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SEP 19 2006

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IN THE UNITED STATES DISTRICT COURT CLERK-SANTA FE
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA and)	
STATE OF NEW MEXICO, ex rel. STATE))	
ENGINEER,)	
Plaintiffs,)	
)	
and)	No. 01cv0072 BB/WDS-ACE
ZUNI INDIAN TRIBE and NAVAJO NATION,)	
Plaintiffs-in-Intervention)	
)	
)	ZUNI RIVER BASIN
v.)	ADJUDICATION
)	
A & R PRODUCTIONS, et al.,)	RAMAH SUB-AREA

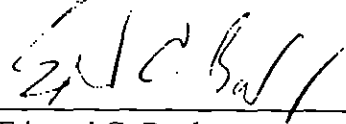
**NOTICE OF FILING PROCEDURAL AND SCHEDULING ORDER FOR THE
ADJUDICATION OF WATER RIGHT CLAIMS IN THE RAMAH SUB-AREA OF THE
ZUNI RIVER STREAM SYSTEM**

Pursuant to the Special Master's August 7, 2006 *Order Setting Status and Scheduling Conference* (No. 784), the Plaintiff, State of New Mexico ex rel. State Engineer ("State") is filing herewith a *Proposed Procedural and Scheduling Order for the Adjudication of Water Rights in the Ramah Sub-Area of the Zuni River Stream System*. Counsel for the State has discussed a draft of the proposed order with counsel for co-Plaintiff State, who had no objections.

DATED: September 19, 2006

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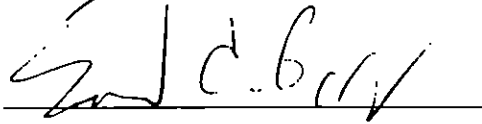
Respectfully submitted,

A handwritten signature in black ink, appearing to read "E.C. Bagley", written over a horizontal line.

Edward C. Bagley
Special Assistant Attorneys General
Attorney for State of New Mexico
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150

Certificate of Service

I certify that on this 19th day of September, 2006, a true and correct copy of the foregoing Notice of Filing Proposed Procedural and Scheduling Order for the Adjudication of Water Right Claims in the Ramah Sub-Area of the Zuni River Stream System was mailed by first class mail to the attached list of counsel of record and pro se parties:



Vickie L. Gabin
Special Master – USDC
P.O. Box 2384
Santa Fe, NM 87504-2384

Robert W. Ionta
P.O. Box 1059
Gallup, NM 87305

Bradley S. Bridgewater
US Dept. of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294

William G. Stripp
P.O. Box 159
Ramah, NM 87321

Peter B. Shoenfeld
P.O. Box 2421
Santa Fe, NM 87504-2421

Ted Brodrick, Pro Se
P.O. 219
Ramah, NM 87321

Paul Drullinger, Pro Se
Sandra Drullinger, Pro Se
319 E. Elm Street
Hoppeston, IL 60942-1822

Stephen Hughes
Michael Thomas
NM State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148

David W. Gehlert
USDOJ-ENRD
1961 Stout Street – 8th Floor
Denver, CO 80294

Ann Hambelton Beardsley, Pro Se
127 Orchard Drive
Central, UT 84722

Kimberly J. Gugliotta, Pro Se
158 W. William Casey St.
Corona, AZ 85641

Dorothy C. Sanchez
1011 4th Street, N.W.
Albuquerque, NM 87110

Mary Ann Joca
U.S. DOA
P.O. Box 586
Albuquerque, NM 87103

David R. Lebeck, Pro Se
Albert O. Lebeck, Pro Se
P.O. Drawer 38
Gallup, NM 87305

Gerald F. McBride, Pro Se
Myrril w. McBride, Pro Se
2725 Aliso Dr., N.E.
Albuquerque, NM 87110

Susan C. Kery
Sheehan Sheehan & Stelzner
P.O. Box 271
Albuquerque, NM 87103

Jay F. Stein
James C. Brockmann
P.O. Box 5250
Santa Fe, NM 87504-1149

Bruce Boynton
West Law Off.
P.O. Box 1239
Grants, NM 87020

Jeffery A. Dahl
Lamb, Metzgar, Lines & Dahl
P.O. Box 987
Albuquerque, NM 87103

Steven L. Bunch
NM Highway & Trans. Dept.
P.O. Box 1149
Santa Fe, NM 87504-1149

Peter Fahmy
Office of Regional Solicitor
755 Parfet St., Suite 151
Lakewood, CO 80215

Mark H. Shaw
9700 Entrada Pl., N.W.
Albuquerque, NM 87114-3776

Kenneth J. Cassutt
530-B Harkle Rd.
Santa Fe, NM 87505

Louis E. DePauli, Pro Se
1610 Redrock Dr.
Gallup, NM 87031

James E. Hass
Losee, Carson & Hass
Box 1720
Artesia, NM 88211

William J. Cooksey
Dubois, Cooksey & Bischoff
2020 Fourth Street, N.W.
Albuquerque, NM 87102

Richard w. Bowser, Pro Se
Joan D. Bowser, Pro Se
#5 Hawk Ridge Road
Moriarty, NM 87035

David Candelaria, Pro Se
12,000 Ice Caves Rd.
Grants, NM 87020

Cullen Hallmark
Garber & Hallmark
P.O. Box 850
Santa Fe, NM 87504

Gergory Mehojah
US Dept. of Interior
505 Marquette, NW #1800
Albuquerque, NM 87102

Raymond Hamilton
US Attorney's Office-Dist NM
P.O. Box 607
Albuquerque, NM 87103

David R. Gardner
P.O. Box 62
Bernalillo, NM 87004

Stephen P. Shadle
Westover, Shadle, Carter
& Walsma
2260 S. Fourth Ave., #2000
Yuma, AZ 85364

Cheryl Duty, Pro Se
HC 61, Box 788
Ramah, NM 87321

John W. Utton
Sheehan, Sheehan &
Stelzner, P.A.
P.O. Box 271
Albuquerque, NM 87103

Pamela William
US Dept. of Interior
Indian Affairs Div.
1849 C. Street NW, Room 6456
Washington, D.C. 20240

Stanley Pollack/Bidtah Becker
Navajo Nation Dept. of Justice
P.O. Box 2010
Window Rock, AZ 86515-2010

Jane Marx
2825 Candelaria Road NW
Albuquerque, NM 87107

Christina Bruff DuMars
Charles T. DuMars
Tanya L. Scott
201 3rd Street NW, Suite 1750
Albuquerque, NM 87102

Stephen Charnas
Sutin, Thayer, & Browne, P.C.
P.O. Box 1945
Albuquerque, NM 87103-1945

Sunny J. Nixon/Mark Adams
Rodey, Dickason, Sloan, Akin
& Robb
P.O. Box 1357
Santa Fe, NM 87504-1357

Clara M. Mercer
1017 S. 10th Avenue
Yuma, AZ 85364

Stephen R. Nelson
Johnson & Nelson, P.C.
P.O. Box 25547
Albuquerque, NM 87125-5547

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

UNITED STATES OF AMERICA and)	
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ENGINEER,)	
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and)	No. 01cv0072 BB/WDS-ACE
ZUNI INDIAN TRIBE and NAVAJO NATION,)	
Plaintiffs-in-Intervention)	
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)	ZUNI RIVER BASIN
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A & R PRODUCTIONS, et al.,)	RAMAH SUB-AREA

PROCEDURAL AND SCHEDULING ORDER FOR THE ADJUDICATION OF WATER RIGHTS CLAIMS IN THE RAMAH SUB AREA OF THE ZUNI RIVER STREAM SYSTEM

This Order amends and supercedes the June 4, 2003 *Interim Procedural Order* (Doc. No. 208), and is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the adjudication of water rights claims for surface and groundwater use in the Ramah Sub-Area of the Zuni River stream system.

A status and scheduling conference concerning the Ramah Sub-Area was held on September 21, 2006. 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 following will govern the course of the adjudication.

I. RAMAH SUB-AREA

This Order governs the adjudication of the Ramah Sub-Area of the Zuni River stream system, as defined by the Special Master's July 21, 2006 Order Granting Motion to Establish Ramah Sub-Area (No. 766), and which consists of Sections 2, 3, 4 and 9 in Township 10N, Range 16W, and Sections 34 and 45 in Township 11N, Range 16W, plus any portion of the Ramah Reservoir outside those sections.

II. JOINDER OF CLAIMANTS-HYDROGRAPHIC SURVEY REPORT

A. No later than seventy-five (75) days following the filing of the hydrographic survey report for the Ramah Sub-Area, the United States shall generate Consent Orders for Claimants identified by the report, 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.

B. All Consent Orders will be joint Consent Orders. If the State does not approve a Consent Order, that Consent Order shall not be served on the Claimant.

C. Service on known claimants in the Ramah Sub-Area shall be accomplished by the United States. Claimants not already joined as defendants may be sent a packet by certified mail that includes: (1) the August 2003 *Amended Complaint*; (2) a Request for Waiver of Service of Summons; (3) two copies of a Waiver of Service of Summons; (4) a copy of the Special Master's September __, 2006 *Notice of Water Rights Adjudication*; (5) a proposed Consent Order, signed on behalf of the United States and the State, including a detailed

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map or aerial photograph showing the location of water uses described; and (6) a Request for Consultation Form. If no Waiver of Service is returned to the United States within 30 days, the Claimant shall be served, by any means permitted by Fed. R.Civ.P. 4, with the Summons and another copy of the August 2003 *Amended Complaint*. Claimants already joined to the suit shall be sent a packet by certified mail that includes (1) the *Notice of Water Rights Adjudication*, (2) the proposed Consent Order executed by the United States and the State, and (3) a Request for Consultation form.

D. Service on known Claimants whose whereabouts are unknown, and unidentified and unknown Claimants in all Sub-Areas shall be made by publication by the United States after the last hydrographic survey report for the Zuni River stream system has been completed and filed with the Court. The publication shall include a copy of the *Notice of Water Rights Adjudication*.

E. Mailing of a service packet by the United States to a Claimant shall be done within 60 days after the Consent Order has been executed and returned by the State.

F. The *Notice of Water Rights Adjudication* generated by the Court explains the adjudication process, and the Claimant's rights and obligations under this Order. In order to conserve funds and resources, the Notice of Adjudication mailed to Claimants may be printed double sided, single spaced, with reduced margins.

G. A Request for Consultation form shall be provided so that Claimants may request in writing a consultation with the United States and the State in the event they disagree with any element of the proposed Consent Order, pursuant to paragraph III.B.1 of this Order.

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The Request for Consultation shall identify the Claimant, the subfile, and the nature of the dispute.

H. The proposed Consent Order(s) shall set out all the elements of the respective water right, unless that water right is an irrigation right. In the case of irrigation rights, the proposed Consent Order(s) shall set out all the elements of the respective water right with the exception of duty of water. Duty of water issues will be presented at a later time.

III. RESPONSES

A. Agreement

1. Claimants who agree with all of the elements of the water rights claims as set out in the Consent Order proposed for the Claimant(s)'s subfile shall sign and return the Consent Order to the United States. The United States shall submit the signed orders to the Court for approval and filing, and shall forward a copy of the filed order to the Claimant(s) and to the State within thirty (30) days of the Court's approval.

2. A signed and returned Consent Order serves as the Claimant's Answer to the Complaint. As between the United States, the State and the Claimant, the Consent Order finally adjudicates the water rights elements contained therein. Each Consent Order is subject to challenge by other Claimants during the *inter se* proceedings, which will be scheduled following the completion of subfile activity.

B. Consultation

1. **NO LATER THAN SIXTY (60) DAYS AFTER DELIVERY OF A SERVICE PACKET PURSUANT TO PARAGRAPH II.C.**, Claimants who disagree with any

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element of the proposed Consent Order shall return to the United States their Request for

Consultation, as described in paragraph II.G. Good faith participation in consultation with the United States and the State is required to satisfy the discovery requirements of Rule 26(a)(1)(A) and (B) of the Federal Rules of Civil Procedure, and must be accomplished before the dispute can be placed before the Court. Accordingly, Claimants are required to consult with the United States and the State, and are expected to make available documents or other information that support their position. To the extent possible, the United States shall have available at consultations the data upon which the consent order is based. Information that cannot be provided to a Claimant at consultations shall be disclosed to the Claimant and made available for examination at the Hard Copy Repository maintained by the United States at the University of New Mexico's Zollinger Library in Gallup, New Mexico. If the disagreement can be resolved at the consultation, the Claimant(s) shall sign either the original Consent Order or a new Consent Order that incorporates any changes agreed upon. The United States shall submit the signed orders to the Court for approval and filing, and shall forward a copy of the filed order to the Claimant(s) and to the State within thirty (30) days of the Court's approval.

2. Timely return of a Request for Consultation shall toll the Claimants' obligation to serve a subfile answer pursuant to Fed.R.Civ.P. 12(a) until 20 days after the United States, with concurrence of the State, serves the Claimant with a Notice That the Consultation Period Has Ended, together with a form subfile answer. The notice, and the form answer, shall state, in bold-face type, that the Claimant(s) must, within twenty (20) days of the date of service of the notice, either sign and accept the last offered Consent Order for the subfile and return the

entire Consent Order to counsel for the United States, or file with the Court and serve on counsel for the United States and the State, a subfile answer.

3. A subfile answer disagreeing with the proposed Consent Order must identify the subfile, explain the Claimant's reason for disagreeing with the proposed Consent Order, and include a statement that the Claimant has made a good faith effort to consult with and resolve the disagreement with the United States and the State.

4. Service by the United States or the State of a Notice That The Consultation Period Has Ended, or by a Claimant of a subfile answer, shall not preclude the parties from subsequently submitting a negotiated agreed Consent Order to the Court.

C. Failure to Respond

1. **A Claimant's failure to make a request for consultation within sixty (60) days after delivery of the service packet required by Paragraph II.C., shall be considered grounds for entry of a default order that incorporates the proposed Consent Order, in accordance with the criteria set forth in paragraph III.C.3 of this Order.**

2. **A Claimant's failure to sign and return the last-offered Consent Order or file and serve a subfile answer within twenty (20) days of service of the Notice That the Consultation Period Has Ended shall be considered grounds for the entry of a default order which incorporates the terms jointly proposed by the United States and the State.**

3. The United States shall request the Clerk of the Court, under Rule 55(a), to enter the default of Claimants who have failed to make a request for consultation within sixty

(60) days after delivery of the initial service packet or to sign and return a Consent Order or file and serve a subfile answer within twenty (20) days of service of a Notice That The Consultation Period Has Ended. Provided, (1) no default shall be entered against any Claimant who has not been properly served with process or waived such service; (2) no default shall be entered until a Claimant has had at least thirty (30) days to review a proposed Consent Order or revised proposed Consent Order sent by the United States; and (3) no default shall be entered if the United States, the State and the Claimant jointly move the Court to extend the deadline for filing an Answer.

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 Water Rights Adjudication* as Form A) and forwarding it to Attn: Zuni Adjudication, U.S. Department of Justice, 1961 Stout Street- 8th Floor, Denver, Colorado, 80294 within thirty (30) days of such a change.

IT IS SO ORDERED.

SPECIAL MASTER VICKIE L. GABIN