

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

UNITED STATES,

Plaintiff,

vs.

NO. CIV-01-0072 BB/WWD

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

**OBJECTIONS BY DEFENDANT PAUL PETRANTO
TO SPECIAL MASTER’S REPORT AND RECOMMENDATIONS**

Introduction

The Special Master’s report and recommendations are “well”-thought out and “well”-intentioned, but perhaps encumbered by the “tortured history” of water rights adjudications in general.¹ Certainly, when looked upon in the grand scheme of life, we should not look upon a water rights adjudication as any more important than the deprivation of an individual’s liberty as the result of the possession or sale of a minimum amount of cocaine base or the deprivation of one’s civil rights resulting from the murder of a young boy’s father by corrupt law enforcement officers. Yet, water is the substance of life without which we cannot live. So, without further waxing poetic, Defendant Petranto presents the following objection.

¹While the Special Master refers to “the tortured history of previous adjudication attempts in this basin” (see page 5, at “Previous Adjudication Attempts” of the Special Master’s Report), it seems to Defendant Petranto and his counsel that all water adjudications in New Mexico have unnecessarily suffered from a “tortured history”.

In presenting this objection, and to soften its blow, Petranto presents the following anecdote. Criminal defense attorneys have learned that if they do not object to everything, they are precluded from raising an issue on appeal. So, if the judge comes in and says. “Good morning counsel”, the criminal defense attorney is advised to state, “I, object, your honor. It is not a good morning. My client is on trial, accused of a crime, and may have to go to jail.” To put things in perspective, the United States, in this matter, has accused all landowners in the undefined Zuni River Basin of unlawfully interfering with its right, and the rights of those it claims to protect, to all of the water in the undefined Zuni River Basin. (See Complaint at page 17, ¶ 5: “The Defendants’ use of surface and groundwater in the Zuni River basin in New Mexico constitutes an unlawful interference with the Plaintiffs’ right to the use of that water.”) More than being heavy-handed, the position of the United States is foolish, and not grounded in either the law or common sense.

Nature of the Adjudication

The Special Master, being of good heart, tries to make a silk purse out of a sow’s ear by stating that it is “clear” that the United States seeks a “general stream adjudication under New Mexico law”, rather than the “quiet title” or “declaratory judgment” action that is prayed for in the U.S. complaint. (See Special Master’s Report at page 5, II. Questions Considered, A. The nature of an adjudication.)

It is certainly not clear to Mr. Petranto, his counsel, or the other residents of the area in dispute, that the U.S. has filed “a general stream adjudication under New Mexico law.” With all due respect to the Special Master, the U.S. complaint speaks for itself. The complaint states, at page 15, under the caption “Nature of the Action”: “This is an action to quiet the title...” Nowhere does the complaint state that this is “a general stream adjudication under New Mexico law.” The Special Master, as a neutral, does not want to take the position of a complainant, and advocate the position that the U.S. might have taken if it had bothered to look before it leaped.

This is not a “general stream adjudication under New Mexico law”. Rather, the complaint is what it purports itself to be, i.e. an action to quiet title. Until such time as the U.S. moves to amend its complaint, which it has not chosen to do, and which the Court, *sua sponte*, has no right to do, the complaint stands as filed, deficient, unsupported in either fact or law, and damaging to all residents of the area, whether they be private landowners or “wards” of a short-sighted monolith.

Despite its error, the United States shows no inclination to release the Defendants from its mistake. (See United States’ Objection to the Special Master’s Report.) The U.S. fears, justifiably, that area residents might not cooperate in its attempt to enter their land to conduct a hydrographic survey. However, the U.S. would not have had to face such a fear if it had filed a proper complaint in the first place.

Defendant Petranto also notes that, while the U.S. represents on the one hand that it “will fund and conduct the hydrographic survey of the basin”, it then states in a footnote, “The commitment to fund the hydrographic survey is, of course, contingent upon Congress’s continued appropriation of sufficient funds to the Department of the Interior.” (See United States’s Objection to the Special Master’s Report at page 1, unnumbered paragraph 3, and footnote 1.) Such a commitment is no commitment at all. (“We will pay for it if we have the money.”)

OBJECTION

Defendant Petranto respectfully objects. Neither the Special Master nor the Court has the right to recharacterize the U.S. complaint as a “general stream adjudication under New Mexico law”. The complaint as it stands is a “quiet title” action. The Special Master recognizes that such a complaint is without basis. The U.S., as plaintiff, has not moved to amend its complaint to dismiss its original claims and have the complaint transmuted into a “general stream adjudication under New Mexico law”. Therefore, the complaint should be dismissed with prejudice.

Conclusion

In sum, the U.S. has filed a quiet title action that the Special Master recognizes is improper, but wants to recharacterize as a “general stream adjudication under New Mexico law”. The U.S. has shown no inclination to move to amend its complaint. Therefore, the complaint should be dismissed with prejudice.

Date: June 5, 2002

Respectfully submitted,

----signed electronically-----

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CERTIFICATE OF MAILING

This is to certify that this pleading was mailed to parties of record by placing it into envelopes with postage prepaid and then placing the envelopes with the United States Post Office in Ramah, New Mexico for mailing.

----signed electronically-----

**WILLIAM G. STRIPP
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