

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.)	
_____)	

**STATUS REPORT AND RECOMMENDATIONS PURSUANT TO SCHEDULING
ORDER TO GOVERN FURTHER PROCEEDINGS FOR DISPUTED NON-INDIAN
WATER RIGHTS CLAIMS (NO. 2695)**

The Plaintiffs United States of America (“United States”) and State of New Mexico *ex rel.* State Engineer (“State”) hereby report on actions they have taken pursuant to the August 22, 2011 *Scheduling Order to Govern Further Proceedings for Disputed Non-Indian Water Rights Claims* (No. 2695) (“Scheduling Order”) and make recommendations as required by Paragraphs II.B and II.C of the Scheduling Order:

1. Pursuant to Paragraph II.A of the Scheduling Order, the defendants in Subfiles ZRB-2-0064, ZRB-2-0101, and ZRB-4-0365 made timely arrangements for further consultations concerning their subfiles. Consultations with these defendants on September 13, 2011 resulted in revised consent order offers. As of this date, the defendant in Subfiles ZRB-2-

0064 and ZRB-2-0101 has accepted the revised consent orders for those subfiles and they have been submitted to the Court. As of the date of this report, Plaintiffs have received no communications concerning scheduling consultations from the defendants in Subfiles ZRB-2-0091 and ZRB-5-0014.

2. Pursuant to Paragraph II.B of the Scheduling Order, Plaintiffs recommend that the defendants in Subfiles ZRB-4-0108 and ZRB-2-0077, who were excused from attending the May 31, 2011 pretrial hearing, be ordered to file with the Court, within 30 days of the date of such order, amended subfile answers to clearly state the issues to be presented for trial of their respective subfiles, and within 60 days after filing the amended subfile answer to meet and confer with the State and the United States with regard to Fed.R.Civ.P. 26 initial disclosures and development of a discovery plan.

3. Pursuant to Paragraph II.C of the Scheduling Order, Plaintiffs recommend that the defendants in Subfiles ZRB-4-0168 and ZRB-2-0104 be found to be in default. These defendants are properly subject to the jurisdiction of this Court,¹ but have failed to comply with D.N.M.LR-Civ. 83.6 and the procedural and scheduling orders entered by the Court in this case, which require defendants to notify in writing the Clerk and counsel for the United States of changes in their addresses. These defendants were properly served with notice of the May 31, 2011 scheduling conference by mail sent to their last known addresses. Fed.R.Civ.P. 5(b)(2)(C). As noted in *Freed v. Plastic Packaging Materials, Inc.*, 66 F.R.D. 550, 552 (E.D. Pa. 1975):

Such service is complete upon mailing. F[ed].R.Civ. P. 5(b). ‘Non-receipt of the paper does not affect the validity of the service.’ 2 Moore’s Federal Practice §

¹ The waivers of service of summons signed by Laura Silvis and Lawrence Silvis were filed with the Court on May 2, 2006 (Nos. 553 and 554). The waivers of service of summons signed by Cary Grinold and Lynne A. Grinold were filed with the Court on January 18, 2007 (No. 958).

5.07 at p. 1356. This, of course, makes good sense. All parties have an obligation to keep the Court advised of a current address for the service of papers, either to counsel or to the party directly. One who does not do so should not thereby be able to foreclose an opposing party from taking full advantage of the procedures which our Rules allow. If receipt were required to effect service, any party could effectively make service impossible by remaining incognito.

The fact that these defendants are “acting *pro se* does not eliminate this burden.” *Theede v. U.S. Dept. of Labor*, 172 F.3d 1262, 1267 (10th Cir. 1999); D.N.M.LR-Civ. 83.6. In addition, while other parties present at the May 31, 2011 scheduling conference offered hearsay testimony to the effect that these defendants may have transferred their interests in the real properties and water rights that are the subject matter of the respective subfiles, no order pursuant to Fed.R.Civ.P. 25(c) has substituted any transferee into this action in lieu of these defendants. Accordingly, these defendants have violated this Court’s orders and local rules and should be held to be in default for failure to defend in their respective subfiles. The Plaintiffs recommend that the Clerk be directed to enter the default of Defendants Laura Silvis, Lawrence Silvis, Cary Grinold, and Lynne A. Grinold, and the Plaintiffs will thereafter file appropriate motions for default judgment.

4. Pursuant to Paragraph II.D of the Scheduling Order, Plaintiffs have requested the Clerk to enter the default of the defendants in Subfiles ZRB-2-0047, ZRB-2-0111, ZRB-3-0018, ZRB-3-0175, ZRB-4-0351, ZRB-4-0406, and the Clerk has done so (No. 2699). Thereafter, Plaintiffs filed motions for default judgment as to the defendants in Subfiles ZRB-2-0047, ZRB-3-0018, ZRB-3-0175, ZRB-4-0351, and ZRB-4-0406. As to Subfile ZRB-2-0111, during the process of preparing a motion for default judgment Plaintiffs determined that the subfile Defendants Marilyn O. Zug and Richard B. Zug should be offered a revised consent order to correct an error and an outdated right description format in the previously offered consent

order. These defendants have accepted the revised consent order, which will soon be submitted to the Court. In addition, the defendants in Subfile ZRB-3-0018, Beverly Brooks and Richard Brooks, contacted counsel for the United States after receiving the Plaintiffs' motion for default judgment and provided a compelling explanation for their failure to attend the May 31, 2011 scheduling conference. Accordingly, on September 19, 2011, Plaintiffs filed a motion to withdraw their motion for default judgment as to Subfile ZRB-3-0018. The Court has granted the motions for default judgment filed with respect to Subfile ZRB-4-0406 (No. 2710), Subfile ZRB-2-0047, and Subfile ZRB-4-0351 (No. 2712). The motion for default judgment as to Subfile ZRB-3-0175 (No. 2701) remains pending.

5. With respect to Paragraph II.E of the Scheduling Order, counsel for Plaintiffs have been contacted by the defendants in Subfiles ZRB-3-0121 and ZRB-3-0122 who have requested an opportunity for further consultations. Plaintiffs have agreed to schedule such consultations in the near future. The deadline has not yet passed for the defendants in the subfiles listed in Paragraph II.E to file amended subfile answers, but Henry Ray Grizzle and Rebecca Grizzle, defendants in Subfile ZRB-4-0169, have done so (No. 2709).

Respectfully submitted: September 30, 2011

Electronically Filed

/s/Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
ANDREW "GUSS" GUARINO
U.S. Department of Justice
South Terrace, Suite 370
999 18th Street
Denver, CO 80202
(303) 844-1359

COUNSEL FOR THE UNITED STATES

(approved 9/29/11)
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 30, 2011, I filed the foregoing *Status Report And Recommendations Pursuant To Scheduling Order To Govern Further Proceedings For Disputed Non-Indian Water Rights Claims (No. 2695)* 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.

I FURTHER CERTIFY that I mailed copies of the foregoing to the following persons who are not CM/ECF Participants.

_____/s/_____
Bradley S. Bridgewater

DEBORAH GREEN TRUSTEE FOR TRIBAL TRUST
& JAMES GREEN TRUSTEE FOR TRIBAL TRUST
HR 60, BOX 11
FENCE LAKE, NM 87315

EDWARD LINK
LINK RANCH, LLC
7319 LEW WALLACE DR. NE
ALBUQUERQUE, NM 87109

DENNIS M. NORTON & LINDA J. NORTON
HCR 31, BOX 13
FENCE LAKE, NM 87315

EDWARD ALLEN WAGNER
P.O. BOX 779
FENCE LAKE, NM 87315-0779

DONNA MARIE WAGNER
74 BROOK LANE
BERLIN, MA 01503

ROBERT R. WALLACE & ROBERT J. WALLACE
620 MCKEE
GALLUP, NM 87301

LAWRENCE SILVIS & LAURA SILVIS
7217 LUELLA ANNE DR. NE
ALBUQUERQUE, NM 87109

MARILYN O. ZUG & RICHARD B. ZUG
12323 FREEMONT ST.
YUCAIPA, CA 92399

BEVERLY BROOKS & RICHARD BROOKS
HC 61, BOX 1024
RAMAH, NM 87321

NORMA M. ELAM & WILLIAM J. ELAM
912 HERMOSA DR. SE
ALBUQUERQUE, NM 87108

JOSEPH F. NEAS & SUSAN S. NEAS REVOCABLE
TRUST
P.O. BOX 776
PLACITAS, NM 87043

DAVID SWINDLE TRUSTEE & LINDA SWINDLE
TRUSTEE
7021 PIONEER PLACE NW
ALBUQUERQUE, NM 87120

HANNAH C. CROOKS & ROBERT W. CROOKS
P.O. BOX 70
RAMAH, NM 87321

CARY GRINOLD & LYNNE A. GRINOLD
P. O. BOX 828
RAMAH, NM 87321

HENRY RAY GRIZZLE & REBECCA GRIZZLE
P.O. BOX 154
VANDERWAGEN, NM 87326

JACK L. WOODS & B. ELAINE WOODS
P.O. BOX 22
CABALLO, NM 87931

MATTHEW K. SILVA
9204 CAMINO DEL SOL
ALBUQUERQUE, NM 87111

TONIA MONTAGUE & KENNETH MONTAGUE
P.O. BOX 2966
PINETOP, AZ 85935

THE CLAWSON FARM & RANCH, LLC
D/B/A/ THE QUARTER CIRCLE RANCH
P.O. BOX 453
19 WEIGHT DRIVE
RAMAH, NM 87321