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Rose M. Marsh
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

United States,)
)
 Plaintiff,)
)
 v.)
)
 A & R Productions, et al.,)
)
 Defendants.)

01cv00072BDB/WWD(ACE)

ZUNI RIVER BASIN
UNITED STATES' REPORT

This report is intended to comply with the Special Masters Scheduling Order of March 31, 2001. The United States conferred with the State of New Mexico's State Engineer regarding the following matters and hereby submits this plan to timely complete this adjudication:

- a. Attached is a copy of a map of the Zuni River Basin that has been developed using United States Geological Survey's 1:24,000 Quad Maps. Also enclosed is a legal description of the Basin;
- b. As to the Special Master's inquiry of whether the United States is willing to dismiss individual (i.e., non-governmental) defendants until the completion of a hydrographic survey, the United States submits the following in response:

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The United States desires to move this adjudication forward as expeditiously as possible with the least disruption to the Basin's defendant/claimants. Accordingly, the United States would like to work with the State of New Mexico State Engineer ("State") and the Special Master to develop an adjudication plan to address these goals. To this end, the United States engaged in discussions with representatives of the State Engineer and thereafter met with the State Engineer. The State Engineer has advised that more pressing water matters in the State require his Office's attention rather than this recently filed case to which no monies have been appropriated. In the opinion of the State, this adjudication is "ill conceived and should be withdrawn or dismissed and filed at a time when the state has the resources to dedicate to it through its completion. . . ." See attached letter of D.L. Saunders to Charles E. O'Connell, Jr., dated April 26, 2001.

The United States understands the State's predicament. However, the United States will not agree to withdraw this suit or to delay it indefinitely. Although the United States' complaint was filed this year, this matter is not new. The adjudication of water rights in the Zuni River basin was initiated in federal court several decades ago in 1982 by the Zuni Tribe because of threatened encroachment to the Zuni Basin's groundwater supply by the City of Gallup. In 1984, the City of Gallup filed a general stream adjudication in state court against all water users in the Basin, including the United States, and the State voluntarily joined as plaintiff. The Zuni Tribe agreed to dismiss its suit and the State agreed to hold its suit in abeyance until further technical studies were conducted jointly by the State and the United States. In accordance with that agreement, the United States contracted for many studies, one of which was a hydrographic survey of a majority of Indian water users in the

basin. The state court apparently felt that the state failed to fulfill its end of the agreement because, in 1990, that court took the extraordinary step of dismissing the State's suit with prejudice for the State's failure to prosecute. The potential conflicts among existing and new water users in the basin require the United States to resume the water rights adjudication in this Court. Notwithstanding the State's prior commitment to conduct studies necessary to adjudicate the waters of the Basin, the United States now offers to initiate that task by funding and conducting a hydrographic survey of two areas of the Basin.

The United States' contractors have the necessary expertise to conduct such a survey and we believe that the survey could be done expeditiously and with a minimal intrusion upon claimants' lands. This survey will: provide an accurate identification of the appropriate water right claimants in Basin; move this case forward expeditiously; and provide a basis for offers of judgment to individual water users. If the Court (and, hopefully, the State) endorses the United States' proposal, the United States will dismiss without prejudice the named individual non-governmental defendants.

Specifically, the United States' proposal is as follows:

1. The United States will retain and fund a qualified contractor to conduct a hydrographic survey of two specific areas of the basin, which are among the most heavily populated areas of the basin.^{1/}
2. The hydrographic survey proposed will be done in a manner that complies with the State Engineer's standards. New Mexico law permits a hydrographic survey

^{1/} The United States is of the understanding that a majority of the non-government defendants in the Zuni River basin are concentrated in five specific areas. (See attached map).

conducted by the United States or its contractors to be received and considered in general stream adjudications;²

3. The United States, if the Court desires, will provide the Court with periodic written reports of the progress of the survey. The survey will be available for joint review and comment by the State; and

4. Following the completion of the survey of the two specific areas proposed, the United States and the State Engineer will bring before this Court for resolution the issue of responsibility for the future conduct of the remaining portions of the hydrographic survey and the allocation of its costs. The United States expects the State to jointly fund and actively participate in the completion of the hydrographic survey for the remaining portions of the basin after the two specific areas are surveyed at federal cost. Prior to the commencement of the survey, public meetings will be held in the basin advising all water users of the nature and purpose of the survey. The date and location of the meetings will be published in local newspapers.

If this proposal meets with this Court's approval, the United States will move to dismiss without prejudice the individual, non-governmental claimants. With this proposal, the

² NMSA 1978, § 72-4-16 (1982) provides in part:

All reports of hydrographic surveys of the waters of any stream system . . . made by . . . any engineer of the United States . . . shall be received and considered in evidence in the trial of all causes involving the data shown in such survey, the same as though testified to by the person making the same, subject to rebuttal, the same as in ordinary cases.

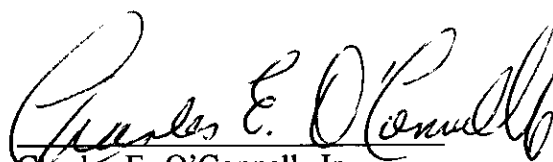
United States is offering to do whatever is reasonably necessary to move this suit forward to completion.

c. As to the Special Master's inquiry of whether there is a class of water rights that can be provisionally excluded at this time from the adjudication, the United States is willing to dismiss without prejudice the non-governmental defendants if it receives from this Court approval to conduct a hydrographic survey of two specific areas of the Zuni River basin. The survey will identify the non-governmental water right claimants who will be joined as party-defendants.

d. As to the matter of identifying the water right claims of the plaintiff, the United States is of the opinion that, since the State claims that it is not in a position to actively participate in moving this suit forward, there is no need at this time to schedule the filing of federal claims. The federal claims are in many instances based on time-sensitive data/studies. When the State signals its willingness to actively move the adjudicate forward, the studies upon which the claims are based will require adjustments based upon data available at that time. The matter can be addressed when the State is in the position to review, analyze and critique the plaintiff's water right claims based on reliable data of the time.

Dated this 31st day of May, 2001.

Respectfully submitted,


Charles E. O'Connell, Jr.
Attorney for Plaintiff the United States

THE EXHIBITS ATTACHED TO THIS
PLEADING ARE TOO VOLUMINOUS TO
SCAN. SAID EXHIBITS ARE ATTACHED
TO THE ORIGINAL PLEADING IN THE
CASE FILE WHICH IS LOCATED IN THE
RECORDS DEPARTMENT, U.S.
DISTRICT COURT CLERK'S OFFICE.