

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

03 OCT 15 AM 10:38

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Robert M. Marsh
CLERK

United States,)	01CV00072BDB/WWD(ACE)
)	
Plaintiff)	ZUNI RIVER STREAM
)	SYSTEM ADJUDICATION
v.)	* * * * *
)	RE: SPECIAL MASTER'S REPORT/ RECOMMENDATIONS for FEDERAL and INDIAN WATER RIGHT CLAIMS PROCEEDINGS
A & R Productions, et al.,)	
)	* * * * *
Defendants)	UNITED STATES' RESPONSE and MOTION FOR ACTION
)	

The United States, pursuant to Rule 53(c)(2), Fed. R. Civ. P., responds to the Special Master's Report and Recommendations for Federal and Indian Water Right Claims Proceedings, (hereinafter referred to as "Report"), dated October 2, 2003, served on the United States on October 3, 2003, and hereby moves this Court to take action in accordance with the response and recommendations of the United States set forth below.

I. BACKGROUND

The Special Master's status conference of September 9, 2003, was set with the intent to comply with this Court's Scheduling Order of July 15, 2002, (Docket No. 147), i.e., "to discuss schedules and procedures for filing and adjudicating the water right claims of the United States,

264

both in its proprietary capacity and as trustee for the Navajo Nation, the Ramah Band of Navajos and the Zuni Indian Tribe.” See Order Setting Status Conference (Docket No. 224).

A. WATER RIGHT CLAIMS ON BEHALF OF THE ZUNI TRIBE AND NAVAJO NATION

At the outset of the September 9th status conference, Special Master Vickie L. Gabin inquired as to what date the United States would be prepared to file water right claims on behalf of the Zuni Tribe and Navajo Nation. The undersigned responded by advising that, while many of the Tribes’ claims have been substantially developed and are nearing completion, there remain outstanding additional investigations/studies needed to develop certain claims on behalf of both Tribes. Completion of the development of these water right claims requires federal funding. The undersigned advised that there is limited funding available and the obligation to conduct this adjudication’s hydrographic survey has forced the Bureau of Indian Affairs to shift a large percentage of the funds that would ordinarily be dedicated to the development and completion of the Tribes’ water right claims to fund the survey. As a consequence, funding of the survey has necessarily delayed the completion of the development of the Tribes’ water right claims. The undersigned advised Special Master Gabin that the Bureau of Indian Affairs has funded and continues to fund simultaneously the studies/investigations needed to complete the development of the water right claims of both Tribes as well as the hydrographic survey of the basin. The limited availability of federal monies, however, by necessity, will delay until the year 2007-08, filing and beginning the adjudication of all Tribal water right claims. The survey is anticipated to be completed within the same time frame. The undersigned advised Special Master Gabin that

the Tribes' claims could be adjudicated upon the completion of the hydrographic survey which would allow all necessary parties to be identified and joined.

Instead of waiting until the all of the Tribes' water right claims are developed, Special Master Gabin inquired whether it is possible to adjudicate the Tribes' water right claims in accordance with the phased adjudication procedure similar to that adopted by this Court in adjudicating Pueblo water right claims to the Rio Santa Cruz and Rio de Truchas Stream Systems, *New Mexico, ex rel. State Engineer v. Abbott*, Civ. Nos. 7488 & 8650 JC consolidated (D.N.M.). The United States and the Zuni Tribe responded affirmatively advising that the Zuni Tribe's claims to the use of the groundwaters of the Zuni River Stream System can be filed and adjudicated as soon as 2004-05. Special Master Gabin, from the bench, directed the United States and Zuni Tribe to prepare and forward a draft order reflecting such a proposal. A joint draft order was prepared and forwarded to Special Master Gabin for consideration, a copy of which is attached.

B. FEDERAL NON-INDIAN WATER RIGHT CLAIMS

Counsel for the United States proprietary agencies, David Gchlert, advised that the development of the water right claims of the United States on behalf of the Cibola National Forest, the El Morro National Monument, the El Malpais National Monument, the El Malpais National Conservation Area, and tracts of public (Bureau of Land Management) land containing springs and water holes should be completed by no later than December, 2005, but that the United States is hesitant to file those claims prior to the joinder of all parties to this litigation.

II. RESPONSE TO REPORT OF SPECIAL MASTER

Special Master Gabin's Report advises that "the United States' approach is that its resources will not permit the concurrent investigation of both non-federal and federal/Indian water right claims." See Report, p. 2. This is not entirely accurate. As stated above, the Bureau of Indian Affairs is presently funding *both* the hydrographic survey as well as certain investigations/studies needed to development the full water right claims of the Zuni Tribe and Navajo Nation. The Bureau of Indian Affairs' obligation to fund the hydrographic survey has not stayed the development of the Tribes' water right claims but has necessarily delayed timely completion of such claims. If in the future an increase in federal funding permits filing and adjudicating the water right claims of both Tribes prior to 2007-08, the Special Master will be advised immediately.

As to the proposal to adjudicate in 2004-05 the claims of the Zuni Tribe to the groundwaters of the Zuni River Stream System, Special Master Gabin chose not to consider the joint draft order as it had not been circulated to counsel of record. See Report, p. 3. By way of explanation, the undersigned and counsel for the Zuni Tribe misunderstood the directions of Special Master Gabin. Special Master Gabin directed from the bench that she be provided with a draft order that considers the adjudication of the Zuni Tribe's claims to the groundwaters of the basin. We did not understand Special Master Gabin to direct that all counsel of record be provided with a copy of the draft order and no schedule for responses from counsel was discussed or set. Accordingly, the undersigned and counsel for the Zuni Tribe were under the impression that Special Master Gabin intended to circulate the draft order to counsel of record when the order was reviewed by her and finalized.

III. UNITED STATES' RESPONSE TO SPECIAL MASTER'S RECOMMENDATION

The United States believes that the time-frame of 2007-08 to develop and complete the remainder of the Tribes' water right claims is reasonable considering the availability of federal funds. The United States is conscious that this Court considers this water adjudication as an opportunity to improve the adjudication process in other New Mexico water right adjudications. The United States shares this interest and believes that the 2007-08 proposal meets that objective. If, on the other hand, this Court adopts the recommendation of the Special Master, the United States will make every effort to complete by mid-December, 2006, the processing of all non-federal claims in the basin. Additionally, the United States will make every effort to be in a position to present and file the water right claims of the Zuni Tribe, Navajo Nation and its proprietary agencies by mid-December, 2006. The United States' stresses, however, that completion of these tasks by mid-December, 2006, is dependent upon the availability of federal funding.

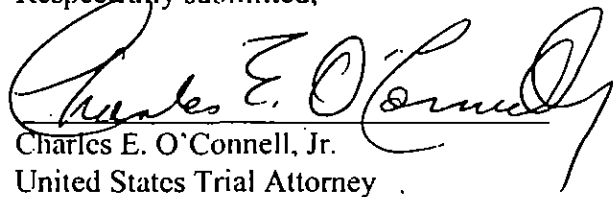
Special Master Gabin expressed a keen interest in addressing and adjudicating as soon as possible the water right claims of the Tribes and seemed favorably inclined to proceed to adjudicate the Tribes' water right claims on a phased schedule similar to that adopted by this Court in the adjudication of Pueblo water right claims to the Rio Santa Cruz and Rio de Truchas Stream Systems, *New Mexico, ex rel. State Engineer v. Abbott*, supra. The development of the Zuni Tribe's claims to the Basin's groundwater are nearing completion and can be filed and adjudicated in 2004-05. The United States and the Zuni Tribe urge this Court to consider entering the attached proposed order, leaving for later consideration in accordance with the time-

frame suggested by the United States the remainder of the water right claims of the Zuni Tribe and Navajo Nation.

Accordingly, the United States, pursuant to Rule 53(c)(2), Fed. R. Civ. P, herewith moves for action in accordance with the recommendations set out herein.

Dated this 10th day of October, 2003

Respectfully submitted,


Charles E. O'Connell, Jr.
United States Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that on or before October, 10, 2003, a true and correct copy of the foregoing was served by United States Postal Service first class, postage pre-paid mail to the following:

Charnas, Stephen, Esq.
Sutin, Thayer & Brown PC
P.O. Box 1945
Albuquerque, NM 87103-1945

Drennan, Jocelyn Esq.
Rodey, Dickason, Sloan & Robb
P.O. Box 1888
Albuquerque, NM 87103

Ionta, Robert W., Esq.
McKim, Head & Ionta
P.O. Box 1059
Gallup, NM 87305
Telephone: (505) 863-4438
Facsimile: (505) 772-3479

Shadle, Stephen P., Esq.
Westover, Shadle, Carter & Walsma, PLC
2260 S. Fourth Ave., #2000
Yuma, AZ 85364

Stripp, William G., Esq.
P.O. Box 159
Ramah, NM 87321
Telephone: (505) 783-4138
Facsimile: (505) 783-4139

Haas, James E., Esq.
Losee, Carson & Haas P.A.
Box 1720
Artesia, NM 88211

Dahl, Jeffrey A., Esq.
Lamb, Metzgar, Lines & Dahl, PA
P.O. Box 987
Albuquerque, NM 87103
Telephone: (505) 247-0100
Facsimile: (505) 247-9249

Gardner, David R., Esq.
P.O. Box 62
Bernalillo, NM 87004
Telephone: (505) 867-4689
Facsimile: (505) 867-6496

Joca, Mary Ann, Esq.
U.S. Dept. of Agriculture
P.O. Box 586
Albuquerque, NM 87103
Telephone: (505) 248-6010
Facsimile: (505) 248-6013

Marx, Jane, Esq.
3800 Rio Grande Blvd., N.W.
PMB 167
Albuquerque, New Mexico 87107
Telephone: (505) 344-1176
Facsimile: (505) 344-8694

Pollack, Stanley M., Esq.
Navajo Nation Dept. of Justice
P.O. Box 2010
Window Rock, AZ 86515-2010
Telephone: (928) 871-6931
Facsimile: (928) 871-6200

Smith, Mark A., Esq.
Rodey, Dickason, Sloan Akin & Robb
P.O. Box 1888
Albuquerque, NM 87103
Telephone: (505) 765-5900
Facsimile: (505) 768-7395

Greg Mehojah
Department of the Interior
Office of the Solicitor
Southwest Regional Office
505 Marquette Avenue, N.W.
Suite 1800
Albuquerque, NM 87102

Williams, Pamela, Esq.
Division of Indian Affairs
Office of the Solicitor
1849 C St., N.W., Rm 6456
Washington, DC 20240

Drullinger, Sandra S., Pro Se
818 E. Maple St.
Hoopeston, IL 60942

Gugliotta, Kimberly J., Pro Se
158 W. William Casey St.
Corona, AZ 85641
Telephone: (520) 762-9804

Lebeck, David R., Pro Se
P.O. Drawer 38
Gallup, NM 87305
Telephone: (505) 863-4471

McBride, Gerlad F., Pro Se
2725 Aliso Dr., N.E.
Albuquerque, NM 87110

Bunch, Steven L., Esq.
N. M. Highway & Trans. Dept.
P.O. Box 1149
Santa Fe, NM 87504-1149
Telephone: (505) 827-5431
Facsimile: (505) 827-0700

Cassutt, Kenneth J., Esq.
530-B Harkle Road
Santa Fe, NM 87505
Telephone: (505) 989-1434
Facsimile: (505) 992-8378

Davidson, Tessa T., Esq.
Swaim, Schrandt & Davidson
4830 Juan Tabo, N.E., Suite F
Albuquerque, NM 87111
Telephone: (505) 237-0064
Facsimile: (505) 237-9440

Shoenfeld, Peter B., Esq.
P.O. Box 2421
Santa Fe, NM 87504-2421
Telephone: (505) 982-3566
Facsimile: (505) 982-5520

Stephen G. Hughes, Esq.
N.M. State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148
Telephone: (505) 827-1261
Facsimile: (505) 827-4262

Gehlert, David W., Esq.
USDOJ-ENRD
999 18th St., Suite 945
Denver, Colorado 80202
Telephone: (303) 312-7352
Telephone: (303) 312-7324
Facsimile: (303) 312-7331

Nixon, Sunny J., Esq.
Rodey, Dickason, Sloan, Akin, & Robb, P.A.
P.O. Box 1357
Santa Fe, NM 87504-1357
Telephone: (505) 954-3917
Facsimile: (505) 954-3942

Sanchez, Dorothy C., Esq.
715 Tijeras N.W.
Albuquerque, NM 87102
Telephone: (505) 842-5924
Facsimile: (505) 242-3125

Barnhouse, Randolph H., Esq
Jordan & Roscbrough
P.O. Box 1744
Gallup, NM 87305-174
Telephone: (505) 722-9121
Facsimile: (505) 722-9490

Bushnell, Darcy S., Esq.
U.S. District Court
333 Lomas Blvd., N.W.
Albuquerque, NM 87102-2272
Telephone: (505) 348-2000
Facsimile: (505) 348-2212

Gabin, Special Master Vickie L.
U.S. District Court
P.O. Box 2384
Sante Fe, NM 87504-2384
Telephone: (505) 888-6481

Beardsley, Ann Hambleton,
Pro Se.
HC 61, Box 747
Ramah, NM 87321
(505)783-4646

Boynton, Bruce, Esq.
P.O. Box 1239
Grants, NM 87020
Telephone: (505) 285-4242
Facsimile: (505) 285-6687

Brodrick, Ted, Pro Se
P.O. Box 219
Ramah, NM 87321

Fahmy, Peter, Esq.
Office of Regional Solicitor
755 Parfet St., Suite 151
Lakewood, CO 80215

Clara M. Mercer
1017 S. 10th Avenue
Yuma, AZ 85364

DePauli, Louis E., Pro Se
1610 Redrock Drive
Gallup, NM 87031
Telephone: (505) 863-3483
Facsimile: (505) 863-3148

Saunders, D.L., Esq.
Bagley, Ted, Esq.
Office of State Engineer
P.O. Box 25102
Sante Fe, NM 87504-5102
Telephone: (505) 827-6150
Facsimile: (505) 827-3887

Lebeck, Albert O., Pro Se
P.O. Box 38
Gallup, NM 87305
Telephone: (505) 863-4471

Law and Resource Planning Assoc.
201 3rd St., N.W., Suite 1370
Albuquerque, NM 87102

McBride, Myrrl W., Pro Se
2725 Aliso Drive, N.E.
Albuquerque, NM 87110

Shaw, Mark H., Esq.
3733 Eubank Blvd., N.E.
Albuquerque, NM 87111
Telephone: (505) 294-7000
Facsimile: (505) 293-0831

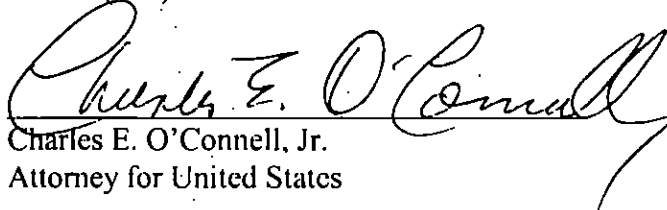
Weldon, John B., Esq.
Lewis, M. Byron, Esq.
McGinnis, Mark A., Esq
2850 East Camelback Road, Suite
Phoenix, AZ 85016
Telephone: (602) 801-9063
Telephone: (602) 801-9060
Facsimile: (602) 801-9070

Nelson, Stephen R., Esq.
P.O. Box 25547
Albuquerque, NM 87125-5547
Telephone: (505) 764-9900
Facsimile: (505) 764-9901

David Candelaria, Pro Se
12,000 Ice Caves Rd.
Grants, NM 87020

Jeffrie Miner, Esq.
Charles T. DuMars, Esq.
201 Third St. NW, Suite 1370
Albuquerque, NM 87102
Tele: (505)346-0998
FAX: (505)346-0997

Mark K Adams, Esq.
Rodey, Dickason, Akin & Robb, P.A.
315 Paseo de Peralta
Santa Fe, NM 87501
Tele: (505) 954-3903
FAX: (505) 954-3942


Charles E. O'Connell, Jr.
Attorney for United States