

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

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	01cv00072-BB-ACE
-v-)	
)	ZUNI RIVER BASIN
STATE OF NEW MEXICO, <i>ex rel.</i> STATE)	
Engineer, A & R Productions, <i>et al.</i> ,)	
)	
Defendants.)	
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ADMINISTRATIVE ORDER

THIS MATTER is before the Court *sua sponte*. This Order supersedes the Court’s May 4, 2001 Administrative Order (Docket No. 54) regarding the funding for the Special Master and for the services of other personnel required by the Special Master.

Under Fed. R. Civ. Proc. 53 (a), the compensation of a special master “. . . shall be charged upon such of the parties or paid out of any fund . . . which is in the custody and control of the court as the court may direct. . . .” The rule permits, but does not require that the parties share the expense of a master. In this case, fairness may suggest that the expense be borne by one of the parties. Atlantic Richfield Co. v. American Airlines, Inc., 98 F.3d 564,572 (10th Cir. 1996); Brock v. Ing, 827 F.2d 1426, 1428 (10th Cir. 1987).

In this instance, the United States filed the adjudication without engaging in sufficient consultation with the State of New Mexico, the party which has an equal or greater responsibility and financial burden in such a case. The Court finds that fairness requires that, at least initially, the United

States bear full responsibility for the Special Master's costs and expenses as set forth in the Order of Reference.

IT IS THEREFORE ORDERED that the United States of America shall advance funds for deposit in the Court's water adjudication account¹ in the amounts and at the times ordered by the Court. The Court's orders for funding will be entered at least 30 days prior to the date on which the required advances are due. All checks for deposit shall be made payable to USDC, and all checks, or the paperwork that accompanies them, shall reference the court account number, 1:66cv06639-M.

The checks shall be sent to:


Clerk of the Court - USDC/DCNM
333 Lomas Blvd, N.W., Suite 270
Albuquerque, New Mexico 87102

IT IS FURTHER ORDERED that the Special Master shall periodically submit vouchers detailing fees, expenses, and New Mexico gross receipts taxes for herself and other personnel. Upon the filing of the vouchers, the Court Financial Administrator shall make payment to the payees.

IT IS FURTHER ORDERED that the Special Master shall report on the status of the case and move for approval of her previous invoices in January and July of each year. The report shall include an affidavit or declaration by the Special Master certifying the work performed. The United States of America and the State of New Mexico shall receive copies of the Special Master's report and a summary of deposits and disbursements from the water adjudication account for the previous six months. They will be given an opportunity to object. Upon review and consideration of the

¹ Established in 1995, the water adjudication account receives and disburses funds associated with special master fees and expenses in all of the pending water adjudications. This account was established with the Rio Pojoaque Adjudication case number 66cv06639, and therefore, all financial documentation is entered in the Rio Pojoaque Adjudication court record.

Special Master's report and any objections to it, the Court will enter an order on the Special Master's motion.



BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE