



# U.S. Department of Justice

Environment and Natural Resources Division

SCA:BSB  
90-6-2-91

*REPLY TO:*  
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October 10, 2006

Craig Fredrickson & Regina Fredrickson  
2742 VERANDA RD NW  
ALBUQUERQUE, NM 87107

Re: United States v. A & R Productions, No. 01cv00072 BB-ACE (D.N.M.) (Zuni River adjudication), Subfile No. ZRB-2-0038

Dear Craig Fredrickson & Regina Fredrickson:

The United States is sending you this packet of documents as required by Procedural and Scheduling Orders entered by the Special Master in the Zuni River adjudication. **If you have retained an attorney to represent you in this matter, you should discuss these documents with your attorney.**

Each of the enclosed documents has an important purpose in this lawsuit.

1. **A proposed *Consent Order*.** As required by New Mexico statutes, an inventory of water uses, called a "Hydrographic Survey," in the Zuni River stream system has been prepared, based on ownership information in county records and water use information compiled from sources such as State Engineer records, aerial photography, field inspections, and interviews. The enclosed *Consent Order* incorporates a description of your water rights derived from the data collected in the Hydrographic Survey. **If you agree with the *Consent Order*, you should sign and return it to me within 60 days.**
2. **A *Request for Consultation* form.** While every effort has been made to prepare a Hydrographic Survey that is as complete and accurate as the available data will permit, the adjudication process ultimately depends on you, the water user, to provide information about your own water uses. If you believe the enclosed *Consent Order* is incorrect or incomplete, with respect to the description of water rights, defendants names, ownership, or any other matter, you must fill out the *Request for Consultation* form with a description of the problem and return the form to the address at the bottom of the form. **You have 60 days from the date this packet is delivered to either (1) sign and return the enclosed *Consent Order* to me, or (2) complete and return the *Request for Consultation* form.** If you fail to take either action within 60 days, a default judgment may be entered against you.

3. A copy of the Special Master's September 27, 2006 *Order Granting Joint Motion to Amend Procedural and Scheduling Orders and Establish or Revise Deadlines for Defendants to Return Requests for Consultation and Submit Subfile Answers*. This document is important because it suspends your obligation to file and serve a Subfile Answer until such time as the United States, with the concurrence of the State of New Mexico, serves you with a *Notice That The Consultation Period Has Ended*. If we send you such a notice, we will also provide you at that time with a form Subfile Answer. You will then be obliged to file and serve the Subfile Answer within 20 days. **However, unless and until you receive a *Notice That The Consultation Period Has Ended*, you are not required to file anything with the Court.**
4. Please pay special attention to the *Notice of Water Rights Adjudication* attached to the enclosed September 27, 2006 Order. The *Notice* is the Court's official explanation of the documents and of the procedure approved by the Court for use in the adjudication of your water rights.

If our records indicate that any of the individuals named as defendant in Subfile ZRB-2-0038 have not been served with process, or voluntarily waived such service, this packet also includes a copy of the August 2003 *Amended Complaint* and, for each such individual, a *Request for Waiver of Service of Summons* and two copies of a *Waiver of Service of Summons*. Delivery of these documents is required by the Special Master's Procedural and Scheduling Orders in accordance with Federal Rule of Civil Procedure 4(d). That rule provides that any defendant who fails to comply with a request for waiver may be assessed the costs subsequently incurred in effecting service on that defendant.

Please note that the enclosed documents may refer to multiple defendants, if county records indicate your property is owned by more than one person. In general, whenever a defendant's signature is required on a document **all defendants named on that document must sign and date the document**. If the county records are incorrect concerning the ownership of your property, or if one or more of the named defendants is unable, or does not agree, to sign a document, please fill out the *Request for Consultation* form, describing the problem, and return it to me as soon as possible. **DO NOT ALTER THE ENCLOSED CONSENT ORDER.** If you think it contains any error, or otherwise believe it is unacceptable, you must return a *Request for Consultation*. If we can reach agreement with you, we will send you a replacement consent order incorporating any agreed-upon changes.

Lastly, I enclose a set of answers to Frequently Asked Questions concerning the Zuni River Basin adjudication. These questions have come up many times during our consultations with other defendants. The answers were prepared collaboratively by attorneys representing a number of diverse parties in the case and were handed out at the Public Information Workshop held on July 26, 2006.

Sincerely,

  
Bradley S. Bridgewater

enc.

## FREQUENTLY ASKED QUESTIONS ABOUT THE ZUNI RIVER BASIN ADJUDICATION

### INTRODUCTION

The following are Frequently Asked Questions (FAQs) that have arisen during the course of the lawsuit known as the Zuni River Basin Adjudication, *United States vs. A&R Productions, et. al.*, case number 01cv00072-BB/ACE, occurring in federal court in Albuquerque, New Mexico.

For even more specific information about the Zuni River Basin Adjudication, please visit the website at [www.zunibasin.com](http://www.zunibasin.com), where you can view some of the legal documents that are referred to below.

### PURPOSE AND EFFECT OF A WATER RIGHTS ADJUDICATION

#### **1.Q. *Am I being singled out?***

- A. You are not being singled out. Everybody in the stream system using and claiming to use waters of the stream system will ultimately be brought in to this adjudication. That includes not just you, but all other private individuals, the state land office, El Moro National Monument, the Zuni Tribe, the Navajo Nation, including lands of the Ramah Band of Navajos, and anyone else claiming a water right.

#### **2.Q. *Who is trying to get my water rights?***

- A. No one is trying to take your water rights. The purpose of an adjudication is solely to identify all the water rights in a particular area and who owns them. It is a lawsuit that is designed to identify what water you are already using and then confirm a water right to you; no water rights will be taken from you.

#### **3.Q. *Will I have to meter my well?***

- A. No. There is nothing in this lawsuit which would require you to meter your well. That being said, generally speaking, and throughout the state of New Mexico, metering is becoming more and more prevalent. In the Pojoaque Valley, in the

Lower Rio Grande and elsewhere, systematic metering is already starting to occur. The possibility exists that at some point in the distant future, most or all uses in this state will be metered, but that is not part of this lawsuit.

**4.Q. What am I consenting to if I sign my Consent Order?**

- A. You are agreeing with the United States and the State of New Mexico that your Consent Order accurately defines your water right. That is the end of the lawsuit for you, at least as between you and the State and the U.S.; the Consent Order provides a basis for the Court ultimately to confirm a water right for you. You have not, however, settled with any other party to the lawsuit, and at a later time, your neighbors will be permitted, if they wish, to challenge your water right in a process known as *inter se* (pronounced "enter say"). You will also be permitted to challenge theirs.

**5.Q. How is my water right measured?**

- A. Your water right is measured by the amount of water you have legally used in the past, your Historical Beneficial Use. It is important to note that if you have recently been unable to use water in the quantities you have in the past due to impossibility, as the result of drought conditions and lack of supply, for example, the quantity of your water right is not reduced as a result. The amount you were using before the recent shortage is the amount you may claim.

**6.Q. Are there other parts of the state where this kind of litigation is happening?**

- A. Yes. There are a number of stream systems in New Mexico where adjudications have been completed, and many more where they are still ongoing. Examples of places where adjudications have been undertaken and completed are the Cimmaron, the Jemez, Red River, and the Dry Canadian. Places where lawsuits like this are still ongoing are the Pojoaque Valley, Taos, the Lower Rio Grande, the Pecos, the Rio Chama, the Rio San Jose, the San Juan, Santa Cruz-Truchas and Santa Fe.

**7.Q. What if I increase my use later?**

- A. An adjudication can only look at what you are using today. It is a snapshot in time of your water right. For that reason, future uses cannot be taken into account with regard to quantifying your water right. Any future uses will be addressed through application to the Office of the State Engineer.

**8.Q. What are the benefits of having my water right adjudicated?**

- A. Your water right will have received formal recognition by the Court, and as a result will have more certain status and will add value to your property.

**9.Q. After my water rights claim is resolved, can I continue to develop my water right in the future?**

- A. Yes, pursuant to state procedures. After your water right claim is resolved in the adjudication, any future ability to develop a water right must be done by filing an application with the State Engineer. The State Engineer will evaluate the application and determine whether the application should be granted or denied.

**10.Q. If I settle my water rights claim with the United States and the State Engineer, can they later take away my water right?**

- A. Once the Consent Order you sign with the United States and the State of New Mexico is approved and entered by the Court, they are bound by it. Other parties may challenge the water rights described in the Consent Order during the *inter se* phase, but the United States and the State of New Mexico cannot oppose you in those proceedings.

**11.Q. Once this adjudication is completed, can the State Engineer or the United States come in at some subsequent time and take away my water rights?**

- A. Once the adjudication is complete, you will have a court order that describes your water rights. It is a property right that can be taken away only in accordance with legal procedures, such as through forfeiture, abandonment or condemnation.

**12.Q. Once I get an adjudicated water right, can anyone stop me from using water?**

- A. Every water right has a priority date. During times of shortage, those with junior (more recent) priority dates may be required to stop using water for the duration of the shortage so that senior (older) rights can be exercised. Thus, for example, a rancher who has an adjudicated right to use water from a well with a 1932 priority

**24.Q. Why is the federal government acting on behalf of the tribes in this case?**

- A. The United States has a unique legal relationship with federally recognized American Indian tribes based on the inherent powers of tribal sovereignty and self-government of tribes recognized by the U.S. Supreme Court two hundred years ago. This relationship creates certain federal duties relating to tribes—also known as a trust relationship. In its role as trustee, the United States is charged with responsibility for administering trust property, including water resources, in order to ensure that tribes have the water resources necessary for their reservations to serve as permanent homelands. The federal government brought this suit in its capacity as trustee to protect tribal water rights, as well as water rights on other federal lands, including National Forests and National Monuments.

**25.Q. If I sign a Consent Order, can I still object later to the amount of water offered in the Consent Order?**

- A: No, the signing of a Consent Order is a settlement of all your water rights claims as they are specified in the Consent Order. Therefore, it is very important that you carefully examine all details of the Consent Order and that you agree with everything before you sign.