

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

Date

6/12/2013 **Location** 11THDIST-396925 ch1

Time	Speaker	Note
8:32:21 AM	J	BACK ON RECORD JUDGE CALLS CASE
8:32:59 AM		NOTES MR RANKIN IS NOT PRESENT
8:33:22 AM		AMY CHANGES IN APPEARANCES FORM YESTERDAY, WELCOMES MR BOLLACK
8:33:31 AM		HOUSEKEEPING
8:33:38 AM		ADDRESSING RECORDING IN COURTROOM AND PICTURES WITH FLASHES
8:34:14 AM		ADDRESSING TIME LEFT
8:34:26 AM		ASKS COUNSEL TO BE TERSE IN ARGUMENTS
8:34:37 AM		ASKS CLERK TO REPEAT TIME BALANCES
8:34:40 AM	CLERK	GIVES BALANCES
8:35:12 AM	J	THAT IS MORE THAN 7.5 HOURS WHICH IS GONG TO BE VERY DIFFICULT. I WOULD LIKE TO ALLOT YOU AS MUCH ARGUMENT TIME AS POSSIBLE BUT I DO NOT THINK WE ARE GOING TO MAKE 6.5 HOURS. ASK FOR COOPERATION TO TIGHTEN UP ARGUMENTS
8:35:32 AM	MARSHA LL	HOUSEKEEPING
8:35:37 AM		YESTERDAY MR OXFORD REFERRED TO SECTION 72-5-17 AND THERE IS ONE SENTENCE THAT I WANTED TO READ INTO RECORD SO THAT EVERYONE KNOW WHAT WE ARE TALKING ABOUT
8:35:48 AM	J	READ IT FROM THERE
8:35:51 AM	MARSHA LL	READS
8:36:29 AM	JOLENE MCCAILE B	ON HEELS OF MR RANKINS PRESENTATION BEFORE YESTERDAY ABOUT THE SETTLEMENT WITH CONOCO PHILLIPS AND THEIR WITHDRAWAL FROM THIS MATTER THE SAN JUAN WATER COMMISSION (IN-AUDIBLE)
8:37:11 AM		THE PARTIES ARE WORKING TOWARD THAT GOAL BUT I WANTED TO LET YOU KNOW THAT ALL OF THE PROVISIONS HAVE NOT YET BEEN IMPLEMENTED AND THERE IS A POSSIBILITY THAT THE WATER COMMISSION WILL ONCE AGAIN BECOME AN ACTIVE PARTICIPANT IN THIS MATTER. AT THIS TIME THE COMMISSION AND THE STATE ARE STILL MOVING FORWARD FINALIZING
8:37:27 AM	RISLEY	THE LA PLATA ACEQUIA GROUP "ME TOO" WE HAVE A SIMILAR SETTLEMENT PROPOSAL
8:37:52 AM	?? PRISCILLA SHANNON	WOULD LIKE TO ADDRESS BRIEFLY IN THE REPLY TO PRONG 2 ON BEHALF OF MY CLIENT MR STEPHEN MCCARTY
8:38:13 AM		CONCERNING WHETHER
8:38:22 AM	?? GUARINO	OBJECTION WE HAD HALF A DAY YESTERDAY ON THIS
8:38:39 AM	J	NOTE YOUR OBJECTION MR GUARINO, WILL HEAR YOU BRIEFLY MRS. SHANNON

<u>8:38:43 AM</u>	SHANNON	CONTINUES
<u>8:38:57 AM</u>		EXPLAINS WHY CLIENT HIRED HER
<u>8:39:41 AM</u>		TALKING ABOUT WHERE NEW WATER IS COMING FROM
<u>8:40:12 AM</u>		THE PEOPLE ARE THE STEP CHILD AND CAN NOT AFFORD TO FIGHT THE UNITED STATES, THE STATE OF NEW MEXICO AND THE TRIBE
<u>8:40:20 AM</u>	J	LETS PROCEED TO PRONG 3 AND BEGIN WITH THE SETTling PARTIES PRESENTING THEIR MOTIONS
<u>8:40:45 AM</u>	POLLACK	3RD PRONG DERIVES FROM THE GILA 7 DECISION OF THE ARIZONA SUPREME COURT
<u>8:41:25 AM</u>		EXPLAINS WHAT COURT DECIDED
<u>8:41:55 AM</u>		STANDARD IS NOT UNIVERSAL STANDARD IN THE AZ ADJUDICATIONS
<u>8:42:05 AM</u>	J	WHY WAS IT REJECTED
<u>8:42:11 AM</u>	POLLACK	EXPLAINS
<u>8:44:10 AM</u>		WHAT WE HAVE IN THIS CASE IS SIMILAR
<u>8:44:59 AM</u>	J	IN GILA WASNT THE TECHNICAL REPORT ABLE TO MEASURE ACTUAL USE VS THE CLAIMS
<u>8:45:04 AM</u>	POLLACK	THEY WERE ABLE TO MEASURE THEIR EXISTING USES
<u>8:45:37 AM</u>		I WOULD HAVE TO GO BACK AND CHECK
<u>8:45:46 AM</u>		HERE THE STATE FILED ITS TECHNICAL ASSESSMENT OF THE SETTLEMENT AND THE STATE CONCLUDED NOT ONLY THAT THE WATER RIGHTS THAT ARE BEING CLAIMED HERE ARE MUCH LESS THAT COULD BE SECURED AT TRIAL BUT THE STATE TOOK A STEP FURTHER HERE AND CONCLUDED THAT THE EXISTING WATER RIGHTS OF THE NN BASED ON EXISTING USES AND EXISTING AUTHORIZATIONS ARE CONCEIVABLY LESS THAN THE WATER THAT IS INCLUDED IN THE SETTLEMENT
<u>8:46:36 AM</u>		GOT IT BACKWARD, RESTATES
<u>8:47:05 AM</u>		IT HAS THE BENEFIT OF EXPERT TECHINCAL ASSESSMENT REPORTS
<u>8:47:18 AM</u>		YOU HAVE MORE TOOLS AT YOUR DISPOSAL
<u>8:47:27 AM</u>		THERE IS AN ADDITIONAL CONSIDERATION
<u>8:48:01 AM</u>		WE HAVE A 4 PRONG TEST THE GILA HAD A SINGLE TEST
<u>8:48:59 AM</u>		90 PERCENT OF THE WATER THAT WE ARE TALKING ABOUT COMES OUT OF FEDERAL CONTRACTS
<u>8:49:21 AM</u>		THE US HOLDS WATER PURSUANT TO A PERMIT
<u>8:49:34 AM</u>		THERE IS NOTHING TO STOP THE SEC OF THE INTERIOR FROM CONTRACTING WITH THE NN FOR ANY AMOUNT OF WATER
<u>8:49:54 AM</u>		THERE IS NOTHING THAT THIS COURT COULD DO TO STOP THE US FROM CONTRACTING WITH THE NN
<u>8:50:03 AM</u>		WE ARE SIMPLY ASKING THAT THE COURT RECOGNIZE THE RIGHTS THAT THE NN HAS PURSUANT TO THESE CONTRACTS AND PURSUANT TO THIS LEGISLATION

<u>8:50:18 AM</u>		WE BELIEVE THAT WE HAVE DEMONSTRATED IN THE SUBMISSIONS THAT WE HAVE MADE THE PRONG 3
<u>8:50:38 AM</u>		WE DO NOT HAVE THE BURDEN TO SHOW THAT BEYOND THE PROPONDERANCE OF THE EVIDENCE
<u>8:51:09 AM</u>		GOING TO TRIAL ELIMINATES ANY INCENTIVE THAT ANY PARTY WOULD HAVE TO SETTLE ITS WATER RIGHTS
<u>8:51:25 AM</u>	J	AND THAT IS WHY THE COURT ADOPTED THE STANDARD OF THERE IS A REASONABLE BASIS TO BELIEVE
<u>8:51:26 AM</u>	POLLACK	AGREED ... AND WE BELIEVE THAT WE HAVE SATISFIED THAT
<u>8:51:42 AM</u>	GUARINO	GOING TO NARROW COMMENTS TO THE WORK THAT THE US HAS DONE IN ASSOC WITH PRONG 3
<u>8:52:09 AM</u>		THE COURT ARTICULATED THAT 3RD PRONG OF THE ANALYSIS TO DETERMINE WHETHER OR NOT THAT THE SETTLEMENT IS FAIR AND REASONABLE IS WHETHER OR NOT THERE IS A REASONABLE BASIS TO BELIEVE THAT THE SETTLEMENT AGREEMENT PROVIDES LESS THAT WHAT COULD BE SECURED AT TRIAL AND USING THE MODEL THAT WE HAVE USING THE GILA LINE OF CASES WHICH IS WHERE WE GOT THIS PRONG
<u>8:52:51 AM</u>		IF IN THE EVENT THE US AND THE NN ARE ASKED TO LITIGATE THE CLAIMS OF THE NN THE CONTRACT RIGHTS THAT THE NN HAS WILL EXIST NO MATTER WHAT, THE COURT ULTIMATELY RULES AND QUANTIFIES FOR THE RESERVED RIGHTS OF THE NN
<u>8:53:09 AM</u>		THEY ARE CONTRACT RIGHTS THAT ARE IN PLACE AND ARE THE NN'S
<u>8:53:29 AM</u>	J	SO WHY ARE WE HERE
<u>8:53:32 AM</u>	GUARINO	THERE ARE VERY LARGE UNRESOLVED QUESTIONS ASSOCIATED WITH THE QUANTIFICATION OF THE NN, THE EXTENT OF THE NN WATER RIGHT AND IT IS IMPORTANT THAT WE QUANTIFY THEM
<u>8:53:57 AM</u>		THERE IS OVERLAP
<u>8:54:10 AM</u>		THE CONTRACTS WILL CONTINUE
<u>8:54:18 AM</u>	J	TELL ME THE REALTIONSHIP
<u>8:54:26 AM</u>	GUARINO	EXPLAINS
<u>8:55:37 AM</u>	J	IF THIS COURT WERE TO SAY THE NN IS NOT ENTITLED TO ANY RESERVED RIGHTS, I UNDERSTAND THAT IS NOT WHAT WE ARE HERE TO SAY IN THIS PART OF THE PROCEEDING, BUT SUPPOSE WE GO DOWN THE LINE AND THAT WERE THE RULING OF THE COURT WHAT I AM HEARING YOU SAY IS THAT DOES NOT MAKE ANY DIFFERENCE WITH RESPECT TO THE NN'S USE OF THE WTER IN THE NAVAJO RESERVOIR
<u>8:56:06 AM</u>	GUARINO	CONFIRMS

<u>8:56:17 AM</u>	WITH RESPECT TO THE THIRIS PRONG OF THE COURTS ANALYSIS... I ASK THE COURT TO RECALL THE LAST HEARING THAT WE HAD IN SANTA FE WHEN THE COURT WAS DISCUSSING THIS PRONG AND DESCRIBING IT AS A MACRO ANALYSIS, THAT IS PRECISLY WHAT IT IS
<u>8:57:13 AM</u>	THE NON-SETTLING PARTIES WOULD BE VERY INTERESTED IN TAKING THIS TO TRIAL ON THE MERITS
<u>8:57:14 AM</u>	THAT IN NOT WHAT WE ARE HERE FOR
<u>8:57:40 AM</u>	NONE OF THE NON-SETTLING PARTIES HAVE PROVIDED ANY EVIDENCE THAT WHAT THE US HAS CLAIMED IS NOT WHAT COULD BE SECURED AT TRIAL AND THAT THERE IS NOT A REASONABLE BASIS TO BELIEVE THAT THAT IS WHAT COULD BE SECURED AT TRIAL
<u>8:58:12 AM</u>	THE COURT IDENTIFIED THAT THE US AND NN HAD NOT FILED STATEMENTS OF CLAIMS IN THIS CASE
<u>8:58:59 AM</u>	WHAT WE HAVE SHOWN THROUGHT OUR PLEADING AND OUR AFFIDAVITS AND THIS TECHNICAL REPORT THAT WE PROVIDED TO THE COURT IS
<u>8:59:34 AM</u>	WHEN THE EXPERTS DID THEIR ANALYSIS THEY REPORTED BACK TO US AND WE BASED OUR CLAIMS UPON THAT
<u>9:00:09 AM</u>	MR MARSHAL HAS DESCRIBED THE ONLY BASIS TO QUANTIFY ANY WATER RIGHT ... IS PIA. IT IS NOT TRUE AND IT IS NOT THE BASIS TO QUANTIFY THE WATER RIGHT FOR INDIAN TRIBES IN THE US
<u>9:01:19 AM</u>	NEEDS OF THE TRIBE TO ESTABLISH A HOMELAND FOR THE PEOPLE OF THAT TRIBE AND THAT IS WHY THE RESERVATIONS WERE CREATED
<u>9:01:58 AM</u>	IN THE MESCALERO CASE THE DISTRICT COURT APPLIED EXACTLY SUCH A STANDARD
<u>9:03:07 AM</u>	IT IS UPON THAT STANDARD THAT THE US QUANTIFIED THE POETNTIAL CLAIMS OF THE NAVAJO NATION
<u>9:03:53 AM</u>	DRINKING WATER COMPONENT IS BASED UPON A POTENTIAL POPULATION
<u>9:05:01 AM</u>	THE NAVAJO NATION NEEDS TO HAVE SUFFICIENT WATER RIGHTS TO SUPPORT THE POTENTIAL POPULATION
<u>9:05:59 AM</u>	WE RETAINED A ECONOMIST, TRAVIS GREENWALL, TO EXAMINE THE PAST PRESENT AND FUTURE ECOMONIC ... OF THE NN
<u>9:06:07 AM</u>	HE ANALYSED THE POTENTIAL GROWTH
<u>9:07:27 AM</u>	WE LOOKED AT THE CURRENT AND FUTURE POTENTIAL IRRIGATION ACTIVITIES OF OF THE NN
<u>9:09:06 AM</u>	ACCORDING TO THE REPORTS BY ?? HAS IDENTIFIED THOSE ACRES THAT THE NN HAS IRRIGATED IN THE PAST
<u>9:09:35 AM</u>	THE NATURE OF A FEDERAL RESERVE WATER RIGHT WHICH IS NOT ABANDONED AND FORFEITED AT ANY TIME ONCE ESTABLISHED (INAUDIBLE) THE RIGHT TO IRRIGATE LAND ONCE IT HAS PUT IT TO USE BENEFICIALLY

<u>9:10:22 AM</u>		WE ARE NOT HERE ON A TRIAL ON THE MERITS
<u>9:11:17 AM</u>		WE QUANTIFIED THE WATER NEEDS ASSOCIATED WITH THE ANIMAL NEEDS TO GRAZE ANIMALS TO GRAZE ON THE AVAILABLE RANGE LAND OF THE NN
<u>9:11:49 AM</u>		THERE IS MOR THAN A THOUSAND IDENTIFIED STORAGE FACILITIES ON THE TRUST LANDS OF THE NN
<u>9:12:07 AM</u>	MARSHA LL	CAN I LODGE 2 CONTINUING OBJECTIONS. REFERENCE TO PERMITS. THERE ARE NO PERMITS. NUMBER 2 ALL OF THAT STUFF, THE STATEMENTS OF FACT THAT HE IS MAKING REFERRING TO ALL OF THESE DOCUMENTS ARE CONTROVERTED AND THE REPRESENTATIONS OF COUNSEL ARE NOT EVIDENCE
<u>9:12:28 AM</u>		HE IS MIS-REPRESENTING SIGNIFICANTLY THE CONTENTS OF DOCUMENTS
<u>9:12:36 AM</u>		ALL WE ARE GETTING HERE IS TESTIMONY AND ALL IT IS IS ARGUMENT BUT IT DOES NOT ACCURATLY STATE THOSE DOCUMENTS
<u>9:12:46 AM</u>	J	I CAN NOT RULE ON YOUR OBJECTION. YOU CAN NOTE THAT THAT IS YOUR POSITION. AND YOU CAN ARGUE THAT IS YOUR POSITION BUT I CONSIDER WHAT YOUR ARE RAISING AS ARGUMENT NOT AS AN OBJECTION THAT THE COURT NEEDS TO RULE ON
<u>9:13:02 AM</u>	MARSHA LL	THE OTHER POINT IS THAT WE CAN NOT POSSIBLY CHASE DOWN ALL OF THE MISREPRESENTATIONS THAT ARE BEING MADE AS TO WHAT THE EVIDENCE IS BY COUNSEL
<u>9:13:09 AM</u>		HE IS SAYING THERE IS THIS FACT, THERE IS THIS FACT IN THOSE DOCUMENTS. NO IT IS NOT IN THERE. BUT WE DO NOT HAVE TIME TO GO BACK THROUGH ALL OF THAT
<u>9:13:26 AM</u>		JUST WANT TO NOTE A CONTINUING OBJECTION... THE ARGUMENTS AND STATEMENTS OF COUNSEL IN COURT ARE NOT EVIDENCE
<u>9:13:30 AM</u>	J	I WILL AGREE WITH YOU AS TO THAT FACT OR AS TO THAT PROPOSITION. OTHER THAN THAT I CAN NOT AGREE WITH YOU. IF YOU WANT TO POINT OUT POINTS THAT, YOU NEED TO POINT OUT TO THE COURT THAT SUPPORT YOUR POSITION AS OPPOSED TO THE US POSITION THEN BY ALL MEANS DO SO
<u>9:13:52 AM</u>	MARSHA LL	WE CAN NOT POSSIBLY DO THAT IN THE REMAINING 214 MIN AND GET TO THE LEGAL DEFECTS IN THEIR CASE
<u>9:14:05 AM</u>	J	ARE THEY IN THE RECORD
<u>9:14:07 AM</u>	MARSHA LL	YES THIS STUFF IS NOT EVIDENCE
<u>9:14:12 AM</u>	J	I AGREE THAT IT IS NOT EVIDENCE
<u>9:14:15 AM</u>		ARGUMENTS OF COUNSEL ARE NOT EVIDENCE. NOW WETHER THERE HAS BEEN EVIDENCE PRESENTED THAT IS IN THE RECORD THAT IS ANOTHER STORY.
<u>9:14:26 AM</u>	MARSHA LL	WE HAVE NO MEANING OPPORTUNITY TO RESPOND ALL OF THAT IN 211 MINUTES AND TO GET TO OUR SIDE OF THE CASE

<u>9:14:41 AM</u>		JUST SAYING WE CAN NOT GET THERE TODAY
<u>9:14:44 AM</u>	J	THE ONLY THING I WANT TO MAKE CLEAR IS THAT TO THE EXTENT THAT YOU ARE SAYING ANYTHING BEYOND ARGUEMNTS OF COUNSEL ARE NOT EVIDENC I CAN NOT RULE ON THAT YOU ARE RAISING TO THE COURT. FOR THE RECORD YOUR OBJECTION IS NOTED
<u>9:15:03 AM</u>	MARSHA LL	IN FACT AT THIS STAGE OF THE CASE ON SUMMARY JUDGEMENT ALL THE COUR TCAN DO IS NOTE THAT THERE ARE DISPUTED QUESTIONS OF FACT
<u>9:15:09 AM</u>	J	AMONG OTHER THINGS YES
<u>9:15:28 AM</u>	GUARINO ??	WE HAVE PROVIDED THE COURT WITH A DETAILED STATEMENT OF CLAIMS THAT DESCRIBED POTENTIAL STATEMENTS OF CLAIM S OF THE US THAT THE US WOULD PURSUE IN THE EVENT THAT WE WERE GOING TO TRIAL ON THE MERITS
<u>9:16:18 AM</u>		THAT IS ALL PART OF THE RECORD AND SUPPORTS THE THIRD PRONG
<u>9:16:49 AM</u>		BY HIM STANDING UP AND SAYING I DISPUTE THAT IT IS REALLY NOT SUFFICIENT
<u>9:17:37 AM</u>		WHAT WE PROVIDED IN OUR FINAL BRIEFING WAS THE FINAL AFFIDAVITS THAT ARE ASSOCIATED WITH THESE REPORTS TO ATTEST THAT THE CONTENTS OF THOSE REPORTS ARE TRUE AND ACCURATE
<u>9:17:56 AM</u>		THERE IN NOTHING IN THE RECORD TO REFUTE THAT
<u>9:18:27 AM</u>	UTTON	REFERRING TO THE 2 TABLES IN MEMORANDUM (TABLES 3 AND 4)
<u>9:19:31 AM</u>		THOSE ARE THE COMPARISON TABLES THAT THE ST PREPARED
<u>9:19:53 AM</u>		TABLE 4 IS THE COMPARISON OF ...
<u>9:20:08 AM</u>		SUMMARIZE THE US CLAIMS...
<u>9:20:26 AM</u>		GOING TO BE FOCUSING ON THE 3 AND 4 PRONGS
<u>9:21:05 AM</u>		IN TERMS OF FACT IN TERMS OF HOW THE ST LOOKS AT THIS THE NN CAME
<u>9:21:40 AM</u>		THERE ARE DIFFERENT RESERVATION CONTEXTS
<u>9:22:42 AM</u>		EVEN THOUGHT IT WAS IN STATE COURT FEDERAL LAW WOULD APPLY
<u>9:23:36 AM</u>		TALKING ABOUT APPROACH THEY USED
<u>9:24:01 AM</u>		WHILE WE WERE WILLING TO RECOGNIZE THOSE PROJECTS AND USES WE ALSO THOUGHT IT WAS IMPORTANT THAT WE NOT JUST QUANTIFY THOSE AND SAY THAT WE ARE DONE BUT PUT RESTRICTIONS ON THOSE
<u>9:24:19 AM</u>		THE NN IS AGREEING TO THAT BECAUSE THEY ARE GETTING SOMETHING THAT IS WET WATER AND MONEY RATHER THAN GREATER QUANTITIES OF CLAIMS
<u>9:24:59 AM</u>		WE HAVE TRIED TO SUMMARIZE THE US LAIMS
<u>9:26:52 AM</u>		WE WANTED TO TIE THAT INTO SOMETHING
<u>9:27:32 AM</u>		TALKING ABOUT RESTRICTCTIONS
<u>9:27:50 AM</u>		REFERRING TO TABLE 4

<u>9:28:35 AM</u>	THE ENGINEERS AND THE HYDROLOGISTS WOULD LOOK AT THIS AND DETERMINE
<u>9:29:52 AM</u>	GOING OVER NIIP NUMBERS
<u>9:30:38 AM</u>	THE PROPOSED DECREE SAYS THAT THE DEPLETIONS ASSOCIATED WITH NIIP OS 270,000 NOW
<u>9:31:17 AM</u>	THAT IS GOING TO REQUIRE NOT ONLY SOME CAREFUL MONITORING AND ADMINISTRATING BUT VERY CAREFUL OPERATIONS AT NIIP
<u>9:32:06 AM</u>	HOGBACK AND FRUITLAND - WHAT IS THE APPROPRIATE AMOUNT OF ACRES. WHAT I AM GOING TO DESCRIBE ARE THE OTHER ASPECTS
<u>9:32:27 AM</u>	THE STATE DOES PROPOSE TO RECOGNIZE THE FULL ACREAGE QUANTITY THAT IS CURRENTLY UNDER DITCH AND IS PERMITTED BY THE BIA 12165 ACREA
<u>9:33:10 AM</u>	THERE IS NOT DOUBT IN OUR MIND THAT THE COURT WOULD RECOGNIZE THIS IRRIGATED LAND AS HAVING A WATER RIGHT
<u>9:33:33 AM</u>	THESE ARE GRAVITY FED DITCHES
<u>9:33:54 AM</u>	WHEN WE REACH AN AGREEMENT WE THINK THAT IS GOOD
<u>9:34:21 AM</u>	THE FACT THAT WE CAN GET THEM TO AGREE THAT THEIR ACREAGE IS LIMITED IS GOOD
<u>9:35:00 AM</u>	THAT IS USING CONTEMPORARY METHODOLOGY FOR DETERMINING WHAT A CROP USES
<u>9:35:35 AM</u>	ONE OF THE PRINCIPALS THAT THE STATE HAS BEEN FOLLOWING IS THAT WE WANT TO BE CONSISTANT
<u>9:35:56 AM</u>	THE NN AHS AGREED TO A DEPLETION BASED ON AN OUTDATED METHODOLOGY
<u>9:36:44 AM</u>	ANOTHER WAY OF SAYING WHAT I HAVE USUT SAID IS THEY REALLY CAN NOT IRRIGATE ALL OF HOGBACK AND FRUITLAND
<u>9:37:12 AM</u>	SKIPPING TO MUNICIPAL AND DOMESTIC IN TABLE 4
<u>9:37:53 AM</u>	TALKING ABOUT ADDITIONAL WATER
<u>9:37:59 AM</u>	INDUSTRIAL USES, SOME ARE NOT CURRENTLY IN USE
<u>9:38:45 AM</u>	MOST OF THOSE USES WOULD GO AWAY OR BE VOIDED
<u>9:40:57 AM</u>	THERE COULD BE ANOTHER ROW IN HERE
<u>9:42:02 AM</u>	IT IS LESS EITHER WAY
<u>9:42:58 AM</u>	IT IS REALLY GOING TO COME DOWN TO THEIR DIVERSION DEMAND
<u>9:45:28 AM</u>	THESE NUMERS ARE IN THE TECHNICAL REPORT PAGES 5-8
<u>9:45:59 AM</u>	THE STATE WANTED THAT IN ADDITION TO A CFS OR AN INSTANTANEOUS THAT THERE BE AN ANNUAL VOLUME MAXIMIM
<u>9:47:16 AM</u>	THE STATE IS REQUIRING THEM TO MANAGE THEIR IRRIGATION DEMANDS BY MONTH
<u>9:48:01 AM</u>	THERE IS A MAXIMUM CFS AMOUNT BUT THERE IS ALSO AN ANNUAL VOLUME MAXIMUM
<u>9:48:37 AM</u>	THAT DIVERSION RESTRICTION IS A VERY SIGNIFICANT CONSESSION BY THE NN
<u>9:49:09 AM</u>	CONCLUSION FROM THE STATES PERSPECTIVE

9:50:11 AM		WE FELT THAT WAS A GOOD REASON TO SETTLE
9:51:18 AM		WE FEEL THIS IS A GOOD SETTLEMENT IT RECOGNIZED WHAT THE NN ALREADY HAS WHAT THEY ALREADY HAVE A RIGHT TO GIVES THEM THE DRINKING WATER THAT THEY WANT AND DOES IT WITHOUT HARMING EXISTING WATER USERS
9:51:42 AM	J	BREAK NOW UNTIL 10:05
10:10:25 AM		BACK ON RECORD,
10:10:32 AM		HOUSEKEEPING ON TIME
10:11:22 AM	MARSHA LL	ASKS FOR BALANCE ON TIME WE WOULD ASK FOR A BUZZER
10:12:07 AM	J	MOVE TO PROPONENTS OF THE SETTLEMENT MOTIONS WITH RESPECT TO PRONG 3
10:12:13 AM	HERB BECKER	COMMENTS THAT DEAL WITH THE LAW THAT CAN BE APPLIED TO THIS MATTER
10:13:01 AM		TALKING ABOUT DIAGRAM DRAWN BY MARHSALL DAY BEFORE
10:13:56 AM		PURPOSE OF THE RESERVATION IN THIS CASE
10:14:20 AM		THERE WERE NUMEROUS CLAIMS MADE FOR THE TRIBES
10:14:50 AM		THE TOTALITY OF THE CLAIMS SUBMITTED BY THE US FOR THE TRIBE HAVE TO BE ?? BY THE COURT
10:16:41 AM		FROM WINTERS AND BIGHORN THAT IT IS THE PURPOSE OF THE INDIAN RESERVATION THAT DETERMINES THE STANDARD AND QUANTITIES OF WATERS TO BE AWARDED TO THEM
10:17:06 AM		IT IS OUR CONTENTION THAT THERE IS NO SECONDARY PURPOSE
10:17:21 AM		THE NN IS NOT AT LIBERTY TO MOVE TO SO MISSISSIPPI WHERE THERE IS A LOT OF RAINFALL, THEIR RESERVATION IS HERE
10:18:02 AM		PASSES
10:18:08 AM	O'BRIEN	INAUDIBLE
10:18:22 AM	J	TURN TO NON-SETTLING PARTIES
10:18:31 AM	RICK TULLY	WE FILED A MOTION FOR PARTIAL SUMMARY JUDGMENT, EXPLAINS
10:19:20 AM		WE FILED A CONSOLIDATED RESPONSE TO THE MOTIONS THAT WERE FILED BY THE SETTLING PARTIES BU
10:19:34 AM		ON BEHALF OF OUR CLIENTS WE AGREED WITH THE SETTLING PARTIES THAT THIS IS AN EXPEDITED INTER SE PROCEEDING ATTEMPTING TO RESOLVE THE WATER RIGHTS CLAIMS OF THE NN
10:19:46 AM		THE ONLY WATER RIGHT CLAIMS IN THIS PROCEEDINGS ARE THE NN AND THE ONLY ISSUE IS THE ADJUDICATION OF THE NN WATER RIGHTS BY ENTRY OF THE PROPOSED DECREES
10:20:03 AM		IN PARTICULAR I WOULD LIKE TO TALK ABOUT MOTIONS FOR PARTIAL SUMMARY JUDGMENT
10:21:25 AM		WE FILED A MOTION PERTAINING TO WE BELIEVE THERE HAS BEEN A WAIVER AND RELINQUISHMENT BY THE NN OF ITS WINTERS RIGHTS
10:21:43 AM		WINTERS FIACTS

10:22:52 AM	EVENTUALLY THE US SUPREME COURT FOUND
10:23:11 AM	IF THE INDIANS DID NOT EXPRESSLY RESERVE WATER IN THOSE LANDS THEY HAD IMPLIEDLY RESERVED THE WATER FOR THEIR RESERVATION
10:23:23 AM	THE COURT STATED IT AFFIRMED THE LOWER COURT AND FOUND THAT THE INDIVIDUALS THE WINTERS GROUPS WERE ENJOINED FROM INTERFERING WITH THE USE OF WATER THAT BELONGED TO THE FORT BELNAF INDIAN RESERVATION
10:23:44 AM	THAT WAS ONE HALF OF THE WATER THAT THE INDIANS HAD CLAIMED
10:24:00 AM	THE REMAINING WATER REMAINED WITH THE WINTERS GROUP
10:24:09 AM	THIS DECISION HAS BEEN CITED IN NUMEROUS CASES STANDS FOR THE PROPOSITION THAT IF A TREATY OR AGREEMENT TO ESTABLISH AN INDIAN RESERVATION DID NOT EXPRESSLY RESERVE WATER
10:24:32 AM	DECISION NOW KNOW AS THE WINTERS DOCTRINE
10:25:05 AM	UNDER THE NIIP ACT THE NAVAJO DAMN WAS TO PROVIDE WATER TO IRRIGATE 110,630 ACRES OF NAVAJO INDIAN LANDS LOCATED IN NW NM AND THERE WAS TO BE A DIVERSION ANUALLY TO IRRIGATE THESE ACRES
10:25:31 AM	TESTIMONY BEFORE US CONGRESS
10:26:01 AM	BRING TO THE ATTENTION OF THE COURT FOR PURPOSES OF OUR MOTION FOR PARTIAL SUMMARY JUDGMENT THAT WAYNE ASPENAL OF CO WAS THE CHAIRMAN OF THAT COMMITTEE
10:26:45 AM	READING INTO RECORD PORTIONS OF WRITTEN STATEMENT BY CHAIRMAN PAUL JONES
10:28:04 AM	CONVERSATION FROM COMMITTEE MEETING
10:30:04 AM	RELINQUISHED HIS RIGHTS UNDER THE WINTERS DOCTRINE FOR THE WATER NECESSARY TO IRRIGATE THE NAVAJO INDIAN IRRIGATION PROJECT
10:30:36 AM	NIIP ACT SIGNED AND PROVED
10:30:57 AM	1964 THERE WAS A RESOLUTION BY THE COUNSEL
10:31:07 AM	ITEMS SPEAKING OF ARE AVAILABLE TO COUNSEL AS ATTACHMENT TO MOTION
10:33:23 AM	IN 1960 AND 1961 THE NN VOLUNTARILY AND INTENTIONALLY RELINQISHED ITS WINTERS RIGHTS IT MADE STATEMENTS TO THE US CONGRESS
10:33:38 AM	THE US CONGRESS APPROVED THE NIIP PROJECT
10:33:56 AM	NAVAJO TRIBE AGAIN REAFFIRMED THAT IT HAD RELINQUISHED ITS WINTERS RIGHTS
10:34:09 AM	WE HAVE FILED THIS MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE VERY NARROW ISSUE OF DID THE NN RELINQUISH ITS WINTERS RIGHTS FOR THE CONSTRUCTION OF THE NIIP PROJECT
10:34:36 AM	THE SETTLING PARTIES CRITICIZE US FOR NOT FOLLOWING THE NM RULES FO CIVIL PROCEDURE
10:34:54 AM	OUR MOTION CLEARLY COMPLIES WITH RULE 56
10:35:55 AM	TALKING ABOUT REPLY BRIEF

10:36:06 AM		REQUESTING THE COURT TO RULE AS A MATTER OF LAW THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT
10:36:49 AM	MARSHALL	MONTANA MINERS INCH
10:37:17 AM	J	ARE YOU MAKING A REQUEST THAT I TAKE JUDICIAL NOTICE, ARE THERE OBJECTIONS
10:37:25 AM	??	CAN HE PLEASE STATE WHAT LAW HE IS REFERRING TO
10:37:42 AM	J	DO YOU HAVE OBJECTION TO TAKING JUDICIAL NOTICE AS TO THE DEFINITION THAT MR MARSHALL HAS PROPOSED
10:37:42 AM	??	THERE IS NO BASIS FOR IT IN FACT OR LAW. IF HE CAN PRODUCE THE BASIS WE MIGHT BE ABLE TO AGREE
10:37:53 AM	J	I WILL NOTE YOUR REPRESENTATION
10:38:02 AM	HORNER	ACTUALLY I THINK IT SAYS THAT IN THE WINTERS CASE ITSELF
10:38:30 AM		OPENING PRONG 3
10:39:38 AM	J	THE STANDARD IS WHETHER THERE IS A REASONABLE BASIS TO REACH THAT CONCLUSION
10:39:55 AM	HORNER	THEY WANT TO GO BACK TO WHERE THEY WERE BEFORE THAT STANDARD WAS CREATED
10:40:28 AM		THEY WANT TO SHOW YOU THE TECHNICAL REPORTS
10:40:35 AM	J	I THINK WHAT THEY ARE DOING IS SAYING HERE IS A REASONABLE BASIS. I WOULD ASK YOU TO ADDRESS WHY WHAT THEY HAVE DONE IS NOT A REASONABLE BASIS
10:41:02 AM	HORNER	ANSWER
10:41:48 AM		WHAT WE NEED TO SEE FROM THE SETTLING PARTIES IS WHAT IS THE BASIS FOR THE WATER RIGHTS OF THE NAVAJO SETTLEMENT NOT WHAT IS THE BASIS FOR THE WATER RIGHTS OF THE US CLAIMS
10:42:00 AM	J	I AM NOT SURE I AM FOLLOWING YOU MR HORNER. AS I UNDERSTAND THAT PRONG WHEN WE TALK ABOUT A REASONABLE BASIS FOR WHAT COULD BE ACHIEVED AT TRIAL THE PURPOSE OF IT AND BECAUSE WE ARE REVIEWING THE SETTLEMENT AGREEMENT WE ARE TALKING ABOUT SOMETHING SHORT OF TRIAL BECAUSE IF A PARTY HAD TO COME IN AND ACTUALLY PROVE WHAT IT WOULD BE ENTITLED TO AT TRIAL THEN WHAT IS THE PURPOSE OF HAVING A SETTLEMENT AGREEMENT. THAT IS THE PREDICATE AS TO WHY I ADOPTED THAT REASONABLE BASIS PART
10:42:45 AM		AS I UNDERSTAND WHAT THEY ARE DOING... IS USING THE STATEMENT OF CLAIMS AS A PROXY TO STATEMENT OF CLAIMS WITH THE TECHNICAL REPORTS AS A PROXY FOR THE COURT TO USE AS A BASIS FOR DETERMINING WHAT THE NN WOULD BE ENTITLED TO AT TRIAL

10:43:08 AM	HORNER	WHEN YOU LOOK AT IT THAT WAY THE FIRST THING THAT WE HAVE IS THE TECHNICAL REPORTS ARE (INAUDIBLE) CAN NOT DO THAT NOW AT SUMMARY JUDGMENT STAGE
10:43:22 AM	J	QUESTION IN THAT REGARD. HAVE THE NON-SETTLING PARTIES DISPUTED THE TECHNICAL REPORTS ON THE SUBSTANCE OF THE MERITS
10:43:37 AM	HORNER	YES
10:43:37 AM	J	AND I SEE MR MARSHALL IS ADDRESSING THAT AS WELL
10:43:43 AM	HORNER	THAT STUFF IS DISPUTED AND CAN NOT BE USED AT SUMMARY JUDGMENT STAGE
10:44:30 AM		THEY HAVE NOT EVEN MAD A MOTION FOR SUMMARY JUDGMENT
10:44:41 AM		IF THEY ARE TO BE CONSIDERED AT ALL IT WOULD HAVE TO BE AT TRIAL
10:45:07 AM		I FILED MY MOTION IN NOVEMBER OF LAST YEAR ON PUBLIC RESERVED RIGHTS
10:45:18 AM		IT REALLY NEEDS ITS OWN HEARING
10:45:41 AM		TALKING ABOUT FEDERAL RESERVED RIGHTS AND WINTERS CASE
10:46:29 AM		COURT ONLY GAVE THEM 5000 MINERS INCHES, LESS THAN HALF, OF WHAT THEY WERE CLAIMING THEY WERE DUE UNDER PRIOR APPROPRIATION
10:46:49 AM		THE RESERVATION WAS CREATED IN 1988. THE US SUPREME COURT DECISION WAS IN 1908. SO THE US SUPREME COURT DECISION WAS WITHIN 20 YEARS OF THE CREATION OF THE RESERVATION
10:47:15 AM		ONE OF THE THINGS THAT YOU SEE THROUGHOUT ALL OF THESE TECHNICAL REPORTS IS WATER RIGHTS THAT THEY ARE NOT CURRENTLY USING IN THE FUTURE FROM NOW AND THEY WANT WATER RIGHTS FOR FUTURE USES FROM BEYOND NOW
10:47:50 AM		NEED TO FIGURE OUT WHAT THE STANDARD IS FOR FEDERAL RESERVED RIGHTS
10:48:16 AM		EACH COURT IS DOING IT DIFFERENTLY
10:48:35 AM		HOMELAND STAND WILL GIVE THEN WATER RIGHTS FOR ANYTHING
10:49:00 AM		HOMELAND STANDARD WAS REJECTED IN US V WASHINGTON AS NOT CONSISTANT WITH FEDERAL LAW
10:49:58 AM		READ THE AZ V CA CASE YOU GET DOWN TO THE DECENT THE MAJORITY OPINION WAS INTERPRETING THE VOLGOR CANYON ACT
10:50:24 AM		THAT WAS NOT WHAT CONGRESS WAS TRYING TO DO
10:50:55 AM		US V WASHINGTON AGAIN UNDERSCORES THAT CONCEPT THAT WATER RIGHTS THAT WERE IMPLIEDLY RESERVED FOR FEDERAL RESERVED RIGHTS FOR INDIAN RESERVATIONS WILL IMPLIEDLY RESERVE AT THE TIME OF THE CREATION OF THE RESERVATION

10:51:23 AM		YOU ONLY GET WATER RIGHTS FOR FEDERAL RESERVED RIGHTS BASED ON THE PRIMARY PURPOSE OF THE RESERVATION AT THE TIME IT WAS INITIALLY CREATED FOR THE MINIMAL NEEDS OF THE RESERVATION
10:51:40 AM		ALL OF THIS WAS REAFFIRMED BY THE US V WASHINGTON CASE
10:52:11 AM		WHEN WE GET DOWN TO IT WE CAN SHOW THAT THE POPULATION ON THE RESERVATION CURRENTLY IS DECLINING IT IS NOT GOING UP
10:53:07 AM		THEY USED ONE YEARS WORTH OF DATA AND PULLED NUMBERS OUT OF THE AIR
10:54:10 AM		ALL OF IT IS MADE UP
10:56:48 AM		THE MUNICIPALITIES ENDED UP GETTING THE WATER AND DID NOT HAVE TO PAY FOR THE CAP PROJECT. AND THE INDIANS GOT A LITTLE BOT OF MONEY FROM IT
10:57:15 AM		THE WHOLE STATE IS LINED UP BEHIND THIS CONCEPT NOW
10:57:39 AM		LOOKING TO ARIZONA FOR A GUID TO WHAT TO DO HERE IS NOT A GOOD IDEA
10:59:11 AM	J	DO YOU RELY ON WHAT YOU HAVE SUBMITTED FOR ME TO GO BACK
10:59:26 AM	HORNER	PLEASE DO
11:00:53 AM		YOU ARE SUPPOSED TO GET YOUR WATER RIGHT FROM THE STATE
11:01:49 AM		WHAT THE STATE HAS BEEN DOING FOR 100 YEARS IS ADVOCATING HIS RESPONSIBILITY.
11:02:15 AM		THIS APPLICATION TO DIVERT NM WATER IS NOT IN NM LAW ANYWHERE
11:02:37 AM	J	CASE IS ON REHEARING BY THE WAY AND I DO NOT THINK IT STANDS FOR ANYTHING YET
11:02:53 AM	HORNER	OK YOU WERE THERE AND YOU KNOW. EVEN IF YOU DO NOT LOOK AT THE CASE YOU LOOK AT ALL OF THE AUTHORITY IN THE CASE THAT SAYS THE SAAME THING
11:03:39 AM		IT HAS BEEN GOING ON FOR 100 YEARS WITH THE OSE
11:03:51 AM		THE CONCEPT THAT IF YOU DO NOT GIVE THEM THE WATER RIGHTS THEY ARE JUST GOING TO TURN AROUND AND MAKE A CONTRACT ANY WAY
11:03:54 AM		SOMEHERE ALONG THE LINE SOMEONE NEEDS TO SHUT THAT CONCEPT DOWN
11:05:51 AM		THEY SAY THEY ALREADY OWN ALL THE WATER RIGHTS
11:06:20 AM		CONGRESS PASSED THE LAW THAT SAID NO THE ONLY THING THAT YOU GET FROM A CONTRACT WITH THE US IS THE RIGHT TO STORE AND DELIVER THEN WE WI+LL REFORM THAT CONTRACT
11:06:45 AM		THE US V CALIFORNIA CASE MADE IT CLEAR, THEY WENT CLEAR BACK TO 1849 TREATY OF GUADALUPE
11:07:16 AM		IT IS ALL BASED ON BENEFICIAL USE
11:07:28 AM		THE LAND OWNERS ARE ULTIMATELY THE ONES THAT GET THE WATER RIGHT

11:07:45 AM		THE US IS THEN NOT FREE TO NEGOTIATE CONTRACTS WITH ANYBODY
11:08:22 AM		BOULDER CANYON PROJECT ACT
11:08:43 AM		IN AZ V CALIFORNIA THE SUPREME CT CAME ALONG AND SAID WHERE CONGRESS HAS EXPRESSED THE DIFFERENT APPROACH, STATE LAW DOES NOT APPLY AND FROM HERE ON IF YOU WANT WATER FROM THE CO RIVER AND THE LOWER BASIN YOU HAVE TO DO IT WITH A CONTRACT FROM THE SECRETARY OF THE INTERIOR
11:11:06 AM		THEY STILL HAVE TO COMPLY WITH STATUE AND THAT IS WHERE THE COURTS AUTHORITY COMES FROM
11:12:05 AM		THE EFFECTED PARTIES HAVE TO HAVE THEIR DAY IN COURT
11:12:17 AM		IT IS NOT EVEN BINDING ON THE SETTLING PARTIES THEMSELVES
11:14:33 AM		THAT BECOMES ISSUES FOR TRIAL
11:14:41 AM		CAN NOT USE THE TECHNICAL REPORTS NOW IN SUPPORT OF US CLAIMS AS SUPPORT FOR NAVAJO SETTLEMENT FOR JUDGEMENT FOR NAVAJO SETTLEMENT CLAIMS
11:15:14 AM		ISSUE WITH NAVAJO TRUST LANDS GOES ON IN DETAIL
11:16:41 AM		CONTINUES TO TALK ABOUT NAVAJO TRUST LANDS AND ALLOTMENTS
11:17:51 AM		FEDERAL RESERVE RIGHTS LAND COMPARED TO NAVAJO LANDS
11:18:29 AM		MOST OF THE LANDS ARE NOT EVEN RESERVATION
11:19:05 AM		REFERS TO WHAT MR UTTON SAID ABOUT US CLAIMS COMPARISON TO NAVAJO CLAIMS
11:19:40 AM		REFERS TO WHAT MR BECKER HAD SAID ABOUT NAVAJO CLAIMS
11:20:36 AM		CONTINUES TO TALK ABOUT FEDERAL STATUES AND NAVAJO WATER RIGHTS AND CLAIMS AND FEDERAL RESERVE RIGHTS
11:22:09 AM		TALKS ABOUT WHEN DOCUMENTS WERE FILED FOR NAVAJO RESERVATION
11:25:03 AM		CONTINUES TO TALK ABOUT FEDERAL RESERVE RIGHTS COMPARED TO THE NAVAJO CLAIMS RIGHTS AND THE PROPERTIES THEY HAVE ACCUMULATED OVER THE YEARS AND THERE FUTURE USES
11:25:55 AM	J	THANK YOU MR HORNER
11:26:00 AM		MR MARSHALL
11:26:04 AM	MARSHALL	RESONABLE BASES THAT THEY CAN PROVE AT TRIAL THE PROPOSED STANDARDS OF THE NUMBERS THEY HAVE CLAIMED
11:26:39 AM		ANYONE CAN CLAIM ANYTHING
11:26:48 AM		COURT CHANGED IT TO WHAT THEY CAN PROVE WHAT THEY ARE ENTITLED TO.
11:27:21 AM		MY CLIENTS HAVE RIGHTS AND THEY DONT WHAT IS THE LEGAL BASIS FOR PROVING YOUR RIGHTS AND FACTUAL BASIS

11:27:36 AM		IF THESE WERE TO PRIVATE PARTIES THEN THE COURT WOULD HAVE A LOT OF LEWAY
11:27:57 AM		TALKS ABOUT CONTRACT SIGNED AND WHO SIGNED
11:27:58 AM		THEY DID NOT OWN THIS WATER
11:28:13 AM		TALKS ABOUT REASONBLE BASIS AND EVIDENCE STANDARD
11:28:30 AM		THIS CONTRACT DOES NOT OVERWRITE THE RULES OF EVIDENCE GIVES EXAMPLES
11:28:44 AM	J	IS THERE SCIENTIFIC EVIDENCE
11:28:47 AM	MARSHALL	WELL NO
11:28:56 AM	J	I MEANT SCIENTIFIC VERSE TECHNICAL NEW MEXICO HAS NOT ADOPTED KUMOTIRE (SP?)
11:29:00 AM	MARSHALL	WELL BOTTOM LINE IS NONE OF IT IS MUNICIPAL
11:29:14 AM		THE FOLKS THAT PUT THAT STUFF TOGETHER WAS THERE BURDEN NOT OUR BURDEN
11:29:31 AM		COURT DOES NOT OVERRIDE
11:29:45 AM		TALKS ABOUT JUDGES EXPERIENCE IN THE APPEAL COURT AND HOW HE IS USE TO SUBSTANTIAL EVIDENCE
11:29:55 AM		SUPPOSE THE COURT CONCLUDED WHAT YOU CAN
11:30:11 AM		IS 40% A REASONABLE BASIS NO IT IS NOT
11:30:28 AM		IS 60% A REASONABLE BASIS NO IT IS PERPONDOUROUS OF THE EVIDENCE
11:30:37 AM		THIS IS A USEFUL DISCUSSION BUT IT DOES NOT ANIALATE CAN NOT ANNIALATE THE REST OF THE ORDER
11:30:54 AM	J	THANK YOU MR MARSHALL LETS TURN NOW TO THE SETTLING PARTIES WITH RESPECT TO RESPONSES AND REPLY
11:31:31 AM	NAVAJO NATION	REPLY TO MR TULLY WE ARE NOT HERE TODAY TO ARGUE THE STATE ALREADY TOLD YOU WHEN THEY ENTERED INTO SETTLEMENT DISCUSSIONS THEY WOULD WEIGH THE RISKS TO COME TO TRIAL TO SETTLE THIS CASE OR NOT
11:33:03 AM	J	ISN'T WAIVER PRECISELY THE TYPE OF LEGAL ISSUE THAT CAN BE ADDRESSED
11:33:28 AM		REASONABLE BASIS FOR THE COURT TO CONCLUDE
11:33:49 AM		WHY IS THAT NOT AN ISSUE THE COURT CAN ADDRESS
11:33:51 AM	NAVAJO NATION	WELL THE STATE MADE A DETERMINATION THAT IT WAS A REASONABLE BASIS THEY WAIVED THE RISKS WHAT WE ARE TRYING TO DO IS SETTLE THE CASE
11:34:32 AM	J	SO WHAT I HEAR IS THAT IF THE COURT AGREES WITH THE STATE THEN IF MR TULLY IS CORRECT THE SETTLEMENT CAN STILL STAND IS THERE STILL A BASIS FOR THIS CASE TO PROCEED AND I HEAR THAT YOU SAY YES BECAUSE OF WHAT THE STATE HAS SAID
11:35:48 AM		I'M TRYING TO RESPOND TO THE ARGUMENT THAT I HEAR YOU ARE MAKING
11:35:59 AM	NAVAJO NATION	I THINK YOU ARE ASKING IF THERE IS A LEGAL BASIS FOR THE SETTLEMENT

11:36:12 AM	J	EXCEPT THE SETTLING PARTIES NEED TO RESPOND ON SATISFYING EACH PRONG
11:36:19 AM	NAVAJO NATION	ABSOLUTELY
11:36:20 AM	J	SO I'M CURIOUS ABOUT PRONG 3 AT THE MOMENT
11:36:20 AM	NAVAJO NATION	WHETHER OR NOT THERE IS A WAIVER THEY WERE NOT IN LEGAL BASIS
11:36:37 AM	J	I THINK THATS PART IN WHAT MR TULLY IS ARGUING
11:36:40 AM		I WANT TO HEAR IS IF YOU THINK HE IS CORRECT OR NOT
11:36:41 AM	NAVAJO NATION	WELL WHAT WE ARE GOING TO ARGUE LATER ON IN PRONG 4 THAT THERE IS A LEGAL BASIS FOR THE SETTLEMENT AND CONGRESS HAS PASSED LEGISLATION RECOGNIZING NAVAJO NATIONS CLAIMS
11:37:10 AM		CONGRESS ALREADY MADE DETERMINATION THAT THERE WAS A LEGAL BASIS
11:37:21 AM	J	SO CONGRESS IS PART OF YOUR ARGUEMENT THERE HAS BEEN NO WAIVER BECAUSE OF 2009 SETTLEMENT ACT
11:37:39 AM	NAVAJO NATION	THAT IS CORRECT TALKS ABOUT 62 ACT
11:37:59 AM		THE HEARING ON THAT ACT IS THE ONE MR TULLY IS RELYING ON
11:38:01 AM		WE KNOW THAT IF A WAIVER IS TO OCCUR THAT INVOLVES DELIQUISHMENT OF A TRIBAL RIGHT OR CLAIM AND ONLY CONGRESS CAN DO IT
11:38:19 AM		THE NAVAJO NATION CAN NOT SIMPLY WAIVE THERE WATER RIGHTS IT MUST GO THROUGH CONGRESS
11:38:27 AM		IN THIS ACT THERE WAS NO WAIVER REFERS BACK TO 62 ACT IN DETAIL AND HOW THAT EFFECTS NAVAJO NATION
11:39:13 AM	J	WHY IS THERE NOT A GENUINE ISSUE OF MATERIAL FACT IF YOU HAVE A STATEMENT FROM THE CHAIRMAN OF THE TRIBE SAYING THE TRIBE WAIVES
11:39:26 AM	NAVAJO NATION	FIRST OF ALL I DON'T BELIEVE THAT WOULD BE AN ISSUE OF MATERIAL FACT THAT WOULD BE WHETHER THERE IS A WAIVER BUT THE CHAIRMAN DIDN'T SAY THE NATION WAIVED THEIR WATER RIGHTS LETS TAKE A LOOK AT THE ACT AND REFERS TO MR TULLYS MOTION
11:40:33 AM		NAVAJO NATION AGREED TO SHARE IN SHORTAGES
11:41:11 AM		TALKS ABOUT WINTERS RIGHT AND WINTERS PRIORITY
11:41:25 AM		MR TULLY REFERS TO LANGUAGE IN A CONTRACT THAT WAS NEVER SIGNED OR EXECUTED REFERS BACK TO CONTRACT
11:42:07 AM		REFERS TO SECTION 11 OF THE ACT
11:43:15 AM		WHAT WE ARE SEVERAL LAYERS AWAY FROM ANY POSSIBLE WAIVER FIRST OF ALL IT MUST A AN ACT OF CONGRESS THE LANGUAGE IN THE ACT DOES NOT INACT A WAIVER YOU DO NOT GO BEHIND THE STATUE TO DEFINE THE STATUE IS
11:44:08 AM		TALKS ABOUT LEGISLATIVE HISTORY IN RELATION TO THIS ACT

11:44:48 AM	CONTINUES TO LAYERS BACK OF THE 62 ACT AND SOMEHOW THERE IS A WAIVER AND ONLY THE US CAN DO IT AND THEY DIDNT
11:45:24 AM	LETS JUST THINK ABOUT THE WAIVER CONCEPT IN THE CONTEXT WE HAVE TALKED ABOUT THIS MORNING ONE THING THAT WE KNOW FROM THE CASE LOG IS THAT THE STANDARD IN NM THAT WATER IS NECESSARY TO CREATE A PERMANENT HOME FOR THE INDIAN PEOPLE THATS WHAT THE COURT SAID AND THAT IS WHAT WINTERS TALKED ABOUT BUT THE 62 ACT WAS TO DEFER 508 THOUSAND ACRE FEET OF WATER FOR THE PURPOSE OF IRRIGATING 110,630 ACRES WHERE IS THE WATER FOR THE NAVAJO PEOPLE
11:46:36 AM	FOR DRINKING, BATHROOM USE, ETC
11:46:48 AM	IF IN FACT THE ONLY WATER RIGHTS THE NAVAJO NATION WAS TO IRRIGATE 110,630 IT SIMPLY DOESN'T MAKE SINCE TO HAVE SUCH A WAIVER
11:47:13 AM	WE KNOW THE NAVAJO PEOPLE HAVE BEEN PRACTICING IRRIGATION
11:47:34 AM	THE IDEA THAT THE NAVAJO PEOPLE GAVE UP ALL THIS WATER JUST DOESN'T MAKE SENSE ITS NOT CONSISTENT
11:48:04 AM	NOW MR HORNER I AM GOING TO LET MR GUARINO DEAL WITH MR HORNERS TESTIMONY RELATIVE TO WHAT HE THINKS RESERVED WATER RIGHTS ARE BUT I JUST WANTED TO KNOW IF WE TAKE A LOOK AT THE CASES TO FIGURE OUT WHAT THE APPROPRIATE STANDARDS ARE ACCORDING TO MR HORNER NOW WE DON'T FOLLOW AZ VERSUS CA BECAUSE ITS A DISASTER, WE DONT FOLLOW WINTERS BECAUSE ITS A DISASTER, WE DON'T FOLLOW ANY OF THESE CASES BECAUSE THEY ARE A DISASTER
11:49:13 AM	WHEN THE US CREATED NAVAJO NATION THEY CREATED WATER TO MAKE IT THERE PERMANENT HOME
11:49:36 AM	MR HORNER IS ASKING YOU TO DISREGARD THE STANDARD THAT WAS ADOPTED IN NM INTHE LEWIS CASE
11:50:46 AM	WE BELIEVE THAT UNDER PRONG 3 THERE IS NO QUESTION THAT THE AMOUNT OF WATER THAT IS INCLUDED IN THIS SETTLEMENT IS LESS THAN THE AMOUNT THAT COULD RESONABLE EXPECTED TO BE OBTAINED IF THIS CASE WENT TO TRIAL
11:51:52 AM J	HOW DO YOU ADDRESS MR HORNERS ARGUMENTS CONCERNING SUBSEQUENT EXECUTIVE ORDERS AND THE MANNER IN WHICH THE LANDS HAVE BEEN ADDED OVER TIME
11:52:14 AM	WE DO NOT HAVE A BOUNDARY ACT IN NM THE WAY THAT WE HAVE ONE IN UTAH AND IN ARIZONA. THERE IS A FORMAL ACT OF CONGRESS THAT DEFINES THE NN BOUNDARY

<u>11:52:33 AM</u>		THE 5 INDIAN RESERVATIONS THAT OBTAINED WATER RIGHTS IN AZ V CALIFORNIA HAVE LAND THAT WERE SET ASIDE BY A SERIES OF EXECUTIVE ORDERS. NON OF THEM HAVE RESERVATIONS THAT HAVE BEEN FORMERLY DECLARED BY CONGRESS
<u>11:52:46 AM</u>		SUPREME COURT REJECTED THE ARGUMENT OF ARIZONA THAT SAID THEY HAD TO BE FORMALLY DESIGNATED AS A RESERVATION TO HAVE A RESERVED WATER RIGHT. SUPREME COURT SAID THAT THESE LANDS HAVE ALWAYS BEEN TREATED AS RESERVATIONS, IT IS CLEAR THAT THEY ARE THE HOMELANDS OF THESE NATIVE AMERICANS
<u>11:53:42 AM</u>	J	QUESTION
<u>11:54:21 AM</u>	POLLACK	HALF OF IT IS NOT ON RESERVATION OF ANY KIND
<u>11:54:38 AM</u>		IN NM THERE IS NO FORMAL DECLARATION OF THE NAVAJO INDIAN RESERVATION. WE DO NOT HAVE A BOUNDARY BUILT
<u>11:55:15 AM</u>		CONGRESS AUTHORIZED THE NN TO ACQUIRE ADDITIONAL LANDS WHICH IT PAID FOR
<u>11:55:26 AM</u>		IT ACQUIRED THOSE LANDS FOR THE PURPOSE OF THE NIIP PROJECT
<u>11:55:34 AM</u>		APPROX HALF OF THOSE LANDS WERE SUBSEQUENTLY ACQUIRED
<u>11:55:44 AM</u>	J	I DID NOT WANT TO MISQUOTE . LETS TALK ABOUT
<u>11:56:19 AM</u>		IN 1890 THERE IS AN EXECUTIVE ORDER THAT ADDS 20,000 ACRES WHY ISNT 1890 THE PRIORITY THE DATE
<u>11:56:31 AM</u>	POLLACK	BECAUSE THE COA IN THE LEWIS CASE SAID THAT WITH RESPECT TO LOOKING AT THE PRIORITY DATE FOR INDIAN LANDS...
<u>11:56:53 AM</u>	J	IS THAT A GENERAL RULE OR IS THAT PARTICULAR TO THE MESCALEROS
<u>11:57:15 AM</u>		IT WAS A DECLARATION OF PEACE BETWEEN THE WAGING PARTIES
<u>11:58:23 AM</u>		IN THIS INSTANCE WE WOULD NOT BE TALKING ABOUT THE 1868 RESERVATION WE WOULD BE TALKING ABOUT THE 1849 TREATY
<u>12:00:05 PM</u>		THE SETTLEMENT IS INTENDED TO BE A SETTLEMENT OF ALL CLAIMS BALANCING ALL RISKS
<u>12:00:36 PM</u>	J	MUST STOP FOR LUNCH HOUR
<u>12:00:39 PM</u>		RECESS UNTIL 1:00
<u>1:09:33 PM</u>	POLLACK	BACK ON RECORD (BEGAN RECORDING LATE)
<u>1:10:20 PM</u>	J	I DO NOT WANT TO BELABOR THE POINT EXPLAINS
<u>1:11:02 PM</u>		RESPONSE WE ARE ASSERTING WATER RIGHTS TO THE DIRECT FLOWS OF THE SJ RIVER
<u>1:11:13 PM</u>	J	AGAIN I HAVE BEEN LOOKING THROUGH THE MESCALERO CASE AGAIN THE QUOTE WITH RESPECT TO THE ACTS OF CIVILIZATION I AM HAVING TROUBLE PUTTING MY FINGER ON IT
<u>1:11:26 PM</u>	POLLACK	IT IS IN THE DISTRICT COURT OPINION

<u>1:11:54 PM</u>	J	NO WONDER I COULD NOT FIND IT IN THE COURT OF APPEALS OPINION
<u>1:12:04 PM</u>	GUARINO	STANDARD WHETHER OR NOT THERE IS A REASONABLE BASIS TO ESTABLISH THAT THE SETTLEMENT AGREEMENT PROVIDES LESS THAN WHAT COULD BE PROVEN AT TRIAL
<u>1:12:58 PM</u>		IT IS A SINGLE STANDARD
<u>1:14:11 PM</u>		NO INTERROGATORIES HAVE BEEN DIRECTED TOWARDS THE WORK THAT HAS BEEN DONE BY THE US IN 2010
<u>1:14:44 PM</u>		WE ARE NOT HERE FOR A TRIAL ON THE MERITS
<u>1:15:00 PM</u>		MR HORNER WOULD LIKE TO OVERTURN BY HIS OWN RIGHTS A HUNDRED YEARS OF JURISPRUDENCE
<u>1:15:14 PM</u>		MR MARSHALL SAYS THAT YOU JUST HAVE TO PROVE EVERYTHING
<u>1:17:33 PM</u>		WE ARE NOT PREPARED TO GO TO TRIAL ON THE MERITS
<u>1:17:39 PM</u>		WE ARE PREPARED TO PROCEED WITH THESE SETTLEMENT PROCEEDINGS
<u>1:18:55 PM</u>		ONLY THE US CAN WAIVE THOSE RIGHTS
<u>1:19:14 PM</u>	J	HAS THE US OR THE NN DECIDED AUTHORITY MR POLLACK WAS SPEAKING BEFORE ABOUT AN ACT OF CONGRESS AND YOU ARE SAYING THE US MUST ACT IN ORDER FOR THERE TO BE A WAIVER. DID YOU CITE AUTHORITY TO THAT EFFECT
<u>1:19:37 PM</u>	GUARINO	IT IS INTERPRETATION OF STATUTE
<u>1:19:51 PM</u>		CASE LAW IS EXPLICIT
<u>1:21:44 PM</u>		THAT IS NOT THE WAY TO RAISE AN ISSUE OF DISPUED FACT
<u>1:24:07 PM</u>		WE ARE HERE ON A SETTLEMENT MOTION
<u>1:24:36 PM</u>		CLARIFY ABOUT WHAT MR POLLACK WAS TALKING ABOUT
<u>1:25:27 PM</u>		IT IS TRUE THAT LANDS HAVE BEEN TAKEN INTO TRUST FOR THE NAVAJO NATION
<u>1:27:07 PM</u>		1852 TREATY
<u>1:27:47 PM</u>	J	OTHER PROPONENTS
<u>1:27:55 PM</u>	HERB BECKER	PRESENTATION GOES TO THE QUESTION THAT YOU RAISED TO MR GUARINO AND MR POLLACK
<u>1:28:43 PM</u>		PRIOR TO THE CONSTITUTION.... THE CONSTITUTION WAS ADOPTED IN 1789 THAT QUESTION WAS PUT TO REST
<u>1:29:15 PM</u>		INDIAN COMMERCE CLAUSE
<u>1:29:39 PM</u>		NON INTERCOURSE ACT BY THE US SUPREME COURT AND THE COURT HAS HELD THAT ANY TRANSFER MADE THAT WAS NOT PURSUANT TO THAT ACT IS COMPLETELY VOID
<u>1:30:14 PM</u>		LAND JOHNSON BOUGHT FROMTHE TRIBES
<u>1:30:58 PM</u>		THIS WAIVER WAS NEVER APPROVED BY CONGRESS
<u>1:31:16 PM</u>		WITHOUT COMPLIANCE WITH THAT ACT THIS WAIVER HAS NO VALIDITY
<u>1:31:27 PM</u>		SECOND PART TALK ABOUT LEASING

<u>1:31:49 PM</u>		CONGRESS IN THIS SETTLEMENT ACT AUTHORIZED THE NN TO LEASE WATER IN THE ST OF NM. THEY DID NOT AUTHORIZE THE LEASE OF WATER OUTSIDE THE ST OF NM
<u>1:32:09 PM</u>		BECAUSE CONGRESS HAS AUTHORITY OVER THESE PROPERTIES ANY CONDITION THAT THEY PLACE WAS TRANSFERED
<u>1:32:21 PM</u>		THE EL PASO CASE WAS BASED OUT OF DECISION OUT OF NEBRASKA
<u>1:33:15 PM</u>		PASSES
<u>1:33:29 PM</u>	CELENE HAWKINS	THE UMUT IS NOT A SETTLEMENT PROPONENT BUT WE HAVE A BRIEF IN THIS CASE
<u>1:34:08 PM</u>		THIS COURT DOES NOT HAVE JURISDICTION TO TELL MY CLIENT WHETHER OR NOT THEY HAVE WATER RIGHTS. THE MCCARREN AMENDMENT WAIVES THE SOVERGN IMMUNITY OF THE UNITED STATES TO QUANTIFY THE WATER RIGHT
<u>1:34:28 PM</u>		WHAT WE ARE TALKING ABOUT HERE IS NOT WHETHER THE ST OF NM IS GIVING WATER RIGHTS TO THE NN
<u>1:34:33 PM</u>		THE NN UNDER FEDERAL LAW POSSESSES FEDERAL RESERVE WATER RIGHT
<u>1:34:40 PM</u>		ALL WE ARE DOING IN THIS PROCEEDING IS GETTING THE NUMBER
<u>1:34:54 PM</u>		I AM VER CONCERNED WITH THE KIND OF ARGUMENT THAT WE ARE HEARING OUT OF THE NON-SETTLING PARTIES BRIEFS ON THE NATURE OF FEDERAL RESERVED WATER RIGHT
<u>1:35:05 PM</u>		IT IS WELL ESTABLISHED AND CRYSTAL CLEAR UNDER THAT LAW
<u>1:35:20 PM</u>		THE ARGUMENT THAT WE HAD IN REGARD TO MR MORNER ARE AN ATTEMPT TO OVERTURN EXISTING US DECISIONS
<u>1:35:40 PM</u>		A LOT OF THE THINGS THAT MR MARSHALL AND MR HORNER ARE ASKING HAVE BEEN SPECIFICALLY DENIED
<u>1:36:12 PM</u>		NOT SOMETHING WE SHOULD BE SPENDING OUR TIME WITH
<u>1:37:25 PM</u>	MARIA OBRIEN	I HAVE NOTHING
<u>1:37:32 PM</u>	J	MOVE TO THE NON-SETTLING PARTIES WITH RESPECT TO THE REPLIES ON THEIR MOTIONS
<u>1:37:39 PM</u>	MARSHALL	WE ARE GOING TO REPLY ON PRONG #3 TO SAVE TIME FOR #4
<u>1:37:45 PM</u>		WHEN WE GET TO IT WE WOULD INVITE THE SETTLING PARTIES TO ADDRESS 2 SPECIFIC QUESTIONS
<u>1:37:53 PM</u>		GIVING ITEMS
<u>1:38:33 PM</u>		EXPLAIN SECTION 13.C
<u>1:38:48 PM</u>	J	WE WILL FOLLOW THE SAME PROCEDURE OF COURSE IF THEY WISH TO ADDRESS THAT IN THEIR INITIAL PRESENTATION THEY MAY AND IF NOT THEY CAN RESPOND TO YOU WHEN THEIR TIME FOR RESPONSE IS UP

<u>1:39:04 PM</u>		I AGREE THAT THOSE ARE PERTINENT ISSUES
<u>1:39:11 PM</u>		MR TULLY I THINK THAT YOU WANT TO REPLY WITH RESPECT TO YOUR MOTION ON PRONG 3
<u>1:39:26 PM</u>	RICHARD TULLY	THE STANDARDS UNDER RULE 56 FOR SUMMARY JUDGMENT MOTIONS AND WOULD JUST POINT OUT TO THE COURT THAT THE BRIEFS AND ARGUMENTS OF COUNSEL ARE NOT EVIDENCE UPON WHICH A TRIAL COURT CAN RELY ON SUMMARY JUDGMENT PROCEEDING
<u>1:40:07 PM</u>	J	ASSURE YOU AND ALL PARTIES THAT I WILL BE CAREFUL AND THE LIKE, OF THE HISMSIO REVIEWING TO THE MOTIONS AND THE RESDPONSE
<u>1:40:46 PM</u>		THERE HAVE BEEN REPRESENTATIONS THAT ARE NOT APPROPRIATE FOR A SUMMARY JUDGMENT OR DISPOSITIVE MOTION DETERMINATION
<u>1:41:08 PM</u>	GARY HORNER	MR BECKER WAS TRYING TO MAKE THE POINT THAT YOU MUST HAVE AUTHORITY FROM CO
<u>1:41:36 PM</u>		IN US V WASHINGTON TALKING ABOUT THE WATER RIGHTS THAT WERE BEING ALLOCATED TO THE TRIBE WERE ACTUALLY TO BE ALLOCATED TO INDIVIDUAL INDIANS
<u>1:42:20 PM</u>		NEED TO KEEP THAT IN MIND THAT THERE IS A WAY TO TRANSFER WATER AWAY FROM A RESERVATION
<u>1:42:54 PM</u>	J	MOVE THEN TO PRONG 4
<u>1:43:05 PM</u>	BECKER	WILL NOT HAVE ANYTHING FOR PRONG 4 ASK TO BE EXCUSED
<u>1:43:09 PM</u>	J	EXCUSED
<u>1:43:25 PM</u>		TURN TO SETTLING PARTIES
<u>1:43:26 PM</u>	DAVID GEHLERT	WANT TO ADDRESS 3 ARGUMENTS THAT HAVE BEEN MADE BY THE NON-SETTLING PARTIES
<u>1:44:24 PM</u>		YOU HAVE HEARD ARGUMENTS FROM MR MARSHALL AND MR HORNER THAT ASK THIS COURT TO OVERTURN CENTURIES WORTH OF ST AND FEDERAL LAW THAT APPLIES TO THE BUREAU OF RECLAMATION
<u>1:44:45 PM</u>		ALSO ASKED THIS COURT TO STEP INTO THE SHOES OF A FEDERAL COURT
<u>1:45:33 PM</u>		AS YOU RECOGNIZED IN THE LOWER RIO GRANDE ADJUDICATION
<u>1:45:34 PM</u>		THERE IS A SEPERATE STATUATORY PROCEDURE BY WHICH THE US CAN DEV
<u>1:45:59 PM</u>		NO WHERE IN THAT STATUTE DOES IT TALK ABOUT A PERMIT
<u>1:47:57 PM</u>		72-5-33 YOU HAVE TO GO TO THE ST ENGINEER FOR A PERMIT
<u>1:48:59 PM</u>		THE RECORD ESTABLISHES IN THIS CASE THE US DID THE SAME THING THAT IT DID IN THE LOWER RIO GRANDE
<u>1:49:41 PM</u>		MR HORNER HAS SUGGEST THAT THESE LONG STANDING STATUTES ARE SOMEHOW UNCONSTITUTIONAL, THAT IS NOT THE CASE

<u>1:50:32 PM</u>	MR HORNER RAISED THE CLAIM THAT THE US CAN NEVER HOLD A WATER RIGHT ON BEHALF OF
<u>1:50:51 PM</u>	THERE ARE NO LESS THAT 3 US SUPREME COURT CASES THAT AFFIRM THE ABILITY OF THE US
<u>1:51:03 PM</u>	CITES CASE NUMBERS
<u>1:52:53 PM</u>	THE NOTION THAT ONCE WATER IS STORED IN A RESERVOIR AND RELEASED TO BE DELIVERED TO THE PEOPLE THAT HAVE A CONTRACTUAL RIGHT TO THAT WHAT IS CAN SOME HOW BECOME FAIR GAME
<u>1:53:13 PM</u>	WHO IN THEIR RIGHT MIND IS GOING TO CONTRACT AND PAY FOR WATER IF SOMEONE ELSE CAN JUST TAKE IT BEFORE THEY GET IT
<u>1:54:40 PM</u>	IT IS EXPENSIVE TO CONSTRUCT A RESERVOIR
<u>1:55:02 PM</u>	THE US WOULD SPEND THE TAX PAYERS MONEY UP FRONT TO DEVELOPE THE RESERVIOR TO CAPTURE THAT SPRING RUN OFF
<u>1:55:15 PM</u>	THEY WOULD THEN IN FACT SELL THE WATER FOR LACK OF BETTER TERM TO THE END USERS THROUGH CONTRACTS
<u>1:56:19 PM</u>	72-5-26?? STATUTE
<u>1:56:42 PM</u>	NOR VS HAGERMAN NM SUPREME COURT AFFIRMED
<u>1:57:18 PM</u>	YOU HAVE A RECLAMATION ACT WHICH IS EXPRESSLY PREMISED ON THE NOTION THAT THESE PROJECTS WOULD BE... ON THESE CONTRACTS
<u>1:58:19 PM</u>	ONCE WATER IS STORED IN A RESERVOIR IT IS NO LONGER NATURAL WATER
<u>1:58:48 PM</u>	IN OTHER WORDS IT IS NO LONGER SUBJECT TO APPROPRIATION
<u>1:58:55 PM</u>	I SHOULD ADD THAT FEDERAL LAW MAKES THE SAME POINT
<u>1:59:37 PM</u>	DELIVER THAT WATER VIA A STREAM
<u>1:59:40 PM</u>	MR OXFORD YETERDAY SUGGEST IN FACT THE RESERVOIR SHOULD BE REQUIRED TO BUILD A SEPERATE DITCH TO DELIVER THAT WATER
<u>2:00:38 PM</u>	TALKING ABOUT THE LUNA IRRIGATION CASE
<u>2:00:46 PM</u>	4 THINGS TO SAY ABOUT THAT CASE
<u>2:01:30 PM</u>	THE LUNA COURT HELD THAT THE WATER THAT HAD BEEN STORED INITIALLY IN ARIZONA WAS SUBJECT TO ADJUDICATION IN NM
<u>2:01:52 PM</u>	WATER IS BEING FLOWING INTO NM VIA INTERSTATE STREAMS
<u>2:01:58 PM</u>	SUGNIFICANT IS THE WATER WAS COMING FROM ARIZONA
<u>2:02:10 PM</u>	THE WATER WAS CONSIDERED PRIVATE WATER IN ARIZONA BUT ONCE IT CROSSED INTO NM THAT AUTHORITY WENT AWAY
<u>2:02:30 PM</u>	ANOTHER PROPOSITION THAT MR HORNER SUGGEST THAT THERE IS SOME OBLIGATION THAT IF AT THE END OF THE YEAR THEY HAVE MORE WATER THAN WHAT THEY WILL NEED FOR THAT YEAR

<u>2:02:48 PM</u>		IF AT THE END OF THE YEAR THEY THINK THEY HAVE MORE WATER THAN THEY THINK THEY WILL NEED THAT YEAR TO SOMEHOW RELEASE THE WATER DOWNSTREAM
<u>2:02:56 PM</u>		CAN NOT CARRY WATER OVER FROM ONE YEAR TO THE NEXT
<u>2:03:38 PM</u>		MR HORNERS AUTHORITY FOR THIS IS WHAT HE CALLS THE RATON CASE
<u>2:04:02 PM</u>		THE COURT WAS APPLYING THE SPECIFIC TERMS OF THE 1935 DECREE BY WHICH RATONS WATER RIGHTS HAD BEEN ESTABLISHED
<u>2:04:28 PM</u>		WHEN A DIVERTER REACHES THE LIMIT OF THEIR WATER RIGHT THEY HAVE TO STOP TAKING WATER AND LET IT PASS
<u>2:05:07 PM</u>		THE NOTION THE THE BOR HYDROLOGIC DETERMINATION SHOULD BE REVIEWED AS PART OF THIS PROCEEDING
<u>2:05:32 PM</u>		STATUATORY DISCRETION ON THIS
<u>2:05:54 PM</u>		CONGRESS WAIVED THE GOVERNMENTS IMMUNITY TO
<u>2:07:00 PM</u>		THE ISSUE BEFORE THE COURT WAS THE QUANITIFICATION OF THAT WATER RIGHT
<u>2:07:07 PM</u>		MY CLIENTS MADE A DEAL WITH THE ST OF CO
<u>2:07:22 PM</u>		ENVIRONMENTAL GROUPS INTERVENED
<u>2:07:37 PM</u>		THE CASE WENT INTO THE CO SUPREME COURT
<u>2:07:46 PM</u>		CO SUPREME COURT SAID NO
<u>2:08:58 PM</u>		THE SAME ISSUE HAS COME UP IN NM IN CASE CALLED ROSETTE INC V US DEPT OF THE INTERIOR
<u>2:10:11 PM</u>		THE MCCARRAN AMENDMENT WAIVER GOES ONLY TO THE DETERMINATION OF FEDERAL WATER RIGHTS
<u>2:10:48 PM</u>	J	BENEFICIAL USE UNDER SECTION 8 OF THE RECLAMATION ACT
<u>2:10:56 PM</u>		IN PARTICULAR I AM INTERESTED IN CASES THAT CONSTRUE THE BENEFICIAL USE PROVISION
<u>2:11:00 PM</u>	GEHLERT	LET ME MAKE THE ESSENTIAL POINT THAT THE 1902 ACT
<u>2:11:14 PM</u>		RECLAMATION PROJECTS DO NOT COME WITH FEDERAL RESERVED WATER RIGHTS
<u>2:12:15 PM</u>	J	I AM SPEAKING SPECIFICALLY ABOUT THE LAST PROVISION IN SECTION 8 THAT ADDRESSES THE QUESTION OF BENEFICIAL USE
<u>2:12:57 PM</u>		AUTHORITY THAT INTERPRETS THAT PROVISION WITH RESPECT TO WHAT IT MEANS IN THE RECLAMATION IN COMPARED TO HOW IT MIGHT RELATE TO STATE LAW
<u>2:13:17 PM</u>	GEHLERT	RESPONDS
<u>2:15:00 PM</u>	J	WITH THE SAME QUESTION IN TERMS OF APPLICATION TO INDIAN FEDERAL RIGHTS TO WHAT EXTENT WHAT CASES CAN YOU CITE TOT HE COURT THAT ADDRESS THE QUESTION OF THE RECLAMATION ACT

<u>2:15:35 PM</u>		YOU SAID THAT IT IS NOT APPLICABLE TO TRIBAL RIGHTS CASES SO WHAT CASES CAN YOU CITE
<u>2:15:43 PM</u>	GEHLERT	I DO NOT KNOW IF ANY COURT HAS EVER SPECIFICALLY ADDRESSED THE APPLICABILITY OF SECTION 8 OF THE RECLAMATION ACT BECAUSE THEY ARE 2 DISTINCT CREATURES
<u>2:16:15 PM</u>		SECTION 8 SAYS THAT IF THE US WANTS TO BUILD A RECLAMATION PROJECT IT NEEDS TO PROCEED ACCORDING TO STATE LAW
<u>2:16:44 PM</u>		I AM NOT AN AUTHORITY ON INDIAN LAW AND I DO NOT WANT TO SPEAK FOR THE NAVAJO NATION
<u>2:16:57 PM</u>	J	IF YOU DO NOT HAVE CASES THAT IS THE QUESTION THAT I ASKED YOU
<u>2:17:20 PM</u>	POLLACK	NOT GOING TO REITERATE THE ARGUMENT THAT WE MADE IN OUR BRIEF REGARDING PRONG 4
<u>2:17:50 PM</u>		AM GOING TO GIVE YOU 2 CITATIONS
<u>2:18:19 PM</u>		REFERENCE THE MESCARELO CASE
<u>2:19:08 PM</u>		ON PRONG 4 WE BELIEVE THAT WE HAVE DISCUSSED THE POLICY OF BOTH THE STOF NM
<u>2:19:45 PM</u>		REFERS TO WINTERS V US
<u>2:20:09 PM</u>		SUPREME COURT RECOGNIZED THEM AS BEING VESTED AS OF THE DATE THE RESERVATION WAS CREATED
<u>2:20:26 PM</u>		REFERS TO NM V COMISSIONER OF PUBLIC LAND
<u>2:20:54 PM</u>		QUOTING FROM CASE
<u>2:21:35 PM</u>		THE PRIORITY OF A FEDERAL RESERVED WATER RIGHT IS NOT ESTABLISHED BY APPROPRIATION FOR BENEFICIAL USE
<u>2:21:42 PM</u>		SUCH A RIGHT IS DETERMINED BY THE WITHDRAWAL AND RESERVATION OF THE APPLICABLE LAND FOR A FEDERAL PURPOSE
<u>2:22:16 PM</u>		THE QUANTITY OF THE FEDERAL RESERVED RIGHT IS NOT DETERMINED BY THE AMOUNT OF WATER PUT TO BENEFICIAL USE RATHER IT IS DETERMINED BY THAT AMOUNT OF WATER NECESSARY TO CARRY OUT THE PRIMARY PURPOSE OF THE RESERVATION
<u>2:22:33 PM</u>		THE PRIORITY DATE OF A FEDERAL RESERVED RIGHT IS UNCONNECTED TO THE USE OF WATER SUCH A RIGHT CAN NOT BE LOST BY UNUSE
<u>2:23:01 PM</u>	UTTON	THE STATE WILL STAND ON THE SUBMISSIONS THAT WE HAVE ALREADY MADE WITH RESPECT TO THE LAW BOTH STATE AND FEDERAL AND THE PUBLIC POLICY IN SUPPORT OF THIS SETTLEMENT
<u>2:23:24 PM</u>	??	PROPONENT COUNSEL STATING THEY HAVE NOTHING
<u>2:23:31 PM</u>	J	TURN TO THE NON-SETTLING PARTIES
<u>2:23:42 PM</u>	MARSHALL	OUR MOTIONS ARE SIMPLE THEY ARE BASED ON INDISPUTABLE LAW AND UNDISPUTED FACTS IN THIS CASE
<u>2:24:13 PM</u>		LETS GO BASK TO THE PREVIEW WHERE I WAS YESTERDAY
<u>2:24:21 PM</u>		IN THOSE CASES THERE THE WINTERS DOCTRINE DOES APPLY
<u>2:24:24 PM</u>		IT CHANGES THE DATE OF APPROPRIATION

<u>2:25:35 PM</u>		THEY HAD ALREADY STARTED BUILDING THIS BIGER CANAL WITH MONEY FROM CONGRESS WHICH CONGRESS HAD APPROPRIATED
<u>2:26:26 PM</u>		THE FEDERAL GOVERNMENT CAN RESERVE WATER FOR INDIANS FOR NON-BENEFICIAL USE, THE ANSWER IS NO
<u>2:26:40 PM</u>		IT IS ALSO A REQUIREMENT OF ALL THE APPLICABLE FEDERAL STATUTES
<u>2:26:47 PM</u>		THE BENEFICIAL USE REQUIREMENT APPLIES TO THIS CASE AND THEIR CLAIM FOR WATER BECAUSE IT IS AN ESSENTIAL ELEMENT OF THE WINTERS CASE AND BECAUSE IT INVOLVES A RECLAMATION PROJECT
<u>2:27:48 PM</u>		WATER IS SO SCARCE YOU CAN NOT WASTE IT THAT IS IN JICARILLA, IT IS IN MESCALERO
<u>2:27:58 PM</u>		BACK TO AZ V CA
<u>2:27:59 PM</u>		GLAD TO SEE MR BECKER AGREED WITH ME ABOUT AZ V CAIF
<u>2:28:14 PM</u>		IF YOU LOOK AT AZ V CA YOU HAVE 30 OR 40 PAGES OF RATHER IMPENETRABLE DISCUSSION ABOUT THE BOULDER CANYON ACT
<u>2:28:20 PM</u>		THEN YOU FINALLY GET TO THE STUFF THAT WE ARE INTERESTED IN
<u>2:28:49 PM</u>		PG 557
<u>2:28:54 PM</u>	J	WHAT FOOT NOTE ARE YOU IN
<u>2:28:59 PM</u>	MARSHA LL	557 NOTE 23
<u>2:29:17 PM</u>		THAT IS THE CONTROLLING CASE AND OF COURSE THAT IS WHAT IT DAID
<u>2:29:38 PM</u>		ACTUALLY YOUR HONOR THAT MAY GE RO
<u>2:30:06 PM</u>		THEY SAID THE ONLY WAY TO DO IT IS BIA
<u>2:30:19 PM</u>		MOTION FOR PARTIAL SUMMARY JUDGMENT #4 IS ONLY DEALING WITH NIIP, I NARROWED IT TO MAKE IT NEAT AND SIMPLE
<u>2:30:49 PM</u>		CAN NOT SAY THAT PIA DOES NOT APPLY
<u>2:31:23 PM</u>		WE ARE NOT ASKING FOR SUMMARY JUDGMENT ON THOSE THINGS BUT THE NAVAJO NATION DOES NEED CLEAN DRINKING WATER EVERYWHERE ON THE RESERVATION
<u>2:31:38 PM</u>		THAT MEANS THAT IT IS GOING TO HAVE TO DRILL WELLS
<u>2:31:49 PM</u>		THAT GALLUP PIPELINE DOES NOT GO TO THE CHAPTER HOUSES
<u>2:32:39 PM</u>		THE NN IS BIGGER THAN 10 STATES OF THE UNION
<u>2:32:55 PM</u>		THEY CAN DRILL WELLS WITHIN THE BOUNDARIES WITHOUT EFFECTING ANYBOSY ELSE AND THEY ARE ENTITLED TO DO SO
<u>2:33:36 PM</u>		THEY DO NOT HAVA A PIA CLAIM FOR NIIP BECAUSE THEY WAIVED IT AND BECAUSE THEY CAN NOT PROVE IT
<u>2:34:02 PM</u>		NEXT WE HAVE OSE PERMITS, THERE ARE NO PERMITS
<u>2:34:09 PM</u>		REPEATS 1962 NIIP ACT

<u>2:34:15 PM</u>	NO RIGHT OR CLAIM OF RIGHT
<u>2:34:40 PM</u>	WHAT THEY SAID IN THAT ACT IS WE ARE AUTORIZING THE CONSTRUCTION AND YOU ARE GOING TO GET YOUR WATER BY PRIOR APPROPRIATION AND BENEFICIAL USE JUST LIKE ANYBODY EL, IN US V NM'
<u>2:35:29 PM</u>	IT SAYS THAT IT HAS TO BE REVIEWED AND APPROVED BY THIS COURT
<u>2:35:37 PM</u>	CONGRESS EXPRESSLY RECOGNIZED THAT THERE WAS A MCCARREN AMENDMENT ADJUDICATION GOING ON RIGHT NOW THAT HAD STARTED IN 1975 AND THERE WAS NO DEAL
<u>2:37:27 PM</u>	WE HAVE CONCEEDED AT LEAST FOR THE PURPOSES OF ARGUMENT THAT HOGBACK FRUITLAND AND ALL THAT DOWN IN THE VALLEY MIGHT BE PIA
<u>2:37:58 PM</u>	NONE OF THE SIGNATORITES TO THIS AGREEMENT HAD THE LEGAL AUTHORY UNDER EITHER STATE OR FEDERAL LAW TO GIVE THE NAVAJOS WATER TO WASTE FOR A NON-BENEFICIAL USE IT CAN NOT BE DONE
<u>2:38:52 PM</u>	CONGRESS HAS SAID THAT WER NOT EVER GOING TO BUILD PROJECTS
<u>2:40:27 PM</u>	THE BOTTOM LINE IT THAT THEY LOST AND WE WIN BECAUSE THERE IS NO POSSIBLE WAY THE THEY COULD PROVE NOW OR AT TRIAL OR AT ANY TIME THAT THE NAVAJO NATION NEEDS 646 THOUSAND ACRE FEET OF DIVERSION IN NM
<u>2:41:07 PM</u>	WE SAY THAT THEY ARE ENTITLED TO SOME WATER RIGHTS. WE DO NOT KNOW NOW MUCH BUT IT IS NOT EVEN CLOSE
<u>2:41:24 PM</u>	MOTION FOR SUMMARY JUDGEMENT NUMBER 2
<u>2:41:30 PM</u>	WE SET OUT THE UNDISPUTED FACTS BASED ON THE 2010 CENSUS
<u>2:42:22 PM</u>	TALKING ABOUT WHY 2010 CENSUS DATA NOT USED IN REPORT
<u>2:43:05 PM</u>	LETS QUICK GO TO THE 2 SUMMARY JUDGMENT MOTION S
<u>2:43:19 PM</u>	THERE ARE NO PERMITS
<u>2:45:15 PM</u>	THESE NON-PERMITS WERE FIRST FILED BY STEVE REYNOLDS, THE STATE
<u>2:45:30 PM</u>	HE ASSIGNED THEM TO THE FEDERAL GOVERNMENT ON THE CONDITION THAT YOU FILE AN APPLICATION
<u>2:45:53 PM</u>	WE ALSO DO NOT KNOW WHY THEY NEVER GOT PUBLISHED
<u>2:46:00 PM</u>	FOR 50 SOME YEARS PEOPLE OF THIS VALLEY HAVE BEEN PREVENTED FROM EXCERCISING THEIR CONSTITUTIONAAL RIGHT TO TAKE WATER FROM THE SAN JUAN RIVERBASED ON THE BOGUS ASSERTION
<u>2:46:33 PM</u>	EVEN IF THERE WERE A PERNMIT. A PERMIT DOES NOT CREATE A WATER TIGHT
<u>2:46:47 PM</u>	TURN TO SUMMARY JUDGMENT MOTION #4
<u>2:48:44 PM</u> J	I DO NOT HAVE IT WITH ME MR MARSHALL

<u>2:48:45 PM</u>	MARHSA LL	READ YOP
<u>2:49:08 PM</u>		NIIP IS NOT A BENEFICIAL NON-WASTEFUL USE OF WATER
<u>2:49:19 PM</u>		THE US, THE NN, AND THE ST ARE NOT MAKING
<u>2:49:48 PM</u>		THEY ESTIMATED THAT IT WOULD COST 967.T MILLION DOLLARS
<u>2:50:09 PM</u>		IT IS DOUBTFUL THAT NIIP WILL EVER BE BUILT UP
<u>2:50:28 PM</u>		THEY WANT WATER FOR PARTS OF NIIP THAT HAVE NEVER BEEN BUILT AND PROB WILL NOT BE BUILT
<u>2:51:20 PM</u>		HOW CAN YOU HAVE WATER FOR AN IRRIGATION PROJECT THAT IS NEVER GOING TO BE BUILT AND THE WATER IS NEVER GOING TO BE USED THERE
<u>2:51:31 PM</u>		THE OTHER POINT IS WHAT IS GOING TO HAPPEN TO THIS WATER IF YOUR HONOR AWARDS THEM THIS WATER IT IS GOING TO GO DOWN THE RIVER BECAUSE IT CAN BE EXPORTED
<u>2:52:09 PM</u>		ALSO THEY ARE GOING TO TRY TO USE IT OFF OF THE RESERVATION. THAT IS NOT ALLOWED UNDER THE WINTERS DOCTRINE
<u>2:52:50 PM</u>		THIS WHOLE HOMELAND PURPOSE THING WE HAVE SIDESTEPED
<u>2:53:25 PM</u>		I YOU LOOK AT THE REPLY WHICH WE FILED ON MAY 24. I WOULD HOPE THAT YOU WOULD TAB THIS BECAUSE IF THERE IS ONE DOCUMENT YOU GET TO READ THOUROUGHLY IT IS 7 PAGES IT WAS REPLY IN SUPPORT OF MTN FOR PARTIAL SUMMARY JUDGMENT
<u>2:54:39 PM</u>		MR HASKIE IN HIS DEPOSITION SAIS THAT HE WAS WORKING ON A DEFICIENCY
<u>2:54:56 PM</u>		HE ALSO TESTIFIED THAT THE FERTILIZING PLANTING ETC IS BEING DONE BY NON-INDIAN CONTRACTORS AND SO IS THE HARVESTING
<u>2:55:05 PM</u>		IT DOES NOT CREATE ANY JOBS
<u>2:55:11 PM</u>		GO TO THE TELEPHONE HEARING THAT WE HAD
<u>2:55:23 PM</u>		JUDGE WESCHLER SAID TO MR POLLACK - I SAW YOUR COMMENT THAT YOU MADE AT THE DEPOSITION OF MR HASKIE AND I WOULD LIKE YOU TO ELABORATE FOR THE COURT WHAT IS THE NN POSITION WITH RESPECT TO THE MATTER OF PROVING ITS WATER RIGHTS TO NIIP
<u>2:55:45 PM</u>		POLLACK ANSWERS - WE DO NOT THINK THAT IT IS THE COURTS ROLL HERE TO DETERMINE WHAT THE WATER RIGHTS ARE FOR NIIP
<u>2:56:13 PM</u>		WITH RESPECT TO THE WATER RIGHTS FOR NIIP NO ONE HERE IS ARGUING THAT THE WATER RIGHTS FOR NIIP ARE BASES ON PIA. AND WERE HAVE BEEN CONSISTANT ON THAT FROM THE BEGINNING
<u>2:56:55 PM</u>		CONGRESS SAID THAT THE NAVAJO NATION WOULD HAVE THE RIGHT TO A DIVERSION OF 500,000 ACRE FEET TO IRRIGATE
<u>2:58:08 PM</u>	J	RECESS UNTIL 3:15
<u>3:16:46 PM</u>	MARSHA LL	IN THE WINTERS CASE 143-F-740

<u>3:17:13 PM</u>		READING FROM THE CASE
<u>3:19:04 PM</u>	ROBERT OXFORD	MAKE ONE COMMERT AOBUT MR ?? COMMENT. HE CITED 72-5-26 STATUE. THAT THE WATER MIGHT BE PROTECTED
<u>3:20:02 PM</u>		MY 2 SUMMARY JUDGMENT MOTIONS THAT I FILED PARTS OF THE AGREEMENT ARE NOT APPLICABLE TO THE EXISTING LAW
<u>3:20:44 PM</u>		WHEN THE ANIMAS LA PLATA PROJECT CAME BEFORE THE PUBLIC THE PULIC HAD TO VOTE
<u>3:20:53 PM</u>		AS TO WHETER THEY WOULD BE TAXED TO SUPPORT THE PREMAYNEY
<u>3:21:23 PM</u>		THE WATERCOMISSION WAS FORMED IN MY ESTIMATION
<u>3:22:10 PM</u>		THE COURT CASE THAT I AM GOING TO TRE TO DESCRIBE TO YOU THAT APPLIES AGAINST THAT SETTLEMENT AGREEMENT INVOLVES THE LEFT OVER WATER FOR THE REDUCED PROJECT IN ITS INITIAL EXTATE.
<u>3:22:57 PM</u>		THE LEFT OVER WATER NEEDS TO BE BE RETURNED TO THE STATE ENGINEER FOR APPRROPRIATION IN THE LAW UNDER 72-5-33
<u>3:23:29 PM</u>		THE WATER COMISSION HOLDING A CONTRACT WOULD HAVE FIRST AND MAYBE THE ONLY RIGHTS TO APPROPRIATE THAT WATER
<u>3:23:30 PM</u>		DURING THIS TIME PERIOD IT WAS AROUND 2001 THE WATER COMMISSION FILED A PERMIT TO APPROPRIATE 20000 ACRE FEET OF WATER
<u>3:24:13 PM</u>		THE WATER COMMISSION DECIDED THEY WOULD GO TO COURT OVER THIS WATER THAT WAS NOT NEEDED
<u>3:24:35 PM</u>		THE COURT DECISION CAME DOWN FAIRLY RECENTLY THAT THE WATER HAD BEEN RETURNED TO THE STATE THE UNUSED TO THE STATE BY OPERATION OF LAW AND THE WATER COMMISSION PREVAILED
<u>3:25:34 PM</u>		THE STATE HAS APPEALED IT
<u>3:27:10 PM</u>		THE LUNA CASE IS A SUPREME COURT CASE
<u>3:27:37 PM</u>		WHEN YOU STORE THAT WATER IN A RESERVOIR YOU STILL HAVE NOT CONVEYED OWNERSHIP OF THAT WATER TO ANYONE
<u>3:28:21 PM</u>		AS I UNDERSTAND IT THE FEDERAL GOVERNMENT WAS ALLOWED TO CONTRACT OUT EXCESS PROJECT WATER
<u>3:28:53 PM</u>		THESE WATERS WERE SET ASIDE BY MR REYNOLDS
<u>3:28:57 PM</u>		THE PRIME CASE IS PNM
<u>3:29:52 PM</u>		THIS WATER WAS JUST SET ASIDE
<u>3:30:18 PM</u>		THE STATE ENGINEER COULD NOT FIGURE OUTG AT WHAT TIME THE RIVER WAS GOING TO BE OVER APPROPRIATED
<u>3:31:51 PM</u>		WATER RIGHTS ARE GIVEN OUT PER YEAR, NOT GIVEN OUT PER 3 YEARS
<u>3:33:26 PM</u>		THE STATE AND FEDERAL GOVERNMENT IS ASKING THIS COURT TO CHANGE THE WAY THAT STATE LAW IS RIGHT NOW

<u>3:35:02 PM</u>		PASSES
<u>3:35:07 PM</u>	TULLEY	CONCERNING PRONG 4
<u>3:35:42 PM</u>		THIS PROPOSED SETTLEMENT AGREEMENT DID NOT
<u>3:36:40 PM</u>		THIS POLICY OF RECOGNIZING AND ENFORCING FAIR AND REASONABLE SETTLEMENT AGREEMENTS IS VIOLATED WHEN THE EXECUTIVE DEPARTMENTS OF THE STATE OF NM OF THE US AND THE NN NEGOTIATE AND APPROVE A SETTLEMENT AGREEMENT MOST OF IT BEHIND CLOSED DOORS
<u>3:37:04 PM</u>		THIS SETTLEMENT AGREEMENT AWARDS MORE WATER RIGHTS TO THE NN THAN WHAT IT IS ENTITLED TO AND WHICH IT COULD SECURE AT TRIAL
<u>3:37:34 PM</u>		EVIDENT OF THE FAILURE OF THE SETTLING PARTIES TO CONDUCT A SIGNIFICANT REVIEW OF THE NEGOTIATIONS AND THE LEGISLATIVE HISTORY
<u>3:38:31 PM</u>		IF THAT IS CORRECT THEN THIS WAIVER AND RELINQUISHMENT OF WINTERS RIGHTS HAS ALSO BEEN RECOGNIZED BY THE PARTIES TO THE SETTLEMENT AGREEMENT
<u>3:39:14 PM</u>		THANK YOU FOR THE OPPORTUNITY TO TALK ABOUT SOVEREIGN IMMUNITY BY THE NN, VIOLATION OF DUE PROCESS, LACK OF DUE DILIGENCE BY THE SETTLING PARTIES, THE WAIVER OF OF THE RELINQUISHMENT OF THE WINTERS RIGHTS BY THE NN, AND COURT IN SOME AREAS HAS NOT BEEN TORN BY THE SETTLING PARTIES THAT IT HAS NO JURISDICTION OVER CERTAIN SUBJECT MATTERS
<u>3:39:48 PM</u>		THE COURTS SHOULDNT AND DO NOT (INAUDIBLE) DECREES THAT ARE UNENFORCABLE
<u>3:40:13 PM</u>	HORNER	LAST NOVEMBER I FILED THE MOTION W REGARDS TO FEDERAL RESERVED RIGHTS TO DETERMINE THE STANDARD IN THIS CASE
<u>3:40:49 PM</u>		THE SETTLING PARTIES ACTUALLY SPENT VERY LITTLE EFFORT ADDRESSING THAT
<u>3:41:01 PM</u>		THEY HAVE A TENDANCY TO CHARACTERIZE MY MOTION ON FEDERAL RESERVED RIGHT AS WANTING TO ASK YOU TO OVERTURN A CENTURY WORTH OF LAW WHICH IS CRAZY
<u>3:41:12 PM</u>		LOOK AT MY MOTION I GO THROUGH THE LAW IN DETAIL
<u>3:41:38 PM</u>		LISTING WHAT HE TALKS ABOUT IN THE MOTION
<u>3:41:54 PM</u>		WITH REGARD TO ARIZONA VS CALIFORNIA I SAY THAT IS AN ABORATION BECAUSE THAT IS THE ONLY PLACE WHERE THE CONCEPT OF FUTURE USES FOR FEDERAL RESERVED RIGHTS COMES IN BY WAY OF THE CONCEPT OF PIA
<u>3:42:30 PM</u>		THAT CONCEPT EVEN IN THE GILA CASES THE ARIZONA COURTS COMPLATELY THROW THAT OUT AND THEY NOTE IN THOSE CASES THAT THE SM SAID HE WAS NEVER INTENDING THAT PIA BE SOMETHING APPLIED IN EVERY ADJUDICATION

<u>3:43:10 PM</u>		US V WASHINGTON THEY TALK ABOUT THAT THE FEDERAL RESERVED WATER RIGHTS ARE LIMITED TO MINIMAL NEEDS ON THE RESERVATION AND THAT THE WATER RIGHTS ARE IMPLIED AT THE TIME OF THE CREATION OF THE RESERVATION
<u>3:43:29 PM</u>		MINIMAL NEEDS IS THE STANDARD FOR FEDERAL RESERVE RIGHTS
<u>3:43:58 PM</u>		THE FEDERAL COURTS HAVE COMPLETELY REJECTED THAT CONCEPT
<u>3:44:12 PM</u>		THE SETTLEMENT ITSELF IS FRAMED ENTIRELY IN TERMS OF FEDERAL RESERVE RIGHTS
<u>3:44:57 PM</u>		THE STATE ENGINEER HAS NEVER ISSUED PERMITS
<u>3:45:35 PM</u>		THEY WERE NEVER PUBLISHED
<u>3:45:51 PM</u>		THERE WAS NEVER AN INSPECTION OR LICENSE ISSUED BY THE OSE FOR THE PROJECT
<u>3:46:27 PM</u>		MR GEHLERT CONTROVERTED THAT HIMSELF
<u>3:46:49 PM</u>		THE FILINGS BY OR ON BEHALF OF THE UNITED STATES
<u>3:47:21 PM</u>		MOST OF THE WATER IS NOT BEING USED SO IT IS NOT BEING BENEFICIALLY USED
<u>3:48:20 PM</u>		THE ONLY WAY THEY GET THOSE WATER RIGHTS IS BY DOING A SETTLEMENT AND BRINGING IT TO YOU
<u>3:48:53 PM</u>		I HAVE SAID ALL ALONG I DO NOT HAVE A PROBLEM WITH THE NAVAJO NATION GETTING THE WATER RIGHTS WHERE THEIR CURRENT USE IS AND THAT INCLUDES NIIP
<u>3:49:01 PM</u>		NEED TO DO A HYDROGRAPHIC SURVEY TO DETERMINE WHAT THOSE USES ARE
<u>3:49:37 PM</u>		THERE IS 400,000 ACRE FEET OF WATER RIGHTS IN THE NAVAJO SETTLEMENT OVER AND ABOVE WHAT THEIR CURRENT USE IS
<u>3:51:46 PM</u>	J	TURNING BACK TO THE SETTLING PARTIES FOR RESPONSES AND REPLIES
<u>3:51:55 PM</u>	GEHLERT	RESPONSE
<u>3:52:11 PM</u>		ONLY WANT TO MAKE ONE POI
<u>3:53:52 PM</u>		YOU ACCEPT THE ARGUMENT PRESENTED TODAY THAT THE US HAS NO VALID WATER RIGHT AND NO VALID INTEREST NO ABILITY TO TAKE WATER FROM THE SAN JUAN RIVER THE US CAN NO LONGER DIVERT
<u>3:54:10 PM</u>		THAT MEANS THEY HAMMOND ETC ARE GOING TO LOSE THEIR WATER SUPPLY
<u>3:54:37 PM</u>		THE FOLKS FROM HAMMOND AND SJ WATER COMMISSION... DID THEY HAVE NOTICE?
<u>3:55:08 PM</u>	J	I WOULD ANSWER YOUR QUESTION BUT THEIR WAS NOT ANY TIME ALOTTED TO ME
<u>3:55:11 PM</u>	GEHLERT	I WOULD BE HAPPY TO YIELD SOME OF OUR TIME
<u>3:55:23 PM</u>	POLLACK	WILL BE BRIEF BECAUSE I BELIEVE THAT WE HAVE STATED MORE THAN ENOUGH IN THE PLEADINGS THAT HAVE BEEN SUBMITTED TO THE COURT

<u>3:55:43 PM</u>		I SENSE THAT THERE IS SOME TENSION HERE BETWEEN TALKING ABOUT THE PERMANENT HOMELAND FOR THE NAVAJO NATION AS THE PERMANENT MEASURE AND THE BASIS FOR A WATERRIGHT
<u>3:56:03 PM</u>		TRYING TO EXPLAIN
<u>3:58:50 PM</u>		MR MARSHALL IS CORRECT THAT OFTEN TIMES WELLS ARE NEEDED TO BE USED FOR DRINKING WATER
<u>3:58:57 PM</u>		NOT CORRECT THAT WE CAN NOT PROVIDE DRINKING WATER FROM SURFACE WATER THAT IS THE WHOLE PURPOSE OF THE NAVAJO GALLUP WATER SUPPLY PROJECT
<u>4:00:37 PM</u>	J	WHAT ABOUT THE 155000 ACRE FEET IN EXCESS OF THE 353000 IN NIIP
<u>4:00:58 PM</u>	POLLACK	I THINK THAT YOUR HONOR IS REFERRING TO THE FACT THAT OF THE 508 WE HAVE AGREE TO FURTHER LIMIT
<u>4:01:05 PM</u>		WE HAVE A CONTRACT THAT WAS AUTHORIZED BY THE 1962 ACT THAT AUTHORIIZED THE NAVAJO INDIAN IRRIGATION PROJECT
<u>4:02:11 PM</u>		WE HAVE AGREED TO REDUCE THE RIGHTS ON THAT CONTRACT BY WAY OF SETTLEMENT
<u>4:02:41 PM</u>		THE WATER RIGHTS THAT WE HAVE BIN THIS SETTLEMNNT ARE SATISFIED BY CONTRACT
<u>4:02:43 PM</u>		THE CONTRACTS ARE CONSISTANT WITH THE 1962 ACT
<u>4:04:16 PM</u>		TO BE GRANTED SUMMARY JUDGMENT THEY MUST DEMONSTRATE MATERIAL FACTS IN THE RECORD IN SUPPORT OF THEIR MOTION
<u>4:04:57 PM</u>		MR TULLY TALKS ABOUT HOW THE RIGHTS OF THE NAVAJO NATION WERE KNOWINGLY WAIVED
<u>4:05:38 PM</u>		WHAT WAS INTENDED TO BE WAIVED WAS THE RIGHT TO ASSERT A PARAMOUNT PRIORITY UNDER THE WINTERS DOCTERINE DURING TIMES OF SHORTAGE
<u>4:06:29 PM</u>		THIS COURT ISSUED AN ORDER STRIKING THE COMMUNITY DITCHES COUNTERCLAIM. THE BASIS FOR STRIKING THE COUNTERCLAIM WAS THE NAVAJO SUBFILE PROCEEDING KNOW AS THE NAVAJO INTER SE INTENDED TO ADDRESS ONLY THE WATER RIGHTS OF THE NAVAJO NATION AND NOT ADDRESS THE WATER RIGHTS OF ANY OTHER USER
<u>4:06:52 PM</u>		WHEN THE STATE ENTERS INTO NEGOTIATIONS WITH ANY OTHER WATER USER THE STATE WILL HAVE A ONE ON ONE CONVERSATION WITH THATH PARTICULAR WATER USER AND THAT WATER USER AND THE STATE WILL PROBABLY MEET BEHIND CLOSED DOORS
<u>4:07:09 PM</u>		THE DOORS WILL OPEN WHEN WE GET TO THE INTER SE CHALLENGE OF WHAT EVER CONSENT ORDER OR DECREE THE STATE AND THE WATER USER PRESENT TO THE COURT
<u>4:07:22 PM</u>		IN THIS CASE WE OPENED THE DOORS BACK IN 2003 FOR PUBIC COMMENT AND WENT THROUGH 3 ROUNDS OF PUBLIC PARTICIPATION AND COMMENT

<u>4:07:41 PM</u>		MR TULLEY SAYS THAT THE COURT SHOULD NOT ENTER A DECREE THAT IS UNENFORCEABLE.
<u>4:07:55 PM</u>		PARAGRAPH 14 OF THE PROPOSED DECREE TALKS ABOUT THE JURISDICTION AFTER ENTRY OF DECREE
<u>4:08:04 PM</u>		THIS DECREE IS A FINAL ORDER UNDER RULE 54
<u>4:08:11 PM</u>		THE COURT RETAINS JURISDICTION TO INTERPRET AND ENFORCE THIS DECREE
<u>4:08:22 PM</u>		THE NAVAJO NATION IS AGREEING AS PART OF THIS SETTLEMENT TO BE BOUND BY THE TERMS OF THE SETTLEMENT AGREEMENT AND THE DECREE
<u>4:08:39 PM</u>		WE ARE HERE IN THIS ADJUDICATION TODAY SUBJECT TO THE COURTS JURISDICTION
<u>4:09:07 PM</u>		THIS SETTLEMENT IS THE PRODUCT OF GOOD FAITH NEGOTIATION. THE SETTLEMENT PROVIDES BENEFITS TO THE NON-INDIAN WATER USERS. TO THE JUNIOR WATER USERS IT PROVIDES PROTECTIONS TO LESSEN THE IMPACT
<u>4:09:56 PM</u>		THE SETTLEMENT IS CONSISTANT WITH APPLICABLE LAW
<u>4:10:46 PM</u>		WE THINK AS A MATTER OF LAW THE COURT SHOULD APPROVE THE PROPOSED DECREES
<u>4:10:56 PM</u>	GUARINO	WE HAVE NOTHING FURTHER TO ADD TO THE COMMENTS OF MR POLLACK EXCEPT TO REQUEST THAT THE COURT DENY ALL OF THE MOTIONS FOR SUMMARY JUDGMENT THAT HAVE BEEN FILED BY THE NON-SETTLING PARTIES
<u>4:11:18 PM</u>	?? (UNIDENTIFIED)	ON BEHALF OF THE STATE UNLESS THE COURT HAS SPECIFIC ISSUES WITH RESPECT TO THE 4TH PRONG WE FEEL THAT WE HAVE ALREADY ADDRESSED THOSE ISSUES EITHER IN PRIOR ARGUMENT REGARDING THE FIRST 3 RPONGS OR OUR PRIOR SUBMITTALS
<u>4:11:33 PM</u>		REST ON OUR PRIOR ARGUMENTS
<u>4:11:36 PM</u>	J	ONE QUESTION MR UTTON
<u>4:11:44 PM</u>		I JUST ASKED MR POLLACK ABOUT THE 155000 ACRE FEET IN CONNECTION WITH NIIP. IS THE STATES POSITION DIFFERENT FROM THE NAVAJO NATIONS
<u>4:12:02 PM</u>	UTTON	RESPONSE
<u>4:12:13 PM</u>		WHAT WE CONTENDED WITH IS THE NN ALREADY EXISTING FEDERAL AUTHORIZATION UNDER THE 1962 ACT FOR A FLOOD IRRIGATION PROJECT WHAT WAS ACTUALLY BUILT WAS A SPRINKLER IRRIGATION PROJECT
<u>4:14:08 PM</u>	J	WOULD THE STATE ENGINEER ALSO NEED TO CONCLUDE THAT THERE WAS WATER AVAILABLE FOR APPROPRIATION
<u>4:14:14 PM</u>	UTTON	NOT ONLY THAT BUT IF THAT IN EFFECT RESULTED IN NEW DEMAND ON THE RESERVOIR I BELIEVE THAT WOULD REQUIRE AN AMENDMENT ON THE CONTRACT
<u>4:15:25 PM</u>		DESPITE THE PRIOR AUTHORIZATION FOR A FLOOD IRRIGATION PROJECT

<u>4:15:29 PM</u>	J	IS THE POSITION THAT YOU JUST STATED DIFFERENT FROM ANY OF THE OTHER SETTLING PARTIES
<u>4:15:57 PM</u>	UTTON	WE ASK THAT YOU GRANT OUR MOTION AND ENTER THE DECREES
<u>4:16:37 PM</u>	(UNIDENTIFIED)	INAUDIBLE
<u>4:16:47 PM</u>	J	MOVE TO THE NON-SETTLING PARTIES
<u>4:16:59 PM</u>	MARSHALL	REPLY
<u>4:17:31 PM</u>	J	I AM LOOKING TO THE BINDER THAT ME MARSHALL PROVIDED YESTERDAY AND THE PLEADING MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING NIIP WHICH WAS FILED APRIL 15, 2013
<u>4:18:12 PM</u>	MARSHALL	HIS AFFIDAVIT ALSO INCLUDES THE KELLER BLISNER REPORT
<u>4:18:29 PM</u>		HIS AFFIDAVIT IS EXHIBIT ONE, CONTINUES TO RESPOND
<u>4:18:50 PM</u>		IF YOU LOOK AT THE RULES, SOMEBODY THAT IS QUALIFIED BY EXPERIENCE
<u>4:19:04 PM</u>		HE IS EXPERIENCED AND KNOWS WHAT HE IS TALKING ABOUT
<u>4:20:09 PM</u>		R HASKIE TALKED ABOUT THE BACKLOG OF MAINTENANCE SO FORTH
<u>4:20:15 PM</u>		NEITHER ME LEEPER NO MR WHIPPLE
<u>4:21:29 PM</u>		KELLER BLISNER REPORT
<u>4:22:54 PM</u>		I CAN NOT CHASE EVERYTHING THAT THEY SAY IS WRONG ABOUT THE RECORD
<u>4:24:39 PM</u>		IS THE FEDERAL GOVERNMENT EXEMPTED FROM A WORM
<u>4:28:12 PM</u>		WATER IS TOO VALUABLE TO BE WASTED
<u>4:29:48 PM</u>		GO ON TO THE JICARILLA BECAUSE THEY HAVE NEVER ADDRESSED THAT EITHER
<u>4:30:00 PM</u>		EVEN IF THERE IS A STATE PERMIT THAT DOES NOT MAKE IT A BENEFICIAL USE
<u>4:30:30 PM</u>		THEY KEEP SAYING ONLY THE NAVAJO NATIONS WATER RIGHTS ARE AT ISSUE IN THIS CASE AND WE AGREE WITH THAT
<u>4:31:22 PM</u>		ARTICLE 16 SECTION 5
<u>4:33:57 PM</u>		THERE ARE SOLUTIONS
<u>4:34:12 PM</u>		WE ARE INTERESTED IN PARTICIPATING
<u>4:34:39 PM</u>		WE AGREE THAT THE NAVAJO NATION IS ENTITLED TO A SUBSTANTIAL AMOUNT OF WATER
<u>4:35:29 PM</u>		YOU CAN GRANT SUMMARY JUDGMENT RIGHT NOW
<u>4:35:55 PM</u>		THERE IS NO DEADLINE, SPECIAL MASTER SNYDER ESTABLISHED THAT
<u>4:36:08 PM</u>		HE ASKED MR GUARINO IF THERE WAS A DEADLINE
<u>4:36:30 PM</u>		MR GUARINO SAID THERE IS NO DEADLINE IN THE SENSE WE DO NOT NEED ANY FURTHER CONGRESSIONAL
<u>4:36:35 PM</u>		THE SETTLING PARTIES CAN BY AGREEMENT AMONG THEMSELVES EXTEND ALL OF THESE DEADLINE

<u>4:37:14 PM</u>		THEY HAD NEVER ADDRESSED THE 192 PARAGRAPHED OF LEGAL DEFENSED EHICH WE HAVE RAISED
<u>4:39:16 PM</u>		WHAT IS THE PREJUDICE TO US? WHERE IS OUR TRIAL
<u>4:40:57 PM</u>		WE WOULD SUGGEST THAT THE CONSTRUCTVE APPROACH IS THE COURT GRANT SOME OF OUR SUMMARY JUDGMENT MOTIONS AND SOME OF THE THINGS THAT IS CAN ADDRESS AS A MATTER OF LAW
<u>4:41:39 PM</u>		SET A DATE FOR TRIAL ON THE REAL ISSUES
<u>4:42:26 PM</u>		IT ALWAYS COMES DOWN TO THIS
<u>4:43:08 PM</u>		ONE OF THE THINGS THAT HAS TO HAPPEN IS THAT THE LEGISLATURE WILL FUND WATER COURTS ADEQUATLY
<u>4:44:39 PM</u>		WE ASK THE COURT TO DENY WHAT THEY FILED AND GRANT SOME OF OURS
<u>4:45:12 PM</u>	SHANNON	I HEARD TODAY MR POLLACK STATE WITH AUTHORITY THAT THE CHARIMAN OF THE NAVAJO TRIBE COULD NOT WAIVE THE WINTERS RIGHTS BECAUSE CONGRESS HAD TO DO IT AND HE REFERRED TO THE INDIAN COMMERCE CLAUSE
<u>4:45:55 PM</u>		THE ONLY PLACE THAT THE TRIBES ARE MENTIONED IN OUR UNITED STATES CONSTITUTION IS THE COMMERCE CLAUSE
<u>4:47:09 PM</u>	OXFORD	THE COURT SHOULD LOOK AT THE JICARILLA SETTLEMENT CONTRACTS
<u>4:49:12 PM</u>	HORNER	MR POLLACKS STATEMENT THAT THEY WILL PUT ALL OF THE WATER RIGHTS TO BENEFICIAL USE
<u>4:50:51 PM</u>		ALL THIS WATER IS TIED UP WITH WHAT THEY ARE CALLING PERMITS OR THE SETTLEMENT THAT PREVENTS OTHER PEOPLE FROM USING IT
<u>4:50:59 PM</u>		IF THEY ARE NOT GOING TO USE IT RELEASE IT AND LET SOMEBODY ELSE USE IT
<u>4:51:18 PM</u>		DIFFERENCE OF OPINION BETWEEN MYSELF AND MR MARSHALL
<u>4:52:01 PM</u>		I AM TALKING ABOUT SHUT IT DOWN AND FOLLOW THE STATE LAW HYDROGRAPHIC SURVEY AND CURRENT USES
<u>4:53:07 PM</u>	J	WRAP UP
<u>4:55:13 PM</u>		ADJOURNED