

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
) 01cv00072 BDB-ACE  
-v- )  
) ZUNI RIVER ADJUDICATION  
STATE OF NEW MEXICO, ex rel STATE )  
Engineer, A & R Productions, et al., )  
)  
Defendants. )  
\_\_\_\_\_)

PROCEDURAL AND SCHEDULING 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 non-federal water rights in the Zuni River Basin. It is one of a set of orders which will be entered during this case.

Having considered the comments and suggestions of interested counsel and defendants *pro se*, and being fully advised in the premises, it is hereby ordered that the following, general outline of procedures will govern the course of the adjudication of the claims to the waters of the Zuni River Adjudication. Procedural and scheduling orders for each sub-area will issue following the filing of the hydrographic survey report for the sub-area. The following provisions may be modified in the future to accommodate specific requirements for each sub-area or for the adjudication generally.

**I. PUBLIC ACCESS TO CASE INFORMATION**

A. Website

Plaintiff United States of America (“United States”) has established a public website - [www.zunibasin.com](http://www.zunibasin.com). All documents that have been filed in this adjudication are available for viewing and downloading, as well as. public notices of meetings, status conferences, field sessions and the like

This website shall include an brief explanation of how a claimant may contact the United States District Court for access to the Court's website.

B. Hard Copy Repository

The United States will establish and maintain a repository of pleadings filed in this case at the University of New Mexico's Zollinger Library in Gallup, New Mexico. Pleadings may be copied, but may not be removed from the repository. This repository will also include public notices of meetings, status conferences, field sessions and the like.

**II. FEDERAL AND INDIAN CLAIMS**

No later than August 1, 2003, counsel for the United States, after conferring with counsel for the State of New Mexico, ex rel. State Engineer ("State"), the Navajo Nation and the Zuni Indian Tribe, shall submit to the Special Master several alternative, agreed-upon dates in late August or early September, 2003, for a status conference on federal and Indian claims scheduling and procedures. The Special Master will then issue a notice setting out the time and place for the conference. Counsel representing those parties shall be prepared to circulate a proposed order (or orders, if there are disagreements) to counsel of record and defendants who have entered appearances *pro se*, at least 10 days prior to the conference.

**III. STATEMENTS OF CLAIMS FOR NON-FEDERAL RIGHTS**

A. Interim Procedural Order

The Interim Procedural Order entered June 24, 2003 (No. 208) established the procedure for filing forms describing non-federal water rights with the Office of the State Engineer ("State"). The Order includes the relevant forms and a disclaimer of interest, sets out the schedule for the first two field sessions, and requires water rights claimants to keep their ownership information current.

Pursuant to that Order, all water rights claimants in the Zuni River stream system must file the appropriate documents by October 31, 2003.

B. Disclaimer of Interest/Dismissal

Parties who claim no water rights within the boundaries of the Zuni River Adjudication may be dismissed at any time by submitting a Disclaimer of Interest form to Charles E. O'Connell, Jr., USDOJ, Indian Resources Section, P.O. Box 44378, L'Enfant Plaza Station, Washington, D.C., 20026-4378. The United States shall then take the steps necessary to effect dismissal, if appropriate, of these parties and of parties who have previously filed answers and motions in accordance with Federal Rules of Civil Procedure.

C. State Trust Lands

No later than October 31, 2003, the New Mexico State Land Office shall (i) identify all state trust lands within the boundaries of the adjudication, (ii) provide the United States and State with this information and the names and addresses of current lessees, and (iii) submit claims for water rights held by the Commissioner. The United States shall notify current lessees of the pendency of this adjudication within 60 days of receipt of the information.

**IV. AMENDED COMPLAINT**

A. Service

Pursuant to the May 21, 2003, Order on Special Master's Report re Geographic Scope of Adjudication (No. 200), the United States shall file and serve its Amended Complaint no later than August 1, 2003. The Amended Complaint shall be accompanied by Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, a copy of this Order, and a copy of the Disclaimer of Interest form.

B. Waiver of Service of Summons

If no Request for Waiver of Service is returned to the United States within 30 days of service of the Amended Complaint (or 60 days if this request was sent to a Defendant outside of the United States), the United States may be required to personally serve the defendant with the Summons, Amended Complaint and other information in the packet. The defendant may be assessed the costs of personal service pursuant to the Federal Rules of Civil Procedure.

C. Answer

On May 21, 2003 the Court lifted its March 1, 2001 stay (No. 3) in this case, and directed the Special Master to initiate case scheduling, including the filing of answers “or any equivalents.” In a typical stream system adjudication, answers to the complaint and request for a stream system adjudication take the form of agreements or disagreements with the Plaintiffs’ proposed offers of judgment or consent orders, which describe the defendant’s water rights as found in the hydrographic survey. At this time, however, no hydrographic surveys have been completed, nor have joined defendants been permitted to file objections and/or affirmative defenses to the complaint. Consequently, defendants shall have 60 days (or 90 days if service was made outside of the United States) after service of the Amended Complaint in which to file objections and defenses pursuant to Fed. R. Civ. P. 12. Failure to do so will not waive a defendant’s future right to challenge the Plaintiffs’ proposed consent orders and descriptions of water rights, or specific statements of water rights claims for federal proprietary rights or federal Indian rights, which will be filed in the future.

D. Discovery

No discovery proceedings shall be initiated at this time.

## **V. NOTICE OF *LIS PENDENS***

No later than 60 days after the filing of the Amended Complaint, the United States shall file a notice of *lis pendens* in the appropriate sites. Parties interested in the content or siting of the notice(s) shall direct all comments and suggestions to counsel for the United States.

## **VI. HYDROGRAPHIC SURVEY PROCESS**

### **A. Approval by State**

For each of the sub-areas delineated by the United States, a hydrographic survey report and hydrographic survey maps shall be filed when the survey is completed. Prior to filing, the report and maps shall be submitted to the State for review, and any objections shall be submitted to the United States by the State within 30 days of receipt of the report and maps. The State and the United States will have 30 days in which to discuss and resolve any objections. A joint motion explaining unresolved objections shall be filed with the Court within 10 days of the end of discussions.

### **B. Status and Scheduling Conference**

Prior to filing each hydrographic survey report, the State and the United States will submit to the Special Master a request for status conference, the forms of a proposed consent order and answer, and a proposed scheduling and procedural order for completing the adjudication of the water rights claims in that section. Unless otherwise agreed upon, the consent order shall set out the amount and location of irrigated acreage, the location of the point of diversion and the purpose of use, irrigation water requirements and priority dates, and include a map showing the individual claimant's water right claims as recognized by the United States and State.

### **C. Joinder of Claimants**

Water rights claimants identified in each hydrographic report who have heretofore not been

joined to the suit, shall be joined by the United States pursuant to the procedural and scheduling orders entered for each sub-area.

## **VII. CHANGE OF ADDRESS OR OWNERSHIP**

All Claimants, whether or not they are represented by counsel, are responsible for informing the Court of any changes in their mailing address or changes in ownership of water rights or real property associated with the rights. The filing should include the name and address of the owner of record and the new owner, any State Engineer file information, and a description of the right, including the purpose and place of use. Standard forms are available from Office of the State Engineer, 121 Tijeras NE, Suite 2000, Albuquerque, NM 87102. The information must be filed with the Court within 30 days of any change at the following address:

Water Rights Adjudication Clerk  
United States District Court  
333 Lomas Blvd. N.W., Suite 270  
Albuquerque, NM 87102

## **VIII. *PRO SE* REPRESENTATION**

Claimants who intend to appear and represent themselves shall file a notice with the Court at the address noted above. Thereafter, they will be included on the Distribution List and served with pleadings pursuant to Paragraph X, below.

## **IX. MOTION PRACTICE**

Unless altered by the provisions in this Order, motion practice shall be governed by the provisions of the Court's March 27, 2003 Administrative Order Establishing Motion Practice and Procedure (No. 191), until further notice.

## **X. NEW SERVICE PROPOSALS/LIMITS ON SERVICE OF PLEADINGS**

### **A. Proposals for Notice**

This adjudication includes many hundreds of individual, *pro se* defendants, and a large number of attorneys. Service of pleadings of general application, miscellaneous correspondence, and other documents may require resources beyond the means of many parties. Consequently, the Court is interested in suggestions for accomplishing alternative forms of service and notice to parties. Mr. William Stripp, counsel for Paul Petranto, the Law & Resource Planning Associates, P.C., counsel for the Western New Mexico Water Preservation Association, Mr. Thomas Outler, counsel for the Salt River Project Agricultural Improvement and Power District, and Mr. Charles O'Connell, counsel for the United States, shall take lead in proposing alternative forms of notice and service which would be appropriate for this adjudication. Other counsel and non-represented parties should submit suggestions and proposals to Mr. O'Connell. Mr. O'Connell shall file and serve counsel of record a proposal (or proposals) no later than August 29, 2003.

### **B. Limitations on Service**

The following limitations on service shall be in effect until further notice.

1. This Procedural Order shall be served on counsel of record and named defendants by the United States. Double-sided copies are permitted to conserve resources. Subsequent procedural orders for each sub-area shall be served only on all counsel of record and defendants with water rights claims in the sub-area. Others may apply to the Court for inclusion on the specific service lists.

2. Service of pleadings and other papers required to be served concerning subfile orders between an individual Claimant and the United States and the State shall be limited to the individual Claimant (or counsel for the Claimant) and the United States and the State.

3. Where water rights claims are associated with state trust lands, service of pleadings and other papers required to be served concerning subfile orders shall be served on the New Mexico Commissioner of Public Lands.

4. Service of pleadings and other papers required to be served concerning the Zuni River Basin adjudication generally shall be served on counsel of record and defendants *pro se* who have made a separate entry of appearance.

5. Unless otherwise ordered by the Court, parties filing motions of general application shall not be required to determine if their motions are opposed prior to filing the motion. When a motion involves issues or claims limited to a particular Claimant or subfile, the movant shall determine if the motion is opposed before filing.

**IT SO ORDERED.**

/electronic signature/  
SPECIAL MASTER VICKIE L. GABIN