

**STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

**THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,**

Defendant-Intervenors.

CV-75-184

**HON. JAMES J. WECHSLER
Presiding Judge**

**SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION**

**Before Special Master
Stephen E. Snyder**

**Claims of the Navajo Nation
Case No. AB-07-1**

DESCRIPTIVE SUMMARY: The Special Master enters a second scheduling order a schedule and procedures governing the remainder of the proceedings for approval of the Proposed Decrees previously described in the September 2011 Scheduling Order.

NUMBER OF PAGES: __.

DATE OF ENTRY: _____, 2011.

**[SETTLING PARTIES' PROPOSED]
SECOND SCHEDULING ORDER
GOVERNING DISCOVERY AND REMAINING ACTIVITIES**

THE SPECIAL MASTER, having entered the *Scheduling Order Governing Initial Pretrial Activities*, September 29, 2011 ("September 2011 Scheduling Order"), enters this scheduling order to establish a schedule and procedures governing the remainder of the proceedings for approval of the Proposed Decrees as described in that order.

PRELIMINARY MATTERS

A. Summary Disposition of Non-Compliant Responses

1. **On or before April 2, 2012**, the Settling Parties shall identify all Responses made pursuant to Paragraph E.2 of the September 2011 Scheduling Order they believe do not comply with the requirements of the September 2011 Scheduling Order, or if the Respondent does not claim ownership of a water right, the reason why the Settling Parties believe the Respondent does not have standing to participate in this proceeding. If ownership of a water right is claimed by a Respondent, but the Settling Parties question such ownership, the Settling Parties may move to dismiss a Response as not in compliance with the September 2011 Scheduling Order.
2. **On or before April 16, 2012**, Respondents, identified by the Settling Parties pursuant to Paragraph A.1 above, shall file Supplemental Responses stating why they believe their Responses were in compliance with the September 2011 Scheduling Order, or if their ownership of a water right is challenged by the Settling Parties, the bases of their ownership.
3. **On or before April 30, 2012**, pursuant to Paragraph E.2(c) of the September 2011 Scheduling Order, the Special Master will issue a default judgment dismissing with prejudice any objections a party may have to the Proposed Decrees if the party:
 - (a) Fails to comply with the requirements of Paragraph E.2 of the September 2011 Scheduling Order;
 - (b) Lacks standing to participate in this proceeding; or
 - (c) Fails to file a Supplemental Response as required by Paragraph A.2 above.

B. Procedure for Identifying, Consolidating and Resolving Objections Involving Common Issues of Fact or Law

1. **On or before May 10, 2012**, any party may propose common issues of fact or law arising out of the Responses ripe for resolution.
2. **On or before May 21, 2012**, any party may respond to proposed common issues of fact or law ripe for resolution.
3. **On or before June 1, 2012**, the Special Master shall determine if any common issues of law are ripe and shall recommend them for resolution by the Judge. The Special Master will set a briefing schedule for the resolution of any common issues of fact the Special Master determines to be ripe for resolution.

DISCOVERY

C. Discovery Procedures

1. Document Depository

- (a) The State of New Mexico shall create a document depository at the State Engineer's website for the purpose of making all discovery documents available online.
- (b) All responses to discovery shall be made in an electronic format and responses shall be sent to: _____. The responding party must notify the other parties that the documents were sent.
- (c) A party satisfies its obligation to respond to discovery by submitting responses to discovery in the manner, and providing notice as, described in Paragraphs F.2 & F.3 of this order.
- (d) All parties requesting discovery material shall, within five business days of receipt of such material, submit an electronic copy of such material to

the Office of the State Engineer for posting to the website described at Paragraph C.2(a) above.

2. **Other Procedures for Enabling Respondents to Conduct Discovery in a Fair, Efficient and Timely Manner** (such as the appointment of lead counsel)

[REQUIRES FURTHER DISCUSSION ON OCTOBER 26]

D. Proposed Initial Discovery Requests

1. **On or before May 10, 2012**, all parties who seek to pursue discovery for additional information from the Settling Parties shall file and serve a notice of requests for discovery and shall attach to that notice all initial discovery requests that the party wishes to propound upon a Settling Party or the Settling Parties. With any notice of request for discovery, the party shall specify: what interests the party holds that it believes could be affected by entry of the Proposed Navajo Decree; how the requested discovery is necessary for evaluating any purported effect on such interests; and how, in particular, the information sought is “strictly limited” to that which is necessary to evaluate an element of the Proposed Navajo Decrees and/or Settlement Agreement and is not cumulative to information that is already available to all parties.
2. **On or before June 11, 2012**, the Settling Parties or a Settling Party, whichever is appropriate, shall file and serve responses to notices of requests for discovery and to initial discovery requests.

E. Discovery Conference

The Special Master shall conduct a Discovery Conference the week of **July 9, 2012**. At the Discovery Conference, the Special Master shall consider the proposed discovery requests and responses. Following the Discovery Conference, the Special Master shall enter a Discovery Order ruling on the requests for discovery and, if discovery is warranted, shall set strict limits on the amount, types, and duration of discovery. Further, the Discovery Order shall specify the day by which all parties must identify and disclose any witness and evidence that a party intends to submit in support of or opposition to the Settling Motion. Any necessary discovery shall end on **October 29, 2012**.

DISPOSITIVE MOTIONS

F. Briefing on the Settlement Motion.

1. **On or before December 7, 2012**, the Settling Parties shall file a memorandum in support of the Settlement Motion of United States, Navajo Nation and State of New Mexico for Entry or Partial Final Decrees, filed January 3, 2011 (Settlement Motion).
2. **On or before January 14, 2013**, responses in opposition to the Settlement Motion must be filed. All necessary evidence for the factual support of a response that a party wishes to be considered shall be attached to the response as an exhibit(s).
3. **On or before February 18, 2013**, the Settling Parties shall file a reply, or replies, to the responses in opposition to the Settlement Motion. All necessary evidence for the factual support of the reply, or replies, by the Settling Parties shall be attached to the response as an exhibit(s).

G. Hearing and Special Master's Report.

1. **On or before March 1, 2013**, the Special Master shall hold a hearing on the Settlement Motion. Following the hearing, the Special Master shall make a determination whether an evidentiary hearing is necessary.
2. If the Special Master determines that no evidentiary hearing is necessary, the Special Master shall issue his Report Concerning the Settlement Motion, or shall refer the determination of legal issues to the Judge, **on or before May 1, 2013**.
3. If the Special Master determines that an evidentiary hearing is necessary, the Special Master's determination shall identify those issues upon which evidence should be presented at the evidentiary hearing, and the Special Master shall conduct a hearing on the evidentiary issues **the week of April 1, 2013**.
 - (a) The Settling Parties may file a post-hearing brief no later than 30 days following the hearing,
 - (b) Parties, other than the Settling Parties, may file a post-hearing brief no later than **30 days following the filing of a post-hearing brief** by the Settling Parties.
 - (c) The Settling Parties may file a reply no later than **15 days following the last-filed post-hearing brief** by parties other than the Settling Parties.
 - (d) If an evidentiary hearing is held, the Special Master shall issue his report concerning the Settlement Motion **on or before July 3, 2013**.

H. Objections to the Special Master's Report.

1. Motions to adopt, motions to modify, and objections to the Special Master's Report shall be filed not more than four (4) weeks from the date the Special Master has filed his report pursuant to G.2 or G.3(d) above.
2. Responses to the motions and objections concerning the Special Master's Report shall be filed not more than eight (8) weeks from the date the Special Master has filed his report pursuant to G.2 or G.3(d) above.

J. Final Decision on Settlement Motion

The Court shall determine whether a hearing is necessary in connection with his decision to adopt, modify, or reject the Special Master's Report on the Severed Issue. Consistent with the Settlement Act, the Special Master recommends that the Court enter an order on the Settlement Motion **on or before December 31, 2013.**

IT IS SO ORDERED this ____ day of _____, 2011.

Stephen E. Snyder
Special Master
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Corrales, NM 87048
(505) 890-7750