

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

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**MOTION TO AMEND PROCEDURAL AND SCHEDULING ORDER FOR INDIAN  
WATER RIGHTS CLAIMS**

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The United States of America (“United States”) hereby moves the Special Master to enter an order amending the April 5, 2004 *Procedural and Scheduling Order for Federal and Indian Water Rights Claims* (Doc. No. 323) (“April 5, 2004 Order”) and establishing a revised preliminary schedule for the Navajo Indian Claims Subproceeding. In support of this motion, the United States asserts:

1. Part II of the April 5, 2004 Order established five formal subproceedings to adjudicate claims to water rights in the Zuni River stream system asserted by or on behalf of Federal agencies, the Zuni Indian Tribe and its members, and the Navajo Nation and its

members. Paragraph 4.3 of the Order required all of the subproceedings to be initiated, by the filing of subproceeding complaints, no later than December 31, 2008.

2. Insofar as it applied to the three subproceedings to adjudicate Federal agency claims, the December 31, 2008 deadline was vacated by the Special Master's February 29, 2008 *Order Granting Motion to Vacate Scheduling Order for Federal Water Rights Claims* (Doc. No. 1526).

3. The Zuni Indian Claims Subproceeding, now member Case No. 07cv00681-BB, was initiated by the May 11, 2007 *United States' Subproceeding Complaint And Statement Of Claims For Water Rights On Behalf Of, And For The Benefit Of, The Zuni Indian Tribe And Zuni Allottees* (Doc. No. 1125 in the present case, Doc. No. 1 in the member case) and is on-going. Subject to review and comment by the Special Master and all parties at the scheduling and management conference set for August 27, 2008 in Case No. 07cv00681-BB, the United States intends to propose the following schedule for the Zuni Indian Claims Subproceeding:

November 5, 2008	United States' disclosure of expert reports re: claims based on evidence of past or present irrigation by means of permanent works ("PPPW")
March 3, 2009	Zuni Tribe's disclosure of PPPW expert reports
November 3, 2009	Disclosure by New Mexico ex rel. State Engineer ("State") of PPPW expert reports
January 27, 2010	Disclosure of PPPW expert reports by any other party.
May 4, 2010	Close of discovery re: PPPW
July 30, 2010	Pre-trial motions re: PPPW due
October 1, 2010	Final list of witnesses and exhibits due
November 9, 2010	Trial of PPPW
July 6, 2011	United States' disclosure of expert reports

	re: claims based on evidence of past, present, or future reserved uses of water for Domestic, Commercial, Municipal, or Industrial purposes (“DCMI”)
November 2, 2011	Zuni Tribe’s disclosure of DCMI expert reports
July 6, 2012	State’s disclosure of DCMI expert reports
October 5, 2012	Disclosure of DCMI expert reports by any other party
February 26, 2013	Close of DCMI discovery
April 30, 2013	Pre-trial motions re: DCMI due
July 2, 2013	Final witness & exhibit lists
August 6, 2013	Trial of DCMI

The United States will propose that any remaining claims in Subproceeding 1 be scheduled following the conclusion of the DCMI trial.

4. Currently, the future Navajo Indian Claims Subproceeding is the only subproceeding that continues to be subject to the December 31, 2008 deadline established by the April 5, 2004 Order.

5. The United States asserts that the commencement of another Indian claims subproceeding on or before the December 31, 2008 deadline will inevitably distract resources of the United States and other parties that are necessary to move forward efficiently with the Zuni Indian Claims Subproceeding, and with the process of Subfile adjudication in the lead case. In addition, such action would likely cause significant confusion among pro se parties who receive notice of the new subproceeding while the Zuni Indian Claims Subproceeding is still in its initial stages.

6. Due to significant differences in the land base, history, and the water use development of the two tribes, the United States expects the Navajo Indian Claims to differ in character and evidentiary bases from those made in the Zuni Indian Claims Subproceeding.

However, evidence to be provided in support of, or in opposition to, DCMI claims on behalf of either tribe will involve similar types of data sources and expert testimony and, perhaps, the same expert witnesses. Accordingly, synchronizing discovery and evidentiary hearings concerning the Zuni Indian DCMI claims with those concerning Navajo Indian DCMI claims will promote efficiency and provide economies to all parties involved in the adjudication of such claims.

7. For the foregoing reasons, the United States moves the Special Master to continue the pending December 31, 2008 deadline for initiation of the Navajo Indian Claims Subproceeding to April 2, 2010 and to adopt the following preliminary schedule for that subproceeding:

April 2, 2010	United States Subproceeding Complaint
June 1, 2010	Navajo Nation Supplemental Subproceeding Complaint
September 2, 2010	Notice to be provided to claimants per paragraph 3.2 of April 5, 2004 order
October 4, 2010	Notice of Intent to Participate deadline
November 4, 2010	Scheduling conference
February 1, 2011	Answers to Subproceeding Complaints due
July 6, 2011	United States' disclosure of expert reports re: claims based on evidence of past, present, or future reserved uses of water for Domestic, Commercial, Municipal, or Industrial purposes ("DCMI")
November 2, 2011	Navajo Nation's disclosure of DCMI expert reports
July 6, 2012	State's disclosure of DCMI expert reports
October 5, 2012	Disclosure of DCMI expert reports by any other party
February 26, 2013	Close of DCMI discovery
April 30, 2013	Pre-trial motions re: DCMI due
June 4, 2013	Final exhibit and witness lists
July 8, 2013	Trial of DCMI

Any remaining claims in Subproceeding 2 should be scheduled following the conclusion of the DCMI trial. A proposed form of order incorporating this schedule is submitted herewith.

8. On March 19, 2008, counsel for the United States circulated a schematic depiction of the proposed Navajo Indian Claim Subproceeding schedule, and of the Zuni Indian Claims Subproceeding schedule indicated in Paragraph 3 above, to counsel of record via email. Very few comments were provided in response to that proposal, perhaps due to Spring Break vacations or because the proposal was not sufficiently specific. The United States is filing the present motion now in order to give parties and the Special Master a definite proposal to review. Drafts of present motion, and of the proposed scheduling order submitted herewith, were provided to counsel for the Navajo Nation, the Zuni Tribe, and the State who have indicated that they do not intend to oppose the schedule proposed in this motion.<sup>1</sup>

Wherefore, the United States moves the Special Master to set this matter for a scheduling conference, after parties have 15 days to file objections or comments on the present motion, and, following said scheduling conference, to enter an order amending the April 5, 2004 *Procedural and Scheduling Order for Federal and Indian Water Rights Claims* consistent with this motion and the proposed order submitted herewith.

DATED: March 31, 2008

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<sup>1</sup> On further review of the draft motion and order after it was sent to these parties, the United States added catch-all language concerning scheduling of "any other claims" to the end Paragraphs 3 and 7 of this motion, and as paragraph 11.7 of the proposed order.

Electronically Filed

/s/Bradley S. Bridgewater

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COUNSEL FOR THE UNITED STATES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on March 31, 2008, I filed the foregoing *Motion To Amend Procedural And Scheduling Order For Indian Water Rights Claims* and the attached *[Proposed] Preliminary Procedural And Scheduling Order For Subproceeding 2: The Adjudication Of Navajo Indian Water Rights Claims* electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

\_\_\_\_\_/s/\_\_\_\_\_  
Bradley S. Bridgewater