

DISTRICT COURT
SAN JUAN COUNTY NM
FILED DC
2019 MAY -7 AM 10: 49

STATE OF NEW MEXICO
SAN JUAN COUNTY
ELEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, ex rel.
STATE ENGINEER,

Plaintiff,

v.

THE UNITED STATES OF AMERICA, et al.,

Defendants,

v.

THE JICARILLA APACHE TRIBE and the
NAVAJO NATION,

Defendants-Intervenors.

CV-75-184

Hon. James J. Wechsler
Presiding Judge

SAN JUAN RIVER STREAM
SYSTEM ADJUDICATION

MOTION TO COMPEL DISCOVERY FROM NAVAJO NATION

The movants Chris Velasquez, Linda Corwin, and San Juan Agricultural Water Users Association respectfully move the Court to compel discovery from the Navajo Nation. It is evident that the Navajo Nation has not complied fully with the "First Discovery to Navajo Nation" propounded on January 23, 2019. On March 4, 2019 the Court denied the Navajo Nation's motion to quash and directed the Navajo Nation to answer the discovery, without limitation. The Navajo Responses which are dated April 2, 2019 are attached as Exhibit 1.

It is apparent that the Navajo Nation has not produced the foundational documents establishing the legal services organization that was named DNA. See RFP Nos. 1, 2, and 3. The Navajo Nation has also not identified by name the DNA lawyers or employees who worked on water rights. Interrogatory No. 1.

There are probably other deficiencies in the Navajo Nation responses – these are simply the ones that stand out.

It is virtually certain that the Navajo Nation did not produce the foundational documents concerning the legal services organization that ultimately was named DNA. In the Navajo Nation's responses, there are no documents concerning DNA prior to March 30, 1967. However, DNA's articles of incorporation and bylaws were filed on February 20, 1967, so there must be records about setting up a legal services organization before then. Movants' independent research also indicated that there were.

Counsel for movants conferred with Mr. Pollack by sending him an email on April 11, 2019, attached as Exhibit 2:

Stanley –

In the documents produced by the Navajo Nation, there are some gaps that I would like to bring to your attention.

1. The foundational documents for DNA have not been produced. These would include the documents authorizing and organizing the legal services organization that was later named DNA. In the production, the earliest document in RFP 2 is dated 1967 – 03 – 30. However other documents refer to earlier resolutions and documents relating to establishing a legal services organization. For example, the 1968- 04-16 DNA REFUNDING PROPOSAL refers to development efforts beginning as early as April 1965. Please produce those records, including ONEO in addition to records from the tribal Council, etc.

In response Mr. Pollack produce some documents concerning ONEO, but nothing more about DNA. There must be earlier records about setting up a legal services organization, such as resolutions or actions of the Tribal Council, the Advisory Council, ONEO, and DNA. And there also were proposals and request for funding sent to the federal government. None of those have been produced.

The Navajo Nation has also not identified lawyers and staff who worked on water rights.

1. Identify each DNA lawyer or employee who worked on water rights, providing their name, title or job description, a description of the work they did, and their current or last known address.

Response: The Navajo Nation objects to this interrogatory. DNA lawyers are not employed by or retained by the Navajo Nation. Discovery concerning the identity of DNA lawyers or their work should be directed to DNA, not to the Navajo Nation.

The Navajo Nation's objection is not well-taken, for several reasons.

1. The answer is deceptive, because it refers to DNA at the present time. "DNA lawyers are not employed by or retained by the Navajo Nation." The relevant time is at or around the time Judge Wechsler worked at DNA – not 2019, which is more than 45 years later.

2. Contemporaneous documents indicate without any real doubt that DNA was part of the Navajo Nation. See the Motion for Case Management Instructions, with exhibits, filed in this court and in the Supreme Court. For example, see Exhibit 4, where the Advisory Committee of the Navajo Tribal Council passed a resolution that DNA employees were employees of the Navajo Tribe. (The Advisory Committee was more than advisory: it acted as the executive committee of the Navajo Tribal Council.)

3. By a legal opinion from the Office of Economic Opportunity in Washington, D.C., it has been held that employees of DNA and of the Office of Navajo Economic Opportunity are employees of the Navajo Tribe[.]

ACJN-119-68 Resolution of the Advisory Committee of the Navajo Tribal Council.

3. The Navajo Nation is begging the question by asserting that DNA was not an agency or instrumentality of the Navajo Tribe, or that there was no attorney-client

relationship between DNA. The discovery is designed to probe and refute those assertions. As a litigant, the Navajo Nation cannot rely on its own assertions, its own version of the facts, as grounds for refusing to answer discovery.

4. As Mr. Pollack knows, DNA's record were destroyed by a fire in 1983.

5. The discovery directly concerns the application of Rule 21-211 in this case, including 21-211 (A)(5)(a):

A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

The judge . . . served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association.

Rule 21-211(A)(5)(a) [emphasis added].

From their own independent research, movants have identified the following DNA lawyers and staff who worked on water rights: Ted Mitchell, Ben Hanley, Douglas MacMeekin, Bob Hilgendorf, Michael Gross, Ted Mitchell, Peterson Zah, and Leo Haven. So there were DNA lawyers and staffers who worked on water rights, but the Navajo Nation has not identified any of them.

6. The Court itself was not aware of some of the recently uncovered facts, so the Court needs the information to be fully informed about the facts.

As indicated above, counsel conferred with Mr. Pollack, without success.

WHEREFORE, pursuant to Rule 1- 037 NMRA, movants hereby move the court to compel the Navajo Nation to provide complete answers to all of these discovery requests, including but not limited to the items mentioned above. Movants further ask for an award of costs and attorneys fees.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

Victor R. Marshall
Limited Special Appearance as Attorneys for
Movants Velasquez, Corwin and
San Juan Agricultural Water Users Association
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2019, a true and correct copy of the foregoing was served on the all counsel on the Electronic Service List for D-1116-CV-7500184 by emailing the filing to sjcwaterfilings@nmcourts.gov and sanjuanwater@nmcourts.gov.

/s/ Victor R. Marshall

Victor R. Marshall, Esq.

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

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

v.

D-1116-CV-75-184

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

San Juan River Adjudication
Hon. James J. Wechsler, Presiding Judge

and

JICARILLA APACHE TRIBE and
The NAVAJO NATION,
Defendant-Intervenors.

Descriptive Summary: The Navajo Nation responds to the *First Discovery to Navajo Nation*, by Chris Velasquez, Linda Corwin and San Juan Agricultural Water Users Association, filed January 23, 2019.

Number of Pages: 17; not including documents produced.

Date of Service: Served by email on April 2, 2019.

**THE NAVAJO NATION'S RESPONSES TO
FIRST DISCOVERY TO NAVAJO NATION**

The Navajo Nation responds to the *First Discovery to Navajo Nation*, by Chris Velasquez, Linda Corwin and San Juan Agricultural Water Users Association, filed January 23, 2019. The discovery requested is indicated in *italics*.

REQUESTS FOR PRODUCTION

Please produce

1. *The Tribal Council resolution establishing DNA. The approximate date is not long before February 20, 1967 (the date articles of incorporation and bylaws were filed).*

Response: There is no such resolution. DNA was not established by the Navajo Nation. All Navajo Nation Council Resolutions from January 1966 to December 1976 concerning DNA are listed in response to RFP #2.

2. *Any other Tribal Council resolutions concerning DNA.*

Response: Multiple searches of the indices of Navajo Tribal Council Resolutions from January 1966 to December 1976, including resolutions of the Advisory Committee of the Navajo Tribal Council, revealed thirteen (13) resolutions:

1. 1967-03-30 AC No. ACMA-58-67 Approving Modification of Lease and Sublease to DNA
2. 1967-07-26 AC No. ACJY-148-67 Authorizing Leases Dinebeiina, Nonprofit AZ, WR, TC, etc....
3. 1968-06-28 AC No. ACJN-119-68 Demanding Removal T. Mitchell Director DNA, and H. Crossman Attorney DNA
4. 1968-08-07 AC No. ACAU-132-68 Excluding T. Mitchell From All Lands of Navajo Tribe
5. 1968-07-17 NNC No. CJY-88-68 Reaffirming Function of ONEO
6. 1969-03-13 AC No. ACMA-78-69 Directing Chairman NTC Refuse OEO Refunding of DNA
7. 1969-04-28 NNC No. CAP-28-69 Directing Removal Present Program Director OEO Legal Services...
8. 1969-10-01 AC No. ACO-299-69 Meeting Director of Office of Economic Opportunity
9. 1969-11-25 NNC No. CN-104-69 Appointing Eight Members of Council to Board of Directors of DNA, Inc.

10. 1970-06-09 NNC No. CJN-56-70 Requesting Office Economic Opportunity Refund Legal Services Program Navajo People
11. 1971-08-06 NNC No. CAU-80-71 Appointing Five Members Board Directors Dine Beiina Nahiilna Be Agaditahe, Inc.
12. 1973-06-19 AC No. ACJN-303-73 Requesting Office Economic Opportunity Refund DNA Continue Legal Services for Navajo People and Other Low Income People
13. 1973-08-23 NNC No. CAU-43-73 Appointing G. George and H. Gorman Represent NTC New DNA Board of Directors

These resolutions have been produced in "NN Response to RFP 2" in PDF format.

3. *Any documents concerning DNA, or authored by DNA, which were given to Tribal Council members or other Navajo government officials.*

Response: There is no centralized log of documents either received by or given to Navajo Nation Council members or other government officials forty or fifty years ago. As the attached memorandum from the Record Management Department attests, "[d]ocuments provided to Council Delegates that are not appended to a resolution for consideration by a committee or the Council are not part of the public record and are not ordinarily archived." Memorandum of March 27, 2019. Nevertheless, the Record Management Department found four documents concerning DNA:

1. DNA Refunding Proposal (April. 16, 1968)
2. DNA Refunding Proposal (circa 1967)
3. OEO Evaluation Report (Undated)
4. Memorandum from Lavell to Wauneka

These documents and the Memorandum of March 27, 2019 have been produced as "NN Response to RFP 3" in PDF format.

4. *Tribal Council resolutions concerning water or water rights claims for the Navajo Nation and its members.*

Response: Multiple searches of the indices of Navajo Tribal Council Resolutions from January 1966 to December 1976, including resolutions of the Advisory Committee of the Navajo Tribal Council, revealed one hundred and seventy-six (176) resolutions:

1. 1966-01-03 AC No. ACJA-1-66 Withdrawing Certain Lands Use Shallow Well and Spring Development...
2. 1966-02-15 AC No. ACF-19-66 Withdrawal Tribal Lands Sewage Lagoon and Connecting Line Federal School...
3. 1966-03-14 AC No. ACMA-23-66 Withdrawal Land Chapter House and Sewer Lagoon and Outfall Line at Iyanbito, NM
4. 1966-04-28 NNC No. CAP-56-66 Objecting to Proposed Re-Evaluation Navajo Irrigation Project
5. 1966-05-18 AC No. ACMY-77-66 Approving Withdrawal Land Sewer Lagoon for Gap Chapter and Gap Trading Post
6. 1966-06-09 NNC No. CJN-67-66 Approving and Appropriating Funds for Emergency Water Hauling Program
7. 1966-06-15 AC No. ACJN-95-66 Confirmation and Ratification NTUA Tariff Rules and Regulations and Enforcement...
8. 1966-06-15 AC No. ACJN-98-66 Withdrawing Tribal Lands Use Water Development Dept. of Navajo Tribe
9. 1966-06-15 AC No. ACJN-99-66 Withdrawal Lands for Thoreau Sewer Lagoons
10. 1966-06-23 AC No. ACJN-117-66 Authorizing 10% Public Works Funds, Fiscal Yr. 1967, Emergency Water Hauling
11. 1966-07-19 AC No. ACJY-142-66 Amending ACR ACJN-99-66 Withdrawing Navajo Tribal Lands Thoreau Sewer Lagoon
12. 1966-07-19 AC No. ACJY-143-66 Authorizing Contract SJC,NM, Board Education re Use Well Former Naschitti BIA School

13. 1966-07-20 NNC No. CJY-88-66 Appropriating Funds re Emergency Water Hauling from Public Works Program
14. 1966-07-28 NNC No. CJY-95-66 Peabody Proposal for Coal-Fired Steam Generating Plant on Navajo Reservation
15. 1966-08-03 NNC No. CAU-97-66 Opposing Construction Dams Marble Gorge and Other Portions of the Grand Canyon
16. 1966-08-30 AC No. ACAU-176-66 Withdrawal Land for Many Farms Sewage Lagoons
17. 1966-09-01 AC No. ACS-192-66 Authorizing Amendment Transwestern Pipeline No. 4 Compressor Station Lease...
18. 1966-10-05 NNC No. CO-106-66 Task Force Report Re-Evaluation Navajo Irrigation Project
19. 1966-10-13 AC No. ACO-202-66 Authorizing NTUA Secure EDA Loan Rebuild and Extend Shiprock, NM, Water and Sewer Systems
20. 1967-01-23 NNC No. CJA-5-67 Recommending Legislation Congress US Fully Implement Navajo Irrigation Project
21. 1967-01-25 NNC No. CJA-10-67 Urging DOI Approve-Execute Water Contract UT Construction and Mining Company
22. 1967-05-09 NNC No. CMY-36-67 Requesting Amendment Act 6-13-1962 re NIIP
23. 1967-07-20 NNC No. CJY-48-67 Amending 1968 Fiscal Yr Budget Appropriating \$50,000 for Emergency Water Hauling Program
24. 1967-08-04 NNC No. CAU-62-67 Requesting USPHS Assist NN Development of Potable Water Supply
25. 1967-08-23 AC No. ACAU-180-67 Authorizing Amendment Water Well Site Lease Thoreau Mutual....
26. 1967-11-08 NNC No. CN-79-67 Appropriating Funds Provide Water System in Bird Springs Area
27. 1968-02-05 NNC No. CF-20-68 Increase Funds for Navajo Indian Irrigation Project
28. 1968-02-21 AC No. ACF-18-68 Withdrawing Navajo Tribal Lands Shallow Well and Spring Development...
29. 1968-03-25 AC No. ACMA-29-68 Recommending Subcommittee DOI and Related Agencies Committee Appropriations....

30. 1968-04-22 NNC No. CAP-40-68 Amending Fiscal Yr 1968 Tribal Budget Purpose Construct Water and Sewage Improvements...
31. 1968-04-22 NNC No. CAP-41-68 Amending Fiscal Yr 1968 Tribal Budget Purpose Constructing Water-Sewage Facilities Served Planned FHA...
32. 1968-04-30 AC No. ACAP-50-68 Authorizing Application Federal Grants and Loan Improvement Shiprock...
33. 1968-04-30 AC No. ACAP-51-68 Authorizing Acceptance Offer Grant Construct Extensions TC Water and Sewer Systems
34. 1968-05-15 AC No. ACMY-64-68 Authorizing Kerr-McGee Dispose Salt Water Navajo #E-1 Well Dineh Bi-Keyah Field
35. 1968-09-16 AC No. ACS-196-68 Authorizing Navajo Business Establishments Cameron Area Providing Tapping...
36. 1968-12-04 AC No. ACD-255-68 Granting Business Lease and Right Explore Develop Water Black Mesa Pipeline...
37. 1968-12-11 NNC No. CD-108-68 Approving the Allocation of 34,100 Acre-Feet of Water for Power Plant and Promising to Limit NT Claims
38. 1969-05-15 AC No. ACMY-132-69 Withdrawal Navajo Tribal Lands Use Ground Water Development and Shallow Well Dept.
39. 1969-05-16 AC No. ACMY-138-69 Authorizing NTUA Apply Grant and Loan Economic Development Construct Extensions Tuba City Water and Sewer Systems
40. 1969-05-16 AC No. ACMY-139-69 Authorizing NTUA Apply Grant and Loan Economic Development Construct Extensions Chinle Water and Sewer Systems
41. 1969-06-03 NNC No. CJN-50-69 Approving the Use of 3,000 Acre-Feet of Water for the City of Page
42. 1969-06-27 NNC No. CJN-66-69 Approving Transfer Funds Emergency Water Hauling Program
43. 1969-09-03 AC No. ACS-203-69 Authorizing NTUA Apply Grant and Loan Economic Development Construct Extensions...
44. 1969-09-03 AC No. ACS-204-69 Authorizing NTUA Apply Grant and Loan Economic Development Construct Extensions Crownpoint..
45. 1969-09-03 AC No. ACS-205-69 Authorizing NTUA Apply Grant and Loan Economic Development Construct Extensions Shiprock...

46. 1969-09-03 AC No. ACS-206-69 Authorizing NTUA Apply Grant FWPCA Construct Extensions Chinle Sewer System
47. 1969-09-03 AC No. ACS-207-69 Authorizing NTUA Apply Grant FWPCA Construct Extensions Tuba City Sewer System
48. 1969-09-16 AC No. ACS-220-69 Requesting Transfer Government Owned Water Utility System Chinle, AZ
49. 1969-09-16 AC No. ACS-221-69 Requesting Transfer Government Owned Sewer Utility System Chinle, AZ
50. 1969-09-16 AC No. ACS-222-69 Requesting Transfer Government Owned Water Utility System Tuba City, AZ
51. 1969-09-16 AC No. ACS-223-69 Requesting Transfer Govt. Owned Sewer Utility System Tuba City, AZ
52. 1969-09-16 AC No. ACS-224-69 Requesting Transfer Govt. Owned Water Utility System Kayenta, AZ
53. 1969-09-16 AC No. ACS-225-69 Requesting Transfer Govt. Owned Sewer Utility System Kayenta, AZ
54. 1969-09-24 AC No. ACS-229-69 Amending Resolution ACMY-132-69, Withdrawal Navajo Tribal Lands Ground Water and Shallow Well Dept.
55. 1969-09-30 AC No. ACS-291-69 Authorizing Execution Loan Doc. Economic Development Respect Kayenta Water...
56. 1969-11-06 AC No. ACN-336-69 Authorizing NTUA Apply Grant DHUD and-or FHA Comprehensive Study and Preparation...
57. 1969-11-12 NNC No. CN-88-69 Authorizing Chairman, Council, to Sign a Contract for Purchase of Water for the LeChee-Page Community
58. 1970-02-10 AC No. ACF-14-70 Authorizing Right-of-Way Construction Well and Waterline Buell Park Navajo, NM Water Supply System
59. 1970-02-13 AC No. ACF-44-70 Directing Water Development Dept. Meet Responsibilities Maintenance Water Facilities and Development of New Water Facilities
60. 1970-04-13 AC No. ACAP-78-70 Authorizing NTUA Apply Grant and Loan from EDA and Federal Water Pollution Control Admin. Construct Outfall Lines and Sewages...

61. 1970-04-16 AC No. ACAP-117-70 Requesting Conveyance Navajo Tribe Certain Federally Owned Building and Earthen Dam
62. 1970-04-16 AC No. ACAP-123-70 Approving Plan Operation for NAPI
63. 1970-05-05 NNC No. CMY-20-70 Amending Fiscal Yr 1970 Budget Appropriating \$9991.49 Payment Unpaid Claims Emergency Water Hauling Program
64. 1970-05-05 NNC No. CMY-21-70 Amending Fiscal Yr 1970 Budget Appropriating \$14172.37 Recognizing Overexpenditures Emergency Water Hauling
65. 1970-05-05 NNC No. CMY-25-70 Requesting Financial Assistance Four Corners and-or Other Federal Agencies Develop Domestic Water...
66. 1970-05-05 NNC No. CMY-26-70 Further Instructions with Respect Long Range and Overall Water Development Program Navajo Tribe
67. 1970-05-27 NNC No. CMY-42-71 Declaring Drought Distress Conditions and Providing Emergency Water Hauling and Feed Program
68. 1970-06-03 NNC No. CJN-52-70 Supporting H.R. 13,001, a Bill Amend Act 06-13-1962 (76 Stat. 96), Respect Navajo Indian Irrigation Project
69. 1970-06-15 AC No. ACJN-134-70 Authorizing NTUA Apply Grant and Loan EDA and Federal Water Pollution Control Admin. Construct Outfall Lines and Sewage..
70. 1970-06-15 AC No. ACJN-135-70 Authorizing App. Federal Grant and Loan Water and Sewer System Construction Navajo Community College Tsailee, AZ
71. 1970-06-15 AC No. ACJN-136-70 Authorizing NTUA Apply Grant and Loan EDA Construct Water Dist. Line Shiprock, NM
72. 1970-07-14 AC No. ACJY-160-70 Authorizing Execution Loan Docs EDA Respect Navajo Water Supply Facilities,...
73. 1970-11-20 AC No. ACN-286-70 Withdrawal Land for Fort Defiance Sewage Lagoons
74. 1970-11-20 AC No. ACN-289-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Bread Springs Community
75. 1970-11-20 AC No. ACN-294-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Copper Mine Community
76. 1970-11-20 AC No. ACN-295-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Dilkon Community

77. 1970-11-20 AC No. ACN-296-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Indian Wells Community
78. 1970-11-20 AC No. ACN-297-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Inscription House Community
79. 1970-11-20 AC No. ACN-298-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Kinlichee Community
80. 1970-11-20 AC No. ACN-299-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Lupton Community
81. 1970-11-20 AC No. ACN-300-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Naschitti Community
82. 1970-11-20 AC No. ACN-301-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Navajo Mtn. Community
83. 1970-11-20 AC No. ACN-302-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Sheep Springs Community
84. 1970-11-20 AC No. ACN-303-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Teec No Pos Community
85. 1970-11-20 AC No. ACN-304-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Wide Ruins Community
86. 1970-11-20 AC No. ACN-309-70 Authorizing Withdrawal Land Sanitary Sewer Improvements Coal Mine Community
87. 1970-11-24 AC No. ACN-314-70 Withdrawal Lands Construction Sewage Lagoon Church Rock, NM
88. 1970-11-24 AC No. ACN-315-70 Withdrawal Land Sewage Lagoon for Navajo Gospel Mission, Inc., Hard Rock, NN, AZ
89. 1970-11-24 AC No. ACN-320-70 Withdrawal Tribal Lands Drain Line Existing Sewage Lagoon Sanostee, County San Juan, NM
90. 1971-01-21 NNC No. CJA-19-71 Long Range and Overall Water Development Program
91. 1971-01-21 NNC No. CJA-20-71 Funds Development of Nageezi Chapter House Water Well
92. 1971-02-11 AC No. ACF-67-71 Authorizing Application Federal Grant Water and Sewer System Construction Kayenta, AZ

93. 1971-05-06 AC No. ACMY-112-71 Transferring Ownership Water and Sewer Facilities to Sawmill Chapter
94. 1971-05-12 AC No. ACMY-190-71 Authorizing and Approving Chairman NTC Transfer Sanitary Facilities Constructed Under Public Law...
95. 1971-05-12 AC No. ACMY-191-71 Promulgate Code Regulations Control and Management Swimming and Wading Pools Constructed and Operated Within NN
96. 1971-05-27 NNC No. CMY-42-71 Drought Distress Conditions and Providing Emergency Water Hauling and Feed Program
97. 1971-06-18 NNC No. CJN-69-71 Matching Funds Development of Permanent Water Sources
98. 1971-06-18 NNC No. CJN-72-71 Authorizing Water Monitoring Agreement Black Mesa Area
99. 1971-07-14 AC No. ACJY-244-71 Amending Advisory Committee Resolution ACJY-198-71, Fiscal Yr. 1972...
100. 1971-07-16 AC No. ACJY-248-71 Authorizing Execution Loan Docs. Economic Development Administration Respect Chinle Water and Sewer Facilities Project...
101. 1971-07-20 AC No. ACJY-250-71 Authorizing Expenditure Community Works Program Funds Chapter Water System District 21, Canoncito Chapter
102. 1971-07-20 AC No. ACJY-251-71 Authorizing Lease J. Gregory Merrion and Robert L. Bayless, Salt Water Disposal Site Navajo Tribal Lands
103. 1971-07-22 AC No. ACJY-262-71 Withdrawal and Assignment Tribal Lands Hogback Irrigation Project Use by NAPI
104. 1971-07-27 NNC No. CJY-74-71 Proposed Fisheries Management Recommendations
105. 1971-08-06 NNC No. CAU-78-71 Authorizing Investigation Possible Purchase Certain Water Rights Colorado River Water
106. 1972-01-18 NNC No. CJA-1-72 Authorizing Change Period Availability Funds Capital Addition Acct. 9953129 Utilized By Water Works Dept.
107. 1972-01-24 AC No. ACJA-15-72 Recommending Transfer Cutter Dam and Reservoir Bureau Reclamation to Navajo Tribe
108. 1972-02-04 NNC No. CF-31-72 Approving Transfer Cutter Dam and Reservoir Bureau Reclamation Navajo Tribe

109. 1972-02-09 AC No. ACF-18-72 Authorizing Submission App. for, and Acceptance State and Federal Grant Waste Water Treatment Facilities
110. 1972-02-09 AC No. ACF-19-72 Authorizing Execution Loan Doc. Economic Development Administration Respect WR-Fort Defiance Water System Improvements,...
111. 1972-03-16 AC No. ACMA-77-72 Amending Plan Operation NAPI and Authorizing Approval Lease Agreement...
112. 1972-04-04 AC No. ACAP-79-72 Provide Peaceful Interim Settlement Dispute Access Navajo Livestock District 6 Area;...
113. 1972-04-26 AC No. ACAP-137-72 Approve Water Study Contract Between Navajo Tribe and Williams Brothers Engineering Co.
114. 1972-06-07 NNC No. CJN-46-72 Requesting Establishment Comprehensive Fish and Wildlife Within NN
115. 1972-06-08 NNC No. CJN-52-72 Declaring Drought Distress Conditions and Requesting Emergency Assistance
116. 1972-06-09 NNC No. CJN-53-72 Requesting Activation Donated Emergency Feed and Water Hauling Programs...
117. 1972-06-14 NNC No. CJN-57-72 Advisory Committee Navajo Tribal Council and Chairman Navajo Tribe Negotiate Contract Purchase Utah Water Rights
118. 1972-08-10 NNC No. CAU-74-72 Amending Fiscal Yr. 1973 Budget and Appropriating \$200,000.00 Establish Emergency Water Hauling Program
119. 1972-09-21 AC No. ACS-310-72 Authorizing Withdrawal of Navajo Tribal Lands Sewer Lagoon Montezuma Creek, NN, UT
120. 1972-09-21 AC No. ACS-312-72 Authorizing Withdrawal Navajo Tribal Lands Sewer Lagoon Tract Aneth, NN, UT
121. 1972-09-21 AC No. ACS-313-72 Authorizing Withdrawal Navajo Tribal Lands Sewer Lagoon Tract Crystal, NN, NM
122. 1972-10-11 AC No. ACO-370-72 Authorizing Use \$200,000.00 Navajo Tribal Industrial Development Funds by NAPI
123. 1972-10-31 NNC No. CO-78-72 Requesting BIA Funds Develop Permanent Sources Water 1882 Executive Order Reservation Joint-Use Area
124. 1972-11-01 NNC No. CN-80-72 Authorizing Expenditure Funds Reimbursable Basis Emergency Assistance Navajo Flood Victims...

125. 1972-12-07 AC No. ACO-403-72 Withdrawal Lands Construction Sewage Lagoon LeChee, AZ
126. 1973-02-08 NNC No. CF-10-73 Approving Amendment Fiscal Yr. 1973 Budget \$1,000,000.00 Development Fund NAPI
127. 1973-04-17 AC No. ACAP-188-73 Withdrawal Lands Construction Sewage Lagoons Twin Lakes, NM
128. 1973-06-19 AC No. ACJN-302-73 Withdrawal Lands for Construction of Sewage Lagoons Tohatchi, NM
129. 1973-08-28 NNC No. CAU-44-73 Dedicating Certain Water Resources Vicinity Navajo, NM, Future Needs Navajo Forest Products Industries
130. 1973-08-31 NNC No. CAU-51-73 Amending 1974 Fiscal Yr. Budget Appropriating \$239,000.00 Phase II Water Studies by Williams Brothers...
131. 1973-08-31 NNC No. CAU-53-73 Authorizing Chairman NTC Negotiate Contract Purchase Certain Utah Water
132. 1973-08-31 NNC No. CAU-54-73 Authorizing Amendment Water Works Dept. Fiscal Yr. 1974 Budget
133. 1973-09-11 AC No. ACS-318-73 Withdrawal Lands Construction Sewage Lagoon Fruitland, San Juan County, NM
134. 1973-09-11 AC No. ACS-319-73 Withdrawal Lands Drill Water Well and Construct Water Storage Tank Buffalo Springs, McKinley County, NM
135. 1973-09-11 AC No. ACS-320-73 Withdrawal Land Which Construct Sewage Lagoon Tolani Lake, AZ
136. 1973-09-11 AC No. ACS-321-73 Withdrawal Land Which Construct Sewage Lagoon Bird Springs, AZ
137. 1973-09-11 AC No. ACS-322-73 Authorizing Withdrawal Lands Waste Water Facilities by NTUA Ganado, NN, AZ
138. 1974-01-15 AC No. ACJA-1-74 Authorizing Chairman NTC Execute Agreement for Purchase of Certain Utah Water
139. 1974-01-16 NNC No. CJA-3-74 Supporting Fiscal Yr. 1975 Budget Request \$17,200,000.00 Construction NIIP
140. 1974-01-16 NNC No. CJA-4-74 Supporting Soil and Moisture Budget Request \$3,405,000.00 Order Commence Farming Operations First 10,000 Acre...

141. 1974-02-12 AC No. ACF-16-74 Authorizing Execution Loan Docs. EDA Respect Tuba City Water and Sewer Facilities Project..
142. 1974-02-14 NNC No. CF-24-47 Amending Fiscal Yr. 1974 Budget Appropriating Amount \$250,000.00 Use Developing Water Supply Steamboat Community
143. 1974-04-17 AC No. ACAP-50-74 Withdrawal Land Which Construct Sewage Lagoon Montezuma Creek, UT
144. 1974-04-17 AC No. ACAP-51-74 Withdrawal Land Which Construct Sewage Lagoon Ramah, NM
145. 1974-06-07 NNC No. CJN-61-74 Approving Expenditures Unused Portion 1973-1974 Fiscal Yr Budgets and Adopting...
146. 1974-07-16 NNC No. CJY-76-74 Construction Water and Sanitation Facilities Bennett Freeze Area
147. 1974-08-01 NNC No. CAU-84-74 Amending Fiscal Yr. 1975 Budget \$200,000.00 Use NAPI
148. 1974-11-19 AC No. ACN-183-74 Authorizing Withdrawal Land Construct Sewage Lagoon Leupp, AZ by USPHS
149. 1974-11-19 AC No. ACN-184-74 Authorizing Withdrawal Lands Construct Sewage Lagoon Klagetoh, AZ by USPHS
150. 1974-11-21 AC No. ACN-212 Amending Plan Operations NAPI Provide Transfer Approx. 304 Acres Agricultural...
151. 1975-02-12 NNC No. CF-11-75 Amending Fiscal Yr. 1975 Budget Through Appropriation of \$1,676,000.00 Use NAPI
152. 1975-05-13 AC No. ACMY-123-75 Authorizing Withdrawal Lands Construct Sewage Lagoon Aneth, UT, by USPHS
153. 1975-07-14 AC No. ACJY-159-75 Authorizing Withdrawal Lands Construct Sewage Lagoon Holly Village, MC,UT by USPHS
154. 1975-09-11 AC No. ACS-207-75 Withdrawal Tribal Land Nageezi Chapter Sewer Lagoon, Rodeo Ground and Multi-Purpose Area
155. 1975-10-15 AC No. ACO-227-75 Restructuring Water Activities and Approving Plan of Operation, Office of Operations
156. 1975-10-15 AC No. ACO-228-75 Approving Establishment of Navajo Water Rights Office

157. 1975-10-16 AC No. ACO-232-75 Amending Plan Operation NAPI Authorize Location Offices, Shops, and Other Facilities and Business Entities Off Reservation
158. 1975-10-17 AC No. ACO-240-75 Approving Memo Agreement NA-75-104 Water and Sewer Facilities for Kitsillie School
159. 1975-11-06 NNC No. CN-66-75 Approving Navajo Version Contract Delivery Water Navajo Indian Irrigation Project...
160. 1975-12-19 NNC No. CD-83-75 Amending Fiscal Yr. 1976 Budget Appropriation \$1,000,000.00 Use By NAPI
161. 1976-01-23 NNC No. CJA-5-67 Recommending Legislation Congress US Fully Implement Navajo Irrigation Project
162. 1976-03-11 NNC No. CMA-12-76 Approving Amended Version Water Delivery Contract Navajo Indian Irrigation Project...
163. 1976-03-12 NNC No. CMA-15-76 Requesting BIA Agriculture Budget Fiscal Yr. 1977 and Subsequent Years On-Farm Development...
164. 1976-05-12 AC No. ACMY-104-76 Authorizing Withdrawal Land Use Water and Sanitation Yard Teec Nos Pos, AZ
165. 1976-05-12 AC No. ACMY-106-76 Authorizing Withdrawal Lands Construct Sewage Lagoon at Red Mesa, AZ
166. 1976-06-28 AC No. ACJN-123-76 Authorizing Withdrawal Land Water Well and Water Storage Tank Sites Tsayatoh, NM
167. 1976-06-28 AC No. ACJN-125-76 Recommending NTC Demand US Immediate Action Protect Navajo Water Rights...
168. 1976-06-28 AC No. ACJN-126-76 Recommending NTC Set Forth Navajo Position Navajo Water Rights
169. 1976-06-28 AC No. ACJN-127-76 Recommending NTC Approval Special Services Contract San Juan Stream Adj....
170. 1976-08-11 AC No. ACAU-161-76 Amending Resolution No. ACJY-198-61 Authorizing Withdrawal Additional Land Sewerage Lagoon Wide Ruins, AZ
171. 1976-08-25 NNC No. CAU-47-76 Appropriating Funds NAPI Amending Navajo Tribal Fiscal Year 1977 Budget, Additional Funds...
172. 1976-08-26 NNC No. CAU-52-76 Setting Forth Navajo Position on Navajo Water Rights

173. 1976-08-27 NNC No. CAU-53-76 Demanding US Take Immediate Action Protect Navajo Water Rights San Juan Stream Adj. Case
174. 1976-09-26 AC No. ACS-152-74 Withdrawal Land Which Construct Sewage Lagoon Smith Lake, NM
175. 1976-11-09 NNC No. CN-65-76 Authorizing Contracting WRD Program Pursuant Public Law 93-638
176. 1976-12-15 AC No. ACD-259-76 Authorizing Withdrawal Lands Construct Sewage Lagoon Oljato, UT by USPHS

These resolutions have been produced as "NN Response to RFP 4" in PDF format.

5. *Any DNA records concerning water rights claims for the Navajo Nation and its members.*

Response: The Navajo Nation does not possess DNA's records. Requests for production of DNA records should be directed to DNA.

6. *Any records concerning James J. Wechsler.*

Response: The Navajo Nation has no records concerning James J. Wechsler other than orders issued in the San Juan River General Stream Adjudication, which should already be in the possession of counsel for Chris Velasquez, Linda Corwin and San Juan Agricultural Water Users Association. The Navajo Nation Department of Personnel Management (DPM) was requested to provide "any records concerning James J. Wechsler." After a search of all DPM records, which go back to DPM, no records responsive to this request were found. The affidavit from the Delegated Human Resources Director confirms that the Navajo Nation has no records identifying James J. Wechsler as an employee of the Navajo Nation. The affidavit has been produced as "NN Response to RFP 6" in PDF format

INTERROGATORIES

1. *Identify each DNA lawyer or employee who worked on water rights, providing their name, title or job description, a description of the work they did, and their current or last known address.*

Response: The Navajo Nation objects to this interrogatory. DNA lawyers are not employed by or retained by the Navajo Nation. Discovery concerning the identity of DNA lawyers or their work should be directed to DNA, not to the Navajo Nation.

2. *Identify by name the attorneys who knew that Judge Wechsler had worked at DNA. This includes attorneys who worked for other parties in the San Juan litigation.*

Response: The Navajo Nation objects to this interrogatory for the reason that it is not possible to intuit the knowledge of all attorneys who worked for other parties in the San Juan litigation. Nevertheless, Judge Wechsler's past employment at DNA may have been discussed among the attorneys for the "Settling Parties" in the Navajo *Inter Se*, Case No. AB-07-1. Those attorneys would be: Stanley M. Pollack, M. Kathryn Hoover, and Samuel D. Gollis representing the Navajo Nation; John W. Utton and Arianne Singer representing the State of New Mexico, and Andrew J. Guarino representing the United States.

Verification

Interrogatory 1 was objected to by undersigned counsel pursuant to Rule 1-033(C)(2) NMRA. Interrogatory 2 can only be responded to by counsel. Counsel affirms under penalty of perjury under the laws of the State of New Mexico that the responses to the interrogatories are true and correct. Counsel's signature is sufficient verification pursuant to Rule 1-011(B) NMRA.

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Dated: April 2, 2019

NAVAJO NATION DEPARTMENT OF JUSTICE



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M. Kathryn Hoover, Principal Attorney
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(928) 871-7510

Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I certify that on this 2nd day of April 2019, an electronic version of this document was served on counsel for Chris Velasquez, Linda Corwin and San Juan Agricultural Water Users Association by electronic mail to: victor@vrmarshall.com



Stanley M. Pollack

From: victor@vrmarshall.com
Sent: Thursday, April 11, 2019 3:16 PM
To: 'Stanley M. Pollack'; shirley@vrmarshall.com; victor@vrmarshall.com
Subject: Documents not included in the Navajo Nation's production

Stanley –

In the documents produced by the Navajo Nation, there are some gaps that I would like to bring to your attention.

1. The foundational documents for DNA have not been produced. These would include the documents authorizing and organizing the legal services organization that was later named DNA. In the production, the earliest document in RFP 2 is dated 1967 – 03 – 30. However other documents refer to earlier resolutions and documents relating to establishing a legal services organization. For example, the 1968-04-16 DNA REFUNDING PROPOSAL refers to development efforts beginning as early as April 1965. Please produce those records, including ONEO in addition to records from the tribal Council, etc.
2. Tribal Council Resolution CJA – 24 – 72, which apparently appropriated money for an overall water study, according to document 1975 – 10 – 15 AC.
3. Tribal Council Resolution CD – 57 – 73, dated October 17, 1973, also referred to in document 1975 – 10 – 15 AC.

These are the gaps we've noticed so far. Please send these records to us as soon as possible. As and if we find other omissions, I will send them to you by email.

Thank You,

Victor Marshall

