

06 SEP 27 PM 2:04

CLERK-SANTA FE

UNITED STATES OF AMERICA,)
 and)
 STATE OF NEW MEXICO, *ex rel.* STATE)
 ENGINEER,)
)
 Plaintiffs,)
)
 and)
 ZUNI INDIAN TRIBE, NAVAJO NATION,)
)
 Plaintiffs in Intervention,)
)
 v.)
)
 A&R PRODUCTIONS, et al.)
)
 Defendants.)
)

No. 01cv00072 BB-ACE
 ZUNI RIVER BASIN
 ADJUDICATION
 Sub-areas 4, 8, 9, 10, & 7

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 matter comes before the Special Master upon the *Joint Motion to Amend Procedural and Scheduling Orders and Establish or Revise Deadlines for Defendants to Return Requests for Consultation and Submit Subfile Answers* filed September 27, 2006, by Plaintiffs United States of America (“United States”) and State of New Mexico *ex rel.* State Engineer (“State”) (Doc. No. 812). The motion seeks to amend the September 8, 2005 *Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System* (Doc. No. 387), the December 14, 2005 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 9 and 10 of the Zuni*

837

River Stream System (Doc. No. 436), and the March 7, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River Stream System* (Doc. No. 561) (collectively “Procedural and Scheduling Orders”) as previously amended by orders granting motions to extend deadlines. With regard to all subfiles listed on Exhibits A and B to this order, and any other subfile in Sub-areas 4, 8, 9, 10, & 7 for which an initial service packet is subsequently served, Plaintiffs request that, in lieu of the date-certain deadlines for defendants to file form answers established by Paragraphs III.B.2 and III.C.2 of the Procedural and Scheduling Orders and by subsequent orders granting motions to extend those deadlines, the Special Master order that defendants who do not accept and sign a *Consent Order* proposed by Plaintiffs must file and serve a subfile answer within twenty (20) days after the United States, with the concurrence of the State, serves the subfile defendants with a *Notice That The Consultation Period Has Ended* together with a form subfile answer. With regard to all subfiles listed on Exhibit B to this order and any other subfiles in Sub-areas 4, 8, 9, 10, & 7 for which an initial service packet is subsequently served, Plaintiffs' motion requests that the Special Master:

1. eliminate the requirement, imposed by Paragraph II.C of each of the Procedural and Scheduling Orders, that the United States include a form answer in the initial service packet for each such subfile;
2. in lieu of the date-certain deadline imposed by Paragraph III.B.1 of each of the Procedural and Scheduling Orders, provide that a defendant who disagrees with the *Consent Order* proposed for a given subfile must return a *Request for Consultation* within 60 days of the date of delivery of the initial service packet; and

3. order that the Special Master's *Notice of Water Rights Adjudication* be revised to accommodate the changes in procedure sought by Plaintiff's motion and be updated in certain other minor respects.

For good cause shown, the Special Master finds that the Plaintiffs' motion is well-taken and should be GRANTED.

IT IS THEREFORE ORDERED that, unless the subfile defendants earlier accept and sign the last *Consent Order* proposed by the Plaintiffs, the defendants in subfiles listed on Exhibits A and B, and in any other subfile in Sub-areas 4, 8, 9, 10, & 7 for which an initial service packet is served after the date of this order, shall serve on the United States and file with the Court a subfile answer not later than twenty (20) days after the United States, with the concurrence of the State, serves the subfile defendants with a *Notice That The Consultation Period Has Ended* together with a form subfile answer. IT IS FURTHER ORDERED that a defendants' failure to thereafter sign and return the last *Consent Order* proposed by Plaintiffs or to timely serve and file a subfile answer as ordered herein shall be considered, subject to the terms of Paragraph III.C.3 of each of the Procedural and Scheduling Orders, grounds for the entry of a default order which incorporates the last *Consent Order* proposed by Plaintiffs.

IT IS FURTHER ORDERED that the requirement, imposed by Paragraph II.C of each of the Procedural and Scheduling Orders, that the United States include a form answer in the initial service packet for each subfile is HERBY ELIMINATED and no longer applicable with regard to any initial subfile service packet served after the date of this order.

IT IS FURTHER ORDERED that with respect to the subfiles listed on Exhibit B to this order, or any other subfiles in Sub-areas 4, 8, 9, 10, & 7 for which an initial service packet

has not been served as of the date of this order, any defendant who disagrees with the *Consent Order* initially proposed for a given subfile must return a *Request for Consultation* within 60 days of the date of delivery of the initial service packet AND IT IS FURTHER ORDERED that a defendant's failure to either sign and return the proposed *Consent Order* or request consultation within such 60 day period shall be considered, subject to the terms of Paragraph III.C.3 of each of the Procedural and Scheduling Orders, grounds for the entry of a default order which incorporates the proposed *Consent Order*.

IT IS FURTHER ORDERED that the amended *Notice of Water Rights Adjudication* filed herein today shall be substituted whenever a prior order of the Special Master requires the United States to serve a *Notice of Water Rights Adjudication* on defendants.

IT IS FURTHER ORDERED that the United States serve a copy of this order on the defendants listed on Exhibits A and B or their counsel of record.


SPECIAL MASTER

EXHIBIT A

Subfile No.	Defendant Name(s)
ZRB-1-0001	Virginia Aragon & Jack W. Aragon
ZRB-1-0010	Ross H. Boehm & Simmie Boehm
ZRB-1-0011	Louis W. Gross, Margaret Gross & Wilhelmina Gross
ZRB-1-0035	Louis W. Gross & Wilhelmina Gross
ZRB-1-0054	Lewis S. & Karen L. Ligon
ZRB-1-0057	Charles E. Mallery & Elizabeth Mallery
ZRB-1-0075	New Mexico State Land Office
ZRB-1-0077	Colin E. O'Neill, Johanne F. O'Neill, & Gregory C. Frank
ZRB-1-0091	Joseph William Schepps
ZRB-1-0092	Theodore B. & Dorothy Schnaidt
ZRB-1-0096	Byron South & Irene P. South
ZRB-1-0130	Stephens Properties, LP
ZRB-2-0020	Rolf J. Conner & Marjorie Conner Trustees for the Rolf & Marjorie Conner Trust
ZRB-2-0021	H. Darrell Bogart & Patricia D. Bogart
ZRB-2-0022	Dodd H. Bogart
ZRB-2-0026	Kenneth Bruton
ZRB-2-0041	John G. Feely Jr. & Marcia McCall Family Revocable Trust
ZRB-2-0042	Fence Lake Joint Venture
ZRB-2-0056	Denise A. Jolly & David Jolly
ZRB-2-0059	Lawrence Simon
ZRB-2-0075	New Mexico State Land Office
ZRB-2-0076	Michael Norte & Jeanette Norte
ZRB-2-0077	Dennis M. Norton & Linda J. Norton
ZRB-2-0095	Maureta Bell Wilson Revocable Trust
ZRB-2-0098	John A. Yates, Yates Petroleum Corporation, And Trust Q Under The Last Will And Testament Of Peggy A. Yates, Deceased
ZRB-2-0104	Lawrence Silvis & Laura Silvis
ZRB-2-0108	Jaralosa Cattle Co. LLC.
ZRB-2-0109	ORC, LLC., Hinkson Ranch Investors, LLC., R.D.S., Inc., Terrestrial Acquisitions, LLC., & JFT Investors, LLC.
ZRB-2-0110	Donnie Ray Bogart Lambden
ZRB-3-0002	Kurt Anderson & Cynthia Anderson
ZRB-3-0005	Patricia C. Balok & Jack G. Balok
ZRB-3-0017	Broe Land Acquisitions III, LLC
ZRB-3-0029	Ernest Chavez
ZRB-3-0034	Ray K. Coho & Alice K. James

Subfile No.	Defendant Name(s)
ZRB-3-0047	Davis Revocable Trust
ZRB-3-0051	William J. Elam & Norma M. Elam
ZRB-3-0055	Peri Eringen
ZRB-3-0056	Jacque Evans & Tina Francis
ZRB-3-0077	Gale Henke
ZRB-3-0078	Donna Hinnant
ZRB-3-0079	Hoffman Living Trust Dated September 25, 2002
ZRB-3-0082	Barbara Iverson
ZRB-3-0087	Leonora Kabala & Andy Kabala
ZRB-3-0091	Valerie C. King
ZRB-3-0096	Garland G. Lewis & Dee Ann Lewis
ZRB-3-0105	Raymond McCall & Rose M. McCall
ZRB-3-0110	Piera Medici
ZRB-3-0121	Joseph F. Neas & Susan S. Neas
ZRB-3-0122	Joseph F. Neas & Susan S. Neas Revocable Trust
ZRB-3-0123	New Mexico State Land Office
ZRB-3-0128	Vernon Osborn
ZRB-3-0130	John Palmer
ZRB-3-0142	Lee Allen Schahrer
ZRB-3-0144	Mary S. Havlik
ZRB-3-0146	Andrew G. Shows & Turza M. Shows
ZRB-3-0151	Adrian Stewart
ZRB-3-0166	William R. Whitmore & Patricia E. Whitmore
ZRB-3-0168	Karen L. Williams
ZRB-3-0170	Michael Zinn & Joanne C. Snowdon
ZRB-3-0171	Michael Sweet & Shirley Sweet

EXHIBIT B

Subfile No.	Defendant Name(s)
ZRB-1-0047	Raymond Jose & Maryald A. Jose
ZRB-1-0107	John L. Bandera & Colette Bandera
ZRB-1-0138	Virginia Aragon & Charles Aragon
ZRB-1-0142	Christopher Paul Dentzel & Barbara Dentzel Cleary
ZRB-1-0143	Thomas B. Gleason & Diane Gleason
ZRB-1-0164	The Roman Catholic Diocese of Gallup
ZRB-1-0166	Larry W. Carver, Sally L. Carver, Louis W. Gross, Wilhelmina M. Gross, Jonathan Pickens, Pamela Pickens, Sharon J. Dishongh, & Kyle Casford
ZRB-1-0167	Robert L. Iverson & Nancy G. Iverson
ZRB-2-0010	Deborah Lee Oliver
ZRB-2-0015	Estate of Derek Osborne Beaton
ZRB-2-0027	Hershel L. Jones & Virginia Bruton
ZRB-2-0036	John B. Davey
ZRB-2-0038	Craig Fredrickson & Regina Fredrickson
ZRB-2-0052	Hoffman Living Trust Dated September 25, 2002
ZRB-3-0024	Candy Kitchen Area Water
ZRB-3-0175	David Swindle, Trustee & Linda Swindle, Trustee
ZRB-3-0176	James A. Farmer & Sharon S. Farmer
ZRB-3-0177	Steven Rowan

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

UNITED STATES OF AMERICA, for Itself)	
and as Trustee for the Zuni Indian Tribe, Navajo)	
Nation and Ramah Band of Navajos and)	
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
Plaintiffs,)	No. 01cv00072-BB
and)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
Plaintiffs in Intervention,)	ADJUDICATION
v.)	
A & R PRODUCTIONS, et al.,)	
Defendants.)	

NOTICE OF WATER RIGHTS ADJUDICATION

TO: ALL PERSONS OWNING WATER RIGHTS IN THE ZUNI RIVER STREAM SYSTEM, ITS TRIBUTARIES AND ASSOCIATED UNDERGROUND WATER BASIN WITHIN THE STATE OF NEW MEXICO, INCLUDING PERSONS PREVIOUSLY JOINED AS DEFENDANTS IN THE ABOVE-CAPTIONED ACTION AND ALL UNKNOWN CLAIMANTS OF INTEREST.

YOU ARE HEREBY NOTIFIED of the procedure established by the United States District Court, District of New Mexico, for the adjudication of your water rights. This notice describes the litigation concerning water rights in the Zuni River stream system, explains documents you may be receiving concerning that litigation, and describes actions you may take to protect your rights.

PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES PROCEEDINGS THAT MAY AFFECT YOUR LEGAL RIGHTS. THIS NOTICE SUPERCEDES ANY PREVIOUS NOTICE YOU MAY HAVE RECEIVED CONCERNING THIS CASE.

Brief Summary of the Proceedings and the Hydrographic Survey

The United States filed this lawsuit to adjudicate all surface and underground water rights in the Zuni River stream system in 2001. The State of New Mexico, ex rel. State Engineer (the "State"), the Zuni Indian Tribe, and the Navajo Nation are also plaintiffs in the case. By law, all other persons who may claim a right to the use of water must be made parties defendant to such a suit. A water adjudication is a legal proceeding in which the Court hears and decides all water rights claims in the stream system, and confirms any valid water rights, whether claimed by a plaintiff or defendant, by court order.

The United States, in consultation with the State of New Mexico, is completing a hydrographic survey of the Zuni River stream system. A hydrographic survey is a technical study that identifies, maps and reports the use of water in a particular stream system. A hydrographic survey starts with aerial photography and a review of the existing water rights records for the area. Information on irrigation, domestic, municipal, industrial and stockwatering use is recorded. Land ownership is verified using information from county records. However, although a hydrographic survey gathers information on land ownership, it does not establish legal ownership to land or determine property boundaries. The survey only produces evidence on the location, amount, and ownership of water rights.

For purposes of the Hydrographic Survey, the Zuni River stream system has been divided into 11 sub-areas. As the Hydrographic Survey is completed for each sub-area, a Hydrographic Survey Report ("HSR")

and hydrographic survey maps for that area will be filed with the Court. Some of these filed HSRs may combine information concerning water uses in more than one sub-area.

Important Documents You May Receive

If the completed HSR for a sub-area identifies you as a water user or water right claimant, you must be joined as a defendant to this lawsuit. Accordingly, if you are not currently a defendant in the case, the United States will send you a packet of documents including: (1) the August 1, 2003 *Amended Complaint*, (2) a *Request for Waiver of Service of Summons*, (3) two copies of a *Waiver of Service of Summons*, and (4) a copy of this *Notice of Water Rights Adjudication*. If you do not return a *Waiver of Service of Summons* to the United States within 30 days of service of the packet (or 60 days if the service packet was sent to you outside of the United States) by mail, the United States may be required to personally serve you with the *Amended Complaint* and a *Summons*. In that case, you may be assessed the costs of personal service pursuant to the Federal Rules of Civil Procedure.

In addition, all persons identified by an HSR as water users or water right claimants, including persons who are already defendants in this lawsuit, may receive (5) a proposed *Consent Order*, signed on behalf of the United States and the State, which describes your water rights, and includes a detailed map or aerial photograph showing the location of your water uses; and (6) a *Request for Consultation* form. These last two documents may, or may not, accompany the service packet described above.

If you have an attorney who represents you in these matters, or decide to obtain an attorney, you should give the attorney all of these documents.

Procedure

Because of the large number of parties and water rights involved in this water rights adjudication, the Court will proceed with this case in two basic phases. In the first phase, "subfiles," which are like small cases within the over-all litigation, will be created to deal with the water rights claims of individual defendants. Depending on the number, location, and other characteristics of your water rights claims or uses, you may be named in more than one subfile. Each subfile is intended to resolve, either through settlement or litigation, all issues between the United States, the State, and the person or persons identified as having a claim based on the water uses involved in that subfile. In the second phase of the adjudication, known as the *inter se* (Latin for "among or between themselves"), all parties to the adjudication other than the United States and the State will be allowed to make any objections they have to each other's water rights as identified in the subfiles. After the *inter se* phase is resolved, the Court will enter a final decree that defines all of the water rights within the Zuni River stream system.

If you agree with a proposed *Consent Order* you receive, including all elements of your water right set out in that *Consent Order*, you must sign and return that order to the United States. Within thirty 30 days of receiving the signed *Consent Order* from you, the United States will submit the order to the Court for approval and filing, and will then provide a copy of the filed order to you and to the State. A signed and returned *Consent Order* will serve as your *Answer* to the *Amended Complaint* for the subfile covered by the *Consent Order* and will finally adjudicate the water rights elements contained therein as between the United States, the State, and you. However, each *Consent Order* is subject to challenge by other parties to the case during *inter se* proceedings, which will be scheduled following the completion of the initial phase of litigation involving the United States and the State.

If you receive more than one proposed *Consent Order*, your agreement with one or more of such orders does not prevent you from disagreeing with any other proposed *Consent Orders* you receive.

If you disagree with a proposed *Consent Order* you receive, including any element of the water right set out in that *Consent Order*, you must fill out the *Request for Consultation* form you received and return it to the United States within 60 days. **IF YOU FAIL WITHIN 60 DAYS TO EITHER SIGN AND RETURN THE PROPOSED *CONSENT ORDER* OR RETURN A *REQUEST FOR CONSULTATION* A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.** After requesting consultation, you must

discuss your disagreement with the United States and State personnel when they contact you. Good faith participation in consultation with the United States and the State is required to satisfy the discovery requirements of Federal Rules of Civil Procedure 26(a)(1)(A) and (B), and must be accomplished before the dispute can be placed before the Court. **THE COURT WILL NOT HEAR YOUR DISAGREEMENT WITH THE PROPOSED CONSENT ORDER UNLESS YOU FIRST PARTICIPATE IN CONSULTATION.** Accordingly, you are required to consult with the United States and the State, and are expected to make available to them documents or other information that support your position. To the extent possible, the United States will have available at consultations the data upon which the consent order is based. Information that cannot be provided to you at the consultation will be made available for you to examine at the Document Repository maintained by the United States for this case at the University of New Mexico's Zollinger Library in Gallup, New Mexico.

If the disagreement can be resolved by consultation, you may sign either the original *Consent Order* or a new *Consent Order* that incorporates any changes agreed upon. The United States will, within 30 days of signature by all the parties to the *Consent Order*, submit the signed orders to the Court for approval and filing, and then will provide a copy of the filed order to you and to the State.

If the disagreement cannot be resolved by consultation, the United States will send you a *Notice That The Consultation Period Has Ended* and a form *Subfile Answer*. Within 20 days of the date when the United States mails you the *Notice That The Consultation Period Has Ended* you must either (1) accept and sign the last Consent Order offered to you by the United States and the State and return the entire Consent Order to counsel for the United States, or (2) complete, sign, and file the form *Subfile Answer* provided to you with the Court, and mail a copy of the *Subfile Answer* to the United States. Your *Subfile Answer* must identify the subfile for which you disagree with the proposed *Consent Order*, explain why you disagree with the proposed *Consent Order*, and include a statement that you made a good faith effort to consult with and resolve the disagreement with the United States and the State. **IF YOU FAIL TO EITHER ACCEPT THE LAST PROPOSED CONSENT ORDER OR FILE A SUBFILE ANSWER WITHIN 20 DAYS AFTER SERVICE OF THE NOTICE THAT THE CONSULTATION PERIOD HAS ENDED, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.** Failure to file a timely *Answer*, or to consult in good faith with the United States and the State before filing an *Answer*, will be considered grounds for entry of a Default Order that incorporates the terms of the proposed *Consent Order*, provided that no default will be entered if (1) you have not been properly served with process or waived such service; (2) you have not had at least 30 days to review the proposed *Consent Order*; or (3) you, the United States, and the State jointly move the Court to extend the deadline for your *Answer*.

Change of Your Address or Ownership

Whether or not you are represented by counsel, you are responsible for informing the United States in writing within 30 days of any changes in your mailing address or changes in ownership of water rights or real property associated with water rights. Notice of such changes may be made using the form included below as FORM A. This form will also be available at <http://www.zunibasin.com>.

Other Important Addresses

Documents that must be filed with the Court may be mailed, or delivered in person, to the following address:

Clerk's Office
U.S. District Court
333 Lomas N.W.
Albuquerque, NM 87102

Communications to the United States may be addressed to:

Bradley S. Bridgewater
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294
Phone: (303) 844-1359
Fax: (303) 844-1350

Communications to the State may be addressed to:

Edward C. Bagley
Office of the State Engineer, Legal Division
P.O. Box 25102
Santa Fe, NM 87504-5102
Phone: (505) 827-6150
Fax: (505) 827-3887

Additional Information

Pursuant to Court order, the United States maintains additional information concerning this case at:

<http://www.zunibasin.com>

This Notice approved this 27th day of September, 2006



VICKIE GABIN, SPECIAL MASTER

FORM A

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

UNITED STATES OF AMERICA, et al.,)
Plaintiffs,)
v.) CIV No. 01 0072 BB/WWD-ACE
A & R Productions, et al.,)
Defendants.)

**CHANGE OF ADDRESS OR OWNERSHIP FORM
ZUNI RIVER BASIN ADJUDICATION**

Check the appropriate box to notify the United States of changes in your address, or in the ownership of real property, for purposes of this adjudication. **Type or print carefully.**

CHANGE OF ADDRESS

Former address of Defendant(s):

Name: _____
Address: _____
City/State/Zip _____

Please change the address to:

Name: _____
Address: _____
City/State/Zip _____

Signature: _____ Date: _____

Daytime phone: _____

CHANGE OF OWNERSHIP

(Note: A copy of the deed must be attached to any change of ownership form.)

This change applies to the following subfile(s):

Real property formerly owned by:

Name: _____
Address: _____
City/State/Zip _____

Daytime phone: _____

has been conveyed to:

Name: _____
Address: _____
City/State/Zip _____

Daytime phone: _____

Signature of former owner (seller): _____ Date: _____

Signature of new owner (buyer): _____ Date: _____

**Mail this form to "Attn: Zuni Adjudication, U.S. Department of Justice, 1961 Stout Street –
8th Floor, Denver, CO 80294."**