

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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Robert M. ...
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UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 STATE OF NEW MEXICO, ex rel. STATE)
 Engineer, A&R Productions, et al.,)
)
 Defendants.)
 _____)

01cv00072-BDB/WWD (ACE)
ZUNI RIVER BASIN

**TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.'S
RESPONSE IN OPPOSITION TO THE STATE'S PROPOSED ADJUDICATION
SCHEDULING ORDER WITH ITS NOTICE OF FILING AND THE UNITED STATES
STATEMENT OF ISSUES AND NATURE OF THE SUIT**

Tri-State Generation and Transmission Association, Inc. ("Tri-State") responds in opposition to certain aspects of the State's Proposed Adjudication Scheduling Order ("Scheduling Order") appended to its Notice of Filing served December 31, 2001 and the United States' Statement Of The Issues And Nature Of The Suit ("Statement of Issues") served on December 27, 2001. Tri-State opposes the positions taken by the United States and the State in that they intend to only dismiss and limit dismissal to those defendants named in error within the two areas they plan to survey and only upon completion of the hydrographic survey of those two areas.

Tri-State is a defendant whose water rights are not included in the two areas that the United States and State plan to survey. In fact, Tri-State's points of diversion of water and places of use of water for its water rights are completely outside the exterior boundaries of the Zuni River Basin. Tri-State has been incorrectly joined and named by

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the United States's complaint. Tri-State renews its request for dismissal with prejudice as set forth in its Response filed on August 24, 2001 to the United States' Report and State's Proposal for Proceeding Once The Stay Is Lifted. Tri-State incorporates herein its August 24, 2001 Response. This Response demonstrates that Tri-State's points of diversion and places of use of its water rights are located completely outside the exterior boundaries of the Zuni River Basin and are included in the Bluewater Adjudication. Tri-State requests that it should be promptly dismissed with prejudice from this adjudication, so as not to incur the unduly burdensome expense of the adjudication. Despite Tri-State's Response, its request for dismissal and argument at the Court's September 7, 2001 hearing on its Response, the United States and State have done absolutely nothing to dismiss Tri-State from this adjudication. Tri-State, and other defendants whose water rights are outside the Zuni River Basin, should be proposed for dismissal in the State's Scheduling Order and United States' Statement of Issues.

The State's and United States recently filed pleadings suggest that the Court's Order to stay further proceedings should be suspended within the two areas surveyed to dismiss defendants named in error within these two areas. These pleadings should be expanded to propose dismissal of Tri-State and other parties named in error and misjoined whose water rights have been demonstrated, as Tri-State's have, to be located outside the Zuni River Basin. The Court's Order to stay all further proceedings, dated March 1, 2001, should be partially suspended to dismiss Tri-State and other incorrectly named and joined defendants. The State's and United States' pleadings

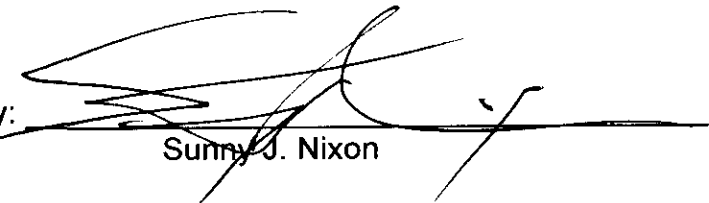
should be amended to make this request for suspension.

Instead, the State now proposes to impermissibly extend the definition of the Zuni River Stream System to include all groundwater within the Gallup Underground Water Basin. Both the State and the United States should concentrate on dismissing the incorrectly named and joined defendants, such as Tri-State, from this suit to save them the time-consuming and expensive process of participating in a suit in which they should not have been named or joined in the first place.

Respectfully submitted,

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