

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

UNITED STATES OF AMERICA,)
ET AL.,)
)
 PLAINTIFFS,)
)
)
v.)
)
STATE OF NEW MEXICO)
COMMISSIONER OF PUBLIC)
LANDS, ET AL.,)
)
 DEFENDANTS.)
_____)

CIV NO. 01- 00072 BDB/WDS
ZUNI RIVER BASIN ADJUDICATION

**COMMENTS OF DEFENDANTS RICHARD DAVIS MALLERY *ET AL.*
TO THE PROPOSED ADMINISTRATIVE ORDER ESTABLISHING
JOINDER AND SUBSTITUTION PRACTICE**

In accordance with the Special Master’s letter request of May 4, 2004, Defendants Richard Davis Mallery *et al.*, members of the Western New Mexico Water Preservation Association (“WNMWPA”), hereby comment on the Special Master’s proposed Administrative Order Establishing Joinder and Substitution Practice.

COMMENTS

The proposed Order appears to adequately address the need for a simplified method of joining new claimants while fulfilling the requirements of due process.

The proposal, however, places the entirety of the responsibility, or opportunity, of seeking the joinder of new parties in the adjudication, upon the Office of the State Engineer. The State Engineer must generate a complaint, consent order and form answer in order to begin the process of joinder. There is no language that allows a claimant to seek joinder in the

adjudication on his or her own initiative, without some action on the part of the State Engineer.

The Western New Mexico Water Preservation Association respectfully requests language to the effect that a water rights claimant who has not received a complaint, consent order, and form answer from the Office of the State Engineer may affirmatively seek joinder in the adjudication as provided under the Federal Rules of Civil Procedure.

CONCLUSION

Defendants Richard Davis Mallery *et al.*, members of the Western New Mexico Water Preservation Association, appreciate the opportunity to comment on the proposed Administrative Order Establishing Joinder and Substitution Practice.

Dated: June 30, 2004

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By: Electronically filed / Original signed by Tanya L. Scott, Esq.

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

CERTIFICATE OF MAILING

In accordance with the instructions of the Special Master, the foregoing Comments on the Proposed Scheduling Order are being served on the Special Master at Post Office Box 2384, Santa Fe, NM 87504-2384 and e-mailed to ylgabin@earthlink.net this 30th day of June, 2004. These Comments are also being filed of record, but not served upon any other party.

Electronically filed / Original signed by Tanya L. Scott, Esq.
Tanya L. Scott