

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

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

Plaintiff,

vs.

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

Defendants,

THE JICARILLA APACHE TRIBE AND THE  
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184

HON. JAMES J. WECHSLER  
Presiding Judge

SAN JUAN RIVER  
GENERAL STREAM  
ADJUDICATION

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

**THE STATE OF NEW MEXICO'S RESPONSES**  
**TO SAN JUAN WATER COMMISSION'S**  
**FIRST SET OF JOINT INTERROGATORIES AND FIRST SET OF JOINT REQUESTS**  
**FOR PRODUCTION TO THE UNITED STATES, THE NAVAJO NATION AND THE**  
**STATE OF NEW MEXICO**

The State of New Mexico ("the State") responds to San Juan Water Commission's ("SJWC's") *First Set of Joint Interrogatories and First Set of Joint Requests for Production to the United States, the Navajo Nation, and the State of New Mexico*, and reserves and restates any objections not previously ruled upon by the Court, as follows:

**Answers to Interrogatories of San Juan Water Commission**

1. Identify key persons known to the State who participated in the drafting or approval of the "Hydrologic Determination, 1988, Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico" (dated February 2, 1988), including the June 1987 "Bureau of Reclamation Upper Colorado Region Projected Water Supply and

Depletions, Upper Colorado River Basin” appended thereto at pages 22-25 (collectively the “1988 Hydrologic Determination”).

**Answer.** It is believed that the Upper Colorado River Commissioners for New Mexico, Colorado, Utah and Wyoming, and their engineering and legal advisors, participated in the drafting, review or approval of the 1988 Hydrologic Determination. Based upon the 1988 Annual Report of the Upper Colorado River Commission, the Commissioners and their advisors were as follows:

On behalf of the State of New Mexico: Steve Reynolds, and Philip B. Mutz and Peter Thomas White.

On behalf of the State of Colorado: Jim Lochhead, Eugene Jencsok, David Merritt, and possibly William McDonald, Frank Maynes, Duane Woodard, and Donald Hamburg.

On behalf of the State of Utah: Larry Anderson, Barry Saunders, Robert Morgan, and possibly Dallin Jensen, Michael Quealy, Don Christiansen, and David Rasmussen.

On behalf of the State of Wyoming: Gordon Fassett, John Shields, and possibly Jennifer Hager and George Christopulos.

On behalf of the Upper Colorado River Commission: Jerry Zimmerman and possibly Jane Bird. At the US Bureau of Reclamation, the State of New Mexico believes that the following persons had direct participation: Wayne Cook, and the Regional Director for Reclamation

Within the Office of the US Secretary of the Interior, the State of New Mexico is aware of direct review and approval by E. Gjelde, as Acting Secretary of the Interior.

2. Identify each person who participated in the drafting, review or approval of the “Hydrologic Determination, 2007, Water Availability from Navajo Reservoir and the Upper

Colorado River Basin for Use in New Mexico” (dated April 2007), including the State of New Mexico Schedule of Anticipated Upper Basin Depletions (dated May 2006) appended thereto at Appendix D (collectively the “2007 Hydrologic Determination”).

**Answer.** On behalf of the State of New Mexico, the following persons participated in the drafting, review or approval of the 2007 Hydrologic Determination: John Whipple, Philip B. Mutz, Estevan Lopez, Tanya Trujillo, and John D’Antonio, Jr..

At the US Bureau of Reclamation, the State of New Mexico is aware of the following persons as having direct participation: Dave Trueman, and Rick Gold, as Regional Director for Reclamation.

On behalf of the Upper Colorado River Commission, the State of New Mexico is aware of the following persons as having direct participation: Don Ostler and Jane Bird.

On behalf of the State of California, the State of New Mexico is aware of the following persons as having direct participation: Jerry Zimmerman.

On behalf of the State of Arizona, the State of New Mexico is aware of the following persons as having direct participation: Gregg Houtz and Tom Carr.

On behalf of the State of Colorado, the State of New Mexico is aware of the following persons as having direct participation: Randy Seaholm, Jim Lockhead, Scott Balcomb, and Eric Kuhn.

On behalf of the State of Utah, the State of New Mexico is aware of the following persons as having direct participation: Dennis Strong, Larry Anderson, Robert King, and Norm Johnson.

On behalf of the State of Wyoming, the State of New Mexico is aware of the following persons as having direct participation: Pat Tyrrell, John Shields and Ben Bracken.

Within the US Fish and Wildlife Service, the State of New Mexico is aware of the following persons having direct participation: David Campbell.

Within the Office of the US Secretary of the Interior, the State of New Mexico is aware of direct review and approval by Dirk Kempthorne, as Secretary of the Interior.

Randy Kirkpatrick of the San Juan Water Commission participated in the review of drafts of the depletion schedule.

3. Describe your understanding or interpretation of the meaning of the “New Mexico” section of the “Projected Water Supply and Depletions, Upper Colorado River Basin,” found on page 24 of the 1988 Hydrologic Determination, including, but not limited to:

a. the amount(s) of “Present and Projected Depletions” for the “Animas-La Plata” Project and why the amount of depletions changes over time;

b. the amount(s) of “Present and Projected Depletions” for the “Gallup-Navajo India[n] Water Supply” Project and why the amount of depletions changes over time;

c. why the “Gallup-Navajo India[n] Water Supply” Project is referred to as a “temporary” Navajo Reservoir contract; and

d. whether the “Gallup-Navajo India[n] Water Supply” Project refers to the project ultimately identified as the “Navajo-Gallup Water Supply Project” in the San Juan River Basin in New Mexico Water Rights Settlement Agreement and the Northwestern New Mexico Rural Water Projects Act.

**Answer.** The New Mexico section of the “Present and Projected Depletions” table that is included in the 1988 Hydrologic Determination at page 24 is a schedule of potential

depletions in the San Juan River Basin in New Mexico that were anticipated through the year 2040 based on information available as of 1988.

a. The depletions shown in the 1988 Hydrologic Determination included the total amount of anticipated future depletions for all municipal, industrial, domestic and irrigation uses in New Mexico under the Animas-La Plata Project combined as that project was planned at that time. The total amount of project depletions increased over time with anticipated potential water demands for the project, including for proposed irrigation uses as irrigation water became available.

b. The depletions shown in the 1988 Hydrologic Determination included the total amount of anticipated future depletions for all municipal and domestic uses in New Mexico under the Gallup-Navajo Indian Water Supply Project combined as that project was planned at that time. The total amount of project depletions change with anticipated potential demands for the project until 2039, after which an assumed future Navajo Reservoir water supply contract for the project would expire.

c. The Gallup-Navajo Indian Water Supply Project was referred to as a temporary Navajo Reservoir water supply contract in the 1988 Hydrologic Determination because it was assumed for that report that the contract would expire after 2039.

d. The Gallup-Navajo Indian Water Supply Project included in the 1988 Hydrologic Determination, and the Navajo-Gallup Water Supply Project included in the 2007 Hydrologic Determination, the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, and the Northwestern New Mexico Rural Water Projects Act, are the same project, albeit the latter is modified from earlier project plans as a result of additional project planning.

4. Explain the purpose of the 1988 Hydrologic Determination and why it was prepared.

**Answer.** Section 11 of the Act of June 13, 1962 (Public Law 87-483), provides that no long-term water supply contract, except contracts for the Navajo Indian Irrigation Project and the San Juan-Chama Project, shall be entered into for the delivery of water stored in Navajo Reservoir or for any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled until the Secretary of the Interior has determined by hydrologic investigations that sufficient water to fulfill the contract is reasonably likely to be available for use in the State of New Mexico under the allocations made in articles III and XIV of the Upper Colorado River Basin Compact and has submitted such determination to the Congress of the United States and the Congress has approved the contract. The 1988 Hydrologic Determination was prepared pursuant to section 11 of the Act of June 13, 1962, in support of the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102-441) passed by Congress in 1992 and the associated settlement contract between the United States and the Jicarilla Apache Tribe for water from the Navajo Reservoir supply.

5. Explain the purpose of the 2007 Hydrologic Determination and why it was prepared.

**Answer.** The 2007 Hydrologic Determination was prepared pursuant to section 11 of the Act of June 13, 1962, in support of the Northwestern New Mexico Rural Water Projects Act (Public Law 111-11, Title X, Subtitle B) passed by Congress in 2009, and in particular, in support of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement that was approved by the Act and the associated settlement contract between the

United States and the Navajo Nation for water from the Navajo Reservoir supply, including for the Navajo-Gallup Water Supply Project. See answer to Interrogatory No. 4 above.

6. Describe your understanding or interpretation of the meaning of the “State of New Mexico Schedule of Anticipated Upper Basin Depletions,” Appendix D to the 2007 Hydrologic Determination, including, but not limited to:

- a. the amount(s) of “anticipated” depletions for the “Animas-La Plata Project” and why the amount(s) of depletions changes over time;
- b. the amount(s) of “anticipated” depletions for the “Navajo-Gallup Water Supply Project” and why the amount(s) of depletions changes over time; and
- c. whether the “Navajo-Gallup Water Supply Project” refers to the project ultimately identified as the “Navajo-Gallup Water Supply Project” in the San Juan River Basin in New Mexico Water Rights Settlement Agreement and the Northwestern New Mexico Rural Water Projects Act.

**Answer:** The “State of New Mexico Schedule of Anticipated Upper Basin Depletions,” which is included in the 2007 Hydrologic Determination, is a schedule of potential depletions in the San Juan River Basin in New Mexico that were anticipated through the year 2060 based on information available as of 2006-2007.

- a. The depletions shown in the 2007 Hydrologic Determination include the total amount of anticipated future depletions for all municipal, industrial and domestic uses in New Mexico under the Animas-La Plata Project as that project was authorized by the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554, Appendix D,

Title III). The total amount of project depletions is anticipated to increase over time with potential water demands for the project.

b. The depletions shown in the 2007 Hydrologic Determination were the total amount of anticipated future depletions for all municipal and domestic uses in New Mexico under the Gallup-Navajo Indian Water Supply Project as that project was proposed in the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement and described in the “Planning Report and Environmental Impact Statement, Navajo-Gallup Water Supply Project, New Mexico-Arizona,” prepared by the US Bureau of Reclamation and dated July 2009. The total amount of project depletions is anticipated to increase over time with project completion and potential demands for the project.

c. The Navajo-Gallup Water Supply Project included in the 2007 Hydrologic Determination, and the Navajo-Gallup Water Supply Project included in the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement and the Northwestern New Mexico Rural Water Projects Act, are the same project.

7. Identify and explain the difference, if any, between the amount(s) of “Present or Projected” depletions for the Animas-La Plata Project shown in the 1988 Hydrologic Determination and the amount(s) of “anticipated” depletions for the Animas-La Plata Project shown in the 2007 Hydrologic Determination.

**Answer.** The total amount of projected or anticipated long-term depletions for the Animas-La Plata Project shown in the 1988 Hydrologic Determination is 34,000 acre-feet per year. The amount of present and projected future annual depletions for the Animas-La Plata Project shown in the 2007 Hydrologic Determination is 1,000 acre-feet as of the year 2000, to



account for the use of water being made at that time under the water rights for the project and 13,600 acre-feet per year in the long-term, respectively. The difference in long-term depletions for the project between the 1988 and the 2007 Determinations is due to the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554, Appendix D, Title III), which authorized for construction a downsized version of the Animas-La Plata Project as compared to the project being planned in the 1980s.

8. Identify and explain the difference, if any, between the amount(s) of “Present or Projected” depletions for the “Gallup-Navajo Indian Water Supply” Project shown in the 1988 Hydrologic Determination and the amount(s) of “anticipated” depletions for the “Navajo-Gallup Water Supply” Project shown in the 2007 Hydrologic Determination.

**Answer:** The total amount of projected or anticipated long-term depletions for the Gallup-Navajo Indian Water Supply Project within New Mexico shown in the 1988 Hydrologic Determination is 24,000 acre-feet per year until 2039, with lesser project diversions beginning by 1990. The amount of projected future annual depletions for the Navajo-Gallup Water Supply Project within New Mexico shown in the 2007 Hydrologic Determination is 28,800 acre-feet per year in the long-term through 2060, with lesser project diversions beginning by 2020. Of the long-term Navajo-Gallup Water Supply Project depletions shown in the 2007 Hydrologic Determination, about 20,780 acre-feet per year is for Navajo Nation municipal and domestic uses to be supplied through the new settlement contract approved by the Northwestern New Mexico Rural Water Projects Act (Public Law 111-11, Title X, Subtitle B), which was entered into by the Navajo Nation and the United States on December 17, 2010, and provides water from the Navajo Reservoir supply for this purpose. The remainder of the long-term project depletions

shown in the 2007 Hydrologic Determination includes 7,500 acre-feet per year for City of Gallup municipal and industrial uses, plus 1,200 acre-feet per year for Jicarilla Apache Nation domestic and commercial uses, both to be supplied through the Jicarilla Apache Nation's existing settlement contract with the United States for water from the Navajo Reservoir supply. The difference in long-term depletions for the project between the 1988 and 2007 Determinations is due to updated project planning as reflected in the "Technical Memorandum, The Navajo-Gallup Water Supply Project," prepared by the Navajo Nation Department of Water Resources, the City of Gallup, the Northwest New Mexico Council of Governments, and the US Bureau of Reclamation, dated March 16, 2001. The proposed settlement contract attached to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement signed by the State of New Mexico and the Navajo Nation on April 19, 2005, included a permanent, not temporary, water supply from Navajo Reservoir for the project.

9. Explain why the Navajo Nation protested the San Juan Water Commission's Application for Permit Pursuant to NMSA § 72-5-33 via the October 17, 2001, letter from Stanley M. Pollack, Water Rights Counsel for the Navajo Nation, to Thomas C. Turney, New Mexico State Engineer.

**Answer:** The State of New Mexico has no information to explain why the Navajo Nation protested the San Juan Water Commission's Application for Permit Pursuant to NMSA § 72-5-33 via the October 17, 2001, letter from Stanley M. Pollack, Water Rights Counsel for the Navajo Nation, to Thomas C. Turney, New Mexico State Engineer, except the information provided in the letter itself, or in subsequent filings in the proceeding.

10. Identify each person who participated in the drafting, review or approval of Mr. Pollack's October 17, 2001, letter to Mr. Turney and state whether the letter was reviewed and/or approved by the Navajo Nation Tribal Council or any other governing or advisory body of the Navajo Nation.

**Answer:** The State of New Mexico has no information to answer this interrogatory.

11. Explain the Navajo Nation's contention, as set out in Paragraph No. 2 on page 2 of Mr. Pollack's October 17, 2001, letter that there is "undeveloped water held by Permit No. 2883" and state whether the United States of America and the State of New Mexico agree with the Navajo Nation's contention.

**Answer.** The State of New Mexico does not take a position regarding the Navajo Nation's contention in 2001. The State of New Mexico's position is that the water under OSE File No. 2883 has not all been fully developed.

12. Explain the Navajo Nation's contention, as set out in Paragraph No. 5 on page 3 of Mr. Pollack's October 17, 2001, letter that "[t]he proposed Application would reduce the available supply of undeveloped water that could be used as part of a water rights settlement with the Navajo Nation," and state whether the United States of America and the State of New Mexico agree with the Navajo Nation's contention.

**Answer.** The State of New Mexico does not take a position regarding the Navajo Nation's contention in 2001, but affirmatively states that the potential availability of undeveloped water under OSE File No. 2883 has no effect on the water rights described in the proposed Partial Final Judgment and Decree of the Water Rights of the Navajo Nation or the

proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation, and could only affect the proposed possible allocation of additional water set out in subparagraph 8.1 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement.

13. Explain the Navajo Nation's contention, as set out in Paragraph No. 9 on page 5 of Mr. Pollack's October 17, 2001, letter that "the proposed application . . . adversely affects the interests of the Navajo Nation, and all other water users in the San Juan River basin, by making less water available for a settlement," and state whether the United States of America and the State of New Mexico agree with the Navajo Nation's contention.

**Answer:** The State of New Mexico does not take a position regarding the Navajo Nation's contention in 2001, but affirmatively states that the water rights in the proposed Partial Final Judgment and Decree of the Water Rights of the Navajo Nation or the proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation are not affected by the availability of undeveloped water under OSE File No. 2883. The potential availability of undeveloped water under OSE File No. 2883 could only affect the proposed possible allocation of additional water set out in subparagraph 8.1 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement.

14. Do you contend that there is "undeveloped water" held in Permit No. 2883 for the Animas-La Plata Project that is no longer necessary for the Animas-La Plata Project? If so, was such "undeveloped water" used to provide water for the Navajo Settlement? If so:

a. identify the amount of undeveloped Animas-La Plata Project water that is no longer necessary for the Animas-La Plata Project;

b. identify the amount of undeveloped Animas-La Plata Project water used for the Navajo Settlement; and

c. explain whether any undeveloped Animas-La Plata Project water provides any portion of the water supply for the Navajo-Gallup Water Supply Project.

If not, identify the source of water for the Navajo-Gallup Water Supply Project.

**Answer:** a. The State of New Mexico's position is that although the water under OSE File No. 2883 is not fully developed, section 302 of the Act does not prohibit the Secretary of the Interior from obtaining Congressional authorization to construct some or all of the additional Animas-La Plata Project features originally authorized by the Colorado River Basin Project Act (Public Law 90-537) passed by the Congress in 1968. The State of New Mexico is not aware that the Secretary of the Interior has made a final decision as to whether to seek additional construction authorizations in the future to further develop the water supply under OSE File No. 2883.

b. None.

c. Undeveloped water under OSE File No. 2883 does not provide any portion of the water supply for the Navajo-Gallup Water Supply Project. The source of water for the Navajo-Gallup Water Supply Project is water from the Navajo Reservoir supply.

15. Identify each person who participated in the drafting, review or approval of Jim Sizemore's December 20, 2005, letter returning San Juan Water Commission's Application No. 4818 without publication.

**Answer.** The following persons are believed to have participated in the drafting, review or approval of Jim Sizemore's December 20, 2005, letter to the San Juan Water Commission: Jim Sizemore.

16. Explain the statement quoted below, which is found in Jim Sizemore's December 20, 2005, letter returning San Juan Water Commission's Application No. 4818 without publication, including, but not limited to:

a. the amount of the "reduced depletion" for the Animas-La Plata Project shown in the "schedule of anticipated depletions";

b. whether the "reduced depletion" amount for the Animas-La Plata Project is the full amount of water anticipated to be used by that Project;

b. how any Animas-La Plata Project water over and above the "reduced depletion" constitutes an "additional allocation of project water";

c. how much of the reduced depletion amount constitutes an "additional allocation of project water" for the Navajo Nation; and

d. how much of the "additional allocation of project water" the San Juan Water Commission is entitled to under the terms of the "New Mexico Navajo Nation Water Rights Settlement Agreement":

I state that New Mexico's schedule of anticipated depletions in the Upper Basin prepared for the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement includes the reduced depletion amounts for project uses, and that the Settlement Agreement, which was signed by the State of New Mexico and the Navajo Nation in April 2005, provides that any additional allocations of project water in New Mexico under Permit No. 2883 would be shared equally between the Navajo Nation and the SJWC's member entities, subject to approval of the Interstate Stream Commission.

**Answer.** The subject statement quoted from Jim Sizemore's December 20, 2005, letter to the San Juan Water Commission was made in reference to subparagraph 8.1 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement signed by the State of New Mexico and the Navajo Nation on April 19, 2005, which states: "If it is determined that an allocation to New Mexico water users can be made without impairment to existing water rights in New Mexico from the water supply associated with New Mexico State Engineer File No. 2883 that is in addition to the Animas-La Plata Project water allocations to users in New Mexico made by section 302 of the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554, [Appendix D, Title III,] 114 Stat. 2763A-258): the Navajo Nation shall receive for its use an additional share of water from the water supply associated with File No. 2883 that is equal to 50 percent of the additional allocation that can be made; the remainder of the additional allocation shall be reserved for uses of water by member entities of the San Juan Water Commission, subject to approval of the State of New Mexico, acting through the Interstate Stream Commission; ..." While Jim Sizemore's letter refers to a reduction in depletions for the Animas-La Plata Project as authorized for construction by the Colorado Ute Settlement Act Amendments of 2000 (see the State of New Mexico's answers to Interrogatories No. 3.a, 6.a and 7 above), it has not been determined whether any allocation of water can be made under subparagraph 8.1 of the Settlement Agreement.

17. Identify the date the United States of America established the original Navajo Reservation, the treaty, executive order or other official act establishing the Reservation, and the boundaries of the Reservation on the date it was established.

**Answer:** Per agreement with the San Juan Water Commission by letter dated July 17, 2012, the Navajo Nation is responding to this Interrogatory.

18. Identify each expansion, contraction or other change to the original boundaries of the Navajo Reservation, and for each such expansion, contraction or other change, identify the date the Reservation boundaries changed, the location of the modified Reservation boundaries, and the treaty, executive order or other official act expanding, contracting or otherwise changing the Reservation boundaries

**Answer.** Per agreement with the San Juan Water Commission by letter dated July 17, 2012, the Navajo Nation is responding to this Interrogatory.

19. State whether you contend the Navajo Nation did or did not release, waive or in any way exchange any portion of its reserved water rights under the *Winters* doctrine in order to secure Congressional authorization of the Navajo Indian Irrigation Project. If you contend the Navajo Nation released any portion of its reserved water rights in exchange for the Navajo Indian Irrigation Project, identify the amount of such reserved water rights.

**Answer:** Per agreement with the San Juan Water Commission by letter dated July 17, 2012, the State of New Mexico is not contending whether the Navajo Nation did or did not release, waive or in any way exchange any portion of its reserved water rights under the *Winters* doctrine in order to secure Congressional authorization of the Navajo Indian Irrigation Project.



20. Pursuant to New Mexico Rule of Civil Procedure 1-030(B)(6), please designate the person(s) who will testify on behalf of each of the Settling Parties concerning the matters addressed in each of the foregoing interrogatories.

**Answer.** On behalf of the State of New Mexico, John Whipple, former Basin Manager, Colorado/San Juan Basin, Interstate Stream Commission, may testify concerning the matters addressed in Interrogatories Nos. 1–16.

#### **Documents Requested by SJWC**

1. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 3 to San Juan Water Commission’s First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

2. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 4 to San Juan Water Commission’s First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

3. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 5 to San Juan Water Commission’s First Set of Joint

Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

4. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 6 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

5. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 7 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

6. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 8 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

7. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 9 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State has no documents within its custody or control that are responsive to this request, other than the October 17, 2001 letter.

8. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 10 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State has no documents within its custody or control that are responsive to this request.

9. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 11 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State has no documents within its custody or control that are responsive to this request, other than the October 17, 2001 letter and OSE File No. 2883, which

is available at the Office of the State Engineer's website at [http://www.ose.state.nm.us/waters\\_db\\_index.html](http://www.ose.state.nm.us/waters_db_index.html).

10. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 12 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State has no documents within its custody or control that are responsive to this request, other than the Proposed Decrees and the Settlement Agreement, which have been produced.

11. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 13 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State has no documents within its custody or control that are responsive to this request, other than the Proposed Decrees and the Settlement Agreement, which have been produced.

12. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 14 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State has no documents within its custody or control that are responsive to this request, other than the Settlement Agreement, OSE. File No. 2883, and the 2007 Hydrologic Determination, which have been or will be produced.

13. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 16 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** The State will provide non-privileged documents within its custody or control that are responsive to this request.

14. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 17 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

15. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 18 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

16. All documents identified, utilized, consulted, or that in any way form a basis for your answer to Interrogatory No. 19 to San Juan Water Commission's First Set of Joint Interrogatories to the United States of America, the Navajo Nation and the State of New Mexico served concurrently herewith.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

17. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 3, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all documents used in responding to Interrogatory No. 3 above; and all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

18. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 4, including, but not limited to, (i) internal

correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce documents used in responding to Interrogatory No. 4 above; and all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

19. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 5, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all documents used in responding to Interrogatory No. 5 above; and all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

20. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 6, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the

Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce documents used in responding to Interrogatory No. 6 above; and all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

21. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 7, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce documents used in responding to Interrogatory No. 7 above; and all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

22. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 8, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and



(ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all documents used in responding to Interrogatory No. 8 above; and all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

23. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 9, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

24. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 10, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States,

the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State has no documents in its possession or control that are responsive to this request.

25. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 11, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

26. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 12, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

27. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 13, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

28. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 14, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

29. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 16, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

30. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 17, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

31. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 18, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the

Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

32. All documents not already produced that address, discuss, mention or otherwise relate to the subject matter of Interrogatory No. 19, including, but not limited to, (i) internal correspondence, studies, memos, or e-mail messages in the possession of the United States, the Navajo Nation or the State of New Mexico or any of their employees, agents or consultants, and (ii) correspondence, studies, memos, or e-mail messages exchanged between the United States, the Navajo Nation and/or the State of New Mexico, their employees, agents, consultants or counsel.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

33. All documents not already produced that relate to the development, approval, interpretation, meaning, application or impact of the “Hydrologic Determination, 1988, Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico” (dated February 2, 1988), including the June 1987 “Bureau of Reclamation Upper Colorado Region Projected Water Supply and Depletions, Upper Colorado River Basin” appended thereto at pages 22-25 (collectively the “1988 Hydrologic Determination”).

**Answer:** The State will produce all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

34. All documents not already produced that relate to the development, approval, interpretation, meaning, application or impact of the “Hydrologic Determination, 2007, Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico” (dated April 2007), including the State of New Mexico Schedule of Anticipated Upper Basin Depletions (dated May 2006) appended thereto at Appendix D (collectively the “2007 Hydrologic Determination”). This request includes, but is not limited to, all communications with any individual or entity (such as the United States Congress or members of New Mexico’s Congressional delegation, the Interstate Stream Commission, the Upper Colorado River Basin Commission, the Bureau of Reclamation, the Secretary of Interior or the Bureau of Indian Affairs) concerning the 2007 Hydrologic Determination.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

35. All documents in any way comparing or reflecting a comparison between the 2007 Hydrologic Determination and the 1988 Hydrologic Determination.

**Answer:** The State will produce all non-privileged documents retained by the State that were generated or used in drafting or approval of the 1988 and 2007 Hydrologic Determinations.

36. All documents identifying the source of water for the Navajo-Gallup Water Supply Project.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

37. All documents not already produced relating to or explaining the Navajo Nation's decision to protest the San Juan Water Commission's Application for Permit Pursuant to NMSA § 72-5-33 via the October 17, 2001, letter from Stanley M. Pollack, Water Rights Counsel for the Navajo Nation, to Thomas C. Turney, New Mexico State Engineer.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

38. All documents not already produced relating to, discussing or explaining Jim Sizemore's December 20, 2005, letter returning San Juan Water Commission's Application No. 4818 without publication.

**Answer:** The State will produce all non-privileged documents in its possession or control that are responsive to this request.

39. All documents establishing, expanding, contracting or otherwise modifying the boundaries of the Navajo Nation.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

40. A map or maps reflecting the boundaries of the Navajo Nation on the date the Navajo Reservation was established and showing how the boundaries of the Navajo Nation have changed over time.

**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

41. All documents discussing, reflecting or in any way relating to the Navajo Nation's reserved water rights under the *Winters* doctrine and/or Congressional authorization of the Navajo Indian Irrigation Project ("NIIP"), including, but not limited to,

(a) all minutes of Navajo Tribal Council meetings and minutes of meetings of advisory committees to the Navajo Tribal Council concerning NIIP and/or the Navajo Nation's *Winters* rights (including all 1951 minutes concerning the need for an irrigation project),

(b) all resolutions or other actions of the Navajo Tribal Council or an advisory committee to the Navajo Tribal Council concerning NIIP and/or the Navajo Nation's *Winters* rights,

(c) letters between officers of the Navajo Nation and members of Congress or any federal agency concerning NIIP and/or the Navajo Nation's *Winters* rights (including the February 18, 1958 letter from Paul Jones to Senator Clinton P. Anderson),

(d) testimony of an officer or other representative of the Navajo Nation to Congress concerning NIIP and/or the Navajo Nation's *Winters* rights,

(e) draft and final contracts between the Navajo Nation and the Bureau of Reclamation or Department of Interior concerning NIIP (including the proposed contract drafted by the Field Solicitor of the Department of Interior approved by the Navajo Tribal Council in 1964), and

(f) if not already produced, the following particular documents:



Navajo Tribal Council Minutes

1951  
December 11, 1957  
April 28, 1966  
January 23, 1967

Contracts

14-06-W-269 (1976)

Other Documents

U.S. Department of Interior, Issue Supporting Paper No. 70-5, Navajo Indian Irrigation Project (1968)

Memorandum to Under Secretary from Deputy Solicitor, "Navajo Indian Irrigation Project—Water Entitlement of the Navajo Tribe" (December 6, 1974)

Memorandum from John Leshy to Dan Beard, "Deputy Solicitor's Opinion of December 1974 on Water Entitlements of Navajo Tribe from Navajo Indian Irrigation Project" (September 23, 1977)

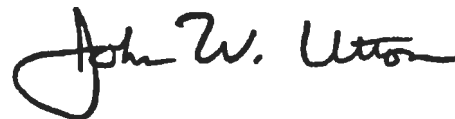
**Answer:** Pursuant to the agreement with the San Juan Water Commission by letter dated July 17, 2012, the State is not responding to this Request.

Dated August 17, 2012

STATE OF NEW MEXICO



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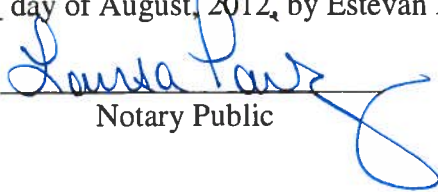
VERIFICATION BY CERTIFICATION

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 Responses to San Juan Water Commission's First Set of Joint Interrogatories and First Set of Joint Requests For Production to the United States, the Navajo Nation, and the State of New Mexico*, 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 Responses to San Juan Water Commission's First Set of Joint Interrogatories and First Set of Joint Requests For Production to the United States, the Navajo Nation, and the State of New Mexico* 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 Responses to San Juan Water Commission's First Set of Joint Interrogatories and First Set of Joint Requests For Production to the United States, the Navajo Nation, and the State of New Mexico* 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

