

STATE OF NEW MEXICO
THE ELEVENTH JUDICIAL DISTRICT COURT
SAN JUAN COUNTY

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

Plaintiff,

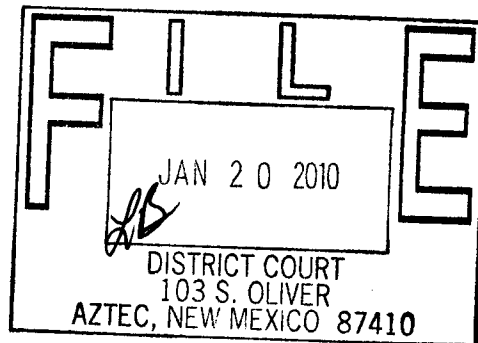
vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.



CV-75-184
HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

LA PLATA RIVER SECTION

REPORT ON SUBFILES IN MEDIATION

Pursuant to the Court's direction at the January 13, 2010 Status Conference, the State of New Mexico *ex rel.* State Engineer ("State") submits this report for the purpose of informing the Court about the common issues arising in the subfiles referred to mediation.

The State has already referred the following 24 subfiles to mediation:

Jack D. McFarland	AF ² 01-30	SJLP-001-0008
Jack D. McFarland	AF-01-38	SJLP-001-0009
D. Barry McGee	AF-01-73	SJLP-003-0001
Deanna McQuitty	AF-01-146	SJLP-004-0002
Joe J. Verce Estate	AF-01-151	SJLP-004-0006
Joseph J. James Verce, Jr.	AF-01-152	SJLP-004-0007
Melanie Williams Verce	AF-01-156	SJLP-004-0011
Michael D. Lenocker	AF-01-159	SJLP-004-0013
Lauren R.P. Crane	AF-01-165	SJLP-004-0019

DKH

Richard D. Ellis, et als.	AF-01-176	SJLP-004-0040
Roger Allyn, Stephanie Lew	AF-01-528	SJLP-004-0042A
Jaye and Sue Decker	AF-01-191	SJLP-005-0010
David and Marilyn Partain	AF-01-197	SJLP-005-0017
Roger Allyn, Stephanie Lew	AF-01-494	SJLP-005-0041
Mildred Fuller, Maudie Leppert	AF-01-244	SJLP-005-0046
Wanda Lee Fuller	AF-01-245	SJLP-005-0047
Chad W. Fuller, et als.	AF-01-246	SJLP-005-0048
Cynthia and Vernon Gay	AF-01-254	SJLP-005-0061
Roger Allyn, Stephanie Lew	AF-01-263	SJLP-006-0009
Sherrill Arviso	AF-01-478	SJLP-007-0007
Stacey Bradley, et als.	AF-01-303	SJLP-007-0009
Nickles Brothers, Inc.	AF-01-135	SJLP-007-0050
Shirley F. Dorsett	AF-01-398	SJLP-008-0064
David and Dawn Harris	AF-01-458	SJLP-009-0005B

Since referring these subfiles to mediation, the State has received signed consent orders for three of these subfiles, Roger Allyn and Stephanie Lew, subfiles 004-0042A, 005-0041, and 006-0009, and will formally withdraw these subfiles from mediation. The State is also in discussions with the Nickles Bros. and will withdraw subfile 007-0050 from mediation.

Of the twenty remaining subfiles, the following represents a breakdown of the issues involved in each.

- Sixteen subfiles involve objections to the amount of acreage we have recognized as having a water right. In these subfiles, the State may have recognized that some acreage is designated as a "no right" because the claimant, for instance, has not placed water to beneficial use on that portion of land. These disputed subfiles indicate that

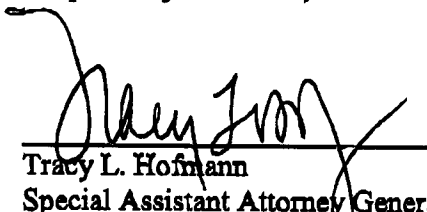
the claimants believe they are entitled to have the State recognize additional acreage in the consent order. At this stage we do not know the legal basis for their claim to additional acreage or the full factual evidence present in each subfile.

- One subfile contests the amount of water contained in the consent order. The claimant believes that he is entitled to divert more water than is indicated in the consent order.
- Three subfiles involve general objections to the consent orders, but we have been unable to contact the claimants to further discuss the matter. It is the State's hope that the mediator may be able to contact the claimants.

The State reported in its Status Report prepared for the January 13, 2010 Status

Conference that thirty-four disputed subfiles are ready for mediation. The 10 subfiles in addition to the 24 discussed above have not yet formally been referred to the Court for an Order for Mediation because there has been some recent contact with the claimants, which the State has hoped would result in the resolution of those subfiles without mediation. At this point, it appears that these additional subfiles all involve objections based on the claimants' claim to more acreage.

Respectfully submitted,



Tracy L. Hofmann
Special Assistant Attorney General
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150
Attorney for Plaintiff State of New Mexico
ex rel. State Engineer