

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	
	)	<b>CIV NO. 01- 0072 BB/WWD -ACE</b>
	)	
<b>v.</b>	)	<b>ZUNI RIVER BASIN</b>
	)	
<b>STATE OF NEW MEXICO; NM</b>	)	
<b>STATE ENGINEER; RICHARD</b>	)	
<b>DAVIS MALLERY, ET AL.,</b>	)	
	)	
<b>DEFENDANTS.</b>	)	
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**DEFENDANT RICHARD DAVIS MALLERY’S  
OBJECTIONS TO SPECIAL MASTER’S REPORT AND  
RECOMMENDATIONS ON ZUNI RIVER BASIN ADJUDICATION  
PROCEDURE**

**COMES NOW**, Defendant Richard Davis Mallery, by and through his undersigned attorneys, and hereby provides the following objections to the Special Master’s Report and Recommendations on Zuni River Basin Adjudication Procedure (Docket No. 123), filed April 26, 2002.

1. Defendant Mallery objects to the Special Master’s first recommendation on the basis of fairness. The Special Master recommends that the United States and State begin a cooperative investigation into the scope of this adjudication, i.e. define the hydrologic boundaries. (Special Master’s Report and Recommendations on Zuni River Basin Adjudication Procedure at 9 [hereinafter “Report”].) She also recommends that the

Zuni Tribe and Navajo Nation be permitted to participate in the investigation on the condition that their participation does not unduly complicate or delay the progress of the investigation. *Id.* She does not recommend that any other parties be permitted to participate in the investigation.<sup>1</sup> Instead, she recommends that once the United States and State reach an understanding, their findings should be circulated to interested counsel for comment. *Id.* In the interest of fairness, Defendant Mallery requests that the Court permit all interested parties, including those dismissed without prejudice, to participate in the investigation and the hydrographic survey. As to determining the hydrologic boundaries for the adjudication, the United States stated at the February 14, 2002, hearing that it “would welcome any expertise to the question [of the scope of the adjudication].” (Tr. at 7.) The Special Master recognized that “[the Court is] also very interested in getting folks in at the beginning [of an adjudication], if they are interested.” (Tr. at 8.) And the State expressed a desire for a hydrologically sound adjudication and admitted that it needs some input from experts and hydrologists. (Tr. at 13.) Such expertise could be fairly provided by a technical committee, limited if possible to fewer than five, comprised of representatives of the interested parties.

2. Defendant Mallery objects to the Special Master’s third recommendation relating to the dismissal of Defendants. The Special Master recommends that the United States move to dismiss all Defendants without prejudice and name “unknown claimants to the surface and underground waters of the Zuni River Basin” instead. (Report at 10.) She views these actions as making clear that the case is a statutory stream system adjudication and recommends that copies of the pleadings, an explanatory letter, and

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<sup>1</sup> The Zuni Tribe and Navajo Nation are not named parties in this case but have moved to intervene.

public meetings will allay concerns regarding “land titles.” *Id.* The Special Master makes no recommendation regarding what the explanation might include.

It is water rights, not land titles, that are of concern. And, the recommended actions do not address the concerns regarding the cloud on titles for these water rights. The concerns were described at the February 14, 2002, hearing, where a potential remedy was suggested: “[W]hat we were anticipating was a piece of information that would -- and a lis pendens that would explain that, in fact, there may not be a claim at all, that this is a normal process, that it doesn’t mean people do or don’t have water rights . . . .” (Tr. at 14-15.) A dismissal without prejudice and an explanatory letter is not a sufficient action to lift the cloud on Defendants’ water rights titles. A Notice of Removal of Lis Pendens, stating that this Court’s action in dismissing the Defendants removes any cloud on title imposed by this suit, is required to do so. Such a Notice, filed in the respective County Clerk’s Office for the properties at issue, will address the concerns of Defendants.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,  
*A Professional Corporation*

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant Richard Davis Mallery’s Objections to Special Master’s Report and Recommendations on Zuni

River Basin Adjudication Procedure was served upon counsel of record via first class mail on this 9th day of May, 2002 as follows:

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