



Objections”) that because the Zuni Tribe has water interests in both the Carrizo Wash and the Puerco River drainages, those areas must be brought within the Zuni River Stream System adjudication, in light of the hydrological connections between the areas. Zuni agrees with the State that the Tribe has water interests in both of those geographic areas but disagrees with the State’s view that those areas must necessarily be brought into this adjudication.

Stream adjudication boundaries consistently have been drawn along surface water drainages, not ground water basin boundaries. The State has cited no precedent and, indeed, none exists in federal or state law, counseling that the geographic boundaries of a stream adjudication should be defined according to the boundaries of a ground water basin. Here, the United States has identified the Zuni River surface water boundaries as the area it seeks to adjudicate. Contrary to the arguments contained in the State’s Objections, the existing designation of the Gallup Groundwater Basin for ground water administration purposes has no bearing on whether the adjudication should be expanded to include the surface water drainages to the north and south of the Zuni River basin. Zuni’s interest in the areas to the north and south does not require the expansion of the boundaries of this case.

With regard to Carrizo Wash to the south of the Zuni Indian Reservation, the Tribe is deeply concerned about the proposed Fence Lake coal mine and its likely impacts on the sacred Salt Lake. The Tribe has been vocal in its objection to activities that will detrimentally affect the Lake. Zuni is actively working to address those issues and protect its interests in ongoing proceedings in administrative and judicial forums. Those issues do not belong in the Zuni River basin adjudication, because neither the proposed mine site nor the sacred Lake lies within the Zuni River system in New Mexico. The surface waters of Carrizo Wash do not drain into the Zuni River basin but, rather, drain into the Little Colorado River in Arizona, and the parties to the Fence Lake mine/Zuni Salt Lake

dispute have not asserted that the proposed pumping will affect the Zuni River system in New Mexico. Thus, because Carrizo Wash is a separate surface drainage system, neither hydrology nor geography dictate that this area be included within the Zuni River basin adjudication. Zuni does not support expansion of the case area boundaries to include Carrizo Wash at this time.<sup>1</sup>

With regard to the Puerco River drainage, Zuni is likewise very concerned about existing and proposed ground water pumping that may affect its prior and paramount rights in the surface and ground waters of the Zuni Reservation. Indeed, it was a pumping project in the area to the north of the Zuni Reservation that caused the Tribe to file litigation over twenty years ago to protect its homeland interests. That case was the precursor to this adjudication.

There is little question that pumping from the San Andres-Glorieta aquifer in the area north of the Reservation is likely to impact Zuni's water rights in the Zuni River basin. However, despite the Tribe's concerns about the potential impacts of pumping in the Puerco River drainage, the Tribe is sensitive to the significant resource constraints of the United States. The Tribe stands by the United States' determination that it is prudent to focus its financial and other resources on adjudicating the relative rights of water users within the Zuni River basin stream system. Moreover, as noted above, the Tribe agrees with comments made by the United States that surface water basin boundaries, not ground water basins, are used to determine the appropriate boundaries for water adjudications.

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<sup>1</sup>In support of its argument to expand the case boundaries to the south, the State cites a newspaper article quoting the previous governor of the Zuni Tribe. *See State's Objections*, at 7. Not only are the comments of Zuni's previous governor no longer germane, but the State's conclusion, that those comments somehow indicate that "an adjudication of the Carrizo Wash in the near future . . . is likely," *id.*, is unfounded.

Zuni certainly would have no objection to expansion of the case area boundary to include the Puerco River surface drainage to the north so long as the burden of such an expansion did not fall on the United States, thereby straining its ability to protect the interests of the Tribe in the existing proposed case.<sup>2</sup> The Tribe has waited decades to have its water rights for its New Mexico Reservation determined, and the Tribe's primary concern is that this case move forward now, without any further delay.

Zuni does, however, have a very strong objection to the State's suggestion that if the adjudication is not expanded to include Carrizo Wash and the Puerco River drainages, the Court should expressly exclude those areas from ever being brought into this adjudication. Although it may not be appropriate to expand the case area at this time, the Tribe does not want to be limited in the future, or have the United States in its capacity as trustee for the Tribe likewise be limited, from taking any actions that may become warranted in the future to protect the water rights of the Tribe. The State's proposed order excluding these areas from this case unnecessarily seeks to infringe on the Tribe's ability to take whatever steps may become necessary in the future, in this adjudication or elsewhere. Finally, the Tribe is comfortable with the Special Master's suggestion at the Status Conference that, in the absence of either an expansion or an exclusion of the areas, the adjudication boundary issue be revisited at a point several years from now when and if it becomes appropriate.

## **II. Proposed Interim Procedural Order for the Zuni River Basin Adjudication.**

The Zuni Tribe has no objections to or additional comments concerning the Special Master's draft proposed Interim Procedural Order for the Adjudication of Water Rights Claims in the Zuni

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<sup>2</sup>As counsel stated at the January 16, 2003 Status Conference, since it is the State of New Mexico's request that the adjudication be expanded to the north, it may be appropriate for the State, despite its own resource constraints, to shoulder the burden of such an expansion.

River Basin. The Special Master received a few comments and suggestions from other counsel for various parties at the Status Conference. Recognizing that the proposed Order applies only to the beginning active stages of the adjudication, the Tribe believes the Order effectively structures the first steps and related obligations of the parties to this adjudication and provides a useful framework in which to get this case moving.

Respectfully submitted,

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**-Certificate of Service-**

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January 31, 2003

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**Re: *United States v. State of New Mexico Engineer, et al.,*  
USDC (NM) No. CIV-01-0072-BB/WWD**

Dear Mr. March:

Enclosed for filing with the Court please find the original and two copies of Plaintiff-Intervenor Zuni Indian Tribe's Comments on Proposed Geographic Boundaries and Response to State of New Mexico's Objections to the United States' January 6, 2003 Pleading Concerning Geographical Boundaries.

Also enclosed is an extra copy to be conformed with evidence of filing and returned to me in the enclosed self-addressed, stamped envelope. Thank you very much for your assistance.

Sincerely,

By Jane Marx  
Jane Marx  
Attorney at Law

JM:dv

Enclosures (5)