

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

UNITED STATES OF AMERICA,)	
and)	
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
)	
Plaintiffs,)	
)	No. 01cv00072-BB/WDS
and)	
)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
)	
Plaintiffs in Intervention,)	
)	
v.)	Subproceeding 2
)	Navajo Indian Claims
A&R PRODUCTIONS, et al.)	
)	
Defendants.)	
_____)	

**MOTION TO STAY DEADLINE FOR FILING THE UNITED STATES'
SUBPROCEEDING COMPLAINT**

The Plaintiff United States of America (“United States”) hereby moves the Special Master to stay the current February 2, 2011 deadline for the United States to file a Subproceeding Complaint initiating Subproceeding 2, the adjudication of Navajo Indian Claims in this case, until after the status conference contemplated by the Special Master’s January 5, 2011 *Order Taking Under Advisement Joint Motion to Amend Scheduling Order*. In support of this motion, the United States asserts:

1. The *Preliminary Procedural and Scheduling Order for Subproceeding 2* (No. 1767) filed May 21, 2008, as amended by the December 4, 2009 *Order Granting Joint Motion to Amend Navajo Indian Claims Scheduling Order* (No. 2487), requires the United States to file, on or before February 2, 2011, “a Subproceeding Complaint setting forth a detailed

statement of all claims of rights to use water in the Zuni River stream system that the United States asserts on behalf of the Navajo Nation or its members, including allottees.”

2. On November 9, 2010, the United States and Co-Plaintiff State of New Mexico *ex rel.* State Engineer (“State”), with the concurrence of the Zuni Indian Tribe and the Navajo Nation, filed a motion (No. 2619) (“Subproceeding 2 Joint Motion”) to amend the existing schedule for Subproceeding by, *inter alia*, extending the deadline for the filing of the United States’ Subproceeding Complaint to February 1, 2012. The Joint Motion was premised on a need to coordinate the schedule for certain aspects of Subproceeding 2 with schedule changes proposed by a simultaneously filed joint motion in Subproceeding 1 (No. 301 in Civil Action No. 07cv00681) (“Subproceeding 1 Joint Motion”). The Subproceeding 1 Joint Motion, in turn, was in part premised upon the competing resource demands created by the trial schedule then in effect in *New Mexico ex rel. State Engineer v. Abbott*, Nos. 68cv07488-BB & 70cv08650-BB (D.N.M.) (“Santa Cruz/Truchas Adjudication”).

3. On January 5, 2011, the Special Master entered orders (No. 2624 in this main case and No. 302 in the member case 07cv0681) taking under advisement both the Subproceeding 2 Joint Motion and the Subproceeding 1 Joint Motion. The Special Master’s orders cited the fact that the previously scheduled trial in the Santa Cruz/Truchas Adjudication has been vacated and determined that any changes to the existing schedules in Subproceeding 1 and 2 of this case should be discussed during a status conference to be scheduled during the month of February 2011. The practical effect of the orders is to leave in place the existing schedules in both Subproceedings, including the February 2, 2011 deadline for filing the United States Subproceeding Complaint in Subproceeding 2.

4. In the interim, on November 30, 2010, Congress enacted, and on December 8, 2010, the President signed into law the Claims Resolution Act of 2010, Public Law No. 111-291, 124 Stat. 3064. Title V of that Act *inter alia* approved the Taos Pueblo Indian Water Rights Settlement Agreement negotiated with respect to claims asserted in *New Mexico ex rel. State Engineer v. Abeyta*, Nos. 69cv07896-BB & 69cv07939-BB consolidated (D.N.M.) (“Taos Adjudication”), and Title VI of the Act *inter alia* approved the Settlement Agreement negotiated with respect to claims asserted in *New Mexico ex rel. State Engineer v. Aamodt*, No. 66cv6639-MV (D.N.M.) (Aamodt Adjudication). Those two major settlements of long-pending Indian water rights adjudications will now have to be submitted to the Court for proceedings providing notice to all parties to the respective adjudications, and allowing any *inter se* objections by non-settling parties to be heard. Both of those proceedings will require very substantial resource commitments from the United States and the State. The consequences that those competing resource demands will have for the scheduling of proceedings in this case are an additional matter appropriate for discussion at the status conference contemplated by the Special Master’s January 5, 2011 orders.

5. Filing the United States Subproceeding Complaint for Navajo Claims on February 2, 2011 is neither feasible nor prudent at this time. Because the Subproceeding 2 Joint Motion was unopposed, the United States has directed the litigation resources necessary to finalize the Subproceeding Complaint to other tasks in this case and others. In addition, a key member of the Bureau of Indian Affairs staff involved in preparation of the Subproceeding Complaint retired at the end of December and it would be unreasonable to expect his replacement to be fully informed about the complex issues to be involved in Subproceeding 2, and able to provide final review the Subproceeding Complaint, on such short notice. Moreover,

if adjustments to the interrelated schedules in Subproceedings 1 and 2 are to be discussed during a February status conference, it makes little sense to require the Subproceeding 2 Complaint to be filed on the current deadline.

6. Counsel for the United States provided a draft of the present motion to counsel of record on January 6, 2011. Counsel for the State, the Zuni Tribe, the Navajo Nation, and Mr. Noble on behalf of his clients, have indicated they do not oppose the requested stay. No other responses have been received as of the time of this filing.

WHEREFORE the United States respectfully moves the Special Master to enter an order staying the requirement that the United States file a Subproceeding Complaint concerning Navajo Claims, as established by the May 21, 2008 *Preliminary Procedural and Scheduling Order for Subproceeding 2* and amended by the December 4, 2009 *Order Granting Joint Motion to Amend Navajo Indian Claims Scheduling Order* until after the matter can be discussed at a status conference.

Dated: January 10, 2011

_____/s/_____
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COUNSEL FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 10, 2011, I filed the foregoing *Motion to Stay Deadline for Filing the United States' Subproceeding Complaint* 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