

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

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

**Plaintiffs,**

**And**

**CIV No. 01 0072 BB/<sup>WDS</sup>~~WWD~~-ACE**

**ZUNI INDIAN TRIBE AND NAVAJO NATION,**

**ZUNI RIVER BASIN**

**Plaintiffs-in-Intervention**

**v.**

**A & R Productions, *et al.*,**

**Defendants.**

**JOINT STATUS REPORT ON THE ZUNI RIVER BASIN HYDROGRAPHIC SURVEY**

The United States of America ("United States") and the State of New Mexico on the Relation of the State Engineer ("State") hereby report on the status of the hydrographic survey being conducted for purposes of this adjudication, and on the status of the tasks identified by the Special Master's January 5, 2005 Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System (Docket No. 355).

**SUB-AREAS 4 AND 8**

1. On July 16, 2004, the United States filed with the Court the Hydrographic Survey for Sub-Areas 4 and 8 (Docket No. 339).

305

2. The United States generated Consent Orders and Form Answers for claimants identified by the Hydrographic Survey of Areas 4 and 8, and forwarded these to the State in batches beginning on February 7, 2005.

3. The State reviewed the February 7, 2005 batch of Consent Orders. It noted a variety of elements in them which indicated further consultation with the United States would be in order. The State suggested that certain changes might be helpful to refine the Consent Orders' language and substance to better reflect the characteristics of the water rights defined therein, and to develop a consistent methodology that could be utilized for all sub-areas of the stream system as they come to be adjudicated.

4. On March 23, 2005, the State communicated its comments on the February 7, 2005 batch of Consent Orders to the United States.

5. The United States forwarded three more batches of Consent Orders to the State on February 11, 2005, February 16, 2005, and February 18, 2005.

6. The State is in the process of completing its review of those batches of Consent Orders and expects to communicate its comments to the United States by no later than June 18, 2005. The State expects that its comments will be substantially similar to those it made with regard to the February 7, 2005 batch of Consent Orders.

7. The State's technical personnel and the United States contractor, NRCE, met in Santa Fe on May 23, 2005, in part to discuss the State's comments with regard to the Consent Orders which have been generated for Sub-Areas 4 and 8, and to determine how best to proceed with any changes to them which might be agreed upon.

8. It is expected that issues arising with regard to the Consent Order for Sub-Areas 4 and 8 will be resolved and the Consent Orders served by July 18, 2005.

## **SUB-AREAS 9 AND 10**

9. On January 5, 2005, the United States forwarded a draft of the Hydrographic Survey of Sub-Areas 9 and 10 to the State. The State reviewed the draft Hydrographic Survey of Sub-Areas 9 and 10, and timely communicated its comments to the United States and the United States' contractor NRCE.

10. The State, the United States and the United States' Contractor, NRCE, are awaiting resolution of issues arising from the State's comments on the Consent Orders for Sub-Areas 4 and 8 before proceeding with finalizing and filing the Hydrographic Survey of Sub-Areas 9 and 10, as many of the same issues are presented.

11. It is expected the HSR for Sub-Areas 9 and 10 will be completed and filed with the Court by August 1, 2005.

## **SUB-AREA 7**

12. The field work for the Hydrographic Survey of Sub-Area 7 has now been completed.

13. It is expected that the draft of the Hydrographic Survey Report for Sub-Area 7 will be completed by August 31, 2005.

## **SUB-AREAS 1, 2 AND 3**

14. The field work for the Hydrographic Survey of the private lands in Sub-Areas 1, 2 and 3 is ongoing and should be completed by the end of September, 2005.

13. The maps and GIS databases are updated after each field visit.

15. It is expected that the draft Hydrographic Survey Report for the private lands in Sub-Areas 1, 2 and 3 will be completed by November 30, 2005.

16. Counsel for the State and the United States, State technical personnel, and the United State Contractor, NRCE, visited the Ramah area on May 24, 2005, to observe the field work being done there, and view representative examples of the water rights being identified.

#### **PROCEDURAL AND SCHEDULING ORDER**

On January 5, 2005, the Court entered its Procedural and Scheduling Order for the Adjudication of Water Right Claims in Sub-Areas 4 and 8 of the Zuni River Stream System (Docket No. 355). That Order provided, in part, that:

No later than sixty days following the entry of [the] Order, the United States shall generate *Consent Orders* for Claimants identified by the Hydrographic Survey reports for Sub-Areas 4 and 8, and forward those *Consent Orders* to the State of New Mexico ("State") for review. Within thirty (30) days of its receipt of a *Consent Order* from the United States, the State shall either indicate its approval by executing the *Consent Order* and returning it to the United States, or notify the United States of its objections to the *Consent Order*.

The United States has timely generated and forwarded the Consent Orders to the State, but the process of reviewing and approving those Consent Orders has proven to take longer than had been expected. Also, as noted above, further consultation between the State and the United States to refine the Consent Orders' language and substance to better reflect the characteristics of the water rights defined therein, and to develop a consistent methodology that could be utilized for all sub-areas of the stream system as they come to be adjudicated, has also been indicated. As a result, the deadlines set by the Court for completing further adjudication tasks is being encroached upon.

The State and the United States jointly recommend the Court consider extending those deadlines to accommodate the necessity of this additional consultation.

Specifically, the State and the United States urge the Court to modify its January 5, 2005 Procedural and Scheduling Order to extend

1) the deadline described on page 2, paragraph II(A), for the State to indicate its approval of Consent Orders, from “within thirty days of its receipt of a Consent Order,” to June 18, 2005;

2) the deadline described on page 3, paragraph II(E), for the mailing of a service packet by the United States to a Claimant, from “within thirty days after the Consent Order has been executed and returned by the State,” to July 18, 2005;

3) the deadline described on page 5, paragraph III(B)(2), for Claimants who still disagree with the proposed Consent Order after consultation to file a form Answer with the Court, from “June 1, 2005,” to October 18, 2005;

4) the deadline described on page 5, paragraph III(C)(2), for a Claimant’s failure to sign and return a Consent Order or file a form Answer to become considered grounds for default, from “June 1, 2005,” to October 18, 2005;

5) the deadline described on page 5, paragraph III(C)(3), within which the United States shall request the Clerk of the Court, under Rule 55(a), to enter the default of Claimants who have failed to sign and return a Consent Order or file a form Answer, from “June 1, 2005,” to October 18, 2005.

Respectfully submitted this 27th day of May, 2005.

**COUNSEL FOR THE UNITED STATES:**

Approved by e-mail

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May 27, 2003

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May 27, 2005  
DATE

**Certificate of Service**

I certify that on this 27th day of May, 2005, a true and correct copy of the foregoing Joint Status Report on the Zuni River Basin Hydrographic Survey was mailed by first class mail to the attached list of counsel of record and pro se parties: \* \* \* \*

Ed C. Buff

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