

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES 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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01CV00072 BDB/WWD(ACE)

ZUNI RIVER STREAM SYSTEM

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CLERK OF COURT

UNITED STATES' OBJECTION TO THE
SPECIAL MASTER'S REPORT AND
RECOMMENDATION ON ZUNI RIVER
BASIN ADJUDICATION PROCEDURE

On April 29, 2002, the United States was served with the Special Master's Report and Recommendations on the Zuni River Basin Adjudication Procedure, dated and filed April 26, 2002. By Order of this Court, dated and filed on May 10, 2002, the time for parties to object to the recommendations of the Special Master was extended to June 5, 2002. For the following reason, the United States objects to the Special Master's recommendation that all defendants be dismissed:

The report recommends, inter alia, that "the United States . . . move to dismiss all defendants without prejudice (naming 'unknown claimants to the surface and underground waters of the Zuni River Basin' instead) . . . [and that] . . . the Court order the United States to conduct the hydrographic survey of the entire Zuni River basin, bear the costs of the survey and the fees of the Special Master and necessary staff during the hydrographic survey phase." See Report of Special Master, pp. 10-11.

The United States will fund and conduct the hydrographic survey of the basin,^{1/} as well as continue to pay the fees of the Special Master and necessary staff incurred during the course of the survey.

^{1/} The commitment to fund the hydrographic survey is, of course, contingent upon Congress's continued appropriation of sufficient funds to the Department of the Interior.

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However, the United States interprets the Special Master's report as recommending that all defendants be dismissed from the suit prior to the completion of the hydrographic survey. If that interpretation is accurate, the United States respectfully objects.

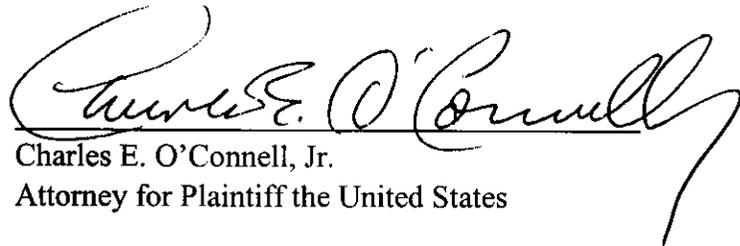
Hydrographic surveys require field inspections where the uses and sources of water by all claimants/water users are noted, irrigated tracts are delineated, diversion structures, and canals, drainage ditched and other conveyance facilities are identified. There will be many instances where the source and specific use of water, as well as the conveyance facilities, can not identified and determined from aerial photography and will require access to the land(s) of claimant/water user. If access is refused, the United States can petition this Court for relief under Rule 34, Fed. R. Civ. P. (Entry Upon Land for Inspection and Other Purposes) because the claimant/water user is a defendant in the suit. On the other hand, if claimant/water user has been dismissed and is not a defendant, this Court is without the jurisdiction to order entry. Without recourse to this Court, completion of the survey is unnecessarily delayed and, most likely will prove more costly.

The defendants to this action were identified through the use of the best available data and records.² Although there may be parties that have been improperly joined, it is the opinion of the United States that the majority of those identified and joined are proper parties to this suit. As to those parties, this Court has the necessary jurisdiction to address the problems that may arise in the completion of the hydrographic survey. The United States shares the Special Master's concern that there may be parties improperly joined. However, no party improperly joined will be prejudiced by remaining a party since the

² Realty tax records of Cibola and McKinley Counties.

Special Master recommends that this Court's stay be retained. Therefore, parties improperly joined will not incur litigation expenses if they choose not to actively participate and, of course, will be dismissed during the course of the survey or at its completion. Another option available is to permit improperly joined parties to file with the Court a disclaimer of interest(s) to the use of the surface and/or ground water for the Zuni River basin.^{3/} The United States would dismiss all those filing a disclaimer of interest(s).

Respectfully submitted this 3rd day of June, 2002.



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

^{3/} Disclaimers would be proper after the geographic scope of the case area is identified. See Report of Special Master, pp. 9-10.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2002, a true and correct copy of the foregoing

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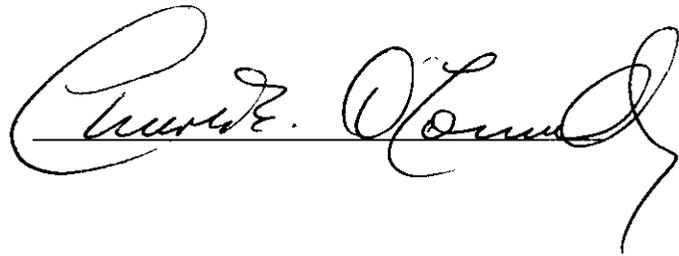
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A handwritten signature in black ink, appearing to read "Curtis O. Land". The signature is written in a cursive style and is positioned above a horizontal line.