

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,)	
)	
and)	01cv00072-BB-ACE
ZUNI INDIAN TRIBE, NAVAJO NATION,)	
Plaintiffs-in-Intervention,)	ZUNI RIVER STREAM SYSTEM
)	ADJUDICATION
)	
-v-)	
)	
A & R PRODUCTIONS, <i>et al.</i>)	
)	
Defendants.)	
_____)	

PROCEDURAL AND SCHEDULING ORDER
FOR FEDERAL AND INDIAN WATER RIGHTS CLAIMS

This Order is entered by the Special Master pursuant to Fed. R. Civ. P. 16(b) to guide the course of the adjudication of the water rights claims asserted by the Plaintiff United States of America (“United States”) for itself and on behalf of the Zuni Indian Tribe, the Navajo Nation and the Ramah Band of Navajos (“Navajo Nation”) in the Zuni River stream system, and any water rights claims asserted by the Plaintiffs-in-Intervention Zuni Indian Tribe and the Navajo Nation. Such water rights claims shall be designated “Federal Claims” and “Indian Claims.”

In entering this Order, the Special Master is guided by concerns for efficiency and resolution of this adjudication in as short a time as the complexities of this case, and the resources of the parties, will allow. This Order establishes a framework within which the resolution of the Federal and Indian Claims can be facilitated, and is the first of a series of orders which will be entered during the pendency of this adjudication. In drafting this Order, the Special Master has taken into consideration

the Court's December 9, 2003, Affirmance of Scheduling Order and Denial of Pending Motion to Dismiss (Docket No. 287), the written comments submitted, and comments of counsel and parties *pro se* at the September 9, 2003 and January 21, 2004 status conferences.

I. HYDROGRAPHIC SURVEY

The United States of America ("United States") shall complete the hydrographic survey of the Zuni River stream system in New Mexico by December 31, 2006, pursuant to procedural orders entered, thereby identifying and joining to the extent possible all non-federal, individual water rights claimants to the Zuni River stream system.

II. FEDERAL WATER RIGHTS SUBPROCEEDINGS

Because of the diverse legal bases and evidentiary requirements of the various water rights claims asserted by the United States and the Zuni Indian Tribe and Navajo Nation, the creation of formal subproceedings allows for the effective management of the claims and promotes the orderly and fair disposition of the issues. Subproceedings will allow final disposition of some of the claims while work proceeds on others, and will minimize to the extent possible the financial burden on all parties. Water rights claims within the Zuni River stream system in New Mexico by all federal and Indian entities shall be the subject of separate subproceedings as follows.

2.1 Zuni Indian Tribes Claims Subproceeding will consist of the adjudication of all appropriative and reserved water rights claims under federal and state law in the Zuni River stream system on behalf of the Zuni Indian Tribe and its members.

2.2 Navajo Nation Subproceeding will consist of the adjudication of all appropriative and reserved water rights claims under federal and state law in the Zuni River stream system on behalf of the Navajo Nation and its members.

2.3 Cibola National Forest Subproceeding will consist of the adjudication of all appropriative and reserved water rights claims under federal and state law in the Zuni River stream system for the National Forest.

2.4 Federal Public Lands Subproceeding will consist of the adjudication of all appropriative and reserved water rights claims in the Zuni River stream system for the benefit of federal public lands (generally administered by the Bureau of Land Management) based on federal and state law and including those based on the Executive Order of April 17, 1926.

2.5 El Morro National Monument, El Malpais National Monument and El Malpais National Conservation Area Subproceeding will consist of the adjudication of all appropriative and reserved water rights claims in the Zuni River stream system for the benefit of the Monuments and Conservation Area based on federal and state law.

2.6 Amendments. Amendments to subproceedings, additional subproceedings, or other modifications may be petitioned for by any party when appropriate.

III. GENERAL ADJUDICATION PROCEDURES

3.1 Subproceeding Complaint. Each subproceeding adjudication shall commence by the United States filing with the Court, mailing to counsel of record, and *pro se* parties who have entered an appearance in this cause, a subproceeding complaint. Except to the extent inconsistent with this Order, or other orders of the Court or the Special Master, a subproceeding complaint shall be deemed

to be a “complaint” for purposes of application of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the District of New Mexico, and said rules shall govern subproceedings to the same extent as any civil action.

The Subproceeding Complaint shall contain a short and plain statement of each claim showing that the claimant is entitled to relief, and a demand for the relief the claimant seeks, and shall be accompanied by a Statement of Claims as described herein. No recitation of the grounds for the Court’s jurisdiction is necessary.

3.2 Notice of Filing/Notice of Intent to Object Form. A Notice of Filing of Subproceeding Complaint, and a Notice of Intent to Object form (described below in paragraph 3.8) shall be mailed to all known water rights claimants in the Zuni River stream system, and shall be published for four consecutive weeks in a newspaper of regional circulation. The Notice shall instruct claimants of their rights to review the Subproceeding Complaint and Statement of Claims, and to object to the claims asserted.

3.3. Statement of Claims. The Statement of Claims to be addressed in the subproceeding shall be as detailed as possible to provide sufficient notice of the claims to other parties, as follows.

3.4 Indian Claims. The Statement of Claims shall include at the minimum: the source, point of diversion, priority, place of use and quantity of water sought to be judicially recognized; and the legal basis for each claim for past, present or future uses. For the purposes of this Order, “past or present uses of diverted water” shall include agricultural irrigation, stock and wildlife watering, impounded water, wells, and springs. Indian Claims based on instream uses of water, including religious and ceremonial uses involving *de minimis* consumption of water, and uses for maintenance

of fisheries, water quality, or of wetland or riparian habitat or vegetation, shall specify minimum flows where appropriate.

3.5 Federal Claims. The Statement of Claims shall include at the minimum: the source, point of diversion, priority, place of use and quantity of water sought to be judicially recognized; and the legal basis for each claim.

3.6 Additional Indian Claims. Any Supplemental Subproceeding Complaint and Statement of Claims shall be filed by the Zuni Indian Tribe or Navajo Nation, as appropriate, within 60 days of the United States' service of a Statement of Claims on behalf of either intervenor, and served upon parties pursuant to Paragraphs 3.1 and 3.2, above.

3.7 *Inter se* Proceedings/Binding Effect. These proceedings will be conducted as expedited *inter se* proceedings. All water rights claimants in the Zuni River stream system will receive notice and have the opportunity to object to the Federal and Indian Claims as they are filed, and to participate in subsequent proceedings. The adjudication of these claims will proceed to partial final decrees which shall be binding on all water rights claimants in the Zuni River stream system.

3.8 Participation in *Inter se* Proceedings. For each subproceeding, within 30 days of service of either a Statement of Claims or Notice of Filing, or within 30 days of the last date of the publication, water rights claimants who intend to object to the claims and/or participate in a subproceeding shall file with the Court a Notice of Intent to Object at the following address:

Water Adjudication Clerk, Box 270
United States District Court
333 Lomas Boulevard N.W.
Albuquerque, NM 87102

Those who file a Notice of Intent to Object will be considered parties to the subproceeding, will be included in a subproceeding service list, and will receive notice of the first Fed. R. Civ. P. 16 pretrial and scheduling conference for the subproceeding. Failure to file this Notice within the time prescribed above and appear at the first conference will be grounds for denial of the right to participate in any manner in the subproceeding adjudication unless allowed to do so by order of the Court.

3.9 Pretrial Conference. The first pretrial conference for each subproceeding will be set as soon as possible following the time permitted for the filing of the Notices Of Intent to Object.

3.10 Pleadings/Discovery. Except as otherwise provided herein, or by other orders of the Court, until the Special Master has entered a scheduling order, no pleadings may be filed and no discovery sought in any subproceeding.

IV. SCHEDULE

4.1 Zuni Indian Tribes Claims Subproceeding. No later than December 31, 2006, the United States shall file a Subproceeding Complaint with respect to its water rights claims for the Zuni Indian Tribe. The Special Master shall set the first pretrial conference regarding those claims as soon as practicable after the expiration of the time for filing Notices of Intent to Object set forth in paragraph 3.8, above.

4.2 Future Subproceedings. Subproceedings shall be conducted seriatim, in the order the subproceedings are identified above in Section II. At the first pretrial conference for the water rights claims for the Zuni Indian Tribe, the United States shall submit a progress report on its preparation of claims for the remaining subproceedings.

4.3 Completion of Filing. All subproceeding complaints, supplemental subproceeding complaints, and accompanying statements of claims shall be completed and filed no later than December 31, 2008.

4.4 Status Conference. The next status conference on these matters will be set for October, 2004, at a time and place to be announced.

V. MODIFICATIONS TO THIS ORDER

This Order may be amended or modified at any time by the Special Master or by any party upon good cause shown.

IT IS SO ORDERED.

/electronic signature/
SPECIAL MASTER VICKIE L. GABIN