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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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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,

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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.

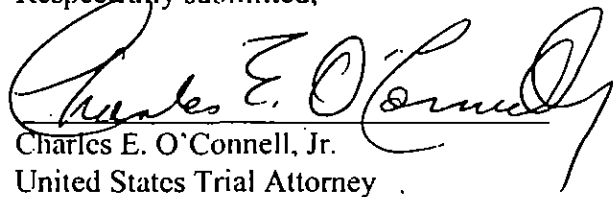
Special Master Gabin expressed a keen interest in addressing and adjudicating as soon as possible the water right claims of the Tribes and seemed favorably inclined to proceed to adjudicate the Tribes' water right claims on a phased schedule similar to that adopted by this Court in the adjudication of 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:

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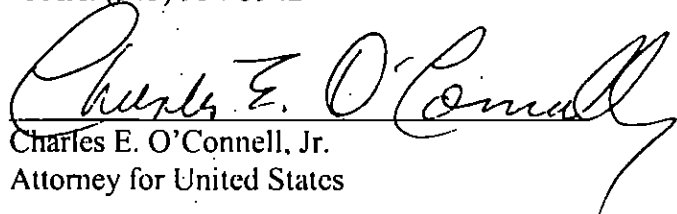
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