

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

UNITED STATES OF AMERICA	)	
and	)	12cv01298-MV/LFG
NAVAJO NATION	)	
Plaintiffs,	)	ZUNI RIVER BASIN
	)	ADJUDICATION
-v-	)	
	)	
STATE OF NEW MEXICO, <i>ex rel.</i> State	)	Subproceeding 2
ENGINEER, <i>et al.</i>	)	<b>Navajo Indian Claims</b>
Defendants	)	
_____	)	

**MOTION TO APPROVE AND ENTER UPDATED NOTICE OF EXPEDITED INTER SE PROCEEDING**

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The Plaintiff United States of America (“United States”) hereby moves the Court to approve and enter the updated *Notice of Expedited Inter Se Proceeding for Subproceeding 2*, including the form *Notice of Intent to Participate in Subproceeding 2*, submitted herewith as Exhibit 1. In support of this motion, the United States asserts:

1. Paragraph 6 of the *Preliminary Procedural and Scheduling Order for Subproceeding 2: The Adjudication of Navajo Indian Water Rights Claims*, filed May 21, 2008 in Case No. 01cv00072 (No. 1767) (“Preliminary Procedural Order”), requires the United States to “serve a *Notice of Expedited Inter Se Subproceeding*, substantially in the form attached [to the Preliminary Procedural Order], including the form *Notice of Intent to Participate in Subproceeding 2*, on all water rights claimants in the Zuni River stream system.”

2. The forms of notice attached to the Preliminary Procedural Order included blanks to be filled in. In addition, deadline dates included in the notice, references to Court

personnel, and the address of Counsel for the United States have been changed by subsequent orders of the Court or other circumstances. Exhibit 1 hereto updates such references and provides the information previously left blank, but does not materially alter the substance of the *Notice of Expedited Inter Se Subproceeding* or the *Notice of Intent to Participate in Subproceeding 2* form.

3. The *Notice of Expedited Inter Se Subproceeding* attached to the Preliminary Procedural Order was drafted with blanks to be dated and signed by the Special Master. A signature image would not be feasible to replicate when the notice is published, and, in any event, is not necessary to the substance or force and effect of the notice once it is filed electronically. Fed.R.Civ.P. 5(d)(3); CM/ECF Admin. Procedures Manual ¶ 11(b) (rev. 2011). Accordingly, Exhibit 1 eliminates the date and signature blanks and substitutes a statement that the “United States is ordered to serve this notice on all water rights claimants in the Zuni River stream system,” which will inform recipients of the notice why they are receiving it from counsel for the United States.

4. The United States provided a draft of the present motion, and a comparison draft highlighting the proposed changes incorporated in Exhibit 1, to Counsel for the Navajo Nation, the Zuni Tribe, and the State on May 2, 2013. These parties have all indicated that they do not oppose this motion.

WHEREFORE the United States respectfully moves the Court to file as a notice issued by the Court the *Notice of Expedited Inter Se Proceeding for Subproceeding 2*, including the form *Notice of Intent to Participate in Subproceeding 2*, submitted herewith as Exhibit 1.

Dated: May 17, 2013

Electronically Filed

/s/ Bradley S. Bridgewater

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**BRADLEY S. BRIDGEWATER**

U.S. Department of Justice

South Terrace, Suite 370

999 18th Street

Denver, CO 80202

Phone: (303) 844-1359

**COUNSEL FOR THE UNITED STATES**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on May 17, 2013, I filed the foregoing *Motion To Approve And Enter Updated Notice Of Expedited Inter Se Proceeding* electronically through the CM/ECF system, which caused CM/ECF participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

\_\_\_\_\_/s/\_\_\_\_\_  
Bradley S. Bridgewater

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NAVAJO NATION	)	
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Defendants	)	
	)	

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**NOTICE OF EXPEDITED *INTER SE* SUBPROCEEDING FOR SUBPROCEEDING 2**

TO: ALL PERSONS CLAIMING 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.

**PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES THE ONLY OPPORTUNITY YOU WILL HAVE TO PARTICIPATE IN THE ADJUDICATION OF WATER RIGHTS CLAIMED IN THE ZUNI RIVER STREAM SYSTEM ON BEHALF OF THE NAVAJO NATION AND ITS MEMBERS (THE “NAVAJO INDIAN CLAIMS”). PLEADINGS FILED IN THIS SUBPROCEEDING MUST INCLUDE THE CASE CAPTION AS SET FORTH ABOVE, OR THEY WILL NOT BE RECOGNIZED IN THIS SUBPROCEEDING.**

YOU ARE HEREBY NOTIFIED that the United States, on December 13, 2012, initiated this subproceeding by filing the *United States' Subproceeding Complaint and Statement of Claims for Water Rights on Behalf of, and for the Benefit of, the Navajo Nation and Navajo Allottees (No. 1)* (“U.S. Subproceeding Complaint”). In addition, on April 30, 2013, the Navajo Nation filed the *Supplemental Subproceeding Complaint of the Navajo Nation* (No. 3) (“Navajo Supplemental Subproceeding Complaint”). These documents are available for copying at the pleading repository for the Zuni adjudications at the University of New Mexico’s Zollinger Library in Gallup, New Mexico; and at the Office of the State Engineer, Litigation and Adjudication Program, in Santa Fe, New Mexico. In addition, the documents may be downloaded in Portable Document Format (PDF) from the “Court Documents, Decisions, Orders, Etc.” page at: <http://www.zunibasin.com>.

You may also obtain a copy of the U.S. Subproceeding Complaint and the Navajo Supplemental Subproceeding Complaint by sending a written request to Bradley S. Bridgewater, U.S. Department of Justice, South Terrace, Suite 370, 999 18th Street, Denver, CO 80202.

## **Subproceeding 2**

The Court has established Subproceeding 2 in order to efficiently conduct the adjudication of the Navajo Indian Claims. All water rights claimants in the Zuni River stream system will receive this 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 these 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 2, and will therefore affect these other parties' rights to challenge the Navajo Indian Claims. However, Subproceeding 2 does not involve the adjudication of the water rights of other parties, including those of subfile defendants, of the Zuni Indian Tribe and its members, or of the United States in its proprietary capacity or in its capacity as trustee for the benefit of the Zuni Indian Tribe or Zuni Indian Tribe members.

### **Rights and Options of Water Right Owners:**

If you claim water rights in the Zuni River stream system, its tributaries or associated underground water basin, you have the following rights and options:

1. You may do nothing. If you do not wish to participate in the adjudication of the Navajo Indian Claims, you do not have to take any further action. In that case, you may be bound by any partial final decree entered by the Court concerning the Navajo Indian Claims.
2. You may file a *Notice of Intent to Participate in Subproceeding 2* using the attached form. If you wish to participate in the adjudication of the Zuni Indian Claims, you must, **no later than November 15, 2013**, file a *Notice of Intent to Participate in Subproceeding 2* with the Clerk's Office of the U.S. District Court, 106 S. Federal Place, Santa Fe, NM 87501, using the form appearing at the end of this document and following the instructions. If you retain an attorney, that attorney must follow the instructions on the form. Filing a *Notice of Intent to Participate in Subproceeding 2* constitutes a voluntary appearance and affirmative submission to the jurisdiction of this Court with respect to all matters in the lead case, No. 01cv00072-MV/LFG, as well as those involved in Subproceeding 2, No. 12cv01298-MV/LFG. **Any party that fails to file a timely *Notice of Intent to Participate in Subproceeding 2* may not later object to the Navajo Indian Claims, unless pursuant to an order of the Court granting a motion to intervene in Subproceeding 2 consistent with Fed. R. Civ. P. 24.**

If you file a *Notice of Intent to Participate in Subproceeding 2* by **November 15, 2013**, you must attend a scheduling conference for further proceedings, to be held on November 26, 2013, at a time and place to be announced. **Any party not appearing at the planning and scheduling conference in person or by counsel will thereafter be precluded from participating in Subproceeding 2, notwithstanding the filing of a timely *Notice of Intent to Participate in Subproceeding 2*.**

The United States is ordered to serve this notice on all water rights claimants in the Zuni River stream system.

Lorenzo F. Garcia  
UNITED STATES MAGISTRATE JUDGE

