

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

STATE OF NEW MEXICO *ex rel.*  
State Engineer, *et al.*,

Plaintiffs,

v.

JOHN ABBOTT, *et al.*,

Defendants.

68cv7488 BB  
Rio Santa Cruz Adjudication

and

70cv8650 BB  
Rio de Truchas Adjudication

Consolidated

**ORDER**

**THIS MATTER** comes before the Court on the Truchas Acequias’ Objections to Special Master’s Order on Motion to Compel (Doc. No. 2828, filed September 27, 2010).

Ohkay Owingeh’s privilege log disclosed a memorandum of understanding (“MOU”) between Ohkay Owingeh and Santa Clara Pueblo that related to “efforts to resolve possible conflicts of aboriginal claim areas.” (Truchas Acequias’ Objections at 1-2). The Special Master denied the Truchas Acequias’ request to compel production of the MOU. (*See* Order on Motion to Compel at 3, Doc. No. 2820, filed August 31, 2010). The Truchas Acequias objected to the Special Master’s Order stating that any such agreements between Ohkay Owingeh and Santa Clara Pueblo “are relevant to the central issue of aboriginal title in this case, and . . . appear reasonably calculated to lead to the discovery of admissible evidence.” (Truchas Acequias’ Objections at 4-5).

Ohkay Owingeh maintains that the MOU is confidential and beyond the scope of discovery because it only addresses protocols to be followed in any discussions between the two Pueblos and nothing in the MOU discusses or pertains to evidence or testimony in this case. (Ohkay Owingeh’s Response at 2-4, Doc. No. 2845, filed October 13, 2010). Ohkay Owingeh attaches the Declaration

of one of its attorneys who states that the MOU: (1) addresses the protocols to be followed in discussions between the two Pueblos on the scope of their water rights claims; (2) does not reflect an agreement resolving any potentially overlapping claims; and (3) does not contain any provisions pertaining to testimony or evidence in this case. (Declaration of Lee Bergen, Doc. No. 2845-1, filed October 13, 2010). Ohkay Owingeh states that “in the event of any doubt Ohkay Owingeh requests that the Court or Special Master review the MOU *in camera* to verify that it does not contain any substantive matter relevant to the issues to be tried in this case.” (Ohkay Owingeh’s Response at 4). The Truchas Acequias contend that because the MOU “addresses the protocols to be followed in discussion between the two Pueblos on the *scope of their water rights claims*,” the MOU could possibly “impact the issues in this case” and agree that an *in camera* inspection of any MOUs between Ohkay Owingeh and Santa Clara Pueblo is appropriate. (Truchas Acequias’ Reply at 2, Doc. No. 2850, filed October 22, 2010) (*emphasis in original*).

The Court will conduct an *in camera* review of the MOU. *See* Fed. R. Civ. P. 26 advisory committee’s note (2000 Amendments) (“Under the amended provisions, if there is an objection that discovery goes beyond material relevant to the parties’ claims or defenses, the court would become involved to determine whether the discovery is relevant to the claims or defenses”). Ohkay Owingeh shall, within 14 days of entry of this Order, submit a copy of the MOU to the Court at the following address:

Water Rights  
Pete V. Domenici United States Courthouse  
333 Lomas Blvd. NW, Suite 270  
Albuquerque, NM 87102

**IT IS SO ORDERED.**



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**BRUCE D. BLACK**  
**CHIEF UNITED STATES DISTRICT JUDGE**