

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

UNITED STATE OF AMERICA, for Itself)	
and as Trustee for the Zuni Indian Tribe,)	
Navajo Nation and Ramah Band of Navajos)	
)	
and)	
)	
STATE OF NEW MEXICO ex rel. STATE)	
ENGINEER,)	No. 01cv00072-MV/LAM
)	
Plaintiffs,)	
)	
and)	
)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
)	ADJUDICATION
Plaintiffs-in-Intervention,)	
)	
-v-)	
)	
A & R PRODUCTIONS, <i>et. al.</i> ,)	Subfile No. ZRB-2-0014
)	
Defendants.)	
_____)	

**UNITED STATES’ RESPONSE IN SUPPORT TO THE COMMISSIONER OF PUBLIC
LANDS’ MOTION TO DISMISS EDWARD J. BAWOLEK AND SUZAN J. BAWOLEK
CROSS-CLAIM**

Plaintiff United States of America (“United States”) responds in support to the *Commissioner of Public Lands’ Motion to Dismiss Edward J. Bawolek and Suzan J. Bawolek Cross-Claim* (Doc. 2931) (“Motion to Dismiss”) and requests that the Court grant the motion.

INTRODUCTION

Defendants Edward J. and Suzan J. Bawolek (“the Bawoleks”) recently filed their

Edward J. Bawolek and Suzan J. Bawolek Cross-Claim Against the New Mexico Commissioner of Public Lands (Doc. 2928) (“Crossclaim”). The Crossclaim is not directed toward any interest held by the United States, therefore, the United States is not obligated to respond to the Crossclaim nor is it obligated to move to dismiss the Crossclaim at this time. Nonetheless, the Crossclaim improperly attempts to inject matters wholly unrelated to Subfile ZRB-2-0014 into this subfile action.

Through the Crossclaim, the Bawoleks’ attempt to challenge in this subfile (Subfile ZRB-2-0014) the validity of matters previously resolved in Subfile No. ZRB-1-0075. Specifically, the Bawoleks allege that particular water rights previously adjudicated to the New Mexico State Land Office in Subfile No. ZRB-1-0075 should have been adjudicated to the Bawoleks. *See Crossclaim* at ¶¶ 13 – 20; *see also Consent Order* (Doc. 2857). Further, the Bawoleks seek to have this Court go so far as to award the Bawoleks in this subfile action water rights previously adjudicated to the New Mexico State Land Office in Subfile No. ZRB-1-0075. *Id.* at ¶ 20 (Prayer for Relief).

The United States provides this response in support of the Motion to Dismiss and to emphasize the potential disruption that hearing the Crossclaim will cause to the orderly, fair, phased approach that the Court has established to address and resolve all water rights in the Zuni River stream system.

ARGUMENT

In this general stream adjudication, this Court has established, and all parties have long followed, a straightforward, common-sense set of procedures to address and resolve all water rights in the Zuni River stream system. For water rights associated with non-Indian claimants,

the Court has followed a phased approach with two components: first, the subfile phase and then an *inter se* phase. See *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 9 and 10 of the Zuni River Stream System* (Doc. 436) (“Procedural and Scheduling Order”). In the subfile phase, each subfile is a potential dispute between the United States, New Mexico, and the individual claimant. The subfile is based on the water rights associated with specific property in the Zuni River Basin and based on ownership of that property to the extent that ownership can be discerned. Ultimately, each subfile associated with each piece of property is resolved with a voluntary or contested subfile order. See *id.*

The Court and the parties have not yet concluded the subfile phase of this adjudication. Nonetheless, once the Court determines that the subfile phase has concluded, the Court will initiate the *inter se* phase of this adjudication. *Id.* In the *inter se* phase, all challenges by any water rights claimant to any other subfile order will be heard. *Id.*

The United States, New Mexico, and the Bawoleks dispute a number of issues associated with this subfile action (Subfile ZRB-2-0014) and turn to this Court to resolve these disputes and enter a subfile order. Yet through the Crossclaim, the Bawoleks seek to go well beyond the confines of this subfile and to directly challenge the subfile order associated with Subfile ZRB-1-0075 (Doc. 2857). See Crossclaim at ¶¶ 13-20. Specifically, the Bawolks assert that certain water rights arising on State Trust Lands and adjudicated in the name of the New Mexico State Land Office should be properly awarded to the Bawoleks. *Id.* Further, the Bawoleks seek to have their selected *inter se* challenge heard first, before any other party is given notice of the Bawoleks’ challenge or an opportunity to file their own *inter se* challenges to the Bawoleks’ assertions.

The Bawoleks' assertion of the Crossclaim is directly inconsistent with this Court's previous procedural orders and the establishment of an orderly, fair, phased adjudication. *See Procedural and Scheduling Order*. The challenge articulated in the Crossclaim may be raised, if at all, during the *inter se* phase of this adjudication and not before. To address the challenge raised in the Crossclaim in this subfile or outside the *inter se* phase would be procedurally improper and would thoroughly undermine the years of effort that this Court and every party have invested in to provide an orderly, fair, and phased adjudication.

WHEREFORE, the United States requests that the Court grant the Motion to Dismiss.

DATED this 5th day of March, 2014.

Electronically Filed

/s/ Andrew "Guss" Guarino
Andrew "Guss" Guarino
U.S. Department of Justice
South Terrace, Suite 370
999 18th St.
Denver, CO 80202
(303) 844-1343

and

Bradley S. Bridgewater
U.S. Department of Justice
South Terrace, Suite 370
999 18th St.
Denver, CO 80202
(303) 844-1359
COUNSEL FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 5th, 2014, I filed the foregoing UNITED STATES' RESPONSE IN SUPPORT TO THE COMMISSIONER OF PUBLIC LANDS' MOTION TO DISMISS EDWARD J. BAWOLEK AND SUZAN J. BAWOLEK CROSS-CLAIM electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Andrew "Guss" Guarino