

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

05 AUG 18 PM 2: 21

CLERK ALBUQUERQUE

UNITED STATES OF AMERICA,)
and)
STATE OF NEW MEXICO, *ex rel.*)
STATE ENGINEER.)
Plaintiffs,)
)
and)
ZUNI INDIAN TRIBE and)
NAVAJO NATION,)
Plaintiffs-in-Intervention,)
)
v.)
)
A & R PRODUCTIONS, *et al.*,)
Defendants.)
_____)

01-CV-00072-BB/WWD--ACE

ZUNI RIVER BASIN
ADJUDICATION

**ZUNI INDIAN TRIBE'S
RESPONSE TO ORDER TO SHOW CAUSE**

The Zuni Indian Tribe submits the following comments in response to the Special Master's *Order to Show Cause Re: Stream System-Wide Issue* (Dkt. No. 370). Zuni concurs generally in the response of the United States. The rights of each and every water user must be determined on a case-by-case basis, and the Zuni Tribe sees no need to deviate from the sub-area by sub-area, subfile by subfile, procedure already in place in this case.

To the extent the Special Master suggests that a stream system-wide adjudication of domestic water rights is appropriate, Zuni questions how this can occur consistent with state law. Actual beneficial use is the basis, the measure and the limit of the right under state law to the use of water. N.M. Const., art. 16, § 3; N.M. Stat. Ann. § 72-12-2. This is an individually-based determination; no system-wide, generic determination of the measure of domestic well rights can be made, and

N.M. Stat. Ann. § 72-12-1 and § 72-12-1.1 do not provide otherwise. The state law beneficial use standard is clear.

Thus, although Zuni Tribe agrees with the Special Master that the United States' and the State of New Mexico's decision to offer individual proposed Consent Orders for domestic water rights recognizing actual historic beneficial use, or in an amount not to exceed .7 acre feet per year, may be perceived as controversial across the basin, such apparent controversy does not obviate the obligation to proceed on a subfile by subfile basis to determine the actual water rights of each claimant.

The Special Master may be suggesting that a legal-issue exists as to whether the State and the United States have the authority to offer individual water claimants a settlement in the amount of .7 or actual historic use, and that this issue should be heard on a stream-wide basis. While Zuni believes that no question exists that the Plaintiffs have that authority, even if the Special Master decides to hear this legal issue in a basin-wide legal proceeding, this will not eliminate the need to determine each domestic well right on a case by case basis.

Thus, Zuni can conceive of no other way to proceed that offers each individual an opportunity to either accept the proposed Consent Order or object to it and have the opportunity to be heard on his or her objections. The Tribe therefore respectfully suggests that the Special Master retain the existing procedural and scheduling approach.

Respectfully submitted,

JANE MARX, ATTORNEY AT LAW, P.C.

By: Jane Marx

Jane Marx

2825 Candelaria Road NW

Albuquerque, New Mexico 87107

Telephone: (505) 344-1176

Facsimile: (505) 344-8694

Attorney for the Zuni Indian Tribe

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Zuni Indian Tribe's Response To Order To Show Cause* was mailed first class to all attorneys and parties of record on the attached distribution list on this 10th day of August, 2005.

Jane Marx

Jane Marx

Edward Bagley & Gregory Ridgley
Office of State Engineer
Legal Services
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

Ann Hambleton Beardsley, Pro Se
127 Orchard Drive
Central, Utah 84722

Bruce Boynton, Esq.
Boynton, Simms-West Law Office
P.O. Box 1239
Grants, New Mexico 87020

Richard W. Bowser, Pro Se
Joan D. Bowser, Pro Se
#5, Hawk Ridge Road
Moriarty, New Mexico 87035

Ted Brodrick, Pro Se
P.O. Box 219
Ramah, New Mexico 87321

Bradley S. Bridgewater
U.S. Department of Justice
999 18th Street, Suite 945 North
Denver, Colorado 80202

Steven L. Bunch, Esq.
Special Assistant Attorney General
N.M. Highway & Trans. Dept.
P.O. Box 1149
Santa Fe, New Mexico 87504-1149

Kenneth J. Cassutt, Esq.
Cassutt, Hays, & Friedman, P.A.
530-B Harkle Road
Santa Fe, New Mexico 87505

Stephen Charnas, Esq.
Sutin, Thayer & Brown, P.C.
P.O. Box 1945
Albuquerque, New Mexico 87103-1945

Robert W. Ionta, Esq.
McKim, Head & Ionta
P.O. Box 1059
Gallup, New Mexico 87305

Stephen P. Shadle, Esq.
Westover, Shadle, Carter & Walsma
2260 S. Fourth Ave., #2000
Yuma, Arizona 85364

William G. Stripp, Esq.
P.O. Box 159
Ramah, New Mexico 87321

James E. Haas, Esq.
Losce, Carson & Haas, P.A.
Box 1720
Artesia, New Mexico 88211-1720

Jeffrey A. Dahl, Esq.
Lamb, Metzgar, Lines, & Dahl, PA
P.O. Box 987
Albuquerque, New Mexico 87103

David R. Gardner, Esq.
P.O. Box 62
Bernalillo, New Mexico 87004

Mary Ann Joca, Esq.
U.S. Dept. Of Agriculture
Office of General Counsel
P.O. Box 586
Albuquerque, New Mexico 87103

Stanley M. Pollack, Esq.
Bidtah Becker, Esq.
Navajo Nation Dept. Of Justice
P.O. Box 2010
Window Rock, Arizona 86515-2010

Greg Mchojah
DOI, Office of the Solicitor
Southwest Regional Office
505 Marquette Ave., NW Suite 1800
Albuquerque, New Mexico 87102

Pamela Williams, Esq.
Division of Indian Affairs
Office of the Solicitor
1849 C St., NW, Room 6456
Washington, DC 20240

Sandra S. Drullinger, Pro Se
818 E. Maple St.
Hoopeston, Illinois 60942

Kimberly J. Gugliotta, Pro Se
158 W. William Casey St.
Corona, Arizona 85641

David R. Lebeck, Pro Se
Albert O. Lebeck, Pro Se
P.O. Drawer 38
Gallup, New Mexico 87305

Gerlad F. McBride, Pro Se
Myrrl W. McBride, Pro Se
2725 Aliso Dr., NE
Albuquerque, New Mexico 87110

Peter B. Shoenfeld, Esq.
P.O. Box 2421
Santa Fe, New Mexico 87504-2421

Stephen G. Hughes, Esq.
Michael Thomas, Esq.
N.M. State Land Office
P.O. Box 1148
Santa Fe, New Mexico 87504-1148

David W. Gehlert, Esq.
USDOJ-ENRD
999 18th St., Suite 945
Denver, Colorado 80202

Sunny J. Nixon, Mark Adams
Rodey Dickason, Sloan, Akin & Robb, P.A.
P.O. Box 1357
Santa Fe, New Mexico 87504-1357

Dorothy C. Sanchez, Esq.
1011 Fourth Street NW
Albuquerque, New Mexico 87102-2132

Special Master Vickie L. Gabin
U.S. District Court - DCNM
P.O. Box 2384
Santa Fe, New Mexico 87504-2384

Peter Fahmy, Esq.
Office of Regional Solicitor
755 Parfet St., Suite 151
Lakewood, Colorado 80215

Louis E. DePauli, Sr., Esq., Pro Se
1610 Redrock Drive
Gallup, New Mexico 87031

Stephen R. Nelson, Esq.
Johnson & Nelson, P.C.
P.O. Box 25547
Albuquerque, New Mexico 87125-5547

Susan C. Kery, Esq.
Sheehan, Sheehan & Stelzner
P.O. Box 271
Albuquerque, New Mexico 87103

Cheryl Duty, Pro Se
HC61 Box 788
Ramah, New Mexico 87321

John B. Weldon, Byron M. Lewis, Mark A.
McGinnis
2850 East Camelback Rd., Ste. 200
Phoenix, Arizona 85016

Clara M. Mercer, Pro Se
1017 S. 10th Avenue
Yuma, Arizona 85364

David Candelaria, Pro Se
12000 Ice Caves Road
Grants, New Mexico 87020

Jay F. Stein, Esq.
James C. Brockmann, Esq.
Stein & Brockmann, P.A.
P.O. Box 5250
Santa Fe, New Mexico 87502-5250

William J. Cooksey, Esq.
Dubois, Cooksey & Bishchoff, P.A.
2020 Fourth Street NW
Albuquerque, New Mexico 87102-4130

Mark Smith, Thomas Outler, Jocelyn Drennan
P.O. Box 1888
Albuquerque, New Mexico 87103

Mark H. Shaw, Esq.
9700 Entrada Pl. NW
Albuquerque, New Mexico 87114-3776

Christina Bruff DuMars, Charles T. DuMars,
Tanya L. Scott
Albuquerque Plaza
201 Third St. NW, Suite 1370
Albuquerque, New Mexico 87102

Cullen Hallmark, Esq.
Garber & Hallmark
P.O. Box 850
Santa Fe, New Mexico 87504

John W. Utton, Esq.
Sheehan, Sheehan & Stelzner, P.A.
707 Broadway NE, Suite 300
P.O. Box 271
Albuquerque, New Mexico 87103

Updated 08/18/05