

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

UNITED STATES OF AMERICA, for Itself)	
and as Trustee for the Zuni Indian Tribe, Navajo)	
Nation and Ramah Band of Navajos and)	
)	
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
)	
Plaintiffs,)	No. 01cv00072-BB
and)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
Plaintiffs in Intervention,)	ADJUDICATION
v.)	
A & R PRODUCTIONS, et al., Defendants)	Sub-areas 4 and 8

**PROCEDURAL AND SCHEDULING ORDER
FOR THE ADJUDICATION OF WATER RIGHTS CLAIMS
IN SUB-AREAS 4 AND 8 OF THE ZUNI RIVER STREAM SYSTEM**

This Order supercedes the Interim Procedural Order entered June 24, 2003 (Docket No. 208) and is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the adjudication of water rights claims for surface and groundwater use in Sub-Areas 4 and 8 of the Zuni River stream system.

Having considered the comments and suggestions of all interested counsel and pro se parties, and being fully advised in the premises, it is hereby ordered that the following will govern the course of the adjudication.

I. SUB-AREAS 4 AND 8

This Order governs the adjudication of sub-areas 4 and 8 of the Zuni River stream system, as described below:

A. Subarea 4 of the Zuni Basin consists of all of Township 10 North, Range 14 West; portions of Sections 31 and 32 in Township 10 North, Range 12 West; portions of Sections 3 - 5, 10, 14, 15, 23 - 25 and 36, and all of Sections 6 - 9, 16 - 22, and 26 - 35 in Township 10 North, Range 13 West; portions of Sections 30 - 33 in Township 11 North, Range 13 West;

portions of Sections 6, 7, 17, 18, 20 – 22, 25 – 27, and 30, and all of Section 19 and 28 – 36 in Township 11 North, Range 14 West; a portion of Section 30 in Township 12 North, Range 14 West; and a portion of Section 25 in Township 12 North, Range 15 West.

B. Subarea 8 of the Zuni Basin consists of all of Township 9 North, Range 14 West, and Township 8 North, Range 14 West; portions of Sections 5, 8, and 17 – 19, and all of Sections 6 and 7 in Township 7 North, Range 13 West; portions of Sections 16, 17, 19 – 24 and 30, and all of Sections 1 – 15 and 18 in Township 7 North, Range 14 West; portions of Sections 1, 2, 11, 14, 15, 21, 22, 28, 32 and 33, and all of Sections 3 – 10, 16- 20 and 29 – 31 in Township 8 North, Range 13 West; portions of Sections 4, 5, 9, 10, 14, 15, 20 – 22 and 29 – 31, and all of Sections 6 – 8 and 16 – 19 in Township 9 North, Range 12 West; and a portion of Section 36 and all of Sections 1 – 35 in Township 9 North, Range 13 West.

II. JOINDER OF CLAIMANTS-HYDROGRAPHIC SURVEY REPORT

A. No later than 60 days following the entry of this Order, the United States shall generate *Consent Orders* for Claimants identified by the hydrographic survey reports for Sub-Areas 4 and 8, and forward those *Consent Orders* to the State of New Mexico (“State”) for review. Within thirty (30) days of its receipt of a *Consent Order* from the United States, the State shall either indicate its approval by executing the *Consent Order* and returning it to the United States, or notify the United States of its objections to the *Consent Order*.

B. All *Consent Orders* will be joint *Consent Orders*. If the State does not approve a *Consent Order*, that *Consent Order* shall not be served on the claimant.

C. Service on known claimants in Sub-Areas 4 and 8 shall be accomplished by the United States. Claimants not already joined as defendants shall be sent a packet by certified mail that includes: (1) the August 2003 *Amended Complaint*; (2) a *Request for Waiver of Service of Summons*; (3) two copies of a *Waiver of Service of Summons*; (4) a copy of the *Notice of Water Rights Adjudication* (as attached to this order); (5) a proposed *Consent Order*, signed on behalf of the United States and the State, including a detailed map or aerial photograph showing the

location of water uses described; (6) a *Request for Consultation Form*; and (7) a form *Answer*. If no *Request for Waiver of Service* is returned to the United States within 30 days (or 60 days if the service packet was sent to an address outside of the United States) the Claimant shall be personally served with the *Summons*, *Complaint* and other information in the packet. Claimants already joined to the suit shall be sent a packet by certified mail that includes the *Notice of Adjudication*, *Request for Consultation*, the *Consent Order* executed by the State, and a form *Answer*.

D. Service on known Claimants whose whereabouts are unknown, and unidentified and unknown Claimants in all Sub-Areas shall be made by publication by the United States after the last hydrographic survey report for the Zuni River stream system has been completed and filed with the Court. The publication shall include a copy of the *Notice of Adjudication*.

E. Mailing of a service packet by the United States to a Claimant shall be done within thirty days after the *Consent Order* has been executed and returned by the State.

F. The *Notice of Adjudication* generated by the Court explains the adjudication process, and the Claimant's rights and obligations under this Order. In order to conserve funds and resources, the *Notice of Adjudication* mailed to Claimants may be printed double sided, single spaced, with reduced margins.

G. A *Request for Consultation* form shall be provided so that Claimants may request in writing a consultation with the United States and the State in the event they disagree with any element of the proposed *Consent Order*, pursuant to paragraph III.B.1. The *Request for Consultation* shall identify the Claimant, the subfile, and the nature of the dispute.

H. The proposed *Consent Order(s)* shall set out all the elements of the respective water right.

I. A form *Answer* is provided for parties who disagree with the proposed *Consent Order*. Any subfile *Answer* filed with the Court must identify the subfile, explain the Claimant's reason for disagreeing with the proposed *Consent Order*, and include a statement that the

Claimant has made a good faith effort to consult with and resolve the disagreement with the United States and the State.

III. RESPONSES

A. Agreement

1. Claimants who agree with all of the elements of the water rights claims as set out in the proposed *Consent Order(s)* may sign and return each order to the United States. The United States shall submit the signed orders to the Court for approval and filing, and shall forward a copy to the State within thirty (30) days.

2. A signed and returned *Consent Order* serves as the Claimant's *Answer* to the *Complaint*. As between the United States, the State and the Claimant, the *Consent Order* finally adjudicates the water rights elements contained therein. Each *Consent Order* is subject to challenge by other Claimants during the *inter se* proceedings, which will be scheduled following the completion of subfile activity.

B. Disagreement

1. Claimants who disagree with any element of the proposed *Consent Order* shall return to the United States their *Request for Consultation*, as described in paragraph II.G, and discuss the disagreement with United States and State personnel. Good faith participation in consultation with the United States and the State is required to satisfy the discovery requirements of Rule 26(a)(1)(A) and (B) of the Federal Rules of Civil Procedure, and must be accomplished before the dispute can be placed before the Court. Accordingly, Claimants are required to consult with the United States and the State, and are expected to make available documents or other information that support their position. To the extent possible, the United States shall have available at consultations the data upon which the consent order is based. Information that cannot be provided to the Claimant at consultations shall be disclosed to the Claimant and made available for examination at the Hard Copy Repository maintained by the United States at the University of New Mexico's Zollinger Library in Gallup, New Mexico. If the disagreement can be resolved

at the consultation, the Claimant shall sign either the original *Consent Order* or a new *Consent Order* that incorporates any changes agreed upon. The United States shall submit the signed orders to the Court for approval and filing, and shall forward a copy to the State within thirty (30) days.

2. Claimants who still disagree with the proposed *Consent Order* after consultation with the United States and the State shall file the form *Answer* included in the service packet with the Court on or before June 1, 2005, and shall mail a copy of the form *Answer* to the United States, which shall forward a copy to the State within thirty (30) days.

3. A form *Answer* disagreeing with the proposed *Consent Order* must identify the subfile, explain the Claimant's reason for disagreeing with the proposed *Consent Order*, and include a statement that the Claimant has made a good faith effort to consult with and resolve the disagreement with the United States and the State.

C. Failure to Respond

1. A Claimant's failure to make a request for consultation, or make other arrangements with the United States for a field investigation shall be considered grounds for entry of a default order that incorporates the proposed *Consent Order*, in accordance with the criteria set forth in paragraph III.C.3 of this Order.

2. A Claimant's failure to sign and return a *Consent Order* or file a form *Answer* by June 1, 2005 shall be considered grounds for the entry of a default order which incorporates the proposed *Consent Order*.

3. The United States shall request the Clerk of the Court, under Rule 55(a), to enter the default of Claimants who have failed to sign and return a *Consent Order* or file a form *Answer* by June 1, 2005. Provided, (1) no default shall be entered against any Claimant who has not been properly served with process or waived such service; (2) no default shall be entered until a Claimant has had at least 30 days to review a proposed *Consent Order* or revised proposed

Consent Order sent by the United States; and (3) no default shall be entered if the United States, the State and the Claimant jointly move the Court to extend the deadline for filing an *Answer*.

IV. STATUS CONFERENCE

A status and scheduling conference concerning Sub-Areas 4 and 8 will be held on July 18, 2005, at a time and place to be announced. Counsel for the United States shall be prepared to report on the progress of the adjudication of water rights in Sub-Areas 4 and 8 to date, and to discuss further scheduling, including potential hearings in disputed individual subfile proceedings.

V. CHANGE OF ADDRESS OR OWNERSHIP

All Claimants, whether or not they are represented by counsel, are responsible for informing the United States of any changes in their mailing address or changes in ownership of water rights or real property associated with the rights by filling out the *Change of Address or Ownership Form* (attached to the *Notice of Adjudication* as Form A) and forwarding it to Attn: Zuni Adjudication, U.S. Department of Justice, Suite 945N, 999 18th Street, Denver, Colorado, 80202 within thirty (30) days of such a change.

IT IS SO ORDERED this 5th day of January, 2005.

/electronic signature/
SPECIAL MASTER VICKIE L. GABIN