

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

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	01cv00072-BDB-ACE
-v-	)	
	)	ZUNI RIVER BASIN
STATE OF NEW MEXICO, ex rel. STATE	)	
Engineer, A & R Productions, et al.,	)	
	)	
Defendants.	)	
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ADMINISTRATIVE ORDER ESTABLISHING MOTION PRACTICE AND PROCEDURE

THIS MATTER is before the Court on the Special Master’s request for consideration of the adoption of appropriate rules governing motion practice in the Zuni River Basin stream system adjudication, and the Court having been sufficiently advised in the premises;

IT IS THEREFORE ORDERED:

Pursuant to D.N.M.LR-Civ. 1.3.b., the provisions of D.N.M.LR-Civ. 7. MOTION PRACTICE shall not apply to general stream system adjudications. The following replacement rules and procedures are hereby adopted to govern motion practice in these proceedings:

**RULE 7. Motion Practice**

**7.1 Notice of Rule.** Upon the entry of this Order, a copy shall be mailed by the Clerk of the Court to every attorney of record and defendant appearing pro se in this adjudication. A copy of this Order shall be mailed to every attorney of record and defendant pro se who enters an appearance in the suit subsequent to the entry of this Order.

**7.2 Requirement of Written Motion. Filing. Copies.** A motion must be in writing and

state with particularity the grounds and the relief sought. Copies of motions, proposed orders and briefs that are served on the parties may be duplicated using both sides of the paper. Originals and copies to be filed with the Court shall be printed on one side of the paper.

**7.3 Limitations on Service.** Unless otherwise determined by orders entered in particular cases, or upon motion to the Court for good cause shown,

(a) Movants shall serve all counsel of record and all parties who have entered pro se appearances with motions of general application and those which may have a substantive impact on all parties. Service of responses and replies is similarly broad.

(b) Motions which are relevant only to the determination of the rights of individual defendants as between each of them and the plaintiff(s) may be filed and served upon those counsel or pro se parties who are directly affected by the motion and the plaintiff(s). Service of responses and replies is similarly limited.

(c) Motions which pertain only to sections of the stream system, certain phases of proceedings or legal issues of relevance to a limited section of the adjudication, may be filed and served upon those counsel or pro se parties who are directly affected by the motion, and the plaintiff(s). Service of responses and replies is similarly limited.

**7.4 Determining Opposition or Concurrence.**

(a) For motions of general application or substantive impact, any movant, either by counsel or appearing pro se, must attempt to determine whether there is concurrence or opposition to a proposed motion and order granting the motion by contacting each attorney of record and defendant pro se before filing the motion.

(b) For motions which have limited relevance as set forth above in sections 7.3 (b) and (c), any movant, either appearing by counsel or pro se, must determine whether there is concurrence or opposition by contacting each attorney of record (as limited) and the plaintiff(s).

(c) Each motion shall include a brief statement that: (i) good faith efforts were made to contact attorneys of record; and (ii) concurrence was obtained or an explanation of why it could not be obtained.

(d) Unopposed motions shall be filed with a proposed order granting the motion.

#### **7.5 Opposed Motions. Briefs. Timing.**

(a) Initial opposition to the motion.

Where any attorney of record is contacted and opposes the motion, movant shall file and serve the motion accompanied by supporting briefs. All responses in opposition to the motion shall be filed along with supporting briefs within fourteen calendar days of service of the motion. “All responses” include objections and responses (i) by attorneys not contacted by movant prior to the filing of the motion, and (ii) by pro se parties. Any replies shall be filed within fourteen calendar days of service of the responses.

(b) Opposition after service of motion and proposed order; statements of non-concurrence and briefs.

This subsection applies where there is initial concurrence with the motion by all attorneys contacted by movant prior to the filing of the motion, and opposition to the motion arises later by attorneys and parties not contacted prior to the filing of the motion.

Attorneys of record who are not contacted by movant before a motion is filed and served and who do not concur with the motion, and pro se parties who do not concur with the motion, shall file

statements of non-concurrence with the motion within fourteen calendar days of service of the motion and proposed order. The statements shall set forth generally the grounds for the non-concurrence, and shall be filed and served on all counsel of record and pro se parties (as set forth in section 7.4). Briefs need not be filed with the statements. Movant shall file and serve a brief in support of the now-opposed motion within fourteen calendar days of service of the statements. All briefs in opposition to the motion shall be filed within fourteen calendar days of service of the movant's brief. Any replies shall be filed within fourteen calendar days of service of the responses.

(c) Briefs not required.

Briefs are not required where briefing is unlikely to assist the Court (requests for extensions of time or continuances, filing of supplemental or amended pleadings, substitutions of parties, and similar motions).

**7.6 Failure to Respond.** Failure to file a statement of non-concurrence in response to any motion and/or a response brief to movant's brief constitutes consent to grant the motion.

**7.7 Surreplies and Expedited Briefing.**

(a) Surreplies are not favored, and require leave of the Court.

(b) When the Court orders an expedited briefing schedule, any paper submitted in compliance with the schedule must be served on each party by the most expeditious, reasonable method of service.

**7.8 Length of Motion and Brief.** The combined length of a motion and supporting brief shall not exceed twenty-seven (27) double-spaced pages. A response brief shall not exceed twenty-four (24) pages. A reply brief shall not exceed twelve (12) pages. Leave of the Special Master or the Court is required to exceed these limitations.

**7.9 Oral Argument.**

(a) A motion will be decided on the briefs unless the Court or Special Master sets oral argument.

(b) The Court or Special Master may permit argument by telephone conference. The requesting party must initiate the call and pay the expenses, and provide copies of all documents necessary for the hearing, and not already served, to all participants. The documents must be served before the hearing by the most expeditious, reasonable method of service.

**7.10 Withdrawal of Papers.** A party may withdraw from consideration by the Court or Special Master any paper by filing a notice of withdrawal and by serving it on all parties served with the paper. Unless opposed, the withdrawal does not require approval by the Court or Special Master.

IT IS SO ORDERED.

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/electronic signature/  
DISTRICT JUDGE BRUCE B. BLACK

Recommended for Approval:

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/electronic signature/  
SPECIAL MASTER VICKIE L. GABIN