

**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,

and
ZUNI INDIAN TRIBE, NAVAJO NATION,
Plaintiffs in Intervention,

v.
A & R PRODUCTIONS, et al.,
Defendants.

No. 01cv00072-BB

ZUNI RIVER BASIN
ADJUDICATION

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 10 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; (6) a *Request for Consultation* form; and (7) a form *Answer*. These last three 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 may 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 provide a copy to the State and submit the order to the Court for approval and filing. 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 and 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, submit the signed orders to the Court for approval and filing, and shall forward a copy to the State.

If the disagreement cannot be resolved by consultation, you must complete, sign, and file the form *Answer* provided to you with the Court, and mail a copy of the form *Answer* to the United States. Your form *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 RESPOND TO A PROPOSED *CONSENT ORDER*, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU. The packet of materials sent to you by the United States will indicate the deadline established by the Court for you to file an *Answer* rejecting the proposed subfile *Consent Order*. Before that date, you must either (a) sign and return a *Consent Order* offered by the United States and the State, or (b) file a form *Answer* rejecting the proposed *Consent Order*, following consultation with the United States and the State. 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>. A copy of Form A must also be mailed to the new owner.

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
999 Eighteenth St., Suite 945N
Denver, CO 80202
Phone: (303) 312-7318
Fax: (303) 312-7379

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>, and a Document Repository at the University of New Mexico's Zollinger Library in Gallup, New Mexico

This Notice approved this 3rd day of January, 2005.

Vickie L. Gabin

SPECIAL MASTER VICKIE L. GABIN