

[NEW MATERIAL]

**1-071.2. Statutory stream system adjudication suits; stream system issue and expedited *inter se* proceedings**

**A. Stream system issue proceedings.**

(1) A stream system issue is any issue in a stream system adjudication suit conducted pursuant to Section 72-4-17 NMSA 1978 the resolution of which could directly affect the water rights of all or a significant number of water rights claimants, regardless of whether the claimants have been served and joined as defendants.

(2) At any time during the adjudication prior to the notice of commencement of *inter se* proceedings, any party may file a motion requesting that the court designate an issue as a “stream system issue”. The motion shall include a short, concise description of the issue and the reasons why such a proceeding is necessary and identify the section or sections of the adjudication affected by the issue. The court *sua sponte* may consider designating a stream system issue.

(3) The court shall conduct a hearing to determine whether to designate an issue as a stream system issue. The court shall designate an issue as a stream system issue if:

(a) the resolution of the issue could directly affect the water rights of all, or a significant number of, water rights claimants, whether served and joined as defendants or not; or

(b) the resolution of the issue in a manner that did not bind all water rights claimants on the stream system that have been joined or in the future

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might be joined, would create a substantial risk of:

(i) inconsistent or varying decisions of an issue the determination of which could directly affect the water rights of other defendants or claimants; or

(ii) a decision that, as a practical matter, would be dispositive of an issue relating to the subject matter of the adjudication and preclude other claimants similarly situated from challenging that decision.

(4) If the court designates an issue as a stream system issue, it shall enter an order defining the scope, timing and procedures to be followed in the stream system issue proceeding. Notice of the proceeding pursuant to Paragraph C of this rule shall be given to all claimants, regardless of whether they have been served and joined as defendants, in the sections of the stream system designated by the court. Unless the court orders otherwise or the parties otherwise agree, the movant requesting designation of the stream system issue shall provide the notice.

**B. Expedited *inter se* proceedings**

(1) An expedited *inter se* proceeding is a proceeding in which a water rights claim is resolved in a stream system adjudication suit conducted pursuant to Section 72-4-17 NMSA 1978 both as between the plaintiff and the defendant and as among the defendant and other water rights claimants.

(2) The plaintiff or any claimant may file a motion requesting that the court designate an expedited *inter se* proceeding. The motion shall include a

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short, concise description of the defendant's claims and the reasons why such a proceeding is necessary. The court *sua sponte* may consider designating an expedited *inter se* proceeding.

(3) The court shall conduct a hearing to determine whether to conduct an expedited *inter se* proceeding, and may proceed if it finds that such a proceeding will promote judicial efficiency and expeditious completion of the adjudication. Among the factors the court shall consider are:

(a) whether failure to proceed will injure the party asserting the claim;

(b) whether proceeding will injure those parties opposing the claim; and

(c) the expense and delay resulting from the failure to proceed.

(4) If the court finds that the criteria for an expedited *inter se* proceeding exist, it shall enter an order defining the scope, timing and procedures to be followed in the proceeding. Notice of the proceeding pursuant to Paragraph C of this rule shall be given to all claimants, regardless of whether they have been served and joined as defendants, in the sections of the stream system designated by the court. Unless the court orders otherwise or the parties otherwise agree, the movant requesting designation of the expedited *inter se* proceeding shall provide the notice.

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C. **Notice.** Notice of a stream system issue proceeding or an expedited *inter se* proceeding shall be given to all claimants, regardless of whether they have been served and joined as defendants, claiming water rights within the section or sections of the stream system identified by the court. Notice shall be given by first class mail with proper postage to all known claimants whose names and addresses are reasonably ascertainable. For all unknown claimants, notice shall be given in a manner reasonably calculated under all the circumstances to apprise claimants of the proceeding.

(1) To the extent they are relevant, the following records, if available, shall be consulted to identify persons who may claim the right to use waters of the identified section or sections of the stream system:

- (a) an existing hydrographic survey, if sufficiently current to provide accurate information;
- (b) the public records of the county assessor;
- (c) the public records of the state engineer; and
- (d) the public records of irrigation districts, acequias, water conservancy districts, and other water users' associations or commissions.

(2) All unknown claimants and claimants whose addresses can not reasonably be determined shall be served by publication.

(3) Any claimant who desires to participate in a stream system issue proceeding or an expedited *inter se* proceeding shall file with the court and

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serve on the plaintiff a notice of intent to participate within the time prescribed by the court. Thereafter, the court shall conduct such scheduling conferences, hearings, and other proceedings as necessary to resolve the issues.

**D.Effect of proceeding.** Stream adjudications are special proceedings to determine the rights to use the waters of a stream system. An order resolving a stream system issue proceeding or an expedited *inter se* proceeding binds all water rights claimants regardless of whether they were served and joined as defendants, participated in, or received actual notice of the proceeding, provided notice was given in accordance with Paragraph C of this rule.