to Respond to Request for Admission Concerning Water Units of Measurement* filed by Community Ditch Defendants on April 1, 2013. The United States and Navajo Nation concur and join in this Response.

In the Motion, Community Ditch Defendants request the Court to compel the “three plaintiff settling parties”¹ to respond to the *Request for Admission and Stipulation About Water Units of Measurement* (“Request for Admission”) filed by Community Ditch Defendants on February 11, 2013. The Motion should be denied for the reasons set forth below.

1. Pursuant to the November 6, 2012 *Second Amended Order Setting Schedule Governing Discovery on the Non-Settling Parties and Remaining Proceedings* (“Scheduling Order”), discovery closed March 1, 2013.

2. Pursuant to NMRA Rule 1-036(A), a party must respond to a request for admission within 30 days service of the request, or within such shorter or longer time as the court may allow.

3. The February 11, 2013 Request for Admission is untimely because it was not filed 30 days prior to the close of discovery on March 1, 2013, and the Court has not granted leave to shorten the time for responses. See *Thomas v. Pacificorp*, 324 F.3d 1176, 1179 (2003) (holding that discovery requests must be served at least thirty days prior to a completion of discovery deadline).

4. On March 15, 2013, following a hearing to consider motions by Community Ditch Defendants and B Square Ranch, LLC to extend the deadline for completion of discovery, the Court entered a *Third Amended Order Granting Motions to Extend Deadlines in Part and Setting Schedule Governing Discovery and Remaining Proceedings* (“Third Amended Order”).

5. In its Third Amended Order, the Court granted an extension of time until March 31, 2013 for (1) taking depositions of four previously noticed witnesses and (2) access to the Settling Parties’ documents repository. No other extensions of time were granted, and pursuant to the Third Amended Order, no further discovery may be conducted without leave of the Court.

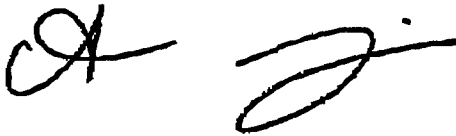
¹ The State of New Mexico is the only plaintiff in this proceeding.

6. To the extent that a response is required, the Settling Parties have previously denied the Request for Admission. See Exhibit 2 to the Motion.

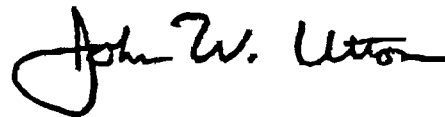
For these reasons, the Motion to Compel should be denied.

Respectfully submitted, this 16th day of April 2013.

STATE OF NEW MEXICO



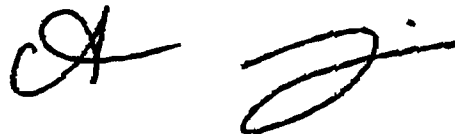
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CERTIFICATE OF SERVICE

I certify that on this 16th day of April 2013, at approximately 4:45 p.m , an electronic copy of this Response to Motion to Compel was served by attaching an electronic copy to an email sent to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the February 25, 2013 Amended Service List.



Arianne Singer