

Description	<p>AB-07-1</p> <p>STATE OF NEW MEXICO COUNTY OF SAN JUAN IN THE DISTRICT COURT</p> <p>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</p> <p>JUDGE: JAMES J WECHSLER TYPE OF PROCEEDINGS: Telephonic Conference on Motions FOR THE PLAINTIFF: VARIOUS FOR THE DEFENDANT: VARIOUS MONITOR: MONIQUE FLOREZ MACHINE TYPE: FTR GOLD REPORTER</p> <p>LEGEND: D - Defendant's Atty DEF - Defendant DEX - Direct Exam EX - Exhibit J - Judge M - Monitor P - Plaintiff's Atty PLA - Plaintiff W - Witness XEX - Cross Exam</p>
Date	8/26/2013 Location Court of Appels

Time	Speaker	Note
12:11:24 PM	J	CALLS TO ADDRESS MOTIONS CV-75-184/AB-07-1
12:12:56 PM	P-J	GUS GUARINO FOR UNITED STATES
12:13:08 PM		UTTON, SINGER, BRASWELL FOR STATE OF NEW MEXICO
12:13:21 PM		POLLACK, DAWLES, HOOVER FOR NAVAJO NATION
12:13:30 PM	D-J	TULLY FOR B SQUARE RANCH
12:13:48 PM		MARSHALL FOR COMMUNITY DITCH DEFENDANTS
12:14:06 PM		HORNER
12:14:08 PM		OXFORD
12:14:22 PM		LARGO FOR UTE MOUNTAIN UTE TRIBE
12:14:23 PM		SHEEANN FOR BHP
12:14:45 PM		FULLERTON FOR ALBUQUERQUE WATER, BERNILLO COUNTY, AND CITY OF ESPANOLA
12:15:00 PM	J	ADDRESSES MOTIONS ON FILE TULLY
12:15:06 PM	D-TULLY	EXPLAINS MOTION IN RELATION TO JUDGES ORDER AND PROPOSED DECREES
12:18:36 PM	J	EXPLAINS THINKING ON PROPOSED DECREES IN RELATION TO HIS ORDER THINKS TULLY'S APPROACH IS PROPER APPROACH
12:22:31 PM	P-UTTON	ADDRESSES JUDGES APPROACH ON PROPOSED DECREES AND EXPLAINS HIS OBJECTIONS TO THE DECREE
12:27:03 PM	J	ASKS FOR ANY OTHER SETTLING PARTIES
12:27:20 PM	D-MARSHALL	ADDRESSES ONE ISSUE ABOUT THE ORDER BEING APPEALABLE
12:27:47 PM	J	FINAL DECREES WILL BE FINAL DECREES
12:28:23 PM	D-MARSHALL	NOTHING FURTHER
12:28:28 PM	J	TO CONFIRM FINAL DECREES WILL BE IN AN APPEALABLE ORDER EXPLAINS IN FURTHER DETAIL RED LINE VERSION
12:30:43 PM	J	LOOKING AT RULE 52 A ORDER BASED ON DEPOSITIVE MOTIONS NOT ON TRIALS RULE 52 A DID NOT APPLY
12:31:56 PM	D-TULLY	NOT ARGUING RECALLING OBJECTIONS TO THE MOTIONS FILED BY SETTLING PARTIES
12:33:21 PM	J	ADDRESSING MARSHALL'S MOTION
12:33:28 PM	D-MARSHALL	ASKING COURT TO SET REASONABLE TIME FOR PARTIES TO REVIEW RULING AND RECORD FOR THE COURT OF APPEALS
12:35:08 PM	J	RECORD FOR DEPOSTIIVE MOTION

<u>12:35:14 PM</u>	D-MARSHAL L	YES INCLUDES ALL FILINGS UNDER RULE 56 FROM FACTUAL POINT OF VIEW
<u>12:35:42 PM</u>	J	UNDERSTANDING CLARIFICATION OF RECORD AND MOTIONS FOR RECONSIDERATION
<u>12:36:11 PM</u>	D-MARSHAL L	MOTION FOR ANY PARTY FOR WHATEVER THEY THINK IS APPROPRIATE
<u>12:36:52 PM</u>	J	TRYING TO UNDERSTAND WHAT THE COURT SHOULD BE DOING
<u>12:37:06 PM</u>	D-MARSHAL L	FOCUSING ON FACTUAL RECORD
<u>12:37:32 PM</u>	J	UNSURE OF CONDENSING RECORD ASKING FOR CLARIFICATION
<u>12:38:04 PM</u>	D-MARSHAL L	EXPLAINS CLARIFICATION OF FACTUAL RECORD
<u>12:38:56 PM</u>	J	JUST TRYING TO UNDERSTAND FOR RULING TO FOLLOW
<u>12:39:10 PM</u>	D-MARSHAL L	EXPLAINS FURTHER
<u>12:39:29 PM</u>	J	URNS TO SETTLING PARTIES RESPONSE TO MARSHALL
<u>12:39:40 PM</u>	P-GUARINO	RESPONDS TO MARSHALL AND FINAL DECREE ON HOW WE SHOULD STICK TO THE RULES
<u>12:42:30 PM</u>	J	THANKS GUARINO ASKS FOR ANY MORE SETTLING PARTIES
<u>12:42:39 PM</u>	P-POLLACK	AGREES WITH MR GUARINO AND WANTS TO STICK TO THE RULES CONTINUES TO EXPLAIN
<u>12:43:32 PM</u>	J	ASKS FOR ANYONE FROM THE STATE
<u>12:43:43 PM</u>	P-UTTON	TALKS ABOUT RED LINE PROJECT AND RESPONSE TO MARSHALL
<u>12:44:28 PM</u>	J	TALKS OF WHAT MARSHALL WAS REQUESTING AND SETTLING PARTIES MOTION TO RESPOND IS CONTINUING WITH DECREES
<u>12:46:33 PM</u>	P-SINGER	WANTS CLARIFICATION MARSHALL'S MOTION IN RESPONSE TO DECREE EXPLAINS
<u>12:47:39 PM</u>	J	RETURNS TO MARSHALL RESPONSE
<u>12:47:47 PM</u>	D-MARSHAL L	WOULD FILE A MOTION TO CORRECT AND CLARIFY THE RECORD ON CERTAIN POINTS FOR PURPOSES OF APPEAL
<u>12:50:03 PM</u>	J	ASKS FOR EXAMPLE OF WHAT MARSHALL IS TALKING ABOUT

12:50:17 PM	D-MARSHALL	POPULATION COURTS REJECTION OF MR ROGERS TESTIMONY NAVAJO NATION CENSUS IS SHRINKING
12:51:39 PM	P-GUARINO	POINTS OUT MR MARSHALL NEEDS TO FOLLOW THE RULES AND IF NOT THEN THIS COURT SHOULD NOT TAKE ANY STEPS AT THIS TIME
12:52:51 PM	J	MR TULLY DID YOU WISH TO ADDRESS THE COURT
12:52:59 PM	D-TULLY	YES MR MARSHALL HAS TAKEN A DIFFERENT APPROACH THEN WHAT HE HAD IN MIND MR TULLY WANTS TO BRING TO THE COURTS ATTENTION WHAT MAY OR MAY NOT BE FACTUAL RECORD OF THE COURT ASKING FOR OPPORTUNITY TO PRESENT THIS INFORMATION FOR A POSSIBLE MOTION TO RECONSIDER AND THAT RECORD IS PROPER WHEN IT GOES UP FOR APPEAL
12:54:45 PM	J	MR MARSHALL ILL LET YOU CLOSE
12:54:58 PM	D-MARSHALL	ONE THING TO HAVE A RECORD ITS ANOTHER TO HAVE AN ACCEPTABLE AND CLEAR RECORD
12:55:24 PM	P-UTTON	HITS ON TULLY'S AND MARSHALL'S PROPOSED FINDINGS AND CONCLUSIONS AND OBJECTS BECAUSE IT IS NOT APPROPRIATE AT THIS TIME EXPLAINS IN FURTHER DETAIL ASKS THAT THE COURT MOVE FORWARD AND TO FOLLOW THE RULES
12:57:34 PM	J	TULLY ASKED FOR RESPONSE
12:57:36 PM	D-TULLY	COURT CUSTOM AND PRACTICE THAT WHEN ONE COUNSEL AND NOT THROUGH TWO DIFFERENT COUNSELS ASKS THAT THE COURT CONSIDER THE PROPOSED FINDINGS ON FACTS AND CONCLUSIONS
12:58:45 PM	J	DON'T QUITE HAVE THE DATES SET IN MY HEAD BUT THE COURT WILL SEND OUT A RED LINE VERSION OF CHANGES IT THINKS WILL BE APPROPRIATE THEN WILL LET THE SETTLING PARTIES DECIDE WHAT THEY WILL EXCEPT AND NOT EXCEPT THEN LET THEM SUBMIT TO THE PROPOSED DECREES WILL ALLOW 5 DAYS FOR SETTLING AND NON-SETTLING PARTIES
1:00:53 PM	P-GUARINO	SETTLING PARTIES HAVE ALREADY SUBMITTED TO THE COURT IN WHAT THEY THOUGHT WERE THE CHANGES THEY AGREED WITH COULD THEY JUST SEND OUT THE RED LINE THEY HAVE ALREADY MADE

1:01:40 PM	J	WANTS TO GIVE THE PARTIES WHAT THE COURT THINKS NEEDS TO BE CHANGED THE SETTLING PARTIES WILL HAVE 5 DAYS TO EXCEPT OR NOT EXCEPT THEN CIRCULATE AND THAT IS WHAT THEY WILL DO IN RESPECT TO TULLY'S MOTION DOES NOT UNDERSTAND WHAT MARSHALL'S MOTION WAS ASKING IF WE ARE TALKING ABOUT REVIEWING THE RECORD IF HE IS POINTING TO EVIDENCE HE ASKS THAT HE SPECIFY THE EVIDENCE THAT WAS PRESENTED TO THE COURT
1:03:57 PM	D-MARSHAL L	YES YOUR HONOR MY INTENTION IS TO SPECIFY
1:04:16 PM	J	GIVES MARSHALL UNTIL THURSDAY SEPTEMBER 5 TO GIVE SPECIFICATION
1:05:04 PM	D-MARSHAL L	WE WILL FILE ON THAT DATE YES IT GIVES HIM ENOUGH TIME
1:05:21 PM	J	SEPTEMBER 5 DEADLINE FOR MOTIONS TO ADDRESS THE COURT AUGUST 16 ORDER AND WE WILL GO FROM THERE RESPONSES 15 DAYS THERE AFTER AND REPLY'S 15 DAYS AFTER THE RESPONSES ARE SERVED
1:06:18 PM		END