

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

UNITED STATES OF AMERICA	)	
and	)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE	)	
ENGINEER,	)	
	)	
Plaintiffs,	)	
	)	No. 01cv00072 BB/LFG
and	)	
	)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,	)	ADJUDICATION
	)	
Plaintiffs in Intervention,	)	Subfile Nos: ZRB-1-0075
	)	ZRB-2-0075
v.	)	ZRB-3-0123
	)	ZRB-4-0295
A & R PRODUCTIONS, et al.	)	ZRB-5-0054
	)	
Defendants.	)	
_____	)	

**JOINT MOTION TO CONSOLIDATE STATE TRUST LAND SUBFILES, ESTABLISH  
MODIFIED PROCEDURES, AND SET PRELIMINARY SCHEDULE**

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The Plaintiffs United States of America (“United States”) and State of New Mexico, *ex rel.* State Engineer (“State”), and the Defendant Commissioner of Public Lands (“Commissioner”) (collectively the “moving parties”), hereby move the Court to (1) consolidate subfiles concerning portions of the Commissioner’s claims described in five different Hydrographic Survey Reports; (2) modify procedures previously established under several different procedural and scheduling orders into a single set of procedures tailored to the unique circumstances of the Commissioner’s water rights claims in this adjudication; and (3) establish preliminary deadlines for the conclusion of consultations among the moving parties and the filing of pleadings for the purpose of framing any remaining issues for motions practice and trial. In support of this motion, the moving parties assert:

1. For practical reasons, the Hydrographic Survey of the non-federal lands in the Zuni River Stream System conducted by the United States' contractors has been divided into a number of sub-areas and has been reported in five volumes previously filed with the Court: See Docs. 339, 393, 464, 805, & 961. As a consequence of the technical organization of the Hydrographic Survey, each of these Hydrographic Survey Reports assigned a different subfile number to the New Mexico Public Lands ("State Trust Lands") surveyed within the scope of the report. In accordance with applicable procedural and scheduling orders, the United States and the State have duly served the Commissioner with proposed consent orders concerning each of these subfiles and, after submission of timely requests for consultation by counsel for the Commissioner, the moving parties have engaged in preliminary consultations concerning these subfiles.

2. The division of these State Trust Lands into five subfiles reflects no difference in ownership or applicable law, and now impedes the moving parties' attempts to resolve the Commissioner's water rights claims. Indeed, as a consequence of the evolution of this case, different portions of the State Trust Lands are presently subject to slightly different and inconsistent procedural requirements. This circumstance does not benefit any party or serve the interests of "the just, speedy, and inexpensive determination" of the Commissioner's claims. *Cf.* Fed.R.Civ.P. 1. Consolidating the State Trust Lands subfiles, and specifying the procedures applicable to those subfiles, will avoid confusion and needless inefficiency.

3. On September 10, 2004, the Commissioner filed a *Declaration of State of New Mexico Trust Reserved Water Rights* (Doc. 347) ("Declaration") which asserted, *inter alia*, that the Commissioner manages a Trust which owns, in addition to water rights established by beneficial use under New Mexico State law, reserved rights under Federal law to use ground and

surface water. The Declaration did not, however, state the source, point of diversion, priority, place of use, or quantity of water for any particular claim.

4. On August 15, 2005, the Commissioner filed herein a *Status Report From Commissioner of Public Lands* (Doc. 379) which stated, at 1, that, at that time, the Commissioner was “in the process of deciding whether to assert a claim for reserved water rights in this case,” but that “the research project and assessment is extensive and time-consuming.”

5. The United States and the State are presently fully committed with respect to available staff and resources for litigating the various proceedings and subproceedings in this case and other New Mexico water adjudications, and are not presently able to divert such resources to address the entire scope of the Commissioner’s potential claims. However, for purposes of planning, and securing sufficient funding appropriations in the future, the moving parties have agreed to seek a comprehensive procedural framework and preliminary schedule for the adjudication of the Commissioner’s claims.

6. Consolidating the subfiles concerning the water rights for the State Trust Lands will also simplify eventual *inter se* proceedings concerning such rights. The moving parties have not yet agreed on a timeframe for such *inter se* proceedings, but agree that the purposes of providing relevant notice to other parties to the adjudication, and of avoiding needless complexity and confusion during such proceedings, are best served by consolidating the State Trust Lands subfiles.

WHEREFORE, the moving parties respectfully urge the Court to enter the proposed order submitted herewith to (1) consolidate subfiles concerning portions of the Commissioner’s claims described in five different Hydrographic Survey Reports; (2) modify procedures previously established under several different procedural and scheduling orders into a

single set of procedures tailored to the unique circumstances of the Commissioner's water rights claims in this adjudication; and (3) establish preliminary deadlines for the conclusion of consultations among the moving parties and the filing of pleadings for the purpose of framing any remaining issues for motions practice and trial.

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/s/ Bradley S. Bridgewater

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