

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

|   |   |                           |
|---|---|---------------------------|
| UNITED STATES OF AMERICA                  | ) | <b>01cv00072-BB</b>       |
| and                                       | ) | <b>07cv00681-BB</b>       |
| ZUNI INDIAN TRIBE                         | ) |                           |
| Plaintiffs,                               | ) | ZUNI RIVER BASIN          |
|   | ) | ADJUDICATION              |
| -v-                                       | ) |                           |
|   | ) |                           |
| STATE OF NEW MEXICO, <i>ex rel.</i> State | ) | <b>Subproceeding 1</b>    |
| ENGINEER, <i>et al.</i>                   | ) | <b>Zuni Indian Claims</b> |
| Defendants                                | ) |                           |
| _____                                     | ) |                           |

PRELIMINARY PROCEDURAL AND SCHEDULING ORDER  
SUBPROCEEDING 1: THE ADJUDICATION OF ZUNI INDIAN WATER RIGHTS CLAIMS

The Special Master enters this Order pursuant to Fed. R. Civ. P. 16(b), and hereby amends and supercedes in part the April 5, 2004 *Procedural and Scheduling Order for Federal and Indian Water Rights Claims* (Doc. No. 323, No. 01cv00072-BB) (“April 5, 2004 Order”) with respect to the adjudication of all water rights claims for surface and groundwater use made in this civil action on behalf of the Zuni Indian Tribe and its members. A status and scheduling conference concerning this case in general was held on May 25, 2007, and included discussion of necessary clarifications and amendments to the preliminary procedures for the *inter se* proceedings in Subproceeding 1 established by the April 5, 2004 Order. 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 Subproceeding 1:

1. **Caption:** For purposes of the CM/ECF e-docket, the general adjudication of the Zuni River Basin, No. 01cv00072-BB, is considered the “lead case.” Subproceeding 1, No. 07cv00681-BB, is referred to as a “member case.” All pleadings pertaining to this Subproceeding shall appear with the caption and case number above. Any pleadings in this Subproceeding which are

inadvertently filed under the lead case, No. 01cv00072-BB, must be re-submitted by the filer to be recognized in this Subproceeding.

2. **Description of the Subproceeding.** Subproceeding 1 was established by the April 5, 2004 Order. Paragraph 2.1 of that Order defined the subproceeding to 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” (collectively termed herein the “Zuni Indian Claims”). Pursuant to the Order, as amended December 27, 2006 (Doc. No. 920, No. 01cv00072-BB) and April 30, 2007 (Doc. No. 1118, No. 01cv00072-BB), the United States, on May 11, 2007, initiated the subproceeding by filing the *United States' Subproceeding Complaint And Statement Of Claims For Water Rights On Behalf Of, And For The Benefit Of, The Zuni Indian Tribe And Zuni Allottees* (Doc. No. 1 in this case, and Doc. No. 1125, No. 01c00072-BB) (“U.S. Subproceeding Complaint”). The Zuni Indian Tribe filed its *Supplemental Subproceeding Complaint* on July 27, 2007 (Doc. No. 2 in this case, and Doc. No. 1187, No. 01cv00072-BB).

3. **Inter se Proceedings/Binding Effect.** Subproceeding 1 will be conducted as an expedited *inter se* proceeding: All water rights claimants in the Zuni River stream system will receive notice and have the opportunity to object to claims filed in this subproceeding, and to participate in the presentation to the Court of evidence and legal arguments concerning such claims. The adjudication of the Zuni Indian claims will proceed to a partial final decree which shall be binding on all water rights claimants, known and unknown, in the Zuni River stream system, regardless of whether they choose to participate as parties in Subproceeding 1, and will therefore affect these other claimants’ rights to challenge the Zuni Indian Claims. However, Subproceeding 1 does not involve the adjudication of the water rights of other parties, including those of subfile

defendants, of the Navajo Nation and its members, or of the United States in its proprietary capacity or in its capacity as trustee for the benefit of the Navajo Nation or Navajo Nation members.

4. **Supplemental Subproceeding Complaint.** Not later than July 27, 2007, the Zuni Indian Tribe shall file in this Subproceeding a pleading styled a “Supplemental Subproceeding Complaint” containing any objections the Tribe may have to the U.S. Subproceeding Complaint and any additional claims the Tribe may have to appropriative or reserved rights to surface water or groundwater within the Zuni River stream system.

5. **Responsive Pleadings and Discovery Stayed.** No party shall serve or file an answer or other pleading responding to the U.S. Subproceeding Complaint or to the Zuni Indian Tribe’s Supplemental Subproceeding Complaint, or serve discovery concerning the Zuni Indian Claims, until expressly ordered or permitted to do so by subsequent orders of the Special Master following the November 27, 2007 scheduling and planning conference.

6. **Service of Notice of Expedited *Inter Se* Proceeding and Form Notice of Intent to Participate.** On or before **September 27, 2007**, the United States shall serve a *Notice of Expedited Inter Se Subproceeding*, substantially in the form attached hereto, including the form *Notice of Intent to Participate in Subproceeding 1*, on all water rights claimants in the Zuni River stream system. Service on known claimants shall be by mail addressed to the claimants or to their counsel of record. Service on unknown claimants shall be by publication of the *Notice of Expedited Inter Se Proceeding* and form *Notice of Intent to Participate in Subproceeding 1* for four consecutive weeks in a newspaper of regional circulation, the last date of publication to be on or before September 27, 2007.

7. **Notice of Intent to Participate.**

a. Unrepresented, or *pro se*, parties. Any party desiring to participate in the adjudication of the Zuni Indian Claims in Subproceeding 1 shall file a form *Notice of Intent to Participate in Subproceeding 1* with the Court for receipt on or before **October 26, 2007**. **Only parties who claim water rights within the Zuni river stream system in New Mexico will be permitted to participate in Subproceeding 1.** Filing a *Notice of Intent to Participate in Subproceeding 1* constitutes a voluntary appearance by the party, and affirmative submission to the jurisdiction of this Court with respect to all matters in the lead case, No. 01cv00072-BB, as well as those involved in this Subproceeding 1, No. 07cv00681-BB. Any party that fails to file a timely *Notice of Intent to Participate in Subproceeding 1* may not later object to any of the claims raised in Subproceeding 1, unless pursuant to an order of the Court granting a motion to intervene in Subproceeding 1 consistent with Fed. R. Civ. P. 24.

b. Parties represented by counsel. Parties represented by counsel shall complete and sign, but not file, a *Notice of Intent to Participate in Subproceeding 1*. That pleading shall be filed by Counsel pursuant to the provisions in Paragraph 8, below.

8. **Entries of Appearance.** On or before **October 26, 2007**, each attorney representing one or more parties in this Subproceeding other than the United States, the Zuni Indian Tribe, or the State shall, pursuant to D.N.M.LR-Civ.83.4 and the CM/ECF Administrative Procedures Manual, file an electronic entry of appearance in this Subproceeding, provide the name and mailing address of each client represented, and attach to the entry of appearance the corresponding *Notice, or Notices, of Intent to Participate in Subproceeding 1*. The Notice(s) shall be completed and signed by the client(s). The entry of appearance shall be filed regardless of whether counsel has entered an appearance in the lead case, and will relate specifically to this Subproceeding.

9. **Planning and Scheduling Conference.** The Special Master will hold a planning and scheduling conference on **Tuesday, November 27, 2007**, at a time and place to be announced, to determine the dates for filing answers to the subproceeding complaints, for initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1), for a conference of parties pursuant to Fed.R.Civ.P. 26(f), for a pretrial conference pursuant to Fed. R. Civ. P. 16, and to discuss management of the different kinds of issues in this subproceeding. **Attendance at the planning and scheduling conference is mandatory: Any party not appearing at the planning and scheduling conference in person or by counsel will thereafter be precluded from participating in Subproceeding 1, notwithstanding the filing of a timely *Notice of Intent to Participate in Subproceeding 1*.**

IT IS SO ORDERED.

*Vickie L. Gabin*

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SPECIAL MASTER VICKIE L. GABIN