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JAY R. GENTRY ORTIZ
GENE C. WALTON
RICHARD C. MINZNER

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

COUNSELLORS AND ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING-WEST
WEST CENTRAL AVENUE AT THIRD
P. O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103

September 21, 1974

OF COUNSEL
DON L. DICKASON

PEARCE C. RODEY
1889-1958

TELEPHONE 243-1301
AREA CODE 505

PERSONAL AND CONFIDENTIAL

Bradley Patterson, Esq.
Executive Office Building
Washington, D. C.

State v. Aamodt

Dear Brad:

Judge Payne's letter of September 17, 1974 determined that an interlocutory judgment will be entered on the legal question of what law governs the definition of the water rights of the Indian Pueblos. An interlocutory appeal will then be taken, based on a record limited to the anthropological and historical evidence. The evidence relating to the quantification of the Pueblos' water rights, including the historically irrigated acreage of the Pueblos, their practicably irrigable acreage, the sources of water from which such lands would be irrigated, and the effects of utilizing such water on the non-Indian water users in the Pojoaque Basin would be segregated and reserved for a later hearing after the appellate courts have determined the legal definition of the Pueblos' rights.

At the present time the evidence relating to the Pueblos' historically irrigated lands (covered mainly in the testimony of Dr. Florence Ellis and Dr. A. D. Solomon) has been completed but the remaining technical evidence is still being prepared. As the basis for defining the Pueblos' practicably irrigable acreage, the BIA Albuquerque Area Office staff is preparing an "engineering plan" showing the feasibility of locating wells and ditches for delivering water to the Pueblos' arable lands. As presently conceived, that plan proposes wells to supply most of the water required, with ditches to carry the water to the fields. Its revision to reflect use of sprinkler irrigation systems in addition to gravity-flow ditches would straighten the jagged contours shown in the original version and improve its credibility.



The BIA plan rests upon studies undertaken by the USGS Albuquerque office to project the effects on the water table of pumpage from the BIA's hypothetical wells, indicating the pumping depths and associated costs of delivering water to the irrigable lands. Although both the BIA staff and the USGS office completed reports as of August 15, 1974, the Judge's decision to proceed with an interlocutory appeal on the legal issues means that those reports will not be delivered to opposing counsel or placed in evidence. William S. Gookin, the independent hydrologist retained by the Pueblos, who would also testify as an expert witness, has pointed out various inconsistencies in the USGS reports and it is now necessary to revise the technical studies to eliminate inconsistencies in the testimony of the various experts.

During the past eight months, a strategy for developing the technical and hydrological areas of the case has been devised. That area was originally solely in the hands of the BIA Area Office engineering staff. As a result of our participation in the case, Mr. Gookin became associated as the expert hydrologist, and the USGS was requested to provide research and studies. Dr. William Gorman of New Mexico State University, previously retained as an economist to advise the BIA staff with respect to the economic constraints which should be reflected in its engineering plan, should be more directly involved in the completion of the BIA's work. The working relationships have revolved around the two Government agencies on the one hand, and the independent consultants and the private attorneys for the Pueblos on the other hand. Experience has demonstrated that the agency staffs have found it difficult to utilize effectively the knowledge and recommendations of the private consultants. Conflicts and inconsistencies have developed, and there has been a lack of cohesive direction in the organization of the highly technical, complex, and interrelated data which provide the evidence required for this phase of the adjudication suit.

In order to bring the technical work to a proper conclusion, we believe a new and better approach is possible. Instead of relying on the established BIA and USGS offices, we believe that a select working group should be established solely for the purpose of organizing and completing the technical evidence in this case. Such a group should draw its personnel from the Government agencies already involved and from the private sector, where the needed experience and knowledge are

available. It would be responsible directly to a Washington office. We believe that Dr. George Pinder of Princeton University, who has already visited Albuquerque as a USGS consultant should be assigned to the select working group in conjunction with Mr. Gookin and Glenn Hearne of the Albuquerque USGS office. John Baker of the BIA staff should work in conjunction with Mr. Gookin and Dr. Gorman, with the participation of Walter Ryan and J. Y. Christiansen of the BIA's Farmington office (who are experts in sprinkler irrigation systems) and John Keller of Logan, Utah, a private consultant in the same field. Such a select working group would be able to utilize more effectively the technical and scientific resources of the USGS and BIA. The studies could be completed on a consistent basis which would show the practicably irrigable acreage on the basis of realistic economic parameters, available irrigation technology, development of the groundwater reserve of the Pojoaque Basin, and a comprehensive understanding of the probable long-term consequences of utilizing groundwater for irrigation of the Pueblos' lands.

The select working group should not only complete the research presently underway, but it should also advise the Pueblos with respect to further research on the water resources of the Pojoaque Basin. During the two or three years required for the interlocutory appeal, additional wells, tests, and studies can and should be undertaken to increase the meager data concerning the groundwater resources of the Pueblos and of the Pojoaque Basin. The additional studies will perhaps results in substantial changes in the present estimates for the hydrological coefficients used to describe the groundwater resources of the Basin and greatly strengthen the Pueblos' claim. It is of the utmost importance that the Pueblos have sound independent advice with respect to all such tests and studies in terms of maximum water development and use and, of course, such additional research should also be organized in a consistent form for eventual presentation at the concluding trial phase of the case.

A select working group of the kind indicated above would develop considerable experience with the complexities of Indian water adjudication suits. It is a flexible device that could, therefore, be utilized in other similar cases, including the other pending adjudication suits involving Pueblos on the tributaries of the Rio Grande.

The technical research will not only be important in quantifying



the water rights of the Indian Pueblos but it will also provide the foundation for decrees to establish effective administrative systems (under judicial supervision) for assuring delivery of water needed to fulfill the adjudicated Indian rights.

If the Federal Trustee is properly to fulfill its obligations to the Indians, a cohesive scientific and technical effort required to establish the Indians' water rights should now be made.

Sincerely yours,

PHILIP R. ASHBY, P.A.

By Philip R. Ashby

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By William C. Schaab
William C. Schaab

WCS:dst



THE WHITE HOUSE

WASHINGTON

AA MODT

This is the State of New Mexico vs Aamodt. Four Indian pueblos in New Mexico are involved: Tesuque, Nambe, Pojoaque and San Ildefonso. They want to use water rights for a commercial development.

Judge Payne in the US District Court has appointed a ~~XXXXXX~~ Special Master.

The issue is the water rights of the 4 Pueblos and whether they are subject to the governance of the State Water Engineer or whether they are federally protected trust rights, consistent with the Winters doctrine (i.e. that Indian reservations have federal trust water rights, dating as of the time the reservation was established, for any purposes for which the reservation was established.)

The Judge evidently thinks that the history of the establishment of the Pueblos is not the same as the history of Reservation Indians -- and that the Winters doctrine which protects the latter does not apply here. In a letter of August 29, 1973 the Judge so instructed the Special Master. "Pueblo Indians should be treated just like any other person." -- They are on land they originally lived on, not land set up by Congress as a special Reservation.

His letter is not appealable as such; the appeal must wait until the Special Master has finished his findings and the Court has ruled -- and that is some time in the future. But meanwhile the Judge has obviously indicated the direction of his thinking on the merits, and all ~~2x2x2~~ 19 of the Pueblos of the Southwest are very nervous about this development.

What makes them, and all the rest of the Indian law community, ~~nxxxxxxx~~ even more nervous is the feeling, among them and shared by Interior, that the Dept. of Justice is not handling the case very well. Interior asked for and received a special, confidential evaluation of how this case was being handled, and it was quite critical of Justice, --- it predicts that unless we shape up our preparations, the government (and the Pueblos) are going to lose.

I think that this evaluation piece has now leaked to the Indian law community and they are heated up about it.

The merits obviously need watching; you need it get into the handling, since neither you nor I know enough about it at present.



File
CHARLES PAYNE
DEPUTY JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE, NEW MEXICO

July 6, 1973

new File Indians
FILED
AT ALBUQUERQUE

JUL 9 1973

L.S. [unclear]
CLERK

TO ALL COUNSEL OF RECORD:

RE: New Mexico v. Aamodt
No. 6639 Civil

Gentlemen:

I have decided that the decision of the Special Master should be sustained. I have carefully thought about the matter of summary judgment and have decided that I should not reverse the Special Master and that I should not order a summary judgment. In this case there are many water rights and any decision affects the public in general. I felt that for such reason that I should not apply the technical rules and that the case should remain open to hear any evidence that is properly presented. I might ask you gentlemen to consider and to help the Court out with certain questions.

The first question is as to what law governs. In an ordinary case I would presume that Federal law should govern since there is no diversity of citizenship. However, in this case it may be that State law should govern since an adjudication of water rights is similar to a quiet title action. There have been some differing decisions about this question. Can you advise me just what I should consider in this case?

I carefully considered the case of Cartwright vs. Public Service Company of New Mexico, 66 N.M. 64 (1958). I have been greatly disturbed by that case. In the Majority Opinion is found the following statement:

"We are unable to avoid the conclusion that the reasons which brought the Supreme Court of California to uphold and enforce the Pueblo Rights doctrine apply with as much force in New Mexico as they do in California."

From the above statement I would presume the law in New Mexico to be that we have adopted the Pueblo doctrine. During argument there was something said by which the State



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felt that the present case could be distinguished from the Cartwright case. It seems to the Court that the same doctrine would apply with as much force to an Indian Pueblo as it did to a Spanish Pueblo.

The question that has worried the Court is that the State of New Mexico has consistently followed the doctrine of prior appropriation which I presume is the Colorado doctrine. In the dissenting opinion in the Cartwright case, Judge Federici quoted from Snow vs. Abalos 18 N.M. 681 (1914) as follows:

"In New Mexico, the 'Colorado doctrine', as it is termed, of prior appropriation prevails. Established or founded by the custom of the people, it grew out of the condition of the country and the necessities of its citizens. The common-law doctrine of riparian right was not suited to an arid region, and was never recognized by the people of this jurisdiction."

Judge Federici cites the constitution of New Mexico Article 16, Section 1, 2 & 3, which provide as follows:

- (1) "All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed."
- (2) "The unappropriated water of every natural stream penennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the State. Priority of appropriation shall give the better right."
- (3) "Beneficial use shall be the basis, the measure and the limit of the right to the use of water."

I felt that the remarks of Senator Bratton as shown at page 47 of the State's Brief were very pertinent. He stated "I do not share the view that these Indians have any prior or superior right to all the water within the watershed nor that the white settlers have any inferior or secondary right to the water within the watershed...There is no difference

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in priority or inferiority as between Indians on the one hand and whites on the other...Water rights in this situation go with the land to which they are appurtenant the same as they do in any of the other Western States where the doctrine of prior appropriation applies, and that doctrine is in force in New Mexico. Considering the act and decrees of court it is my belief that the Indians are governed by that doctrine the same as whites."

From what Senator Bratton said it was his view that the doctrine of prior appropriation applied. It is the opinion of the Supreme Court in the Cartwright case that has worried me since they have talked of the Pueblo doctrine as including "expanding" rights.

It appears to me that if I follow the constitution of the State of New Mexico the water rights should be determined by prior appropriation but that if I follow the decision of the Supreme Court they should be determined under the Pueblo rights doctrine. The Supreme Court says that those two doctrines are not in conflict. If that is right the Special Master will need some help as to just how the rights are to be determined.

In 66 N.M. 80, the Supreme Court says:

"We see nothing in the theory of Pueblo rights inconsistent with the doctrine of prior appropriation and beneficial use."

It might be that the attorneys should give the Court further authority on whether or not these two doctrines are inconsistent.

There has been considerable space in the briefs addressed to the question of whether or not the laws of a foreign country are questions of fact which must be produced or testified to by expert witnesses. The Court in the Cartwright case at page 84 says:

"Of course, the courts are entitled to take judicial notice of the laws of another state or foreign country from which the state of the forum was formed."

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This being so it appears to me that the Court should judicially take notice of these laws. There has been a difference of opinion of counsel on the interpretation of these laws and it might be that experts would be useful in such interpretation. For that reason I have looked at the testimony of Dr. Mares as a mixed question of law and fact. I will be glad to have counsel furnish me with anything concerning this question. I didn't look at the statement of Professor Onate as being admissible since there was no right of cross-examination.

It appears to me that the critical phrase is "who are now and later may be." The question in the mind of the Court is whether or not any large growth or commercial use was contemplated. Anything that would help the Court to know what that phrase meant would be appreciated.

The Supreme Court of New Mexico took the position that the Pueblo rights doctrine authorized the pueblo in question to use the water on an expanding scale. The following statement is made at page 84 of the Cartwright decision:

"And in California the priority of right in a colonization pueblo to take all the waters of a non-navigable stream for the use of its inhabitants on an expanding scale necessary for the benefit of its inhabitants was early recognized and enforced."

Frankly I can see a difference between the use by inhabitants of the Pueblo, now or hereafter, who use the water for the bona fide irrigation of lands of the pueblo but I couldn't see the use of the waters for a municipality if its boundaries are expanded or if the waters are used for commercial purposes.

Frankly I didn't think that a municipality or a pueblo had a right to expand its boundaries or to sell water to some commercial enterprise. With that limitation the pueblo rights doctrine might prevail over the doctrine of prior appropriation.

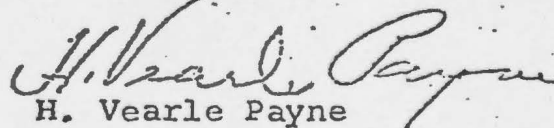


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I am not putting this in an Order yet because I didn't know what further comments counsel wish to make. Nor did I know whether or not I was supposed to enter any kind of order except one sustaining the Special Master. I did want you to know the thinking of the Court.

I am not ruling at this time which doctrine should be followed but I am ruling that it is of such importance that it should not be decided by a summary judgment and that the matter should be left open for all parties.

Sincerely,


H. Vearle Payne

cc: Hon. Howard C. Bratton
Hon. Edwin L. Mechem
Clerk, U. S. District Court



UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE, NEW MEXICO 87103

PEARLE PAYNE
CHIEF JUDGE

FILED
AT ALBUQUERQUE

AUG 29 1973

August 28, 1973

L. C. KIRBY
CLERK

TO ALL COUNSEL OF RECORD:

RE: New Mexico v. Aamodt
No. 6639 Civil

Gentlemen:

I have carefully considered your briefs.

The only thing before the Court at this time is whether or not the decision of the Special Master should be sustained. I think that I have already ruled that the decision of the Special Master should be sustained. I took the position that this case involved the public and that I shouldn't apply technical rules and that the case should remain open to hear any evidence or offers that are properly presented.

My only purpose in writing this letter is for the guidance of the Special Master and the attorneys.

To begin with, I do not feel that I should set trial dates or that I should take the matter away from the Special Master. There are so many things to be heard that I do not feel the Court has time to hear them and so the relief requested by the United States in that regard is hereby denied.

I do not believe that the decisions of the United States Supreme Court in the Winter case or in the case of Arizona vs. California are exactly in point because in each of those cases the Court was talking about the Reservation Indians, and for various reasons which I will not discuss, the situation of Reservation Indians is not the same as Pueblo Indians. With regard to Reservation Indians it is clear that the Supreme Court has held that "enough water was reserved to irrigate all the practicable irrigable acreage on the reservation."

With regard to the Pueblos water rights, it appeared to me that under the old Pueblo Lands Act the commission was paying the Pueblos \$35 an acre on the theory that they had



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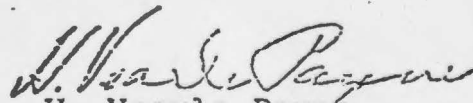
not lost any water rights. It seems that the commission took the position that the Pueblo Indians could take the water under some reservation theory. Congress did not agree and took the position that certain water rights had been taken and that they should be paid for. In other words, Congress took the position that prior appropriation was the law in New Mexico and the reservation theory did not apply. It is interesting to note that Senator Bratton and others took the position that the Pueblo Indians should be treated just like any other person. From that lead it appears to me that the Pueblo Indians were not considered by Congress to have any reserved water rights in the same meaning that Reservation Indians have such reserved water rights. Accordingly it seems to me that my original decision was correct.

I realize that these matters are not really before me at this time but I am merely stating my views so that the Special Master may be guided by what I have said.

It was not my intention to discriminate against Pueblo Indians by not applying the reservation doctrine to them since Pueblo Indians are on the land that they had originally lived on and were not on land which Congress had reserved or set aside for them. I hope that I am making myself clear.

Accordingly, my opinion of August 10th should stand.

Sincerely,


H. Vearle Payne



~~CONFIDENTIAL~~

Determined to be Administrative Marking

Date 2/24/82 By JP

MEMORANDUM

Northern Pueblos Tributary Water Rights Association
Recommendation for Continuance

February 28, 1974

This memorandum sets forth the first recommendation by the three attorneys engaged in reviewing the Government's preparation for the trial of State v. Asmodt.

We and our consulting hydrologist, W. S. Gookin, have worked diligently to review the full scope of the evidence being developed for presentation on behalf of the Pueblos of Tesuque, Nambé, Pojoaque, and San Ildefonso and to consider the legal theories advocated by the Government attorneys. We found it necessary to prepare an overall outline (attached as Exhibit A hereto) in order to bring together the diverse elements of the case. Mr. Gookin has reviewed the technical work in detail and has submitted the reports attached hereto as Exhibits B, C, and D; his final summary, Exhibit E, lists the needed decisions of policy that will materially contribute to the outcome of the suit.

Our conclusions at this date are that the Government's case is not prepared for trial and that if the preparations proceed without change, there is a serious possibility that the case will be lost. By "lost" we mean that the water rights of the Pueblos will be defined by their previous beneficial use and subject to control by the New Mexico State Engineer, acting under a decree which would prevent or seriously inhibit future growth of Indian uses,



particularly future use of ground water. We have, therefore, concluded that a continuance should be sought for a period of about six months in order to allow time to redirect the theory and development of the case. Our reasons for these conclusions are explained below.

1. Present Development of Case. The Government has attempted to develop the case without a chief counsel and without a unified legal theory. (Several possible theories of Pueblo water rights have been pieced together but they do not form a comprehensive whole.) Although an enormous amount of work has been undertaken and a great deal completed by competent and willing personnel, the work has not been organized or directed to a clearly stated objective. The Government has asserted as alternatives five separate legal theories, one of which is substantially like the State's position. It has prepared hydrological studies which show hypothetical uses of the entire surface flow on Indian lands but has not developed adequate studies of available groundwater. Neither the detailed supporting studies nor the technicians and experts who made them are ready for trial presentation and cross-examination, and the needed exhibits have not been prepared and organized for introduction. In the area of legal theory and argument, work has been concentrated in the area of Spanish law. At this time we question whether there has been adequate research regarding the actions of Congress, the Pueblo Lands Board, and the courts with respect to Pueblo water rights in connection with the controversies over Pueblo lands which began with the Sandoval decision in 1913.

We believe the present theory of the Government's case has not been properly crystallized and that, in consequence, some of the evidence developed

in the present confusion may well confirm the State's theory. As we understand the State's argument, it has developed its technical data to show that all surface waters in the watershed are over-appropriated. That is, not all lands presently under ditch irrigation by Indians and non-Indians can be irrigated in a normal year. It is the State's contention that groundwater must be rejected as an alternative source, in part on economic grounds. The State will urge the Court to limit Indian rights to their historical or present beneficial use and to place control of the watershed, both surface and ground water, under the State Engineer. If an Indian priority is allowed, it will cover little more than present use, so that curtailment of non-Indian appropriations will be minimized (or a later attempt will be made to reduce Indian rights under the beneficial use doctrine). The Government's evidence, as now conceived, will show that Indian claims cover all available surface water and the total curtailment of non-Indians is required without showing that groundwater is a practical additional source. The Government has not developed evidence to show the ameliorating effects on the stringent surface supply of the proposed Nambe Reservoir Project or feasible waste-saving improvements such as ditch-lining, leveling, better control of return flows. In the face of such evidence, the Court might well give the State Engineer the tight control he seeks.

2. Clarification of Goals. The Government's case suffers from confusion about the goals of the case, from a lack of understanding of what "winning" the case must entail. This is seen in the presentation of alternative legal theories, which include a right "based upon appropriation and beneficial use" to irrigate all "historically irrigated" lands. That is nearly the State's basic

theory of its case. The other theories, based on Spanish law, the "pueblo rights doctrine", the Federal "reservation theory", and the "aboriginal or Indian title doctrine", are fragmentary and unclear. These theories encompass important facets, but they do not assert the crucial issue: Indian water rights, like Indian lands, are governed solely by Federal law. This issue is fundamental to a conception of the case and to a clear idea of "winning". We believe the Government will win the case if it obtains a judgment defining Pueblo water rights exclusively by reference to existing Federal law and a decree which places control of the watershed in a Federal agency charged with the primary duty, as trustee, of supplying sufficient water (surface or underground) to the Pueblos to satisfy their rights. On the other hand, the case will be "lost" if the Pueblos' rights are made subject to the prior appropriation doctrine of State law and to the control of the State Engineer (even if he acts as water master of the Federal court). To win, the Government must develop a clear and unified theory of applicable Federal law.

3. Theory Based on Federal Law. The sources of Federal law which define the water rights of the Pueblos are not difficult to ascertain, but they have not yet been adequately explored and worked-up in memoranda or briefs. We have, in the brief life of this review, not been able to do more than identify the most important resources:

- (a) the Treaty of Guadalupe Hidalgo, which preserved all rights of the Pueblos under Spanish and Mexican law -- and which in turn guaranteed sufficient water for their lands and for all present and future needs;

- (b) the actions of Congress, the Federal government, and the courts, which have dealt with the lands and water rights of the Pueblos, particularly the Pueblo Lands Acts of 1924 and 1933, the reports of the Pueblo Lands Board, the court decisions confirming those reports; and
- (c) the Winters doctrine as enunciated in the well-known line of cases culminating in Arizona v. California.

We believe the Government must show that Congress, in the Pueblo Lands Acts, confirmed the title and water rights of non-Indians, paid compensation to the Pueblos for the Government's failure to prevent loss of such rights, and confirmed the prior rights of the Pueblos for the water needed to irrigate their remaining lands. From our preliminary research, we believe that complete analysis of the historical records would make that showing. (It was on the State's interpretation of the Pueblo Lands Acts that the Government's case foundered last summer when Judge Payne showed the direction of his thinking.)

In addition to definition of Indian rights, the Federal trustee should insure that water needed to satisfy the rights of its Indian wards is administered by a Federal agency under Federal law. The Government's present case has paid scant attention to the terms of the decree which will terminate the adjudication and determine how water will be supplied to fulfill the Indians' rights. Here, we believe, recognition must be given to the apportionment of water between Indians and non-Indians, the freezing of non-Indian rights, and the allocation of all groundwater in the watershed for present and future Indian needs, without limit. The decree must, of course, provide for curtailment of non-Indian users where necessary to protect Indian rights to irrigate the Pueblo's irrigable lands, but



predictions of immediate, inevitable, and complete curtailment of non-Indians should be opposed as speculative and unfounded. Available groundwater must be shown to rebut such assertions.

4. Development of Additional Evidence. The formulation of a unified legal theory and a related decree will require two significant efforts to provide supporting evidence not now available:

- (a) a complete historical review of all important Federal actions respecting the Pueblos after 1848, with particular emphasis on the Pueblo Lands Board period in the 1920's and early 1930's; and
- (b) a thorough groundwater study to show the quantity present and the anticipated effects of withdrawal, and a legal analysis supporting the Pueblos' right to use groundwater without control by the State Engineer.

In addition, evidence previously developed should be reshaped to support the central theory.

The historical study should be contracted to an experienced historian, familiar with the archival records, the Indian policies of the Federal Government, and the Pueblo Lands Board's activities. An effective witness will be needed in this area, and the historian should be able to assure the Court that all existing records have been reviewed and considered in reaching his opinions and conclusions. Part of the groundwater study can be done by the U.S.G.S. using existing staff and capabilities. However, a qualified hydrologist should be retained to testify concerning the results achieved by the U.S.G.S. We believe it will be necessary to construct a digital computerized model of the watershed in order to show the amounts which may be withdrawn without important effects on other appropriations

in the watershed or in the valley of the Rio Grande. Both of these studies should go forward in close cooperation with legal research directed by a chief counsel.

5. Time Required. Although our estimate may require later revision, we believe six months should be obtained to allow for completion of the studies referred to above. We wish to avoid recommending a continuance either for more time than would reasonably be needed for proper completion of work pursued with diligence or for insufficient time, which would force completion in a hasty and inadequate manner. There are various problems in arranging for and obtaining the work needed, and six months seems to be the most reasonable estimate of the time required.

6. Chief Counsel. A chief counsel for the Government's case must be designated forthwith, and he should be in Albuquerque to have continuing contact with and give direction for preparation of exhibits and witnesses. Unless this is done, other preparations may go for naught. The man chosen should have the trial experience needed to shape this complex, difficult, and important suit. He should be able to devote a significant portion of his time to direction and coordination of the preparations from now until trial is complete. Because the Court has already indicated a predisposition to accept the State's theory of the case, he should have prestige to speak with authority for the United States.

Among present counsel, Tom Garrity has acquired valuable knowledge of the case and has worked closely with some of the witnesses, with emphasis particularly in the area of Spanish law. His familiarity with the case will be helpful, and his commission as special assistant U. S. Attorney should be promptly

renewed so that he can assist in the conduct of the trial.

In reaching the conclusions set forth above, we do not intend to derogate the competence, commitment, or effort of any who have worked on the case to this point. The problems are basically conceptual and organizational. Once the case has been given a head and a new direction, we believe the evidence and arguments can be developed and presented effectively. In our judgment, the case can be won, and we urge immediate action on these recommendations to achieve that result.

William C. Schaab

Philip R. Ashby

John D. Donnell