

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

UNITED STATES OF AMERICA)	
and)	07cv00681-BB
ZUNI INDIAN TRIBE)	
Plaintiffs,)	ZUNI RIVER BASIN
)	ADJUDICATION
-v-)	Subproceeding 1
)	Zuni Indian Claims
STATE OF NEW MEXICO, <i>ex rel.</i>)	
STATE ENGINEER, <i>et al.</i>)	
Defendants)	

ANSWER TO UNITED STATES' SUBPROCEEDING COMPLAINT AND
STATEMENT OF CLAIMS ON BEHALF OF ZUNI TRIBE OF INDIANS

For their answer to the United States Subproceeding Complaint and Statement of Claims on behalf of the Zuni Indian Tribe, John A. Yates, Yates Petroleum Corporation and Trust Q Under the Last Will and Testament of Peggy A. Yates, Deceased, state:

1. They admit the allegations of the first four sentences of paragraph 1 of the complaint. They are without information sufficient to admit or deny the remaining allegations of paragraph 1 and therefore deny the same; in the alternative they assert that as a matter of law there is no reservation in effect for the Zuni Tribe as a result of the 1877, 1883, 1912, and 1917 executive orders, by whatever names they were called, pursuant to which Winters doctrine water rights were created. Those

reservations, to the extent they coincide with the lands patented to Zuni Tribe, were not lands capable of reservation by the United States; in the alternative, these Defendants assert that the reservations have been subsumed in or supervened by the Zuni Tribe's patent.

2. They are without information sufficient to admit or deny the allegations contained in paragraph 2 and therefore deny the same.

3. They admit that Zuni Indian Tribe has aboriginal title to some of its lands as alleged in paragraph 3, in addition to any attributes which may have been acquired by virtue of Congressional Acts or Executive Orders. They are without information sufficient to admit or deny that all such lands have aboriginal title and therefore deny the same; they deny that land acquired by virtue of purchase transactions has attributes of aboriginal title.

4. They deny the allegations of paragraph 4;

5. They are without sufficient information to admit or deny the allegations of paragraphs 5, 6, and 7, and therefore deny the same.

6. To the extent that in paragraph 8 the United States claims an aboriginal or time immemorial Winters water right, they deny that the Winters water rights claimed have

a time immemorial or aboriginal priority. They are without sufficient information to admit or deny the remaining allegations of paragraph 8 and therefore deny the same.

7. They are without sufficient information to admit or deny the allegations of paragraphs 9, 10, 11, and therefore deny the same.

8. They admit the use of New Mexico State Plane Coordinates, West Zone, 1983 North American Datum ("NAD"), as alleged in paragraph 12, but are without information sufficient to admit or deny the accuracy thereof as used, and therefore deny the same.

9. They admit the allegations of paragraph 13.

10. They are without information sufficient to admit or deny the allegations of the first sentence of paragraph 14, and therefore deny the same; they admit that the United States makes the claim asserted in the remainder of paragraph 14, for the benefit of the Zuni Indian Tribe, but are without sufficient information to admit or deny the remainder of the claims or assertions of paragraph 14, and therefore deny the same.

11. They are without information sufficient to admit

or deny the allegations of the first sentence of paragraph 15, and therefore deny the same; they admit that the United States makes the claim asserted in the remainder of paragraph 15, for the benefit of the Zuni Indian Tribe, but are without sufficient information to admit or deny the remainder of the claims or assertions of paragraph 14, and therefore deny the same.

12. They deny the allegations of paragraphs 16, 17, and 18, and affirmatively assert that this action is brought pursuant to New Mexico Statutes Annotated, Sections 72-4-13 through 72-4-19, which oblige the plaintiff to secure the data required for adjudication, including quantification, of all water rights. Additionally, beneficial use of water is the basis, measure and limit of the water rights subject to adjudication; the demographic and economic data relied upon by the United States plays no role in the adjudication, and the allegations of paragraph 18 are subject to the defense of failure to state a claim upon which relief can be granted, all as stated hereinafter.

13. They are without information sufficient to admit or deny the allegations of paragraph 19, and therefore deny the same.

14. They are without information sufficient to admit or deny the allegations of the first two sentences of paragraph 20, and therefore deny the same. They deny the remaining allegations of paragraph 20.

15. They admit that the United States makes the claim set forth in paragraph 21, but are without information sufficient to admit or deny the remaining allegations thereof and therefore deny the same.

16. They deny that any water right exists with respect to the springs as alleged in paragraph 22, except and to the extent such springs have been improved by works for the diversion and transportation or use of the water produced by those springs.

17. They are without information sufficient to admit or deny the allegations of paragraphs 23 and 24 and therefore deny the same.

18. They are without information sufficient to admit or deny the allegations of paragraph 25, and therefore deny the same; they affirmatively assert that this action is brought pursuant to New Mexico Statutes Annotated, Sections 72-4-13 through 72-4-19, which oblige the plaintiff to secure the data required for adjudication, including quantification, of all water rights. The allegations of

paragraph 25 are subject to the defense of failure to state a claim upon which relief can be granted, as stated hereinafter.

19. They are without information sufficient to admit or deny the allegations of paragraphs 26, 27, 28, 29, 30, and 31, and therefore deny the same.

Legal Defenses

20. The United States' subproceeding complaint fails to state a claim upon which relief can be granted in paragraphs 16 through 18 and paragraph 25 for the reason that the Plaintiff is required by the statute pursuant to which this action is brought, Sections 72-4-13, et seq., N.M.S.A. to determine the amount of water it proposes to be adjudicated.

(Note: the following citations to the law of Mexico are here presented in full for the convenience of the Court and Counsel. As the law of the preceding sovereign these provisions of law are the law of the forum, and would ordinarily not be set forth in a pleading, but they are relatively obscure and difficult to locate, and so are set forth for ease of reference.)

21. The property rights of Zuni tribe and its Members and allottees, to the extent they are governed by the law in effect prior to the sovereignty of the United States, are governed by the law of the immediately preceding Mexican sovereign, which is based on the "Plan of

Iguala" of 1821, a cornerstone of Mexican independence from Spain, which provides:

"12. Todos los habitantes de la Nueva España, sin distinción alguna de europeos, africanos ni indios, son ciudadanos de esta monarquía con opción á todo empleo, según su mérito y virtudes.

"13. Las personas de todo ciudadano y sus propiedades serán respetadas y protegidas por el gobierno."¹

22. The provisions of the Plan of Iguala were enacted in the legislation of September 22, 1822, of the Republic of Mexico, pursuant to which the Zuni Tribe and its members had no less and no more rights or property entitlements than any other citizens of Mexico. That statute provides:

CIUDADANOS.

Orden.

Se prohíbe clasificar á los ciudadanos mexicanos por su origen.

El soberano congreso constituyente mexicano, con el fin de que tenga su debido cumplimiento el art. 12 del plan de Iguala, por ser uno de los que forman la base social del edificio de nuestra independencia, ha venido en decretar y decreta.

1°. Que en todo registro y documento público ó privado al sentar los nombres de los ciudadanos de este imperio, se omita clasificarlos por su origen.

2°. Que aunque á virtud de lo prevenido en el artículo anterior no deberá ya hacerse in los libros parroquiales distincion alguna de clases, continuará no obstante por ahora la que actualmente se observa en los aranceles para sola la graduacion de derechos y

¹ Counsel's translation:

12. All inhabitants of New Spain, with no distinction whatever between Europeans, Africans, and Indians, are citizens of this monarchy with equal access to all employment according to their merits and virtues.

13. The person and property of all citizens shall be respected and protected by the government.

obvenciones, interin estas se califican por otro método mas justo y oportuno.-Setiembre 17 de 1822.²

23. By virtue of the law of Mexico, the predecessors of the Zuni Tribe and its allottees had as of the date of the Treaty of Guadalupe Hidalgo only such interest in the waters of the Zuni River and its related groundwater as were possessed by other citizens of the Mexican Republic similarly situated, without respect to their ethnic or racial origins.

24. None of the rights referred to in the foregoing paragraph included prior or paramount water rights or "prior and paramount" water rights cognizable by this Court.

25. These Defendants are informed and believe and therefore allege that the only waters to which Zuni Tribe

² Counsel's translation:

"Citizens

"Order

"Prohibiting the classification of Mexican Citizens by their origins.

"The sovereign Mexican constitutional congress, for the purpose of compliance with art. 12 of the plan of Iguala, which is one of the social foundations of our independence, has determined to decree and does hereby decree:

1st. That all registrations and public and private documents containing the names of the citizens of this nation will omit all classification by their origin;

2nd. Even though by virtue of the prohibition contained in the foregoing article, there should be shown in the parochial books no class distinctions whatever, those distinctions may temporarily continue to be used in tax collection matters in accordance with the current practices for the purpose of valuation of rights and irregular profits, until a more just and opportune method can be devised.

have an aboriginal priority or right are those which were in use as of the date of the Treaty of Guadalupe Hidalgo, (9 Stat. 922).

26. These defendants are informed and believe and therefore allege that the only waters which were reserved to the Zuni Tribe by virtue of its 1877, 1883, 1912, and 1917 reservations were those waters which could be used on practicably irrigable acreage lying outside the tribe's patented lands.

27. These defendants are informed and believe and therefore allege that the United States unreasonably delayed the institution of this adjudication and the assertion of claims for Zuni Tribe and its allottees, with the result that good faith subsequent appropriators were detrimentally led to make valuable improvements to their land for the utilization of junior appropriations, with no notice of the claims now made by the United States.

WHEREFORE, these Defendants request that the water rights of Zuni Tribe and its allottees be adjudicated in accordance with law, and that they have such other and further relief to which they are entitled.

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By: S/Peter B. Shoenfeld (e-filed)
Attorney for the Yates
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Certificate of Service

The foregoing motion was served on all parties by means of the Court's electronic service system this March 19, 2008.

S/Peter B. Shoenfeld (e-filed)