

ORIGINAL

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

UNITED STATES OF AMERICA,)
ET AL.,)

PLAINTIFFS,)

v.)

STATE OF NEW MEXICO)
COMMISSIONER OF PUBLIC)
LANDS, ET AL.,)

DEFENDANTS.)

04 FEB -5 PM 1:18
Robert M. Marsh
CLERK ALBUQUERQUE

CIV NO. 01-00072 BDB/WDS
ZUNI RIVER BASIN ADJUDICATION

**COMMENTS OF DEFENDANTS RICHARD DAVIS MALLERY ET AL.
TO THE UNITED STATES' PROPOSED DRAFT SCHEDULING ORDER**

In accordance with the Special Master's request at the January 21, 2004 Status Conference, Defendant Richard Davis Mallery, Western New Mexico Water Preservation Association, appreciates the opportunity to comment on the proposed Scheduling Order prepared by the United States.

COMMENTS

A. Completion of Hydrographic Survey of Zuni River Basin

1. The United States' Proposed Scheduling Order notes the United States is "committed to make every effort to complete by mid-December, 2006" the hydrographic survey of the Zuni River Basin and to present the non-federal claims.

2. The WNMWPA objects to this language, proposing instead, that a date certain be inserted into the Scheduling Order for compliance by the United States.

310

3. As the Special Master observed during the Status Conference on January 21, 2004, an order directing the United States to complete these tasks by the end of 2006 is more likely to lead to the necessary appropriations than an order that merely expresses a desire to reach that goal.

4. As the Court has noted, the United States is the plaintiff in this action and bears the burden of prosecuting the action in a timely manner. Therefore, an Order that imposes a concrete deadline on the United States is more likely to result in definitive action by the United States. In addition, the Court's previous Orders impose a deadline of Fall, 2006 to complete the hydrographic survey and preparation of federal and Indian water rights claims, not mid-December, 2006. (Doc. Nos. 255 and 287).

B. Trial Schedule

The trial schedule proposed by the United State is acceptable with the exception of a dispositive motion deadline imposed six (6) months before trial and (2) two months before the completion of discovery. Some dispositive motions, such as summary judgment motions, cannot generally be raised until discovery is completed. Therefore, the WNMWPA proposes that a deadline for dispositive motions not be imposed until the completion of discovery.

C. Zuni Indian Tribe Claims Subproceeding

1. The United States proposes at page 10 of its draft order (section 5.1) that the Zuni Indian Tribe Claims Subproceeding commence by June 15, 2007 with the filing of the claims.

2. During the Status Conference, counsel for the United States indicated that he intended that *trials* commence by June 5, 2007, not the disclosure of claims.

3. Defendant Richard Davis Mallery proposes that this paragraph be revised to reflect that this is the time period by which trials will begin. Claims should be disclosed by the Fall, 2006 as provided by the Special Master's previous Report and Recommendation (Doc. No. 255), and adopted by the Court (Doc. No. 287).

D. United States' Claims

Defendant Richard Davis Mallery also proposes that all proceedings regarding the United States' claims in its proprietary capacity be rolled into one subproceeding rather than four (4) as suggested by counsel for the United States.

E. Status Conferences & Pre-trial Conferences

Finally, the WNMWPA suggests that early status and/or pre-trial conferences be specifically set forth in the Scheduling Order to ensure that any issues that arise in the interim can be brought to the attention of the Special Master early in the proceedings.

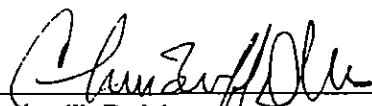
CONCLUSION

Defendant Richard Davis Mallery, on behalf of all members of the Western New Mexico Water Preservation Association, appreciates the opportunity to comment on the United States' proposed Scheduling Order.

Respectfully submitted.

Dated: February 4, 2004

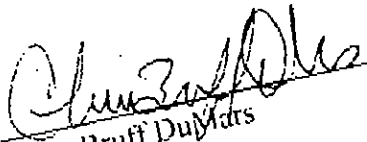
LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By:  _____

Charles T. DuMars
Christina Bruff DuMars
Tanya L. Scott
Attorneys at Law
Albuquerque Plaza, 201 3rd Street NW, Ste. 1370
Albuquerque, NM 87102
(505) 346-0998 / FAX: (505) 346-0997

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the forgoing was mailed to all parties entitled to notice on this 5th day of February, 2004.


Christina Bruff DuMars