

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

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

**INITIAL SCHEDULING AND PLANNING ORDER**

This Order is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the adjudication of the water rights claims asserted in this Subproceeding by the Plaintiffs United States of America (“United States”) and Zuni Indian Tribe (“Tribe”). In entering this Order, the Special Master is guided by concerns for efficiency and for resolution of this Subproceeding in as short a time as the complexities of the case, and the resources of the parties, will allow. In drafting this Order, the Special Master has taken into consideration the written proposals and comments submitted by the parties, and the comments of counsel and parties *pro se* at the Scheduling and Planning Conference.

**1. Date of Conference and Appearances**

**1.1 Date of Conference**

The Planning and Scheduling Conference was held before Special Master Vickie L. Gabin on November 27, 2007.

**1.2 Appearances**

**1.2.1 Counsel**

Attorney and/or Firm:	Representing:
Bradley S. Bridgewater U.S. Department of Justice 1961 Stout St., 8 <sup>th</sup> Floor Denver, CO 80294 (303) 347-9601	Plaintiff United States
Jane Marx 2825 Candelaria Road, NW Albuquerque, New Mexico 87107	Plaintiff Zuni Indian Tribe
Edward Bagley Office of the State Engineer, Legal Division P.O. Box 25102 Santa Fe, NM 87504 (505) 827-6150	Defendant New Mexico ex rel. State Engineer
William G. Stripp, Attorney at Law P.O. Box 159 Ramah, NM 87321 (505) 783-4138 stripp@wildblue.net	Paul Davis Survivor's Trust dated July 28, 2003; JoAnn V. Davis Residual Trust dated July 28, 2003; Pamela Kay Davis; Sage Grae Merrill; Kristeen "Kristi" Davis; Anita Davis Schafer; Robert Schafer; Barbara Mallery; Lucy W. Kluckhohn-Jones, Trustee; Priscilla M. Schulte; Eddie Torres; Tina Torres; Luis Mario Baeza; Lisa Baeza; Paul Petranto; and William G. Stripp

### 1.2.2 Parties appearing *pro se*:

## **2. Preliminary Case Plan and Schedule**

### **2.1 Parties**

Pursuant to the July 30, 2007 *Preliminary Procedural and Scheduling Order* (Doc. No. 3), only those parties who have filed a timely *Notice of Intent to Participate in Subproceeding 1*, and who have appeared at the Planning and Scheduling Conference, in person or by counsel, may participate in Subproceeding 1. Accordingly, only those parties listed in Section 1.2 of this Order, or in a subsequent order of the Court granting a motion to intervene in Subproceeding 1 consistent with Fed.R.Civ.P. 24, shall be entitled to participate in, or to receive service of pleadings and other papers concerning, Subproceeding 1.

### **2.2 Service of Pleadings and Other Documents, Joint Document Depository**

The Special Master finds that, as provided by Paragraph 3(a) of this Court's CM/ECF Administrative Procedures Manual, all parties represented by counsel of record, and all parties *pro se* who have registered with the Court's CM/ECF system, will be electronically served with all filed documents via the CM/ECF system and have waived their right under Fed.R.Civ.P. 5 to personal service or service by mail of such documents. Nonetheless, a large number of parties involved in this Subproceeding are not CM/ECF Participants, and discovery documents listed in D.N.M.LR-Civ. 26.2 (a) - (f), which are not to be filed with the Court, must still be served pursuant to Fed.R.Civ.P. 5. In consequence, a narrow interpretation of Fed.R.Civ.P. 5(a) requiring almost all documents filed with the Court or relating to discovery to be served upon each of the parties would cause significant financial hardship to many parties, could discourage some parties from participating in the Subproceeding, and thus would run contrary to the mandate of Fed.R.Civ.P. 1 that the Rules be "construed and administered to secure the just, speedy, and inexpensive determination of every action."

Accordingly, on or before \_\_\_\_\_, 200\_\_, counsel listed in Section 1.2.1 shall meet and confer and submit to the Special Master recommendations concerning a Joint Document Depository (JDD) that will store materials pertinent to this Subproceeding, including disclosures, interrogatories, requests for admission, requests for production of documents, deposition transcripts, documents produced in response to discovery requests or subpoenas, and similar materials, and provide access to such materials to the parties on a not-for-profit basis.

Counsels' considerations and recommendations should encompass:

- (a) making a party's placement of documents in the JDD fully satisfy the party's obligation to produce documents to other parties,
- (b) the means of providing notice of the contents of the JDD to all parties,
- (c) rules of usage,
- (d) protocols for produced materials subject to a claim of privilege or assertion of confidentiality,
- (e) use of unique alphanumeric identifiers for all documents placed in the JDD,
- (f) allocation of fees for operation of the JDD and payment of allocated fees by users, and
- (g) use of electronic media and/or remote access to reduce parties' need to travel to examine documents.

### **2.3 Answers**

Pleadings responding to 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) ("U.S. Subproceeding Complaint") and the Zuni Indian

Tribe's *Supplemental Subproceeding Complaint* (Doc. No. 2) ("Zuni Supplemental Complaint") are necessary to frame issues for purposes of disclosures and discovery, and to provide information essential to the Court's further management of the case, including which parties are prepared to bear the burdens of participation in the adjudication of which issues. Accordingly, on or before \_\_\_\_\_, 200\_, all parties opposing any of the claims stated by the U.S. Subproceeding Complaint or the Zuni Supplemental Complaint shall file Answers consistent with Fed.R.Civ.P. 8 except that, given this proceeding's character as a subproceeding, no such Answer shall contain a counterclaim or cross-claim. Any claim that could be stated in a counterclaim or cross-claim should be properly raised in the main case, No. 01cv00072. Counterclaims or cross-claims asserted in this Subproceeding in violation of this Order shall be deemed stricken without further order of the Court.

#### **2.4 Initial Disclosures**

On or before \_\_\_\_\_, 200\_, all parties shall make initial disclosures required by Fed.R.Civ.P. 26(a)(1)(A) & (B). As stated by Rule 26(a)(1), "[a] party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures."

#### **2.5 Discovery Conference**

On or before \_\_\_\_\_, 200\_, the attorneys of record listed in Section 1.2.1, and all unrepresented parties listed in Section 1.2.2, shall meet to develop a proposed discovery plan that indicates the parties' views and proposals concerning any of the topics listed in Fed.R.Civ.P. 26(f)(1) - (6). In particular, the parties' proposed plan shall address

proposals to conduct discovery and/or evidentiary hearings in phases or focused on particular issues.

**2.6 Pretrial Conference**

A further conference to address scheduling and management of this

Subproceeding will be held on \_\_\_\_\_, 200\_, at \_\_\_\_\_.

IT IS SO ORDERED.

\_\_\_\_\_  
SPECIAL MASTER VICKIE L. GABIN