

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.

**DEFENDANT PAUL PETRANTO'S SUPPLEMENTAL OBJECTIONS TO
PROPOSED BOUNDARY OF THE ZUNI RIVER STREAM SYSTEM
AND PROPOSED INTERIM PROCEDURAL ORDER FOR THE ADJUDICATION
OF WATER RIGHTS CLAIMS IN THE ZUNI RIVER BASIN**

Defendant Paul Petranto, by and through his defense counsel, William G. Stripp, hereby objects to the proposed boundary of the Zuni River Stream System as put forth in the pleadings filed by the United States, and the proposed Procedural Interim Order for the Adjudication of Water Rights Claims in the "Zuni River Basin", which was presented in draft form during the hearing on January 16, 2003.

1. Nomenclature. At the outset, and in accordance with the Court's July 2002 Scheduling Order, the case is to be styled as the "Zuni River stream system" as opposed to the "Zuni River Basin". (See Scheduling Order at p. 2, ¶ 2.)

2. Domestic and other de minimis uses should be excluded from the adjudication.

Although the boundaries of the adjudication have not yet been clearly determined, it is fairly safe to state that most of the land in question is unpopulated with no major surface water flows and no major commercial uses. On offer of proof, the fear among much of the resident population, as well as nonresident landowners, is that if they do not currently have a well on their property, the hydrographic survey will result in an offer to them of zero water rights, and they will be left with land that has no water and no value.

Many nonresident landowners have not yet invested in wells on their property. On offer of proof, the cost of a domestic well can range between \$2,500.00 and \$15,000.00 or more. Many resident landowners also do not yet have wells on their property, some due to cost considerations, others due to geologic conditions.

There are no major commercial enterprises in the area. It is questionable whether any of the small commercial enterprises currently use more than three acre feet of water per year. Larger commercial enterprises, such as the C&E Concrete gravel mine, may use more than three acre feet of water per year.

Given the nature of the area, why is the federal government, the Zuni Tribe, and to a lesser extent the Navajo Tribe, so intent on pushing this adjudication on de minimis water users? One theory is that the government and the tribes want the non-Indian

Defendants to prove up their current water usage prior to having to state what their claims are. Non-Indian Defendants who do not currently have a well on their land will not receive any offers of water. Non-Indian Defendants who have wells and stock tanks on their land will receive offers of no greater than their current water usage. Then the federal government and tribes will claim all remaining water rights. If an individual who does not currently have a well on their land wants to place a well on their land, then they will have to buy water rights from the tribes, the federal government, or a landowner who has water rights.

This fear can be eliminated by eliminating domestic and other de minimis uses from the adjudication. Currently, under NMSA, 1978, § 72-12-1 (2001), individuals who want to have de minimis uses of water are statutorily entitled to a permit to drill a well “for watering livestock; for irrigation of not to exceed one acre of noncommercial trees, lawn or garden; or for household or other domestic use...”¹ Similarly, stockmen or stock owners “may build or construct water tanks or ponds for the purpose of watering stock which have a capacity of ten acre-feet of water or less.” See NMSA, 1978, § 72-9-3 (1953). If such de minimis uses, including de minimis commercial uses, were not included in the adjudication, it would eliminate thousands of defendants, simplify the hydrographic survey, reduce the cost of the litigation, and greatly expedite the litigation.

¹This section does not address de minimis commercial use of three acre feet or less per year, e.g. a small trading post/grocery store, a small restaurant, or a small gas station.

Therefore, the Court should order that the adjudication does not include de minimis uses, and that landowners shall be entitled to all water rights that they currently enjoy under the New Mexico state statutes.

3. Once de minimis users are excluded from the litigation, the Court should require the Federal and Tribal claims to proceed on a separate schedule with both the Federal Government and the Tribes being required to present their claims prior to the presentation of State claims and non-Indian claims which are not de minimis.

The federal government wants to begin the hydrographic survey using nonfederal and non-Indian lands. This is inappropriate. The federal government should begin the survey with federal and Indian lands, stating how much water is claimed, the sources of the water claimed, and the reasoning behind the claims. As the federal government has brought this lawsuit, it is not fair to require either the State of New Mexico or the non-Indian defendants to state their claims first.

This approach would also allay the fear that the federal government and the tribes are trying to box private landowners into severely restricted water use, and then claim all remaining water rights in the hope of future financial gain. Once the federal government and the tribes present their claims, the State of New Mexico can present its claims and non-Indian claims which are not de minimis can be presented.

4. In going forward with the litigation, the United States should be ordered to stop misrepresenting that it has reached agreements with the State of New Mexico when it has not reached such Agreements. The United States should also be ordered to follow this Court's Orders.

5. Boundary Issues.

(A) Neither the United States nor the State of New Mexico have provided a sufficient explanation as to what facts they are using to determine appropriate boundaries to the adjudication area. It is not appropriate to determine the boundaries in a haphazard fashion. The proposed boundaries should be based upon facts and reason, and not upon speculation.

(B) Until the non de minimis landowners and water rights claimants know what the proposed boundaries are and the reasoning behind the proposed boundaries, they do not know whether or not they have standing to object to the proposed boundaries or whether they should object to the proposed boundaries. Therefore, the landowners should be given sufficient time after the proposed boundaries are presented to submit appropriate objections.

(C) The boundaries proposed by the federal government extend into Arizona. However, Arizona has not been included in the adjudication at this time. If the rights to the water in the stream system are to be fully determined, then Arizona must be included.

(D) It has been suggested by the State of New Mexico that areas to the north and south of the boundaries proposed by the federal government should be included in the adjudication. If the State's position is scientifically sound, then those areas should be included in the adjudication.

6. Hydrographic Survey Issues.

The Special Master has stated that the federal standards for the hydrographic survey must meet state standards. However, the parties have apparently not agreed upon those standards, including the protocol and when the hydrographic survey is going to begin. The landowners and water rights claimants have the right to know what standards will be used and the reasoning behind those standards, including how priorities will be determined. The explanations should be made in terms a layperson can understand.

Date: January 31, 2003

Respectfully submitted,

----signed electronically-----

**WILLIAM G. STRIPP
ATTORNEY AT LAW
P.O. BOX 159
RAMAH, NEW MEXICO 87321
Telephone: (505) 783-4138
Facsimile: (505) 783-4139**

CERTIFICATE OF MAILING

This is to certify that on January 31, 2003 this pleading was served on the following individuals by placing it into envelopes with postage prepaid and addressed as follows:

Mark K. Adams Attorney at Law Rodey, Dickason, Sloan, Akin & Robb P.O. Box 1357 Santa Fe, NM 87504-1357	Quivira Mining Company
--	------------------------

Randolph H. Barnhouse Attorney at Law Rosebrough & Barnhouse, P.C. P.O. Box 1744 Gallup, NM 87305	Delbert & Mary Beal W.A. & Janet Fay Scott William Goldsmith
--	--

Larry D. Beall Attorney at Law Beall & Biehler, P.A. 6715 Academy Road NE Albuquerque, NM 87109	Joseph A. Solis Barbara L. Solis
--	-------------------------------------

Ann Hambleton Beardsley HC 61, Box 747 Ramah, NM 87321	Pro Se
---	--------

Bruce Boynton III Attorney at Law Boynton & Sims-West P.O. Box 1239 Grants, NM 87020	Pitchford Properties
---	----------------------

Ted Broderick P.O. Box 219 Ramah, New Mexico 87321	Pro Se
---	--------

Steven L. Bunch
Attorney at Law
New Mexico Highway & Transportation Dept.
P.O. Box 1149
Santa Fe, NM 87504-1149

State of New Mexico

Darcy Bushnell
Attorney at Law
US District Court
3333 Lomas Blvd NW
Albuquerque, NM 87102-2272

David Candelaria
12000 Ice Caves Road
Grants, NM 87020

Pro Se

Ernest L. Carroll
Attorney at Law
Losee, Carson, Haas & Carroll, PA
P.O. Box 1720
Artesia, NM 88211-1720

John A. Yates

Peter B. Shoenfeld
Attorney at Law
P.O. Box 2421
Santa Fe, NM 87504-2421

John A. Yates

Kenneth J. Cassutt
Attorney at Law
Cassutt, Hays & Friedman, PA
530-B Harkle Rd.
Santa Fe, NM 87505

Timberlake Ranch

Jeffrey A. Dahl
Attorney at Law
Lamb, Metzgar, Lines & Dahl, PA
P.O. Box 987
Albuquerque, NM 87103-0987

Alan F. & Christine B. Davis

Tessa T. Davidson
Attorney at Law
Swaim, Schrandt & Davidson, P.C.
4830 Juan Tabo N.E., Suite F
Albuquerque, NM 87111

Homer G. & Julienne A. Pringle

Louis E. DePauli, Sr.
1610 Redrock Drive
Gallup, NM 87301

Pro Se

Sandra S. Drullinger
818 E. Maple Street
Hoopeston, IL 60942

Pro Se

Charles T. Dumars
Christina Bruff DuMars
Jeffrie Minier
Attorneys at Law
201 Third Street NW, 13th Floor, #1370
Albuquerque, NM 87102

Richard Davis Mallery

R. Bruce Frederick
Stephen G. Hughes
Special Assistant Attorneys General
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148

Public Lands Commissioner

Vickie L. Gabin, Esq.
US District Court
US Courthouse
P.O. Box 2384
Santa Fe, NM 87504-2384

Special Master

David R. Gardner
Attorney at Law
P.O. Box 62
Bernalillo, NM 87004-0062

Alberta O'Neal

David Gehlert
US Department of Justice
999 18th Street, #945
Denver, CO 80202

US Department of Justice

Kimberly J. Gugliotta
158 W William Casey Street
Corona, AZ 85641

Pro Se

Raymond Hamilton
Attorney at Law
US Attorney's Office
P.O. Box 607
Albuquerque, NM 87103-0607

United States

Robert W. Ionta
Attorney at Law
P.O. Box 1059
Gallup, NM 87305

Pro Se
Linda Ionta

Mary Ann Joca
General Counsel
US Department of Agriculture
P.O. Box 586
Albuquerque, NM 87103

US Department of Agriculture

Albert O. Lebeck, Jr.
Attorney at Law
P.O. Box 38
Gallup, NM 87305

Pro Se
David R. Lebeck

Patricia A. Madrid
Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508

Jane Marx

Attorney at Law
Jane Marx, Attorney at Law, P.C.
3800 Rio Grande Blvd. N.W., PMB 167
Albuquerque, NM 87107

Zuni Indian Tribe

Gerald F. & Myrrl W. McBride

2725 Aliso Drive NE
Albuquerque, NM 87110

Pro Se

Clara M. Mercer

1017 S 10th Ave
Yuma, AZ 85364

Pro Se

Stephen R. Nelson

Attorney at Law
Johnson & Nelson, PC
P.O. Box 25547
Albuquerque, NM 87125-5547

April E. Crosby

Sunny J. Nixon

Attorney at Law
Rodey, Dickason, Sloan, Akin & Robb
P.O. Box 1357
Santa Fe, NM 87504-1357

Tri-State Generation & Transmission
Assoc., Inc.

Charles E. O'Connell Jr.

Attorney at Law
U.S. Department of Justice
Environment & Natural Resources
P.O. Box 44378
Washington D.C., DC 20026-4378

United States

Stanley Pollock

Attorney at Law
Navajo Nation Dept. of Justice
P.O. Drawer 2010
Window Rock, AZ 86515

Navajo Nation

Dorothy Sanchez
Attorney at Law
715 Tijeras N.W.
Albuquerque, NM 87102

Jerry R. & Emily S. Frazier

D.L. Sanders
Edward C. Bagley
Attorneys at Law
New Mexico State Engineer's Office
PO Box 25102
Santa Fe, NM 87504-5102

State Engineer

Mark H. Shaw
Attorney at Law
3733 Eubank NE
Albuquerque, NM 87111

Paul Bernett

Mark A. Smith
Jocelyn C. Drennan
Tom Outler
Attorneys at Law
Rodey, Dickason, Sloan, Akin & Robb, P.A.
P.O. Box 1888
Albuquerque, NM 87103

Salt River Project

John B. Weldon Jr.
M. Byron Lewis
Mark A. McGinnis
Attorneys at Law
Salmon, Lewis & Weldon
4444 N. 32nd Street, Suite 200
Phoenix, AZ 85032

Salt River Project

and then placing the envelopes with the United States Post Office in Ramah, New Mexico for mailing.

----signed electronically-----

WILLIAM G. STRIPP, ESQ.