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DISTRICT COURT
DONA ANA COUNTY, NM

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

State of New Mexico, *ex rel.* Office of the State Engineer, Plaintiff,	)	
v.	)	
Elephant Butte Irrigation District, *et al.*, Defendants.	)	Judge Valentine No. CV -96-888

SECOND AMENDED CASE MANAGEMENT ORDER AUTHORIZING LIMITED NOTICE BY A QUARTERLY REPORT AND SETTING PROCEDURES FOR STREAM SYSTEM ISSUE PROCEEDINGS FILED AUGUST 16, 2010

THIS MATTER comes before the Court to consider whether the First Amended Case Management Order filed on September 14, 2009, should be amended. The September 14, 2009, Order addresses matters of website notice for general concerns in the adjudications. This Second Amended Order provides for website notice in stream system proceedings for parties who are not participating parties in the proceedings. It also provides that the New Mexico Rules of Civil Procedure shall govern service of filed documents on participating parties in stream system issue proceedings.

THE COURT FINDS: that the First Amended Case Management Order Authorizing Notice by a Monthly Report, filed herein on September 14, 2009, should be amended to set procedures for matters of general concern in the adjudication and procedures for initiating and

resolving both expedited *inter se* proceedings and stream system issue proceedings, and change from a Monthly Report to a Quarterly Report.

A. Definitions. Except as otherwise defined below, all words in this Order shall be given their customary and accepted meanings.

1. "**Stream System Issue**" refers to an issue, the resolution of which will affect the water right(s) of all or a substantial number of claimants.

2. "**Expedited *Inter Se* Proceeding**" is a type of proceeding by which the Court resolves objections made by water right claimants to another claimant's water right before all sub-file proceedings in the adjudication have been resolved. Expedited *inter se* proceedings are a sub-set of stream system issues. Any reference herein to a stream system issue shall include expedited *inter se* matters.

3. "**Quarterly Reports**" are reports prepared by the Court and posted on the New Mexico Judiciary's website, www.nmcourts.gov (Click on Lower Rio Grande Adjudication). The Court may supplement a Quarterly Report, as it deems appropriate.

4. "**Participating Parties**" in a stream system issue proceeding are the State, parties who file Adjudication Form B, Notice of Intent to Participate in that specific stream system issue proceeding and parties who are granted leave to intervene by Court order. If a party is represented by counsel, only one Form B needs to be filed in each stream system issue which has the name of all attorneys who represent the party and their contact information.

B. **Obtaining Form B, Notice of Intent to Participate.** Form B may be downloaded from the New Mexico Judiciary's website at www.nmcourts.gov (Click on Lower Rio Grande

Adjudication). The forms are specific to the designated stream system issue, e.g., Form B-101 for participating in SS 97 - 101, etc. The Orders designating and describing specific stream system issues may be found on the New Mexico Judiciary's website.

C. **Motions to Join a Non-participating Party and Motions to Intervene.** Motions to join after the deadline for filing Form B shall be governed by either Rule 1-019 NMRA or Rule 1-020 NMRA. After the deadline for filing Form B has expired, a non-participating party may file a motion to intervene in a specific stream system issue proceeding pursuant to Rule 1-024 NMRA.

IT IS THEREFORE ORDERED that the Court will provide notice to all parties regarding matters of general concern in the adjudication by posting a Quarterly Report on the New Mexico Judiciary's website, www.nmcourts.gov. (Click on Lower Rio Grande Adjudication.).

A. **Quarterly Report.**

1. The Quarterly Report will contain dates and times of status conferences and hearings, motions to designate stream system issues and other matters. The Court may file supplemental reports to Quarterly Reports at its discretion. No further notice or other document filed or referenced in the Quarterly Reports or supplements shall be served by the Court on parties, except service in stream system issue proceedings as set out below.

2. Quarterly Reports will be posted and then archived in an electronically accessible archive on the New Mexico Judiciary's website, www.nmcourts.gov (Click on Lower Rio Grande Adjudication).

3. The website of the Office of the State Engineer shall have a link to the Lower Rio Grande Adjudication website. The website of the Office of the State Engineer is www.ose.state.nm.us.

4. The posting of a document relating to a stream system issue in the Quarterly Report and the mailing of the Quarterly Report to claimants who subscribe shall be effective service on all claimants, whether or not a claimant has personal knowledge of the filing of the document.

5. Any documents posted will be in PDF format and may be printed from the website.

6. Exhibits attached to motions or other documents initiating requests for court action may not be posted. If exhibits are not included with a document, claimants participating in the matter should obtain copies from the moving or initiating party.

7. Any claimant may subscribe to the Quarterly Report by filing a written request with a current mailing address and by paying an annual fee. The fee is $100.00.

8. The subscription fee is due June 1st each year. The Court will remove from the subscription list any party who fails to renew its subscription by June 30th. A waiver of the annual fee may be allowed by the Court if a claimant meets the standard for *in forma pauperis* pursuant to the Local Rule LR3-108 of the District Court of the Third Judicial District.

B. **Copies of Filed Documents.**

Any party may obtain a copy of a document filed with the Court by requesting a copy from the Court and paying $ .35 per page.

The request and filing fee shall be delivered to or mailed to:

Third Judicial District Court
Water Clerk
201 W. Picacho Ave.
Las Cruces, NM 88005

IT IS FURTHER ORDERED that the following procedures shall be used in stream system issue proceedings.

A. **Designating a Stream System Issue.**

1. At any time, any party may file a motion asking the Court to designate an issue as a stream system issue. The motion shall be served by first class mail on the State and, if arising in a sub-file, on the sub-file claimant(s). All other parties will be served by the Court's posting of the motion in a Quarterly Report.

2. A party's motion to designate a stream system issue shall contain the following:

   a. A short description of the subject of the matter;

   b. A statement of why the moving party thinks the matter is significant and should be resolved as a stream system issue or an expedited inter se proceeding;

   c. A statement by the moving party of how designation of a stream system issue or beginning of an expedited *inter se* proceeding will promote judicial efficiency and completion of the adjudication; and

   d. The moving party's opinion as to when the matter will be ripe for the Court's decision.

3. The Court, *sua sponte*, may file a notice of intent to designate a stream system issue.

4. The Court will conduct a hearing before determining whether to designate an issue as a stream system issue.

5. The Court may enter an order designating a stream system issue if it finds that:

a. It is an issue that could affect the interests of all or a substantial number of parties; and,

b. A resolution of the issue which did not bind all parties would create a risk of:

i) inconsistent or varying decisions with respect to various claimants; or,

ii) a decision which would, as a practical matter, be dispositive of the interests of other claimants; or,

iii) a decision that would, for other reasons, substantially impair or impede the ability of claimants or the State to protect their interests; and,

c. A timely decision, binding on all parties to the adjudication, will promote judicial efficiency and completion of the adjudication.

6. The Court will post motions requesting designation of a stream system issue in the Quarterly Report, and will post objecting or supporting responses and replies regarding the motions in subsequent Quarterly Reports or supplements.

B. **Notice of Designation of a Stream System Issue.**

1. When the Court designates a stream system issue, it will include in the Quarterly Report a "Notice of Designation of a Stream System Issue." and assign a stream system issue proceeding number.

2. Parties wishing to participate in that stream system issue will have sixty (60) days from the date of the Quarterly Report containing the Notice of Designation of a Stream System Issue to file Form B, Notice of Intent to Participate. The Court then will set a

scheduling conference or ask counsel and parties for scheduling reports. Thereafter, the Court will file a scheduling order or take other appropriate action.

D. **Service After Designation of a Stream System Issue.**

1. Service on non-participating claimants shall continue to be by posting in the Quarterly Report.

2. Participating parties shall comply with New Mexico Rules of Civil Procedure for service on other participating parties of motions, responses, replies or other documents related to stream system issue proceedings.

3. Participating parties are not required to serve any filed documents or papers on any non-participating party, unless such non-participating party expressly requests a copy in writing from the moving claimant and provides a self-addressed, stamped envelope.

E. **Form of Documents Filed in Designated Stream System Issue Proceedings.**

1. The Court will open a file in each stream system issue proceeding and assign it a unique number. The numbers of designated stream system issue proceedings shall be SS 97-101, SS 97-102 and so on.

2. The title of each document relating to the stream system issue filed after designation must clearly state the nature of the document and contain the number assigned by the Court for that particular stream system issue.

3. An abbreviated description of the issue shall be placed immediately below the stream system issue number on documents filed with the Court.

4. The stream system issue proceeding will be listed in pending matters section of the Quarterly Report until the Court has resolved the issue by entry of an order.

F. **Court Orders.**

1. A final decision by the Court on a stream system issue will bind all parties whether or not they have participated in the proceeding.

2. An order that resolves a stream system issue proceeding will be posted in the Quarterly Report.

3. Each order resolving a stream system issue shall be a final appealable order in accordance with Rule 1-054(B) NMRA.

4. On request of a participating party, the Court's order resolving a stream system issue will contain all findings necessary to enable parties to make an interlocutory appeal in the event that an appellate court determines that the order is not a final order.

G. **Claimants' Obligations to Keep Address and Ownership Records Up to Date.**

1. If a claimant, whether participating or non-participating in a stream system proceeding, moves and changes address or changes telephone numbers after becoming a participating party, claimant shall timely file Adjudication Form D, Notice of Change of Address or Telephone Number, and mail a copy of this notice to the Office of the State Engineer. Form D may be downloaded from the New Mexico Judiciary's website at www.nmcourts.gov (Click on Lower Rio Grande Adjudication). If a claimant does not file the Form D, Notice of Change of Address or Telephone Number, all documents mailed to the claimant's last known address shall be effective service.

2. In the case of a transfer of any interest in a water right, the new owner shall mail Adjudication Form E, Notice of Transfer of Interests to the Office of the State Engineer. Form E may be downloaded from the New Mexico Judiciary's website at

www.nmcourts.gov (Click on Lower Rio Grande Adjudication). This notice shall include the signature of the former owner acknowledging the transfer.

3. If a new owner requests the former owner to acknowledge the transfer by signing the Form E, Notice of Transfer of Interest, and the former owner refuses to do so, the new owner may mail a Notice of Transfer of Interest to the Office of the State Engineer without the former owner's acknowledgment. The new owner shall immediately petition the Court to determine ownership, serving the petition on the former owner. The Court will set a hearing to decide the matter.

4. If a new owner fails to file a Form E, Notice of Transfer of Interest, and the Office of State Engineer does not have the transfer information in its records from other sources, the adjudication will proceed against the former owner and the new owner shall be bound by all decisions of the Court.

Gerald A. Valentine, Presiding Judge
Lower Rio Grande Basin Adjudication