

IN THE UNITED STATES DISTRICT COURT

FILED

FOR THE DISTRICT OF NEW MEXICO

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John P. ...
SANTA FE

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

01cv00072-BB/WDS (ACE)

ZUNI RIVER BASIN

OBJECTION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. TO SPECIAL MASTER'S PRELIMINARY PROCEDURAL AND SCHEDULING ORDER

Tri-State Generation and Transmission Association, Inc. (Tri-State) objects to portions of the Special Master's most recent draft Preliminary Procedural and Scheduling Order served on March 14, 2003 and dated March 16, 2003 (Procedural Order). Tri-State objects on the grounds that the Procedural Order does not fully incorporate language on geographic boundaries and groundwater from the Court's Scheduling Order of July 15, 2002. This language is essential to fully apprise parties of the boundaries as a basis for dismissal. As this Procedural Order will govern procedure, this language should be carried forward. Moreover, the Procedural Order should attach a form of dismissal order.

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In particular, Tri-State objects to the following language of the Special Master's draft Procedural Order:

1. **IV. DISMISSAL OF PARTIES** – Tri-State objects because this paragraph does not fully conform to paragraph 1 of the Court's July 15, 2002 Scheduling Order.

This paragraph should incorporate the Court's language as follows:

Groundwater diversions which lie within the surface boundaries shall be included in the adjudication. 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 with those of any other adjudication. Conflicts which may arise between claimants in this and other adjudications are beyond the scope of this case.

Further, the Special Master's Procedural Order should require that the United States and the State as plaintiffs to provide a form of order of dismissal to be attached to the Special Master's Procedural Order and referenced in this paragraph IV DISMISSAL OF PARTIES, so that parties filing a disclaimer will be on notice of the form of order of dismissal obtainable once a disclaimer is filed. Tri-State made this point at the January 16, 2003 scheduling conference, which the Special Master indicated was "a good suggestion." (Tr 72) This should expedite dismissal of parties that have been mis-joined. See *also* Tri-State's Objection to Special Master's Report and Recommendations on the Geographic Scope of the Adjudication filed March 17, 2003, and all prior objections of Tri-State filed regarding the boundaries of the adjudication.

2. **V. RESPONSES – B. Disagreement**. 2 Rejection of Consent Order. Tri-State objects in that the language of this paragraph improperly requires a claimant to file a Form Answer without clearly providing the claimant the opportunity to include in

its answer any affirmative defenses or other pleading alternatives allowed by the Federal Rules of Civil Procedure. This section should be revised to provide this latitude.

Tri-State reserves the right to supply additional comments to the Procedural Order, as it may be developed.

Respectfully submitted,

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