

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW MEXICO, ex rel.
STATE ENGINEER, et al.,

Defendants.

04/12/07 11:00 AM
CIV No. 01 0072-BB/WWD-ACE

ZUNI RIVER BASIN

COMMENTS OF THE STATE OF NEW MEXICO TO THE UNITED STATES'
PROPOSED DRAFT SCHEDULING ORDER

THE STATE OF NEW MEXICO, by and through its counsels of record, hereby provides its comments with regard to the United States' February 27, 2004 proposed Scheduling Order for the Adjudication of Federal Water Rights Claims. The State's comments are as follows:

1. The United States' February 27, 2004 proposed Scheduling Order for the Adjudication of Federal Water Rights Claims ("Proposed Order") identifies five separate subproceedings, one for each of the five federal and Indian entities involved in the adjudication. Proposed Order, p. 2. With respect to the two tribal subproceedings, one for the Zuni Indian Tribe, and one for the Navajo Indian Tribe, it would be helpful to further subdivide those into types of claims. The United States' Complaint suggests that a variety of different aboriginal, reserved right and state law based claims will be made on behalf of each tribe. Each type of claim presents different discovery challenges, unique motion practice issues and varying trial demands. The typically huge litigation demands of just a reserved right claim, for example, warrant the attention and focus that a separate subproceeding implies. Further, itemizing the types of Indian claims which will

be presented will focus attention on them, further the parties understanding of them, and likely foster any potential settlement discussions which may be had.

2. A mechanism for adding or amending subproceedings should be included.

This could be accomplished by adding a Section 3.3 to page three of the Proposed Order stating:

Any party may, by motion, petition for an amendment to a subproceeding or the creation of additional subproceedings with respect to federal water right claims.

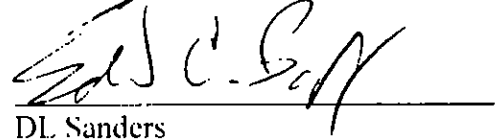
3. Paragraph 3.1 of the Proposed Order states that a subproceeding adjudication shall commence by the United States filing "a statement of the United States' claims." It would be helpful for procedural clarity to characterize such a document as a complaint under the Federal Rules of Civil Procedure. The United States would be free to allege all the elements of the water rights it is claiming, and to the extent its complaint proves to be vague or incomplete, other parties could seek clarification by the various methods afforded them under the Federal Rules of Civil Procedure. Moreover, procedures for discovery, motion practice and trial would be defined and understood. That this state of affairs exists could be made clear by including the following language after section 3.1:

Rules of Procedure: Except to the extent inconsistent with this order, or other orders of the Court or the Special Master, a subproceeding complaint shall be deemed to be a "complaint" for purposes of the application of the Federal Rules of Civil procedure and the Local Civil Rules of the United States District Court for the District of New Mexico to the subproceeding, and said rules shall govern subproceedings to the same extent as any civil action.

Subsequent paragraphs should be renumbered accordingly.

4. To be consistent with paragraph 3.1. and characterizing the United States' statement of claims as a complaint, the objections described in Section 3.2 would be better described as "answers."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DL Sanders", is written over a horizontal line.

DL Sanders

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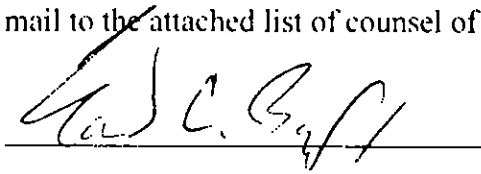
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Certificate of Service

I certify that on this 15th day of March, 2004, a true and correct copy of the foregoing **COMMENTS OF THE STATE OF NEW MEXICO TO THE UNITED STATES PROPOSED DRAFT SCHEDULING ORDER** was mailed by first class mail to the attached list of counsel of record and pro se parties:



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