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

01cv00072-BB-ACE
ZUNI RIVER BASIN
ADJUDICATION
)

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL AND OBJECTION TO PROCEEDINGS

THIS MATTER is before the Special Master on the Motion and Objection filed May 12, 2004 by Lavern Morsbach (Docket No. 332). In her Motion and Objection, Ms. Morsbach requests that the Court appoint a free lawyer to represent her rights in this stream system adjudication, and protests the adjudication generally. Ms. Morsbach writes that she has received "several papers from [my] office" and needs further information about the pleadings and this suit. From these allegations, I assume that Ms. Morsbach claims water rights in the Zuni River Basin and is a defendant in this action.

Being fully advised in the premises, I find the Motion and Objection should be DENIED for the following reasons:

¹ Ms. Morsbach communicated by letter dated May 5, 2004, but requested that her letter be filed as an objection. I have construed her request for an attorney as a motion.

- 1. The right to a court-appointed attorney is limited. The Sixth Amendment to the United States Constitution guarantees every criminal defendant the right to assistance of counsel. Rule 44 of the Federal Rules of Criminal Procedure authorizes the Court to appoint counsel; and the Criminal Justice Act at 18 U.S.C.A. §3006A sets forth procedures and standards by which financially eligible criminal defendants may be provided with counsel. <u>United States v. Osuna</u>, 141 F.3d 1412, 1414 (1998). However, there is no constitutional or statutory authority which would permit this Court to appoint counsel for a defendant in a stream system adjudication.
- 2. Each defendant has the right to appear in a *pro se* capacity, that is, represent his or her own interests, before the Court. Further, Ms. Morsbach is advised that in this case there is at least one water users' association in the Zuni Basin area which has been organized to retain counsel, and which may be of assistance to currently unrepresented defendants.
- 3. General information about this adjudication has been available through public information meetings within the Zuni Basin area, numerous field offices which defendants may attend, and several general status conferences. Additional meetings will be scheduled in the future. If Ms. Morsbach has access to the internet, she can review the pleadings and other relevant documents through the United States' website at www.zunibasin.com or contact the U.S. District Court for information about access to the Court's electronic docket. Also, a paper file is available at the University of New Mexico's Zollinger Library in Gallup.
- 4. General information is also available from the United States attorney, Mr. Bradley Bridgewater ((303) 312-7318), or the lead counsel for the State of New Mexico, Mr. Edward Bagley of the Office of the State Engineer ((505) 827-6150).

5. According to Section IV(C) of the Procedural and Scheduling Order filed July 20, 2003,

objections and defenses to the United States' Amended Complaint (which is the pleading that formally

begins and describes this adjudication), were due no later than 90 days following service of the

Amended Complaint. The Amended Complaint was filed and served at the beginning of August,

2003; and the Court addressed all objections which were filed at that time. Ms. Morsbach's current

objection to the general proceedings, therefore, is untimely.

6. Section IV(C) of the July 20 Order also provides that the failure to file objections in

response to the United States' Amended Complaint "will not waive a defendant's future right to

challenge the Plaintiffs' proposed consent orders and descriptions of water rights, or specific

statements of water rights claims for federal proprietary rights or federal Indian rights, which will be

filed in the future." In other words, Ms. Morsbach retains every opportunity to challenge actions

which affect her individual water rights claims, as well as to participate fully in the adjudication of

federal agency and Indian claims.

IT IS ORDERED, THEREFORE:

1. that the motion for appointed counsel is DENIED, and

2. that the general objection to these proceedings is DENIED.

/electronic signature/

SPECIAL MASTER VICKIE L. GABIN

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