

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

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

03 MAR 17 PM 4:16

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STATE OF NEW MEXICO, ex rel. STATE )  
 Engineer, A&R Productions, et al., )  
 )  
 Defendants. )  
\_\_\_\_\_ )

*Robert M. ...*  
CLERK-SANTA FE

01cv00072-BB/WDS (ACE)

ZUNI RIVER BASIN

OBJECTION OF TRI-STATE GENERATION AND TRANSMISSION  
ASSOCIATION, INC. TO SPECIAL MASTER'S REPORT AND  
RECOMMENDATIONS ON THE  
GEOGRAPHIC SCOPE OF THE ADJUDICATION

Introduction

Tri-State Generation and Transmission Association, Inc. (Tri-State) objects to the March 13, 2003 Special Master's Report and Recommendations (Report) insofar as it omits express language on groundwater from the Recommendations (pages 10 and 11) in the description of the geographic boundaries. The Court's July 15, 2002 Scheduling Order determined that boundaries for groundwater must be set as part of the "definite and specific geographic boundaries for the adjudication." Accordingly, the Court stated "the groundwater considered shall be limited to that which lies within the surface boundaries, as though their lines were drawn vertically through the earth. The surface boundaries shall not overlap those of any other adjudication." (See, Paragraph 1 of Scheduling Order).

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As the Court's Scheduling Order recognized, determining the groundwater boundaries of the adjudication is just as essential as determining the surface water boundaries. Accordingly, the Court's Scheduling Order states: "Groundwater diversions which lie within the surface boundaries shall be included in the adjudication." (*Id.*).

**Specific Language On Groundwater Boundaries  
Should Be Added To Recommendation A.**

Although the Special Master quotes this groundwater language by Court in the body of the Report and some of this groundwater language is contained by reference in the United States' Identification and Supplemental Identification, this essential express language fails to find its way into the Recommendations. Accordingly, Recommendation A of the Report should be revised to read:

- A. the Court define the adjudication boundaries as lying within the surface water drainage basin as depicted on the map dated December, 2002, which is appended to the January 6, 2003, United States' Identification of Zuni River Stream System Boundary, and as described in the January 14, 2003, Supplemental Identification of Zuni River Stream System Boundary [1], **and that the groundwater subject to this adjudication shall be limited to that which lies within the surface boundaries of such surface water drainage basin as so depicted and described, as though such lines or boundaries were drawn vertically through the earth. These surface water boundaries shall not overlap into any other adjudications.**

(Emphasis supplied)

Concomitantly, the synopsis (page 1) to the Report should be revised to read:

This Report recommends that the scope of the Zuni River Basin be defined by the surface water drainage area as proposed by the United States, **and the groundwater subject to this adjudication shall be limited to that which lies within the surface water**

**boundaries of such surface water basin, as through such lines or boundaries were drawn vertically through the earth. These surface water boundaries shall not overlap into any other adjudications.**

(Emphasis supplied)

Without these revisions, the Reports Recommendation A does not on its face clearly comport with the Court's Scheduling Order. Moreover, insertion of this language is important to guard against ambiguous language such as the United States included in both its Identification and Supplemental Identification of Zuni River Stream System Boundary stating the "Zuni River stream system shall include groundwater in hydraulic continuity with the surface waters of the basin." The Report notes that Tri-State and Quivira Mining Company objected to this language, which the United States agreed to strike at the January 16, 2003 Status and Scheduling Conference when objections were made. Such language would defeat the precise groundwater boundaries articulated and ordered by the Court. It injects ambiguity on groundwater into the United States' Identification and Supplemental Identification.

Tri-State has consistently maintained since the outset that adjudications do not adjudicate groundwater uses located outside the downwardly extended vertical boundaries of the perimeter of the particular stream system subject to the adjudication. (See, Tri-State's Response to the United States' Report and State's Proposal For Proceeding Once the Stay is Lifted filed August 1, 2001, the Affidavit of Fred R. Allen attached thereto and Tri-State's Objections to the Special Master's Report and Recommendations on Zuni River Basin Adjudication Procedure filed June 5, 2002).

## Conclusion

In sum, the foregoing highlighted language should be added to the Recommendation A and synopsis to make them consistent on their face with the Court's July 15, 2002 Order and so that this language is included in the Court's order setting boundaries for the adjudication.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

Sunny J. Nixon

P O Box 1357  
Santa Fe, New Mexico 87504-1357  
(505) 954-3917 – Telephone  
(505) 954-3942 – Facsimile

Attorneys for Tri-State Generation and  
Transmission Association, Inc.