

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

UNITED STATE OF AMERICA, for Itself)	
and as Trustee for the Zuni Indian Tribe,)	
Navajo Nation and Ramah Band of Navahos)	
)	
and)	
)	
STATE OF NEW MEXICO ex rel. STATE)	
ENGINEER,)	No. 01cv00072-MV/LFG
)	
Plaintiffs,)	
)	
and)	
)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
)	ADJUDICATION
Plaintiffs-in-Intervention,)	
)	
-v-)	
)	
A & R PRODUCTIONS, <i>et. al.</i> ,)	Subfile No. ZRB-2-0014
)	
Defendants.)	
_____)	

MOTION TO DISMISS
EDWARD J. BAWOLEK AND SUZAN J. BAWOLEK CROSS-CLAIM AGAINST THE
NEW MEXICO COMMISSIONER OF PUBLIC LANDS

COMES NOW Ray Powell, in his capacity as the Commissioner of Public Lands of the State of New Mexico (the “Land Commissioner”), by and through his attorney, below-listed, and hereby moves to dismiss the *Edward J. Bawolek and Suzan J. Bawolek Cross-Claim Against the New Mexico Commissioner of Public Lands* [Doc. 2928] (the “Bawolek Cross-Claim”) as premature and not ripe for adjudication. As grounds for the motion, the Land Commissioner states as follows:

1. The Commissioner has been duly elected to an office established under N.M. Const., art. V, § 1 and vested with constitutional authority to manage lands (hereinafter, “State Trust Lands”) granted to the State by the federal government in trust to generate support for public schools and other state institutions, such as hospitals, colleges and prisons. *See* N.M. Const., art. XIII, § 2. He is the chief executive of the State Land Office and has broad authority to manage the State Trust Lands to achieve the purposes set forth in the New Mexico Enabling Act (Act of Congress of June 20, 1910, 36 Stat. 557, Ch. 310, § 10) and the compact between the State of New Mexico and the United States set forth in the New Mexico Constitution (N.M. Const., art. XXI, § 9). *See* NMSA 1978, §§ 19-1-1 and 19-1-2; *State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 5,149 N.M. 330, 248 P.3d 878.

2. In a consolidated subfile pertaining to State Trust Lands throughout the Zuni River Stream System (Subfile No. ZRB-1-0075 (Consolidated)), the Court approved and entered a Consent Order [Doc. 2857] on March 28, 2013, rendering a final judgment as between Plaintiffs United States of America (“United States”) and State of New Mexico, *ex rel.* State Engineer (“State Engineer”) and the Land Commissioner with respect to the Land Commissioner’s right to use the public waters of the Zuni River Stream system. As recited in the Consent Order, the judgment was and is “subject to the right of any other water right claimant with standing to object prior to the entry of a final decree.”

3. Included in the Consent Order are rights associated with two water features – Well 10C-4-W15 and Pond 10C-4-SP33 -- located on State Trust Lands currently leased by the Land Commissioner to Edward J. Bawolek and Suzan J. Bawolek (collectively, the “Bawoleks”) under State Land Office Agricultural Lease No. GR-1434. *See* Consent Order at 90-91 & 110;

Bawolek Cross-Claim at ¶ 7 & Exh. B thereto.

4. During the course of proceedings in Subfile No. ZRB-1-0075, the Bawoleks moved to intervene for purposes of objecting to the Land Commissioner's water rights claims associated with the two water features referenced above. *See Motion to Intervene of Edward J. Bawolek and Suzan J. Bawolek* [Doc. 2795]. In its *Order Denying Motion to Intervene* [Doc. 2805], the Court found that the Bawoleks' objection to the Land Commissioner's water rights claims should be resolved during the "inter se" portion of this adjudication. *Id.* at 2.

5. This adjudication remains in the subfile phase, and Subfile No. ZRB-2-0014 pertains to water rights claimed by the Bawoleks *vis a vis* the United States and the State Engineer with respect to fee lands owned by the Bawoleks, not State Trust Lands leased from the Land Commissioner. The Bawolek Cross-Claim attempts to do what the Court has already determined that the Bawoleks may not do; *viz.*, object to the Land Commissioner's water rights claims prior to the "inter se" portion of this adjudication. In effect, the Cross-Claim attempts to initiate an expedited, limited inter se proceeding with respect to the Consent Order entered in Subfile No. ZRB-1-0075. There is no reason to allow the Bawoleks to proceed in this fashion, and allowing them to do so would set a potentially harmful precedent and disrupt the orderly adjudication water rights as between water rights claimants and the United States and State Engineer prior to the inter se phase.

6. Due to the nature of the relief sought in this motion, counsel for the Land Commissioner has not sought the concurrence of the Bawoleks.

WHEREFORE, the Land Commissioner respectfully requests that the Court enter its order dismissing the Bawolek Cross-Claim.

Respectfully submitted,

/S/ John L. Sullivan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 28, 2014, I filed the foregoing *Motion to Dismiss Edward J. Bawolek and Suzan J. Bawolek Cross-Claim Against the Commissioner of Public Lands* electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/S/ John L. Sullivan
JOHN L. SULLIVAN