

form for Sections 3, 5 and 7 of this stream system adjudication.

II. Judgment on the Pleadings

In determining a motion for judgment on the pleadings, filed pursuant to A Fed. R. Civ. P. Rule 12(c), a court accepts all facts pleaded by the non-movant as true, and reviews all inferences to be drawn from the facts in the light most favorable to the non-moving party. Park University Enters., Inc. v. American Cas. Co., 442 F.3d 1239, 1244 (10th Cir. 2006); Realmon v. Reeves, 169 F.3d 1280, 1283 (10th Cir. 1999). Judgment on the pleadings should be granted if the moving party has clearly established that no material issue of fact remains to be resolved Park University, *id.*

In determining the motion, a court may consider any of the pleadings, including the complaint, the answer and any written instruments attached to them. 2 Moore's Federal Practice Third Edition § 12.38 (2007). Notwithstanding Defendant's allegation that he "objects to the description of the water rights contained in the proposed Consent Orders tendered to him by Plaintiff State of New Mexico ... ," Answer at 1, the exhibits attached to the answer indicate that he raises no substantive objections to the elements of the water rights which have been recognized by the State and which form the basis for the proffered consent orders. Instead, Defendant takes issue with certain phrases used in the consent order form, which form and others have been in use since being approved by the Court in April, 2000.

Defendant's central argument is that the "strict accordance" standard is nowhere to be found in any statute, constitutional provision or case law in New Mexico. He would, instead, substitute the phrase "in conformity with" in the appropriate injunction. Answer, Exhibit C at 2 - 3. Defendant offers no authority for his proposition that the standard phrase should be precluded because it appears nowhere in the law.

The language indicating that defendants are enjoined from any use of the surface waters of the stream system except “in strict accordance” with the court’s orders has been used very nearly since the inception of this adjudication. See, Motion at 7. If indeed there is any functional difference between the two phrases, that difference, as a matter of law, does not constitute an issue of fact which is material to the adjudication of the elements of Defendant’s rights.

III. Recommendation

I recommend that the Court grant the State’s Motion and grant the State’s request to submit an order enjoining the Defendant, and any successors, heirs and assigns from any use of the surface waters of the Rio Chama Stream System except in “strict accordance” with the water rights described in the State’s proposed consent orders.

Respectfully submitted,

Vickie L. Gabis

Special Master