

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

01cv00072 BDB-ACE

STATE OF NEW MEXICO, *ex rel*
State Engineer, A& R Productions, *et al.*,

ZUNI RIVER ADJUDICATION

Defendants,

ORDER DENYING MOTION FOR JURY TRIAL

THIS MATTER is a part of the general adjudication of all water rights in the Zuni River stream system. It is before the Court on Defendant Paul Petranto's March 15, 2001 Demand for Jury (Docket No. 22) under 28 U.S.C. §2201 and Rules 57, 38, and 39 of the Federal Rules of Civil Procedure.

Under the Federal Rules, when a party makes a timely demand for a jury trial, it shall be granted unless the parties agree to a trial by the Court alone or the Court determines that a right of trial by jury does not exist under the Constitution or the statutes of the United States. Fed. R. Civ. Proc. 57, 38, 39.

The Petranto demand was made on the same day as counsel's entry of appearance and, therefore, was timely. This case, however, is about determining the property rights of claimants to the use of waters of the Zuni stream system. The property rights issues lie in the realm of equity. Since the right to a jury trial attaches to actions at law, not to those in equity, the decision to grant the same lies within the discretion of the trial court. Mile High Industries v. Cohen, 222 F.3d 845, 855 (10th Cir. 2000). The New Mexico adjudication statutes also recognize that the use of juries is discretionary in these cases. N.M.S.A. 1978 §72-4-17 to18.

Since this is an equitable cause of action and the life of a water rights case spans many years, it is not practical to use a jury in an adjudication. The Petranto jury demand is, therefore, DENIED.

/electronic signature/
BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE