

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

**MOTION TO ESTABLISH RAMAH SUB-AREA FOR HYDROGRAPHIC
SURVEY AND ADJUDICATION PURPOSES**

The Plaintiffs United States of America (“United States”) and State of New Mexico ex rel. State Engineer (“State”) hereby move the Special Master to establish a separate Ramah Sub-area, as further described herein, for the purpose of allowing the hydrographic survey of other portions of the Zuni River Basin to be completed without delays that may be necessary to resolve issues unique to water rights in the Ramah Sub-area. In support of this motion, the United States asserts:

1. As far as counsel for the United States and the State have been able to determine, the current division of the Zuni River Basin into ten sub-areas has never been formally endorsed by Court order. The first indication in the docket of a delineation of the sub-areas appears to be in an attachment to the February 21, 2003 *Notice of Filing*

Joint Progress Report (Doc. No. 179), filed jointly by the United States and the State. Nonetheless, the sub-areas have been adopted by inference by subsequent orders, beginning with the Special Master's March 14, 2003 *Order Setting Field Trip and Status Conference* (Doc. No. 184), and continuing with the procedural and scheduling orders for Sub-areas 4 and 8 (Doc. No. 355, amended by Doc. No. 387), Sub-areas 9 and 10 (Doc. No. 436), and Sub-area 7 (Doc. No. 561).

2. Currently, the only Hydrographic Survey Report ("HSR") remaining to be completed concerning non-Federal and non-Tribal rights includes surveyed water uses in Sub-areas 1, 2, and 3. Field work has been completed in these areas and, on March 9, 2006, the United States transmitted a draft survey report to the State. However, Sub-area 3, as currently structured, includes nearly all of the non-Federal and non-Tribal irrigation uses in the basin,¹ all of which are concentrated in the proposed Ramah Sub-area, to be described as:

Sections 2, 3, 4, and 9 in Township 10N, Range 16W, and Sections 34 and 35 in Township 11N, Range 16W, plus any portion of the Ramah Reservoir outside those sections.

3. The quantification of irrigation uses involves the issue of consumptive irrigation requirement. The United States and the State have begun discussions, and an information exchange, concerning appropriate methodologies for determining consumptive irrigation requirement. Nonetheless, the issue is technically complex and may have ramifications outside this particular adjudication. The United States and the State agree that further discussions of the subject are warranted, but acknowledge that it may ultimately have to be submitted for decision by the Special

¹ Noncommercial irrigation of less than 1 acre is generally recognized as part of a domestic use right under state law, and, by agreement of the United States and the State, has been so treated in the Zuni River Basin Hydrographic Survey.

Master and the Court. However, whether addressed in a non-litigation context or by a judicial proceeding, resolution of the matter is likely to require several more months.

4. The vast majority of the subfiles identified in the current draft HSR for Sub-areas 1, 2, and 3 involve no irrigation uses. As to these subfiles, the United States and the State have reached agreement. The Hydrographic Survey data concerning these subfiles will become dated and increasingly inaccurate, resulting in a waste of the resources invested in the survey, if proceedings on the subfiles are delayed pending resolution of the consumptive irrigation requirement issue applicable to only the relatively small number of subfiles involving irrigation uses in the proposed Ramah Sub-area. On the other hand, severing the Ramah Sub-area from Sub-areas 1, 2, and 3 will allow the HSR for Sub-areas 1, 2, and 3 to be filed, and proceedings to adjudicate the rights identified in that HSR to move forward without such waste of data and resources.

5. In addition to the consumptive irrigation requirement issue, water uses in the proposed Ramah Sub-area may raise other issues of fact and law unlikely to be relevant to the adjudication of other rights in the basin. These issues include the history of settlement of the Town of Ramah, construction of the Ramah Reservoir and organization of the Ramah Land & Irrigation Co., whether water rights within the Ramah irrigation system are owned by a corporate entity or by individual land-owners, and the nature of the storage right associated with the Ramah Reservoir. Treating Ramah as a separate sub-area would facilitate entry of a procedural and scheduling order tailored to address these unique issues.

6. Counsel for the United States has circulated a draft of this motion to counsel for the Zuni Tribe, the Navajo Nation, and the Ramah Land & Irrigation Co.

Counsel for the Zuni Tribe and the Navajo Nation have no objection to the motion. Counsel for the Ramah Land & Irrigation Co. requested, and has been provided, preliminary hydrographic survey maps of the proposed Ramah Sub-area, and also does not object to the present motion.

Accordingly, the United States and the State respectfully move the Special Master to enter an order that:

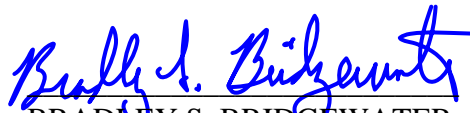
(1) establishes a separate Ramah Sub-area, consisting of Sections 2, 3, 4, and 9 in Township 10N, Range 16W, and Sections 34 and 35 in Township 11N, Range 16W, plus any portion of the Ramah Reservoir outside those sections;

(2) permits the United States to file a Hydrographic Survey Report and propose a Procedural and Scheduling Order for Sub-areas 1, 2, and 3, excluding the Ramah Sub-area; and

(3) sets a planning and scheduling conference for the purpose of determining the adjudication procedures to be followed with respect to the Ramah Sub-area.

DATED: July 11, 2006

Respectfully submitted,



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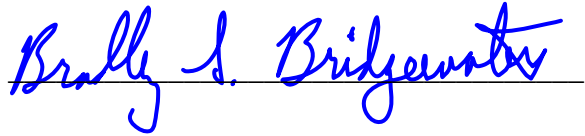
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CERTIFICATE OF SERVICE

I hereby certify that, on July 11, 2006, a copy of the foregoing *Motion To Establish Ramah Sub-Area For Hydrographic Survey And Adjudication Purposes* was mailed to all persons on the attached distribution list:

A handwritten signature in blue ink, reading "Brally S. Bridgewater", is written over a horizontal line.

United States v. A & R Productions, No. 01cv00072-BB-ACE, Distribution list.

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