

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

**UNITED STATES OF AMERICA,
and
STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,**

Plaintiffs,

And

No. 01cv0072 BB/LFG

**ZUNI INDIAN TRIBE AND
NAVAJO NATION,**

ZUNI RIVER BASIN

Plaintiffs-in-Intervention

v.

A & R Productions, *et al.*,

Defendants.

**SCHEDULING ORDER TO GOVERN FURTHER PROCEEDINGS
FOR DISPUTED NON-INDIAN WATER RIGHTS CLAIMS**

This Order is entered by the Court pursuant to the Special Master's May 31, 2011, scheduling conference for 23 disputed water right claims for surface and groundwater use in the Zuni River stream system, and to govern further proceedings to resolve those claims. *See*, Order Setting Scheduling Conference ("Order," May 3, 2011, No. 2654). Having considered the comments and suggestions of all interested counsel and *pro se* parties, and being fully advised in the premises, it is hereby ordered that the paragraphs below will govern the course of the adjudication of these claims.

I. CONSENT ORDERS

As of the date of the filing of this Order, two consent orders have been filed:

ZRB-1-0110 J.E. and Winnie Mae Willcox Trust (July 1, 2011, No. 2680)

ZRB-2-0003 Jane C. Martin & Charlie H. Allen (July 1, 2011, No. 2681)

II. FURTHER PROCEEDINGS

A. Four defendants associated with five subfiles stated they wished to negotiate further with Plaintiffs State of New Mexico, *ex rel.* State Engineer, and the United States of America:¹

ZRB-2-0064 Wilson Link (Edward Link)
ZRB-2-0091 Edward Allen Wagner & Donna Marie Wagner
ZRB-2-0101 Link Ranch LLC (Edward Link)
ZRB-4-0365 Matthew K. Silva
ZRB-5-0014 The Clawson Farm & Ranch LLC D/B/A the Quarter Circle Ranch

No later than **October 3, 2011**, Wilson Link (Edward Link), Edward Allen Wagner & Donna Marie Wagner, Link Ranch LLC (Edward Link), Matthew K. Silva, and the Clawson Farm & Ranch LLC shall contact counsel for the State and the United States and arrange for a time and place to further discuss their subfiles. If a consultation does not result in an agreed consent order, the Defendant(s) in that subfile shall, within 30 days of the consultation, amend the subfile answer to clearly state the issues to be presented for trial and shall file the amended subfile answer with the Court. Within 60 days of the filing, Defendants shall meet and confer with the State and the United States with regard to F. R. Civ. P. R. 26 initial disclosures, and development of a discovery plan.

B. Defendants in two subfiles were excused from attending the pretrial hearing:

ZRB-4-0108 Hannah C. Crooks & Robert W. Crooks (May 25, 2011, No. 2668)
ZRB-2-0077 Dennis M. Norton & Linda J. Norton (June 1, 2011, No. 2672)

No later than **October 3, 2011**, the United States and the State shall make a recommendation

¹ At the May 31st scheduling conference, some defendants indicated that they spoke on behalf of a corporate entity, e.g., Link Ranch LLC. Although an individual might control the decisions of such an entity, only a licensed attorney may represent a corporation in court (e.g. file pleadings, appear in court to present argument and evidence, etc.). D.N.M.LR.-Civ. 83.7. At all future proceedings and appearances before this Court, any corporate party appearing before this Court ***must*** be represented by counsel.

to the Court as to how to proceed with regard to these subfiles.

C. The Orders sent to Defendants in two subfiles were returned to the Court:

ZRB-4-0168 Cary Grinold & Lynne A. Grinold (May 9, 2011, No. 2663)

ZRB-2-0104 Lawrence Silvis and Laura Silvis (May 9, 2011, No. 2662)

Procedural and scheduling orders for this adjudication require claimants to inform the United States of changes in their mailing address or in their ownership of water rights or real property associated with those rights. *See, e.g.*, Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 9 and 10 of the Zuni River Stream System (December 14, 2005, No. 436). No later than **October 3, 2011**, the United States and the State shall make a recommendation to the Court as to how to proceed with regard to these subfiles.

D. Defendants in six subfiles failed to appear, and are subject to default under the terms of the Order:

ZRB-2-0047 Deborah Green Trustee for Tribal Trust & James Green Trustee for Tribal Trust

ZRB-2-0111 Marilyn O. Zug & Richard B. Zug

ZRB-3-0018 Beverly Brooks & Richard Brooks

ZRB-3-0175 David Swindle Trustee & Linda Swindle Trustee

ZRB-4-0351 Jack L. Woods & B. Elaine Woods

ZRB-4-0406 Tonia Montague & Kenneth Montague

The Order Setting Scheduling Conference required Defendants to attend: **“Failure to appear without good cause may result in a default order which incorporates the Plaintiffs’ proposed consent order(s).”** No later than **October 3, 2011**, State and the United States shall jointly request the clerk to enter the default of the defendants who failed to appear. The State and the United States shall thereafter move for entry of appropriate default judgments in each subfile.

E. Defendants in six subfiles have raised objections which likely will be resolved through summary judgment proceedings or trial:

ZRB-2-0092 Robert R. Wallace & Robert J. Wallace
ZRB-4-0313 Karen Pettit, Trustee & Steven Pettit, Trustee
ZRB-3-0051 Norma M. Elam & William J. Elam
ZRB-3-0121 Joseph F. Neas & Susan Neas Revocable Trust
ZRB-3-0122 Joseph F. Neas & Susan Neas Revocable Trust
ZRB-4-0169 Henry Ray Grizzle & Rebecca Grizzle

No later than **October 3, 2011**, Defendants shall amend their subfile answers to clearly state the issues to be presented for trial, and shall file their amended subfile answers with the Court. No later than **November 3, 2011**, Defendants shall meet and confer with the State and the United States with regard to F. R. Civ. P. R. 26 initial disclosures, and development of a discovery plan.

III. STATUS CONFERENCE

The State and United States shall, no later than **January 16, 2012**, request the Court to set a status conference in this matter.

IV. CHANGE OF ADDRESS OR OWNERSHIP

All Claimants, whether or not they are represented by counsel, are responsible for informing the United States of any changes in their mailing address or changes in ownership of water rights or real property associated with the rights by filling out the *Change of Address or Ownership Form* (attached to the *Notice of Adjudication* as Form A) and forwarding it to Attn: Zuni Adjudication, U.S. Department of Justice, South Terrace, Suite 370, 999 18th Street, Denver, Colorado, 80294, and the United States District Court, Office of the Clerk, 333 Lomas Blvd. NW, Albuquerque, NM 87102, within 30 days of such a change.² **Failure to inform the Court and the United States of these changes may result in a default order which incorporates the Plaintiffs' proposed consent order(s).**

This requirement does not alter the effect of Fed.R.Civ.P. 25.

² In lieu of the form, Defendants may submit copies of a short declaration, referencing the caption and case number of this adjudication, above.

IT IS SO ORDERED.



CHIEF DISTRICT COURT JUDGE