

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/WDS-ACE
ZUNI INDIAN TRIBE and NAVAJO NATION,)	
Plaintiffs-in-Intervention)	
)	
v.)	ZUNI RIVER BASIN
)	ADJUDICATION
)	
A & R PRODUCTIONS, et al.,)	SUB-AREA 7
Defendants.)	

PROCEDURAL AND SCHEDULING ORDER FOR THE ADJUDICATION OF WATER
RIGHTS CLAIMS IN SUB-AREA 7 OF THE ZUNI RIVER STREAM SYSTEM

This Order amends and supercedes the June 4, 2003 *Interim Procedural Order* (Doc. 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-Area 7 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-AREA 7

This Order governs the adjudication of Sub-area 7 of the Zuni River stream system, as described below:

Sub-area 7 of the Zuni River Basin consists of all of sections 1-4, 9-16, 21-27, and 34-36 in Township 9 North Range 16 West; all of sections 1-3, 9-17, and 19-36 in Township 8 North Range 16 West; all of Township 7 North Range 16 West; all of Township 6 North Range 16 West; all of sections 2-11, 14-19, and 21, and portions of sections 1,12,13,20 and 22-30 in Township 5 North Range 16 West; all of Township 9 North Range 15 West; all of Township 8 North Range 15 West; all of sections 1-24 and 26-35 and portions of sections 25 and 36 in Township 7 North Range 15 West; all of sections 3-9, 17-20, and 29-31, and portions of sections 1,2,10,11,15,16,21,28, 32 and 33 in Township 6 North Range 15 West; and portions of sections 5 and 6 in Township 5 North Range 15.

II. JOINDER OF CLAIMANTS-HYDROGRAPHIC SURVEY REPORT

A. No later than thirty (30) days following the entry of this Order, the United States shall generate Consent Orders for Claimants identified by the hydrographic survey report for Sub-Area 7, 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-Area 7 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 Special Master's January 3, 2005 *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 and another copy of the August 2003 *Amended Complaint*. Claimants already joined to the suit shall be sent a packet by certified mail that includes (1) the *Notice of Water Rights Adjudication*, (2) the proposed Consent Order executed by the United States and the State, (3) a Request for Consultation form, and (4) 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 Water Rights Adjudication*.

E. Mailing of a service packet by the United States to a Claimant shall be done within 30 days after the Consent Order has been executed and returned by the State.

F. The *Notice of Water Rights 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 of this Order. 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. **NO LATER THAN AUGUST 12, 2006**, 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. **NO LATER THAN JUNE 12, 2006**, 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. **NO LATER THAN AUGUST 12, 2006**, 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 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 no later than **June 12, 2006**, 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 August 12, 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 August 12, 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

In September, 2006, the Special Master will hold a status and scheduling conference concerning Sub-Area. Counsel for the United States shall be prepared to report on the progress of the adjudication of water rights in Sub-Area 7 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 Water Rights 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.



SPECIAL MASTER