

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

UNITED STATES OF AMERICA,

and

STATE OF NEW MEXICO, ex rel. STATE
ENGINEER,
Plaintiffs,

and

ZUNI INDIAN TRIBE, NAVAJO NATION,
Plaintiffs-in-Intervention,

-vs-

A & R Productions, et al.,
Defendants.

No. 01cv00072-MV-WPL
Subfile No. ZRB-2-00098
JAY Land Ltd. Co., Yates
Ranch Property LLP

MEMORANDUM IN SUPPORT OF MOTION REQUESTING ORAL ARGUMENT

Defendants JAY Land Ltd. Co., and Yates Ranch Property LLP submit the following authorities in support of their Motion requesting oral argument in connection with Magistrate's proposed findings and recommended disposition (Doc. 3223), on competing motions for summary judgment, Defendants' Objections thereto (Doc. 3230) the United States' Response to Defendants' objections (Doc. 3250), and the State of New Mexico's Response to Defendants' objections (Doc. 3251).

This matter arises under F.R.Civ.P. 72(3), which provides:

Resolving objections. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

It is a matter of the Court's discretion whether to allow

oral argument. LR 7.6 contains the only mention of oral argument and does not provide much guidance, at least in part because it is directed at motions, rather than Magistrate recommendations: "(a) . . . A motion will be decided on the briefs unless the Court sets oral argument."

Cases from elsewhere, for the most part minute orders, set forth the factors the Court should consider: Will oral argument aid the decisional process. Fleetwood Transp. Corp. v. Packaging Corp. of America, (D.S.C., 2012). Will oral argument be necessary or helpful. SE Prop. Holdings, LLC v. Rookery, (S.D. Ala., 2013) [fn].

The Court should consider whether explanations at oral argument might provide a basis for the Court to act. Foundation v. Modernica, Inc., 12 F.Supp.3d 635 (S.D.N.Y., 2014).

Explanations are desirable in this case because of the large number of relatively small water rights involved, their complicated and, so the Defendants assert, inappropriate treatment at the hands of the United States, the somewhat arcane nature of New Mexico water law, the relative inexperience of the United States as a Plaintiff in omnibus water rights adjudications such as this, and the United States' double role as trustee and advocate for the Zuni and Navajo tribes, and at the same time as the substitute stakeholder of the public waters. (See State of Idaho, et al., v. United States, 912 P.2d 614, 128

Idaho 246 (Idaho, 1995):

A general water adjudication brought by the state is analogous to an interpleader action. The position of the director of the Department of Water Resources is analogous to the "stakeholder" in an interpleader action. The director is really a disinterested party. The only interest the director has is to see that all rights are accurately adjudicated. The director does not oppose a claim, trying to subvert a valid claim. Nor does the director stand to gain if a claim is invalidated.)

WHEREFORE, these Defendants request the opportunity to appear and make oral arguments to the Court with respect to their objections to the Magistrate's proposals and recommendations.

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CERTIFICATE OF SERVICE

I served a copy of the foregoing on all counsel and parties served by the Court's digital filing and service system on May 11, 2016.

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