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October 21, 2009

Hon. Martha Vasquez, Chief Judge  
District Court of the District of New Mexico  
P.O. Box 2384  
Santa Fe, New Mexico 87504

Re: Desirability of Local Rule governing CMECF filings in  
water rights cases

Dear Chief Judge Vasquez:

As a result of several unfortunate incidents involving me as  
counsel as well as others of which I have heard, I bring to your  
attention the following problem and possible cure:

THE PROBLEM: Water rights adjudications, unlike most other  
litigation, involve thousands of defendants. The result is that  
there are hundreds or possibly thousands of filings per year  
posted by means of the CMECF system, and delivered by that system  
to counsel. When the name of the affected Defendant is not  
included in the "docket text" line of the email, it is next to  
impossible to determine whether the emailed notice has any  
pertinence to a given counsel's client, except by reading every  
email. Even if counsel reads every document which comes into his  
or her email in one of the water right adjudication cases, only  
less than 1% or perhaps even .1% will be applicable to his or her  
client. (This is likely not so important for the State of New  
Mexico or the United States, which has some interest in almost  
all of the subfiles.) The expense to one's client(s) from having  
to do so can be substantial.

The problem is compounded by the fact that some documents filed  
in the water cases indeed identify by name the party to whom the  
pleading or other document applies. Thus counsel can be, and in  
my case at least, was lulled into a false sense of security that  
if there were any document filed or served which pertained to my  
client or clients, the client's name would appear in the "docket  
text" portion of the email. This is sometimes the case and  
sometimes not.

A PROPOSED CURE: My suggestion for curing this problem, if you

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agree that it is a problem, is to require by local rule that counsel filing a pleading or other document identify the party to whom the pleading pertains. I have copied the docket text lines from several recent CMECF email received in my computer:

**ORDER GRANTING DEFAULT JUDGMENT by District Judge Bruce D. Black granting [2404] Motion for Default Judgment. Default judgment entered. Water rights set out for Defendant Stuart Sanders, Subfile No. ZRB-3-0145.**

**MOTION for Order Confirming Priority Date (Winfield Morten Ditch) by State of New Mexico. (Newville, Edward)**

If all filers would include the name and, as appropriate, the subfile of the affected party, as Judge Black or his staff has done, in the first quote or Mr. Newville did in the second, there would be no such mistakes as I (and, I am informed, others) have made. The less desirable alternative is shown in two other emails:

**ORDER SETTING PRETRIAL CONFERENCE by Special Master; Hearing set for 10/26/2009 at 09:00 AM in Santa Fe - Second Floor Auxiliary Courtroom (vg)**

**SCHEDULING ORDER, SUBFILES PM-43319, PM-62492, PM-75490, PM-78928, AND PM-84489: by Special Master (pl)**

Even though the latter two notices apply to only several defendants as well as the State of New Mexico and perhaps the United States, there is no way to tell from the docket text itself to whom it applies. In the second, even though the subfile numbers are given (which is perhaps enough to put counsel on notice) it is likely not enough to get the attention of *pro se* parties. In any event, substantial effort on the part of counsel, parties and the Court is required to undo the harm which could have been avoided by the identification of the parties to whom the pleading applied. Such a rule would prevent the mistake which has been made by me and others, of not recognizing as pertinent a document reflected in the email. In addition, it could contribute to keeping the expense of litigation under control.

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If I may provide further information or suggestions of a cure for the above, I would be happy to provide such assistance to the Court.

Very truly yours,

Peter B. Shoenfeld

cc: Hon. Bruce Black  
ec: Pierre Levy  
Vickie Gabin  
Edward Newville  
State Engineer Legal Division (Bagley, Stroud, Singer)  
U.S. DOJ (Bridgewater, Gehlert)