

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

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UNITED STATES OF AMERICA, on its)
 own behalf and on behalf of the)
 PUEBLOS OF JEMEZ, SANTA ANA and)
 ZIA, the Pueblos as)
 Intervenor, in their own behalf,)
 and the STATE OF NEW MEXICO,)
ex rel. State Engineer,)
)
 Plaintiffs,)
)
 v.)
)
 TOM ABOUSLEMAN, et al.,)
)
 Defendants.)

No. 83CV-1041 MV/LCS

PARTIAL FINAL JUDGMENT AND DECREE OF THE UNITED STATES'
WILD AND SCENIC RIVER ACT RESERVED WATER RIGHT

This cause of action is a general adjudication of all water rights in the Jemez River stream system, a tributary of the Rio Grande in northern New Mexico.

This matter comes before the Court upon its own motion for the entry of a Partial Final Judgment and Decree on the United States' Wild and Scenic Rivers Act ("WSRA") reserved right claim for the East Fork of the Jemez River ("WSRA Claim") in the Jemez River stream system. This Decree is entered in accordance with NMSA 1978, § 72-4-19 (1907) and is a final judgment in accordance with Fed. R. Civ. P. 54(b).

The proprietary water rights of the United States, other than the United States' WSRA claim, were adjudicated in the Partial Final Judgment and Decree on the Proprietary Water Rights of the United States on Lands Administered by the Forest Service, Bureau of Land Management, and Department of Energy, filed on November 29, 1999 (No. 3868). The Non-Pueblo, Non-Federal Proprietary Water Rights in the Jemez

River Stream System were adjudicated in the Partial Final Judgment and Decree on Non-Pueblo, Non-Federal Proprietary Water Rights filed on December 1, 2000 (No. 3948). The United States, the State of New Mexico *ex rel.* State Engineer ("State") and the Jemez River Basin Water Users Coalition ("Coalition"), by and through their counsel, have entered into a settlement agreement and Consent Order regarding all elements of the United States' federal reserved right under the WSRA, entered by the Court on September 18, 2007. The Court, having considered the agreement between the parties, finds there is no just reason for delay in the entry of this Partial Final Judgment and Decree fully and finally adjudicating the reserved water rights of the United States under the Wild and Scenic River Act in the East Fork of the Jemez River.

Therefore, being fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS OF FACT

1. On October 12, 1990 the United States filed a Motion and Memorandum to Permit Filing of Claim (No. 2255) to allow the United States to file a supplemental claim to water rights based upon rights asserted under the WSRA and P.L. 101-306, June 6, 1990, declaring the east fork of the Jemez River a Wild and Scenic River. The Coalition filed Defendants' Opposition to United States' Motion to Permit Filing of Claim (No. 2257) on October 22, 1990. Special Master Judge Frank B. Zinn issued a Notice of Hearing on the United States' Motion (No. 2268) on January 31, 1991, which was served on parties and counsel of record by the United States (No. 2269). On February 13, 1991, by memorandum distributed to counsel and parties by the United States (No. 2273), Special Master Zinn vacated the hearing on the motion and enclosed a proposed draft

order granting the motion, which was subsequently entered on February 22, 1991 (No. 2274). The Order, distributed to affected parties by the United States, provided that *inter se* objections were to be filed within 30 days of receiving the United States' supplemental claim to water rights based upon rights asserted under the WSRA. The United States filed its certificate of service that the Order was mailed to counsel of record and *pro se* parties on February 28, 1991 (No. 2275).

2. On April 2, 1991 the United States filed its Wild and Scenic Claim for the East Fork of the Jemez River (No. 2278). The Coalition filed its Response to the United States' Wild and Scenic River Claim for the East Fork of the Jemez River (No. 2283) on April 26, 1991, and the State filed its Response (No. 2284) on May 1, 1991. No other parties filed objections or responses or *inter se* objections within the period allowed by the February 22, 1991 Order. This decree is the result of a negotiated settlement by these parties, the United States, the State and the Coalition.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the State, the United States, the Coalition, and the subject matter of this suit.

2. This Partial Final Judgment and Decree of the Court is final and binding on the United States, the State of New Mexico, and all claimants to the use of water of the Jemez River Stream System.

3. Throughout the course of this adjudication, all parties were provided with adequate legal notice of all proceedings to adjudicate this water right claim and were given a full and fair opportunity to contest the United States' WSRA claim *inter se*, and to participate in the hearings and in any other proceedings involving this claim.

4. The water rights claims of the United States on behalf of the Pueblos are being adjudicated in a separate proceeding.

5. The United States' WSRA Claim arises under section 16 U.S.C. § 1274 of the WSRA and Pub. L. No. 101-306, 104 Stat. 260 (June 6, 1990) (designating the East Fork of the Jemez River as a Wild and Scenic River).

6. The United States' WSRA Claim is fully resolved by entry of this Partial Final Judgment and Decree.

DECREE

1. The right of the United States to the use of the surface flow in the segment of the East Fork of the Jemez River designated under the WSRA, 16 U.S.C. §§1271 et seq., and Pub. L. No. 101-306, is as set forth below, *subject to the Conditions set out in paragraph 2 of this Decree, below:*

- a. **State Engineer File No.:** None
- b. **Priority:** June 6, 1990 (the date of the designation of the subject section of the Jemez River under Public Law No. 101-306, 104 Stat. 260).
- c. **Source of Water:** Surface waters of the East Fork of the Jemez River, a tributary of the Rio Grande.
- d. **Purpose of Use:** Instream-use for the maintenance of all the outstandingly remarkable values that were the basis for the June 6, 1990 designation of the East Fork of the Jemez River as a "Wild and Scenic River" pursuant to the WSRA, including but not limited to scenic values, recreation, fisheries and riparian habitat.
- e. **Point of Diversion and Place of Use:** The 11-mile segment of the Jemez River extending from the Santa Fe National Forest boundary, at a point described as X = 363668, Y = 3965660 (Point A); to its confluence with the Rio

San Antonio, at a point described as X = 351496, Y = 3965942 (Point B), UTM Zone 13N, NAD 27. This 11-mile segment includes: (1) The 2-mile segment from the Santa Fe National Forest boundary with the Valles Caldera National Preserve to the second crossing of State Highway 4, near Las Conchas Trailhead, which is designated as a recreational river; (2) the 4-mile segment from the second crossing of State Highway 4 to the third crossing of State Highway 4, approximately one and one-quarter miles upstream from Jemez Falls, which is designated as a wild river; and (3) the 5-mile segment from the third crossing of State Highway 4 to its confluence with the Rio San Antonio, which is designated as a scenic river.

- f. **Amount of Water:** The following amounts of water occurring from the natural surface water flow of the East Fork of the Jemez River:

<u>Period</u>	<u>Flow</u>
January	5 cfs
February	6 cfs
March	14 cfs
April	43 cfs
May	14 cfs
June	5 cfs
July	6 cfs
August	7 cfs
September	6 cfs
October	7 cfs
November	6 cfs
December	6 cfs

2. **Conditions:** The United States' right to the instream use of the flows set forth above in paragraph 1 is subject to the following Conditions:

- A. The right is and shall be non-consumptive.
- B. The right is limited to the use of the natural surface flows of the East Fork of the Jemez River for the purposes of use set forth above in the designated segment of the East Fork of the Jemez River only, and may not be changed to any other place or purpose of use. This water right does not include any right to divert the surface waters of the East Fork of the Jemez River.

- C. The State makes no admission or finding that any unappropriated water existed at the time of the WSRA designation, or that there will be surface water available to satisfy the reserved right adjudicated hereby.
- D. Nothing herein precludes the United States from the acquisition of surface water rights as provided under state law.
- E. This right shall not be enforced against rights permitted under NMSA 1978, §72-12-1.1 or its predecessor statutes.
- F. The United States shall not assert a priority call to increase flows pursuant to this right unless and until the flows are gaged in accordance with accepted standards. The gage(s) will demonstrate the United States' beneficial use of the stream flow for WSRA purposes of use within the segment. Any priority call pursuant to this right may only be enforced against the exercise of junior water rights.

3. The United States has no water right for the instream use of the flow of the East Fork of the Jemez River other than as set forth in this Partial Final Judgment or Decree or as may be adjudicated by a future order from this adjudication court. Nothing herein shall affect the pending adjudication of the claims of the Pueblos of Jemez, Santa Ana and Zia, currently before this adjudication court.

4. The United States and its successors, representatives, and assigns are enjoined from any instream uses of the flow of the public waters of the Jemez River stream system except in strict accordance with this Decree or as may be adjudicated by a future order from this adjudication court, or as provided in ¶2(D), above.

5. Because this agreement between the parties regarding the elements of the United States' right is based upon the unique facts present on the East Fork of the Jemez River, the parties agree that nothing in this Partial Final Judgment and Decree shall be construed or interpreted to establish any standard or precedent with regard to the determination or quantification of the amounts of the flow for instream use of any other claims, or to limit or affect the authority of the United States or the State provided by statute or regulation.

6. There is no just reason for delay, and the Court hereby expressly directs entry of this Decree pursuant to Fed. R. Civ. P. 54(b).

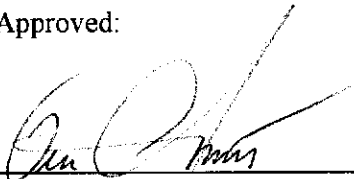
The right of the United States to the instream use of the flow of the public waters of the Jemez River stream system is hereby adjudicated as set forth herein. The United States and its successors, representatives, and assigns are hereby enjoined from diverting or using public waters of the Jemez River for the purposes of use adjudicated herein except in strict accordance with this Partial Final Judgment and Decree and other orders of the Court in this cause.

DATED this 3rd day of October, 2008.



MARTHA VAZQUEZ
CHIEF UNITED STATES DISTRICT JUDGE

Approved:



LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE