

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

UNITED STATES OF AMERICA,)	
and)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE)	
ENGINEER,)	
)	
Plaintiffs,)	
)	No. 01cv00072 BB-ACE
and)	
)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
)	
Plaintiffs in Intervention,)	
)	
v.)	
)	
A&R PRODUCTIONS, et al.)	
)	
Defendants.)	
_____)	

**JOINT MOTION TO EXTEND DEADLINE FOR INITIATION OF ZUNI INDIAN
TRIBE SUBPROCEEDING**

The Plaintiffs United States of America (“United States”) and State of New Mexico ex rel. State Engineer (“State”) hereby move the Special Master to extend by 120 days, to April 30, 2007, the deadline for the United States to file a Subproceeding Complaint initiating the subproceeding for adjudication of water rights claims on behalf of the Zuni Indian Tribe. In support of this motion, the Plaintiffs assert:

1. Paragraph 4.1 of the Special Master’s April 5, 2004 *Procedural and Scheduling Order for Federal and Indian Water Rights Claims* (Doc. No. 323) (“April 5, 2004 Order”) requires the United States to “file a Subproceeding Complaint with respect to its water rights claims for the Zuni Indian Tribe” on or before December 31, 2006.

2. As discussed by counsel and the Special Master during the September 21, 2006 status and scheduling conference, notice to other parties of the water rights claims asserted on behalf of the Zuni Indian Tribe will be more complete and effective if all individual water rights claimants identified by the Hydrographic Survey are joined as defendants and provided with service packets before the Zuni claims are filed.

3. During November 2006, pursuant to the Special Master's September 28, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3 (Excluding Ramah) of the Zuni River Stream System*, initial service packets were sent to over 600 defendants with respect to 350 subfiles in Sub-areas 1, 2, and 3 (Excluding Ramah).

4. Based on the October 23, 2006 *Ramah Land and Irrigation Company's Position Regarding Ownership of Water Rights* (Doc. No. 850)¹, the United States' contractors prepared a draft hydrographic survey report for the Ramah Sub-area. This draft report was transmitted to counsel for the State on December 6, 2006, for review as required by Paragraph VI.A of the Special Master's July 20, 2003 *Procedural and Scheduling Order* ("July 20, 2003 Order") (Doc. No. 215). Pursuant to the July 20, 2003 Order, the State has 30 days to submit objections to the report and the United States and the State are to have 30 days in which to discuss and resolve any such objections. Thereafter, the United States and the State are to submit to the Special Master a proposed procedural and scheduling order for the Ramah Sub-area. While counsel for the United States and the State anticipate being able to reach agreement on a proposed procedural

¹ Pursuant to the Special Master's October 6, 2006 *Order for Further Proceedings* (Doc. No. 843), other parties had leave to respond to the Ramah Land and Irrigation Company's filing until December 1, 2006. No responses were filed by that date.

and scheduling order well within the 60 days provided by the July 20, 2003 Order and, indeed, before December 29, 2006, they anticipate that other parties, including particularly the Ramah Land and Irrigation Company, may also want to be heard on the proposed order. Accordingly, the Ramah Sub-area procedural and scheduling order may not be finalized before the end of January 2007. Thereafter, the United States must generate, the State must review, and, assuming any disagreements can be resolved, counsel for the United States and the State must sign proposed consent orders based on the Ramah Sub-area hydrographic survey. The United States must also join as defendants any defendants identified in the proposed consent orders who have not been joined previously, and assemble and mail service packets consistent with the terms of the approved procedural and scheduling order. Based on past experience with the other sub-areas, counsel for the United States and the State conservatively estimate 60 days will be required following entry of the Ramah Sub-area procedural and scheduling order to complete the initial mailing of service packets pursuant to that order.

5. Since the beginning of October 2006, preparing and mailing service packets for Sub-areas 1, 2, and 3 (Excluding Ramah), processing the extremely large volume of mail received in response to that mailing, and continuing consultations and resulting correspondence concerning subfiles in Sub-areas 4, 7, 8, 9, and 10, has consumed the majority of the time of counsel for the United States and his available staff, and a substantial part of the time of the United States' hydrographic survey contractors who are also tasked with the hydrographic survey of the Zuni Indian Tribe's lands. The volume of correspondence, both by mail and by telephone, continues to increase and, in light of scheduled leave during the holiday season, counsel for the United States

anticipates a significant backlog extending well into the month of January 2007. Counsel for the United States also continues to have substantial responsibilities in other water adjudication cases pending before this Court and before New Mexico's state courts, particularly New Mexico ex rel. State Engineer v. Kerr-McGee Corp., No. CB-83-190-CV & CB-83-220-CV consolidated (13th Dist. NM) (Rio San José adjudication) and New Mexico ex rel. State Engineer v. United States, No. CV-75-182 (11th Dist. NM) (San Juan River adjudication). These competing obligations have greatly limited the ability of counsel for the United States to compile the results of numerous technical studies concerning nearly 450,000 acres of land within the Zuni River Basin that are held in trust for the Zuni Indian Tribe into a completed statement of the United States' water rights claims on behalf of that Tribe.

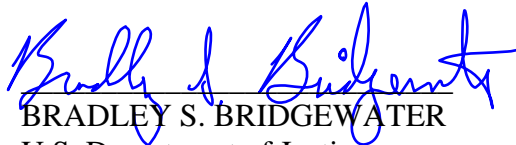
6. Counsel for the State also has competing obligations, including particularly New Mexico ex rel. State Engineer v. Aamodt, No. 66cv6639 (D.N.M.) (Rio Pojoaque adjudication), which has recently commenced active adjudication of thousands of domestic wells. These competing obligations limit opportunities when counsel for the State can coordinate with counsel for the United States as required by the procedural and scheduling orders in the present matter, and necessarily prolong the amount of time that will be required to complete procedural steps that are prerequisites for joining and serving the remaining defendants in this action.

7. On December 13, 2006, counsel for the United States contacted Jane Marx, counsel for the Intervenor Zuni Indian Tribe, who had no objection to the 120-day extension requested in this motion.

WHEREFORE Plaintiffs respectfully move the Special Master to allow until the end of March 2007 for the United States to mail service packets to defendants initially identified by the hydrographic survey for the Ramah Sub-area, and to extend by 120 days, to April 30, 2007, the deadline for the United States to file a Subproceeding Complaint initiating the subproceeding for adjudication of water rights claims on behalf of the Zuni Indian Tribe.

DATED: December 13, 2006

Respectfully submitted,



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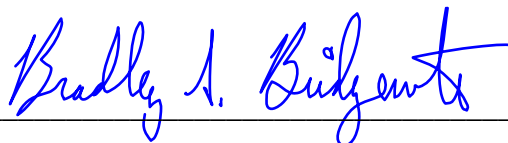
(approved via telephone 12/13/2006)

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CERTIFICATE OF SERVICE

I hereby certify that, on December 13, 2006, a copy of the foregoing *Joint Motion To Extend Deadline For Initiation Of Zuni Indian Tribe Subproceeding* was mailed to the following persons.



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