

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

UNITED STATES OF AMERICA)	
)	01 AUG 24 PM 3:06
Plaintiff,)	
)	
v.)	01cv00072-BDB/WWD (ACE)
)	
STATE OF NEW MEXICO, ex rel. STATE)	ZUNI RIVER BASIN
Engineer, A&R Productions, et al.,)	
)	
Defendants.)	
<hr style="width: 40%; margin-left: 0;"/>)	

**Quivira Mining Company's
Response to United States' Report and State's Proposal
For Proceeding Once The Stay Is Lifted**

Quivira Mining Company ("Quivira") opposes the United States' Report dated May 31, 2001 ("United States' Report") and the State's Proposal For Proceeding Once The Stay Is Lifted served July 9, 2001 ("State Report") (together, sometimes "Reports") on the following grounds:

Quivira Should Be Dismissed From This Action

Quivira should be dismissed from this adjudication at the outset because it has been improperly named as a defendant. Both Reports fail to provide for a procedure for dismissal of defendants improperly named. Quivira's water rights are located outside the exterior boundaries of the Zuni River Basin, as shown on the Hydrologic Map of the Zuni River Basin dated April 2001, attached to the United States' Report and described in the Narrative Description of the Adjudication Boundary for the Zuni River Basin. *See*, Affidavit of Terry L. Fletcher attached as Exhibit A hereto and incorporated herein. ("Fletcher Affidavit").

Adjudications do not adjudicate groundwater uses located outside of the downwardly

extended vertical boundaries of the perimeter of the stream system subject to adjudication, which in this case is the Zuni River Basin, and with points of diversion outside the boundaries. The points of diversion and places of use for all of Quivira's water rights are outside the Zuni River Basin. Fletcher Affidavit. Moreover, Quivira's water rights are the subject of adjudication in the Rio San Jose River Basin adjudication, *State v. Kerr McGee Corporation, et al.*, Nos. CB-83-190-CV and CB-83-220-CV (Consolidated). Fletcher Affidavit. (Quivira is the successor to Kerr-McGee Corporation.)

The State's letter of April 26, 2001 by D. L. Sanders, Special Assistant Attorney General, to Charles E. O'Connell, Jr., attached to the United States' Report, confirms that "[t]here is agreement that a majority of the defendants were named in err" [sic]. (p.2). Quivira was one of the defendants named in error. This same letter also states that "[t]his adjudication cannot proceed with erroneously named defendants," essentially because such defendants own no water rights within the basin and therefore have no standing. The letter emphasizes:

"The state has adopted the procedure of identifying the proper defendants from the hydrographic survey before the filing of an adjudication and the lis pendens. The course chosen by the US postures this adjudication without a survey, proper defendants, or a lis pendens."

Id. Finally, the letter documents that "the United States has recognized the general inaccuracy of those named." (p.3).

Accordingly, Quivira should be dismissed, with prejudice, from this Zuni River Basin adjudication. Both Reports should provide for a procedure for dismissal of Quivira and the other improperly named defendants.

United States' and State Report

Quivira joins in and adopts the opposition to the United States' Report and the State Report set forth on pages 3-9 of Tri-State Generation and Transmission Association, Inc.'s Response to United States' Report and the State's Proposal for Proceeding Once The Stay is Lifted.

Conclusion

Quivira should be dismissed with prejudice.

The stay should not be lifted now except to permit the dismissal with prejudice of Quivira and the other defendants similarly situated whose rights to use groundwater are outside the Zuni River Basin. Otherwise, the stay should not be lifted until the State – with funding by the United States – completes the hydrographic survey.

Finally, the State's reasons for not proceeding set forth in its April 26, 2001 letter far outweigh the United States' assertion that the adjudication should proceed.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

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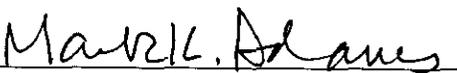
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Attorneys for Quivira Mining Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 24, 2001, I mailed copies of the foregoing on the Quivira Mining Company's Response to United States' Report and State's Proposal For Proceeding Once The Stay Is Lifted to all persons on the attached mailing list.


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

UNITED STATES OF AMERICA,

Plaintiff,

CIV NO. 01 0072 BB/WWD-ACE

v.

ZUNI RIVER BASIN

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

Defendants,

AFFIDAVIT OF TERRY L. FLETCHER

STATE OF NEW MEXICO)
COUNTY OF CIBOLA)

TERRY L. FLETCHER, being first sworn upon his oath, deposes and says:

I am the General Manager, Ambrosia Lake (New Mexico) Operations, of Quivira Mining Company (“Quivira”), and am familiar with the water rights in New Mexico owned by Quivira.

I have examined the map titled “Hydrologic Map of the Zuni River Basin, NM” dated April 2001 and find that Quivira owns no surface or underground water rights, the points of diversion of which are within the exterior boundaries of the Zuni River Basin as shown on said map. The points of diversion of Quivira’s water rights are in T14N, R9W, and T14N, R10W, in the Bluewater Underground Water Basin.

Quivira is a party to the Bluewater water rights adjudication suit, State ex rel. State Engineer v. Kerr McGee Corporation, et al., Cause No. CB-83-190 & CB-83-220-CV Consolidated, Thirteenth Judicial District Court, Cibola County, New Mexico. All of Quivira’s water rights are involved in that adjudication.



Terry J Fletcher
Terry L. Fletcher

Subscribed to before me this 1st day of August, 2001.

Kathy J Kovats
Notary Public

My Commission Expires: 2/10/05