

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES DISTRICT COURT
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JULY 2001
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UNITED STATES)
)
 Plaintiff,)
)
 vs.) 01cv00072BDB/WWD(ACE)
)
 A & R PRODUCTIONS, ET AL.,) ZUNI RIVER BASIN
) UNITED STATES' REPORT
)
 Defendants.)

MOTION FOR EXTENSION OF TIME TO
FILE RESPONSES TO THE REPORTS OF THE
UNITED STATES OF AMERICA AND THE STATE OF NEW MEXICO

COME NOW the John A. Yates et al Defendants in the above-entitled cause (hereafter "Yates Defendants") and request that the Special Master enter her order granting the Yates Defendants, and all other defendants, an extension of time of at least 45 days to respond to the reports of the United States and the State of New Mexico suggested hearing schedules for this adjudication proceeding and in support of this motion state:

1. Heretofore on March 30, 2001, the Special Master entered her order directing the Plaintiff United States of America and the Defendant State of New Mexico to file by May 31, 2001 their proposed scheduling plan to complete the above entitled adjudication. The United States timely

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filed its report on May 30, 2001, although not received by the undersigned counsel for several days thereafter, but the State of New Mexico requested and received from the Special Master an extension of time until July 6, 2001 to file its report. In the same order the Special Master granted the non-government defendants until July 20, 2001 to file their responses to both reports.

2. The undersigned counsel received copies of the State of New Mexico report on July 10, 2001 thus leaving 10 days for the defendants to file their responses to both reports. Although the United States report was filed earlier it made no sense for the defendants to file their responses until both reports were received and could be read together.

3. In fact the two reports are diametrically opposite. The United States report says, inter alia, that the case would be dismissed as to the non-government defendants until at least a partial hydrographic survey was undertaken to identify the defendants with water rights and make offers of judgment to them at a later date. As far as it goes the defendants represented by the undersigned believe this plan makes sense except the non-government defendants should remain in the case while the hydrographic survey is being completed.

4. By contrast, the State of New Mexico, while disclaiming any funds or staff to complete the adjudication, proposes that a status conference be held on July 30, 2001, the stay imposed by the District Court be lifted on the same date, and the matter proceed with motions by the defendants directed to the complaint, responses of the United States thereto, replies in support of motions, a hearing on the motions and subsequently answers to the United States complaint, if necessary.

5. With all due respect to the learned counsel for the State of New Mexico, the State's proposal is not acceptable to these Defendants. Nobody in this case has even the slightest idea of what the specific claims of the United States are except as they are only described in broad general legal theories in the complaint. Until a hydrographic survey is completed, the defendants don't even know what the rights are except as may be combined in the declarations of water rights and permits, if any, that may exist in the State Engineer records. Many of the defendants may have only domestic wells, which are generally not included in the adjudication process. See, e.g., final decree in the Red River Adjudication Cause No. 9780, United States District Court, entered December 1, 2000.

6. It is unfair and a denial of due process for the hundreds of defendants, many of whom have no counsel of record, who do not even receive the reports according to the certificates of service by the United States and the State of New Mexico, but would nevertheless be bound by whatever orders the Special Master enters, to respond in any coordinated, coherent way in 10 days. The defendants should have at least half as long as the governmental parties did to respond, i.e. 45 days in order that an already chaotic case not become even worse.

7. Given the shortness of time counsel deems it not feasible to contact all the numerous counsel and pro se parties to obtain their concurrence or not to this motion for extension of time. Counsel has contacted the State of New Mexico and the United States for their positions on the motion and they do not oppose this motion. Counsel is authorized to state that Sunny Nixon of the Rodey law firm, counsel for Tri State Generation and Transmission Association, Inc., successor in interest to Plains Electric, who received the State of New Mexico Report on July 12, 2001, does concur in the motion for extension of time.

Wherefore, the Yates Defendants pray that the Special Master grant an extension of time until August 25, 2001 for

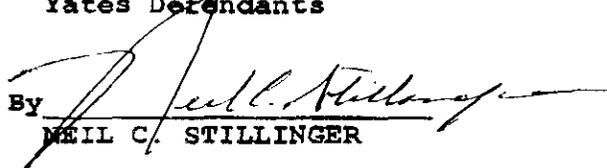
the defendants to file their respective responses to the reports of the United States and the State of New Mexico.

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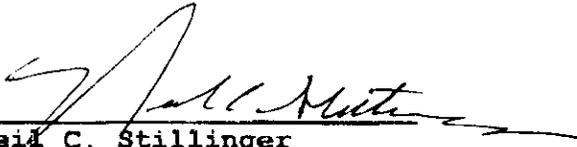
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I certify I mailed or faxed a copy of the foregoing Motion for Extension of Time to the above counsel and pro se parties of record this 12th day of July, 2001.


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