

**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: DISPOSITIVE MOTIONS

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**

6/11/2013 **Location** 11THDIST-396925 ch1

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>8:36:30 AM</u>	J	CALLS CASE IN AZTEC
<u>8:37:00 AM</u>		ASK COUNSEL TO ENTER APPEARANCES
<u>8:37:04 AM</u>	SETTLING PARTIES	COUNSEL ENTERING APPEARANCES
<u>8:37:36 AM</u>	NON-SETTLING PARTIES	ENTERING APPEARANCES
<u>8:39:47 AM</u>	J	ADDRESS PRELIMINARY MATTERS
<u>8:40:42 AM</u>		WILL ADDRESS ALL 4 PRONGS
<u>8:41:43 AM</u>		HAVE DIVIDED THE TIME
<u>8:42:16 AM</u>		TALKING ABOUT TIME KEEPING
<u>8:42:46 AM</u>	UNIDENTIFIED	AT THE CONCLUSION OF EACH PRONG
<u>8:43:22 AM</u>	MARSHAL L	AT A BREAK WE MIGHT AS FOR A RUNNING TALLY
<u>8:43:56 AM</u>	ADAM RANKIN	CONOCO PHILLIPS AND EL PASO NATURAL GAS COMPANY WILL BE FILING TODAY NOTICES OF WITHDRAWING FROM FURTHER PARTICIPATION IN PROCEEDING AND WITHDRAWING OBJECTIONS TO PROPOSED DECREES
<u>8:44:45 AM</u>	MARSHAL L	PRELIMINARY MANNERS REGARDING HOW WE HAVE REORGANIZED THINGS TO DEAL WITH YOUR ORDER
<u>8:45:38 AM</u>	J	WE ARE JUST GOING TO FIT THEM WITHIN THE ARGUMENTS WITHIN THE PRONG AND TIME LIMITS
<u>8:46:18 AM</u>		IF YOU WISH TO USE YOUR TIME IN THAT MANNER WE WILL BE HAPPY TO HEAR IT
<u>8:46:36 AM</u>		I WILL NOT BE THE TIME KEEPER BUT TURN TO SETTLING PARTIES ON PRONG 1
<u>8:46:54 AM</u>	STANLEY POLLACK	HERE ON THE SETTLING PARTIES MOTION FOR ENTRY OF THE PROPOSED PARTIAL FINAL AND SUPPLEMENTAL DECREES
<u>8:47:06 AM</u>		WE FILED A MOTION ON JANUARY 3 2011 AND THE COURT HAS SET FORTH THE 4 PRONG STANDARD
<u>8:47:18 AM</u>		THE SETTLING PARTIES BELIEVE THAT THEY HAVE PROVIDED ADEQUATE PRIMA FACIA CASE ESTABLISHING EACH OF THE 4 PRONGS
<u>8:47:48 AM</u>		IN THIS INSTANCE THE COURTS STANDARDS HAVE ATTEMPTED TO DETERMINE IF THE SETTLEMENT IS FAIR, ADEQUATE, REASONABLE, CONSISTANT WITH THE PUBLIC INTEREST, AND APPLICABLE LAW
<u>8:48:08 AM</u>		PRONG 1 OPENING
<u>8:49:34 AM</u>		WE ENTERED INTO A MEMORANDUM OF AGREEMENT
<u>8:50:09 AM</u>		RIGHT OFF THE BAT THE NN WAS TRYING TO MAKE A SETTLEMENT THAT WOULD WORK IN EVERYONES BENEFIT
<u>8:50:23 AM</u>		THIS WAS AN AGREEMENT THAT WAS MADE MORE THAN 10 YEARS BEFORE THE FILING OF THIS MOTION
<u>8:51:11 AM</u>		THE COURTS INQUIRY IS A FACT BASED INQUIRY
<u>8:51:33 AM</u>		THE NN ENTERED INTO THESE NEGOTIATIONS ALREADY POSSESSING A BUNDLE OF WATER RIGHTS
<u>8:51:46 AM</u>		EXPLAINS

<u>8:52:07 AM</u>		A PRIME CONCERN AT THE TIME THAT WE COMMENCED THESE NEGOTIATIONS WAS ALTHOUGH THE NN HAD A LOT OF WATER IT DID NOT HAVE WAS THE BASIC INFRASTRUCTURE TO BRING DRINKING WATER TO THE NAVAJO PEOPLE
<u>8:52:34 AM</u>		NAVAJO GALLUP WATER SUPPLY PROJECT
<u>8:53:07 AM</u>		AGREEMENTS OF THE NN
<u>8:53:41 AM</u>		WE AGREED TO ATKE FAR LESS THAN OUR HISTORIC MAXIMUM DIVERSIONS FOR THOSE PROJECTS
<u>8:53:52 AM</u>		AGREED NOT TO CHALLENGE THE UNDERLYING WATER RIGHTS OF THE NON-INDIAN IRRIGATORS THAT WERE ESTABLISHED IN ECHO DITCH DECREE OF 1948
<u>8:54:10 AM</u>		FACTS IN AFFIDAVIT SHOW
<u>8:54:57 AM</u>		THAT IS THE BASIS OF OUR CONTENTION
<u>8:55:39 AM</u>	JOHN UTTON	BUILDING ON SOME OF THE POINTS THAT MR POLLACK MADE
<u>8:56:20 AM</u>		THIS PROCESS TOOK 15 YEARS
<u>8:57:31 AM</u>		NOT A PERFECT SETTLEMENT, NO SETTLEMENT IS PERFECT
<u>8:58:13 AM</u>		BEGAN IN 1996
<u>8:58:42 AM</u>		EXPLAINING HISTORY
<u>8:59:51 AM</u>		MUCH OF IT DID OCCUR BEHIND CLOSED DOORS WE WERE ADVOCATING FOR THE STATE TO...
<u>9:00:58 AM</u>		TALKING ABOUT CONSTITUTIONAL AND FEDERAL LAW, US SUPREME COURT CASE LAW SAYS THOSE COULD BE PRETTY LARGE
<u>9:01:21 AM</u>		2 CONFLICTING BODIES OF LAW THAT HAVE CREATED A CLOUD OVER WATER USE IN THIS BASIN
<u>9:01:41 AM</u>		WANTED TO PROTECT THOSE STATE BASED WATER RIGHTS
<u>9:03:04 AM</u>		THE ADDITIONAL WATER OF THE NAVAJO GALLUP PROJECT THE DRINKING WATER SUPPLY WHICH IS REALLY THE CONSESSION IN TERMS OF MONEY BY THE US THAT MAKES THIS SETTLEMENT GO COMPARED TO THE TOTAL AMOUNT OF WATER
<u>9:03:32 AM</u>		TO LIMIT PRIORITY CALLS THE SETTLEMENT CALLS FOR THE NN TO BEGIN WITH TO SUBORDINATE ITS EARLY PRIORITY THAT IT CAN CLAIM UNDER ITS EARLY PEACE TREATY OR RESERVATION DATE 80 PERCENT OF ITS DIVERSION AND NEARLY 90 PERCENT OF ITS DEPLETION AMOUNT TO A JR PRIORITY TO BE SUPPLIED
<u>9:03:59 AM</u>		THERE ARE MULTIPLE SHARING OF SHORTAGES PROVISIONS IN THE SETTLEMENT
<u>9:04:09 AM</u>		STATE ADMINISTRATION OF WATER
<u>9:04:18 AM</u>		IT IS ALSO A QUESTION OF WHO ADMINISTERS

<u>9:04:28 AM</u>		THE REASON THE ECHO DITCH DECREE DID NOT INCLUDE THE NAVAJO WATER RIGHTS TO BEGIN WITH WAS THAT AT THAT TIME THERE WAS WAIVER OF FEDERAL SOVEREIGN IMMUNITY FOR TO ADJUDICATE WATER RIGHTS AND IN THE 50'S THE MACCAREN AMMENDMENT WAS PASSED AND SAID WE NEED TO HAVE GENERAL STREAM ADJUDICATIONS AND ALL OF THESE WATER RIGHTS NEED TO BE ADJUDICATED IN ONE PROCEEDING IN STATE COURT
<u>9:05:01 AM</u>		IT IS NOT JUST A SETTLEMENT OF THE ADJUDICATION OF THE NAVAJO NATIONS WATER RIGHTS, IT GOES TO THE NEXT STEP, IT SETTLES THE ADMINISTRATION OF THOSE WATER RIGHTS
<u>9:05:10 AM</u>		THE NN AND THE US AGREE THAT THE STATE ENGINEER IS GOING TO BE WATER MASTER
<u>9:05:23 AM</u>		THIS COURT WILL BE THE COURT WITH JUDISDICTION FOR INFRINGEMENT
<u>9:05:52 AM</u>		TALKING ABOUT OTHER ADJUDICATIONS
<u>9:06:03 AM</u>	J	WHAT AUTHORITY DOES THE NN HAVE WITH REGARD TO ADMINISTRATION ALLOCATION OF WATER UNDER THE AGREEMENT AND PROPOSED DECREES
<u>9:06:25 AM</u>	UTTON	EXPLAINS USE RIGHTS
<u>9:07:09 AM</u>		THE NN HAS A WATER CODE THAT WOULD APPLY
<u>9:07:42 AM</u>		THE STATE COURT WOULD HEAR AN APPEAL FROM THAT
<u>9:08:04 AM</u>		THEY APPEAL TO THIS COURT
<u>9:08:15 AM</u>		WITH RESPECT TO ANY OTHER PERMITTING DECISION, TRANSFER, CHANGE OF POINT OF DIVERSION ON THE SJ RIVER OR OFF OF NAVAJO LANDS THATS BY APPLICATION TO THE OSE
<u>9:09:12 AM</u>		TALKING ABOUT PARAGRAPH 17
<u>9:09:46 AM</u>		WE NOT ONLY ASKING THE COURTS TO ENTER DECREES THAT ADJUDICATE THE WATER RIGHTS BUT THEN WILL PROVIDE SOME GUIDANCE FOR THE OF THAT WATER
<u>9:10:00 AM</u>	J	WILL THE OSE AS WATER MASTER HAVE AUTHORITY OF WATER ON NN LAND
<u>9:10:08 AM</u>	UTTON	DEPENDS ON PROPOSED USE
<u>9:10:22 AM</u>	J	CLARIFYING
<u>9:10:36 AM</u>	UTTON	ANSWERS REGARDING WATER MASTER DUTIES
<u>9:10:54 AM</u>		THE OSE WOULD ONLY GET INVOLVED IN THE EXTENT THAT THERE NEEDS TO BE MEASUREMENT OF USE
<u>9:11:15 AM</u>		THERE ARE CLEAR PROVISIONS FOR ACCOUNTING FOR WATER AND HOW MUCH IS BEING USED AND WHERE IT IS GOING
<u>9:11:20 AM</u>		ONCE IT IS ON THE NN THE OSE IS NOT GOING TO DICTATE HOW IT IS USED BUT WILL ACCOUNT FOR THE WATER USE
<u>9:12:30 AM</u>		IF WE HAD NEVER HAD ANY PUBLIC PARTICIPATION I WOULD BE UP HERE ARGUING...
<u>9:12:55 AM</u>		WE HAD A PUBLIC PARTICIPATION PROCESS THAT WAS EXTENSIVE
<u>9:13:31 AM</u>		THE JICARILLA SETTLEMENT DID NOT HAVE THE PUBLIC PARTICIPATION PROCESS

<u>9:14:13 AM</u>		NORMALLY OTHER PARTIES DO NOT GET INVOLVED IN COMMENTING ON THE TERMS OF ANOTHER PARTIES INDIVIDUAL CONSENT ORDER OR SUBFILE ORDER
<u>9:14:28 AM</u>		THE JICARILLA WAS NEGOTIATED IN THE MORE TRADITIONAL WAY
<u>9:15:41 AM</u>		WE DID NOT INVITE THE PUBLIC INTO THE NEGOTIATION SESSIONS
<u>9:16:01 AM</u>		WE MADE REVISIONS TO THE SETTLEMENT AGREEMENT BECAUSE OF THOSE COMMENTS
<u>9:16:40 AM</u>		REFERRING TO WHIPPLE BRIEF
<u>9:18:19 AM</u>		EXHIBIT 6 WOULD BE VERY HELPFUL TO SEE WHAT WAS HAPPENING
<u>9:20:42 AM</u>		DECEMBER 10TH 2004 THE 3RD AND FINAL DRAFT WAS RELEASED AGAIN WITH LENGTHY COMMENTS
<u>9:21:18 AM</u>		THE US DID NOT SIGN THAT BECAUSE IT REQUIRES CONGRESSIONAL APPROVAL
<u>9:21:48 AM</u>		THE NN WAS NOT GOING TO AGREE TO MANY OF THE LIMITATIONS
<u>9:22:00 AM</u>		PEOPLE ARE CLAIMING THIS PIE AND SOMEONE WANTS THIS PIECE IT ONLY LEAVES SO MUCH FOR SOMEONE ELSE
<u>9:22:09 AM</u>		IF SOMEONE IS CLAIMING A REALLY LARGE PIECE HOW DO YOU GET THEM TO CLAIM SOMETHING SMALLER
<u>9:22:20 AM</u>		THE US CONGRESS CHANGED THE DYNAMIC SAYING WE WILL APPROPRIATE A BILLION DOLLARS FOR A WATER PROJECT FOR YOU BUT THAT WAS PART OF THE SETTLEMENT
<u>9:23:11 AM</u>		THE PRESIDENT SIGNED THE SETTLEMENT ACT IN MARCH OF 2009 WHICH RESULTED IN ANOTHER ROUND OF CONFORMING THE SETTLEMENT AGREEMENT
<u>9:23:44 AM</u>		THE SETTLEMENT AGREEMENT WAS SIGNED IN DECEMBER 2010 BY ALL 3 PARTIES
<u>9:23:53 AM</u>		THE PROPOSED DECREE ALONG WITH THE MOTION FOR ENTRY OF THE DECREE WITH THE SETTLEMENT AGREEMENT ATTACHED WAS SUBMITTED TO THE COURT IN JANUARY OF 2011
<u>9:24:49 AM</u>		TALKING ABOUT PROPOSED SUPPLEMENTAL DECREE
<u>9:25:40 AM</u>		THE COURT ORDERED US TO COMBINE THE 2 INTO ONE PROCESS
<u>9:26:05 AM</u>		THE PARTIES SUBMITTED TO THE COURT ON APRIL 2 2012 THE FINAL SUPPLEMENTAL DECREE FOR APPROVAL
<u>9:26:28 AM</u>		THE SUBSTANTIVE CHANGES IN EXHIBIT 6 SHOW
<u>9:27:28 AM</u>		LISTING SOME OF THE CHANGES MADE
<u>9:31:18 AM</u>		STILL TALKING ABOUT CHANGES
<u>9:31:40 AM</u>		TALKING ABOUT PUBLIC MEETING RESPONSES
<u>9:32:35 AM</u>		THE NAVAJO NATION IS GOING TO TAKE THE BRUNT OF THAT HIT IN SHORTAGE
<u>9:32:46 AM</u>		THIS IS ALSO A GOOD SETTLEMENT FOR THE NN
<u>9:33:26 AM</u>		BENEFITS FOR THE NN
<u>9:33:42 AM</u>	GUSS GUARINO	WITH REGARDS TO PRONG ONE
<u>9:34:08 AM</u>	J	PLEASE SPEAK UP

<u>9:34:17 AM</u>	GUARINO	CONTINUES REGARDING GOOD FAITH ACTIVITY WITH RESPECT TO THE US
<u>9:35:36 AM</u>		AFFIDAVIT SHOWS GOOD FAITH ACTIVITY OF THE US
<u>9:36:09 AM</u>		THE US HOLDS THE NN RESERVED RIGHTS IN TRUST ON BEHALF OF THE NN ALTHOUGH THE NN EXERCISES THOSE RIGHTS AND RELIES ON THOSE RIGHTS ON A DAILY BASIS
<u>9:36:26 AM</u>		IN ADDITION THIS SETTLEMENT CONTEMPLATED THAT THE US WOULD COMMIT A VAST SUM OF RESOURCES
<u>9:37:23 AM</u>		TALKING ABOUT THE US PARTICIPATION IN THE NEGOTIATION
<u>9:40:00 AM</u>		IN 2006 WHEN THE ST OF NM AND NN WERE RESOLVED ENOUGH TO PROCEED WITH FEDERAL LEGISLATION THE MATTER WAS SUBMITTED TO CONGRESS
<u>9:40:41 AM</u>		IT IS A POLITICAL PROCESS
<u>9:41:08 AM</u>		PEOPLE AT A NATIONAL LEVEL WERE LOOKING AT SHOULD WE DO THIS
<u>9:41:49 AM</u>		BETWEEN 2006 AND 2009 LEGISLATION ASSOCIATED WITH THIS SETTLEMENT WAS INTRODUCED IN BOTH HOUSES OF CONGRESS, THE HOUSE AND SENATE NO LESS THAN 4 TIMES
<u>9:42:04 AM</u>		IT WAS CONSIDERED OVER AND OVER AGAIN
<u>9:43:15 AM</u>		THE AFFIDAVIT OF OF MR BENNETT
<u>9:43:41 AM</u>		IT MAY NOT ULTIMATELY BE THE DECISION OF THE US TO SUPPORT AND TO ENGAGE AND TO BE A SETTLING PARTY IN THIS SETTLEMENT FOLKS MIGHT NOT AGREE WITH, BUT IT WAS ENGAGED IN GOOD FAITH
<u>9:44:29 AM</u>		ULTIMATELY THE CONCERNS WERE RESOLVED
<u>9:44:51 AM</u>		I BELIEVE WE HAVE ESTABLISHED PRONG ONE UNDER THE COURTS STANDARD AS ARTICULATED
<u>9:45:13 AM</u>	MARIA O'BRIEN	THE SETTLING PARTIES HAVE AGREED TO PROVIDE ME WITH A FEW MOMENTS OF THEIR TIME
<u>9:45:27 AM</u>	J	IT IS ALLOCATED TO THE SETTLING PARTIES AND PROPONENTS
<u>9:45:39 AM</u>	O'BRIEN	TECHNICALLY BHP AND ENTERPRISE ARE NON-SETTLING PARTIES BUT WE ARE A SETTLEMENT PROPONENT SO WE FELT IT APPROPRIATE TO SPEAK AT THIS TIME I WILL BE BRIEF
<u>9:46:05 AM</u>		BHP AND ENTERPRISE ARE LARGE NON-INDIAN WATER USERS IN THE SJ BASIN
<u>9:46:13 AM</u>		THEY FALL INTO THE CLASS OF THOSE STATE BASED WATER USERS MR UTTON MENTIONED
<u>9:46:43 AM</u>		WE SUPPORT THE SETTLEMENT MOTIONS THAT THE SETTLING PARTIES HAVE FILES FOR PURPOSES OF PRESENTING TO THIS COURT AND ARGUING FOR THE ENTRY OF THE PARTIAL FINAL DECREE THAT HAS BEEN PRESENTED
<u>9:46:56 AM</u>		WITH REGARD TO PRONG ONE NOTHING TO ADD, WE DID FILE BRIEFS IN SUPPORT AND WE STAND ON OUR BRIEFS IN THAT REGARD
<u>9:47:15 AM</u>		DID WANT TO ADDRESS ONE POINT THAT CAME UP IN A QUESTION THAT YOU ASKED MR UTTON. I BELIEVE THE QUESTION BLEEDS INTO PRONG 2

<u>9:47:31 AM</u>		YOU ASKED QUESTION ABOUT ADMINISTRATION OF NN WATER RIGHTS
<u>9:47:42 AM</u>		IMPORTANT TO POINT OUT THAT IF THE NN WERE LITIGATED AND THEIR WATER RIGHTS WERE QUANTIFIED PURSUANT TO LITIGATION AS OPPOSED TO A SETTLEMENT TO OSE WOULD NOT HAVE AUTHORITY WITH REGARD TO THOSE QUANTIFIED LITIGATED WATER RIGHTS ON NN LANDS
<u>9:48:06 AM</u>		THEY ARE ENTITLED TO A QUANTIFIED WATER RIGHT, THEY HAVE ENTERED INTO A SETTLEMENT
<u>9:48:22 AM</u>		WE HAVE A SETTLEMENT THAT PROVIDES CERTAIN PROTECTIONS TO STATE BASED WATER RIGHTS USERS EXISTING RIGHTS AS THIS INDIAN WATER RIGHT COMES INTO THE SYSTEM
<u>9:48:54 AM</u>		PRONG 1 AND 2 RELATIONSHIP
<u>9:49:23 AM</u>	??? HERB BECKER	WE ARE SUPPORTERS OF THE SETTLEMENT AND WOULD ASK THE COURT TO ENTER IT
<u>9:49:31 AM</u>		ONE ASPECT TO POINT OUT WITH RESPECT TO THE NEGOTIATIONS
<u>9:50:06 AM</u>		THE JICARILLA STEPPED FORWARD AS A RESULT OF THE ACT AND ENTERED INTO AN AGREEMENT WITH CITY OF GALLUP
<u>9:50:34 AM</u>	NATASHA KILER ??- JICARILLA APACHE NATION	WE BELIEVE THAT THE SETTLING PARTIES HAVE MET THEIR BURDEN IN ESTABLISHING THAT THE SETTLEMENT AGREEMENT AND THE PROPOSED DECREES ARE THE PRODUCT OF GOOD FAITH ARMS LENGHT NEGOTIATIONS
<u>9:50:56 AM</u>		THE SETTLING PARTIES HAVE PROVIDED AN EXTENSIVE HISTORY DETAILING THE NEGOTIATIONS THAT HAVE TAKEN PLACE BETWEEN THE NN AND THE ST OF NM
<u>9:51:16 AM</u>		THERE HAVE BEEN OPORTUNITIES FOR PUBLIC REVIEW AND COMMENT ON THE DRAFT SETTLEMENT AND THE S HAS PROVIDED AN EXTENSIVE LIST OF THE PROVISIONS OF THE DRAFT SETTLEMENT AGREEMENT THAT HAVE BEEN MODIFIED BASED UPON PUBLIC INPUT
<u>9:51:34 AM</u>		THE EVIDENCE SHOW THE NEGOTIATIONS WERE CONDUCTED IN GOOD FAITH
<u>9:51:54 AM</u>	J	TURN TO THE NON-SETTLING PARTIES
<u>9:52:15 AM</u>	VICTOR MARSHAL L	20 SOME COMMUNITY DITCHES ON THE ANIMAS RIVER AND SJ RIVER WITH APPROXIMATELY 25,000 IRRIGATED ACRES
<u>9:52:48 AM</u>		MOST OF THOSE DEFENDANTS HAVE WATER RIGHTS THAT WERE ADJUDICATED BY THIS COURT IN 1948 UNDER THE ECHO DITCH DECREE
<u>9:53:07 AM</u>		IT WAS THE STATE ENGINEER THAT STARTED THAT ADJUDICATION
<u>9:53:23 AM</u>		CAN THE SETTLING PARTIES PROVE BEYOND A PROPONDERANCE OF THE EVIDENCE THAT THE NN IS ENTITLED TO AT LEAST 646,640 ACRE FEET OF DIVERSION
<u>9:54:07 AM</u>		ARE THEY ENTITLED TO 335,681 ACRE FEET OF DEPLETION

<u>9:54:14 AM</u>		ARE THEY ENTITLED TO THOSE AMOUNTS OF DIVERSION AND DEPLETION FROM NM SHARE OF THE COLORADO RIVER SYSTEM
<u>9:54:32 AM</u>		THOSE NUMBERS COME FROM MR LEEPERS AFFIDAVIT
<u>9:54:44 AM</u>		THAT IS THE QUESTION THAT SPECIAL MASTER SNYDER STARTED APPROACHING FROM THE DATE THAT HE WALKED IN
<u>9:55:33 AM</u>		OUR CASE IS BACKLOADED BEHIND PRONG 3 AND 4
<u>9:55:48 AM</u>		THE 2 KEY RULES IN THE WEST ARE PRIOR APPROPRIATION AND BENEFICIAL USE (WRITING ON PAPER BOARD)
<u>9:56:18 AM</u>		THOSE ARE THE 2 PRONGS OF WESTERN WATER LAW
<u>9:56:28 AM</u>		WHEN THE WINTERS DOCTRINE APPLIES IT MODIFIES THAT RULE IT DOES NOT MODIFY THE BENEFICIAL USE REQUIREMENT
<u>9:57:13 AM</u>		BENEFICIAL USE IS, APPEARS IN THE 1902 FEDERAL RECLAMATION ACT
<u>9:57:52 AM</u>		THAT IS THEN REPEATED IN THE NM 2007 WATER CODE VERBATUM AND IN THE 1911 - 1912 NM CONSTITUTION
<u>9:58:27 AM</u>		NM CONSTITUTION WAS APPROVED BY A FEDERAL STATUTE
<u>10:03:42 AM</u>		LOST CONNECTION
<u>10:18:30 AM</u>		RECORDING SKIPS
<u>10:18:33 AM</u>	J	CAN YOU GIVE ME CITATION FOR THAT, CLARIFIES
<u>10:18:35 AM</u>	MARSHAL L	ANSWERS WITH CITATION
<u>10:19:40 AM</u>		READING FROM CITATION
<u>10:19:54 AM</u>	J	MY UNDERTANDING OF WINTERS IS
<u>10:20:29 AM</u>		I DO NOT KNOW THAT I HAVE THE UNDERSTANDING THAT BENEFICIAL USE IS REQUIRED FOR UNDER THE WINTERS DOCTRINE
<u>10:20:36 AM</u>	MARSHAL L	CONTINUES WITH QUOTATION
<u>10:21:01 AM</u>		FORGET ABOUT THE PRIORITY DATE TALK ABOUT THE QUANTIFICATION
<u>10:21:11 AM</u>		HERE IS WHAT THE SUPREME COURT SAID IN THAT CASE (READING)
<u>10:21:27 AM</u>		THAT IS THE PIA STANDARD
<u>10:21:43 AM</u>		BENEFICIAL USE IS THE MEASURE OF THE RIGHT TO USE WATER
<u>10:21:54 AM</u>		THE PIA STANDARD IS UNIVERSAL AT LEAST WITH RESPECT TO IRRIGATION PROJECTS, LISTING
<u>10:22:15 AM</u>		10TH CIRCUIT JICARILLA CASE QUOTATION
<u>10:22:43 AM</u>		ALSO IN THE MESCALERO CASE
<u>10:23:23 AM</u>		THESE CASES ARE BINDING ON THIS COURT
<u>10:25:09 AM</u>		THE 1962 ACT IS AN AMMENDMENT OF THE 1956 ACT
<u>10:25:41 AM</u>		CAN THEY CITE SOME STATUTE THAT SAYS IN THE WEST SOMEBODY IS ALLOWED TO WASTE WATER, IF THEY CAN FIND THAT AUTHORITY THEY HAVE NOT PRESENTED IT TO THE COURT
<u>10:25:58 AM</u>		FOR THE FIRST TIME IN 356 YEARS WE ARE TRYING TO TO NAIL DOWN THE KEY FACTS AND KEY POINTS OF LAW

10:26:02 AM		THE KEY POINT OF LAW IS BENEFICIAL NON-WASTEFUL USE IS AN ESSENTIAL REQUIREMENT OF EVERY FEDERAL STATUE
10:26:57 AM		WHAT IS THE LEGAL BASIS FOR THE CLAIM THAT THE NN IS ENTITLED 646,000 ACRE FEET
10:27:23 AM		THEY ARE CLAIMING 3 SOURCES FOR THEIR WATER RIGHTS (NAMES THEM AND WRITING ON PAPER BOARD)
10:28:08 AM		THERE IS A FATAL PROBLEM IN EACH ONE OF THESE
10:28:24 AM		THEY WAIVED ANY PIA CLAIM FROM NIIP
10:28:39 AM		THEY ARE CLAIMING THEY ARE ENTITLED TO ALL OF THIS WATER BECAUSE OF THESE PERMITS, THERE ARE NO PERMITS
10:28:51 AM		THERE WERE NOTICES OF INTENT WHICH WERE NEVER PUBLISHED AS A MATTER OF LAW THERE ARE NO PERMITS
10:29:02 AM		A PERMIT DOES NOT CREATE A WATER RIGHT ONLY THIS COURT CAN CREATE A WATER RIGHT
10:30:02 AM		THERE IS AN EXPRESSED CONGRESSIONAL DECLARATION THAT THIS ACT DOES NOT CREATE WATER RIGHTS AND WHY THEY NEVER CITED THAT TO THIS COURT OVER ALL OF THESE YEARS I DO NOT KNOW
10:30:30 AM		CONGRESS DID NOT CREATE A WATER RIGHT FOR NIIP OR FOR THE NAVAJOS AND 2 IT DID NOT PREJUDICE MY CLIENTS WHO HAD EXISTING ADJUDICATED WATER RIGHTS AND IT DID NOT PREJUDICE ALL OF THE OTHER PEOPLE WHO WOULD LIKE TO HAVE WATER RIGHTS
10:31:02 AM		THEY WERE PASSING A CONSTRUCTION PROJECT
10:31:42 AM		THEY WERE SAYING THAT THE US AND THE NAVAJOS WOULD AQUIRE WTER THE SAME WAY AS ANYBODY ELSE UNDER NM LAW, APPROPRIATE THE WATER AND PUT IT TO BENEFICIAL USE
10:34:04 AM		NM IS THE ONLY ARRID STATE THAT WAS ADMITTED TO THE UNION AFTER WINTERS AS AN EXPRESS PRIOR APPROPRIATION CLAUSE IN THE CONSTITUTION
10:34:57 AM		MR POLLACK SAID THE NN ALREADY POSSESSED SUBSTANTIAL WATER RIGHTS IN EXCESS OF THE AMOUNTS OF IN THIS SETTLEMENT
10:36:35 AM		THEY DO NOT OWN THIS WATER OR AT LEAST THOSE LARGE AMOUNTS
10:37:04 AM		THEY ARE SAYING APPROVE THIS BECAUSE IT IS LESS THAN WHAT WE ALREADY OWN. DO NOT ASK US HOW WE ALREADY OWN THIS
10:38:32 AM		THEY CAN CLAIM ANYTHING THAT THEY WANT BUT THEY HAVE GOT TO PROVE IT
10:38:46 AM		I WOULD ASK THEM TO FIND A CASE THAT SAYS THAT BENEFICIAL USE HAS SOMEHOW BEEN REPEALED
10:38:56 AM	J	ASKS TO MOVE PODIUM
10:41:07 AM		EXPLAINS WHY ADJUSTMENT REQUESTED
10:41:25 AM	MARSHAL L	CONTINUES WITH PRONG 1

10:42:09 AM		ONE OF THESE DAYS WE WANT TO GET THE OPPORTUNITY TO TELL THE FULL STORY ABOUT WHAT HAPPENED TO THE PEOPLE IN THIS VALLEY WHEN ALL OF THIS WAS BEING NEGOTIATED ALMOST ENTIRELY IN PRIVATE BEHIND CLOSED DOORS
10:42:20 AM	J	IS THERE A REASON WHY THAT INFORMATION WAS NOT INCLUDED IN THE AFFIDAVIT
10:42:25 AM	MARSHAL L	IT IS IN THE AFFIDAVIT OF JIM ROGERS (READING)
10:45:23 AM		WE HAVEE DUELING AFFIDAVITS
10:45:45 AM		THEIR BAD FAITH IS CONFIRMED BY THEIR OWN AFFIDAVITS
10:46:16 AM		MR UTTON AND OTHERS WILL STAND UP AND GIVE A DECLARATION ABOUT WHAT IS SUPPOSEDLY IN THE AGREEMENTS OR WHAT HAPPENED, THAT IS NOT EVIDENCE YOU HAVE GOT TO LOOK AT THE RECORD ITSELF
10:47:00 AM		MOST CHANGES WERE COSMETIC
10:47:35 AM		PASSES
10:47:39 AM	ROBERT OXFORD	I WORKED FOR THE OSE FROM 1987 UNTIL 2000
10:48:01 AM		I MANAGED THE AZTEC OFFICE FOR THE ECHO DECREE RIGHTS
10:48:20 AM		AFTER RETIREMENT I DECIDED TO INVEST IN SOME LAND, THIS GOES TO THE GOOD FAITH SETTLEMENT
10:48:36 AM		EXPLAINING HIS CASE
10:51:02 AM		AFTER THE ECHO DECREE IS DISECTED FOR BENEFICIAL USE AND IT IS EXPECTED THAT 50% OF THE WATER RIGHTS IN THE ECHO DECREE MAY BE LOST THAT THE NN WILL GET HALF OF THOSE WATER RIGHTS
10:51:35 AM		THIS CREATED A CONFLICT OF INTEREST
10:52:00 AM		AS FAR AS MR ROGERS AND MY ASSOCIATION
10:52:20 AM		THESE WATER RIGHTS ARE NOT FROM STORAGE, THEY ARE DIRECT FLOW WATER RIGHTS AND THAT IS IN DIRECT COMPETITION WITH ALL OF THE OTHER WATER RIGHTS IN THE VALLEY
10:53:26 AM		MR WHIPPLE AND MYSELF HAVE NEVER AGREED ...
10:54:06 AM		THIS WILL CREATE SHORTAGES AND THIS IS WHY WE WERE SUCCESSFUL IN NEGOTIATING SOME EXTRA WATER TO BE RELEASED
10:54:21 AM		THE PROBLEM WITH THE ALTERNATE WATER SUPPLY IS 12000 ACRE FEET COULD BE RELEASED ONCE THERE IS A SHORTAGE WOULD NOT HAPPEN UNLESS ALL OF THE IRRIGATORS IN THE VALLEY AGREED THAT ALL WATER BEING RELEASED FROM NAVAJO RES HAS TO HAVE A CONTRACT WITH THE FEDERAL GOVERNMENT
10:55:04 AM		THIS CREATES A CONFLICT WITH SUPREME COURT CASE LUNA, WATER RELEASED INTO A PUBLIC WATER WAY HAS GOT TO BE CONSIDERED PUBLIC WATER
10:57:06 AM		THAT WATER IN PRIOR COURT CASES HAS BEEN THOUGHT TO BE AVAILABLE TO OTHER USERS SUCH AS THE NON-INDIAN DITCHES EVEN THOUGH THEY DO NOT HAVE A STORAGE CONTRACT THE NM STATUTES SAY THAT WATER RIGHTS ARE BY AN ANNUAL USE

10:58:07 AM		AS FAR AS THE JICARILA AGREEMENT... I WORKED FOR THE STATE WHILE THAT WAS BEING PUT TOGETHER AS THE JICARILLA WERE SUING THE FEDERAL GOVERNMENT AND THEY WERE WINNING LAWSUITS
10:58:26 AM		THE STATE WAS NOT A PARTY TO ANY OF THOSE NEGOTIATIONS TO MY KNOWLEGE, THE STATE HAD TO ACCEPT THE TERMS OF THAT AGREEMENT
10:59:07 AM	RICHARD TULLY	IDENTIFYING CLIENTS THAT HE REPRESENTS
11:02:38 AM		EXPLAINING HISTORY OF BOLACK PARTY
11:03:05 AM		BEGIN PRONG #1
11:03:21 AM		REMEMBER CASES THAT YOU LOSE
11:03:33 AM		JICARILLA APACHE CASE REGARDING SOVERIEGN IMMUNITY
11:04:25 AM		WE ASKED QUESTIONS REGARDING SOVEREIGN IMMUNITY AND WETHER THERE HAD BEEN WAIVERS
11:04:33 AM		THE COURT FOUND THAT OUR INTERROGATORY REQUESTS WERE RELEVANT BUT THEY WERE OVERLY BROAD
11:04:49 AM		REASON I AM BRINGING THIS UP
11:05:18 AM		THERE ARE STATEMENTS THAT THERE ARE CERTAIN AREAS OF THE LAW THAT THEY DO NOT BELIEVE THAT YOU HAVE JURISDICTION OVER
11:06:00 AM		KEEPING IN MIND THAT THE NN ENCOMPASES MORE THAN JUST ONE STATE
11:06:12 AM		IF NM GOES THE THE NN AND THEN THE NN STARTS USING THAT WATER IN ANOTHER STATE ... THE END RESULT IS SOVEREIGN IMMUNITY OF THE NN MY UNERSTANDING THAT6 UNLESS THEY SPECIFICALLY AND EXPRESSLY RESERVE THAT SOVEREIGN IMMUNITY THEY CAN TELL THIS COURT IF IT IS NOT SPECIFICALLY AND ACCURATLY COVERED IN THIS SETTLEMENT AGREEMENT YOU DO NOT HAVE ANY JURISDICTION WE CAN DO WHAT EVER WE WANT
11:07:58 AM		WHY WOULD THIS COURT WANT TO ENTER AN ORDER OR A DECREE THAT WOULD NOT BE ENFORCEABLE
11:08:11 AM		THAT TO ME DOES NOT SHOW GOOD FAITH
11:08:36 AM		WOULD LIKE TO TALK ABOUT THE RELINQUISHMENT OF THE WINTERS RIGHTS BY THE NAVAJO NATION AT THE TIME THE NIIP PROJECT WAS IN THE PROCESS OF BEING APPROVED IN LEGISLATION
11:09:04 AM		WANT THE COURT RECORD TO SHOW THAT I DID BRING THAT UP, I THINK THERE HAS BEEN A LACK OF DUE DILIGENCE
11:09:58 AM		PASSES
11:10:08 AM	?? GARY HORNER	PRELIMINARY COMMENTS
11:10:30 AM		THE SETTLING PARTIES HAVE NOT FILED ANY KIND OF MOTION FOR SUMMARY JUDGMENT, THEY HAVE NOT TRIED TO PLAY BY THE RULES OF SUMMARY JUDGMENT, THEY HAVE NOT LISTED MATERIAL FACTS THAT ANYBODY COULD OBJECT TO
11:11:00 AM		WE HAVE A CONFLICT IN WHAT WE ARE DOING HERE TODAY

11:11:17 AM		THE SETTLEMENT MOTION WAS FILED OVER 2 YEARS AGO, THE BRIEF OR MEMORANDUM ASSOCIATED WITH THAT SHOULD HAVE BEEN FILED AT THE SAME TIME
11:11:31 AM		THEN THEY DO NOT FOLLOW THE RULES OF SUMMARY JUDGMENT AND IT MAKES IT VERY DIFFICULT
11:11:48 AM		THE EXPERT REPORTS ARE GOING TO BE INADMISSABLE AS HERESAY EVEN AT TRIAL, SO THEY CAN NOT BE USED IN A SUMMARY JUDGMENT PROCEEDING
11:12:10 AM		THEY AFFIDAVITS THAT THEY ARE USING AND THE INFORMATION IN THERE I THINK HAVE BEEN DISPUTED BY EVERYBODY ON THIS SIDE
11:12:20 AM		THEY CAN NOT BE USED AT THIS POINT WITH REGARD TO ISSUES REGARDING DISPOSITIVE MOTIONS WHICH THEY HAVE NOT EVEN FILED
11:12:34 AM		TO BE ABLE TO USE THAT STUFF SINCE IT HAS BEEN DISPUTED THEY WOULD HAVE TO DO IT AT TRIAL TO BE ABLE TO PROVE THE STUFF IN THE AFFIDAVITS OR THE REPORTS
11:12:47 AM		THEY COULD PUT THE PEOPLE ON THE STAND AND HAVE THEM TESTIFY SUBJECT TO OBJECTIONS AND CROSS EXAMINATIONS
11:13:20 AM	J	ARE YOU PLANNING TO POINT OUT TO THE COURT REGARDING THE PRONGS THE DEFICIENCIES THAT YOU PERCEIVE
11:13:35 AM	HORNER	SOME OF THEM
11:13:37 AM		GENERALLY THEY CAN NOT BE USED AT THIS POINT
11:14:01 AM		MR POLLACK HAD STATED THAT THEY ALREADY HAVE THIS BUNDLE OF WATER RIGHTS THAT THEY ARE JUST HERE TO GET THEM APPROVED IN FACTS THEY HAVE NO WATER RIGHTS
11:14:17 AM		FOR THE FIRST TIME TO ESTABLISH THEIR WATER RIGHTS, THEY HAVE NOTHING NOW
11:14:22 AM		THEY MAY BE ABLE TO CLAIM SOME FEDERAL RESERVED RIGHTS THAT WOULD BE PART OF THE SUPPLEMENTAL DECREE
11:14:52 AM		AS MR MARSHALL POINTED OUT THEY DO NOT WANT TO TALK ABOUT WHERE THEIR WATER RIGHTS COME FROM
11:15:23 AM		WITH REGARD TO THE FIRST PRONG I AM SAYING THERE WAS NOT GOOD FAITH ARMS LENGTH NEGOTIATION
11:16:18 AM		THE STATE IS ALSO ESSENTIALLY ON THE SAME SIDE OF THE TABLE
11:16:23 AM		THEY ARE GIVING THEM THE WATER RIGHTS OF THE PEOPLE, THE STATE IS NOT GIVING UP ANYTHING
11:16:52 AM		GOING OVER WHAT THE NN IS GETTING
11:17:04 AM		THE ONLY THING THAT THE STATE CAN ARGUE THAT THEY GOT IN TERMS OF CONSIDERATION FOR THIS SETTLEMENT WAS THE AVOIDANCE OF THE LITIGATION AND HERE WE ARE LITIGATING
11:17:28 AM		THE STATE HAS THE RESPONSIBILITY OF REPRESENTING THE PUBLIC INTEREST BUT DID NOT DO IT
11:17:50 AM		THE STATE IS ON THE OTHER SIDE WITH THE NAVAJOS, THEY ARE ALL SITTING AT THE SAME TABLE
11:18:19 AM		YOU HAVE COLLUSION ON THEIR PART
11:19:06 AM		CONCEPT OF THE SETTLEMENT

11:21:09 AM		GENERALLY SPEAKING THEY TALK ABOUT THE ADMINISTRATION OF THE WATER AND THE PROVISIONS IN THE DECREE FOR THE ADMINISTRATION OF THE WATER, DIRECT FLOW CONCEPT AND THAT ALSO LOOKS A LOT LIKE THIS ACTIVE WATER RESOURCE MANAGEMENT REGULATIONS
11:21:47 AM		THEY ARE INCORPORATING INTO THIS DECREE THESE PROVISIONS THAT AT THE TIME WERE REALLY TENIOUS THEY WERE BEFORE THE COURTS IN A TRI STATE CASE
11:21:58 AM		THE COURT OF APPEALS OVER TURNED IT AND THE SUPREME COURT ACTUALLY TURNED AROUND AND APPROVED IT
11:22:16 AM		IT DOES NOT BELONG IN THE DECREE AT ALL, THE ADMINISTRATION
11:22:59 AM		MR UTTON TALKED ABOUT THE WATER SUPPLY IN THE AREA BEING A ZERO SUM GAIN?
11:23:14 AM		THE WATER IN THIS BASIN HAS BEEN CONSIDERED FULLY APPROPRIATED
11:23:31 AM		NOBODY HAS BEEN ABLE TO GET ANY WATER RIGHTS OUT OF THE STATE ENGINEER SINCE THAT TIME
11:24:00 AM		YOU ARE TAKING WATER RIGHTS AWAY FROM EXISTING PEOPLE ON A GALLON FOR GALLON BASIS
11:25:03 AM		PEOPLE ARE GOING TO END UP HAVING TO PAY THE NAVAJO NATION FOR THE USE OF THEIR EXISTING WATER RIGHTS WHEN YOU START COUPLING IN THE REOPERATION OF NAVAJO DAM....
11:26:16 AM		THIS IS ALL ONE COMMON PLAN OR SCHEME
11:26:23 AM		WANT TO BE VERY CAREFUL ABOUT SAYING I AM GOING TO IGNORE ALL OF THAT AND I AM JUST GOING TO LOOK AT THE SETTLEMENT B ECAUSE THEY DID IT ALL TOGETHER
11:26:43 AM		PASSES
11:27:03 AM	PRISCILLA SHANNON	FIRST TIME ADDRESSING COURT
11:27:35 AM		CLIENT HAS ABOUT 3 OR 4 HUNDRED ACRES ON THE LA PLATA WHICH AT THE MOMENT I DO NOT THINK THERE IS ANY WATER THERE
11:27:42 AM		HE WOULD LIKE ME TO STATE THAT HE AFFIRMS AND SUPPORTS ALL OF THESE NON-SETTLING PARTIES ARGUMENTS HERE TODAY THAT THE SETTLEMENT AGREEMENT WAS NOT A PRODUCT OF GOOD FAITH AND ARMS LENGTH NEGOTIATIONS
11:28:04 AM		WHERE WERE THE PEOPLE, WHERE WAS MR MCCARTY ... WHO WAS REPRESENTING ALL OF THEM
11:28:20 AM		TALKING ABOUT FRAMEWORK
11:28:54 AM		THE TRIBE WAS REPRESENTED BUT WHERE WAS THE COUNTY
11:28:54 AM		ALL THE PEOPLE THAT WERE EFFECTED WERE NOT ABLE TO BE AT THE TABLE
11:29:26 AM		MY CLIENT DOES NOT FEEL THAT HE IS BEING REPRESENTED BY THE STATE BY THE UNITED STATES OR BY ANYBODY EXCEPT ME AND THOSE OF US THAT ARE WORKING AS THE NON-SETTLING, JUST THE TERMS

11:29:48 AM		PASSES
11:29:52 AM	J	LETS TURN BACK TO THE SETTLING PARTIES FOR REPLIES WITH RESPECT TO YOUR MOTIONS ON PRONG 1 AND RESPONSES WITH REGARD THE NON-SETTLING PARTIES ON PRONG 1
11:30:18 AM	COUNSEL ??	CAN WE HAVE JUST A FEW MINUTES TO CONFER
11:30:18 AM	J	SURE
11:31:04 AM		BEFORE WE BEGIN THE COURT IS PLANNING TO TAKE A LUNCH RECESS AT NOON SO WE WILL SEE WHERE WE ARE AT THAT TIME
11:31:29 AM	STANLEY POLLACK	I THINK THE IMPORTANT THING HERE IS TO PUT PRONG 1 INTO THE PROPER PROSPECTIVE. WE ARE HERE TODAY ON THE NN WATER RIGHTS SETTLEMENT. TO DETERMINE THE WATER RIGHTS OF THE NAVAJO NATION, NOT TO DETERMINE THE WATER RIGHTS OF ANY OTHER USER IN THE BASIN
11:31:58 AM		THIS IS SOLELY A SUBFILE OF THE NAVAJO NATIONS WATER RIGHT
11:32:00 AM		WHEN WE LOOK AT THE BENCH MEMO THAT MR MARSHALL CIRCULATES AND HE TALKS ABOUT, GOOD FAITH IS A QUESTION OF FACT, WE AGREE
11:32:12 AM		HE SAYS THAT THE SETTLEMENT WAS NOT NEGOTIATED IN GOOD FAITH BECAUSE IT WAS NOT NEGOTIATED WITH THE OTHER WATER USERS IN THE SAN JUAN BASIN. HE IS CHANGING THE STANDARD THAT THE COURT PUT FOR THE FIRST PRONG
11:32:28 AM		EXPLAINS PRONG 1
11:32:44 AM		WE WERE NOT REQUIRED TO NEGOTIATE WITH EVERY OTHER WATER USER IN THIS BASIN BECAUSE WE ARE NOT NEGOTIATING THEIR WATER RIGHTS
11:33:01 AM		WE WHEN FAR BEYOND WHAT WAS REQUIRED IN THE JICARILLA SETTLEMENT OF A SUBFILE
11:33:13 AM		WE REACHED OUT TO OTHER PARTIES ON NUMERUS OCCASIONS TO PROVIDE THEM WITH A DRAFT AGREEMENT, WE ALLOWED PUBLIC COMMENT TO OCCUR, AND WE TOOK THOSE COMMENTS VERY SERIOUSLY
11:33:47 AM		WE ALL WANTED TO MAKE A SETTLEMENT THAT WOULD WORK FOR EVERYBODY TO CREATE A WIN WIN SITUATION
11:34:10 AM		WE HAVE SUBMITTED AFFIDAVITS FROM ALL 3 PARTIES ... THEIR PRINCIPLE EXPERTS. THOSE AFFIDAVITS LAY OUT FACTUAL ALEGATIONS OF WHAT HAPPENED IN THE NEGOTIATIONS
11:34:38 AM		GIVING EXAMPLES OF THE FACTS
11:35:52 AM		THE NN BENT OVER BACKWARD TO ACCOMODATE THE PUBLIC AS MUCH AS POSSIBLE
11:36:14 AM	J	SO THE QUESTION OF DUELING AFFIDAVITS... I AM NOT INA POSITION TO BE WEIGHING WHAT IS IN THE AFFIDAVITS
11:36:39 AM	POLLACK	I AM NOT SUGGESTING TO YOU HONOR THAT THERE IS A FACTUAL DISPUTE HERE. THE DIFFERENCE IS
11:37:10 AM	J	YOU CAN PROCEDE

11:37:18 AM	POLLACK	THESE ARE ELEMENTS O FACT THAT WE HAVE SET OUT AND THAT ARE REALLY NOT CONTROVERTED BY THE NON-SETTLING PARTIES
11:37:34 AM		WANT TO TALK ABOUT MR HORNERS ALLEGATIONS THAT WATER WAS TAKEN FROM THE NON-INDIAN IRRIGATORS AND GIVEN TO THE NN
11:37:44 AM		I WANT TO JUST STATE MY OUTRAGE AT THE BEGINNING THAT THIS DAY IN AGE WE WOULD TALK ABOUT GIVING ANYTHING TO PEOPLE WHO HAVE HAD SO MUCH TAKEN AWAY FROM THEM HISTORICALLY AND NOTHING HERE IS BEING GIVEN TO THE NN. WE ARE NOT ASKING THE COURT TO GIVE THE NN ANYTHING
11:38:08 AM		WE ARE HERE ASKING THE COURT TO RECOGNIZE LEGITIMATE WATER RIGHTS OF THE NN THAT HAS HISTORICALLY BEEN USED BY THE NN AT THEIR PROJECTS ON HOGBACK IN FRUITLAND....
11:38:27 AM		NOTHING IS BEING GIVEN TO THE NN AND NOTHING IS BEING TAKEN FROM THE NON-INDIAN IRRIGATORS
11:39:02 AM		THE BULK OF THE WATER THAT THE NAVAJO NATION WOULD HAVE RECOGNIZED IN THE SETTLEMENT IS COMING OUT OF STORAGE
11:39:12 AM		EXPLAINS HOW IT WORKS
11:39:51 AM		STORAGE RESERVOIRS ARE BUILT FOR THE PURPOSE OF MITIGATING THE EFFECT OF DROUGHT
11:40:49 AM		WE HAVE AN ACT OF CONGRESS PASSED IN 1962 THAT SAYS DIRECT FLOW DIVERTERS CAN NOT TAKE WATER THAT WAS STORED IN NAVAJO RESERVOIR WITHOUT A STORAGE CONTRACT, IT IS A MATTER OF FEDERAL AND STATE LAW
11:41:38 AM		THE NN IS AGREEING THAT BEFORE IT EXERCISES A PRIORITY CALL FOR ITS SENIOR WATER RIGHTS FOR THE HOG BACK AND FRUITLAND PROJECT IT WILL RELEASE 12,000 ACRE FEET OF ITS STORAGE RIGHT FOR USE, WHETHER THE NN USES THAT WATER OR THE DIRECT FLOW DIVERTERS USE THAT WATER IT MAKES NO DIFFERENCE
11:42:29 AM		LUNA IRRIGATION CASE RESPONSE
11:43:20 AM		RESPONSE REGARDING COLLUSION
11:43:58 AM	J	HORNER MAKES A POINT ABOUT 400,000 ACRE FEET THAT HAVE NOT BEEN USED
11:44:07 AM	POLLACK	I HAVE SEEN THAT IN HIS BRIEFS NUMEROUS TIMES, I AM STILL CURIOUS WHERE HE GETS THOSE NUMBERS FROM. IT IS NOT SUPPORTED BY ANY AFFIDAVITS RELATIVE TO WATER NOT BEING USED
11:45:49 AM		PASSES
11:45:55 AM	JOHN UTTON	RESPONSE REGARDING LUNA CASE, THE STATES RESPONSE BRIEF DEVOTES ABOUT THE SECOND HALF OF THE BRIEF TO THAT SUBJECT
11:47:44 AM		RESPONSE REGARDING SOVEREIGN IMMUNITY
11:48:23 AM	J	THAT IS PROBABLY ONE OF THE VERY QUESTIONS THAT MR TULLY RAISED
11:48:42 AM	UTTON	THERE IS TWO LIMITED PROVISIONS WHERE THAT IS ALLOWED IN THE SETTLEMENT AGREEMENT, EXPLAINS

<u>11:50:44 AM</u>	J	LETS TALK ABOUT ENFORCEMENT HOW WOULD THE ENFORCEMENT WORK IF SOMEONE PRECEIVED THERE WAS A PROBLEM
<u>11:51:03 AM</u>	UTTON	I AM GOING TO GET TO THAT IN PRONG 2
<u>11:51:08 AM</u>	J	OK I DO NOT WANT TO TAKE IT OUT OF ORDER UNLESS YOU CAN GIVE ME A SHORT ANSWER
<u>11:51:15 AM</u>	UTTON	ANSWERS
<u>11:51:52 AM</u>		JURISDICTION AFTER THE DECREE, READING FROM DECREE
<u>11:53:07 AM</u>		AFFIDAVIT BY MR ROGERS IS NOT A COMPETING AFFIDAVIT
<u>11:55:00 AM</u>	J	I BELIEVE THERE WAS SOME INDICATION THAT THE JICARILLAS ARE CONTRACTING TO DELIVER WATER TO THE CITY OF GALLUP AMONG OTHERS IF I RECALL CORRECTLY
<u>11:55:18 AM</u>	UTTON	THAT WAS ANTICIPATED IN THE JICARILLA SETTLEMENT ONE OF THE BENEFITS THAT THE JICARILLA APACHE NATION GOT WAS THAT THEY GOT SOME EXCESS STORAGE WATER THAT DID NOT HAVE A CURRENT USE THAT THEY COULD CONTRACT FOR AND CONGRESS SPECIFICALLY PROVIDED FOR THE LEASING
<u>11:55:35 AM</u>		THAT IS NOT WHAT WE HAVE HERE, THE WATER RIGHTS THAT ARE BEING RECOGNIZED ARE FOR EXISTING PROJECTS. THERE IS NO WATER RIGHT WITHOUT A HOME
<u>11:57:04 AM</u>		EVEN THOUGH THEY ARE NOT BOUND BY THE ECHO DITCH DECREE THEY ARE SAYING WE WILL BE BOUND BECAUSE OF THIS SETTLEMENT AND THEY WILL HAVE TO RESPECT THE ECHO DITCH DECREE
<u>11:57:42 AM</u>		PASSES
<u>11:57:44 AM</u>	J	TIME FOR RECESS
<u>11:57:56 AM</u>		RECESS UNTILL 1:30 THEN NON-SETTLING PARTIES WILL BE ABLE TO REPLY WITH RESPECT TO PRONG 1 AND THEN WE WILL PROCEED TO PRONG 2
<u>11:58:10 AM</u>		LUNCH RECESS UNTIL 1:30
<u>1:34:22 PM</u>	J	BACK ON THE RECORD
<u>1:34:25 PM</u>		CONTINUE WITH NON-SETTLING PARTIES REPLY ON PRONG 1
<u>1:34:34 PM</u>	MARSHAL L	HAVE A NOTEBOOK FOR THE COURT WITH SOME OF THE KEY PLEADINGS IN IT
<u>1:34:47 PM</u>		AGREE WITH MR POLLACK THAT THIS PROCEEDING IS ONLY TO DETERMINE THE WATER RIGHTS OF THE NN, NOT ANY OTHER USERS
<u>1:35:01 PM</u>		ALL OF THE OTHER USERS NEED TO KNOW WHAT IS THE PRIORITY AND WHAT ARE THE AMOUNTS OF THE WATER THAT BELONG TO THE NN
<u>1:35:31 PM</u>		MR POLLACK SAID IN THE COURSE OF HIS ARGUMENT THAT THESE WATER RIGHTS WERE AUTHORIZED TO BE USED BY ACT OF CONGRESS, REFERRING TO THE 1962 ACT SECTION 13-C SAYS...
<u>1:36:00 PM</u>		THAT BY ITSELF WE THINK IS FURTHER EVIDENCE OF BAD FAITH
<u>1:36:09 PM</u>		WE HAVE DUELING AFFIDAVITS

<u>1:36:24 PM</u>		THEY WERE NOT REQUIRED TO NEGOTIATE WITH OTHER WATER RIGHTS OWNERS IN THE BASIN
<u>1:36:44 PM</u>		ON THE CHANGES THAT WERE MADE TO THE DRAFT AGREEMENT WE ARE GETTING TO THAT IN PRONG 2
<u>1:36:58 PM</u>	ROBERT OXFORD	TALKING ABOUT LUNA COURT CASE
<u>1:38:05 PM</u>		THERE WAS NO PRIVATE DELIVERY SYSTEMS
<u>1:38:23 PM</u>		TO DUMP IT IN A NATURAL STREAM VIOLATES THE STATUTE
<u>1:38:33 PM</u>		THE STATTE ARGUES THAT THEY NEGOTIATED FOR A TOP WATER BANK IN THIS AGREEMENT FOR OTHER USERS
<u>1:38:55 PM</u>		STATE STATUE 72-5-17 THAT HAS ALWAYS BEEN THE CASE
<u>1:39:43 PM</u>		THE MAIN PROBLEM IS THAT THERE IS NO WAY TO DELIVER THAT WATER TO THE USER WITHOUT MIXING IT WITH PUBLIC WATERS
<u>1:40:02 PM</u>	GARY HORNER	COUPLE OF BRIEF COMMENTS
<u>1:40:17 PM</u>		MR POLLACK WAS TALKING ABOUT HOW THERE WERE NEW AFFIDAVITS TO SUPPORT MY CLAIMS THAT THE NAVAJOS WERE GETTING 400,000 ACRE FEET THAT WHAT THEY WERE USING
<u>1:40:43 PM</u>		I DID DO AN AFFIDAVIT THAT INCORPORATED THOSE IN
<u>1:41:07 PM</u>		THE SETTLING PARTIES NON OF THEM HAVE DISPUTED A SINGLE ONE OF THOSE MATERIAL FACTS
<u>1:42:10 PM</u>		HE DOES NOT DISPUTE IT HE JUST SAYS THAT THERE IS NO AFFIDAVIT TO SUPPORT IT AND IN FACT THERE IS
<u>1:42:45 PM</u>	J	TURN TO THE 2ND PRONG
<u>1:42:59 PM</u>	LORESSA	TIME UPDATE
<u>1:43:41 PM</u>	JOHN UTTON	WE HAVE IN OUR OPENING MEMORANDUM DETAILED IN LENGTH THE VARIOUS PROTECTIONS THAT ARE FOUND IN THE PROPOSED DECREES AND THE SETTLEMENT AGREEMENT
<u>1:44:58 PM</u>		ON OF THE STATES KEY OBJECTIVES IN AGREEING TO NEGOTIATE A SETTLEMENT WITH THE NN AND THE US WAS TO PROTECT EXISTING NON-NAVAJO WATER USES
<u>1:45:29 PM</u>		PROTECTION OF THOSE ECHO DITCH DECREE RIGHTS AND OTHER WATER RIGHTS THAT HAVE ALREADY BEEN PERMITTED AND RECOGNIZED WAS OF THE UTMOST IMPORTANCE
<u>1:45:51 PM</u>		FIRST OBJECTIVE WAS QUANTITY
<u>1:46:21 PM</u>		WE ARE NOT GOING TO BE SAYING THAT WE AGREE WITH THAT, WE KNOW THAT THEY COULD MAKE THOSE CLAIMS
<u>1:46:34 PM</u>		WE ARE GOING TO BE TALKING ABOUT HOW THROUGH VARIOUS RESTRICTIONS THE QUANTITIES HAVE GOTTEN DOWN TO A LEVEL THAT EVEN WITH THE ADDITION OF THE NAVAJO GALLUP SUPPLY IS A QUANTITY THAT FITS WITHIN THE OBJECTIVES

<u>1:47:07 PM</u>		WANT TO HIGHLIGHT THAT THE LIMITATIONS ON THE QUANTITIES OF THE NN WATER RIGHTS IS A FUNDAMENTAL PROTECTION, WE DO NOT SEE THAT THERE IS PIA ACERAGE
<u>1:47:30 PM</u>		EXPLAINING PIA
<u>1:48:18 PM</u>		WE ALREADY HAVE THOSE PROJECTS
<u>1:48:31 PM</u>		WE DO NOT SEE THEM AS PIA, THEY ARE EXISTING PROJECTS
<u>1:48:37 PM</u>		THE DECREES ONLY RECOGNIZE HISTORIC AND EXISTING USES PLUS THE PROJECTS THAT WERE AUTHORIZED MANY YEARS AGO
<u>1:48:43 PM</u>		ONLY EXCEPTION IS NAVAJO GALLUP DRINKING WATER PROJECT
<u>1:49:29 PM</u>		THE SECOND KEY PROTECTION IS THE COORDINATION OF PRIORITY DATES FOR THE USE OF WATER FROM STORAGE
<u>1:49:40 PM</u>		THE US HAS ASSERTED A TIME AND MEMORIAL RIGHT...COULD CLAIM THE TREATY DATE OF 1849
<u>1:49:57 PM</u>		HAVE AGREED ON THE LATEST OF THOSE 3 DATES
<u>1:50:12 PM</u>		80% OF DIVERSIONS AND 90% OF DEPLETIONS ARE SUBORDINATED IN THEIR PRIORITY DATES
<u>1:50:31 PM</u>		GALLUP AND NIPP ARE THE 2 BIG NAVAJO DAMN RESERVOIR RECEIPTS OF SUPPLY THAT ARE SUBORDINATED
<u>1:51:00 PM</u>		THERE IS ONE JR DIRECT FLOW RIGHT IN 1968 THAT WOULD SUPPLY WATER TO NAVAJO GALLUP WHEN IT IS AVAILABLE BUT OTHERWISE IT IS TO BE SUPPLIED FROM STORAGE SAME WITH THE ALP
<u>1:51:19 PM</u>		HOGBACK AND FRUITLAND ARE DIRECT FLOW PROJECTS
<u>1:51:40 PM</u>		THE VAST MAJORITY OF THE NN DIVERSIONS AND DEPLETIONS ARE SATISFIED FROM WATER IN STORAGE
<u>1:51:56 PM</u>		THE ALTERNATE WATER SPECIFICALLY THAT WAS ONE OF THE SIGNIFICANT ITEMS THAT WAS ADDED AS A PART OF THE PUBLIC PROCESS, EXPLAINS
<u>1:53:01 PM</u>		IF THERE IS AN 80% SHORTAGE THEN THERE WOULD BE NO ALTERNATE WATER
<u>1:53:28 PM</u>		TALKING ABOUT ALTERNATE WATER PROVISION
<u>1:54:32 PM</u>	J	HOW DOES THAT PROTECTION RELATE TO THE HOGBACK-FRUITLAND USE OF 321 CFS
<u>1:54:45 PM</u>	UTTON	ANSWERS
<u>1:54:52 PM</u>	J	WOULD HOGBACK-FRUITLAND SUCK UP THE MAJORITY OF THAT WATER
<u>1:54:56 PM</u>	UTTON	THEY ARE AT THE BOTTTOM OF THE SYSTEM
<u>1:55:45 PM</u>		WE HEARD THAT PEOPLE WANTED THE BENEFIT OF STORAGE
<u>1:57:02 PM</u>		4TH PROTECTION
<u>1:57:48 PM</u>	J	ARE THERE STORAGE RIGHTS THAT ARE SENIOR TO THAT
<u>1:58:00 PM</u>	UTTON	NOT IN NAVAJO RESERVOIR
<u>1:58:26 PM</u>		#5 IMPORTANT TO WATER USERS ON THE RIO GRANDE WHO ARE CONTRACTORS WITH THE SAN JUAN CHAMA PROJECT
<u>1:59:02 PM</u>		#6 LIMITS ON TRIBUTARY WATER USES

<u>1:59:46 PM</u>		WE ARE NOT RECOGNIZING ANY FUTURE USE WINTERS RIGHTS, THOSE WATER RIGHTS ARE GOING TO BE BASED ON HISTORIC AND EXISTING USES
<u>2:00:57 PM</u>		THEY ARE RECOGNIZED WHERE IS AS IS
<u>2:01:03 PM</u>		#7 THE ADMINISTRATION OF WATER RIGHTS
<u>2:01:31 PM</u>		IT CONFIRMS THE RESPONSIBILITY OF THE STATE ENGINEER FOR ADMINISTRATION OF WATER RIGHTS AND CONFIRMS THE REVIEW AND AUTHORITY IN THIS COURT
<u>2:02:11 PM</u>		THERE ARE PARALLEL PROVISIONS IN THE SUPPLEMENTAL DECREE
<u>2:02:57 PM</u>		STATE ENGINEER AUTHORITY TO MONITOR NN WATER USES FOR COMPLIANCE
<u>2:03:41 PM</u>		IF THERE IS A SHORTAGE OR DROUGHT WE ARE NOT GOING TO BE ADMINISERING PAPER RIGHTS WE ARE GOING TO BE ADMINISTERING ACTUAL USES
<u>2:04:07 PM</u>		#8 IS THE INSTATE LEASING OF WATER
<u>2:05:44 PM</u>		THERE IS A SPECIFIC PROVISION IN THE SETTLEMENT AGREEMENT WHERE IF DISPITE ALL OF THAT, THEY AGREED ON TOP OF EVERYTHING ELSE THEY WOULD HAVE TO GET CONSENT FROM THE ST OF NM
<u>2:06:37 PM</u>		#9 THERE ARE A BUNCH OF AGREEMENTS RESPECTING WATER RIGHTS OF OTHERS
<u>2:07:11 PM</u>		NEITHER TH US OR THE NN WAS A PARTY TO THE ECHO DITCH DECREE BUT THEY ARE AGREEING UNDER PARA 9-6-1 NO TO CHALLENGE IN THE ADJUDICATION THE ELEMENTS OF WATER RIGHTS RECOGNIZED IN THE ECHO DITCH DECREE
<u>2:07:42 PM</u>		UNDER 9-6-2 THE NN ACCEPTS THE QUANTITIES AND DIVERSION RATES OF POST ECHO DITCH DECREE IRRIGATION RIGHTS
<u>2:08:09 PM</u>		THERE IS A SPECIFIC AGREEMENT NOT TO CHALLENGE THE QUANTIFICATION OF WATER RIGHTS FOR THE HAMMOND IRRIGATION DISTRICT BASED ON A TOTAL WATER RIGHT ACERAGE OF UP TO 3900 ACRES
<u>2:08:20 PM</u>		THE NN HAS AGREED NOT TO CHALLENGE MAJOR WATER RIGHTS OF THE CITY OF FARMINGTON
<u>2:08:34 PM</u>		WE BELIEVE THAT THIS SETTLEMENT TAKES CARE OF A CONDITION IN THE JICARILLA SETTLEMENT
<u>2:09:20 PM</u>		THE US WILL NOT BE GOING OUT AND TRYING TO BUY UP AND RETIRE PRIVATELY OWNED WATER RIGHTS ON THE ANIMAS AND THE SAN JUAN TO SATISFY THAT 1992 CONDITION
<u>2:10:34 PM</u>		#10
<u>2:11:36 PM</u>		RESTS
<u>2:11:44 PM</u>	J	MOVE TO THE NON-SETTLING PARTIES FOR RESPONSE AND THE ARGUMENT ON THE NON-SETTLING PARTIES MOTIONS
<u>2:12:05 PM</u>	?? VICTOR MARSHAL L	THE SETTLING PARTIES HAVE NOT FILED A SUMMARY JUDGMENT MOTION
<u>2:13:13 PM</u>		TALKING ABOUT RULE ON SUMMARY JUDGMENT
<u>2:14:56 PM</u>		ALL THE STUFF THEY FILED IN SUPPORT OF THEIR STATEMENT OF CLAIM IS INADMISSABLE HERESAY

<u>2:15:24 PM</u>	J	WHAT SPECIFICALLY. CAN YOU BREAK IT DOWN
<u>2:16:00 PM</u>	MARSHAL L	ANSWERS
<u>2:17:00 PM</u>		ALL OF THOSE REPORTS WERE PREPARED IN CONTEMPLATION OF LITIGATION
<u>2:17:07 PM</u>		THE COURT ORDERED THEM TO PUT ALL OF THIS STUFF TOGETHER
<u>2:17:54 PM</u>		11-801-D-2 OPPOSING PARTIES STATEMENT
<u>2:18:03 PM</u>		THE RULE SAYS
<u>2:19:01 PM</u>	J	ISNT THE PARTY INCORPORATING IT MAKING A STATEMENT ANEW BY REFERENCING IT
<u>2:19:11 PM</u>	MARSHAL L	IF THEY PUT IT IN A NUMBERED PARA....
<u>2:19:53 PM</u>	J	WHAT ABOUT EXPERT WITNESS, IS IT NOT COMPARABLE TO AN EXPERT WITNESS
<u>2:19:55 PM</u>	MARSHAL L	NO, GIVING REASON....HERESAY STILL APPLIES
<u>2:20:16 PM</u>		WE DO NOT CONCEED THE EXPERTISE OF ANY OF THESE WITNESSES
<u>2:20:29 PM</u>	J	WHAT ABOUT FOR SUMMARY JUDGEMENT AND ONE PARTY COMES UP WITH AN EXPERT WITNESS...
<u>2:21:02 PM</u>	MARSHAL L	NO, GIVES REASONS
<u>2:21:22 PM</u>	J	LETS RESPOND TO MY HYPOTHETICAL
<u>2:22:00 PM</u>	MARSHAL L	THE REPORTS THEMSELVES ARE NOT ADMISSABLE. THE EXPERTS TESTIMONY WHICH MAY RELY IN PART ON THOSE REPORTS MAY BE ADMISSABLE IF IT MEETS STANDARDS
<u>2:23:01 PM</u>		WE NEED TO KNOW WHO ACTUALLY PREPARED EACH ONE OF THESE THINGS
<u>2:23:28 PM</u>		EVERYTHING THEY SAY THAT IS SIGNIFICANT IS CONTROVERTED BY US BY USING MOSTLY THEIR STATEMENTS
<u>2:23:44 PM</u>		CLARIFICATION, I STAND CORRECTED THAT THE PROVISION IN 9.1 FOR THE RELEASE OF 225 CFS DOES NOT OPERATE WHEN NAVAJO RESERVOIR HAS LESS THAN 1 MILLION ACRE FEET STORED AS OF MAY 1ST OF EACH YEAR. I MISSPOKE AND I WANT TO CLARIFY IT
<u>2:25:06 PM</u>		WHEN TIMES ARE REALLY TOUGH LIKE THIS YEAR, THAT PROVISION FOR 225 CFS DOES NOT APPLY
<u>2:27:40 PM</u>		IT IS AGAINST THE LUNA IRRIGATION CASE WHICH SAYS THAT WATER MAY HAVE BEEN STORED BUT ONCE IT IS RELEASED BACK INTO THE RIVER IT IS PUBLIC WATER, MR. OXFORD IS RIGHT
<u>2:27:57 PM</u>		THIS IS AN ATTEMPT BY THE OSE AND THE FEDERAL GOVERNMENT TO TURN A PUBLIC RIVER INTO A PRIVATE PIPELINE
<u>2:28:30 PM</u>		WATER GETS ALL MIXED UP
<u>2:29:00 PM</u>		THE OVERALL QUESTION OF WATER AVAILABILTY
<u>2:29:05 PM</u>		THEY CALIM TO HAVE WORKED VERY CAREFULLY TO TRY TO KEEP THIS WITHIN NM ALLOCATION UNDER THE CO RIVER COMPACTS
<u>2:29:15 PM</u>		REFERRS TO MOTION FOR PARTIAL SUMMARY JUDGMENT NUMBER 3 WHICH IS IN THE NOTEBOOK

<u>2:29:23 PM</u>	?? ARIANNE SINGER	OBJECT, WE HAVE NOT HAD ANY OPPORTUNITY TO REVIEW THIS NOTEBOOK THAT MR MARSHALL PROVIDED JUST TO THE JUDGE
<u>2:29:37 PM</u>	MARSHAL L	I WILL REPRESENT THAT EVERY ONE OF THESE ARE PLEADINGS WHICH HAVE BEEN FILED AND PROVIDED TO YOU
<u>2:29:51 PM</u>		BEGINS READING MOTION
<u>2:29:58 PM</u>	SINGER	ASKS FOR INDEX OF THE NOTEBOOK
<u>2:29:58 PM</u>	MARSHAL L	I DO NOT HAVE AN INDEX WE JUST HAVE TABS
<u>2:30:00 PM</u>	J	IF THERE IS SOMETHING THAT HAS NOT BEEN PROVIDED AND IS NOT READILY ACCESSABLE I WILL NOTE THAT AND WE CAN DEAL WITH IT AT THE TIME BUT SO FAR I HAVE NOT HEARD ANYTHING THAT IS NOT SOMETHING THAT YOU HAVE READILY AVAILABLE AS WELL
<u>2:30:23 PM</u>	MARSHAL L	CONTINUES... MOTION #3
<u>2:30:41 PM</u>	J	THIS IS IN THE COMMUNITY DITCH MOTION FOR PARTIAL SUMMARY JUDGEMENT CONCERNING AVAILABILITY OF WATER AND IMPACTS ON OTHER WATER USERS FILED ON 4-15-13
<u>2:30:58 PM</u>	MARSHAL L	READING FROM MOTION
<u>2:31:36 PM</u>		REFERRING TO EXHIBIT A
<u>2:31:57 PM</u>		THIS IS AN ATTEMPT TO CALCULATE HOW MUCH WATER IS AVAILABLE TO THE STATE OF NM UNDER THE COMPACTS AND UNDER OTHER APPLICABLE LAW BASED ON VARYING STREAM FLOW SCENARIOS
<u>2:32:15 PM</u>	J	WHO COMPILED THIS
<u>2:32:15 PM</u>	MARSHAL L	ANSWERS
<u>2:32:41 PM</u>		REMEMBER THAT WE GET TO USE THEIR STATEMENTS AGAINST THEM
<u>2:35:58 PM</u>		HOW ARE WE GOING TO FIT THIS WITHIN NM SHARE
<u>2:36:32 PM</u>		TALKING ABOUT 1922 COMPACT
<u>2:36:41 PM</u>		THE ONLY GAUGE ON THE CO RIVER WAS WAY DOWN BY UMA AZ
<u>2:36:48 PM</u>		THIS WAS BEFORE ANY OF THE DAMS HAD BEEN MADE SO THEY TOOK SOME WILD GUESSES ABOUT HOW MUCH WATER THERE REALLY WAS IN THE CO RIVER
<u>2:37:47 PM</u>		WHAT ARE THE DEMANDS ON OUR SHARE
<u>2:38:07 PM</u>		GOING OVER NUMBERS
<u>2:39:37 PM</u>		IF YOU READ THROUGH WHAT THEY WANT FOR THE 4 ENDANGERED FISH SPECIES AND DO THE ARITHMETIC IT AMOUNTS TO OVER 700,000 ACRE FEET PER YEAR
<u>2:41:45 PM</u>		GOING OVER NUMBERS
<u>2:42:19 PM</u>		EXHIBIT 6 RE SHARES
<u>2:43:07 PM</u>	J	GET TO WHERE YOU ARE GOING
<u>2:43:13 PM</u>	MARSHAL L	ANSWERS UNRESOLVED NM DEFICIT IS THE PUNCH LINE

<u>2:43:48 PM</u>		THERE IS NO WATER AVAILABLE IN EXTREME HIGH WATER YEARS TO COVER ALL OF THE PEOPLE THAT ARE MAKING DEMANDS AND ACCOMODATE THIS NAVAJO SETTLEMENT
<u>2:44:14 PM</u>	J	IS THAT NOT THE STATE ENGINEERS RESPONSIBILITY TO ADMINISTER ALL OF THE DEMANDS ON THE RIVER
<u>2:44:30 PM</u>	MARSHAL L	THE STATE ENGINEERS JOB IS NOT TO TRY TO GIVE AWAY WATER WHICH BELONGS TO THE PEOPLE OF THIS STATE WHICH IS WHAT HE IS DOING
<u>2:44:50 PM</u>		IT IS NOT HIS WATER
<u>2:44:54 PM</u>	J	I UNDERSTAND WHERE YOU ARE GOING. THERE ARE A NUMBER OF CONCLUSIONS THAT CAN BE DRAWN FROM THIS DOCUMENT
<u>2:45:03 PM</u>		ONE CONCLUSION IS THE STATE ENGINEER HAS A HELL OF A JOB BECAUSE REGARDLESS IF YOU TAKE OUT THE NAVAJO SETTLEMENT AND PUT 0 THERE IT IS STILL OVER APPROPRIATED
<u>2:45:28 PM</u>	MARSHAL L	THAT IS THE FUNNY THING IT IS NOT OVER APPROPRIATED
<u>2:45:34 PM</u>	J	USE A DIFFERENT WORD THEN YOU ARE RIGHT YOU ARE TALKING ABOUT THE DEMANDS, IT IS OVER DEMANDED
<u>2:45:37 PM</u>	MARSHAL L	YES
<u>2:46:59 PM</u>		WE DO NOT KNOW HOW THESE THINGS WOULD BE CALCULATED AND WHO WOULD GET STUCK WITH THEM
<u>2:47:31 PM</u>	J	AN AS WE KNOW THAT DOES NOT MEAN THAT THEY ARE GOING TO GET IT
<u>2:47:32 PM</u>	MARSHAL L	I HOPE NOT
<u>2:48:43 PM</u>		THE STATE ENGINEER DOES HAVE SOME ROLE BUT REMEMBER THE STATE ENGINEER DOES NOT GRANT WATER RIGHTS, CAN NOT GRANT WATER RIGHTS
<u>2:49:36 PM</u>		TURN TO SUPPLEMENTAL EXHIBIT
<u>2:50:07 PM</u>	J	LOOKING AT THE SUPPLEMENTAL EXHIBIT IN SUPPORT OF COMMUNITY DITCH MOTION FOR PARTIAL SUMMARY JUDGMENT #3 CONCERNING AVAILABILITY OF WATER AND IMPACTS ON OTHER WATER USERS FILED 6/7/2013
<u>2:50:28 PM</u>	MARSHAL L	THIS WAS FILED ON FRIDAY
<u>2:51:20 PM</u>		THEY DID A FINAL YEAR TO YEAR PROJECTION
<u>2:53:37 PM</u>		WE DO NOT KNOW THE FUTURE BUT WE KNOW THERE IS NOT ENOUGH WATER
<u>2:54:25 PM</u>		WE BELIEVE THAT WE ARE ENTITLED TO SUMMARY JUDGMENT RIGHT NOW
<u>2:55:52 PM</u>	ROBERT OXFORD	WANT TO ADDRESS THE JICARILLA HYDROLOGIC DETERMINATION
<u>2:57:28 PM</u>		WOULD HAVE BEEN ABLE TO SEL THEIR WATER RIGHT TO THE FEDERAL GOVERNMENT, IF THEY HAD DCONE THAT THE WATER WOULD NOT HAVE BEEN AVAILABLE TO THE NAVAJOS IN THIS SETTLEMENT
<u>2:57:43 PM</u>		MR UTTON STILL HAS NOT ADDRESSED STATUE 72-5-17 WHICH ALLOWS FOR DEMAND THAT THE STATE ENGINEER ACTUALLY SUPPORT EXTRA STORAGE BY OTHERS IN NAVAJO LAKE

<u>2:58:04 PM</u>		THE PROBLEM WITH GETTING STORAGE IN NAVAJO LAKE FOR IRRIGATORS HERE THEY WOULD HAVE TO GIVE UP IN SECTION 9.6 THEY WOULD HAVE TO RECOGNIZE THAT YOU HAVE TO HAVE A CONTRACT WITH THE FEDERAL GOVERNMENT RATHER THAN APPLY TO LUNA
<u>2:58:36 PM</u>		THE PROBLEM I HAVE WITH THE AMOUNTS OF WATER IN THE HOGBACK DITCH WHICH IS A DIRECT FLOW 1868 RIGHT IS THAT THERE IS NEVER BEEN THE EXPERT FOR THE STATE SAY THAT 8839 ACRES HAS EVER BEEN IRRIGATED IN ANY ONE SEASON
<u>2:59:17 PM</u>		IN THIS AGREEMENT IT STATES THAT THIS IS NOT FUTURE WATER IT IS EXISTING WATER, THERE NEVER HAS BEEN A DEMAND FOR THAT MUCH WATER WHICH INCREASES THAT CFS DEMAND BEFORE THIS SETTLEMENT
<u>2:59:49 PM</u>		MR UTTON MENTIONS THE 1968 PRIORITY, HE CALLS IT A WATER RIGHT OUT OF PERMIT 3215
<u>3:00:06 PM</u>		IT HAS BEEN ESTABLISHED THAT THOSE PERMITS WERE NOT GIVEN A WATER RIGHT, THAT WAS WATER RESERVED AND SET BACK SO THAT OTHER APPROPRIATORS WOULD NOT USE IT ALL UP BEFORE THE PROJECTS GOT BUILT. THAT WAS NEVER INTENDED TO BE A WATER RIGHT TO THE FEDERAL GOVERNMENT
<u>3:00:26 PM</u>		MR REYNOLDS WOULD NOT GIVE OUT A WATER RIGHT TO A NON-BENEFICIAL USER
<u>3:00:39 PM</u>	RICHARD TULLY	PRONG #2 IS THE SETTLEMENTS PROVISIONS AND THE PROPOSED DECREES WILL REDUCE OR ELIMINATE IMPACTS ON JR WATER RIGHTS
<u>3:01:12 PM</u>		WE STILL HAVE A BROOKLYN BRIDGE SITUATION
<u>3:01:16 PM</u>		WE HAVE BEEN TOLD THAT WATER RIGHTS COME FROM 3 SOURCES
<u>3:01:27 PM</u>		DRAW COURTS ATTENTION TO THE FILING THAT WE MADE ON BEHALF OF OUR CLIENTS B SQUARE RANCH LLC ET AL, MAY 10TH CONSOLIDATE RESPONSE TO THE MEMORANDUM OF THE NAVAJO NATION AND UNTIED STATES IN SUPPORT OF THE SETTLEMENT MOTION AS WELL AS TO THE ST OF NMS MEMORANDUM IN SUPPORT OF SETTLEMENT MOTION FOR ENTRY OF PARTIAL DECREE
<u>3:01:57 PM</u>		WE HAVE JOINED IN AND FILED SEVERAL MOTIONS CLAIMING THAT THERE HAS BEEN A DENIAL OF DUE PROCESS
<u>3:02:14 PM</u>		THERE HAS NOT BEEN ENOUGH DISCOVERY NOR THE OPPORTUNITY TO COMPLETE DISCOVERY FOR CERTAIN OF THE NON-SETTLING PARTIES TO BE ABLE TO DETERMINE
<u>3:03:01 PM</u>		RULE 56
<u>3:03:26 PM</u>		TALKING ABOUT BOLACK AFFIDAVIT
<u>3:04:08 PM</u>		ASKS COURT TO ALLOW DISCOVERY AND NOT CONTINUE WITH CURRENT SCHEDULING ORDERS
<u>3:04:27 PM</u>	MARSHAL L	THERE IS A RULE 56-F STATEMENT IN MR ROGERS AFFIDAVIT IN PARA 22
<u>3:04:43 PM</u>	J	RECESS UNTIL 3:20
<u>3:26:07 PM</u>		BACK ON RECORD

<u>3:26:12 PM</u>	GARY HORNER	ASKS FOR UPDATE ON TIME
<u>3:26:29 PM</u>	LORESSA	GIVES TIME BALANCES
<u>3:26:38 PM</u>	HORNER	THIS PRONG IS A BIG ONE FOR ME. IT IS ONE OF THE PRIMARY REASONS THAT I AM HERE
<u>3:26:55 PM</u>		I SEE THE NAVAJO SETTLEMENT AS DESTROYING THIS COMMUNITY
<u>3:27:33 PM</u>		IT IS MY ESTIMATE THAT WATER IS CURRENTLY BEING USED DURING THE SUMMER IN THE VALLEY AT THE RATE OF ABOUT 800 CFS, THAT IS DOWN THE SAN JUAN AND THE ANIMAS
<u>3:28:15 PM</u>		THEN THEY WANT 500 CFS FLOWING OUT FOR THE FISH
<u>3:28:33 PM</u>		THE REOPERATION OF NAVAJO DAMN IS GOING TO ALLOW 250 CFS
<u>3:29:01 PM</u>		THEY ARE SETTING UP A SCENARIO TO CUT OFF EVERYBODY IN THE VALLEY
<u>3:29:20 PM</u>		COUPLE THAT WITH THE NAVAJO SETTLEMENT AND YOU GET INTO THE SITUATION WHERE WE WILL MAKE YOU A DEAL
<u>3:30:40 PM</u>		WHEN IT GOES UP FOR BID IT WILL NOT BE THE PEOPLE AROUND HERE THAT GET TO USE IT
<u>3:31:11 PM</u>		TALKING ABOUT LEASING OUT OF STATE
<u>3:32:06 PM</u>		I HAVE A LOT OF TROUBLE RELYING ON THE STATE ENGINEER TO ACTUALLY PROTECT US
<u>3:32:19 PM</u>		THE STATE ENGINEER HAS THE RESPONSIBILITY TO PROTECT EVERYBODY AND THEY ARE NOT DOING IT THEY ARE SITTING OVER THERE AT THAT TABLE
<u>3:32:48 PM</u>		HAVE NOT SEEN THEM USE THE TERM ECONOMIC BENEFIT WITH REGARD TO THIS NAVAJO SETTLEMENT
<u>3:33:21 PM</u>		AWRM REGULATIONS
<u>3:37:04 PM</u>		IN EXHIBIT D HE PUT IN HIS ANALYSIS ON HOW HE GOT TO THE POINT THAT HE THOUGHT THIS WAS A GOOD DEAL
<u>3:38:44 PM</u>		WHEN YOU LOOK AT HIS ANALYSIS HE DID NOT CONSIDER AT ALL THE REOPERATION OF NAVAJO DAMN, HE DID CONSIDER DIRECT FLOW
<u>3:39:18 PM</u>		HE NEVER SHOWED HOW MUCH WATER WAS BEING RELEASED FROM NAVAJO DAMN IN HIS STUDY AND NEVER SHOWED HOW MUCH WATER WAS GOING INTO THE RESERVOIR
<u>3:39:34 PM</u>		HIS STUDY WAS A MODEL NOT ACTUAL DATA
<u>3:40:52 PM</u>		WE NEED TO GO TO TRIAL AND HAVE HIM TESTIFY AND BE ABLE TO CROSS EXAMINE
<u>3:41:20 PM</u>		THE SETTLING PARTIES WANT TO HOLD OUR FEET TO THE FIRE WITH REGARD TO THE SUMMARY JUDGMENT RULES
<u>3:41:54 PM</u>		THEY DO NOT HAVE A MOTION FOR SUMMARY JUDGMENT
<u>3:41:58 PM</u>		WE HAVE GOT COMPLETELY DIFFERENT SETS OF RULES BEING APPLIED TO THE DIFFERENT PARTIES IN THIS CASE AND IT IS INAPPROPRIATE
<u>3:42:25 PM</u>		WE ARE DISPUTING THE AFFIDAVITS AND THEY SHOULD NOT BE CONSIDERED HERE. IF THEY ARE GOING TO BE CONSIDERED IT NEEDS TO BE AT TRIAL

<u>3:43:03 PM</u>	J	HOW COME YOU DID NOT TAKE MR WHIPPLES DEPOSITION
<u>3:43:05 PM</u>	HORNER	#1 I CAN NOT AFFORD IT, I DID NOT TAKE ANY DEPOSITIONS. THE OTHER THING IS WHAT GOOD IS A DEPOSITION
<u>3:43:19 PM</u>		THIS IS ONE OF THE PROBLEMS THAT I HAVE WITH YOUR PRESPECTIVE OF LIMITED DISCOVERY AND INTERROGATORIES AND REQUESTS FOR PRODUCTION AND EXPECTING PEOPLE TO GET INTO THE GREATER DETAIL IN THE DEPOSITIONS
<u>3:43:52 PM</u>		CONTINUES TALKING ABOUT DEPOSITIONS
<u>3:44:04 PM</u>		NOBODY ELSE CAN AFFORD THEM AND THEY DO NOT DO WHAT YOU THINK THAT THEY ARE GOING TO DO
<u>3:45:07 PM</u>		I BELIEVE THAT MR UTTON WAS TALKING ABOUT ONE OF THE COOL THINGS ABOUT THE SETTLEMENT WAS THAT THE NAVAJO NATION HAS AGREED NOT TO CHALLENGE THE ECHO DITCH DECREE
<u>3:45:42 PM</u>		PEOPLE ARE CONCERNED THAT ABOUT HALF OF THE WATER THAT WAS ADJUDICATED IN 1948 IS NOT CURRENTLY BEING USED
<u>3:45:58 PM</u>		THERE HAS BEEN A LOT OF CHANGES OUT THERE, GIVING EXAMPLES
<u>3:46:26 PM</u>		THE NAVAJO NATION IS RESERVING THE RIGHT TO CHALLENGE ANYBODIES WATER RIGHT BASED ON THE FACT THAT THEY ARE NOT CURRENTLY USING THE WATER
<u>3:46:42 PM</u>		THE NOTION THAT MR UTTON WOULD SELL YOU THAT THE NN HAS AGREED NOT TO CHALLENGE THE ECHO DECREE IS NOT AT ALL THE TRUTH
<u>3:47:12 PM</u>		THERE WAS SOME TALKING ABOUT THE JICARILLA DECREE
<u>3:47:51 PM</u>		THE HYDROLOGIC DETERMINATION IS REQUIRED BY THE 1962 ACT THAT SAYS CONGRESS HAS TO APPROVE ANY OF THESE NEW CONTRACTS
<u>3:48:17 PM</u>		THE 1988 HYDROLOGIC DETERMINATION SHOWED IN 2000 NM WAS USING 39,500 ACRE FEET THAN THEIR SHARE
<u>3:48:32 PM</u>		IN 2020 NM WOULD BE USING 59,500 ACRE FEET MORE THAN THEIR SHARE
<u>3:48:39 PM</u>		THEY COULD NOT GET THE JICARILLA DEAL DONE BASED ON THAT DECREE WITHOUT DOING SOMETHING ELSE
<u>3:49:27 PM</u>		WHEN THE SAN JUAN WATER COMMISSION GOT CAUGHT IN THIS STUFF TOO AND THEY CUT THE ANIMAS LA PLATA PROJECT IN HALF
<u>3:51:10 PM</u>		THE BUREAU IS WACKING US THERE ON A MISINTERPRETATION OF THE COLORADO RIVER COMPACT
<u>3:51:46 PM</u>		IT IS ALL ABOUT MOVING THE WATER THROUGH HER WITHOUT USING IT
<u>3:52:25 PM</u>		THE UNITED STATES DOES NOT HAVE ANY WATER RIGHTS AT ALL BECAUSE THE PERMITS ARE NOT ANY GOOD
<u>3:52:37 PM</u>		THE UNITED STATES CAN NOT GIVE WATER RIGHTS TO THE NAVAJO NATION IF THE US DOES NOT HAVE THE WATER RIGHTS THEMSELVES
<u>3:53:31 PM</u>		I HAVE DISPUTED THE AFFIDAVITS

<u>3:54:03 PM</u>		THEY HAVE GONE OUT AND RECRUITED THE EXPERTS TO DO THE AFFIDAVITS THAT PARROT THEIR OWN ARGUMENTS
<u>3:55:03 PM</u>	J	THE SETTLING PARTIES HAVE ARGUED THAT ONE OF THE FACTORS IS THE SUBORDINATION OF THE PRIORITY DATE, WHAT IS YOUR POSITION ON THAT
<u>3:55:22 PM</u>	HORNER	IT IS NOTHING. EXPLAINS
<u>3:55:57 PM</u>		STORAGE WATER TRUMPHS EVEN THEIR 1868 PRIORITY DATE. STORAGE WATER BECOMES BETTER THAN ANYTHING ELSE
<u>3:56:46 PM</u>	J	TURN BACK TO THE SETTLING PARTIES WITH REGARD TO THEIR REPLY
<u>3:56:56 PM</u>	??? HERB BECKER	THE JICARILLA HAD COMMENTS IN SUPPORT OF THE SETTLING PARTIES PRONG #2
<u>3:56:58 PM</u>	J	DID I MISS YOU BEFORE MR BECKER, I AM SORRY.. MS. TYLOR I AM SORRY I DID NOT RECOGNIZE YOU BEFORE
<u>3:57:07 PM</u>	???	I DO NOT HAVE MUCH TO ADD IN TERMS OF THE SECOND PRONG
<u>3:57:32 PM</u>		I DO WANT TO EXPRESS THAT THE JICARILL DOES SUPPORT THAT THE SETTLING PARTIES HAVE DEMONSTRATED THAT THE PROVISIONS CONTAINED IN THE SETTLEMENT AGREEMENT AND THE PROPOSED DECREES WILL REDUCE OR ELIMINATE THE IMPACTS ON JR WATER RIGHTS. EXPLAINS
<u>3:58:25 PM</u>		PASSES
<u>3:58:33 PM</u>	??? MARIA O'BRIEN	THERE HAS BEEN A LOT OF DISCUSSION OF DIRECT FLOW AND DIRECT FLOW USERS. I THINK IT IS IMPORTANT TO LET THE COURT KNOW THAT BHP NAVAJO COAL CO IS ONE OF THE LARGEST IF NOT THE LARGEST DIRECT FLOW USER IN THE SJ BASIN
<u>3:59:18 PM</u>		WE SUPPORT THE SETTLEMENT IN LARGE PART BECAUSE OF THE SUGNIFICANT PROTECTIONS GIVEN TO JR DIRECT FLOW USERS THAT WOULD NOT OTHERWISE BE PROTECTED
<u>3:59:51 PM</u>		THE FACT OF THE MATTER IS THAT THE NN DOES HAVE A WATER RIGHT AND IT IS EITHER GOING TO BE QUANTIFIED IN THE CONTEXT OF THE SETTLEMENT OR IT IS GOING TO BE QUANTIFIED PURSUANT TO LITIGATION
<u>4:00:02 PM</u>		THEIR RIGHTS ARE GOVERNED BY FEDERAL LAW
<u>4:00:09 PM</u>		WHAT WE ARE ALL STRUGGLING WITH IS THE INTERFACE OF THE NN RIGHT WITH STATE BASED EXISTING WATER RIGHTS
<u>4:01:00 PM</u>		THERE WILL BE A RIGHT OF THE NN RECOGNIZED IN SOME FORM AT SOME POINT
<u>4:01:25 PM</u>		DO I THINK THAT THEY ARE PERFECT, ABSOLUTELY NOT
<u>4:02:35 PM</u>		THE PROTECTIONS CLEARLY REDUCE THE IMPACT OF QUANTIFICATION OF THE NN CLAIM
<u>4:02:47 PM</u>		IN MY MIND THERE COULD BE NO SETTLEMENT THAT WOULD ELIMINATE IMPACTS ON ALL EXISTING WATER USERS
<u>4:02:51 PM</u>		THERE IS ALWAYS GOING TO BE SHORTAGES AND DROUGHT

<u>4:02:59 PM</u>		NO SETTLEMENT CAN COME IN AND ELIMINATE THE EFFECTS OF SHORTAGES AND DROUGHT
<u>4:03:17 PM</u>		I BELIEVE THAT THE COURT SHOULD APPROVE THE PARTIAL FINAL DECREE PURSUANT TO THE SETTLING PARTIES MOTION
<u>4:03:36 PM</u>	J	WITH RESPECT TO YOUR CLIENTS WHAT IS YOUR PRECEPTION OF THE SUBORDINATION OF THE PRIORITY DATE
<u>4:03:40 PM</u>	O'BRIEN	WE THINK THAT IS SUGNIFICANT
<u>4:04:07 PM</u>		HE IS ASSUMING THAT THE ONLY WATER AVAILABLE WOULD BE RELEASE OF STORED WATER
<u>4:04:12 PM</u>		I DISAGREE WITH THE ANALYSIS OF THE NON-SETTLING PARTIES THAT RELEASE OF STORED WATER CAN BE TAKEN BY ANYBODY EVEN THOSE WHO DO NOT HAVE A RIGHT TO STORAGE
<u>4:04:40 PM</u>		THE STATE ENGINEER IS GOING TO HAVE A JOB SORTING OUT SOME OF THESE ISSUES IN THE CONTEXT OF ADMINISTRATION BUT THE PROPOSAL IN THE FORM OF THE SETTLEMENT THAT THE SETTLING PARTIES HAVE PUT FORWARD HAVE PROVIDED PROTECTIONS FOR THE STATE ENGINEER TO ADMINISTER
<u>4:06:18 PM</u>	J	MR OXFORD IT IS NOT YOUR GROUPS TIME AT THE MOMENT
<u>4:06:26 PM</u>		TURN TO THE SETTLING PARTIES FOR THEIR REPLY WITH RESPECT TO THE PRONG 2 MOTION
<u>4:06:29 PM</u>	STANLEY POLLACK	THE NON-SETTLING PARTIES HAVE ATTEMPTED TO TURN THIS ADJUDICATION INTO AN ADJUDICATION OF THE WATER SUPPLY AVAILABLE TO THE WATER USERS
<u>4:06:45 PM</u>		WATER SUPPLY IS NOT A RELEVANT FACTOR. THE MOTION FOR SUMMARY JUDGMENT BASED ON AVAILABILITY OF WATER HAS NOTHING TO DO WITH THE 4 PRONGS THAT THE COURT HAS ARTICULATED. IT HAS NOTHING TO DO WITH THE SETTLEMENT OR THE ADJUDICATION
<u>4:07:04 PM</u>		IF WE DO NOT HAVE THE SETTLEMENT YOUR HONOR WILL NOT BE ADJUDICATING WATER BASED ON WATER SUPPLY
<u>4:07:41 PM</u>		ALL OF THE ARGUMENT RELATIVE TO AN INADEQUATE WATER SUPPLY HAS NOTHING TO DO WITH EITHER THE ADJUDICATION OR THE SETTLEMENT
<u>4:10:09 PM</u>		THERE IS NO QUESTION THAT YOU ARE ADDING WATER TO THE SYSTEM
<u>4:10:47 PM</u>		THE NN ONLY HAS APPROX 67,000 ACRE FEET OF DIVERSION RIGHT IN THIS SETTLEMENT FOR THE HOGBACK AND FRUITLAND PROJECTS. ALL THE REST OF THE WATER COMES OUT OF THE RESERVOIR SUPPLY
<u>4:11:21 PM</u>		WE ARE NOT OFFSETTING IT FOR THE ENTIRE YEAR, EXPLAINS HOW THE SYSTEM WORKS
<u>4:11:39 PM</u>		SHORTAGES TYPICALLY OCCUR IN THE LATE SUMMER MONTHS
<u>4:12:03 PM</u>		WE ARE ADDING WATER TO THE RIVER DURING THE MOST CRITICAL TIME OF SHORTAGE
<u>4:12:44 PM</u>		MR MARSHALL SAYS THAT WE ARE GIVING ADDITIONAL WATER AWAY TO THE CITY OF ALBUQUERQUE.... THAT IS NOT THE FACT

<u>4:13:01 PM</u>		THE SAN JUAN CHAMA PROJECT WILL CONTINUE TO OPERATE AS IT ALWAYS HAS. EXPLAINS WHAT THE SETTLEMENT DOES FOR THIS PROJECT
<u>4:13:46 PM</u>		WITH RESPECT TO THE PUNCHLINE THAT THERE IS NO WATER AVAILABLE, THAT IS NOT THE CASE
<u>4:14:15 PM</u>		ADDRESSING MR OXFORDS COMMENTS REGARDING 8.2
<u>4:15:00 PM</u>		WHEN WE NEGOTIATED WITH THE STATE THEY SAID THAT THERE IS NOT A LOT OF ADDITIONAL WATER AVAILABLE SO YOU ARE GOING TO HAVE TO LIVE WITHIN THAT APPORTIONMENT
<u>4:15:10 PM</u>		ONE OF THE QUID PRO QUOS FOR NAVAJO AGREEING TO LIVE WITHIN THAT APPORTIONMENT WAS IF THE APPORTIONMENT INCREASES, NAVAJO WOULD GET SOME OF THE BENEFIT OF THAT INCREASE
<u>4:15:22 PM</u>		IT HAS NOTHTING TO DO WITH THE AMOUNT OF WATER ADJUDICATED IN THE ECHO DITCH DECREE
<u>4:16:31 PM</u>		WHAT WE DID IN THE SETTLEMENT WAS WE REDUCED THE MAXIMUM ALLOWABLE DIVERSION BY THE HOGBACK AND FRUITLAND PROJECTS TO 321 CFS
<u>4:17:02 PM</u>		THE CALL CAN NOT GO FOR MORE THAN 321 CFS
<u>4:17:17 PM</u>		TALKING ABOUT DR LEEPER AFFIDAVIT
<u>4:17:49 PM</u>		BOTTOM LINE IS THAT THE NN AND THE SETTLING PARTIES HAVE ESTABLISHED A PRIMA FACIA CASE
<u>4:18:14 PM</u>		WE ARE REDUCING THE DRAW ON THAT SYSTEM
<u>4:18:52 PM</u>		THE FACT THAT WE MAY RESERVE THE RIGHT TO LATER COME BACK AND SAY SOME OF THIS WATER HAS BEEN HISTORICALLY FORFEITED OR ABANDONED DOES NOT MEAN THAT WE HAVE NOT GIVEN UP A MAJOR CONSESSION
<u>4:19:04 PM</u>		IF THIS CASE GOES TO TRIAL IF THE NN'S WATER RIGHTS ARE ULTIMATELY RESOLVED THROUGH LITIGATION THERE WILL BE NO WAIVER
<u>4:19:53 PM</u>	?? UTTON	PROTECTIONS COMPARED TO WHAT I THINK THIS ALSO GOES TO THE COMMENT THAT MR HORNER MADE THAT DISCUSSING THE ALTERNATIVE WATER THERE ARE NO CALLS TODAY
<u>4:20:22 PM</u>		SOME PEOPLE MAKE THE MISTAKE THAT THEY COMPARE WHAT THE SETTLEMENT IS PROPOSING WITH WHAT IS OCCURING TODAY
<u>4:20:56 PM</u>		THE WATER RIGHTS ARE GOING TO BE ADJUDICTED IN THE SAN JUAN BASIN AND THEN THEY ARE GOING TO BE ADMINISTERED
<u>4:21:01 PM</u>		AT THE END OF THE DAY THERE WILL BE A WATER MASTER, THERE WILL BE METERS, THERE WILL BE PRIORITY ADMINISTRATION AND SO IT IS GOING TO BE DIFFERENT
<u>4:22:27 PM</u>		WITHOUT SETTLEMENT THEY ARE NOT BOUND BY THE ECHO DITCH DECREE
<u>4:22:54 PM</u>		IF SOMEONE HAS ABANDONED OR FORFEITED THEIR WATER RIGHT BENEFICIAL USE IS A MEASURE OF A WATER RIGHT AND IF YOU ARE NOT GOING TO USE YOUR WATER RIGHT SINCE 1948 THEN IT IS NOT GOING TO BE RECOGNIZED

<u>4:23:14 PM</u>		THE NAVAJO NATION EVEN THOUGH THEY WERE NOT A PARTY TO THAT 1948 AND THE US THEY ARE SAYING THEY WILL BE BOUND BY IT AS IT WAS ENTERED
<u>4:23:33 PM</u>		THE CHART THAT MR MARSHALL HAS PROVIDED, WE DISAGREE WITH THAT CHART, IT IS HUNDRES OF THOUSANDS OF ACRE-FEET OFF BASE
<u>4:24:16 PM</u>		PASSES
<u>4:24:16 PM</u>	J	I HAVE A QUESTION ABOUT THE SUBBORDINATION OF THE PRIORITY DATE AND I ASKED IT BEFORE ABOUT THE RESEVOIR AND STORAGE RIGHTS THAT WE ARE TALKING ABOUT
<u>4:24:35 PM</u>		AS I UNDERSTOOD WHAT YOU TOLD ME THAT THERE WERE NO STORAGE RIGHTS THAT WERE SENIOR TO 1955
<u>4:24:46 PM</u>	UTTON	THAT IS MY BELIEF
<u>4:24:48 PM</u>	J	CAN YOU EXPLAIN TO ME THEN THE INTERACTION WITH THE DIRECT FLOW USERS SUCH THAT SUBORDINATION OF PRIORITY DATES IS GOING TO IMPACT
<u>4:25:07 PM</u>	UTTON	EXPLAINS
<u>4:28:35 PM</u>	J	TRIES TO CLAIFY QUESTION
<u>4:28:44 PM</u>	UTTON	CONTINUES TO EXPLAIN
<u>4:29:24 PM</u>		SO IF I HAVE A 1948 PRIORITY FOR DIRECT USE CAN I THEN TRUMPH THE NN 1955 STORAGE PRIORITY
<u>4:29:37 PM</u>	UTTON	YES
<u>4:29:39 PM</u>	J	THAT ANSWERS THE QUESTION
<u>4:29:42 PM</u>	UTTON	WATER HAS TO GO DOWN THE RIVER TO YOU FIRST ONLY WHEN THERE IS AN AMOUNT ABOVE THAT CAN THERE BE STORAGE BUT ONCE IMPOUNDED THAT IS NO LONGER PUBLIC WATERS THAT YOU CAN CALL ON. YOU DID NOT BUILD THAT DAMN
<u>4:31:35 PM</u>	GEHLERT	LET ME TRY TO GIVE YOU A MORE DIRECT ANSWER TO THE QUESTION OF SUBORDINATION
<u>4:31:38 PM</u>		THE US HAS PREPARED A STATEMENT OF CLAIM THAT CLAIMS OVER 900,000 ACRE-FEET OF DIVERSION FROM THE SAN JUAN RIVER FOR THE NN
<u>4:31:47 PM</u>		THEY ARE ASSERTING A TIME IN MEMORIAL PRIORITY
<u>4:31:51 PM</u>		MR UTTON TOLD YOU BEFORE IF WE DO NOT HAVE A TIME IN MEMORIAL PRIORITY COULD UNDER THE LEWIS CASE CLAIM A 1849 PRIORITY OR AT THE VERY LATEST A 1868 PRIORITY BASED ON THE DATE OF THE TREATY
<u>4:32:08 PM</u>		WHAT WE ARE TALKING ABOUT IS A CLAIM IN LITIGATION TO DIRECT FLOW RIGHT TO THE RIVER
<u>4:32:41 PM</u>	J	MY QUESTION WAS REALLY THE RELATIONSHIP BETWEEN THE DIRECT FLOW AND THE STORAGE AND IF YOU HAVE A STORAGE PRIORITY DATE OF 1955 BUT NOBODY IS SENIOR TO THAT THEN WHAT DOES IT MATTER IF IT IS A 1868 STORAGE RIGHT IF IT IS AN 1868 STORAGE RIGHT IF IT IS ONLY CONFINED TO STORAGE
<u>4:33:02 PM</u>		THE ANSWER IS AS I UNDERSTAND IT AND CORRECT ME IF I AN WRONG THAT THE 1868 RIGHT WAS NOT A STORAGE RIGHT BUT IT WAS A DIRECT FLOW RIGHT
<u>4:33:36 PM</u>	??	FINISHES JUDGES STATEMENT
<u>4:33:57 PM</u>		THERE ARE NO DOWN STREAM SENIOR DIRECT FLOW DIVERTERS MAKING A DEMAND ON THAT SUPPLY

<u>4:34:14 PM</u>	GEHLERT	WANTED TO GIVE YOU AN ANALOGY TO THINK ABOUT IN TERMS OF THE SUBORDINATION ISSUE
<u>4:34:26 PM</u>		THINK OF THE PRIORITY SYSTEM AS ESTABLISHING A LINE. EVERY WATER USER GETS IN A LINE BASED ON THEIR PRIORITY DATE. 1ST PERSON IN THE LINE GETS ALL OF THE WATER THAT THEY WANT, ALL OF THE WATER THAT THEY ARE ENTITLED TO AND SO UNTIL YOU RUN OUT OF WATER
<u>4:34:45 PM</u>		UNDER THIS SYSTEM YOU RAISE THE POSSIBILITY OF A 1948 APPROPRIATOR
<u>4:34:49 PM</u>		WHAT IS THE BENEFIT APPROPRIATOR? THE NN HAS SUBORDINATED THEIR WATER RIGHT TO 1955, THEY HAVE TAKEN A POSITION BEHIND THAT PERSON
<u>4:35:31 PM</u>	J	MY QUESTION REALLY RELATED TO AND YOU ANSWERED IT WAS WHETHER THERE WAS A STORAGE RIGHT MADE ANY DIFFERENCE IN THE EQUATION
<u>4:35:58 PM</u>		I NEED TO GO BACK FOR THE PROPONENTS OF THE SETTLEMENT AGREEMENT
<u>4:36:00 PM</u>	???	NOTHING FURTHER OU HONOR
<u>4:36:07 PM</u>	O'BRIEN	WE HAVE NOTHING FURTHER BUT APPRECIATE THE FURTHER EXPLANATION ON THIS ISSUE
<u>4:36:18 PM</u>	J	RETURN FOR REPLIES TO THE NON-SETTLING PARTIES AND IF YOUR TAKE IS DIFFERENT WITH RESPECT TO THAT QUESTION OF THE IMPACT OF THE SUBORDINATION EFFECTING STORAGE RIGHTS AS THEY EFFECT DIRECT FLOW I WOULD BE INTERESTED IN YOUR PRESPECTIVE AS WELL
<u>4:36:48 PM</u>	MARSHAL L	WITH RESPECT TO THE CHART THAT I PREPARED ABOUT WATER AVAILABILITIES UNDER THE COMPACTS THAT IS A PRO FORMA CHART AND IT VERY SPECIFICALLY SAYS THAT WHEN YOU LOOK AT ALL OF THESE DEMANDS YOU END UP WITH AND UNRESOLVED DEFICIT. I DO NOT KNOW HOW THAT DEFICIT WOULD BE RESOLVED
<u>4:37:15 PM</u>	J	I UNDERSTAND WHERE YOU ARE GOING WITH THAT CHART
<u>4:37:25 PM</u>	MARSHAL L	JUST NOTE THAT THERE IS NO PLACE IN THERE FOR THE EXISTING USERS SO THE BOTTOM LINE IS JUDGE TAKE THOSE PRO FORMA NUMBERS, PUT IN SOMETHING FOR THE EXISTING USERS, AND TRY TO PUSH AND PULL THEM AROUND AND SEE IF THEY WORK
<u>4:37:47 PM</u>		ONE THING THAT YOU CAN SAY IS THAT IT IS SUCCEPTABLE TO INTERPRETATION
<u>4:37:55 PM</u>	J	THERE ARE A NUMBER OF INTERPRETATIONS TO THAT CHART
<u>4:37:59 PM</u>	MARSHAL L	ALL I AM SAYING IS THAT WE DO NOT KNOW AND THAT IS THE PROBLEM, THE PIECES OF THE PUZZLE ARE NOT HERE
<u>4:38:17 PM</u>		I WANT TO MAKE IT CLEAR THAT I DID NOT SAY THAT THERE WOULD NEVER BE ANY WATER. I AM JUST SAYING IT SURE LOOKS LIKE THERE IS SOME UNRESOLVE DEFICIT UNDER MOST SCENARIOS UNLESS WE HAVE A BUMPER WET YEAR

<u>4:39:12 PM</u>		IN FACT WHEN MR DE ANTONIO WAS UP AT ONE OF THESE COURT SPONSORED MEETINGS SAYING THIS IS A GREAT DEAL BECAUSE IT PROHIBITS THE EXPORT OF WATER, MR POLLACK WAS SAYING THE OPPOSITE, THAT THEY HAVE THE RIGHT TO EXPORT THE WATER
<u>4:40:07 PM</u>	OXFORD	MR POLLACK CHALLENGED WHETHER THE HOGBACK DITCH WAS ENTITLED TO 321 CFS OR NOT
<u>4:40:25 PM</u>		HE MADE THE STATEMENT THAT IN PRIOR YEARS THE HOGBACK AND THE FRUITLAND HAD DIVERTED 500 OR MORE THAN THAT CFS
<u>4:40:37 PM</u>		I DO NOT KNOW OF ANY DOCUMENTATION BUT THOSE DITCHES ARE NOT CAPABLE OF CARRYING THAT AMOUNT
<u>4:40:52 PM</u>		ADDRESSING MS. O'BRIEN CLIENTS WATER RIGHTS
<u>4:41:41 PM</u>	TULLY	NEED TO MAKE SURE I AM CLEAR OF THE POSITION OF THE SETTLING PARTIES WHEN WE JUST TALKED ABOUT THIS PROHIBITION ON THE EXPORTING OF WATER
<u>4:43:12 PM</u>		STILL NOT SURE ABOUT THE SOVEREIGN IMMUNITY AND WHETHER OR NOT THE NN HAS WAIVED THAT SO THAT SOME WHERE DOWN THE ROAD UNDER CERTAIN CIRCUMSTANCES THAT IN THE EVENT THIS COURT HAS JURISDICTIONOR DOES NOT THEN WHERE DO FOR ANY DAMAGES THAT MIGHT BE ASSOCIATED WITH NW WATER LEAVING NM
<u>4:43:43 PM</u>	J	WOULD THERE BE A CAUSE OF ACTION
<u>4:44:43 PM</u>	TULLY	ANSWER
<u>4:44:48 PM</u>	J	I EXPECT THAT THERE IS MORE TO BE HEARD ABOUT THE EXPERTING QUESTION
<u>4:45:02 PM</u>	GARY HORNER	REGARDING COMMENT THAT IF PEOPLE DO NOT USE THEIR WATER RIGHT THEY WOULD LOSE THEM
<u>4:45:56 PM</u>		THAT IS NOT WHAT IS HAPPENING TO THE NAVAJO NATION
<u>4:46:10 PM</u>		IN ACCORDANCE TO THE SETTLEMENT IT WILL NEVER BE SUBJECT TO LOSS FOR NONE USE
<u>4:47:44 PM</u>		TALKING ABOUT THE CONCEPT OF BENEFITS OF WHAT THE DAMN IS DOING
<u>4:48:13 PM</u>		CAN ONLY STORE WATER IN THE DAMN WHEN THERE IS NMORE WATER COMING IN THEN THE PEOPLE DOWN BELOW NEED TO USE
<u>4:48:38 PM</u>		WHEN YOU ARE PLAYING BY THE DIRECT FLOW RULES WE ARE RELEASEING THE WATER FROM THE DAMN AND MR SR WATER RIGHTS WHO IS A DIRECT FLOW USER YOU CAN NOT USE IT. THE GUY THAT HAS THE CONTRACT FOR THE STORAGE GETS TO USE THE WATER
<u>4:49:00 PM</u>		THE GUY WITH THE CONTRACT MIGHT HAVE COME ALONG WITH THE 1955 56 FILINGS WITH REGARD TO THE NAVAJO DAMN. HE MAY COME ALONG AND BE A JR USER BUT IF HE GETS A CONTRACT THEN THEY CAN RELEASE WATER AND PROTECT IT PASSED THE SR WATER RIGHTS USERS AND THEY DO NOT GET TO USE IT BUT THE JR WATER RIGHTS GUY WITH THE CONTRACT DOES
<u>4:49:40 PM</u>		SO THE JR USER GETS THE WATER RATHER THAN THE SR USER PER THESE DIRECT FLOW RULES
<u>4:49:54 PM</u>		THERE IS SOME LIGITIMATE BASIS FOR THAT

4:50:05 PM		PURSUANT TO THE RATON CASE YOU CAN NOT SAY THAT I AM NOT GOING TO RELEASE THIS WATER BECAUSE I AM GOING TO KEEP IT FOR YEARS INTO THE FUTURE
4:50:42 PM		YOU HAVE TO RELEASE IT TO THE DOWN STREAM GUY
4:50:59 PM		THEY WANT TO IGNORE THE LAW IN NM
4:51:42 PM		TALKING ABOUT NIIP PRIORITY DATE AND CONTRACT
4:52:41 PM		PASSES
4:52:48 PM	J	WE HAVE NOW FINISHED THE SECOND PRONG
4:53:09 PM		ASKS CLERK FOR TIME TOTALS
4:53:10 PM	LORESSA	GIVES TIME
4:53:31 PM	J	RECESS FOR THE DAY WILL RECONVEINE TOMORROW AT 8:30 AM
4:53:43 PM		RECESS