

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

**UNITED STATES OF AMERICA,  
and  
STATE OF NEW MEXICO, *ex rel.*  
STATE ENGINEER,**

**Plaintiffs,**

**And**

**No. 01cv0072 BB/WWD-ACE**

**ZUNI INDIAN TRIBE AND  
NAVAJO NATION,**

**ZUNI RIVER BASIN**

**Plaintiffs-in-Intervention**

**v.**

**A & R Productions, *et al.*,**

**Defendants.**

**AMENDED 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 amends and supercedes the January 5, 2005 *Procedural And Scheduling Order For The Adjudication Of Water Rights Claims In Sub-Areas 4 And 8 Of The Zuni River Stream System* (Docket No. 355), as modified by the *Order on Addendum to Procedural and Scheduling Order* entered January 11, 2005 (Docket No. 356), 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 twenty (20) 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 twenty (20) 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, 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*, the proposed *Consent Order* executed by the United States and the State, a *Request for Consultation* form, 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 20 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 January 10, 2006, 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 January 10, 2006 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 January 10, 2006. 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 November 9, 2005. 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 8th day of September, 2005.

/electronic signature/  
SPECIAL MASTER VICKIE L. GABIN



**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,	)	<b>No. 01cv00072-BB</b>
and	)	
ZUNI INDIAN TRIBE, NAVAJO NATION,	)	ZUNI RIVER BASIN
Plaintiffs in Intervention,	)	ADJUDICATION
v.	)	
A & R PRODUCTIONS, et al.,	)	
Defendants.	)	

---

**NOTICE OF WATER RIGHTS ADJUDICATION**

TO: ALL PERSONS OWNING WATER RIGHTS IN THE ZUNI RIVER STREAM SYSTEM, ITS TRIBUTARIES AND ASSOCIATED UNDERGROUND WATER BASIN WITHIN THE STATE OF NEW MEXICO, INCLUDING PERSONS PREVIOUSLY JOINED AS DEFENDANTS IN THE ABOVE-CAPTIONED ACTION AND ALL UNKNOWN CLAIMANTS OF INTEREST.

YOU ARE HEREBY NOTIFIED of the procedure established by the United States District Court, District of New Mexico, for the adjudication of your water rights. This notice describes the litigation concerning water rights in the Zuni River stream system, explains documents you may be receiving concerning that litigation, and describes actions you may take to protect your rights.

**PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES PROCEEDINGS THAT MAY AFFECT YOUR LEGAL RIGHTS. THIS NOTICE SUPERCEDES ANY PREVIOUS NOTICE YOU MAY HAVE RECEIVED CONCERNING THIS CASE.**

**Brief Summary of the Proceedings and the Hydrographic Survey**

The United States filed this lawsuit to adjudicate all surface and underground water rights in the Zuni River stream system in 2001. The State of New Mexico, ex rel. State Engineer (the "State"), the Zuni Indian Tribe, and the Navajo Nation are also plaintiffs in the case. By law, all other persons who may claim a right to the use of water must be made parties defendant to such a suit. A water adjudication is a legal proceeding in which the Court hears and decides all water rights claims in the stream system, and confirms any valid water rights, whether claimed by a plaintiff or defendant, by court order.

The United States, in consultation with the State of New Mexico, is completing a hydrographic survey of the Zuni River stream system. A hydrographic survey is a technical study that identifies, maps and reports the use of water in a particular stream system. A hydrographic survey starts with aerial photography and a review of the existing water rights records for the area. Information on irrigation, domestic, municipal, industrial and stockwatering use is recorded. Land ownership is verified using information from county records. However, although a hydrographic survey gathers information on land ownership, it does not establish legal ownership to land or determine property boundaries. The survey only produces evidence on the location, amount, and ownership of water rights.

For purposes of the Hydrographic Survey, the Zuni River stream system has been divided into 10 sub-areas. As the Hydrographic Survey is completed for each sub-area, a Hydrographic Survey Report ("HSR") and hydrographic survey maps for that area will be filed with the Court. Some of these filed HSRs may combine information concerning water uses in more than one sub-area.

**Important Documents You May Receive**

If the completed HSR for a sub-area identifies you as a water user or water right claimant, you must be joined as a defendant to this lawsuit. Accordingly, if you are not currently a defendant in the case, the United States will send you a packet of documents including: (1) the August 1, 2003 *Amended Complaint*, (2) a

*Request for Waiver of Service of Summons*, (3) two copies of a *Waiver of Service of Summons*, and (4) a copy of this *Notice of Water Rights Adjudication*. If you do not return a *Waiver of Service of Summons* to the United States within 30 days of service of the packet (or 60 days if the service packet was sent to you outside of the United States) by mail, the United States may be required to personally serve you with the *Amended Complaint* and a *Summons*. In that case, you may be assessed the costs of personal service pursuant to the Federal Rules of Civil Procedure.

In addition, all persons identified by an HSR as water users or water right claimants, including persons who are already defendants in this lawsuit, may receive (5) a proposed *Consent Order*, signed on behalf of the United States and the State, which describes your water rights, and includes a detailed map or aerial photograph showing the location of your water uses; (6) a *Request for Consultation* form; and (7) a form *Answer*. These last three documents may, or may not, accompany the service packet described above.

If you have an attorney who represents you in these matters, or decide to obtain an attorney, you should give the attorney all of these documents.

### Procedure

Because of the large number of parties and water rights involved in this water rights adjudication, the Court will proceed with this case in two basic phases. In the first phase, “subfiles,” which are like small cases within the over-all litigation, will be created to deal with the water rights claims of individual defendants. Depending on the number, location, and other characteristics of your water rights claims or uses, you may be named in more than one subfile. Each subfile is intended to resolve, either through settlement or litigation, all issues between the United States, the State, and the person or persons identified as having a claim based on the water uses involved in that subfile. In the second phase of the adjudication, known as the *inter se* (Latin for “among or between themselves”), all parties to the adjudication other than the United States and the State will be allowed to make any objections they have to each other’s water rights as identified in the subfiles. After the *inter se* phase is resolved, the Court will enter a final decree that defines all of the water rights within the Zuni River stream system.

**If you agree with a proposed *Consent Order*** you receive, including all elements of your water right set out in that *Consent Order*, you may sign and return that order to the United States. Within thirty 30 days of receiving the signed *Consent Order* from you, the United States will provide a copy to the State and submit the order to the Court for approval and filing. A signed and returned *Consent Order* will serve as your *Answer* to the *Amended Complaint* for the subfile covered by the *Consent Order* and will finally adjudicate the water rights elements contained therein as between the United States, the State, and you. However, each *Consent Order* is subject to challenge by other parties to the case during *inter se* proceedings, which will be scheduled following the completion of the initial phase of litigation involving the United States and the State.

If you receive more than one proposed *Consent Order*, your agreement with one or more of such orders does not prevent you from disagreeing with any other proposed *Consent Orders* you receive.

**If you disagree with a proposed *Consent Order*** you receive, including any element of the water right set out in that *Consent Order*, you must fill out the *Request for Consultation* form you received and return it to the United States and discuss your disagreement with the United States and State personnel when they contact you. Good faith participation in consultation with the United States and the State is required to satisfy the discovery requirements of Federal Rules of Civil Procedure 26(a)(1)(A) and (B), and must be accomplished before the dispute can be placed before the Court. **THE COURT WILL NOT HEAR YOUR DISAGREEMENT WITH THE PROPOSED CONSENT ORDER UNLESS YOU FIRST PARTICIPATE IN CONSULTATION.** Accordingly, you are required to consult with the United States and the State, and are expected to make available to them documents or other information that support your position. To the extent possible, the United States will have available at consultations the data upon which the consent order is based. Information that cannot be provided to you at the consultation will be made available for you to examine at the Document Repository maintained by the United States for this case at the University of New Mexico’s Zollinger Library in Gallup, New Mexico.

If the disagreement can be resolved by consultation, you may sign either the original *Consent Order* or a new *Consent Order* that incorporates any changes agreed upon. The United States will, within 30 days, submit the signed orders to the Court for approval and filing, and shall forward a copy to the State.

If the disagreement cannot be resolved by consultation, you must complete, sign, and file the form *Answer* provided to you with the Court, and mail a copy of the form *Answer* to the United States. Your form *Answer* must identify the subfile for which you disagree with the proposed *Consent Order*, explain why you disagree with the proposed *Consent Order*, and include a statement that you made a good faith effort to consult with and resolve the disagreement with the United States and the State.

**IF YOU FAIL TO RESPOND TO A PROPOSED *CONSENT ORDER*, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.** The packet of materials sent to you by the United States will indicate the deadline established by the Court for you to file an *Answer* rejecting the proposed subfile *Consent Order*. Before that date, you must either (a) sign and return a *Consent Order* offered by the United States and the State, or (b) file a form *Answer* rejecting the proposed *Consent Order*, following consultation with the United States and the State. Failure to file a timely *Answer*, or to consult in good faith with the United States and the State before filing an *Answer*, will be considered grounds for entry of a Default Order that incorporates the terms of the proposed *Consent Order*, provided that no default will be entered if (1) you have not been properly served with process or waived such service; (2) you have not had at least 30 days to review the proposed *Consent Order*; or (3) you, the United States, and the State jointly move the Court to extend the deadline for your *Answer*.

**Change of Your Address or Ownership**

Whether or not you are represented by counsel, you are responsible for informing the United States in writing within 30 days of any changes in your mailing address or changes in ownership of water rights or real property associated with water rights. Notice of such changes may be made using the form included below as FORM A. This form will also be available at <http://www.zunibasin.com>.

**Other Important Addresses**

Documents that must be filed with the Court may be mailed, or delivered in person, to the following address:

Clerk's Office  
U.S. District Court  
333 Lomas N.W.  
Albuquerque, NM 87102

Communications to the United States may be addressed to:

Bradley S. Bridgewater  
U.S. Department of Justice  
999 Eighteenth St., Suite 945N  
Denver, CO 80202  
Phone: (303) 312-7318  
Fax: (303) 312-7379

Communications to the State may be addressed to:

Edward C. Bagley  
Office of the State Engineer, Legal Division  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Phone: (505) 827-6150  
Fax: (505) 827-3887

**Additional Information**

Pursuant to Court order, the United States maintains additional information concerning this case at: <http://www.zunibasin.com>

This Notice approved this \_\_\_\_ day of \_\_\_\_\_, 2004

---

VICKIE GABIN, SPECIAL MASTER

**FORM A**

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

UNITED STATES OF AMERICA, et al., )  
Plaintiffs, )  
v. ) CIV No. 01 0072 BB/WWD-ACE  
A & R Productions, et al., )  
Defendants. )

---

**CHANGE OF ADDRESS OR OWNERSHIP FORM  
ZUNI RIVER BASIN ADJUDICATION**

---

Check the appropriate box to notify the United States of changes in your address, or in the ownership of real property, for purposes of this adjudication. **Type or print carefully.**

**CHANGE OF ADDRESS**

**Former address of Defendant(s):**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

**Please change the address to:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Daytime phone:** \_\_\_\_\_

**CHANGE OF OWNERSHIP**

*(Note: A copy of the deed must be attached to any change of ownership form.)*

This change applies to the following subfile(s):

---

**Real property formerly owned by:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

**Daytime phone:** \_\_\_\_\_

**has been conveyed to:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

**Daytime phone:** \_\_\_\_\_

Signature of former owner (seller): \_\_\_\_\_ Date: \_\_\_\_\_

Signature of new owner (buyer): \_\_\_\_\_ Date: \_\_\_\_\_

**Mail this form to "Attn: Zuni Adjudication, U.S. Department of Justice, 999 18<sup>th</sup> St., Suite 945N, Denver, CO 80202."**