

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

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
)	CIV NO. 01- 0072 BB/WWD (ACE)
)	
v.)	ZUNI RIVER BASIN
)	
STATE OF NEW MEXICO; NM)	
STATE ENGINEER; RICHARD)	
DAVIS MALLERY, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

**DEFENDANT RICHARD DAVIS MALLERY’S COMMENTS
ON THE FIELD TRIP PROPOSED BY THE SPECIAL MASTER**

COMES NOW, Defendant Richard Davis Mallery, by and through his undersigned attorneys, and hereby provides the following comments on the field trip of the Zuni River Basin proposed by the Special Master in her letter dated February 18, 2003.¹

1. The Special Master proposed a field trip to the Zuni River Basin stating “fair and efficient case management of stream system adjudications depends in great measure on developing procedures appropriate to the water users in each system.” The Special Master’s letter states that “[familiarity] with the communities, patterns of land ownership, types of beneficial uses of water, and any organizations of water users in the area . . . is always useful to the Court, and will be particularly important when detailed case planning begins.” The letter later states parenthetically “(While site visits on Navajo Nation and Zuni Indian Tribal lands are desirable, we can plan those for a later trip if inclusion at this time is undesirable for any reason.)”

¹ A second letter from the Special Master dated February 25, 2003, rescheduled the proposed field trip for Friday, April 11, 2003.

2. Many of the communities, types of beneficial uses of water and surface water bodies are located on Navajo Nation or Zuni Indian Tribal lands. The main surface water feature in the basin, the Zuni River, lies entirely within the Zuni Indian Reservation. Approximately half of each of the two tributaries that combine to form the Zuni River, the Rio Pescado and the Rio Nutria, also are located within the boundaries of the Zuni Indian Reservation. The Zuni Indian Reservation also contains the following reservoirs: Pescado, Black Rock, Tekapo, Nutria Diversion, Nutria No. 2, Nutria No. 3, Nutria No. 4, Eustace Lake, Jacks Lake, Upper Galestina No. 1A, Upper Galestina No. 7, and Ojo Caliente. The Zuni Canal is located on the Zuni Indian Reservation. There are several springs located on the Zuni Indian Reservation and numerous small, intermittent lakes located within the Ramah Indian Area. The communities of Zuni, Black Rock, Ojo Caliente, Tekapo, Lower Nutria, Upper Nutria, and Pescado are all located on the Zuni Indian Reservation.

3. Defendant Mallery proposes that the field trip include visits to Pescado, Black Rock, Tekapo and Ojo Caliente Reservoirs, and to the communities of Pescado, Black Rock, Zuni, Pescado and Ojo Caliente. The field trip should also include visits to irrigated acreage and some springs within Navajo Nation or Zuni Indian Tribal lands, as well as some of the intermittent lakes and water uses within the Ramah Indian Area.

4. Fair and efficient case management of this adjudication will require that the procedures developed for the non-federal, non-Indian defendants and subareas are also appropriate for the federal and Indian defendants and subareas. Furthermore, visiting these sites should not take a great deal of time, as Pescado, Black Rock, Zuni and Tekapo are located on or near an approximately 23-mile long stretch of Highway 53. That stretch of highway is located only about 12 miles from Subarea 4, which is one of the subareas scheduled for the first phase of the hydrographic survey. Ojo Caliente is located approximately 8 miles southwest of Tekapo.

5. There are several areas in the basin with subdivision developments including Timberlake, El Morro Ranches, Candy Kitchen and Pine Meadows. Defendant Mallery proposes that the field trip include a visit to the Timberlake development site. Timberlake is a subdivision development with approximately 800 lots which when fully developed will constitute a significant water-using community within the Zuni River Basin.

6. The proposed field trip should include site visits to other water use locations including ranching operations and Ramah Lake and irrigation system.

7. Defendant Mallery is the president of the Western New Mexico Water Preservation Association (“WNMWPA”). The WNMWPA has approximately 150 members that own land in the Zuni River Basin and have a vested interest in the outcome of this adjudication. Many of the members reside out of state. Many of the members that do reside in the basin may not be able to attend the field trip. Also, there are likely many potential Defendants that are not members of the WNMWPA that may not be able to attend the field trip.

8. In order to make the field trip “accessible” to as many potential parties as possible, Defendant Mallery requests that the United States post a map of the field trip route on the adjudication website. The map should indicate the sites visited during the field trip. The posting should also include digital photographs taken at each site.

9. Defendant Mallery proposes that the status conference be held at Ramah High School Commons Area.

10. In her February 25, 2003, letter, the Special Master instructed counsel for the United States to ensure the notice of the field trip and status conference is posted on the website and distributed for posting in local post offices. She also requested that local counsel

and local defendants *pro se* post copies of the notice at other public locations, or let counsel for the United States know appropriate posting sites.

11. Defendant Mallery requests that the Court instruct counsel for the United States to publish the notice in the local newspaper, the “reservation edition” of the Gallup Independent. Defendant Mallery also requests that the United States provide public notice of its website.

12. The Special Master’s letters were addressed to counsel for the following parties: the United States; the Office of the State Engineer; the Zuni Indian Tribe; and the Navajo Nation.

13. In the interest of the fairness and to avoid the appearance that certain parties are entitled to direct participation and others are not, Defendant Mallery requests that all future correspondence from the Court be addressed to “Counsel of record and Defendants appearing *pro se*.”

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By: _____

Charles T. DuMars
Jeffrie D. Minier
Attorneys at Law
Albuquerque Plaza, 201 3rd Street NW, Ste. 1370
Albuquerque, NM 87102
(505) 346-0998 / FAX: (505) 346-0997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments on the Field Trip Proposed by the Special Master was served upon counsel of record on this 6th day of March, 2003 as follows:

VIA FACSIMILE AS FOLLOWS:

Charles E. O'Connell Jr., Esq.
U.S. Department of Justice
Environment & Natural Resources
601 D Street, NW – Room 3507
Washington, DC 20004
Telephone: (202) 305-0261
Facsimile: (202) 353-7763
Attorney for Plaintiff United States of America

D. L. Sanders
Edward C. Bagley
Special Assistant Attorneys General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504 – 5102
Telephone: (505) 827-6150
Facsimile: (505) 827-3887
Attorney for Defendant New Mexico, State of Zuni River System

VIA FIRST CLASS MAIL AS FOLLOWS:

Raymond Hamilton
Asst. U.S. Attorney
Office of the U.S. Attorney
District of New Mexico
P.O. Box 607
Albuquerque, NM 87103
Telephone: (505) 346-7274
Facsimile: (505) 346-7205
Attorney for Plaintiff United States of America

Mary Ann Joca, Esq.
US Department of Agriculture
General Counsel
PO Box 586
Albuquerque, NM 87103
Telephone: (505) 248-6010
Facsimile: (505) 248-6013
Attorney for Plaintiff United States of America

Charles E. O'Connell Jr., Esq.

U.S. Department of Justice
Environment & Natural Resources
PO Box 44378
Washington, DC 2026-4378
Telephone: (202) 305-0261
Facsimile: (202) 353-7763
Attorney for Plaintiff United States of America

David W. Gehlert, Esq.
US Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
Telephone: (303) 312-7352 – (303) 312-7324
Facsimile: (303) 312-7331
Attorney for Plaintiff United States of America

Steven L. Bunch, Esq.
NM Highway & Transportation Department
PO Box 1149
Santa Fe, NM 87504-1149
Telephone: (505) 827-5431
Facsimile: (505) 827-0700
Attorney for Defendant New Mexico, State of Zuni River System

Edward C. Bagley, Esq.
NM State Engineering Office
Legal Division
PO Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Facsimile: (505) 827-3887
Attorney for Defendant New Mexico, State of Zuni River System

D.L. Sanders, Esq.
State of New Mexico Engineer's Office
PO Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Facsimile: (505) 827-3887
Attorney for Defendant New Mexico, State of Zuni River System

Albert O. Lebeck, Jr., Esq.
P.O. Box Drawer 38
Gallup, NM 87305
Telephone: (505) 863-4471
Attorney for Defendant Albert O. Lebeck, Jr.

David R. Lebeck
PO Drawer 38

Gallup, NM 87305
Telephone: (505) 863-4471
Defendant

Kenneth J. Cassutt, Esq.
Cassutt, Hays & Friedman, P.A.
530-B Harkle Road
Santa Fe, NM 87505
Telephone: (505) 989-1434
Facsimile: (505) 992-8378
Attorney for Defendant Timberlake Ranch Landowners' Association

Sandra S. Drullinger
818 E. Maple St.
Hoopston, IL 60942
Defendant

David R. Gardner, Esq.
P.O. Box 62
Bernalillo, NM 87004
Telephone: (505) 867-4689
Facsimile: (505) 867-6496
Attorney for Defendant Alberta O'Neal

Jeffrey A. Dahl, Esq.
Lamb, Metzgar, Lines & Dahl, P.A.
PO Box 987
Albuquerque, NM 87103-987
Telephone: (505) 247-0100
Facsimile (505) 247-9249
Attorneys for Defendants Christine B. Davis and Alan F. Davis

Kimberly J. Gugliotta
158 W. William Casey Street
Corona, AZ 85641
Telephone: (520) 762-9804
Defendant

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

Ted Brodrick
PO Box 219
Ramah, NM 87321
Defendant

Tessa T. Davidson, Esq.
Swaim, Schrandt & Davidson, P.C.
4830 Juan Tabo, NE, #F
Albuquerque, NM 87111
Telephone: (505) 237-0064
Facsimile: 237-9440
Attorneys for Defendants Homer G. Pringle and Julianne A. Pringle

Bruce Boynton, III, Esq.
P.O. Box 1239
Grants, NM 87020
Telephone: (505) 285-4242
Facsimile: (505) 285-6687
Attorney for Defendant Pitchford Properties

William G. Stripp, Esq.
PO Box 159
Ramah, NM 87321
Telephone: (505) 783-4138
Facsimile: (505) 783-4139
Attorney for Defendant Paul Petranto

Robert W. Ionta, Esq.
McKim, Head & Ionta
PO Box 1059
Gallup, NM 87305
Telephone: (505) 863-4438
Facsimile: (505) 772-3479
Attorney for Defendants Robert W. Ionta and Linda A. Ionta

R. Bruce Frederick, Esq.
NM Attorney General's Office
Special Assistant
PO Box 1148
Santa Fe, NM 87504-1148
Telephone: (505) 827-5756 – (505) 827-6175
Facsimile: (505) 827-4262
Attorney for Defendant Public Lands Commissioner

Stephen G. Hughes, Esq.
NM State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501
Telephone: (505) 827-1261
Facsimile: (505) 827-4262
Attorney for Defendant Public Lands Commissioner

Louis E. DePauli, Sr.
1610 Redrock Drive
Gallup, NM 87301
Telephone: (505) 863-3483
Facsimile: (505) 863-3148
Defendant

Peter B. Shoenfeld, Esq.
PO Box 2421
Santa Fe, NM 87504-2421
Telephone: (505) 982-3566
Facsimile: (505) 982-5520
Attorney for Defendant John A. Yates

Ernest L. Carroll, Esq.
7429 Roswell Highway
Artesia, NM 88210
Attorney for Defendant John A. Yates

Ann Hambleton Beardsley
HC 61 Box 747
Ramah, NM 87321
Telephone: (505) 783-4646
Defendant

Sunny J. Nixon, Esq.
Rodey Law Firm
PO Box 1357
Santa Fe, NM 87504-1357
Telephone: (505) 954-3917 – (505) 984-0100
Facsimile: (505) 954-3942
Attorney for Defendant Tri-State Generation and Transmission Association, Inc.

Robert E. Temmer, Esq.
PO Box 33695
Denver, CO 80233
General Counsel for Defendant Tri-State Generation and Transmission Association, Inc.

Dorothy C. Sanchez, Esq.
715 Tijeras NW
Albuquerque, NM 87102
Telephone: (505) 842-5924
Facsimile: (505) 242-3125
Attorney for Defendants Jerry R. Frazier and Emily S. Frazier

Clara M. Mercer
1017 S. 10th Ave.
Yuma, AZ 85364
Defendant

Randolph Barnhouse, Esq.
Rosebrough & Barnhouse, PC
PO Box 1744
Gallup, NM 87305-1744
Telephone: (505) 722-9121
Facsimile: (505) 722-9490

Attorneys for Defendants Delbert Beal, Mary Beal, William Goldsmith, W.A. Scott, and Janet Fay Scott.

Mark A. Smith, Esq.
Thomas A. Outler, Esq.
Rodey Law Firm
PO Box 1888
Albuquerque, NM 87103-1888
Telephone: (505) 765-5900
Facsimile: (505) 768-7395

Attorney for Defendant Salt River Project

John B. Weldon, Jr., Esq.
Mark A. McGinnis, Esq.
Salmon, Lewis & Weldon, PLC
2850 E. Camelback Rd., #200
Phoenix, AZ 85016
Telephone: (602) 801-9063 – (602) 801-9060
Facsimile: (602) 801-9070

Attorney for Defendant Salt River Project

Mark H. Shaw, Esq.
3733 Eubank NE
Albuquerque, NM 87111
Telephone: (505) 294-7000
Facsimile: (505) 293-0831
Attorney for Defendant Paul Bernett

Stephen R. Nelson, Esq.
Robert A. Johnson
Johnson & Nelson, P.C.
320 Gold Avenue SW, Suite 1111 (87102)
PO Box 25547
Albuquerque, NM 87125-5547
Telephone: (505) 764-9900
Facsimile: (505) 764-9901
Attorney for Defendant April E. Crosby

Larry D. Beall, Esq.
Beall & Biehler
6715 Academy Rd. NE
Albuquerque, NM 87109

Telephone: (505) 828-3600
Facsimile: (505) 828-3900
Attorneys for Defendants Joseph A. Solis and Barbara L. Solis

David Candelaria
12000 Ice Caves Rd.
Grants, NM 87020
Defendant

Mark K. Adams, Esq.
Rodey Law Firm
PO Box 1357
Santa Fe, NM 87504-1357
Telephone: (505) 984-0100
Facsimile: (505) 954-3942
Attorney for Defendant Quivira Mining Company

Jeffrie Minier, Esq.
Charles T. DuMars, Esq.
Christina Bruff DuMars, Esq.
201 Third St. NW, Suite 1370
Albuquerque, NM 87102
Telephone: (505) 346-0998
Facsimile: (505) 346-0997
Attorneys for Defendant Richard Davis Mallery

Jane Marx, Esq.
3800 Rio Grande Blvd. NW
PMB 167
Albuquerque, NM 87107
Telephone: (505) 344-1176
Facsimile: (505) 344-8694
Attorney for Intervenor Zuni Indian Tribe

Stanley M. Pollack, Esq.
Navajo Nation Department of Justice
PO Drawer 2010
Window Rock, AZ 86515
Telephone: (928) 871-6931
Facsimile: (928) 871-6200
Attorney for Intervenor The Navajo Nation

Vickie L. Gabin, Esq.
U.S. District Court
U.S. Courthouse
PO Box 2384
Santa Fe, NM 87504-2384
Telephone: (505) 888-6481
Special Master

Darcy S. Bushnell, Esq.
U.S. District Court
District of New Mexico
333 Lomas Blvd. NW
Albuquerque, NM 87102-2272
Telephone: (505) 348-2000
Facsimile: (505) 348-2212
Attorney for USDC NM

Jeffrie D. Minier