

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,)	Sub-areas 4, 8, 9, 10, & 7
)	
v.)	Subfiles listed on Exhibits A & B
)	
A&R PRODUCTIONS, et al.)	
)	
Defendants.)	
)	

**JOINT MOTION TO AMEND PROCEDURAL AND SCHEDULING ORDERS
AND ESTABLISH OR REVISE DEADLINES FOR DEFENDANTS TO RETURN
REQUESTS FOR CONSULTATION AND SUBMIT SUBFILE ANSWERS**

The Plaintiffs United States of America (“United States”) and State of New Mexico ex rel. State Engineer (“State”) hereby move the Special Master to amend the procedure established by her previous sub-area procedural and scheduling orders and to allow additional time for consultations concerning subfiles listed on Exhibits A and B, and any other subfile subsequently created in Sub-areas 4, 8, 9, 10, & 7, by extending the Defendants’ deadline for filing a subfile answer in each such subfile to a date twenty (20) days after the United States, with the concurrence of the State, serves the subfile defendants with a *Notice That The Consultation Period Has Ended* together with a form subfile answer. In addition, as to those subfiles listed on Exhibit B, and any other subfile

subsequently created or revised and for which an initial service packet has not yet been served, Plaintiffs move the Special Master to (1) eliminate the United States' obligation to include a form answer in the initial service packet and (2) order that defendants who do not accept the consent order initially proposed by Plaintiffs must serve the United States with a *Request for Consultation* setting forth the nature of their objections within 60 days of delivery to defendants of the service packet containing the initially proposed consent order. Plaintiffs also seek to revise the Special Master's *Notice of Water Rights Adjudication* consistent with the procedural revisions proposed by this motion. In support of this motion, the Plaintiffs assert:

1. With respect to all of the subfiles listed on Exhibit A, the defendants have requested consultation but have not yet filed subfile answers with the Court. With respect to 16 of these subfiles, consultations have occurred and resulted in an agreement concerning additional follow-up work by Plaintiffs or Defendants which may eventually yield a completed Consent Order. Additional time is needed for the agreed-upon follow-up tasks. Consultations have not yet been arranged as to the remaining 44 subfiles listed on Exhibit A.

2. The subfiles listed on Exhibit B reflect new ownership information obtained either from updated county records, or from consultations with defendants or their attorneys. The United States has not previously served the named defendants with consent order packets for these subfiles. In addition, new defendants and new subfiles in Sub-areas 4, 7, 8, 9, and 10 may be added to this adjudication in the future as a result of new or revised hydrographic survey data, including ownership information. Defendants who disagree with the terms of the consent order proposed for any such subfile should

have the opportunity (including a fair time period), and responsibility, to timely request and participate in consultation concerning their dispute before presenting it to the Court.

3. Under the procedure previously recommended by Plaintiffs and established by the terms of the September 8, 2005 *Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System* (Doc. No. 387), the December 14, 2005 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 9 and 10 of the Zuni River Stream System* (Doc. No. 436), and the March 7, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River Stream System* (Doc. No. 561) (collectively “Procedural and Scheduling Orders”), the United States is required to include a form answer in the initial service packet for each subfile (Paragraph II.C) and a defendants’ failure to either sign and return a Consent Order or file a form answer by a date certain established by the order has been stated to be grounds for entry of a default order (Paragraph III.C.2). Nonetheless, each of those orders has also provided (in Paragraph III.B.1) that good faith participation in consultation with Plaintiffs is a prerequisite to placing any dispute concerning a proposed consent order before the Court, and (in Paragraph III.C.1) that a defendant’s failure to make a request for consultation shall also be considered grounds for entry of a default order.

4. Based on the past year of experience with this process, Plaintiffs assert that the existing requirements concerning form answers have required Plaintiffs to file repeated motions for extension, have caused confusion for many defendants, and have thereby impeded, rather than promoted, the consultation process. In some instances,

defendants have filed answers out of an abundance of caution while actually intending to reach accommodation through consultation. Other defendants have returned form answers signifying objection at the same time they returned signed *Request for Consultation* forms or even along with signed consent orders, thereby creating uncertainty concerning their intent. Many defendants have returned form answers to the United States, but have failed to file them with the Court. Defendants also have returned form answers without first making “a good faith effort to consult with and resolve the disagreement with the United States and the State.” (Procedural and Scheduling Orders at Paragraph III.B.3) Eliminating the form answer from the initial service packet will avoid sending defendants a mixed message about their obligations to participate in consultation with the United States and the State.

5. Because it is never possible for the United States to serve consent order packets on all defendants affected by a particular procedural and scheduling order on the same date, having fixed dates certain for the defendants’ responses (rather than deadlines that are relative to the date of actual service) inevitably creates inequities among the defendants. In addition, new information obtained through the consultation process, from updated county records, or as a consequent of service packets returned as undeliverable by the postal service, frequently requires Plaintiffs to amend subfiles or create new subfiles within sub-areas subject to previously-filed procedural and scheduling orders. Consent order packets for these new or amended subfiles may not be ready for service until after the fixed deadlines established by the procedural and scheduling orders have expired. As a consequence, the United States cannot serve the packets until after a motion to extend deadlines has been filed and granted by the Special

Master. In order to avoid having to file dozens of such motions, the United States tries to make them apply to as many subfiles as possible. However, scrutinizing the data to identify all of the subfiles needing such extensions has proven to be an extremely time-consuming task. Establishing deadlines for defendant actions that are relative to the dates of corresponding actions by Plaintiffs, rather than fixed as dates certain, will (1) avoid the need for repeated motions for extension, (2) accommodate the possibility of new subfiles and new service packets as required by changing ownership information, and (3) correspond better to the scheme of the Federal Rule of Civil Procedure which generally mandates response dates that are relative to the date of service of the document to which a party is responding.

6. The filing of repeated motions to extend deadlines may serve the useful purposes of keeping the Court informed about the progress on particular subfiles and helping to ensure that subfiles do not get overlooked and neglected. However, the Plaintiffs propose that periodic status reports may serve these purposes better. Plaintiffs recommend that the contents to be included in such reports, and their frequency, be a subject of discussion at a future status and scheduling conference.

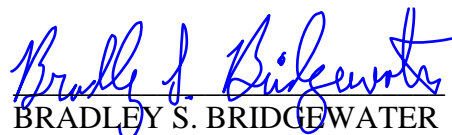
7. Because the changes that Plaintiffs are proposing herein would create a procedure that differs from that contemplated by the Special Master's May 2, 2006 *Notice of Water Rights Adjudication*, Plaintiffs are submitting herewith, as an attachment to the proposed form of order granting this motion, a revised *Notice of Water Rights Adjudication* to be included in future service packets. In addition to accommodating the changes requested by this motion, the proposed revisions to the *Notice of Water Rights Adjudication* also acknowledge that there are now 11, rather than

10, sub-areas in this adjudication, and expressly incorporate the United States' consistent practice of providing defendants with a file-stamped copy of consent orders approved by the Court.

Accordingly, as to all subfiles listed on Exhibits A and B, and any other subfile subsequently created in Sub-areas 4, 8, 9, 10, & 7, Plaintiffs are requesting that the Special Master suspend the existing deadlines for filing answers until twenty (20) days after the United States, with the concurrence of the State, serves the subfile defendants with a *Notice That The Consultation Period Has Ended* together with a form subfile answer. As to all subfiles listed on Exhibit B, and any other new or revised subfiles in Sub-areas 4, 8, 9, 10, & 7 for which service packets have not yet been served, Plaintiffs request that the Special Master eliminate the requirement to include a form answer in the initial service packet and approve inclusion of the revised *Notice of Water Rights Adjudication* submitted herewith in such packets.

DATED: September 11, 2006

Respectfully submitted,



BRADLEY S. BRIDGEWATER
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294
(303) 844-1359

COUNSEL FOR THE UNITED STATES

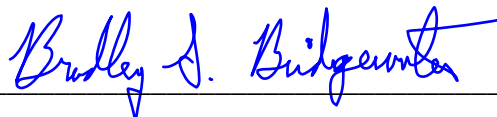
(approved via telephone 9/11/2006)

EDWARD BAGLEY
Office of the State Engineer, Legal Division
P.O. Box 25102
Santa Fe, NM 87504
(505) 827-6150

COUNSEL FOR THE STATE OF NEW
MEXICO EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I hereby certify that, on September 11, 2006, a copy of the forgoing *Joint Motion To Amend Procedural And Scheduling Orders And Establish Or Revise Deadlines For Defendants To Return Requests For Consultation And Submit Subfile Answers* was mailed to the following persons.



Special Master Vickie L. Gabin
U.S. District Court
District of New Mexico
P.O. Box 2384
Santa Fe, NM 87504-2384

Edward Bagley
Office of the State Engineer, Legal
Division
P.O. Box 25102
Santa Fe, NM 87504

Tanya L. Scott
201 Third St., NW, Suite 1750
Albuquerque, NM 87102

Susan Kery
Sheehan, Sheehan & Stelzner, P.A.
P.O. Box 271
Albuquerque, NM 87103

Peter Shoenfeld
P.O. Box 2421
Santa Fe, NM 87504-2421

James M. Noble
1775 Sherman Street, 21st Floor
Denver, CO 80203

Brian Egolf
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307

Stephen Hughes
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148

Sarita Nair
P.O. Box 1945
Albuquerque, New Mexico 87103

John Utton
Sheehan, Sheehan & Stelzner, P.A.
P.O. Box 271
Albuquerque, NM 87103

Robert W. Ionta
McKim, Head & Ionta
P.O. Box 1059
Gallup, NM 87305

Stephen P. Shadle
Westover, Shadle, Carter & Walsma
2260 S. Fourth Ave., #2000
Yuma, AZ 85364

William G. Stripp
P.O. Box 159
Ramah, NM 87321

James E. Haas
Losee, Carson & Haas P.A.
Box 1720
Artesia, NM 88211

Jeffrey A. Dahl
Lamb, Metzgar, Lines & Dahl, PA
P.O. Box 987
Albuquerque, NM 87103

Mary Ann Joca
U.S. DOA, Off. of Gen. Counsel
P.O. Box 586
Albuquerque, NM 87103

Jane Marx
2825 Candelaria Road NW
Albuquerque, NM 87107

Stanley Pollack/Bidtah Becker
Navajo Nation Dept. of Justice
P.O. Box 2010
Window Rock, AZ 86515-2010

Greg Mehojah
DOI, Office of the Solicitor
505 Marquette Ave NW Ste 1800
Albuquerque, NM 87102

Pamela Williams
Division of Indian Affairs
1849 C St., N.W., Rm 6456
Washington, DC 20240

Steven L. Bunch
N. M. Highway & Trans. Dept.
P.O. Box 1149
Santa Fe, NM 87504-1149

Sunny J. Nixon, Mark Adams
Rodey Dickason Sloan Akin &
Robb
P.O. Box 1357
Santa Fe NM 87504-1357

Bruce Boynton
Boynton, Simms-West Law Office
P.O. Box 1239
Grants, NM 87020

Peter Fahmy
Office of Regional Solicitor
755 Parfet St., Suite 151
Lakewood, CO 80215

Mark H. Shaw
9700 Entrada Pl. NW
Albuquerque, NM 87114-3776

Stephen R. Nelson
Johnson & Nelson, P.C.
P.O. Box 25547
Albuquerque, NM 87125-5547

Jay F. Stein, James C. Brockmann
Stein & Brockmann, P.A.
P.O. Box 5250
Santa Fe, NM 87502-5250

Cullen Hallmark, Esq.
Garber & Hallmark
P.O. Box 850
Santa Fe, NM 87504

William J. Cooksey
Dubois, Cooksey & Bischoff, P.A.
2020 Fourth Street, N.W.
Albuquerque, NM 87102

Virginia Aragon, Charles Aragon & Jack
W. Aragon
750 Oso Ridge
Grants, NM 87020

Ross H. Boehm & Simmie Boehm
5428 Home Ct.
Carmichael, CA 95608

Louis W. Gross, Margaret Gross &
Wilhelmina Gross
HC 61, Box 45
Ramah, NM 87321

Raymond Jose & Maryald A. Jose
2945 Chilton Place
Virginia Beach, CA 23456

Lewis S. & Karen L. Ligon
60005 Cantina Acres
Grants, NM 87020

Charles E. Mallery & Elizabeth Mallery
477 Montclair Dr. Se
Albuquerque, NM 87108

Colin E. O'Neill, Johanne F. O'Neill, &
Gregory C. Frank
343 Baker Lane
Erie, CO 80516

Joseph William Schepps
560 Montezuma, Ste 201
Sante Fe, NM 87501

Theodore B. Schnaidt & Dorothy
Schnaidt
17500 E. Palmdale Blvd.
Llano, CA 93544

Byron South & Irene P. South
P.O. Box 427
Ramah, NM 87321

John L. Bandera & Colette Bandera
P.O. Box 3056
Ramah, NM 87321

Stephens Properties, LP
171 Bear Creek Rd
Sarver, Pa 16055

Christopher Paul Dentzel & Barbara
Dentzel Cleary
535 Barker Pass Road
Santa Barbara, CA 93108

Thomas B. Gleason & Diane Gleason
45 San Francisco
Los Lunas, NM 87031

Larry W. Carver, Sally L. Carver, Louis
W. Gross, Wilhelmina M. Gross,
Jonathan Pickens, Pamela Pickens,
Sharon J. Dishongh, & Kyle Casford
P.O. Box 2970
Milan, NM 87021

Robert L. Iverson & Nancy G. Iverson
P.O. Box 358
Pinehill, NM 87357

Deborah Lee Oliver
12610 Short Ave
Los Angeles, CA 90066

Estate Of Derek Osborne Beaton
P.O.Box 355
Quemado, NM 87829

Rolf J. Conner & Marjorie Conner
Trustees For The Rolf & Marjorie
Conner Trust
P.O. Box 1545
Cave Creek, AZ 85327

H. Darrell Bogart & Patricia D. Bogart
P.O. Box 698
Fence Lake, NM 87315

Dodd H. Bogart
310 Tulane Pl. N.E.
Albuquerque, NM 87106

Kenneth Bruton
P.O. Box 746
Fence Lake, NM 87315

Hershel L. Jones & Virginia Bruton
P.O. Box 717
Fence Lake, NM 87315

John B. Davey
93 Linden St.
Williamstown, Ma 01267

Craig Fredrickson & Regina Fredrickson
2742 Veranda Rd Nw
Albuquerque, NM 87107

John G. Feely Jr. & Marcia Mccall
Family Revocable Trust
2309 Cutler Ave Ne
Albuquerque, NM 87122

Fence Lake Joint Venture
P.O. Box 2201
Sun City, AZ 87372

Hoffman Living Trust Dated September
25, 2002
P.O. Box 707
Fence Lake, NM 87315

Denise A. Jolly & David Jolly
HC 31, Box 16
Fence Lake, NM 87315

Lawrence Simon
919 S. Prospect
Park Ridge, Il 60068

Michael Norte & Jeanette Norte
7849 Quintana Ne
Albuquerque, NM 87109

Dennis M. Norton & Linda J. Norton
HCR 31, Box 13
Fence Lake, NM 87315

Maureta Bell Wilson Revocable Trust
P.O. Box 692
Fence Lake, NM 87315

Lawrence Silvis & Laura Silvis
HC Box 3
Fence Lake, NM 87615

Donnie Ray Bogart Lambden
1357 43rd Ave., #20
Greely, CO 80631

Kurt Anderson & Cynthia Anderson
P.O. Box 160
Ramah, NM 87321

Patricia C. Balok & Jack G. Balok
R.Rt., Box 26
Fencelake, NM 87315

Broe Land Acquisitions III, LLC
950 17th St., Suite 1600
Denver, CO 80202

Candy Kitchen Area Water
1224 N. 1st St.
Grants, NM 87020

Ernest Chavez
900 N. 6th St
Socorro, NM 87801

Ray K. Coho & Alice K. James
PO Box 186
Pinehill, NM 87357

Davis Revocable Trust
P.O. Box 399
Ramah, NM 87321

William J. Elam & Norma M. Elam
912 Hermosa Dr Se
Albuquerque, NM 87108

Peri Eringen
P.O. Box 391
Ramah, NM 87321

Jacque Evans & Tina Francis
5414 Past North
Spokane, WA 99205

Gale Henke
5528 Via Conejo NE
Albuquerque, NM 87111

Donna Hinnant
4129 West Eva
Phoenix, AZ 85051

Hoffman Living Trust Dated September
25, 2002
P.O. Box 707
Fence Lake, NM 87315

Barbara Iverson
300 Elysian Dr.
Sedona, AZ 86336

Leonora Kabala & Andy Kabala
3155 Catamore Lane
Dallas, TX 75229

Valerie C. King
P.O. Box 550
Ramah, NM 87321

Garland G. Lewis & Dee Ann Lewis
P.O. Box 397
Ramah, NM 87321

Raymond Mccall & Rose M. Mccall
HC 61, Box 2019
Ramah, NM 87321

Piera Medici
1420 Crescent Dr NW
Albuquerque, NM 87105

Joseph F. Neas & Susan S. Neas
566 Hwy. 165
Placitas, NM 87043

Joseph F. Neas & Susan S. Neas
Revocable Trust
P.O. Box 776
Placitas, NM 87043

Vernon Osborn
HC 61, Box 1028
Ramah, NM 87321

John Palmer
914 N. 9th St
Phoenix, AZ 85006

Lee Allen Schahrer
HCR 2, Box 27a
Ramah, NM 87321

Mary S. Havlik
11249 11th Place
Phoenix, AZ 85020

Andrew G. Shows & Turza M. Shows
HC 61, Box 3020
Ramah, NM 87321

Adrian Stewart
P.O. Box 729
Ramah, NM 87321

William R. Whitmore & Patricia E.
Whitmore
P.O. Box 1608
Tomball, TX 77377

Karen L. Williams
1748 Lee Loop Ne
Rio Rancho, NM 87144

Michael Zinn & Joanne C. Snowdon
P.O. Box 377
Pinehill, NM 87357

Michael Sweet & Shirley Sweet
40 S. Sheridan Blvd
Denver, CO 80226

David Swindle, Trustee & Linda
Swindle, Trustee
7021 Pioneer Place
Albuquerque, NM 87120

Steven Rowan
2601 S Divisadero
Visalia, CA 93277

James A. Farmer & Sharon S. Farmer
PO Box 763
Fence Lake, NM 87315

EXHIBIT A

Subfile No.	Defendant Name(s)
ZRB-1-0001	Virginia Aragon & Jack W. Aragon
ZRB-1-0010	Ross H. Boehm & Simmie Boehm
ZRB-1-0011	Louis W. Gross, Margaret Gross & Wilhelmina Gross
ZRB-1-0035	Louis W. Gross & Wilhelmina Gross
ZRB-1-0054	Lewis S. & Karen L. Ligon
ZRB-1-0057	Charles E. Mallery & Elizabeth Mallery
ZRB-1-0075	New Mexico State Land Office
ZRB-1-0077	Colin E. O'Neill, Johanne F. O'Neill, & Gregory C. Frank
ZRB-1-0091	Joseph William Schepps
ZRB-1-0092	Theodore B. & Dorothy Schnaidt
ZRB-1-0096	Byron South & Irene P. South
ZRB-1-0130	Stephens Properties, LP
ZRB-2-0020	Rolf J. Conner & Marjorie Conner Trustees for the Rolf & Marjorie Conner Trust
ZRB-2-0021	H. Darrell Bogart & Patricia D. Bogart
ZRB-2-0022	Dodd H. Bogart
ZRB-2-0026	Kenneth Bruton
ZRB-2-0041	John G. Feely Jr. & Marcia McCall Family Revocable Trust
ZRB-2-0042	Fence Lake Joint Venture
ZRB-2-0056	Denise A. Jolly & David Jolly
ZRB-2-0059	Lawrence Simon
ZRB-2-0075	New Mexico State Land Office
ZRB-2-0076	Michael Norte & Jeanette Norte
ZRB-2-0077	Dennis M. Norton & Linda J. Norton
ZRB-2-0095	Maureta Bell Wilson Revocable Trust
ZRB-2-0098	John A. Yates, Yates Petroleum Corporation, And Trust Q Under The Last Will And Testament Of Peggy A. Yates, Deceased
ZRB-2-0104	Lawrence Silvis & Laura Silvis
ZRB-2-0108	Jaralosa Cattle Co. LLC.
ZRB-2-0109	ORC, LLC., Hinkson Ranch Investors, LLC., R.D.S., Inc., Terrestrial Acquisitions, LLC., & JFT Investors, LLC.
ZRB-2-0110	Donnie Ray Bogart Lambden
ZRB-3-0002	Kurt Anderson & Cynthia Anderson
ZRB-3-0005	Patricia C. Balok & Jack G. Balok
ZRB-3-0017	Broe Land Acquisitions III, LLC
ZRB-3-0029	Ernest Chavez
ZRB-3-0034	Ray K. Coho & Alice K. James

ZRB-3-0047	Davis Revocable Trust
ZRB-3-0051	William J. Elam & Norma M. Elam
ZRB-3-0055	Peri Eringen
ZRB-3-0056	Jacque Evans & Tina Francis
ZRB-3-0077	Gale Henke
ZRB-3-0078	Donna Hinnant
ZRB-3-0079	Hoffman Living Trust Dated September 25, 2002
ZRB-3-0082	Barbara Iverson
ZRB-3-0087	Leonora Kabala & Andy Kabala
ZRB-3-0091	Valerie C. King
ZRB-3-0096	Garland G. Lewis & Dee Ann Lewis
ZRB-3-0105	Raymond McCall & Rose M. McCall
ZRB-3-0110	Piera Medici
ZRB-3-0121	Joseph F. Neas & Susan S. Neas
ZRB-3-0122	Joseph F. Neas & Susan S. Neas Revocable Trust
ZRB-3-0123	New Mexico State Land Office
ZRB-3-0128	Vernon Osborn
ZRB-3-0130	John Palmer
ZRB-3-0142	Lee Allen Schahrer
ZRB-3-0144	Mary S. Havlik
ZRB-3-0146	Andrew G. Shows & Turza M. Shows
ZRB-3-0151	Adrian Stewart
ZRB-3-0166	William R. Whitmore & Patricia E. Whitmore
ZRB-3-0168	Karen L. Williams
ZRB-3-0170	Michael Zinn & Joanne C. Snowdon
ZRB-3-0171	Michael Sweet & Shirley Sweet

EXHIBIT B

Subfile No.	Defendant Name(s)
ZRB-1-0047	Raymond Jose & Maryald A. Jose
ZRB-1-0107	John L. Bandera & Colette Bandera
ZRB-1-0138	Virginia Aragon & Charles Aragon
ZRB-1-0142	Christopher Paul Dentzel & Barbara Dentzel Cleary
ZRB-1-0143	Thomas B. Gleason & Diane Gleason
ZRB-1-0164	The Roman Catholic Diocese of Gallup
ZRB-1-0166	Larry W. Carver, Sally L. Carver, Louis W. Gross, Wilhelmina M. Gross, Jonathan Pickens, Pamela Pickens, Sharon J. Dishongh, & Kyle Casford
ZRB-1-0167	Robert L. Iverson & Nancy G. Iverson
ZRB-2-0010	Deborah Lee Oliver
ZRB-2-0015	Estate of Derek Osborne Beaton
ZRB-2-0027	Hershel L. Jones & Virginia Bruton
ZRB-2-0036	John B. Davey
ZRB-2-0038	Craig Fredrickson & Regina Fredrickson
ZRB-2-0052	Hoffman Living Trust Dated September 25, 2002
ZRB-3-0024	Candy Kitchen Area Water
ZRB-3-0175	David Swindle, Trustee & Linda Swindle, Trustee
ZRB-3-0176	James A. Farmer & Sharon S. Farmer
ZRB-3-0177	Steven Rowan