

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

UNITED STATES OF AMERICA,

Plaintiff,
v.

01cv00072 BDB (ACE)

STATE OF NEW MEXICO, *ex rel*
State Engineer, A& R Productions, *et al.*,

ZUNI RIVER ADJUDICATION

Defendants,

ADMINISTRATIVE ORDER

THIS MATTER is a part of the general adjudication of all water rights in the Zuni River stream system, is before the Court *sua sponte* and concerns funding for a Special Master. This Order amends the Court's March 12, 2001 Order of Reference (14).

Under Fed.R.Civ.Proc. 53 (a), the compensation of the 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 a given 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. The Court will reconsider the matter after the first Pretrial Conference.

IT IS THEREFORE ORDERED that the United States of America shall periodically advance sums for deposit in the Court's water adjudication fund. These sums shall be issued to the United States District Court, District of New Mexico Account No. 1:66-cv-06639-M and sent to:

United States District Court
c/o Darcy S. Bushnell, Esq.
333 Lomas NW #610
Albuquerque, NM 87102

IT IS FURTHER ORDERED that the United States' first advance shall be made in the amount of \$12,000.00 and shall be received by the Court by June 8, 2001. Thereafter, the United States shall advance sums for deposit in the Court account in an amount and at a time ordered by the Court.

IT IS FURTHER ORDERED that the Special Master shall periodically submit vouchers detailing fees, expenses, and New Mexico gross receipts taxes for herself and her assistants to the Court for payment. Upon approval and 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. Upon review and consideration of the report, the Court will enter an order on the Special Master's motion.

/electronic signature/
BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE