

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,

No. 01cv00072 BB/LFG

and

ZUNI INDIAN TRIBE, NAVAJO NATION,

ZUNI RIVER BASIN  
ADJUDICATION

Plaintiffs in Intervention,

Subfile Nos: ZRB-1-0075  
ZRB-2-0075  
ZRB-3-0123  
ZRB-4-0295  
ZRB-5-0054

v.

A & R PRODUCTIONS, et al.

Defendants.

**ORDER CONSOLIDATING STATE LAND SUBFILES, ESTABLISHING MODIFIED  
PROCEDURES, AND SETTING PRELIMINARY SCHEDULE**

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This matter comes before the Court upon the *Joint Motion to Consolidate State Trust Land Subfiles, Establish Modified Procedures, and Set Preliminary Schedule* (Doc. 2779) filed April 26, 2012, by the Plaintiffs United States of America (“United States”) and State of New Mexico, *ex rel.* State Engineer (“State”), and the Defendant Commissioner of Public Lands (“Commissioner”). The Court finds that the joint motion is well-taken and accordingly

HEREBY ORDERS:

1. The Subfiles previously identified in the Hydrographic Survey Reports filed herein (Docs. 339, 393, 464, 805, & 961) as ZRB-1-0075, ZRB-2-0075, ZRB-3-0123, ZRB-4-0295, and ZRB-5-0054 are HEREBY CONSOLIDATED for purposes of future

proceedings. All of the consolidated subfiles may hereafter be referenced as simply “Subfile ZRB-1-0075 Consolidated.”

2. For purposes of future proceedings concerning Subfile ZRB-1-0075 Consolidated, all procedural and scheduling orders previously applicable to any portion of the consolidated subfiles are **HEREBY SUPERCEDED** by the terms of the present order.

3. On or before June 1, 2012, counsel for the Plaintiffs United States and State shall approve and sign, and the United States shall serve counsel for the Commissioner, with a single proposed Consent Order for Subfile ZRB-1-0075 Consolidated, incorporating text descriptions of all water use features, other than natural ponds, identified by any of the Hydrographic Survey Reports filed in this case as being located on state trust lands under the Commissioner’s management, custody and control (“State Trust Lands”). Service of the proposed Consent Order shall be accompanied by delivery on electronic media of Portable Document Format (“PDF”) map sheets depicting the location of all of the water use features described in the proposed Consent Order, and also accompanied by a common-format spreadsheet file listing, for each water use feature described in the proposed Consent Order:

- a. the unique ID number assigned to that feature by the hydrographic survey;
- b. the page of the proposed Consent Order on which the description of that feature begins;
- c. the location of the feature by both Public Land Survey System (township, range, section and quarter-quarter-quarter section) and New Mexico State Plane Coordinate System, West Zone, NAD 1983; and
- d. the number or file name of the map sheet on which the location of the feature is shown.

4. On or before December 1, 2012, counsel for the Commissioner shall serve both counsel for the United States and counsel for the State with a detailed response to the proposed Consent Order. The response shall be signed by counsel for the Commissioner and shall present in tabular format, for each water use feature included in the Consent Order proposed by counsel for the United States and the State:

- a. the unique ID number assigned to that feature by the hydrographic survey;
- b. an indication of whether the Commissioner accepts the description of that feature in the proposed Consent Order; and
- c. if the Commissioner does not accept the description of the feature in the proposed Consent Order, a statement describing which elements of the description the Commissioner disagrees with, the reasons for such disagreement, and whether, in the opinion of counsel for the Commissioner, resolution of the disagreement will require additional field work.

The response shall also present in tabular format a description of each past or present water use feature on State Trust Lands, other than natural impoundments, that the Commissioner claims to have been omitted from the proposed Consent Order. The description of each such feature shall include the location of the feature by both Public Land Survey System (township, range, section and quarter-quarter-quarter section) and New Mexico State Plane Coordinate System, West Zone, NAD 1983, and the claimed purpose and priority date of the use. Service of the response shall be accompanied by delivery on electronic media of a common-format spreadsheet file containing all the tabular data included in the response.

5. If the parties are able to reach agreement on the terms of a Consent Order, the United States shall submit the signed order to the Court for approval and filing. The Consent Order shall be without prejudice to the ability of the Commissioner to assert a claim for reserved

water rights under Federal law. If the parties are unable to reach agreement on the terms of a Consent Order, the United States, with the concurrence of the State, shall file a Notice That the Consultation Period Has Ended with respect to Subfile ZRB-1-0075 Consolidated.

6. Within 90 days of the filing of either a consent order for Subfile ZRB-1-0075 Consolidated approved by the Court or a Notice That the Consultation Period Has Ended with respect to Subfile No. ZRB-1-0075 Consolidated, the Commissioner shall file a subfile answer setting forth all water rights claims not previously resolved by means of an approved consent order, including any and all claims concerning reserved rights under Federal law to use groundwater or surface water. As to claims not involving federal reserved rights, if any, each claim stated in the subfile answer shall include, at the minimum: the source, point of diversion, priority, place of use, and quantity of water sought to be judicially recognized, and the legal basis for the claim. As to federal reserved rights claimed, if any, the subfile answer shall set forth the general factual and legal grounds for that claim, and reserve the right to set forth the technical aspects of that claim (*i.e.*, the source, point of diversion, priority, place of use, and quantity of water) if a favorable determination is made regarding the legal basis.

7. The Commissioner's failure to file a subfile answer as required by Paragraph 6 of this Order shall be considered grounds for the entry of a default order that incorporates the terms of any consent order previously approved by the Court or, if no such order has been approved, the terms of the last consent order jointly proposed by the United States and the State, and that dismisses with prejudice the Commissioner's September 10, 2004 *Declaration of State of New Mexico Trust Reserved Water Rights* (Doc. 347).

IT IS SO ORDERED.

  
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UNITED STATES MAGISTRATE JUDGE