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

UNITED STATES OF AMERICA)	
and)	07cv00681-BB
ZUNI INDIAN TRIBE)	
Plaintiffs,)	ZUNI RIVER BASIN
)	ADJUDICATION
-v-)	
)	
STATE OF NEW MEXICO, ex rel. State)	Subproceeding 1
ENGINEER, et al.)	Zuni Indian Claims
Defendants)	
_____)	

[PROPOSED] SCHEDULING ORDER

This Order is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to further guide the course of the adjudication of the water rights claims asserted in this Subproceeding by the Plaintiffs United States of America (“United States”) and Zuni Indian Tribe (“Zuni Tribe”). In entering this Order, the Special Master has taken into consideration the discovery plan proposed by the parties and the comments of counsel and parties *pro se* at the scheduling conference.

I. Date of Conference and Appearances

A. Date of Conference

The scheduling and management conference was held at _____ on August 27, 2008, before Special Master Vickie L. Gabin.

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B. Appearances

1. For the United States:

Bradley S. Bridgewater
U.S. Department of Justice
1961 Stout St., 8th Floor
Denver, CO 80294
(303) 844-1359

2. For the Tribe:

Jane Marx
2825 Candelaria Road NW
Albuquerque, NM 87107
(505) 344-1176

**3. For the State of New Mexico ex rel. State Engineer
("State"):**

Arianne Singer
Edward Bagley
Special Assistant Attorneys General
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

4. For . . .

[complete list to be determined]

II. Statement of Claims and Defenses

A. The United States

The United States, acting as sovereign and trustee for the Zuni Indian Tribe, claims federal reserved rights to divert and/or impound and deplete water with an aboriginal priority within the Zuni River Stream System based on federal law and asserted evidence of (a) specified past or present uses of 12 reservoirs and 333 other constructed impoundments for irrigation, recreation, livestock, construction, sewage treatment, or public water supply purposes; (b) specified past or present uses of 206 wells and 76 springs for irrigation, livestock, domestic, commercial, municipal, industrial, and other identified purposes; (c) predicted additional domestic (including public water

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supply), municipal, commercial, and industrial uses necessary to provide the Zuni Tribe with a permanent homeland; (d) past and present irrigation of 138 specified tracts by means of permanent works; (e) past and present irrigation of an additional 100 specified tracts by means of seasonal or temporary works; (f) 1,200 acres of practicably irrigable, but previously unirrigated, land; and (g) the livestock carrying capacity of the Zuni Indian Reservation. In addition, the United States, acting as trustee on behalf of the beneficiaries of six identified Zuni allotments outside the exterior boundaries of the Zuni Indian Reservation claims (a) for the beneficiaries of Allotment Number 247321 a federal reserved right to divert from groundwater .78 acre foot per year for livestock and domestic purposes with an October 5, 1925 priority; (b) for the beneficiaries of Allotment Number 246364 a federal reserved right to divert from groundwater .78 acre foot per year for livestock and domestic purposes and to impound surface runoff in the impoundment labeled 6A-S-SP008, all with a priority of December 28, 1923; (c) for the beneficiaries of Allotment Number 246365 a federal reserved right to divert from groundwater .78 acre foot per year for livestock and domestic purposes with an October 12, 1923 priority; (d) for the beneficiaries of Allotment Number 246362 a federal reserved right to divert from groundwater .78 acre foot per year for livestock and domestic purposes with an October 12, 1923 priority; (e) for the beneficiaries of Allotment Number 246363 a federal reserved right to divert from groundwater .78 acre foot per year for livestock and domestic purposes with a December 28, 1923 priority; and (f) for the beneficiaries of Allotment Number 211719 a federal reserved right to divert from groundwater .76 acre foot per year for livestock and domestic purposes with an April 6, 1920 priority.

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B. The Tribe

C. The State

D. Parties Represented by

...

III. Report of Pre-Conference Discovery Meeting Pursuant to Fed.R.Civ.P. 26(f)

A. Date of Rule 26(f) meeting

The parties met on August 26, 2008 at the Office of the State Engineer, Water Resources Allocation Program, Water Rights Division District 1, Springer Square Building, 121 Tijeras NE, Suite 2000, Albuquerque, New Mexico, and via teleconference.

B. Names of Conference Participants and Parties Represented

[to be determined]

C. Statement as to when Rule 26(a)(1) disclosures were made.

The parties exchanged Rule 26(a)(1) disclosures on July 30, 2008.

IV. Case Plan and Schedule

A. Claims Based on Evidence of Past or Present Irrigation by Means of Permanent Works (“PPPW”).

1. Discovery will be needed on the following subjects:

One or more parties intend to make discovery requests concerning the following types of information. Other parties may dispute whether such information is properly discoverable in this proceeding under the Federal Rules of Civil Procedure or,

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even if such information is discoverable, whether it is admissible under the Federal Rules of Evidence. Until specific discovery requests, or attempts to introduce evidence, are made, it is not possible to further specify the nature of such potential disputes.

a) Facts concerning specific PPPW claims asserted by the United States or the Zuni Tribe.

- For each tract of land identified as PPPW by the United States or the Zuni Tribe, the date the irrigation commenced, the point of diversion, the amounts of water applied to each tract, the method of irrigation, and the duration of irrigation.
- For each diversion from a surface watercourse alleged by the United States or the Zuni Tribe to serve PPPW, the date the diversion commenced, the annual diversion amounts, and the duration of the diversion.
- For each diversion from a well alleged by the United States or the Zuni Tribe to serve PPPW, the depth, capacity, and construction of said well, and the date of the well's construction and use.

b) General facts asserted to be relevant to the PPPW claims asserted by the United States or the Zuni Tribe

- Facts concerning the hydrology in the adjudication area, including water supply and interconnection of surface water and groundwater (if any).
- All facts asserted as a basis for the claim to aboriginal priority or as a basis for contesting said claim.
- Any other facts asserted as a basis for defenses to the claims asserted by the United States or the Zuni Tribe, including allegations that such claims are barred by adverse possession or by the laws and customs of Spain and Mexico.

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2. Expert Witness Disclosure:

a) Anticipated fields of expert testimony:

The parties anticipate calling expert witnesses in the fields of hydrology, archeology, anthropology, history, agricultural science, soil science, and hydrographic survey.

b) Expert Reports:

Reports from retained experts under Rule 26(a)(2), concerning PPPW claims or defenses to PPPW claims, shall be due:

From the United States by November 5, 2008;

From the Zuni Tribe by March 3, 2009;

From the State by November 3, 2009;

From all other parties by January 27, 2010.

3. Discovery Completion Date

All discovery concerning PPPW claims, or defenses to PPPW claims, will be commenced in time to be completed by May 4, 2010. Motions relating to discovery (including, but not limited to, motions to compel and motions for protective order) shall be filed with the Court and served on opposing parties by July 2, 2010. This deadline shall not be construed to extend the twenty-day time limit in D.N.M.LR-Civ. 26.6.

4. Pretrial Motions

Pretrial motions concerning PPPW claims or defenses, other than discovery motions, shall be filed with the Court and served on opposing parties by July 30, 2010, or thirty (30) days after relevant documents are provided pursuant to a motion to compel, whichever is later. Any pretrial motions concerning PPPW claims or

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defenses, other than discovery motions, filed after this date shall be considered untimely in the discretion of the Court.

5. Witness and Exhibit Lists

Final lists of witnesses and exhibits under Fed.R.Civ.P. 26(a)(3) shall be due from all parties on October 1, 2010.

6. Date and Anticipated Length of Trial

PPPW claims and defenses in this Subproceeding should be ready for trial by November 9, 2010. The parties agree that it is impossible to make a realistic projection concerning the length of trial at this point in time.

B. Claims for Rights to Use Water for Domestic, Commercial, Municipal, or Industrial (“DCMI”) Purposes

1. Discovery will be needed on the following subjects:

One or more parties intend to make discovery requests concerning the following types of information. Other parties may dispute whether such information is properly discoverable in this proceeding under the Federal Rules of Civil Procedure or, even if such information is discoverable, whether it is admissible under the Federal Rules of Evidence. Until specific discovery requests, or attempts to introduce evidence, are made, it is not possible to further specify the nature of such potential disputes.

a) Facts concerning specific DCMI claims asserted by the United States or the Zuni Tribe.

- For each past or present DCMI use claimed by the United States or the Zuni Tribe, the date the use commenced, the point of diversion, the amounts of water used, the type of any conveyance, the specific purpose and the duration of the use.

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- For each diversion from a well alleged by the United States or the Zuni Tribe to serve DCMI, the depth, capacity, and construction of said well, and the date of the well's construction and use.
- For each future DCMI use claimed by the United States or the Zuni Tribe, all facts asserted to provide a basis for the quantification of the claim.

b) General facts asserted to be relevant to the DCMI claims asserted by the United States or the Zuni Tribe

- Facts concerning the hydrology in the adjudication area, including water supply and interconnection of surface water and groundwater (if any).
- All facts asserted as a basis for the claim to aboriginal priority or as a basis for contesting said claim.
- All facts asserted as a basis for the claimed entitlement to past, present or future DCMI uses or as a basis for contesting said claim.
- Any other facts asserted as a basis for defenses to the claims asserted by the United States or the Zuni Tribe, including allegations that such claims are barred by adverse possession or by the laws and customs of Spain and Mexico.

2. Expert Witness Disclosure:

a) Anticipated fields of expert testimony:

The parties anticipate calling expert witnesses in the fields of history, hydrology, archeology, demography, history, economics, and hydrographic survey.

b) Expert Reports:

Reports from retained experts under Rule 26(a)(2), concerning DCMI claims or defenses, shall be due:

From the United States by July 6, 2011;

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From the Zuni Tribe by November 2, 2011;

From the State by July 6, 2012;

From all other parties by October 5, 2012.

3. Discovery Completion Date

All discovery concerning DCMCI claims, or defenses to DCMCI claims, will be commenced in time to be completed by February 26, 2013. Motions relating to discovery (including, but not limited to, motions to compel and motions for protective order) shall be filed with the Court and served on opposing parties by April 29, 2013. This deadline shall not be construed to extend the twenty-day time limit in D.N.M.LR-Civ. 26.6.

4. Pretrial Motions

Pretrial motions concerning DCMCI claims or defenses, other than discovery motions, shall be filed with the Court and served on opposing parties by April 30, 2013, or thirty (30) days after relevant documents are provided pursuant to a motion to compel, whichever is later. Any pretrial motions concerning DCMCI claims or defenses, other than discovery motions, filed after this date shall be considered untimely in the discretion of the Court.

5. Witness and Exhibit Lists

Final lists of witnesses and exhibits under Fed.R.Civ.P. 26(a)(3) shall be due from all parties on July 2, 2013.

6. Date and Anticipated Length of Trial

DCMCI claims and defenses in this Subproceeding should be ready for trial by August 6, 2013. In the interests of conservation of the resources of the Court and the parties, it is the intention of the parties that the DCMCI trial in this Subproceeding follow

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closely the trial of Navajo Indian DCMi claims in Subproceeding 2. However, the parties agree that it is impossible to make a realistic projection concerning the length of either trial at this point in time.

C. All Other Claims

The scheduling of discovery and trial of all other claims in this Subproceeding shall be determined at a Scheduling and Management Conference to be set following the conclusion of the DCMi trial.

V. Settlement

The parties have had no substantive discussions concerning settlement of this Subproceeding. The parties shall make a joint report concerning the prospects for settlement on or before the 15th of each January and July. In the event the parties are unable to reach agreement on a joint status report, they may file separate reports.

VI. Amendments to Scheduling Order

This Scheduling Order will be altered or amended by the Special Master only upon a showing of good cause.

IT IS SO ORDERED

Dated: _____, 2008

SPECIAL MASTER