

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

UNITED STATES OF AMERICA,
et al.,

Plaintiffs,

-vs-

STATE OF NEW MEXICO COMMISSIONER
OF PUBLIC LANDS, et al.,

01cv00072-BDB-ACE
ZUNI RIVER
BASIN

Defendants.

MOTION FOR LEAVE TO TAKE DEPOSITION

Defendant John A. Yates moves for leave to take the deposition of Jack McCaw, and as grounds would show the Court the following:

1. The Special Master in her Procedural and Scheduling Order (215), page 4, paragraph D, ordered that

"D. Discovery

"No discovery proceedings shall be initiated at this time."

2. Jack McCaw is the former land manager for Movant and Yates Petroleum Corporation, and, as Movant is informed and believes, has substantial knowledge of the property known as Atarque Ranch which is owned by Defendant Yates (with others to be joined herein;)

3. The water rights of Atarque Ranch will be adjudicated herein.

4. Mr. McCaw is 88 years old and is reported to counsel

to be "physically frail" but to have full mental facilities.

5. Mr. McCaw lives in a nursing home in Artesia, New Mexico, with his wife, an Alzheimer's victim, and he cannot travel.

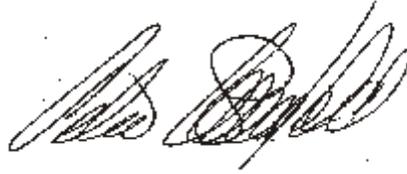
6. In 1995, Mr. McCaw filed a number of Declarations of Owner of both surface and underground water rights with respect to the Atarque Ranch, some or all of which will form the basis or part of the basis for some or all of the water rights of Movant at Atarque Ranch.

7. Mr. McCaw has a substantial body of knowledge respecting Atarque Ranch and its history.

8. It is essential for the Movant's case herein to preserve Mr. McCaw's knowledge and testimony.

WHEREFORE, John A. Yates moves for modification of the Procedural and Scheduling Order (215) so as to permit the taking of the deposition of Jack McCaw for the purpose of preserving his testimony and for the purpose of discovery. The United States, the State of New Mexico, the Zuni Indian Tribe and the Navajo Nation have no objection to the granting of this motion.

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By: _____
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CERTIFICATE OF SERVICE

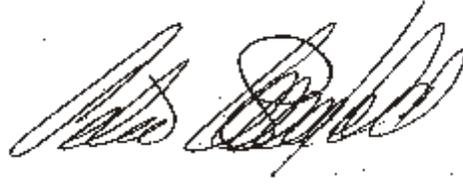
I served a copy of the foregoing motion (which is relevant only to the determination of the rights of the Movant and the plaintiffs, this 3d day of September, 2003, by email and by first class mail upon the following:

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A handwritten signature in black ink, consisting of several loops and flourishes, positioned above a horizontal line.

Attorney for John A. Yates