

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,)	
)	
and)	No. 01cv0072 BB/WDS-ACE
ZUNI INDIAN TRIBE and NAVAJO NATION,)	
Plaintiffs-in-Intervention)	
)	
v.)	ZUNI RIVER BASIN
)	ADJUDICATION
)	
A & R PRODUCTIONS, et al.,)	SUB-AREAS 1, 2, AND 3
Defendants.)	(EXCLUDING RAMAH)

PROCEDURAL AND SCHEDULING ORDER FOR THE ADJUDICATION OF WATER
RIGHTS CLAIMS IN SUB-AREAS 1, 2, AND 3 (EXCLUDING RAMAH) OF THE ZUNI
RIVER STREAM SYSTEM

This Order amends and supercedes the June 4, 2003 *Interim Procedural Order* (Doc. No. 208), and is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the adjudication of water rights claims for surface and groundwater use in Sub-Areas 1, 2, and 3 (excluding Ramah) of the Zuni River stream system.

A status and scheduling conference concerning Sub-areas 1, 2, and 3 (excluding Ramah) was held on September 21, 2006. Having considered the comments and suggestions of all interested counsel and *pro se* parties, and being fully advised in the premises, it is hereby ordered that the following will govern the course of the adjudication.

I. SUB-AREAS 1, 2, AND 3 (EXCLUDING RAMAH)

This Order governs the adjudication of Sub-areas 1, 2, and 3 (excluding Ramah) of the Zuni River stream system, as described below:

A. Sub-area 1 of the Zuni River Basin consists of all of Township 10 North Range 19 West; all of Township 10 North Range 20 West; and all of Township 10 North Range 21 West ; all of sections 1-5 and 7-36 and portion of section 6 in Township 11 North Range 19 West; all of sections 12-14, and 21-36 and portions of sections 1, 10-12, 16, 17, 19 and 20 in Township 11 North Range 20 West; all of sections 10, 11, 14, 15, 22, 23, 25-27, and 34-36, and portions of sections 2, 3, 11-13, and 24 in Township 11 North Range 21 West; and all of sections 34-36 and portions of sections 25-28, 31, 32 and 33 in Township 12 North Range 19 West.

B. Sub-area 2 of the Zuni River Basin consists of all of sections 5-8, 17-20, and 29-32 in Township 10 North Range 16 West; all of Township 10 North Range 17 West; all of Township 10 North Range 18 West; all of sections 5-8, 17-20, and 29-32 in Township 11 North Range 16 West; all of Township 11 North Range 17 West; all of Township 11 North Range 18 West; all of sections 5-8, 17-20, and 29-32 in Township 12 North Range 16 West; all of Township 12 North Range 17 West; all of sections 12, 13, 23-27, and 31-36 and portions of sections 1, 2, 11, 14, 15, 21, 22, and 28-30 in Township 12 North Range 18 West; all of sections 23-27 and 32-26 and portions of sections 12-15, 21, 22, 28-31.

C. Sub-area 3 of the Zuni River Basin, excluding Ramah Sub-area, consists of all of Township 10 North Range 15 West; all of sections 1, 10-16, 21-28 and 33-36 in Township 10 North Range 16 West; all of sections 2-11 and 14-36 and portions of sections 1, 12, and 13 in Township 11 North Range 15 West; all of sections 1-4, 9-16, 21-28, 33 and 36 in Township 11 North Range 16 West; a portion of section 30 in Township 12 North Range 14 West; all of sections 2-11, 15-22, and 26-35, and portions of sections 1, 12, 13, 14, 23, 24, 25 and 36 in

Township 12 North Range 15 West; all of sections 1-4, 9-16, 21-28 and 33-36 in Township 12 North Range 16 West; a portion of section 31 in Township 13 North Range 14 West; all of sections 7, 18-20, 29-35 and portions of sections 6, 8, 16, 17, 21-23, 25-28 and 36 in Township 13 North Range 15 West; all of sections 11-36 and portions of sections 1-5 and 7-10 in Township 13 North Range 16 West; and a portion of Township 16 North Range 14 West.

II. JOINDER OF CLAIMANTS-HYDROGRAPHIC SURVEY REPORT

A. No later than seventy-five (75) days following the entry of this Order, the United States shall generate Consent Orders for Claimants identified by the hydrographic survey report for Sub-Areas 1, 2, and 3 (excluding Ramah), and forward those Consent Orders to the State of New Mexico ("State") for review. Within thirty (30) days of its receipt of a Consent Order from the United States, the State shall either indicate its approval by executing the Consent Order and returning it to the United States, or notify the United States of its objections to the Consent Order.

B. All Consent Orders will be joint Consent Orders. If the State does not approve a Consent Order, that Consent Order shall not be served on the Claimant.

C. Service on known claimants in Sub-Areas 1, 2, and 3 (excluding Ramah) shall be accomplished by the United States. Claimants not already joined as defendants may be sent a packet by certified mail that includes: (1) the August 2003 *Amended Complaint*; (2) a Request for Waiver of Service of Summons; (3) two copies of a Waiver of Service of Summons; (4) a copy of the Special Master's September 27, 2006 *Notice of Water Rights Adjudication*; (5) a proposed Consent Order, signed on behalf of the United States and the State, including a

detailed map or aerial photograph showing the location of water uses described; and (6) a Request for Consultation Form. If no Waiver of Service is returned to the United States within 30 days, the Claimant shall be served, by any means permitted by Fed. R.Civ.P. 4, with the Summons and another copy of the August 2003 *Amended Complaint*. Claimants already joined to the suit shall be sent a packet by certified mail that includes (1) the *Notice of Water Rights Adjudication*, (2) the proposed Consent Order executed by the United States and the State, and (3) a Request for Consultation form.

D. Service on known Claimants whose whereabouts are unknown, and unidentified and unknown Claimants in all Sub-Areas shall be made by publication by the United States after the last hydrographic survey report for the Zuni River stream system has been completed and filed with the Court. The publication shall include a copy of the *Notice of Water Rights Adjudication*.

E. Mailing of a service packet by the United States to a Claimant shall be done within 60 days after the Consent Order has been executed and returned by the State.

F. The *Notice of Water Rights Adjudication* generated by the Court explains the adjudication process, and the Claimant's rights and obligations under this Order. In order to conserve funds and resources, the Notice of Adjudication mailed to Claimants may be printed double sided, single spaced, with reduced margins.

G. A Request for Consultation form shall be provided so that Claimants may request in writing a consultation with the United States and the State in the event they disagree

with any element of the proposed Consent Order, pursuant to paragraph III.B.1 of this Order.

The Request for Consultation shall identify the Claimant, the subfile, and the nature of the dispute.

H. The proposed Consent Order(s) shall set out all the elements of the respective water right.

III. RESPONSES

A. Agreement

1. Claimants who agree with all of the elements of the water rights claims as set out in the Consent Order proposed for the Claimant(s)'s subfile shall sign and return the Consent Order to the United States. The United States shall submit the signed orders to the Court for approval and filing, and shall forward a copy of the filed order to the Claimant(s) and to the State within thirty (30) days of the Court's approval.

2. A signed and returned Consent Order serves as the Claimant's Answer to the Complaint. As between the United States, the State and the Claimant, the Consent Order finally adjudicates the water rights elements contained therein. Each Consent Order is subject to challenge by other Claimants during the *inter se* proceedings, which will be scheduled following the completion of subfile activity.

B. Consultation

1. **NO LATER THAN SIXTY (60) DAYS AFTER DELIVERY OF A SERVICE PACKET PURSUANT TO PARAGRAPH II.C.**, Claimants who disagree with any element of the proposed Consent Order shall return to the United States their Request for Consultation, as described in paragraph II.G. Good faith participation in consultation with the

United States and the State is required to satisfy the discovery requirements of Rule 26(a)(1)(A) and (B) of the Federal Rules of Civil Procedure, and must be accomplished before the dispute can be placed before the Court. Accordingly, Claimants are required to consult with the United States and the State, and are expected to make available documents or other information that support their position. To the extent possible, the United States shall have available at consultations the data upon which the consent order is based. Information that cannot be provided to a Claimant at consultations shall be disclosed to the Claimant and made available for examination at the Hard Copy Repository maintained by the United States at the University of New Mexico's Zollinger Library in Gallup, New Mexico. If the disagreement can be resolved at the consultation, the Claimant(s) shall sign either the original Consent Order or a new Consent Order that incorporates any changes agreed upon. The United States shall submit the signed orders to the Court for approval and filing, and shall forward a copy of the filed order to the Claimant(s) and to the State within thirty (30) days of the Court's approval.

2. Timely return of a Request for Consultation shall toll the Claimants' obligation to serve a subfile answer pursuant to Fed.R.Civ.P. 12(a) until 20 days after the United States, with concurrence of the State, serves the Claimant with a Notice That the Consultation Period Has Ended, together with a form subfile answer. The notice, and the form answer, shall state, in bold-face type, that the Claimant(s) must, within twenty (20) days of the date of service of the notice, either sign and accept the last offered Consent Order for the subfile and return the entire Consent Order to counsel for the United States, or file with the Court and serve on counsel for the United States and the State, a subfile answer.

3. A subfile answer disagreeing with the proposed Consent Order must identify the subfile, explain the Claimant's reason for disagreeing with the proposed Consent Order, and include a statement that the Claimant has made a good faith effort to consult with and resolve the disagreement with the United States and the State.

4. Service by the United States or the State of a Notice That The Consultation Period Has Ended, or by a Claimant of a subfile answer, shall not preclude the parties from subsequently submitting a negotiated agreed Consent Order to the Court.

C. Failure to Respond

1. **A Claimant's failure to make a request for consultation within sixty (60) days after delivery of the service packet required by Paragraph II.C., shall be considered grounds for entry of a default order that incorporates the proposed Consent Order, in accordance with the criteria set forth in paragraph III.C.3 of this Order.**

2. **A Claimant's failure to sign and return the last-offered Consent Order or file and serve a subfile answer within twenty (20) days of service of the Notice That the Consultation Period Has Ended shall be considered grounds for the entry of a default order which incorporates the terms jointly proposed by the United States and the State.**

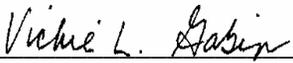
3. The United States shall request the Clerk of the Court, under Rule 55(a), to enter the default of Claimants who have failed to make a request for consultation within sixty (60) days after delivery of the initial service packet or to sign and return a Consent Order or file and serve a subfile answer within twenty (20) days of service of a Notice That The Consultation Period Has Ended. Provided, (1) no default shall be entered against any Claimant who has not

been properly served with process or waived such service; (2) no default shall be entered until a Claimant has had at least thirty (30) days to review a proposed Consent Order or revised proposed Consent Order sent by the United States; and (3) no default shall be entered if the United States, the State and the Claimant jointly move the Court to extend the deadline for filing an Answer.

IV. CHANGE OF ADDRESS OR OWNERSHIP

All Claimants, whether or not they are represented by counsel, are responsible for informing the United States of any changes in their mailing address or changes in ownership of water rights or real property associated with the rights by filling out the Change of Address or Ownership Form (attached to the *Notice of Water Rights Adjudication* as Form A) and forwarding it to Attn: Zuni Adjudication, U.S. Department of Justice, 1961 Stout Street- 8th Floor, Denver, Colorado, 80294 within thirty (30) days of such a change.

IT IS SO ORDERED.



SPECIAL MASTER VICKIE L. GABIN