

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

No. D-1116-CV-7500184

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

Hon. James J. Wechsler
Judge Pro Tempore

v.

SAN JUAN RIVER
ADJUDICATION

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

JICARILLA APACHE TRIBE and
The NAVAJO NATION
Defendant-Intervenors.

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2019 NOV 27 AM 9:11

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

THIS MATTER having come before the Court on the *Corrected Notice of Deposition of Stanley Pollack* filed November 15, 2019, by Chris Velasquez, Linda Corwin, and San Juan Agricultural Water Users Association (Movants) and the *Navajo Nation's Motion for Protective Order and Request for Expedited Consideration* filed November 22, 2019, and the Court being advised in the premises, hereby finds and concludes that:


1. Movants corrected notice of deposition notices the deposition of Stanley Pollack, the attorney for the Navajo Nation;
2. The corrected notice of deposition commands Stanley Pollack to produce at the deposition records requested by Movants in discovery including “[a]ll records referred to in the Navajo Nation’s discovery responses or objections since January 1, 2019, including the records referred to in objections, motions to quash, briefs, etc.”;

3. The *Fifth Amended Case Management Plan* filed September 22, 2008 provides that “[d]iscovery practices will be conducted by leave of the Court[,]” requiring leave of the Court to proceed with discovery;
4. The Court has granted leave for Movants to take the deposition of Robert Hilgendorf and propound its first discovery to the Navajo Nation, subject to the rules of Civil Procedure for the District Courts;
5. Movants have not requested leave of the Court to take the deposition of Stanley Pollack;
6. Courts view the taking of the deposition of opposing counsel with extreme disfavor. *See Hickman v. Taylor* 329 U.S. 495, 513 (observing that the standards of the legal profession would suffer by forcing an attorney to provide discovery testimony); *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th cir. 1986), (recognizing *Hickman* in noting that “the practice of forcing trial counsel to testify as a witness . . . has long been discouraged”).
7. By the nature of the documents requested to be produced by the *Corrected Notice of Deposition of Stanley Pollack*, it appears that Movants are seeking discovery that does not warrant engaging in a disfavored discovery practice.

IT IS THEREFORE ORDERED that:

1. The *Navajo Nation’s Motion for Protective Order and Request for Expedited Consideration* is granted.
2. The *Corrected Notice of Deposition of Stanley Pollack* is quashed.

IT IS SO ORDERED.


James J. Wechsler
Judge Pro Tempore