

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

**MOTION TO AMEND PROCEDURAL AND SCHEDULING ORDERS**

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The Plaintiff United States of America (“United States”) hereby moves the Special Master to enter an order amending Paragraph III.C.3 of each of the following procedural and scheduling orders to make clear that the United States has discretion with regard to whether to request the Clerk of Court, under Rule 55(a), to enter the default of Defendants who have failed to meet deadlines established by the procedural and scheduling orders:

*Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System*, filed September 8, 2005 [No. 387];

*Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 9 and 10 of the Zuni River Stream System*, filed December 14, 2005 [No. 436];

*Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River Stream System*, filed March 7, 2006 [No. 561];

*Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3 (Excluding Ramah) of the Zuni River Stream System*, filed September 28, 2006 [No. 838]; and

*Procedural and Scheduling Order for the Adjudication of Water Rights Claims*, filed January 11, 2007 [No. 954].

In support of this motion, the United States asserts:

1. The procedural and scheduling orders entered in this action with regard to the different Sub-areas of the adjudication evolved over time in light of experience gained under the earlier orders. Nonetheless, Paragraph III.C.3 of each of the above-referenced orders begins with a provision that: “[t]he United States shall request the Clerk of Court, under Rule 55(a), to enter the default of Claimants who have failed” (emphasis added) to take certain actions, including filing and serving a subfile answer by a specified deadline. These paragraphs also later provide that: “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.”

2. The use of the word “shall” in the first lines of these provisions implies it is mandatory that the United States request entries of default for defendants who fail to meet the deadline for filing a subfile answer and have not, with the United States and the State, jointly moved the Court to extend said deadline. Notwithstanding these terms of the procedural and scheduling orders, the Court’s March 16, 2010 *Memorandum Opinion and Order* [No. 2555], indicates the Court disapproves of, and will not grant, requests for entry of default submitted in compliance with Paragraph III.C.3 in some circumstances where a subfile answer is filed late and no joint motion to extend the deadline has been submitted.

3. In consequence, the existing procedural and scheduling orders now appear to require the United States to file Rule 55(a) motions that the Court has already ruled improper. Substituting the word “may” for “shall” in the first line of Paragraph III.C.3 of the above-referenced procedural and scheduling orders will eliminate this apparent contradiction and allow the United States to exercise discretion with regard to filing such motions.

4. In accordance with D.N.M.LR-Civ. 7.1(a), a draft of the present motion was provided, via email, to counsel of record on April 15, 2010, with a request that they indicate concurrence or opposition by April 20, 2010. Counsel for the State of New Mexico ex rel. State Engineer, for the Zuni Tribe, for Alan and Christine Davis, and for Tampico Springs 3000 LLC, ORC, LLC, and Jaralosa Cattle Company indicated they do not oppose the motion. Counsel for the United States has received no other responses.

WHEREFORE, the United States respectfully moves the Special Master to enter an order amending the first line of Paragraph III.C.3 of each of the referenced procedural and scheduling orders by substituting “may” for the word “shall.”

DATED: April 21, 2010

Electronically Filed

/s/ Bradley S. Bridgewater

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

COUNSEL FOR THE UNITED STATES



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on April 21, 2010, I filed the foregoing *Motion To Amend Procedural And Scheduling Orders* 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