

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

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

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

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01-CV-00072-BDB/ATE
ZUNI RIVER BASIN

Rose M. Marsh
CLERK-ALEXANDERQUE

**NAVAJO NATION'S COMMENTS ON
THE UNITED STATES' PROPOSED ADJUDICATION SCHEDULING ORDER
AND
THE STATE OF NEW MEXICO'S ADJUDICATION SCHEDULING ORDER**

The NAVAJO NATION, a water user in the Zuni River Basin and prospective party to this adjudication, submits the following comments on the adjudication scheduling orders proposed by the United States (103) and the State of New Mexico (102).

Both the United States and the State of New Mexico are proposing to define the "stream system" in this adjudication as "the surface waters of the Zuni River including all its tributaries within the State of New Mexico and all groundwater underlying or hydrologically (sic) connected to the surface water." *United States' Proposed Order* at 2; *New Mexico Proposed Order* at 2. This proposed definition of the stream system is unacceptable to the Navajo Nation. The Navajo Nation agrees that groundwater hydraulically connected to the Zuni River surface water system extends beyond the boundaries of the of the Zuni River Basin. For example, the San Andres-Glorieta aquifer, identified in paragraph 8 of the United States' *Complaint*, extends into the Rio Puerco basin north of the Zuni River basin and into the Rio San Jose basin, east and northeast of the Zuni River Basin.

The Navajo Nation has surface and groundwater uses in the Rio Puerco and Rio San Jose basins. If certain groundwater uses from those basins are subject to the instant adjudication, there is the risk that such uses will be incorporated into a decree in this adjudication that will be in conflict

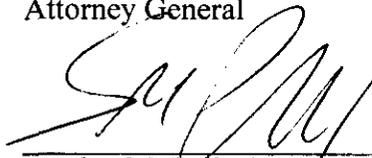
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with the rights of the parties in the Rio Puerco and Rio San Jose basins. There is the possibility that pumping from such wells might not adversely affect interests in the Zuni River basin, but could adversely affect interests in the other basins. Thus, if the “stream system” is expanded to include all groundwater hydraulically connected to the Zuni River, the system should also include all surface water systems hydraulically connected to such groundwater.

The procedures proposed to determine the extent of the “hydrologically (sic) connected groundwaters” is also unacceptable to the Navajo Nation. The United States and the State of New Mexico each propose that the extent of the “stream system” will be defined by “consultation” between hydrologists for the United States, the State of New Mexico, and the Zuni Pueblo. *United States’ Proposed Order at 2; New Mexico Proposed Order at 2.* No explanation is given by either the United States nor the State of New Mexico as to why the Pueblo of Zuni has been and will be consulted on this issue, to the exclusion of the Navajo Nation, or any other party. The Navajo Nation has water rights in several surface water basins overlying groundwater that may be hydraulically connected to the Zuni River, including the Rio Puerco and the Rio San Jose surface water systems. The Navajo Nation should be included in all consultations.

Respectfully submitted this 11th day of February, 2002.

NAVAJO NATION DEPARTMENT OF JUSTICE
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CERTIFICATE OF SERVICE

I certify that on the 11th day of February 2002, a true and correct copy of the foregoing MOTION OF THE NAVAJO NATION FOR LEAVE TO FILE COMMENTS ON PROPOSED ADJUDICATION SCHEDULING ORDERS was served by United States Postal Service first class, postage pre-paid mail to those on the LIST OF PERSONS RECEIVING SERVICE (Zuni River Basin) which is attached and incorporated by reference.

By: Atto Ptsin
Legal Secretary

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