

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 STATE OF NEW MEXICO, ex rel. STATE)
 ENGINEER, et al.,)
)
 Defendants.)
 _____)

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Robert M. ...
CIV No. 01 00072-BB/WWD/ACE
ZUNI RIVER BASIN

**QUIVIRA MINING COMPANY'S RESPONSE IN OPPOSITION TO STATE
ENGINEER'S PROPOSED ADJUDICATION SCHEDULING ORDER AND THE
UNITED STATES' STATEMENT
OF ISSUES AND NATURE OF THE SUIT**

Quivira Mining Company ("Quivira") files this Response to oppose certain aspects of the State Engineer's Proposed Adjudication Scheduling Order ("Proposed Order"; appended to Notice of Filing served December 31, 2001) and the United States' Statement of Issues and Nature of Suit ("Statement of Issues") served December 27, 2001.

Quivira opposes the proposals of the State Engineer and the United States because they would defer dismissal of persons mistakenly made parties who do not own surface water or groundwater rights within the Zuni River stream system, and as a result have no interest in this proceeding, for an indefinite time, until two hydrographic surveys (which have not even started) are completed and one unrelated water rights adjudication suit is finished.

If the proposals of the State Engineer and the United States were adopted, parties, which have no interest in this proceeding would, nevertheless, be compelled to remain parties for an indefinite and unknowable period of time, incurring unnecessary expenses and needlessly complicating the administration of this action.

Quivira is such a party. It has no water rights within the Zuni River stream system. Its

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water rights are being determined in the Rio San Jose (Bluewater) Adjudication. Quivira has no dog in this fight. Consequently, Quivira should be dismissed soon, not after two new hydrographic surveys and an unrelated adjudication are completed.

The procedures governing this case should provide for early dismissal of Quivira and other similarly situated parties. The Proposed Order and the Statement of Issues should be modified accordingly.

Quivira renews its request for dismissal with prejudice asserted in its Response filed on August 24, 2001 to the United States' Report and State's Proposal for Proceeding Once The Stay Is Lifted. That Response is incorporated herein. The Affidavit attached to the Response demonstrates that Quivira has no water rights within the Zuni River basin. The Affidavit also establishes that Quivira's water rights are being determined in the Rio San Jose (Bluewater) Adjudication.

The State Engineer's Proposed Order and United States' Statement of Issues should be modified to provide for dismissal of Quivira and other misjoined parties that own no water rights within the Zuni stream system.

Respectfully submitted,

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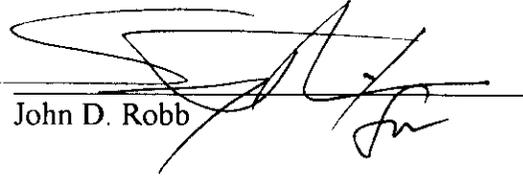
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 14, 2002, I mailed copies of the foregoing Response In Opposition To State Engineer's Proposed Adjudication Scheduling Order and The United States' Statement Of Issues And Nature Of the Suit to all persons on the attached mailing list.


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