

from the bench on January 16, 2003, allowed for responses by January 31, 2003.² The issues debated here turn on the difference between the scope of the Zuni River *basin* and the appropriate scope of the Zuni River *adjudication*. The attached documents demonstrate clearly that the boundary of the Zuni River basin was “prepared jointly by the State of New Mexico’s Engineer’s Office and a contractor of the Department of the Interior, Natural Resources Consulting Engineers, Inc.” The State does not object to this basin boundary, rather it asserts that any adjudication of the Zuni River basin also should include the Puerco River basin and the Carrizzo Wash, based on the fact that the surface water basins are in hydrological continuity with a single aquifer and cannot be administered unless all water rights are recognized in a single decree from this Court.

The State claims it “. . . knows of no basis upon which the United States might rely to represent that an agreement exists.” See, *State of New Mexico’s Objection to and Clarification of United States’ January 6, 2003, Pleading Proposing Geographical Boundary for this Adjudication*, p. 2.

In response, the United States submits the following:

A. Identification of the Boundary of the Zuni River Stream System

The State claims that “the United States implies that it has reached an agreement with the State with regard to the *geographical scope of the adjudication*.” (Emphasis added) See *State of*

and the state of New Mexico with regard to the scope of the adjudication, much less a map or township/range/section description of the same.” *State of New Mexico’s Objection to and Clarification of United States’ January 6, 2003, Pleading Proposing Geographical Boundary for this Adjudication*, dated January 14, 2003, p. 1-2.

² The State of New Mexico electronically served the United States with a copy of its filing on January 15, 2003.

New Mexico's Objection to and Clarification of United States' January 6, 2003, Pleading Proposing Geographical Boundary for this Adjudication, (January 14, 2003) at 1. The State misinterprets the United States' representation regarding the development and identification of the boundary of the Zuni River stream system. The United States notified this Court and all parties of record that the boundary of the Zuni basin as depicted on the map of December 2002, was "prepared jointly by the State of New Mexico's Engineer's Office and a contractor of the Department of the Interior, Natural Resources Consulting Engineers., Inc." See *United States' Identification of the Zuni River Stream System Boundary*, (December 27, 2002) at 1. The United States' representation that the boundary has been "jointly prepared" is based on the following:

1. The State instructed the United States' technical team to work directly with its technical staff (J. McNees) in identifying the boundaries of the Zuni River basin and the development of the legal description of the same. See letter from State's counsel (Dec. 13, 2002), **Attachment No. 1**.
2. On December 24, 2002, Mr. McNees, by electronic mail (**Attachment No. 2**), advised Natural Resources Consulting Engineers, Inc., (NRCE) that NRCE's "basin shapefile" "looks real good to me." Mr. McNees advised further that NRCE's efforts in identifying the surface water boundary was in more detail than the State's contribution. Mr. McNees also advises that the State's attorneys, as of December 24, 2002, agreed to the surface water boundary.

The United States, in contrast, has not represented that the State was or is in agreement with the "geographical scope of the adjudication." See discussion below in Part II. Rather, based upon the December 20 through December 24, 2002, e-mail exchanges between the State's technical staff (Mr. McNees) and NRCE, in particular Mr. McNees's conclusion that the basin

shapefile “looked real good [to him],” the United States advised accurately that the boundary of the Zuni River stream system as depicted on the map of December, 2002, was “prepared jointly by the State of New Mexico’s Engineer’s Office and [NRCE].” Again, the United States did not represent that an agreement had been reached as to the scope of the adjudication.

B. Identification of the Legal Description of the Zuni River Stream System

The United States notified this Court and all parties of record that State “agreed” to the legal description of the geographic boundary of the Zuni River stream system, as depicted on the map of December, 2002. See, *Supplemental Identification of Zuni River Stream System Boundary*, dated January 9, 2003. The State claims it “. . . knows of no basis upon which the United States might rely to represent that an agreement exists.”

The United States’ notification of “agreement” is based on the following:

1. The State instructed the United States’ technical team to work directly with its technical staff (J. McNeese) in identifying the boundaries of the Zuni River basin and the development of the legal description of the same. See **Attachment No. 1**.
2. So as to comply timely with the Court’s Scheduling Orders of July 15 and December 5, 2002, the United States forwarded for filing on December 27, 2002, a legal description of the boundary of the basin as depicted on the map of December, 2002. With that filing, the United States advised that the legal description had been “provided to the [State] on December 26, 2002, for agreement and or comment.” See *Identification of Zuni River Stream System Boundary*, (December 27, 2002) at 2.
3. On December 31, 2002, Mr. McNeese, by electronic mail (**Attachment No. 3**), advised NRCE of certain errors in the legal description. Mr. McNeese and NRCE personnel

discussed the errors and corrections were made to the legal description in accordance with those discussions. The corrections did not adjust the boundary as depicted on the map of December 2002. The corrections more accurately described the boundary as shown on that map.

The State's technician (Mr. McNeese) clearly reviewed in its entirety the legal description as developed by NRCE. See attached electronic mails of December 30 and 31, 2002. Errors to the legal description were discovered and discussed jointly (NRCE and Mr. McNeese) and were subsequently adopted. Thereafter, this Court and all interested parties were served with the *United States' Supplemental Identification of Zuni River Stream System Boundary*, (January 9, 2003), which included the corrections that had been identified and adopted jointly by the technicians of the United States and State. Clearly, as of January 9, 2003, there was "agreement" with respect to the legal description of the geographic boundary of the Zuni River stream system as depicted on the map of December, 2002, that had been jointly prepared by the State and NRCE. The State now claims there is no agreement with respect to the legal description of the boundary as identified on the December 2002. The State fails to identify, however, what aspect of the description is in error.

II.

SCOPE OF THE ADJUDICATION

In its filing of January 14, 2003, the State now questions whether this adjudication should include not only the Puerco River basin but also the Carrizo Wash.

The State asks the following:

1. Why the surface drainages of the Puerco River and the Carrizo Wash are not being included within the geographic boundaries of the Zuni River stream system for purposes of this adjudication;

2. How the Zuni River stream system can be administered without a final decree which includes the hydrologically connected Puerco River and the Carrizo Wash; and
3. Who will be responsible for the adjudication of the Puerco River and the Carrizo Wash if that becomes necessary to administer water rights adjudicated pursuant to the instant matter.

The attached letter of December 18, 2002, to the State's counsel, addresses each of the above questions. **Attachment No. 4.** The surface drainages of the Puerco River and the Carrizo Wash are not included within this adjudication because neither surface drainage drain into the Zuni River basin in New Mexico. Thus neither contribute to the surface flow of the Zuni River basin in New Mexico and, conversely, the Zuni River basin's surface flow does not contribute to the surface drainages of either the Puerco River or Carrizo Wash in New Mexico. For that reason alone, there is no need to include the surface drainages of the Puerco River and Carrizo Wash in this adjudication.

The United States recognizes that the San Andres-Glorieta Aquifer underlies and is in hydraulic continuity with the surface waters of the Zuni River Basin, the Upper Puerco River Basin and the Rio San Jose River Basin. The Aquifer also underlies the Carrizo Wash but is minimally in hydraulic continuity with the surface flows of the Wash. The surface flows of Carrizo Wash are intermittent, flashy and low in volume. NRCE advises that withdrawals from the water underlying the Wash will have minimal effect on the surface flows of the Zuni River basin. As the letter of December 18, 2002, recognizes, withdrawals from the San Andres-Glorieta Aquifer theoretically could, in the future, impact adversely the ability to exercise valid right(s) to the use of surface flows in the Zuni, Puerco and Rio San Jose River basins.

Attachment No. 4. If, in the future, there are withdrawals or other activity involving the Aquifer

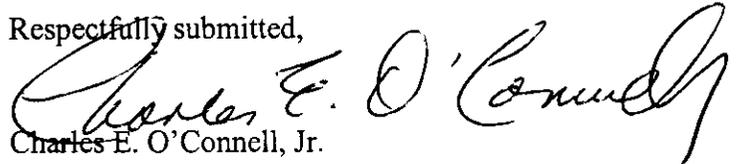
that adversely impact on decreed water rights in the Zuni River basin, it is assumed that appropriate action will be taken to protect valid senior rights to the use of water in the watershed, including appropriate action by the United States to protect its decreed water rights and/or the water rights of the Zuni Tribe or the Navajo Nation. It is not necessary to include in one adjudication all claimants of a common water source covering several surface water basins. To do so would not only unduly exhaust the resources of the court but would be prohibitively expensive and involve possibly thousands of additional parties unnecessarily. No other adjudication involving the waters of New Mexico extends to all claimants of a common source of water covering multiple surface water basins. See the water rights adjudication of State of New Mexico, ex rel. State Engineer v. Kerr-McGee Corp., et al., Cibola County District Court No. CB-83-190-CV & CV-83-20-CV, (Consolidated). That case is limited to claimants of the waters of the Rio San Jose River basin (both surface and groundwater) and does not include claimants to the entire San Andres-Glorieta Aquifer, which underlies and is in hydraulic continuity with the surface waters of the Zuni and Puerco River basins.

Lastly, it is noted that, contrary to the State's assertions here that it cannot administer the three basins without a decree covering all claimants, the State Engineer, in 1994, specifically recognized and found that "*[t]here are three separate surface drainage areas in the existing and proposed extension to the Gallup Underground Water Basin. The underground waters can be (except for deep aquifers) administered separately in the three separate surface drainage areas*" (emphasis added). **Attachment No. 5** (para. I. 10 .G). The State Engineer's finding is based on evidence and testimony presented at a full evidentiary hearing in 1994. **Attachment No. 5**. The burden is on the State to now show that the State Engineer's finding and conclusion is in error.

2002.” See Order of December 4, 2002.³⁷ The United States has no objection to the State transferring the boundary, as presently defined, to an appropriate map of its choosing.

Dated this 31st day of January, 2002.

Respectfully submitted,



Charles E. O'Connell, Jr.
United States Trial Attorney

³⁷ The State's attorney advised by letter of December 24, 2002, that its technical staff would not be available for further discussion of the issue until "hopefully" December 27, 2002.

ATTACHMENT NO. 1



STATE OF NEW MEXICO

OFFICE OF THE STATE ENGINEER

Thomas C. Turney
State Engineer

LITIGATION & ADJUDICATION
PROGRAM
130 South Capitol
Santa Fe, New Mexico 87501

Mailing Address:
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Fax: (505) 827-3887

December 13, 2002

VIA FEDERAL EXPRESS

Charles E. O'Connell, Jr.
United States Department of Justice
Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, DC 22026-4378
Fax: (202) 305-0271

Re: United States v. State of New Mexico Engineer, et al.
United States District Court Case No. 01-0072

RECEIVED
INDIAN RESOURCES
SECTION
DEC 17 12 21 02

Dear Mr. O'Connell;

Attached is a more refined map of the Zuni surface drainage than I e-mailed you on November 27, 2002, and a matching legal description of that surface drainage, drafted in the township, range and section format called for by the Court in its most recent order. I draw your particular attention to the bottom left hand corner of the map, wherein there lies a box labeled "notes," and which contains the following description:

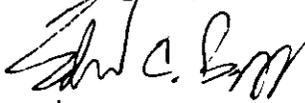
The geographical extent of the Zuni River Adjudication is defined by this map as being the drainage divide between the Zuni River surface water drainage basin and the adjoining surface water drainage basins and the state line between New Mexico and Arizona. The Zuni River Basin lies entirely within the Declared Gallup Underground Water Basin.

In my view, this description, or something like it, ought to be included in the pleading as the controlling definition of the Zuni River stream system for purposes of the adjudication. The map and the legal description would then serve to visually and legally illustrate that description.

In order to reconcile the differences between the attached documents and the legal description contained in your November 5, 2002 draft pleading, I suggest that we have our technical people speak directly with one another. Jim McNees is doing this work for the State. His direct phone number is (505) 827-7873; his e-mail is jmccnees@seo.state.nm.us.

Please know that the State offers these descriptions of the geographical boundary of the Zuni River stream system for purposes of this adjudication only to the extent that we prove able to agree that the River Puerco may be properly excluded from it. As you will recall, it is the State's position is that it can agree to this exclusion if the United States can explain in the record: 1) why the hydrologically connected Puerco River is not included within the geographic boundaries of the Zuni River stream system for purposes of this adjudication; 2) how the Zuni River stream system can be administered without a final decree which includes the hydrologically connected Puerco River; and 3) who will be responsible for the adjudication of the Puerco River if that becomes necessary to administer water rights adjudicated pursuant to the instant matter. To date, the United States has not suggested any language which would accomplish this, and it has rejected the State's suggestions. I again invite the United States to suggest language which would address the problems posed by excluding the River Puerco from this adjudication.

Best regards,



Edward C. Bagley
Special Assistant Attorney General

cc: DL Sanders, General Counsel
Greg Ridgley, Managing Attorney, NRG
Pamela Williams, Solicitor's Office, Department of the Interior
Bradley S. Bridgewater, U.S. Dept. of Justice, Environment & Nat. Res. Div.
James McNees, OSE Hydrographic Survey

PLSS Description of the Geographic Extent of the Zuni Adjudication

Townships completely within the Zuni Basin

T06N, R16W - R19W
 T07N, R16W - R20W
 T08N, R14W - R20W
 T09N, R14W - R20W
 T10N, R14W - R20W
 T11N, R16W - R18W
 T12N, R16W - R17W

Fractional Townships completely within the Zuni Basin

T07N, R21W (Fractional Township)		
1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36	In	
T8N, R21W (Fractional Township)		
1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36	In	
T09N, R21W (Fractional Township, partially Projected)		
1, 2, 3, (fractional sections, partially projected) 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36	In	
T10N, R21W (Fractional Township, Projected Township and Sections)		
1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36	In	

Townships partially in Zuni

T04N, R18W		
1, 4, 5, 6, 9, 12, 13, 14, 15, 16	Partial	
2, 3, 10, 11	In	
T05N, R15W		
5, 6	Partial	
T05N, R16W		
1, 12, 13, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30	Partial	
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 21	In	
T05N, R17W		
23, 24, 25, 26, 27, 28, 29, 31, 32	Partial	
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30	In	
T05N, R18W		
31, 32	Partial	
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36	In	

BUREAU OF LAND MANAGEMENT
 SECTION 17
 OCT 17 2011
 10:00 AM

T05N, R19W

18, 19, 20, 21, 26, 27, 28, 29, 34, 35, 36 Partial

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25 In

T05N, R20W

3, 4, 10, 13, 14, 15 Partial

1, 2, 11, 12 In

T05N, R21W (Fractional Township)

3 In

T06N, R15W

1, 2, 3, 10, 15, 16, 21, 28, 29, 32, 33 Partial

4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 30, 31 In

T06N, R20W

29, 30, 32, 33 Partial

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36 In

T06N, R21W (Fractional Township)

25, 26, 27, 34 Partial

1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 27 In

T07N, R13W

5, 8, 17, 18, 19 Partial

6, 7 In

T07N, R14W

16, 17, 19, 20, 21, 22, 23, 24, 30 Partial

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18 In

T07N, R15W

25, 36 Partial

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 In

T08N, R13W

1, 2, 11, 14, 15, 16, 21, 28, 32, 33, Partial

3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 29, 30, 31 In

T09N, R12W

4, 5, 9, 10, 14, 15, 20, 21, 22, 29, 30, 31 Partial

6, 7, 8, 16, 17, 18, 19 In

T09N, R13W

36 Partial

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 In

T10N, R12W		
31, 32	Partial	
T10N, R13W		
3, 4, 5, 10, 14, 15, 23, 24, 25, 36	Partial	
6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35	In	
T11N, R13W		
30, 31, 32, 33	Partial	
T11N, R14W		
6, 7, 17, 18, 20, 21, 22, 25, 26, 27	Partial	
19, 28, 29, 30, 31, 32, 33, 34, 35, 36	In	
T11N, R15W		
1, 12, 13	Partial	
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36	In	
T11N, R19W		
6		Partial
1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36		
In		
T11N, R20W		
1, 2, 10, 11, 15, 16, 17, 19, 20		Partial
12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36		In
T11N, R21W (Fractional Township-Projected Township and Sections)		
2, 3, 11, 12, 13, 24		Partial
10, 14, 15, 22, 23, 25, 26, 27, 34, 35, 36		In
T12N, R14W		
30		Partial
T12N, R15W		
1, 12, 13, 14, 23, 24, 25, 36		Partial
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,		In
T12N, R18W		
1, 2, 11, 14, 15, 21, 22, 28, 29, 30	Partial	
13, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36	In	
T12N, R19W		
25, 26, 27, 28, 31, 32, 33	Partial	
34, 35, 36	In	
T13N, R14W		
31	Partial	

T13N, R15W

5, 6, 8, 16, 17, 21, 22, 23, 25, 26, 27, 28, 36, Partial
7, 18, 19, 20, 29, 30, 31, 32, 33, 34, 35 In

T13N, R16W

1, 3, 4, 5, 7, 8, 9, 10 Partial
2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 In

T13N, R17W

12, 13, 14, 15, 21, 22, 28, 29, 30, 31 Partial
23, 24, 25, 26, 27, 32, 33, 34, 35, 36 In

T14N, R16W (Projected Township and Sections)

34, 35, 36 Partial

ATTACHMENT NO. 2

Jay Detjens

From: Jim McNeese [jmcnees@ose.state.nm.us]
Sent: Friday, December 20, 2002 2:32 PM
To: jdetjens@nrce.com
Cc: ebagley@ose.state.nm.us
Subject: Zuni Basin



zuni-base-24x36-pr zuniextent.zip (29
elim.pdf (1 ... KB)

Here's that Zuni stuff I said I'd send. Take a look at it and give me a call when you can. I forgot to get your phone number when we talked. If you can send it to me, I'd sure appreciate it. If you have any questions, please call.

Thanks
Jim McNeese

Jay Detjens

From: Jim McNeese [jmcnees@ose.state.nm.us]
Sent: Monday, December 23, 2002 4:34 PM
To: Jay Detjens
Subject: RE: Zuni Basin

Got your email and I've started looking it over. Looks real good so far. Curious why you decided to use NAD 27 and Zone 12.

Thanks for everything
I'll be in touch

Jim McNeese

-----Original Message-----

From: jdetjens
Sent: Monday, December 23, 2002 3:42 PM
To: jmcnees
Subject: RE: Zuni Basin

As per our conversation earlier, here is the coverage I have edited to fit closer to your delineation. This coverage is pretty much identical to yours except in a few small instances. I generally just rounded out some edges from yours and adapted mine. I am hoping we can agree on a single coverage we can both use. Please examine this coverage and make the changes you deem necessary. There are two particular question areas: one is Natural Lake in T13 R15 S8 and the other is Cerrito Arizona T09 R13 S36. I hope we can get straightened out by Christmas! Oh, almost forgot, our coverage is in nad27 and utm zone 12! Thanks. Please call me with any questions!

Jay Detjens
GIS Analyst
NRCE, Inc.
970.224.1851
jdetjens@nrce.com

-----Original Message-----

From: Jim McNeese [mailto:jmcnees@ose.state.nm.us]
Sent: Friday, December 20, 2002 2:32 PM
To: jdetjens@nrce.com
Cc: ebagley@ose.state.nm.us
Subject: Zuni Basin

Here's that Zuni stuff I said I'd send. Take a look at it and give me a call when you can. I forgot to get your phone number when we talked. If you can send it to me, I'd sure appreciate it. If you have any questions, please call.

Thanks
Jim McNeese

Jay Detjens

From: Jim McNeese [jmcnees@ose.state.nm.us]
Sent: Tuesday, December 24, 2002 10:45 AM
To: Jay Detjens
Cc: ebagley@ose.state.nm.us
Subject: RE: Zuni Basin

(X)

We had some problems with our license manager this morning and I got held up a little, but I've been able to take a look at your basin shapefile. It looks real good to me. You seem to have gone into more detail than I did and I agree with your changes on the Natural Lake and Cerrito Arizona areas. I wonder if it's worth me trying to refine what you've done. What I would really like to propose is that we define the geographic extent of the adjudication as being the surface water drainage basin as it could be defined on the ground. If you've had a chance to look at the map, that is what I'm trying to do with that note in the lower left hand corner. This would allow people a way to objectively determine if they are in the adjudication or not instead of having to rely on some type of map interpretation exercise. We used this approach in the Aamodt adjudication up here near Santa Fe. The adjudication originally covered the surface diversions and so was defined by the surface water basin, but as things proceeded wells were drawn into the process. We were able to use field inspections or work by land surveyors to determine if someone should be included in the adjudication or not by looking at which side of the drainage divide the well was on. The map and the PLSS description are good tools for informing people if they may be included, but in cases of confusion, inspections on the ground would be the determining factor. The relationship between the surface and groundwater basins is probably going to be one of the tough issues in this adjudication, but if we are going to agree with the Rio San Jose adjudication to the east, I think we are going to have to go with the surface water basin as being the extent.

K

Let me know what you think. I've talked about this with our attorneys here and they agree with this approach.

I'll be checking the PLSS description I made up to see if it needs to be edited as a result of your edits on the boundary. I'd like it if you could check that too. If you need a copy of that PLSS description let me know and I'll get it to you.

Thanks for all your help.

Jim McNeese

-----Original Message-----

From: jdetjens
Sent: Monday, December 23, 2002 3:42 PM
To: jmcnees
Subject: RE: Zuni Basin

As per our conversation earlier, here is the coverage I have edited to fit closer to your delineation. This coverage is pretty much identical to yours except in a few small instances. I generally just rounded out some edges from yours and adapted mine. I am hoping we can agree on a single coverage we can both use. Please examine this coverage and make the changes you deem necessary. There are two particular question areas: one is Natural Lake

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and utm zone 12! Thanks. Please call me with any questions!

Jay Detjens
GIS Analyst
NRCE, Inc.
970.224.1351
jdetjens@nrce.com

-----Original Message-----

From: Jim McNeese [mailto:jmcees@ose.state.nm.us]
Sent: Friday, December 20, 2002 2:32 PM
To: jdetjens@nrce.com
Cc: ebagley@ose.state.nm.us
Subject: Zuni Basin

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call when you can. I forgot to get your phone number when we talked. If
you can send it to me, I'd sure appreciate it. If you have any
questions, please call.

Thanks
Jim McNeese

Notes

This map is based on data acquired by the OSE from the New Mexico Resource Geographic Information System Program. (rgis.unm.edu)

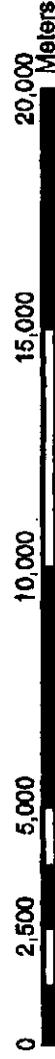
The geographic extent of the Zuni River Adjudication is defined by this map as being the drainage divide between the Zuni River surface water basin and the adjoining surface water basins and the state line between New Mexico and Arizona..

The Zuni River Basin lies entirely within the Declared Gallup Underground Water Basin.



The map grid is based on the Universal Transverse Mercator System NAD 1983, Zone 13N, units in meters.

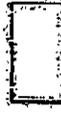
SCALE 1:180,000



Zuni River Drainage



Other Surface Water D



State Boundary Line



County Boundary Line



Township and Range l



City Limits



Major Roads



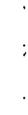
Federal Interstate High



State Highway



Streams and Water Bo



Reservoir / Pond



San Andres/Glorieta F

ATTACHMENT NO. 3

Jay Detjens

From: Jim McNeese [jmcnees@ose.state.nm.us]
Sent: Monday, December 30, 2002 1:12 PM
To: Jay Detjens
Subject: RE: Zuni Basin

(X)



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Here's my PLSS list. I went through yours and corrected mine to fit the new boundary. I only found 2 small typos.

On T05N, R17W you included 33 and I think it should be 32.
On T09N, R12W you show 6 as a "partial", I think it should be "in".

Also I show several of those Townships along the state line as Fractional Townships and call them completely "in". Even though some of those sections aren't complete sections, I think we should describe them as being completely "in". They don't extend across the state line and anyone who is in one of those sections will be in the adjudication unlike the other partial sections described where someone may be in the section, but not in the basin/adjudication.

I also think we should spell out each section individually. This is much more specific and is less likely to lead to misunderstandings. It's very likely our description will be attached "as is" to some type of court document and so I think it should be as exact and as clear as possible. This is also why I call out the projected sections and townships.

Take a look and let me know what you think.

Thanks and Happy New Year.

Jim McNeese

-----Original Message-----

From: jdetjens
Sent: Thursday, December 26, 2002 12:16 PM
To: jmcnees
Subject: RE: Zuni Basin

Jim,
Hope you had a joyful little break. I have gone through all the sections for the basin and came up with this list. Please review it and verify that it looks correct and/or is similar to yours. Thank you.

P.S. A copy of our map is coming your way soon.

Jay Detjens
GIS Analyst
NRCE, Inc.
970.224.1851
jdetjens@nrce.com

Jay Detjens

From: Jim McNeese [jmcnees@ose.state.nm.us]
 Sent: Tuesday, December 31, 2002 2:53 PM
 To: Jay Detjens
 Subject: RE: Zuni Basin



sec18-24.pdf (1 MB) plss_descript_of_zu
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Hope you've had some time to celebrate these holidays.

Sections 18 and 24 are real close. It looks like the line goes right over the section corner on the 24K maps. I agree though we should call 18 in and 24 partial. Section 22, T08N R13W and Section 10, T13N R16W are both partials also. When I went to edit my list though I already had Section 10 listed as partial. I hope I sent you the correct list. Anyway I've added all the edits you've suggested and I've enclosed a new copy. I've also attached a pdf of T05N showing sections 18 and 24. Let me know if yours looks similar. I wonder if we should just nudge that line over a little to make the inclusion of Section 24 obvious on the plotted map.

Thanks for all your help, have a Happy New Year.
 Jim McNeese

-----Original Message-----

From: jdetjens
 Sent: Monday, December 30, 2002 4:18 PM
 To: jmcnees
 Subject: RE: Zuni Basin

Thank you for getting back to me and proofreading to catch those mistakes. I have changed those. I have reviewed your plss list and we are still not jibing.

On T05N R19W, I think 18 is not partial; which brings up....
 On T05N R20W, I think 24 is partial.
 On T08N R13W, I think 22 is partial.
 On T13N R16W, I think 10 is partial.

Please review these and let me know what you think.

Jay Detjens
 GIS Analyst
 NRCE, Inc.
 970.224.1851
 jdetjens@nrce.com

-----Original Message-----

From: Jim McNeese [mailto:jmcnees@ose.state.nm.us]
 Sent: Monday, December 30, 2002 1:12 PM
 To: Jay Detjens
 Subject: RE: Zuni Basin

Here's my PLSS list. I went through yours and corrected mine to fit the new boundary. I only found 2 small typos.

On T05N, R17W you included 33 and I think it should be 32.
On T09N, R12W you show 6 as a "partial", I think it should be "in".

Also I show several of those Townships along the state line as Fractional Townships and call them completely "in". Even though some of those sections aren't complete sections, I think we should describe them as being completely "in". They don't extend across the state line and anyone who is in one of those sections will be in the adjudication unlike the other partial sections described where someone may be in the section, but not in the basin/adjudication.

I also think we should spell out each section individually. This is much more specific and is less likely to lead to misunderstandings. It's very likely our description will be attached "as is" to some type of court document and so I think it should be as exact and as clear as possible. This is also why I call out the projected sections and townships.

Take a look and let me know what you think.

Thanks and Happy New Year.

Jim McNees

-----Original Message-----

From: jdetjens
Sent: Thursday, December 26, 2002 12:16 PM
To: jmcnees
Subject: RE: Zuni Basin

Jim,
Hope you had a joyful little break. I have gone through all the sections for the basin and came up with this list. Please review it and verify that it looks correct and/or is similar to yours. Thank you.

P.S. A copy of our map is coming your way soon.

Jay Detjens
GIS Analyst
NRCE, Inc.
970.224.1851
jdetjens@nrce.com

Jay Detjens

From: Jim McNeese [jmcnees@ose.state.nm.us]
Sent: Monday, January 06, 2003 10:40 AM
To: jdetjens@nrce.com
Cc: ebagley@ose.state.nm.us
Subject: zuni stuff

How was your weekend. Hope everything is OK.

How are things going on Zuni. Did you get a map done and have you finalized your PLSS description? Could you send me copies of what you have? I'd like to see what we ended up with.

Thanks
Jim McNeese



U.S. Department of Justice

Environment and Natural Resources Division

SOA:DEC/CONNELL:gpr

01-22-2002

Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, DC 20026-4378

Telephone (202) 305-0269
Facsimile (202) 305-0271

December 18, 2002

Edward C. Bagley
Special Assistant Attorney General
State of New Mexico
Office of State Engineer
Legal Services Division
P.O. Box 25102
Santa Fe, New Mexico 87504-2102

Re: United States v. A & R Productions, et al.,
01cv00072RDE (WWD/ACE)

Mr. Bagley:

This responds to your letters of December 9 and 13, 2002, which forwarded a map of the geographic boundaries of the Zuni River adjudication, dated December 13, 2002, (marked "Preliminary") and reiterating the concern of your office that this adjudication does not address adequately future withdrawals of water underlying the Upper Puerco River basin that may have an adverse impact on decreed water rights of water users in the Zuni River basin.

As you correctly noted, all agree that the San Andres-Glorieta Aquifer underlies and is in hydraulic continuity with the surface waters of the Zuni River Basin, the Upper Puerco River Basin and the Rio San Jose River Basin. Additionally, all recognize that withdrawals from that aquifer theoretically could, in the future, impact adversely the ability to exercise valid right(s) to the use of surface flows in those three basins. If, in the future, there are withdrawals from that part of the San Andres-Glorieta Aquifer having a harmful affect on decreed water rights in the Zuni River basin, it is anticipated that appropriate action will be taken to protect valid senior rights to the use of water in the watershed. At the same time, it is not necessary to include in one adjudication all claimants of a common water source covering several surface water basins. To do so would not only unduly exhaust the resources of the court but would be prohibitively expensive and involve possibly thousands of additional parties at a premature time. No other adjudication involving the waters of New Mexico extends to claimants of a common source of water covering multiple surface water basins.

The water rights adjudication of State of New Mexico, ex rel. State Engineer v. Kerr-McGee Corp., et al., Cibola County District Court No. CB-83-190-CV & CV-83-20-CV, (Consolidated) is a case in point. As you no doubt know, that case is limited to claimants of the waters of the Rio San Jose River basin (both surface and groundwater) and does not include claimants to the entire San Andres-Glorieta Aquifer, which, we all agree, is in hydraulic continuity with the surface waters of that basin. The Zuni adjudication is patterned after the Kerr-McGee lawsuit.

I continue to be of the opinion that the following language should be adequate to address the concerns of your office as to future infringements to valid and paramount rights to the use of surface water in the Zuni River basin by withdrawals from the aquifer underlying the Upper Puerco River basin:

The United States and the State of New Mexico's Engineer's Office recognize that the San Andres-Glorieta Aquifer underlies and is in hydraulic continuity with the surface waters of the Zuni River Basin, the Upper Puerco River Basin and the Rio San Jose River Basin. As such, the United States and the State of New Mexico's Engineer's Office further recognize that withdrawals from the San Andres-Glorieta Aquifer could impact adversely the ability to exercise valid right(s) to the use of surface flows in the Zuni, Upper Puerco, and Rio San Jose River Basins. Upon such occasions, it is the understanding of the United States and the State of New Mexico's Engineer's Office that appropriate action will be taken either in this lawsuit, in the suit entitled, State of New Mexico, ex rel. State Engineer v. Kerr-McGee Corp., et al., Cibola County District Court No. CB-83-190-CV & CV-83-20-CV, Consolidated (Rio San Jose adjudication), or in an appropriate court having jurisdiction over water users of the Upper Puerco River basin, to protect against actions infringing upon prior and paramount rights to the use of surface flows in the Zuni, Upper Puerco, and Rio San Jose River basins.

As to future lawsuits to protect the rights and interests of the United States to the waters of the Zuni River basin, I advised earlier that this Department can not and will

not agree to commit to a particular course of action. To do so would deny future administrations (e.g., Secretary of the Interior and/or Attorney General) of their right to exercise independent judgment and discretion as to the proper course of action to take to protect the United States' interests to the waters the Zuni River basin. If, in the future, there is a need to protect decreed water right interests by reason of withdrawals in the Upper Puerco River basin, I am optimistic that the State and the United States will be able to come to an agreement as to the appropriate action to take based upon the facts of the situation.

Lastly, as you know, the Court ordered the United States to file a report by December 31, 2002, describing "definite and specific geographic boundaries for the adjudication". See Order, dated December 5, 2002. You will recall that, on November 27, 2002, you forwarded a "draft" map of the Zuni River surface drainage. The Department of the Interior's technical staff advises that the boundaries depicted on the "draft" map are identical to the boundaries depicted on map provided by the United States to the Court and all parties of record in response to the Special Master's Scheduling Order of March 31, 2001. (I presume that the geographic boundaries depicted on the map, dated December 13, 2002, follow exactly and are identical to the boundaries depicted on the "draft" map). That being so, I am going to assume that the State and the United States agree now on the location of the geographic boundaries of the Zuni River surface drainage of this adjudication. As to the legal description of the geographic boundaries of the Zuni River adjudication, as you suggest, I have asked the Department of the Interior's contractors (Assad Safadi of National Resources Consulting Engineers, Inc) to reconcile with your technical person (Jim McNees) any differences between the legal description forwarded to you on November 5, 2002, and the boundary depicted on December 13, 2002 map.

If you have any questions, do not hesitate to call.

Sincerely,



Charles E. O'Connell, Jr.
Attorney, Indian Resources Section
Environment and Natural Resources
Division
(202) 305-0261

cc

David W. Gehlert, Esq.
USDOJ-ENRD
999 18TH St., Suite 945
Denver, Colorado 80202

Pamela Williams, Esq.
Division of Indian Affairs
Office of the Solicitor
1849 C St., N.W., Rm 6456
Washington, DC 20240

JUL 12 1994

7-19-95

Leh

STATE ENGINEER OF THE
STATE OF NEW MEXICO
BATAAN MEMORIAL BUILDING
P.O. BOX 25102
SANTA FE, NEW MEXICO 87504-5102

ORDER NO. 151-A

JULY 12, 1994

IN THE MATTER OF STATE ENGINEER
SPECIAL ORDER NO. 151 DECLARING AN
EXTENSION OF THE GALLUP UNDERGROUND WATER BASIN

1. This matter came to hearing upon State Engineer Special Order No. 151 pursuant to New Mexico Statutes Annotated, Section 72-2-8, (1985 Repl. Pamp.) on April 25, 1994. Paul Saavedra, Deputy Chief, Water Rights Division, duly appointed Hearing Examiner, after giving opportunity to those who are or may be affected by the basin extension to appear and testify, and having considered the testimony presented at hearing and being fully advised in the premises, FINDS:

1. Special Order No. 151 was duly and lawfully promulgated on the 14th day of March 1994.
2. Notice of the promulgation of Special Order No. 151 and hearing thereon was duly published as required by law.
3. Hearing on Special Order No. 151 was duly held as required by law and pursuant to said notice on the 25th of April 1994.
4. Special Order No. 151, as promulgated, contained no legal description or other errors.
5. The present Gallup Underground Water Basin contains the surface drainage of the Rio Puerco.
6. The northern half of the proposed extension to the Gallup Underground Water Basin contains the surface drainage of the Zuni River.
7. The southern half of the proposed extension to the Gallup Underground Water Basin contains the surface drainage of Largo Creek.
8. Evidence was presented at the hearing in opposition to the extension of the Gallup Basin.

JUL 12 1994

9. The evidence in opposition of the declaration of the basin consisted of the following concerns:

- A. Whether the procedure provided by the New Mexico Statutes Annotated, Section 72-2-8 (1985 Repl. Pamp.) was followed in the promulgation of Special Order No. 151.
- B. Whether the declaration of the extension to the Gallup Underground Water Basin would close the basin to further appropriation.
- C. That the underground water table is the only means for the increasing rural population to obtain water and whether declaration of the proposed extension of the Gallup Underground Water Basin would eventually deplete this source.
- D. Whether the people and governments in the area of the proposed extension were consulted prior to the declaration or whether such consultations are required by statute.
- E. Whether applications to appropriate ground water in the proposed extension would fall into the backlog of pending applications in the existing Gallup Underground Water Basin.
- F. Whether the declaration of the extension of the basin (in the southern half) would be contrary to the Catron County Water Plan.
- G. Whether the State Engineer has reasonably ascertained boundaries of the proposed extension to the Gallup Underground Water Basin and whether the proposed southern half of the extension is hydrologically connected with the Gallup Underground Water Basin.

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10. These concerns are unfounded for the following reasons:

- A. New Mexico Statutes Annotated, Section 72-2-8 (1985 Repl. Pamp.) statutory requirements were met in the promulgation of Special Order No. 151.
- B. The proposed extension of the Gallup Underground Water Basin brings the area under the jurisdiction of the State Engineer, as such any proposed ground water use requires an application to appropriate be filed with the State Engineer to determine whether the proposed appropriation will impair existing water rights; is contrary to the conservation of water in the State of New Mexico; or is detrimental to the public welfare. The declaration of the basin does not close the basin to further appropriation of water.
- C. The declaration of the extension of the basin by the State Engineer will ensure that the ground water aquifer is not depleted.
- D. New Mexico Statutes Annotated, Section 72-2-8 (1985 Repl. Pamp.) does not require that the local residents and governments within an underground water basin be consulted prior to the declaration of a basin (or extension). To make public the decision to declare a basin prior to the publication of Special Order could cause a rush of speculation in water and in water use.
- E. There are three subsections of the Gallup Underground Water Basin (including the proposed extension) which are somewhat different from each other hydrologically. Applications to appropriate will be considered separately in each subsection of the Rio Puerco drainage, the Rio Zuni drainage and

JULY 12 1994

the Largo Creek drainage of the Gallup Underground Water Basin.

- F. The State Engineer is responsible for the supervision, measurement, appropriation and distribution of the state's water. He performs these duties according to the licenses issued by him and his predecessors and according to the adjudication of the courts New Mexico Statutes Annotated, Sections 72-2-1, 72-2-9 (1985 Repl. Pam.). He is governed by the New Mexico Water Code not the Catron County Water Plan.
- G. There are three separate surface drainage areas in the existing and proposed extension to the Gallup Underground Water Basin. The underground waters can be (except for deep aquifers) administered separately in the three separate surface drainage areas.
11. Ground water appropriations in the area described by Special Order No. 151 would eventually diminish the ground water supply in the proposed extension to the Gallup Underground Water Basin, but assertion of jurisdiction by the State Engineer would protect water users from over appropriation.
12. The underground waters of the Gallup Underground Water Basin are public waters and have reasonable ascertainable boundaries.
13. The boundaries of the extension of the Gallup Underground Water Basin, Special Order No. 151 are described as follows:

Beginning at the point of intersection of the New Mexico-Arizona state line and the topographic drainage boundary between the Rio Puerco stream system and Whitewater Arroyo stream system, which is a point on the

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boundary of the presently declared Gallup Underground Water Basin, in the south half of Section 15, Township 12 North, Range 21 West, NMPM; thence easterly and northeasterly along said topographic drainage boundary, which is the boundary of the presently declared Gallup Underground Water Basin, passing through Township 12 North, Ranges 21 through 19 West and passing through Township 13 North, Ranges 19 through 17 West to a point common to the topographic drainage boundary of the Rio Puerco, Rio Nutria and Whitewater stream systems; thence easterly and northeasterly along the topographic drainage boundary between the Puerco River stream system and the Rio Nutria stream system and the southern boundary of the Gallup Underground Water Basin passing through the northeast quarter of Section 3, Township 13 North, Range 16 West, NMPM; thence southeasterly passing along McKenzie Ridge to a point common to the topographic drainage boundary of the Rio Grande, Rio Puerco and the Rio Nutria stream systems, which is a point on the presently declared Bluewater Underground Water Basin and the Continental Divide in the northeast

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quarter of Section 23, Township 13 North, Range 15 West, NMPM; thence southeasterly along the Continental Divide and the topographic drainage boundary of the Rio Grande and Zuni River stream systems passing along the crest of the Zuni Mountains to a point near the west line of Section 14, Township 9 North, Range 12 West, NMPM; thence southwesterly along the Continental Divide to the point common of the Bluewater Underground Water Basin and the Rio Grande Underground Water Basin and the Continental Divide located on the south section line of Section 15, Township 8 North, Range 13 West; thence southwesterly along the Continental Divide, which is the existing west boundary of the Rio Grande Underground Water Basin to the southwest corner of Section 31, Township 5 North, Range 15 West, NMPM; thence southeasterly along the Continental Divide to its intersection with the west line of Section 7, Township 1 North, Range 11 West, NMPM; thence southwesterly along the Continental Divide to its intersection with the east line of Section 22, Township 3 South, Range 15 West, a point on the existing Gila-San

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Francisco Underground Water Basin; thence north along the existing boundary of the Gila-San Francisco Underground Water Basin to the northwest corner of Section 23, Township 3 South, Range 15 West, thence west along section lines to the southwest corner of Section 13, Township 3 South, Range 16 West; thence north along section line to the northwest corner of said Section 13; thence west along section line to the southwest corner of Section 11, Township 3 South, Range 16 West; thence north along section line to the northwest corner of said Section 11; thence west along section lines to the southwest corner of Section 5, Township 3 South, Range 16 West; thence south along section line to the southeast corner of Section 7, Township 3 South, Range 16 West; thence west along section line to the southwest corner of said Section 7; thence north along section line to the northwest corner of said Section 7; thence west along section lines to the southwest corner of Section 4, Township 3 South, Range 17 West; thence south along section line to the southeast corner of Section 8, Township 3

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South, Range 17 West; thence west along section line to the southwest corner of said Section 8; thence north along section lines to the southwest corner of Section 32, Township 2 South, Range 17 West; thence west along township line to the southwest corner of Section 34, Township 2 South, Range 18 West; thence south along section lines to the southeast corner of Section 9, Township 3 South, Range 18 West; thence west along section line to the southwest corner of said Section 9; thence south along section line to the southeast corner of Section 17, Township 3 South, Range 18 West; thence west along section lines to the southwest corner of Section 17, Township 3 South, Range 19 West; thence south along section line to the southeast corner of Section 19, Township 3 South, Range 19 West; thence west along section lines to the southwest corner of Section 21, Township 3 South, Range 20 West; thence south along section line to the southeast corner of Section 29, Township 3 South, Range 20 West; thence west along section lines to the southwest corner of Section 25, Township 3 South, Range 21 West;

1994 JUL 12 AM 10:15

thence south along section line to the southwest corner of Section 36, Township 3 South, Range 21 West; thence west along section lines to the southwest corner of Section 33, Township 3 South, Range 21 West a point at the intersection of the existing boundary of the Gila-San Francisco Underground Water Basin and the New Mexico-Arizona state line; thence north along the New Mexico-Arizona state line to the point of beginning.

II. IT IS THEREFORE RECOMMENDED that State Engineer Special Order No. 151 declaring an extension of the Gallup Underground Water Basin in McKinley, Cibola and Catron Counties be confirmed as described in Order 151-A and Item 13 above.

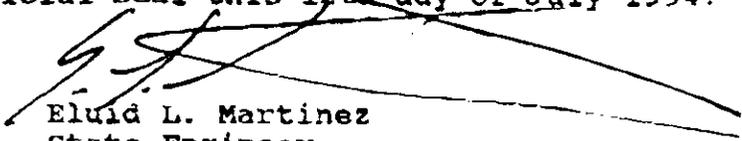
Respectfully submitted,



Paul Saavedra
Hearing Examiner

I ACCEPT AND ADOPT the Recommendation of the Hearing Examiner as set forth hereinabove.

WITNESS my hand and official seal this 12th day of July 1994.



Eluid L. Martinez
State Engineer

Reviewed



Ann Finley Wright
Special Assistant Attorney General

July 12, 1994

NEW MEXICO

THE STATE ENGINEER

REGISTRATION & REGULATION

Mail Stop 1000

Santa Fe, New Mexico

87501-1000

ATTACHMENT NO. 6

I received your letter dated December 18, 2002, which

ple and yours do seem to be making significant

letter it will not be possible to respond until after
is Friday, as the individuals in this office who are
always.



STATE OF NEW MEXICO

OFFICE OF THE STATE ENGINEER

Thomas C. Turney
State Engineer

LITIGATION & ADJUDICATION
PROGRAM

130 South Capitol
Santa Fe, New Mexico 87501

Mailing Address:
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Fax: (505) 827-3887

December 24, 2002

VIA FACSIMILE

Charles E. O'Connell, Jr.
United States Department of Justice
Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, DC 22026-4378
Fax: (202) 305-0271

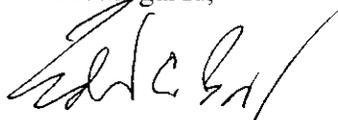
Re: United States v. State of New Mexico Engineer, et al.
United States District Court Case No. 01-0072

Dear Mr. O'Connell;

Yesterday, December 23, 2002, I received your letter dated December 18, 2002, which was sent by regular mail. First, please know that your assumption, stated on page three of your letter, "that the State and the United States agree now on the location of the geographic boundaries of the Zuni River surface drainage of this adjudication," is not correct. However, our technical people and yours do seem to be making significant progress in that direction.

With regard to the remainder of your letter, it will not be possible to respond until after Christmas, hopefully no later than this Friday, as the individuals in this office who are involved have taken time off for the holidays.

Best regards,



Edward C. Bagley
Special Assistant Attorney General

cc: DL Sanders, General Counsel
Greg Ridgley, Managing Attorney, NRG
Pamela Williams, Solicitor's Office, Department of the Interior
Bradley S. Bridgewater, U.S. Dept. of Justice, Environment & Nat. Res. Div.
James McNees, OSE Hydrographic Survey