

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

UNITED STATES,

Plaintiff,

vs.

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

Defendants.

03 JUN 31 PM 1:17

CIV-NO. 01-0072-BB/WWD  
NEW MEX

ZUNI RIVER ADJUDICATION

**NEW MEXICO COMMISSIONER OF PUBLIC LANDS:  
COMMENTS RE: INTERIM PROCEDURAL  
ORDER FOR ADJUDICATION OF WATER RIGHTS CLAIMS**

The New Mexico Commissioner of Public Lands (“Commissioner”) has jurisdiction over 100,000 acres of state trust land within the Zuni River surface drainage basin. Water development on these lands is of crucial importance to New Mexico, New Mexico’s public schools and other public institutions that derive income and support from state trust lands, and therefore, the Commissioner very much appreciates this opportunity to participate in determining how this adjudication progresses.

The Commissioner respectfully provides the following comments and suggestions regarding the proper boundaries of this adjudication and the “Interim Procedural Order for the Adjudication of Water Rights Claims in the Zuni River Basin” to be entered by the Court:

**1. Boundary of Adjudication.**

A. Initial Boundary: At this early stage, before any hydrologic investigation is completed, the boundary of the Zuni River Stream System Adjudication should be limited to the surface drainage basin of the Zuni River. All parties, including the United States and Office of State Engineer (“OSE”), should be able to agree to this readily identifiable geographical boundary. The Court would then adjudicate: (1) all alleged rights to divert surface water within the surface drainage basin; and (2) all alleged rights to divert groundwater through wells located within the surface drainage basin.

B. Expansion of Adjudication Area: Any party should be allowed to request the Court to expand the boundary of this adjudication by motion. The party making the motion

should have the burden to provide: (1) sufficient and reliable hydrologic or other data to justify the proposed expansion; (2) proof of sufficient funds and ability to perform the hydrographic survey within the expanded area; (3) proof that the hydrographic survey within the expanded area will be completed within a reasonable time; (4) proof that the proposed expansion would not overlap with any ongoing or completed adjudication; and (5) proof that these proceedings would not be unduly prolonged or otherwise prejudiced by the expansion.

**2. State Trust Lands.** The Commissioner may assert a claim regarding every parcel of state trust land within the boundaries of this adjudication. Given the large quantity of state trust lands, the Commissioner requests that the interim order provide the following specific requirements:

A. Identification. The hydrographic survey should identify all state trust lands within the boundaries of this adjudication. The New Mexico State Land Office can provide the United States with this information.

B. Notice to Commissioner. All offers of judgment, proposed consent orders and other pleadings involving surface water or groundwater that is diverted, produced or used on state trust lands within the boundaries of this adjudication should be served on the Commissioner. If the United States or OSE believes that a person other than the Commissioner owns any such rights, then the United States should send copies of such offers of judgment, consent orders and other pleadings to the alleged owner and to the Commissioner.

C. Offers of Judgment/Proposed Consent Orders. If the United States concludes that there no water right is associated with a given parcel of state trust land, then the United States should serve on the Commissioner an offer of judgment or proposed consent order alleging that no water right attaches to such land.

**3. OSE Approval of Hydrographic Survey.** The interim order should require the United States to obtain the express approval of the OSE for each completed subsection of the hydrographic survey. Each hydrographic survey report filed by the United States should indicate approval by the OSE.

**4. Notice of Completion.** Upon filing a hydrographic survey report with the Court, the United States should serve on all parties a notice of completion identifying the boundaries of the subsection completed.

**5. Offers of Judgment or Proposed Consent Orders:** No later than thirty (30) days after filing the hydrographic survey report for each subsection, the United States should serve offers of judgment or proposed consent orders on all potential claimants it identified within that subsection, including the Commissioner as provided in paragraph 2 above. Each proposed consent order or offer of judgment should indicate whether the OSE concurs with the described water right. The interim order should also provide that a claimant may, but is not required to, respond to an offer of judgment or proposed consent order, and that the Court will establish deadlines for such responses by subsequent order.

**6. Additional Claims.** For claims not recognized by the United States or OSE, the interim order should provide that any party may, but is not required to, file a water right claim or claims associated with lands within the completed subsection of the hydrographic survey. The order should provide that there currently is no deadline for a party to file any of the claims it may have.

**7. Dismissal of Improper Parties.** The interim order should provide that parties who claim no water right within the boundaries of the Zuni River Stream System Adjudication must submit an appropriate disclaimer to the United States. Within thirty days of receiving the disclaimer, the United States should prepare, file and serve an Agreed Motion of Dismissal, attaching an Order of Dismissal for the Court's consideration.

**8. Sequential Phases.** In paragraph 6 of the Court's Scheduling Order, filed July 15, 2002, provides:

The Court will consider the water rights claims of the parties in two sequential phases. The Federal, Tribal and State agency claims shall proceed on one schedule. Non-Indian Defendant claims segment shall proceed on its own schedule.

The interim order should provide that the "two sequential phases" will be described in a subsequent order of the Court.

9. **Objection:** The Commissioner objects to the United States' "Proposed Order Re: Adjudication Procedures and Schedules" to the extent it conflicts with the foregoing comments and suggestions.

Conclusion

The Commissioner offers the foregoing comments and suggestions for the Court's consideration.

Respectfully submitted,

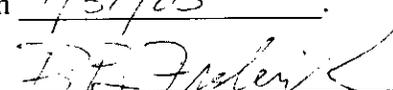


R. Bruce Frederick  
Stephen G. Hughes  
New Mexico State Land Office  
P.O. Box 1148  
Santa Fe, New Mexico 87504-1148  
(505) 827-5758

Attorneys for the New Mexico  
Commissioner of Public Lands

Certificate of Service

I certify that a true and correct copy of the foregoing pleading was mailed by first class mail to the persons appearing on the attached service list on 1/31/03.

  
R. Bruce Frederick

D.L. Sanders, Esq.  
Edward C. Bagley, Esq.  
Ofc of the State Engineer  
P.O. Box 25102  
Santa Fe, NM 87504-5102

Ann Hambleton Bearsley  
HC 61 Box 747  
Ramah, NM 87321

Bruce Boynton III, Esq.  
P.O. Box 1239  
Grants, NM 87020-1239

Ted Brodrick  
P.O. Box 219  
Ramah, NM 87321-0219

Steven L. Bunch, Esq.  
NM Hwy & Transpt.  
P.O. Box 1149  
Santa Fe, NM 87504-1149

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

Ernest Carroll, Esq.  
P.O. Box 1720  
Artesia, NM 88211-1720

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

Stephen Charnas, Esq.  
P.O. Box 1945  
Albuquerque, NM 87103

Jeffery A. Dahl, Esq.  
P.O. Box 987  
Albuquerque, NM 87103

Tessa T. Davidson, Esq.  
4830 Juan Tabo, NE # F  
Albuquerque, NM 87111

Louis E. DePauli, Esq.  
1610 Redrock Drive  
Gallup, NM 87301

Sandra S. Drullinger  
818 East Maple Street  
Hoopeston, IL 60942

Charles T. DuMars  
Chistina Bruff DuMars  
Albuquerque Plaza  
Ste. 1370  
201 3<sup>rd</sup> Street NW  
Albuquerque, NM 87102

Peter Fahmy, Esq.  
Office of the Reg. Sol.  
755 Parfet St. 151  
Lakewood, CO 80215

Raymond Hamilton, Esq.  
US Atty. Office  
District of NM  
P.O. Box 607  
Albuquerque, NM 87103

Mary Ann Joca, Esq.  
US Dept. of Agric.  
Rm. 4017  
517 Gold Av. SW  
Albuquerque, NM 87102

Lynn A. Johnson, Esq.  
USDJ-ENRD  
999 – 18<sup>th</sup> Street, Suite 945  
Denver, CO 80202

Albert R. Lebeck, Jr. Esq.  
P.O. Drawer 38  
Gallup, NM 87305

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

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

Jane Marx, Esq.  
2501 Rio Grande Blvd., NW  
Albuquerque, NM 87104

Myrrl W. McBride  
2725 Aliso Dr. NE  
Albuquerque, NM 87110

Gerald McBride  
2725 Aliso Dr. NE  
Albuquerque, NM 87110

Charles E. O'Connell Jr.  
US Dept. of Justice  
601 D Street, NW, Rm. 3507  
Washington, DC 2004

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

Mark A. Smith, Esq.  
Jocelyn Drennan, Esq.  
Sunny J. Nixon, Esq.  
Rodey Dickason Sloan Akin &  
Robb PA  
P.O. Box 1888  
Albuquerque, NM 87103

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

John B. Weldon, Esq.  
M. Byron Lewis, Esq.  
Mark A. McGinnis, Esq.  
Salmon Lewis & Weldon  
2850 East Camelback Road,  
Suite 200  
Phoenix, AZ 85016

Dorothy C. Sanchez, Esq.  
715 Tijeras SW  
Albuquerque, NM 87102

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

Peter B. Schoenfeld  
P.O. Box 2421  
Santa Fe, NM 87504-2421

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

Pamela Williams, esq.  
Div. of Indian Affairs  
1849 C. Street, NW, Rm. 6456  
Washington, DC 20240

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

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

Darcy S. Bushnell, Esq.  
U.S. District Court  
333 Lomas Blvd. NW  
Albuquerque, NM 87102-2272

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

Stephen R. Nelson, Esq.  
P.O. Box 1276  
Albuquerque, NM 87103-1276

Larry D. Beall, Esq.  
6715 Academy Road, NE  
Albuquerque, NM 87109

Jeffrie D. Minier, Esq.  
Law & Resources Planning  
Associates  
Albuquerque Plaza  
201 3<sup>rd</sup> St. NW, S.1370  
Albuquerque, NM 87102

Patricia A. Madrid  
Attorney General  
P.O. Box 1508  
Santa Fe, NM 87504-1508

John D'Antonio  
NM State Engineer  
P.O. box 25102  
Santa Fe, NM 87504-5102

Roger Martella, Esq.  
DoJ/ENRD-IRA  
P.O. Box 44378  
Washington, DC 20026

David W. Gehlert, Esq.  
USDJ/ENRD  
999 18<sup>th</sup> St. Ste. 945  
Denver, CO 80202

Robert & Linda Ionta  
P.O. Box 1059  
Gallup, NM 87305

Peter B. Shoenfeld  
Attorney at Law  
P.O. Box 2421  
Santa Fe, NM 87504-2421