

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

FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,  
and  
STATE OF NEW MEXICO, *ex rel.*  
STATE ENGINEER,

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CLERK-SANTA FE

Plaintiffs,

And

No. 01cv0072 BB/WDS-ACE

ZUNI INDIAN TRIBE AND NAVAJO NATION,

ZUNI RIVER BASIN

Plaintiffs-in-Intervention

v.

A & R Productions, *et al.*,

Defendants.

**STATUS REPORT REGARDING THE STATE OF NEW MEXICO'S  
RESPONSIBILITY FOR THE CONDUCT OF THIS CASE**

The State of New Mexico on the Relation of the State Engineer ("State"), pursuant to the Special Master's Order at the Status Conference held on September 21, 2006, as reported in the Clerk's Minutes filed October 2, 2006 (No. 839), hereby reports to the Special Master, addressing the status of "[t]he plans of the State of New Mexico, *ex rel.* State Engineer (State) to assume its full share of responsibility for the conduct of this case." *Id.* at ¶ 1.

1. On January 19, 2001, the United States filed its Complaint for the adjudication of the Zuni River stream system. (No. 1). It immediately became clear that the issue of who was going to pay for the adjudication had not been addressed in advance of that filing. Shortly thereafter, on March 2, 2001, the Court stayed the case "until such time as planning and scheduling meetings can take place." No. 3.

2. On July 6, 2001, the State made clear that it did “not presently have the resources to undertake the adjudication of the Zuni River basin.” Proposal for Proceeding Once the Stay in This Case is Lifted (No. 65). The State went on to observe that:

Such resources will not be available in the foreseeable future. In any event, the urgency of other adjudication and litigation precludes contemplating the Zuni River adjudication in a time frame which the U.S. would find acceptable. Nonetheless, the State of New Mexico’s adjudication plan does contemplate the adjudication of the Zuni River. As such, the State requests that the Court order the U.S. to fund this adjudication to its completion . . .

Id. at p. 8.

3. In support of its assertion that it did not presently have the resources to undertake the adjudication of the Zuni River basin, the State noted that:

The State is presently involved in the adjudication of numerous river basins and in the litigation of multiple federal claims. These alone are straining its resources to the utmost. Many basins in addition to the Zuni remain to be adjudicated. Most significant among these is the middle Rio Grande, which includes the Albuquerque metropolitan area, the MRGCD, the largest number of Pueblos in a single adjudication, and it will present legal, factual and logistical challenges that make it a daunting task to complete once commenced . . . . As such, the State is unwilling to volunteer to undertake this adjudication.

Id. at 5.

4. These conditions have not changed. The adjudications referred to by the State in its 2001 pleading all remain active. Although the adjudication of the middle Rio Grande has not yet begun, a near term timetable for that undertaking is being contemplated.

5. Furthermore, in the intervening years, the demands on the State’s adjudication resources have not abated, but in fact have significantly increased. For

example, Indian water rights settlements with the Navajo Nation, the Pueblo of Taos and the four Pueblos of the Nambe-Pojoaque-Tesuque stream system have since 2001 advanced to a stage where a significantly greater focus and resource commitment by the State is required. In both the San Juan River adjudication (State ex rel. State Engineer v. United States of America, et al., D-1116-CV 75-184), and the Aamodt case (State ex rel. State Engineer v. R. Lee Aamodt, et al., 66cv6639) subfile work which was not ongoing in 2001 has since been ordered by the respective adjudication courts, creating demands for attorney and technical support which did not exist five years ago. Additionally, Indian claims are presently scheduled to move forward in the Jemez adjudication (United States and State ex rel. State Engineer v. Tom Abouseiman, et al., 83cv1041) and the Santa Cruz-Truchas adjudication (State ex rel. State Engineer v. John Abbott, et al., 68cv7488).

6. Even in 2001 the demands on the State were sufficiently daunting, however, and on April 23, 2002, the Special Master noted that “[t]he State of New Mexico has made a persuasive case for its inability to initiate another adjudication at this time.” Special Master’s Report and Recommendations on Zuni River Basin Adjudication Procedure, p. 10. (No. 123). The Special Master went on to recommend that:

The Court order the United States to conduct the hydrographic survey of the entire basin, and bear the costs of the survey and the fees of the Special Master and necessary staff during the hydrographic survey phase. Doing so would allow this adjudication to begin while affording the state perhaps five years to secure the resources necessary to participate fully in the post hydrographic survey phases of consent order/offers of judgment, field offices and additional investigations, and day-to-day case management.

Id. at 10 – 11. On June 5, 2002, the United States agreed to “fund and conduct the hydrographic survey of the basin, as well as continue to pay the fees of the Special

Master and necessary staff during the course of the survey.” United States Objection to the Special Master’s Report and Recommendations on Zuni River Basin Adjudication Procedure, p. 1 (No. 128).

7. Although the Special Master’s Report and Recommendations contemplated affording the State five years to secure resources, the State nonetheless immediately began participating fully in all the adjudication tasks identified by the Special Master.

8. The State’s Hydrographic Survey Bureau undertook the review of all the hydrographic survey reports produced by the United States, approving them before they were ultimately filed with the Court. Counsel for the State reviewed and signed all consent orders generated by the United States. The State has participated in all field offices and when necessary joined in further investigations. With regard to day-to-day case management, counsel for the State has regularly joined with the United States in motions, and consulted with it on all significant issues of substance and timing.

9. As such, the State has already been participating fully in the adjudication to the extent suggested by the Special Master’s April 23, 2002 Report and Recommendations, and in advance of the timetable urged therein.

10. In addition, despite scarce resources, the State has voluntarily undertaken additional tasks it believed necessary to advance the adjudication.

11. On May 23, 2003, the State offered the services of its Water Rights Division and WATERS database personnel to immediately undertake efforts to reach out to claimants in the stream system so they could update existing water rights files or create new ones to reflect current circumstances of ownership and water use. Notice of Filing

Joint Letter and Proposed Order (No. 203). The notion was that this information would be abstracted and used as a foundation for a more comprehensive and accurate hydrographic survey than could otherwise be had. Over the months which followed, the State conducted numerous field offices, most often at locations within the stream system, but also in the nearby towns of Gallup and Grants for the convenience of the many claimants who resided there. Hundreds of water right files were updated and their information ultimately utilized in the hydrographic survey.

12. Since 2001 the State has participated in numerous public meetings intended to provide claimants with information about the adjudication. The first was held at El Moro National Monument in March of 2001, less than a month after the lawsuit was filed. The most recent was held at Zuni High School on July 27, 2006. In between, there have been many others.

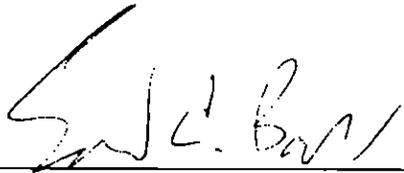
13. Additionally, counsel for the State has, as has counsel for the United States, spent many hours on the phone with individual claimants in the case, answering questions and providing information about the adjudication. The time required for this is not inconsequential.

14. And in the near term, in the ordinary course of this adjudication, the resource demands on the State are expected to grow significantly. Additional resources will be necessary to address the Indian and federal claims, presently scheduled to be filed by December 31, 2006. Non-Indian irrigation claims, mainly in the Ramah area, have yet to be presented and to the extent necessary, litigated. With regard to other non-Indian claims, between 300 to 400 subfile orders remain to be served in sub-arcas 1, 2 and 3, with consultations and field offices to follow.

15. The State does not presently have resources available to contribute to the conduct of this case beyond that necessary for the tasks it is already involved in or committed to, as described above. The State believes that it has already “assumed its full share of responsibility for the conduct of this case” that was contemplated in the Special Master’s April 23, 2002 Report and Recommendations.

16. The possibility exists that monies from the Water Project Fund may become available for this adjudication. In 2005, the Legislature amended the original Water Project Fund statute, NMSA 1978 § 72-4A-9 (2001), requiring that “[t]en percent of water project funds [] be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications [] be allocated to the administrative office of the courts for the courts’ costs associated with those adjudications.” 2005 N.M. Laws, ch. 293, § 1(A) (enacted as HB 1110). The availability to the State Engineer for water rights adjudications of monies from the Water Project Fund pursuant to 2005 N.M. Laws, ch. 293, and the adjudication-related purposes for which any such monies could be expended, continue to be subjects of discussion between the administration and the legislature. The State will have a better idea as to whether these funds could become available in the coming months, as it gets closer to the 2007 legislative session. It is our understanding that it is highly unlikely that HB 1110 funds, if they are produced from the issuance of bonds, can be made available for expenditure on either full time employees or contract attorneys to assist with the work load.

Respectfully submitted this 3rd day of October, 2006.

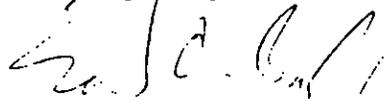


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**Certificate of Service**

I certify that on this 3rd day of October, 2006, a true and correct copy of the foregoing Status Report was mailed by first class mail to the attached list of counsel of record and pro se parties:

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**US vs. Kerr McGee Service List**  
**CIV No. 01-00072 BDB/WDS, Page 2**