

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

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

Plaintiff,

v.

THE UNITED STATES OF AMERICA,
et al.,

Defendants.

CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
ADJUDICATION

Claims of Navajo Nation
Case No. AB-07-1

STATE OF NEW MEXICO'S RESPONSES
TO CONOCO PHILLIPS AND EL PASO NATURAL GAS COMPANY'S JOINT
REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO THE SETTLING PARTIES

Pursuant to Rules 1-026, 1-033, and 1-034 NMRA, the State of New Mexico, by and through its counsel, responds to Defendants ConocoPhillips, its subsidiaries and affiliates, ConocoPhillips Company, and Burlington Resources Oil and Gas Company LP ("ConocoPhillips"), and El Paso Natural Gas Company's *Joint Requests for Admission, Interrogatories, and Requests for Production of Documents to the Settling Parties*, and reserves and restates any objections not previously ruled upon by the Court, as follows:

Responses to Requests for Admission of Fact

Request No. 1: Admit that the Navajo lands identified in the proposed Partial Final Decree (Appendix 1 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement) as part of the Hogback-Cudei Irrigation Project were not part of the reservation of land comprising the Navajo Indian Reservation as established in 1868.

Response: The State of New Mexico denies this request.

Request No. 2: Admit that the Navajo lands identified in the proposed Partial Final Decree as part of the Fruitland-Cambridge Irrigation Project were not part of the reservation of land comprising the Navajo Indian Reservation as established in 1868.

Response: The State of New Mexico admits that part of the Navajo lands identified in the Proposed Partial Final Decree as part of the Fruitland-Cambridge Irrigation Project were not part of the reservation of land comprising the Navajo Indian Reservation as established in 1868, but denies that all the lands were not part of the Fruitland-Cambridge Irrigation Project were not part of the reservation of land comprising the Navajo Indian Reservation as established in 1868.

Answers to Interrogatories

Interrogatory No. 1: With respect to Request for Admission No. 1, to the extent that your answer is anything other than an unqualified admission of such fact, answer fully and under oath the following:

- A. State which lands identified in the Partial Final Decree as part of the Hogback-Cudei Irrigation Project were part of the reservation of land comprising the Navajo Indian Reservation in 1868;
- B. State which lands identified in the Partial Final Decree as part of the Hogback-Cudei Irrigation Project were not part of the reservation of land comprising the Navajo Indian Reservation in 1868.
- C. State the date each tract identified in subpart B above was acquired by, for, or on behalf of the Navajo Nation; and

D. State all of the material facts on which the answers to subparts A through C above are based and identify all documents which show, tend to show, or otherwise establish the facts set forth in your answers to the subparts above.

Answer: The State of New Mexico answers this Interrogatory as follows:

- A. All lands within the Hogback-Cudei Irrigation Project are part of the reservation of land comprising the Navajo Indian Reservation in 1868.
- B. None.
- C. Not applicable.
- D. Undated map titled "Map 1 Boundaries of the Navajo Reservation," Executive Orders and federal law establishing the boundaries of the Navajo Nation, and documents produced by the Navajo Nation.

Interrogatory No. 2: With respect to Request for Admission No. 2, to the extent that your answer is anything other than an unqualified admission of such fact, answer fully and under oath the following:

- A. State which lands identified by the Partial Final Decree as part of the Fruitland-Cambridge Irrigation Project were part of the initial reservation of land comprising the Navajo Indian Reservation in 1868;
- B. State which lands identified in the Partial Final Decree as part of the Fruitland-Cambridge Irrigation Project were not part of the reservation of land comprising the Navajo Indian Reservation in 1868.
- C. State the date each tract identified in subpart B above was acquired by, for, or on behalf of the Navajo Nation; and

D. State all of the material facts on which the answers to subparts A through C above are based and identify all documents which show, tend to show, or otherwise establish the facts set forth in your answers to the subparts above.

Answer: The State of New Mexico answers this Interrogatory as follows:

A. A portion of the Fruitland Irrigation Project, and all of the lands constituting the Cambridge Irrigation Project are on lands that were part of the initial reservation of land comprising the Navajo Indian Reservation in 1868.

B. The total acreage for the Fruitland-Cambridge Irrigation Project is approximately 3,741 acres; however, the proposed Partial Final Judgment and Decree of the Water Rights of the Navajo Nation recognizes a right to irrigate 3,335 acres. Of the total 3,741 acres, a portion of the acreage for the Fruitland Irrigation Project are on lands that were part of the expansion of the Navajo Reservation in 1880.

C. The remaining portions of land identified as part of the Fruitland-Cambridge Irrigation Project were added to the Navajo Reservation pursuant to the Executive Order of January 6, 1880, as amended by the Executive Orders of May 17, 1884 and April 25, 1886.

D. D. Undated map titled “Map 1 Boundaries of the Navajo Reservation,” Executive Orders and federal law establishing the boundaries of the Navajo Nation, and documents produced by the Navajo Nation.

Interrogatory No. 3: State whether any of the 8,830 acres of land identified in the

Partial Final Decree as part of the Hogback-Cudei Irrigation Project have *not* been irrigated, and if so, describe each such tract or parcel sufficiently to identify its location, state the total acreage

of each such tract or parcel that has not been irrigated, and state the reasons why each such tract or parcel has not been irrigated.

Answer: The State of New Mexico does not have the information needed to answer this Interrogatory. Information regarding the acreage irrigated as part of the Hogback-Cudei Irrigation Project is provided in the State's "Technical Assessment of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement" prepared by John J. Whipple, dated August 17, 2012 (Technical Assessment).

Interrogatory No. 4: If you have identified any lands in response to Interrogatory No. 3 that have not been irrigated, state the material facts and identify all documents which show, tend to show, or otherwise establish that any such lands are practicably irrigable under any legal standard sufficient to establish a reserved water right.

Answer: Please see the State of New Mexico's answer to Interrogatory No. 3 above.

Interrogatory No. 5: State whether any of the 3,335 acres of land identified in the Partial Final Decree as part of the Fruitland-Cambridge Irrigation Project have *not* been previously irrigated, and if so, describe each such tract or parcel sufficiently to identify its location, state the total acreage of each such tract or parcel that has not been irrigated, and state the reasons why each such tract or parcel has not been irrigated.

Answer: The State of New Mexico does not have the information needed to answer this Interrogatory. Information regarding the acreage irrigated as part of the Fruitland-Cambridge Irrigation Project is provided in the Technical Assessment.

Interrogatory No. 6: If you have identified lands in response to Interrogatory No. 5 that have not been irrigated, state the material facts and identify all documents which show, tend to show, or otherwise establish that any such lands are practicably irrigable under any legal standard sufficient to establish a reserved water right.

Answer: Please see the State of New Mexico's answer to Interrogatory No. 5 above.

Interrogatory No. 8: Identify each expert you have retained, consulted with and/or communicated with, including any experts who may testify, regarding any contention that "the settlement agreement provides for less than the potential [water rights] claims that could be secured at trial," as required by the Court's April 19, 2012, Amended Order, and in so doing, provide the following information with respect to each such person:

- A. The expert's name, address, and telephone number; the qualifications of each expert; a list of all publications authored by each expert within the preceding ten years; and a list of any other cases in which each expert has testified as an expert at trial or by deposition within the last four years;
- B. The substance of the facts and opinions to which the expert is expected to testify;
- C. A summary of the grounds and the facts relied upon for each opinion; and
- D. The name and contact information of the custodian of any reports prepared by the expert for this litigation.

Answer: The State of New Mexico identifies the following experts who may testify at trial in this case:

1.A. John Whipple may testify in this case as both an expert and fact witness. He is a subcontractor to the Office of the State Engineer, and is under contract with the Sheehan & Sheehan Law Firm. Mr. Whipple worked for the New Mexico Office of the State Engineer/Interstate Stream Commission from 1985-2010 and retired from the Interstate Stream Commission at the end of December 2010 as the Basin Manager, Colorado/San Juan Basin. Mr. Whipple directly participated in the negotiation of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. He has not authored any publications, but has prepared numerous letters, memoranda, reports and other documents, some relating to the Settlement Agreement and some not, over the course of the past ten years. Mr. Whipple in 2010 and 2011 testified by deposition as a fact witness in *San Juan Water Commission v. John R. D'Antonio, Jr., New Mexico State Engineer*, No. CV-2008-1699, District Court of San Juan County.

1.B. It is anticipated that Mr. Whipple will testify as to technical matters associated with the Settlement Agreement, including as to information and analyses that he presented, prepared or directly participated in developing in furtherance of the Settlement Agreement. Such matters include the bases for the proposed Partial Final Judgment and Decree of the Water Rights of the Navajo Nation and the proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation. He also may testify as to the process for developing portions of the Settlement Agreement.

1.C. The State of New Mexico is producing unprivileged documents which were prepared by Mr. Whipple and that are relevant to the Settlement Agreement and this case. It is anticipated that the documents produced will provide the substance of the facts and opinions to which he may testify.

1.D. The reports prepared by Mr. Whipple for this litigation are being produced pursuant to the procedures required by the Court.

2.A. Jim McNees may testify in this case as both an expert and fact witness. He is the current Bureau Chief, Hydrographic Survey Bureau, Litigation and Adjudication Program, Office of the State Engineer.

2.B. It is anticipated that Mr. McNees will testify as to certain information and analyses that he prepared for inclusion in the “Quantification Analysis for the Proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation,” prepared by John Whipple and filed with the Court on April 2, 2012.

2.C. The State of New Mexico is producing unprivileged documents which were prepared by Mr. McNees and that are relevant to the proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation. It is anticipated that the documents produced will provide the substance of the facts and opinions to which he may testify.

2.D. The reports prepared by Mr. McNees for this litigation are being produced pursuant to the procedures required by the Court.

The State reserves the right to identify further witnesses.

Interrogatory No. 9: Identify each fact witness you intend to call to testify regarding the contention that “the settlement agreement provides for less than the potential [water rights] claims that could be secured at trial,” as required by the Court’s April 19, 2012, Amended Order, and in so doing, provide the following information for each such person:

A. The person’s name, address, and telephone number; and

B. A summary of the substance of facts and opinions of such person's expected testimony.

Answer: See the State of New Mexico's answer to Interrogatory No. 8 above.

Interrogatory No. 10: Identify each expert you have retained, consulted with and/or communicated with, including any experts who may testify, regarding the contention that "the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights," as required by the Court's April 19, 2012, Amended Order, and in so doing, provide the following information with respect to each such person:

- A. The expert's name, address, and telephone number; the qualifications of each expert; a list of all publications authored by each expert within the preceding ten years; and a list of any other cases in which each expert has testified as an expert at trial or by deposition within the last four years;
- B. The substance of the facts and opinions to which the expert is expected to testify;
- C. A summary of the grounds and the facts relied upon for each opinion; and
- D. The name and contact information of the custodian of any reports prepared by the expert for this litigation.

Answer: See the State of New Mexico's answer to Interrogatory No. 8 above.

Interrogatory No. 11: Identify each fact witness you intend to call to testify regarding the contention that "the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights," as required by the Court's April 19, 2012, Amended Order, and in so doing, provide the following information for each such person:

- A. The person's name, address, and telephone number; and
- B. A summary of the substance of facts and opinions of such person's expected testimony.

Answer: See the State of New Mexico's answer to Interrogatory No. 8 above.

Interrogatory No. 12: For every person who participated substantively in the preparation of answers to these interrogatories, state such person's name, address, phone number, title or position, and the identity of each interrogatory, including any subpart, in which he or she participated answering.

Answer: John Whipple provided information used to prepare answers to Interrogatories Nos. 3-8. Mr. Whipple is a subcontractor to the Office of the State Engineer, and is under contract with the Sheehan & Sheehan Law Firm. He can be contracted through counsel for the State of New Mexico.

Requests for Production of Documents

Request No. 1: Produce all documents relied upon, referred to, and/or identified in response to Interrogatory No. 1.

Response: The State will produce the undated map titled "Map 1 Boundaries of the Navajo Reservation. The Navajo Nation is producing further documents.

Request No. 2: Produce all documents relied upon, referred to, and/or identified in response to Interrogatory No. 2.

Response: See the State of New Mexico response to Request No. 1 above.

Request No. 3: Produce all documents relied upon, referred to, and/or identified in response to Interrogatory No. 3.

Response: The State of New Mexico is producing the “Technical Assessment.”

Request No. 6: Produce all documents relied upon, referred to, and/or identified in response to Interrogatory No. 4.

Response: The State of New Mexico is producing the “Technical Assessment.”

Request No. 7: Produce all documents relied upon, referred to, and/or identified in response to Interrogatory No. 5.

Response: The State of New Mexico is producing the “Technical Assessment.”

Request No. 8: Produce all documents relied upon, referred to, and/or identified in response to Interrogatory No. 6.

Response: The State of New Mexico is producing the “Technical Assessment.”

Request No. 10: Produce all documents furnished to or communications sent to each expert in forming an opinion and any reports prepared by each expert regarding the issue identified in Interrogatory No. 8.

Response: The State of New Mexico is producing all non-privileged documents within its custody or control that are responsive to this request.

Request No. 11: Produce all documents or communications relied upon by each fact witness that relate to or are relied upon in their expected testimony regarding the issue identified in Interrogatory No. 9.

Response: The State of New Mexico is producing all non-privileged documents within its custody or control that are responsive to this request.

Request No. 12: Produce all documents or communications relied upon by each expert in forming an opinion and any reports prepared by each expert regarding the issue identified in Interrogatory No. 10.

Response: The State of New Mexico is producing all non-privileged documents within its custody or control that are responsive to this request.

Request No. 13: Produce all documents or communications relied upon by each fact witness that relate to or are relied upon in their expected testimony regarding the issue identified in Interrogatory No. 11.

Response: The State of New Mexico is producing all non-privileged documents within its custody or control that are responsive to this request.

Request No. 14: Produce all documents, maps, reports, and hydrographic surveys, or any other analyses or studies, that the Settling Parties intend to rely upon to support the contention that “the settlement agreement provides for less than the potential [water rights] claims that could be secured at trial,” as required by the Court’s April 19, 2012, Amended Order.

Response: The State of New Mexico is producing all non-privileged documents within its custody or control that are responsive to this request.

Request No. 15: Produce all documents, maps, reports, and hydrographic surveys, or any other analyses or studies, that the Settling Parties intend to rely upon to support the contention that “the provisions contained in the Settlement Agreement and the Proposed Decrees will reduce or eliminate impacts on junior water rights,” as required by the Court’s April 19, 2012, Amended Order.

Response: The State of New Mexico is producing all non-privileged documents within its custody or control that are responsive to this request.

Request No. 16: Produce all documents, maps, reports, and hydrographic surveys, or any other analyses or studies, or communications, which show, tend to show, or otherwise establish that the provisions in the Settlement Agreement and the Proposed Decrees will not reduce or eliminate impacts on junior water rights.

Response: The State of New Mexico has no documents responsive to this request.

Dated August 17, 2012

STATE OF NEW MEXICO



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VERIFICATION BY CERTIFICATION

Estevan R. López, P.E. states that he is the Director of the New Mexico Interstate Stream Commission and Deputy State Engineer of the State of New Mexico, a named party in this action, and that he is the authorized agent for the purpose of executing this document on behalf of the State of New Mexico; that while he does not have personal knowledge of all facts recited in the *State of New Mexico's Answers to Conoco Phillips and El Paso Natural Gas Company's Joint Requests for Admission, Interrogatories and Requests for Production to the Settling Parties*, the information contained therein has been collected and made available to him by counsel and employees of the Office of the State Engineer, and the *State of New Mexico's Answers to Conoco Phillips and El Paso Natural Gas Company's Joint Requests for Admission, Interrogatories and Requests for Production to the Settling Parties* are true to the best of his knowledge and belief, based upon the information made available to him.

Accordingly, the undersigned, being first sworn upon oath, verifies on behalf of the State of New Mexico that the statements set forth in the *State of New Mexico's Answers to Conoco Phillips and El Paso Natural Gas Company's Joint Requests for Admission, Interrogatories and Requests for Production to the Settling Parties* are true and correct, and hereby certifies the same, except as to matters stated to be on information and belief and as to such matters the undersigned certifies that he believes the same to be true.



Estevan R. López, P.E.

Director, New Mexico Interstate Stream Commission
Deputy New Mexico State Engineer

Subscribed and sworn to before me this 17 day of August, 2012, by Estevan R. López.



Notary Public

