

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
and ZUNI INDIAN TRIBE,

07cv00681-MV/JHR

Plaintiffs,

ZUNI RIVER BASIN ADJUDICATION

-v-

Subproceeding 1:
Zuni Indian Claims

STATE OF NEW MEXICO, ex rel.
STATE ENGINEER, et al.

Defendants.

**ORDER GRANTING JOINT MOTION FOR ORDER
PROTECTING CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS**

This matter comes before the Court upon the *Joint Motion for Order Protecting Confidentiality of Settlement Negotiations* filed by certain parties (“Negotiation Parties”) to this case who are attempting to reach a settlement agreement. In order to provide favorable conditions for the success of the negotiations, and for other good cause shown, the joint motion is GRANTED, and IT IS HEREBY ORDERED:

1. All oral and written statements made in the course of discussions during the negotiation process, including the Negotiation Process and Confidentiality Agreement, shall be deemed confidential and inadmissible in any judicial or administrative proceeding for any purpose, including but not limited to impeachment of witnesses.
2. In the course of sharing information for purposes of settlement negotiations in this case, any Negotiation Party may designate any document as not available for use in court and for use solely in the course of settlement discussions by clearly marking such document

with the designation “Confidential Settlement Document – Not Available for Use in Court.” Any Negotiation Party receiving a document so marked who disagrees with that designation shall so advise the party who prepared the document in writing and by so doing, shall be deemed to have reserved the right to raise the issue of admissibility before the Court at trial on the merits, if any.

3. Except as provided in paragraph 1, evidence previously disclosed or known to a participant, or that is otherwise admissible or discoverable, shall not be rendered confidential, inadmissible, or not discoverable in any pending or subsequent litigation or arbitration relating to the subject matter of this case solely as a result of its use in the settlement negotiations or its designation by a Negotiation Party as confidential pursuant to paragraph 2.
4. A Negotiation Party shall not seek to disqualify an expert who participates in the negotiation process from assisting a Negotiation Party in pending or subsequent litigation or arbitration relating to the subject matter of this case based on that expert’s participation, or knowledge of information deemed confidential, in the negotiation process.
5. Except as otherwise provided for in this Order, the Negotiation Parties shall not disclose to any person not a party to this settlement negotiation, including but not limited to the press, any information regarding the substance of the negotiation process, including the Negotiation and Confidentiality Process Agreement, or the Negotiation Parties’ positions, negotiation, proposals, or settlement offers. However, this shall not be construed to prevent counsel for the Negotiation Parties from discussing these matters with their respective clients, or with the consent of all Negotiation Parties from disclosing designated information regarding the substance of the settlement process to non-negotiation parties.

6. The Negotiation Parties reserve the right to utilize any information from the settlement process to fully inform decision makers, including State and Federal representatives and staff, and to make recommendations within their respective governments, or to fully inform their members or clients and their agencies, concerning settlement with respect to these matters or the case. The Negotiation Parties also reserve the right to provide public notice of any settlement achieved by, after, or as a result of the negotiation process to the extent required by law or established government policy, and to publish press releases concerning any final settlement achieved by or after the negotiation process.
7. The proceeding notwithstanding, no Negotiation Party subject to the requirements of the New Mexico Inspection of Public Records Act (Section 14-2-1 et seq. NMSA 1978) or the Freedom of Information Act (5 U.S.C. Section 552) shall be required to make confidential settlement documents available for review or release until a final judgment is entered.



JERRY H. RITTER
UNITED STATES MAGISTRATE JUDGE