

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

3 UNITED STATES OF AMERICA,
4 STATE OF NEW MEXICO,
5 ex rel. STATE ENGINEER,

6 Plaintiffs,

7 ZUNI INDIAN TRIBE,
8 NAVAJO NATION,

9 Plaintiffs-in-Intervention,

10 -vs-

11 NO. 01 CV-72 BB/WDS
12 ZUNI RIVER BASIN ADJUDICATION

13 STATE OF NEW MEXICO,
14 COMMISSIONER of
15 PUBLIC LANDS and
16 A&R PRODUCTIONS, et al.,

17 Defendants.

18 and

19 UNITED STATES OF AMERICA,
20 and ZUNI INDIAN TRIBE,

21 Plaintiffs,

22 -vs-

23 NO. 07 CV-688 BB
24 ZUNI RIVER BASIN ADJUDICATION
25 Subproceeding 1

STATE OF NEW MEXICO, Zuni Indian Claims ex rel.,
STATE ENGINEER, et al.,

Defendants,

TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

December 1, 2009

BEFORE: VICKIE L. GABIN, SPECIAL MASTER

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1 (In open court at 12:04 p.m.)

2 THE SPECIAL MASTER: Okay, let's begin.

3 We're here today on a status conference for the
4 adjudication of the Zuni River Basin. We're going
5 to be dealing with issues having to deal with the
6 main case, the Subproceeding 1, the claims of the
7 Zuni Indian Tribe, and Subproceeding 2, claims of
8 the Navajo Nation.

9 Let's start with appearances, please.

10 MR. SCHOENFELD: Peter Schoenfeld for the
11 Yates defendants with respect to the Target Ranch
12 and for the Wells Fargo trustee under the Allen
13 Trust. I'm quite sure I do not have the name
14 exactly right.

15 MR. CURTICE: Stephen Curtice on behalf of
16 numerous individual defendants and the Ramah Land &
17 Irrigation Company, among other individuals and
18 entities.

19 MR. NOBLE: Good morning, Your Honor.
20 James Noble for the Jaralosa Cattle Company, LLC,
21 and Tampico Springs 3000, LLC.

22 MR. HUGHES: Stephen Hughes on behalf of
23 the New Mexico Commissioner of Public Lands.

24 MS. SINGER: Arianne Singer, Your Honor,
25 for the State of New Mexico Plaintiff.

1 MR. BRIDGEWATER: Bradley Bridgewater for
2 the United States. With me is Greg Mehojah from the
3 Solicitor's Office.

4 MS. MARKS: Good Morning, Special Master.
5 Jane Marx on behalf of the Zuni Indian Tribe. And
6 with me in the courtroom is Andres Cheame, who is
7 the Water Rights Program Coordinator at Zuni.

8 MS. BECKER: Bidtah Becker with the Navajo
9 Nation.

10 THE SPECIAL MASTER: Okay, the first thing
11 on the agenda. When I had asked counsel for
12 suggestions for agenda items, Mr. Bridgewater
13 brought to my attention the fact that there were
14 conflicting demands on him, but particularly on many
15 of the attorneys here, and that we were going to
16 have to be thinking very carefully about some
17 reorganization or reprioritization of tasks.

18 And I'd like Mr. Bridgewater to start off
19 and tell me what ideas you have for juggling what we
20 have in store.

21 MR. BRIDGEWATER: Thank you, Special
22 Master. Brad Bridgewater for the United States.

23 My approach to this case at this point in
24 time is mostly reactive. As I have time, I try to
25 work through the non-Indian subfile work.

1 But as you know, there is quite a lot
2 going on in some other cases, as well as coming down
3 the road on the Indian side of this case. The trial
4 deadline in the Santa Cruz/Truchas/Ohkay Owingeh
5 case, Subproceeding 2, necessarily is a priority
6 because --

7 THE SPECIAL MASTER: That's July.

8 MR. BRIDGEWATER: It's currently set for
9 July, I believe.

10 THE SPECIAL MASTER: Does it look likely
11 to go in July?

12 MR. BRIDGEWATER: I've seen the e-mail
13 traffic of a possible proposal to move that a few
14 months, but not very many.

15 In any event, we are just wrapping up
16 discovery in that case, which has been time
17 consuming, and we're moving into the motions phase,
18 which I anticipate will be extremely time consuming,
19 depending on a variety of dispositive motions that
20 the parties submit.

21 We've currently worked through a lot of
22 the subfiles in the Zuni adjudication, but we have
23 about 149 that need to be resolved. Those are all
24 non-Indian nonfederal defendants.

25 I have been working with my staff on ways

1 of grouping those subfiles as indicated in your
2 order. What I find every time is when you get into
3 the details of these subfiles, they really do need
4 to be handled uniquely.

5 It is possible, and I have discussed with
6 Mr. Schoenfeld briefly, that some of the larger
7 ranching subfiles have some common issues.

8 I haven't had a chance to talk with
9 Mr. Noble about that and frankly have not had time.
10 Both Mr. Schoenfeld and Mr. Noble have provided me
11 with very detailed requests for consultation
12 concerning their clients' subfiles.

13 A quick readthrough of those indicates
14 there are some common issues possibly about the way
15 stock ponds are quantified for purposes of
16 adjudicating a right. That is one possibility that
17 we could in some way resolve those matters together.

18 Mr. Schoenfeld suggested having a meeting
19 of counsel involved just to explore that, and I
20 think that's a good idea. We'll attempt to do that.

21 Otherwise, there have been a number of new
22 subfiles that have come into the case this past year
23 following the Court's December 4, 2008, order, which
24 in essence established an end date for the well
25 permits that would be involved in the case.

1 Our contractors and our CE, Dr. Niel
2 Allen, from NRCE, who is present with me in the
3 courtroom, have been doing follow-up fieldwork on
4 all of the remaining permits and declarations in the
5 State's files that were submitted prior to the
6 cut-off date, and nearly all that fieldwork is
7 finished.

8 There are a few wells they have not been
9 able to find, and I need to discuss with Mr. Bagley
10 how to deal with those issues. I believe there may
11 be four or five more subfiles to be added, but
12 that's it in the case.

13 And once that's done, it will just be a
14 matter of getting rid of subfiles by entry of
15 consent orders, default judgments or proceeding to
16 present matters to you, Special Master, for
17 resolution.

18 There are a number of consultations that
19 yet need to be held on subfiles that have requested
20 such, and it's been difficult for Mr. Bagley and I
21 to coordinate schedules on that. Mr. Bagley has
22 been very involved in the Aamodt case, dealing with
23 domestic wells.

24 I'm anticipating that after the turn of
25 the year, we'll start scheduling these consultations

1 again. And it appears to me that there may be as
2 many as 50 of these subfiles that can be resolved
3 through consultation yet.

4 THE SPECIAL MASTER: That's 50 out of 149?

5 MR. BRIDGEWATER: Yes. But I anticipate
6 there's in the neighborhood of 100 that are going to
7 have to be presented to you for some sort of
8 resolution, perhaps by a dispositive motion.

9 There are a few of these subfiles where
10 the only issue raised appears to be the domestic
11 well quantity, which the Court has previously ruled
12 on. The problem is presenting those in a manner
13 that fairly accounts for any distinguishing features
14 that people have raised.

15 And I have continued to look for ways that
16 some of them can be grouped together so that one
17 motion can deal with several subfiles, but I'm not
18 yet ready to present that to you. There's too many
19 entangling details that come up as I look into these
20 issues about ownership, changes in name and so forth
21 that have to be sorted out before an issue can be
22 cleanly presented.

23 I think from my perspective and perhaps
24 from Mr. Bagley's, who unfortunately could not be
25 with us today, we need some guidance from the Court

1 as to the relative importance of pushing these
2 forward as against the background of the Indians'
3 schedule that's being presented to you today, the
4 revised Indian subproceeding schedules and the other
5 cases that we are involved with.

6 Since the Abbot Subproceeding 2 became so
7 active this year, I have transferred primary
8 responsibility for two of my cases, the San Juan
9 River adjudication, which now has a major settlement
10 involved in it, and the Rio San Jose adjudication,
11 to other attorneys.

12 But there are no more attorneys available
13 to work on New Mexico. That's really gone to the
14 limit of what I can get from the Department of
15 Justice to help me on this.

16 And that basically is the situation. I'm
17 happy to respond to any questions you may have about
18 the matter.

19 THE SPECIAL MASTER: I was thinking about
20 the matter, but it was hard for me to concentrate on
21 specifics when I really didn't know if we were
22 dealing with a handful of subfiles or hundreds of
23 subfiles.

24 The fact that you have 149, with possibly
25 a third that could be resolved through

1 consultations, is discouraging and heartening at the
2 same time.

3 I guess I have a question about the
4 consultations. Do they need to be joint? Do you
5 need to coordinate with Mr. Bagley every time?

6 MR. BRIDGEWATER: I think that is both
7 necessary, and it has been very constructive. The
8 State has experience, and certainly Mr. Bagley is
9 much more familiar with the State's policies than I
10 am. And I don't see going forward unilaterally as
11 being particularly productive.

12 It would leave a hanging end that it would
13 be difficult to get resolved basically. Basically,
14 I think it would take more time if we did it that
15 way.

16 THE SPECIAL MASTER: If somebody did a
17 consultation and then reported to the other
18 plaintiff about what they recommended, what they
19 found out?

20 MR. BRIDGEWATER: It's much the preferred
21 approach if we could both be there. And in most
22 consultations, we have been able to reach an
23 agreement at the table and sign the document then
24 and there. And that really is the most efficient
25 way to deal with it.

1 NRCE has the technology that we could
2 revise consent orders on the spot, and that has been
3 very productive.

4 I would not, for example, want to have
5 NRCE revise a consent order and get the signature of
6 the defendant without having the State present to
7 agree to those changes.

8 THE SPECIAL MASTER: Of course.

9 Well, you know, I'm always in favor of
10 scheduling orders, whether the deadlines are on some
11 matters extended, just so we have that roadmap to go
12 forward.

13 My feeling with regard to non-Indian
14 rights generally is we get them in and we get them
15 out. My experience over all these too many years of
16 being a Special Master shows me what happens when
17 your data stales, when your ownership changes.
18 That's so inefficient.

19 And it seems to me we've got to do
20 something about getting the non-Indian rights at
21 least fixed at a moment in time so that we can knock
22 them off one by one.

23 I have not consulted with Judge Black
24 about this. It's a thorny problem, and that's my
25 feeling.

1 MR. BRIDGEWATER: Well, we have certainly
2 tried to do that.

3 THE SPECIAL MASTER: You have done an
4 excellent job.

5 MR. BRIDGEWATER: The ones we've gotten
6 through are, as I've described them previously, the
7 low-hanging fruit.

8 THE SPECIAL MASTER: Yes.

9 MR. BRIDGEWATER: Many of the subfiles
10 that are left, there are either personalities or
11 issues involved that are simply going to require
12 presentation to the Court.

13 There are also a couple other very large
14 subfiles. Mr. Hughes and I just talked briefly this
15 morning. The State trust lands has been hanging out
16 there. And I understand Mr. Hughes has had a need
17 to get some clarification on the extent of his
18 authority to resolve the outstanding issues.

19 Also the Ramah Irrigation District is a
20 very large and important subfile. It involves all
21 of the significant non-Indian irrigation claims in
22 the basin.

23 That's just -- it's a matter of it being
24 such a daunting task to deal with what's going to be
25 at stake in that. One issue in that subfile is that

1 the State and the US are divided on the question of
2 proper irrigation water requirements for a variety
3 of reasons.

4 This is an issue you see all across the
5 state. It's a touchy issue and an issue of great
6 importance to both parties. And it's likely we're
7 going to need resolution from the Court ultimately
8 to get that matter resolved, and that is inherently
9 involved in that subfile of the Ramah Irrigation
10 District.

11 THE SPECIAL MASTER: Setting aside for a
12 moment those large subfiles with owners who aren't
13 going anywhere, how many smaller subfiles do we
14 have, pro se folks, whether or not they're unique
15 factually? How many, more or less, do we have to
16 look at?

17 MR. BRIDGEWATER: I can't give you exact
18 numbers. But after poring over this list of 149 for
19 the last few days, I would estimate there's maybe
20 125 subfiles that are pro se. There's a few more
21 smaller subfiles that have counsel representation.

22 And frankly, for most of them, it's just I
23 need to sit down, and sometimes it takes me a whole
24 day to work through what is the remaining set of
25 issues on that and come up with a proposal on how to

1 deal with it, send a suggestion to NRCE, and then
2 present something to Mr. Bagley as to how we can
3 resolve it. It can be that time consuming to work
4 through these.

5 THE SPECIAL MASTER: I believe you.

6 I'm just wondering if there's any
7 opportunity for the Court to be able to sit down
8 with the parties, particularly the pro se parties
9 and plaintiffs, and sort some of these things out.
10 Just a first cut examination in speaking with pro se
11 defendants, sometimes that does help the progress.
12 Possibly not.

13 I'm just casting for answers.

14 MR. BRIDGEWATER: I frankly can't see that
15 at present. Each of these subfiles has bugs on it
16 that, in order for it to be presented meaningfully
17 to you, it needs to have some background work done
18 on it.

19 THE SPECIAL MASTER: I feel very dense at
20 the moment. Can you just give me a specific
21 example, without naming names or situations, but
22 tell me the kind of bugs you're looking at?

23 MR. BRIDGEWATER: There is a subfile owned
24 by a trust, and we consulted with the defendants.
25 They have made clear they are not going accept

1 anything but 3 acre-feet.

2 In the meantime, they have a new well, and
3 so there's been a field inspection of the new well.
4 We need now to make them a revised offer so that
5 they can reject it and the issues are properly
6 framed for you.

7 That's one example.

8 THE SPECIAL MASTER: But they have
9 rejected the first offer?

10 MR. BRIDGEWATER: They rejected the first
11 offer.

12 THE SPECIAL MASTER: Well, can we dispose
13 of that?

14 MR. BRIDGEWATER: Well, the only way to do
15 that would be to create a new subfile.

16 THE SPECIAL MASTER: For the second one?

17 MR. BRIDGEWATER: For the second well,
18 when they have substantially the same issue that
19 they're going to raise.

20 THE SPECIAL MASTER: Would they raise the
21 issue on the second subfile if the first issue was
22 determined?

23 MR. BRIDGEWATER: Knowing these
24 individuals, I believe they would.

25 THE SPECIAL MASTER: They could raise it?

1 You know, I don't want to second guess
2 you. I'm just curious.

3 MR. BRIDGEWATER: Another example: There
4 is a subfile which really has quite a few issues on
5 it. But a key issue is the defendant has a
6 recreational pond which fills from a well.

7 And the issue is how to quantify the right
8 to fill that pond from the well. How often? How do
9 you calculate the quantity of water? And that
10 involves policy questions for the State, which need
11 to be sorted out.

12 And it's been an issue that because it was
13 somewhat thorny, it was put in the background while
14 we worked through the easier subfiles and tried to
15 get them disposed of.

16 Now I need to sit down with the State and
17 simply come up with a final judgment call on how
18 we'll quantify that particular -- it's quite unique.
19 We don't have another pond just like that.

20 THE SPECIAL MASTER: But recreational
21 ponds are quantified all the times in other
22 adjudications.

23 Actually, that's a question for
24 Ms. Singer, probably. I don't understand why we
25 have to reinvent the wheel here.

1 If there's a good reason, I'm sure you've
2 got one.

3 MR. BRIDGEWATER: There is another cluster
4 of subfiles that are owned by a variety of
5 interrelated defendants which involve the industrial
6 use a gravel operation. There are declarations on
7 file that claim quite a large amount of water.

8 We've recently determined that the
9 metering records don't quite sustain what was
10 declared. We now need to revise an offer.

11 In addition, when we consulted with these
12 people, there was some additional claimed minor
13 irrigation, a stand of trees they claimed to
14 irrigate.

15 We did some follow-up fieldwork on that.
16 We need to make a final revised offer based on the
17 field data from the follow-up fieldwork that was
18 done and new information we have about the entangled
19 ownership of these various tracts.

20 THE SPECIAL MASTER: And the longer we
21 wait, the more things change along the way, which I
22 know you appreciate the problem.

23 MR. BRIDGEWATER: There is that potential,
24 and it's certainly not something I want to delay any
25 further. But it has taken some time to get all the

1 fieldwork caught up and the metering data ready so
2 Mr. Bagley and I can sit down with a properly
3 presented issue, make a policy call on it, and then
4 issue a revised offer.

5 There are several significantly subfiles
6 that were represented by Mr. Stripp. We consulted.
7 I thought we had reached agreement on those
8 subfiles. And we sent a revised offer to Mr. Stripp
9 about six month ago and have heard nothing back.

10 And it would be our great preference to
11 resolve those in a consensual manner. But it now
12 appears we're going have to send a notice that the
13 consultation period has ended on those subfiles.

14 And there are there are a number of
15 subfiles that were on that cusp where we were very
16 close to an agreement. But as time has gone by,
17 there has been no response.

18 We now have to move forward with a notice
19 that the consultation period has ended, and you will
20 be seeing those come in.

21 THE SPECIAL MASTER: I've seen several.

22 MR. BRIDGEWATER: Yes.

23 THE SPECIAL MASTER: Would it be useful to
24 have an informal or even formal working session with
25 those folks where you're that close?

1 Sometimes it helps.

2 MR. BRIDGEWATER: It's possible, if I can
3 get Mr. Stripp's attention.

4 THE SPECIAL MASTER: It's not just him.
5 Let's not talk about him because he's not in the
6 courtroom.

7 But in that situation, where you're that
8 close to an agreement, sometimes the intercession of
9 the Court can be fruitful in moving things or in
10 making very certain that there is no resolution.

11 MR. BRIDGEWATER: I will keep that in
12 mind.

13 I think that to the extent we are in
14 consultations, the parties might be reluctant to
15 present the issues in negotiation to the trier of
16 facts. So that can be a problem.

17 But there may be a few that are just ready
18 to push on. I'll see what we can do.

19 THE SPECIAL MASTER: I don't have any
20 fresh ideas here. Things that have worked in other
21 adjudications don't seem to be amenable under this
22 adjudication.

23 MR. BRIDGEWATER: The problem is once you
24 clear away the easy subfiles, they do become
25 individual cases. And fairness and due process

1 perhaps require treating them that way.

2 And that's been the hangup, trying to
3 prioritize among all of those little cases and just
4 churn through them, line them up for disposition one
5 way or another.

6 THE SPECIAL MASTER: Well, what would you
7 like to see happen, and what is reasonable?

8 MR. BRIDGEWATER: I brought a whole stack
9 of papers that I was hoping to discuss with
10 Mr. Bagley today to try to work through that. And
11 it's very unfortunate he's not able to do that.

12 But I would like to have a chance to work
13 through those issues with him and then make a
14 proposal to you. If we could have a deadline of
15 perhaps January 15th to get you a proposal on
16 perhaps sequencing some of the non-Indian subfiles,
17 I think that would be helpful.

18 THE SPECIAL MASTER: All right. Would you
19 write a very short order with exactly what you want
20 to give me by January 15th, and I'll enter that.

21 MR. BRIDGEWATER: Okay, all right.

22 THE SPECIAL MASTER: Actually, I should
23 ask Ms. Singer for her input at this point.

24 I don't know how informed you are about
25 the issues.

1 MS. SINGER: Special Master, Arianne
2 Singer for the State.

3 I apologize that Ed Bagley is not here.
4 His father died late Sunday night, and he has been
5 in Illinois all week.

6 And John Sullivan would be here as well,
7 but he couldn't get out of bed this morning. He
8 just got back from England after being rerouted all
9 around the country and spending different nights in
10 different places, and he ended up ill. So it's just
11 me today.

12 I don't know any more than Mr. Bridgewater
13 has told you about scheduling. Unfortunately, I
14 haven't been that closely involved, and Mr. Bagley
15 didn't have a chance to talk to me.

16 But I think January 15th sounds
17 reasonable, and we can work on how to move these
18 forward and what ways might work.

19 But as you know, this is a problem that
20 happens once you get through, as Mr. Bridgewater
21 said, the low-lying fruit. But I think we can try
22 to see how the Court could assist in moving them
23 forward. We'll take a look at that.

24 THE SPECIAL MASTER: Yes, please do.

25 MS. SINGER: Thank you.

1 THE SPECIAL MASTER: Any comments from
2 private counsel on this thorny issue of making
3 progress?

4 Mr. Schoenfeld, you always have something
5 to say. You've been around for a very long time.

6 MR. SCHOENFELD: Your Honor, Peter
7 Schoenfeld for the defendants.

8 I'm speechless. The comments I have been
9 hearing from Mr. Bridgewater and Ms. Singer really
10 don't apply to my clients. And my thinking has been
11 essentially limited to my clients, and so I may be
12 of very little help.

13 THE SPECIAL MASTER: Well, you have
14 experience, Mr. Schoenfeld, of many years, and you
15 do have ideas.

16 MR. SCHOENFELD: It doesn't count for much
17 when it comes to moving these things along. They
18 either move or they don't.

19 And the Special Master's right foot and
20 the posterior of the litigants is perhaps the key to
21 it. You just have to keep the heat on.

22 I'm sorry I can't be of more help.

23 THE SPECIAL MASTER: I'm sorry to put you
24 on the spot. Thank you.

25 Anybody else on this subject?

1 Okay. Moving on to Agenda Item

2 Number 3 --

3 MR. HUGHES: Special Master.

4 THE SPECIAL MASTER: Yes, Mr. Hughes.

5 MR. HUGHES: I don't know if this is the
6 appropriate time, but I feel I need to inform the
7 Court regarding the peculiar and indeterminate
8 status of the Commissioner's claims at present.

9 I have had very fruitful in the past
10 consultations with both Mr. Bridgewater and the
11 State Engineer. And we have, as we have consulted,
12 been very successful in resolving matters.

13 Because of the number of claims, we
14 elected to consolidate them all, rather than go
15 subarea by subarea. And for various reasons, that
16 hasn't proceeded at the pace that it should.

17 However, at the conclusion of the San Juan
18 adjudication, a statement was filed by the New
19 Mexico Attorney General in the United States Supreme
20 Court indicating that in the opinion of the State
21 Attorney General, none of the attorneys for the
22 Commissioner had authority to present any of those
23 claims or, in fact, to represent anyone in any of
24 the state adjudications, lacking, as they did,
25 special commissions to do so.

1 The status of those claims and of claims
2 in every court is thus thrown into a state of
3 uncertainty. It may be that I have no authority to
4 speak to you today.

5 Nonetheless, I'm directed by my general
6 counsel to do so and to indicate to you that in the
7 very near future, we expect to have commissions to
8 proceed on state law claims.

9 And as soon as that happens, within a week
10 or ten days, one hopes Mr. Bridgewater and I will be
11 communicating about how best to move forward quickly
12 with consolidating and disposing of the
13 Commissioner's state law claims.

14 I don't know whether or not we'll be
15 commissioned to proceed with federal reserve right
16 claims before this Court. But I'm directed by my
17 general counsel to inform the Court that whether or
18 not we receive a commission, those claims will be
19 presented before this Court.

20 When that will be, I don't know. It would
21 appear to me that we will probably be able to
22 dispose of or at least present the state law claims
23 before we reach any federal law matters.

24 THE SPECIAL MASTER: Fair enough.

25 May I ask you to file a status report

1 brief, a status report of what you just told me?

2 MR. HUGHES: Yes.

3 THE SPECIAL MASTER: Simply because you
4 had an old status report several years ago which was
5 not forthcoming, and I'm starting to understand why,
6 it would be good to have something done in writing.

7 MR. HUGHES: It will be done immediately.

8 THE SPECIAL MASTER: Thank you.

9 Now, let's get back to Agenda Item 3, the
10 revisions to the scheduling order on the Zuni
11 claims. Who is going to speak to that?

12 MS. SINGER: Special Master, Arianne
13 Singer for the State.

14 As you know, we filed two motions, the
15 United States and the State, joint motions to amend
16 the scheduling orders for Subproceeding 1 and
17 Subproceeding 2.

18 Since we obtained the consent of the
19 Navajo Nation and the Zuni Tribe on both of those
20 proposed schedule changes, we have not heard any
21 objections yet from any of the other parties. We
22 did circulate the proposed changes to other counsel,
23 and I don't know whether there's any objections out
24 there.

25 In part, as you're well aware, it's

1 necessitated by the scheduling of the subproceedings
2 in the other adjudications, most notably in
3 Santa Cruz/Truchas/Ohkay Owingeh, which is scheduled
4 for trial in July, which we hope to keep on track,
5 which would then make the trial on the Zuni Tribe
6 claims in November really impossible.

7 And also, given consideration of the
8 resources, I don't know how many resources I'm going
9 to have for the rest of the year or even next fiscal
10 year. But at this point I'm hoping we'll have more
11 resources next fiscal year so that we could continue
12 to move forward on litigating these claims.

13 THE SPECIAL MASTER: We won't know any of
14 that until after the session.

15 MS. SINGER: No, unfortunately.

16 But we do think we can keep to this
17 schedule at this point for this fiscal year, which
18 is through July 1st of next year.

19 THE SPECIAL MASTER: Okay, I have a
20 question.

21 When I was looking through the original
22 scheduling order, there's a provision that we all
23 seem to have ignored on page 18. We're supposed to
24 be getting a joint status report on prospects for or
25 ideas for settlement discussions.

1 MS. SINGER: Your Honor, I had overlooked
2 that. It says from January 15th and July 15th.

3 THE SPECIAL MASTER: Has the subject even
4 surfaced in any of your discovery activity?

5 MS. SINGER: It hasn't in this case. It
6 hasn't surfaced in discussions with me. I don't
7 know whether it has arisen in discussions where I
8 have not been present, but I'm not aware of any.

9 THE SPECIAL MASTER: Okay.

10 Mr. Bridgewater.

11 MR. BRIDGEWATER: In a very informal
12 sense, I'm told there were discussions during a
13 field inspection about possible ways of resolving
14 some of the Zuni Indian claims. That discussion did
15 not involve attorneys, and I don't know that we've
16 done any formal work on that.

17 THE SPECIAL MASTER: Are there still
18 federal negotiating teams that are used for Indian
19 claims, like there used to be?

20 MR. BRIDGEWATER: I won't force
21 Mr. Mehojah to address that. But they are
22 required -- under Department of Interior guidelines,
23 there is a process for requesting appointment of a
24 federal negotiating team.

25 And when that is done, then the Department

1 of Interior selects individuals from a number of
2 agencies to represent the United States in the
3 negotiations.

4 THE SPECIAL MASTER: What's the trigger
5 for a request?

6 MR. BRIDGEWATER: I think I would have
7 Mr. Mehojah speak on that.

8 THE SPECIAL MASTER: All right. We'll put
9 him on the spot.

10 MR. MEHOJAH: Special Master, there is a
11 federal negotiating team appointed in the Zuni
12 adjudication, and I am the Chair of that team. It's
13 been inactive because there have not been any formal
14 requests for the Department to enter into any
15 negotiations.

16 We have a process called the criteria and
17 procedures. There's a trigger that does bring about
18 at least the beginnings of discussions for
19 negotiations.

20 That generally involves a request by the
21 Indian tribe whose rights are at issue requesting,
22 along with the State and a non-Indian stakeholders
23 in the adjudication, to bring forth that request
24 that the Department begin negotiations.

25 That hasn't happened yet. I have not

1 heard of any discussions in which that process has
2 been suggested.

3 THE SPECIAL MASTER: Thank you. I want to
4 be clear on the process.

5 MR. MEHOJAH: Yes. Thank you.

6 THE SPECIAL MASTER: Any other comments on
7 the proposed revisions to both the Zuni and Navajo
8 scheduling orders, Ms. Marx, Ms. Becker?

9 MS. SINGER: Thank you, Special Master.

10 Very briefly, the Zuni Tribe does not
11 oppose this request for an extension.

12 We are, however, interested in seeing our
13 claims move forward. And these dates were the
14 subject of a little bit of negotiation back and
15 forth. So although we're comfortable with this, we
16 would hate to see those dates slip any further.

17 THE SPECIAL MASTER: So would the Court.

18 MS. SINGER: Thank you.

19 MS. BECKER: Good morning, Special Master.

20 All I can do at this point is concur with
21 what Ms. Marx said. We understand the resource
22 allocations and the problems therein.

23 We're happy that we have a proposed order,
24 and we hope that we can stick by those new proposed
25 dates for the filing of the Navajo claims.

1 Thank you.

2 THE SPECIAL MASTER: I think the response
3 time is up on the motion to revise the Zuni Indian
4 claims proceedings. We still have a little while to
5 wait on the Navajo scheduling order, but I see no
6 reason not to enter one at this point.

7 Mr. Bridgewater, if you could just send me
8 proposed orders for those and when they are timed to
9 enter.

10 All right, the last agenda item: Any
11 other matters relevant to the adjudication of the
12 water rights in the Zuni Basin.

13 Anything else?

14 All right, thank you very much. We're
15 adjourned.

16 (Court in recess at 12:44 p.m.)

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REPORTER'S CERTIFICATE

I, Paul Baca, Official Court Reporter for the US District Court, District of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: December 11, 2009

PAUL BACA
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