

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2011 SEP 29 AM 11: 50

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

CV-75-184

Plaintiff,

HON. JAMES J. WECHSLER
PRESIDING JUDGE

v.

SAN JUAN RIVER
ADJUDICATION

THE UNITED STATES OF AMERICA,
et al.,

Before Stephen E. Snyder
Special Master

Defendants,

Claims of Navajo Nation
Case No: AB-07-1

SCHEDULING ORDER GOVERNING INITIAL PRETRIAL ACTIVITIES

THE SPECIAL MASTER enters this scheduling order, pursuant to Rule 1-016 NMRA and in anticipation of the October 3, 2011 scheduling conference, for purposes of establishing a schedule for initial pretrial activities. A subsequent scheduling order to govern discovery and all remaining pretrial activities will be entered as provided in this order.

A. Identification of Parties

1. The parties to this proceeding are (i) the Navajo Nation, the United States of America and the State of New Mexico, *ex rel* State Engineer (collectively the "Settling Parties") and (ii) those persons who filed a Notice of Intent to Participate in Navajo *Inter Se* by September 16, 2011 and attended the October 3, 2011 scheduling conference. *See* Order Establishing Initial Procedures for Entry of Partial Final Judgment and Decree of Water Rights of the Navajo Nation, filed on August 19, 2010, as amended by orders filed on March 16, 2011 and May 16, 2011, (collectively the "Navajo Procedural Order").
2. The Clerk shall, promptly after the October 3 scheduling conference, prepare a List of Parties to Navajo *Inter Se* containing the names, email addresses, mailing addresses and telephone numbers of all persons who became parties to this proceeding by complying with the requirements of the Navajo Procedural Order. The Clerk shall file the List of Parties

and serve the list on the parties in accordance with the Order Mandating Alternative Service described in paragraph C below.

3. Any person whose name does not appear on the list who believes it should be, or seeks leave to become, a party shall file a motion with the Court requesting that it be designated a party and stating with particularity the reasons for failing to comply with the deadline for becoming a party as stated in the Navajo Procedural Order.

B. Order Providing for Alternative Means of Service

The Court has entered an order mandating the use of an alternative method for service of orders, motions and other papers filed with the Clerk. See Order Mandating Alternative Method of Service Pursuant to Rule 1-005, filed on September 28, 2011 ("Order Mandating Alternative Service"). All papers filed with the Clerk shall be served on the parties in accordance with that order rather than Rule 1-005.

C. Determination of Objection to Entry of Appearance

The Special Master has recommended that the Court resolve three pending objections to the Entry of Appearance filed by Victor Marshall on July 5, 2011 and the Notice of Intent to Participate filed by Victor Marshall on September 16, 2011. *See* Special Master's Recommendation filed September 27, 2011. Judge Wechsler adopted the recommendation and set the following schedule for resolution of the objections:

October 12, 2011: Deadline for filing responses to pending objections

October 18, 2011: Deadline for filing reply briefs

October 26, 2011: Hearing on pending objections, hearing to commence at 9:30 AM at the New Mexico Court of Appeals courtroom, 2211 Tucker NE, Albuquerque, NM 87131. A video link will be available at the district court at 103 S. Oliver Drive, Aztec, New Mexico 87410, and participants may attend the hearing at the Aztec location. See Order Adopting Special Master's Recommendation and Setting October 26, 2011 Hearing Regarding Objection To Entry of Appearance of Victor Marshall and Notice of Intent to Participate Filed by Victor Marshall, filed September 28, 2011.

D. Determination of Legal Standard for Approval of Partial Decrees.

1. The Navajo Nation, the United States and the State of New Mexico (the "Settling Parties") filed a motion requesting that the Court enter the Proposed Partial Final Decrees (the "Proposed Decrees") attached as Appendices 1 and 2 to the Settlement Agreement resolving, as among the Settling Parties, the water rights claims of the Navajo Nation in the San Juan Basin of New Mexico. *See* Settlement Motion of the United States, the Navajo Nation and the State of New Mexico, filed on January 3, 2011 (the "Settlement Motion"). Entry of the Proposed Decrees by the Court would adjudicate the water rights of the Navajo Nation in a manner that is binding on all water rights claimants in the San Juan Basin. Prior to deciding whether to approve the Proposed Decrees, the Court must determine the applicable legal standard governing approval and whether the Settling Parties, or those parties filing objections to the Proposed Decrees, have the burden of establishing that the Proposed Decrees satisfy (or do not satisfy) that standard. The issue of the applicable standard was briefed before the Settlement Motion was filed but the issue was deferred until all water rights claimants in the basin were notified of the opportunity to participate in this proceeding. The Special Master deems it appropriate to provide the parties with an opportunity to brief, or submit supplemental briefs, concerning the issue of the appropriate legal standard. Accordingly it is ordered that:

(a) On or before **November 18, 2011**, any party who desires to do so shall file a brief addressing the following:

- i. What legal standard governs the Court's decision about whether to approve the Proposed Decrees?
- ii. Must the Court, to approve the Proposed Decrees, conclude that the water rights to be awarded the Navajo Nation pursuant to those decrees do not exceed the water rights that would be awarded the Navajo Nation under applicable law?

- iii. Do the Settling Parties, or the parties objecting to the Proposed Decrees, have the burden of establishing whether the applicable legal standard for approving the Proposed Decrees has (or has not) been satisfied?

Parties who have already briefed the issue of the appropriate legal standard may file supplemental briefs.

2. Judge Wechsler will conduct a hearing to resolve the forgoing issues during the **week of December 12, 2011**. Notice of the date, time and location of the hearing will be given in accordance with the Order Mandating Alternative Service. Attendance at the hearing by the Settling Parties and all parties filing responsive briefs is mandatory. Attendance by the other parties is optional.

E. Objections to Settlement Motion; Initial Disclosures.

1. The Settling Parties have proposed that they file the proposed Appendix 2 Decree (also known as the "Supplemental Decree") by **February 1, 2011**, along with final technical reports concerning the United States' Statement of Claims. See Settling Parties Proposal for Scheduling Order filed September 22, 2011. Accordingly, the Special Master orders that the settling parties file the forgoing documents by the dates they proposed.
2. **On or before March 2, 2012**, all parties to this proceeding, except for the Settling Parties, shall file an objection or other response to the Settlement Motion stating whether or not they object to entry of the Proposed Decrees by the Court. All objections or other responses ("Responses") to the Proposed Decrees shall contain:
 - (a) The name and address of the objector or other respondent (the "Respondent")
 - (b) A statement of the legal basis for the Response and the facts alleged in support thereof.

If the Respondent does **not claim ownership of a water right**, the Response, in addition to stating its legal and factual basis, shall state the reasons why the Respondent contends it has standing to participate in this proceeding.

(c) A disclosure of (i) the name, address and telephone number of each individual likely to have discoverable information that the Respondent may use to support its position, and (ii) a description, by category and location, of all documents, electronically stored information and tangible things in the possession, custody or control of the Respondent that the Respondent may use to support its position. The legal and factual basis for all Responses shall be stated with particularity. Responses will be subject to a motion to dismiss if they are so vague and ambiguous as to preclude the Settling Parties from reasonably understanding their basis or if the Responses otherwise do not conform to the requirements of this order. Responses may be amended, as if they were answers to a complaint, in accordance with Rule 1-015. **A default judgment dismissing with prejudice any objections a party may have to the Proposed Decrees may be entered against any party who, without good cause, fails to file a Response or make the required disclosures as required by this order.**

3. **On or before March 2, 2012**, the Settling Parties shall file a written disclosure of (i) the name, address and telephone number of each individual likely to have discoverable information that they may use to support their position in this matter, and (ii) a description, by category and location, of all documents, electronically stored information and tangible things in the possession, custody or control of the Settling Parties that they may use to support their position.
4. Parties must make their initial disclosures based on information reasonably available to them and are not excused from making disclosures because they have not completed their investigation or because another party has allegedly not made proper disclosures.

F. Scheduling Order Governing Remainder of Proceedings.

1. All discovery is stayed pending the entry of a Scheduling Order governing discovery and other pretrial matters by the Court or the Special Master.

2. **On or before October 31, 2011**, the Settling Parties shall meet with the other parties who are represented by Counsel to attempt to agree on the terms of a proposed Scheduling Order addressing the topics described below. Parties not represented by counsel may attend the meeting provided they inform the attorney for the State of New Mexico in writing of their intent to do so by **October 18, 2011**. The topics the parties should consider when discussing a proposed proposed Scheduling Order include:
- (a) A procedure for the summary disposition of Responses that do not comply with the requirements of this order.
 - (b) A procedure for identifying, consolidating and resolving objections involving common issues of fact or law.
 - (c) A procedure for enabling Respondents to conduct discovery, such as the appointment of lead counsel for conducting discovery on the Respondents' behalf, in a fair, efficient and timely manner.
 - (d) A plan concerning the amount, types and sequencing of discovery that allows no more discovery than is reasonably necessary to permit Respondents to evaluate the merits of the settlement upon which the Proposed Decrees are based. *See Navajo Procedural Order at ¶ V.B.*
 - (e) The establishment and maintenance of a document depository containing all materials prepared or produced in response to discovery requests, including all documents produced in response to a document request, deposition transcripts, answers to interrogatories, and responses to requests for admission. The proposed Case Management Order shall provide that a party satisfies its obligation to respond to discovery by placing the appropriate response in the document depository and notifying the other parties that it has done so.
 - (f) A procedure for identifying and resolving dispositive issues as soon as they are ripe for resolution.

- (g) Any other matters intended to simplify or address the unique procedural problems associated with this proceeding.

On or before **November 7, 2011**, after meeting with the parties represented by counsel, the Settling Parties shall prepare and file a proposed Scheduling Order addressing the forgoing topics that will govern the remainder of the proceedings for approval of the Proposed Decrees. . Other parties who desire to submit proposed Case Management Orders may do so but shall file their proposed orders by the same date.

3. The Special Master will conduct a working session for the purpose of discussing issues related to the preparation of proposed Case Management Order during the week of November 14, 2011. Notice of the date, time and location of the hearing will be given in accordance with the Order Mandating Alternative Service.
4. Following the working session, the Special Master will prepare his own proposed Scheduling Order and submit it to the parties who attended the working session for comments. The Special Master will conduct a Rule 1-016 scheduling conference during the week of January 9, 2012 for purposes of adopting a Scheduling Order governing discovery and other pretrial issues.
5. **Attendance at the working session and scheduling conference by the Settling Parties and any other parties who submit proposed Scheduling Orders is mandatory. Attendance by the other parties is optional.**

G. Pro Se Parties.

1. All persons who filed a Notice of Intent to Participate in this proceeding who are not represented by counsel ("pro se parties") are expected to be familiar with and comply with the New Mexico Rules of Civil Procedure, the Local Rules of the Eleventh Judicial District and all orders entered in this proceeding by the Court or the Special Master.
2. The only persons who may appear in this proceeding without an attorney are individuals. Corporations, partnerships, unincorporated associations and other organizations must be represented by an attorney. All such organizations not represented by an attorney shall

retain counsel and their counsel shall file an entry of appearance on their behalf by October 31, 2011. Except for good cause shown, organizations who do not obtain counsel by the required date will be dismissed from this proceeding with prejudice.

3. Any party, other than the Settling Parties, who desires to terminate its participation in this proceeding may request dismissal by completing, signing and filing with the Court the form entitled "Voluntary Dismissal with Prejudice of All Objections to Proposed Decrees", a copy of which is attached as Exhibit A to this order.

H. Service of this Order; Summary of Deadlines.

The Clerk shall serve this order by handing copies thereof to all persons who filed Notices of Intent to Participate whose presence is made known to the Clerk at the October 3, 2011 Scheduling Conference and file the order on the Navajo Inter Se Website. Thereafter, all motions, responses to motions, notices and other papers shall be served pursuant to the Order Mandating Alternative Method of Service. A summary of the deadlines set by this Order is attached as Exhibit B.

I. Sanctions for Non-Compliance With Scheduling Order.

The parties are cautioned that they must file all required papers, attend all mandatory hearings and otherwise comply with this order. Rule 1-016.F provides that sanctions may be entered against any party who, without good cause, does not comply with a scheduling order. **Those sanctions may include, depending on the circumstances, a default judgment against the non-compliant party dismissing that party from this proceeding and barring that party from asserting any objections to the Partial Decrees and the water rights claims of the Navajo Nation.**

Dated this 29th day of September, 2011

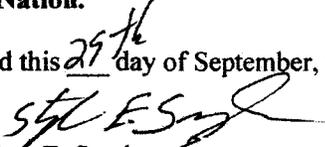

Stephen E. Snyder
Special Master
4 Manzano Road
Corrales NM 87048
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EXHIBIT A
SCHEDULING ORDER GOVERNING INITIAL PRETRIAL ACTIVITIES

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

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

Plaintiff,

v.

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

Defendants,

CV-75-184

HON. JAMES J. WECHSLER
PRESIDING JUDGE

SAN JUAN RIVER
ADJUDICATION

Claims of Navajo Nation
Case No: AB-07-1

**VOLUNTARY DISMISSAL WITH PREJUDICE OF ALL
OBJECTIONS TO PROPOSED DECREES**

hereby (i) voluntarily

(Insert Name)

dismisses with prejudice any and all objections the undersigned has, or might have, asserted to the Proposed Partial Final Decrees attached as Appendixes 1 and 2 to the Settlement Agreement, among the Navajo Nation, the United States and the State of New Mexico, resolving the water rights claims of the Navajo Nation in the San Juan Basin, (ii) waives all further rights to notice of or to participate in this proceeding and (iii) agrees to be bound by the final judgment to be entered in this proceeding adjudicating the water rights of the Navajo Nation.

THE UNDERSIGNED UNDERSTANDS THAT, IF IT SIGNS AND FILES THIS NOTICE WITH THE COURT, IT WILL BE DISMISSED AS A PARTY TO THIS PROCEEDING AND THEREAFTER BARRED FROM OBJECTING TO THE WATER RIGHTS CLAIMS OF THE NAVAJO NATION

SIGNED:

If Party Represented by Counsel:

DATE:

ADDRESS:

Attorney for Party

PHONE:

EXHIBIT B
SCHEDULING ORDER GOVERNING INITIAL PRETRIAL ACTIVITIES

ACTION TO BE TAKEN	DEADLINE FOR COMPLETING ACTION
Responses to Objections to Entry of Appearance and Notices of Intent filed by Victor Marshall	October 12, 2011
Reply Briefs Objections to Entry of Appearance and Notices of Intent filed by Victor Marshall	October 18, 2011
Hearing on Objection to Victor Marshall's Entry of Appearance and Notice of Intent Before Judge Wechsler	October 26, 2011
Deadline for Parties to Meet to Discuss Scheduling Order Governing Discovery and Remainder of Pretrial Proceedings	October 31, 2011
Deadline for Submission of Scheduling Order Governing Discovery and Remainder of Pretrial Proceedings to Special Master	November 7, 2011
Working Session Before Special Master Concerning Scheduling Order Governing Discovery and Remainder of Pretrial Proceedings	Week of November 14, 2011
Briefs and Supplemental Briefs Concerning Legal Standard for Approval of Partial Decrees	November 18, 2011
Hearing Before Judge Wechsler Concerning Legal Standard for Approval of Partial Decrees	Week of December 12, 2011
Scheduling Conference Before Special Master Concerning Scheduling Order Governing Discovery and Remainder of Pretrial Proceedings	Week of January 9, 2012
Court Order Determining Legal Standard for Approval of Partial Decrees	On or before February 1, 2012
Settling Parties file Proposed Supplemental Decree and Technical Reports	February 1, 2012
Objections and Other Responses to Proposed Partial Decrees <u>and</u> Initial Disclosures by all Parties	March 2, 2012
Schedule for Remainder of Proceeding to be set in Scheduling Order Governing Discovery and Other Pretrial Matters to be entered following January Scheduling Conference	