

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

02 JUN 25 PM 4: 21

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW MEXICO, *ex rel.*
STATE ENGINEER, et al.,

Defendants.

CIV No. 01 0072 BB/WWD-ACE

ZUNI RIVER STREAM
SYSTEM

STATE'S RESPONSE TO NAVAJO NATION AND ZUNI INDIAN TRIBE'S
MOTIONS TO INTERVENE

THE STATE OF NEW MEXICO, by and through its counsel of record, pursuant to the Court's Order of June 10, 2002 (No. 135) lifting the March 1, 2001 Stay (No. 3) in so far as it relates to the Motions to Intervene filed by the Zuni Indian Tribe on April 20, 2001 (No. 48) and by the Navajo Nation on September 7, 2001 (No. 88), hereby files its Response to those Motions, and further states as follows:

The State does not oppose the intervention of the Navajo Nation ("Navajo") or the Zuni Indian Tribe ("Zuni") in this stream system adjudication. The State notes, however, that having the United States as Trustee asserting claims on behalf of the Navajo and Zuni at the same time the Navajo and Zuni (collectively, "tribes") are asserting their own claims could lead to uncertainty as to the total extent of the Native American claims in the stream system. In addition, having both the United States and the respective tribes asserting claims on behalf of each tribe necessitates careful case management to avoid the unnecessary expenditure of effort and resources by the parties and the Court. It would not promote judicial economy, for example, if the United States were to assert claims on

behalf of a tribe and those claims were to be litigated only to have the tribe at a later date assert claims on its own behalf. Such problems can be avoided by requiring the United States and each tribe to state their claims jointly where the United States and the tribe agree, and where the United States and the tribe cannot reach agreement, by requiring them to file their separate claims all at the same time. The State therefore Responds to the Navajo and Zuni Motions to Intervene only to ask that the Court condition their intervention on a requirement that the tribes and the United States on behalf of the tribes simultaneously file any claims they may have by a single deadline established by the Court.

To ensure that the resources of all parties are conserved, the State recommends adopting an adjudication schedule similar to that ordered in the Rio Santa Cruz and Rio de Truchas stream system adjudication (State of New Mexico ex rel. State Engineer v. Abbott, 68cv7488 JEC and 70cv8650 JEC, Consolidated). In that adjudication, the Special Master entered a Scheduling Order on Pueblo Claims which recognized these problems, and attempted to deal with them by requiring the United States and the Pueblos to simultaneously state their claims:

On or before April 2, 1999, the United States shall file and serve . . . a subproceeding complaint stating the water rights to be claimed on behalf of any Pueblo within the scope of Pueblo Claims Subproceeding 1, as defined herein. Also, on or before April 2, 1999, any Pueblo claiming water rights within the scope of this subproceeding shall file and serve . . . a motion seeking to leave to intervene in this case and a subproceeding complaint for water rights the pueblo claims within the scope of the subproceeding.

New Mexico v. Abbott, 68cv7488 JEC and 70cv8650 JEC, Consolidated, December 17, 1998 Scheduling Order on Pueblo Claims (No. 2215), p. 9 (emphasis added). That same order provided further that if a Pueblo failed to intervene and state its claims on the

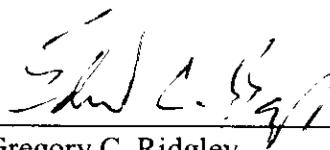
timetable established by the Court, it forfeited any right to challenge a judgment later entered in that subproceeding:

A Pueblo that fails to file timely a motion to intervene . . . shall forfeit any right to intervene in Pueblo Claims subproceeding 1 or to challenge any judgment entered therein

Id. at 10 (emphasis added). This approach permits the tribes to participate in the adjudication in their own capacity to assert claims in addition to those asserted by the United States on their behalf as their trustee. It also promotes judicial economy by ensuring that the claims of the tribes and the United States are addressed by the Court at the same time rather than in a serial or piecemeal fashion.

The State therefore requests that the Court condition the intervention of the Navajo Nation and the Zuni Indian Tribe on the requirement that they file any claims they may have within the scope of this water right adjudication, whether those claims are filed jointly with the United States or separately, by the same deadline when the United States is required to file any claims it may have on behalf of the tribes. The State further requests that the Court order that the failure of the Navajo or the Zuni to so assert their claims shall result in the particular tribe being deemed to have waived the right to assert such claims in its own capacity, and shall result in the particular tribe forfeiting any right to challenge any judgment entered in this proceeding.

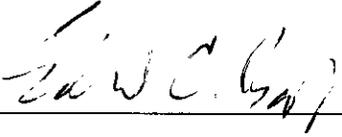
Respectfully submitted,



Gregory C. Ridgley
Edward C. Bagley
Special Assistant Attorneys General
Attorneys for the State of New
Mexico *ex rel.* State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Fax: (505) 827-6188

Certificate of Service

I certify that on this 26th day of June, 2002, a true and correct copy of the foregoing pleading was mailed by first class mail to the attached list of counsel of record and pro se parties:



Mark K. Adams, Esq.
Rodey, Dickason, Sloan, Akin & Robb
P.O. Box 1357
Santa Fe, NM 87504-1357

Randolph H. Barnhouse, Esq.
Rosebrough & Barnhouse, P.C.
P.O. Box 1744
Gallup, NM 87305-174

Larry D. Beal, Esq.
Beall & Biehler, P.A.
6715 Academy Road, N.E.
Albuquerque, NM 87109

Bruce Boynton, Esq.
Boynton, Simms-West Law Office
P.O. Box 1239
Grants, NM 87020

Steven L. Bunch, Esq.
NM Highway & Trans. Dept.
P.O. Box 1149
Santa Fe, NM 87504-1149

Darcy S. Bushnell, Esq.
Water Rights Attorney
USDC-DCNM
333 Lomas Blvd., N.W. – Ste. 270
Albuquerque, NM 87102-2272

Ernest L. Carroll, Esq.
Losee, Carson, Haas & Carroll, P.A.
Box 1720
Artesia, NM 88211

Kenneth J. Cassutt, Esq.,
530-B Harkle Road
Santa Fe, NM 87505

Jeffrey A. Dahl, Esq.
Lamb, Metzgar, Lines & Dahl, PA
P.O. Box 987
Albuquerque, NM 87103

Tessa T. Davidson, Esq.
Swaim, Schrandt & Davidson, P.C.
4830 Juan Tabo, N.E., Suite F
Albuquerque, NM 87111

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

Charles T. DuMars,
Christina Bruff DuMars
Albuquerque Plaza
201 3rd Street, N.W., Ste. 1370
Albuquerque, NM 87102

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

R. Bruce Frederick, Esq.
NM Attorney General's Office
P.O. Box 1148
Santa Fe, NM 87504-1148

Special Master Vickie L. Gabin.
U.S. District Court
U.S. Courthouse
P.O. Box 2384
Santa Fe, NM 87504-2384

David R. Gardner, Esq.
P.O. Box 62
Bernalillo, NM 87004

Deborah S. Gille, Esq.
Eastham, Johnson, Monnheimer etc
500 Marquette, NW, Suite 1200
P.O. Box 1276
Albuquerque, NM 87102

Raymond Hamilton, Esq.
U.S. Attorney's Office
District of New Mexico
P.O. Box 607
Albuquerque, NM 87103

Stephen G. Hughes, Esq.
NM Land Office
310 Santa Fe Trail
P.O. Box 1148
Santa Fe, NM 87504-1147

Robert W. Ionta, Esq.
McKim, Head & Ionta
P.O. Box 1059
Gallup, NM 87305

Mary Ann Joca, Esq.
U.S. Dept. of Agriculture
517 Gold Ave., S.W. Rm 4017
Albuquerque, NM 87102

Lynn A. Johnson, Esq.
USDJ-ENRD
999 - 18th St., Suite 945
Denver, CO 80202

M. Byron Lewis, Esq.
Salmon, Lewis & Weldon
2850 East Camelback Road
Suite 200
Phoenix, Arizona 85016

Roger Martella, Esq.
DOJ/ENRD-IRS
P.O. Box 44378
Washington, D.C. 20026-4378

Jane Marx, Esq.
Williams, Janov & Cooney
2501 Rio Grande Blvd., N.W.
Albuquerque, NM 87104-3223

Mark A. McGinnis, Lewis
Salmon, Lewis & Weldons
2850 East Camelback Road
Suite 200
Phoenix, Arizona 85016

Jeffrie D. Minier, Esq.
Law & Resources Planning Assoc.
Albuquerque Plaza
201 3rd Street, N.W., Ste. 1370
Albuquerque, NM 87102

Stephen R. Nelson, Esq.
Eastham, Johnson, Monnheimer & Jontz
500 Marquette, N.W., St. 1200
P.O. box 1276
Albuquerque, NM 87103

Sunny J. Nixon, Esq.
Rodey, Dickason, Sloan, Akin & Robb
P.O. Bo 1357
Santa Fe, NM 87504-1357

Charles O'Connell, Esq.
United States Dept. of Justice
601 D. Street, N.W.
Room 3507
Washington, D.C. 20004

Stanley M. Pollack, Esq.
Navajo Nation Dept. of Justice
P.O. Box 2010
Window Rock, AZ 86515-2010

Martella Rogers, Esq.
DOJ/ENRD-IRS
P.O. Box 44378
Washington, D.C. 20026-4378

Dorothy C. Sanchez, Esq.
715 Tijeras, N.W.
Albuquerque, NM 87102

Mark H. Shaw, Esq.
3733 Eubank Blvd., NE
Albuquerque, NM 87111

Mark A. Smith, Esq.
Rodey, Dickason, Sloan Akin & Robb
P.O. Box 1888
Albuquerque, NM 87103

Law Office of Neil C. Stillinger
P.O. Box 8378
Santa Fe, NM 87504

William G. Stripp, Esq.
P.O. Box 159
Ramah, NM 87321

John B. Weldon, Jr., Lewis
Salmon, Lewis & Weldon
2850 East Camelback Road
Suite 200
Phoenix, Arizona 85016

Pamela Williams, Esq.
Division of Indian Affairs
Office of Solicitor for Interior
1849 C Street, NW, Rm 6456
Washington, D.C. 20240

Susan M. Williams, Esq.
Williams, Janov & Cooney
2501 Rio Grande Boulevard, N.W.
Albuquerque, NM 87104-3223

Ann Hambleton Beardsley, Pro Se
HC 61 Box 747
Ramah, NM 87321

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

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

Louis E., Sr. DePauli, Pro Se
1610 Redrock Drive
Gallup, NM 87301

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

Cheryl Duty, Pro Se
HC 61 Box 788
Rahma, NM 87321

Kimberly J. Gugliotta, Pro Se
158 W. William Casey Street
Corona, AZ 85641

Albert O., Jr. Lebeck, Pro Se
P.O. Drawer 38
Gallup, NM 87305

David R. Lebeck, Pro Se
P.O. Drawer 38
Gallup, NM 87305

Gerald F. McBride, Pro Se
2725 Aliso Drive, N.E.
Albuquerque, NM 87110

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

Stephen Charnas, Esq.
For Information Purposes
Sutin, Thayer & Browne PC
P.O. Box 1945
Albuquerque, NM 87103-1945