

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

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

01cv00072 BDB-ACE

STATE OF NEW MEXICO, ex rel.
State Engineer, A & R Productions,
et al.,

ZUNI RIVER ADJUDICATION

Defendants.

DEFENDANTS YATES' MOTION FOR EXPEDITED ORDER TO COMPEL STATE
ENGINEER TO ACCEPT STATEMENT OF CLAIMS.

Defendants Yates Petroleum Corporation and John A. Yates ("Yates") move for an expedited order compelling the Defendant State Engineer to accept for filing the Declaration of Ownership of Water Right of Surface Waters Perfected Prior to March 19, 1907, tendered to the State Engineer on March 31, 2004, and rejected by him by letter dated April 21, 2004.

As grounds, Yates would show the following:

Substantive Portion of the Motion

1. The Court's Special Master, Ms. Gabin, on June 24, 2003, by document No. 208 ordered as follows:

. . . . It is hereby ordered that the following will govern the course of this phase of the adjudication. . . .

A REQUIREMENT TO SUBMIT WATER RIGHTS FORMS

1. No later than October 31, 2003, [by various orders of the Court subsequently extended to March 31, 2004 and April 12, 2004,] all water rights claimants in the Zuni River stream system shall file with the State Engineer the documents necessary to either update their existing water rights files, or if no such files exist, to create such files to accurately reflect the current ownership, nature

and extent of their claimed water right.

2. The documents shall be those used in the ordinary course of business by the Water Resource Allocation Program of the Office of the State Engineer ("WRAP"). WRAP documents include, but are not limited to, surface and groundwater declaration forms (forms wr-03 or wr-21). . . .

3. A declaration form shall be completed by any water right claimant whose use of a surface water right was initiated prior to March 19, 1907 and continues through the present . . . and that water right is not reflected by an existing WRAP file. . . . As its title suggests, its purpose is to allow the claimant an opportunity to "declare" their water right. . . .

2. On March 31, 2004, as required and permitted by the Special Master's order quoted, Yates presented to the State Engineer at his office in Albuquerque for filing their declaration of ownership of water right of surface waters perfected prior to March 19, 1907 (hereinafter "the declaration"). A true copy of the declaration is attached as Exhibit 1 to this motion.

3. On April 21, 2004, by letter, the State Engineer rejected and returned to Yates the declaration, apparently attempting to deny the claim of Yates asserted in the declaration, and seeking to prevent the assertion of that claim in this Court. A true copy of the State Engineer's letter is attached as Exhibit 2 to this motion. The letter was sent by first class U.S. Mail, not certified.

4. The State Engineer is obliged to receive the declaration, by reason of the Special Master's order set forth above, and as a matter of statute, Section 72-1-3, N.M.S.A., and is without discretion to reject the declaration.

5. It is a denial of due process for the Court to allow a party opponent, the State Engineer, to administratively determine the validity of Yates' water rights in a manner which could result in Yates' claim being rejected without hearing or presentation of evidence before this Court on procedural rather than substantive grounds.

6. The determination of the validity of water rights is a matter exclusively for this Court and is not within the administrative jurisdiction of the State Engineer.

Request for Expedited Hearing

7. Yates will be prejudiced if the State Engineer acts on the declaration by rejecting it prior to the consideration of the issues raised by the declaration as part of the water rights adjudication before this Court;

8. As shown by Exhibit 2, the State Engineer is attempting to apply state administrative law procedural standards to the assertion of Yates' claim under the declaration, by attempting to require Yates to file a notice of aggrieval within 30 days of the date of Exhibit 2, apparently in order to force Yates to defend their claim before the State Engineer, which would allow the State Engineer to assert the benefits of administrative res judicata or collateral estoppel based on his own self-serving decision.

9. Determination of the validity of the Yates' claim is within the exclusive jurisdiction of this Court.

10. In order to protect Yates from having to appear before

the State Engineer to assert the claim which is or should be adjudicated exclusively before this Court, and to protect Yates from the possible effects of an adverse decision by the State Engineer, prior to adjudication of Yates' claim by this Court, this Court should hear this motion as quickly as possible, and in all events prior to the expiration of the 30 days set forth in Exhibit 2, which expires on May 21, 2004;

11. Counsel for Yates has consulted with counsel for the State Engineer, who does not concur in either the substantive portion of this motion or the procedural request for an expedited hearing. Yates' memorandum in support of this motion is submitted herewith.

WHEREFORE, Yates respectfully requests that the Court order the State Engineer to receive and file the declaration, Exhibit 1, previously proffered by Yates, in accordance with the Special Master's order.

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S/Electronically Filed (ACE)

By: _____
Attorney for Yates

CERTIFICATE OF SERVICE

On May 4, 2004, I served a copy of the foregoing instrument on the following, those in italics by email, those not in italics, by first class U.S. Mail, and the State Engineer by hand-delivery.

Service List

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David R. Gardner, Esq.
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Susan Williams, Esq.
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