

THIRD JUDICIAL DISTRICT COURT  
COUNTY OF DOÑA ANA  
STATE OF NEW MEXICO

FILED

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DISTRICT COURT  
DONA ANA COUNTY, NM  
GREGORY F. TOOMEY

STATE OF NEW MEXICO, *ex rel.*,  
Office of the State Engineer,

Plaintiff

vs.

ELEPHANT BUTTE IRRIGATION DISTRICT, *et al.*,

Defendants.

CV-96-888

Jerald A. Valentine

District Judge, Division IV

**FIRST AMENDED CASE MANAGEMENT ORDER FOR  
STREAM SYSTEM ISSUES AND EXPEDITED *INTER SE* PROCEEDINGS  
AUTHORIZING NOTICE BY A MONTHLY REPORT AND SETTING PROCEDURES**

**FILED SEPTEMBER 14, 2009**

**THIS MATTER** comes before the Court upon the review of the Case Management Order Authorizing Notice by a Monthly Report, filed herein on July 3, 2007, and the need for providing:

- 1) an efficient and inexpensive method of giving notice when the Court addresses matters of general concerns in the adjudication, and
- 2) procedures for bringing stream system issues and expedited *inter se* proceedings before the Court.

**THE COURT FINDS** that the Case Management Order Authorizing Notice by a Monthly Report, filed herein on July 3, 2007 should be amended.

**THE COURT ORDERS** adoption of the following procedures authorizing notice to all claimants in the Lower Rio Grande Adjudication through a Monthly Report posted on the New Mexico Judiciary's website. This website notice shall be used for matters of general concern to the adjudication, stream system issue proceedings and expedited *inter se* proceedings.

**THE COURT FURTHER ORDERS** the adoption of the following procedures for conducting stream system issues proceedings and expedited *inter se* proceedings.

**Note: All forms referred to are available  
on the Lower Rio Grande Adjudication website.**

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

1. "**Participating Parties**" in a stream system issue proceeding or an expedited *inter se* proceeding are the State, any party from whom specific relief is requested, all parties specifically named in a motion or other document requesting action of the Court, all parties who file responses and replies, and claimants who file Adjudication Form B, Notice of Intent to Participate, asking the Court permission to participate.

2. "**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.

3. "**Expedited Inter Se Proceeding**" is a type of proceeding by which the Court resolves objections of other water right owners to a specific water right or water right element before all sub-file proceedings have been resolved.

**B. Stream System Issue and Expedited *Inter Se* Proceedings.**

At any time, any party may file a motion asking the Court to designate an issue as a stream system issue or to initiate an expedited *inter se* proceeding. 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 the motion in a Monthly Report. [See Paragraph D Below]

**C. Designating a Stream System Issue or Beginning an Expedited *Inter Se* Proceeding.**

1. A party's motion to designate a stream system issue or begin an expedited *inter se* proceeding 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, if designated or began, will be ripe for the Court's decision.

2. The Court, *sua sponte*, may file a notice of intent to designate a stream system issue or begin an expedited *inter se* proceeding.

3. The Court will conduct a hearing before determining whether to designate an issue as a stream system issue or begin an expedited *inter se* proceeding. Notice of the hearing will be included in the Monthly Report.

4. The Court may enter an order designating a stream system issue or initiating an expedited *inter se* proceeding, 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.

5. When the Court decides to designate a stream system issue or begin an expedited *inter se* proceeding, it will enter an “Order Commencing Stream System Issue” or an “Order Commencing Expedited *Inter Se* Proceeding” and assign a proceeding number. The Court will file a scheduling order setting deadlines for the proceeding.

**D. Monthly Reports**

1. The Court will prepare a Monthly Report for the purpose of serving notice to all claimants of hearings on motions to designate stream system issues and initiate expedited *inter se* proceedings and, if the Court grants such motion, hearings related to the designated proceeding.

2. The Monthly Reports will be posted on the New Mexico Judiciary's website, [www.nmcourts.gov](http://www.nmcourts.gov). (Click on Lower Rio Grande Adjudication.) The Court will include briefing schedules when appropriate. The Court may file supplemental reports and may consolidate Monthly Reports into quarterly reports at its discretion.
3. Any claimant may subscribe to the Monthly Report by filing a written request with a current mailing address and by paying an annual fee to cover the costs of producing, copying and mailing the Report. The fee is \$100.00 unless the Court amends it by a future order. The subscription fee is due June 1<sup>st</sup> each year. The Court will remove from the subscription list any party who fails to renew its subscription by June 30<sup>th</sup>. 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.
4. 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.
5. The Court will post motions which relate to stream system issues and expedited *inter se* proceedings with the Monthly Report. The Court will post objecting or supporting responses and replies regarding the motions with subsequent Monthly Reports or supplements.
6. Monthly Reports will be posted once, and then archived in an electronically accessible archive on the website.
7. The posting of a document with the Monthly Report and the mailing of the Monthly 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. The documents will be posted in PDF format and may be printed from the website.

8. 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.

9. The website of the Office of the State Engineer shall have a link to the Lower Rio Grande Adjudication website set forth in paragraph D(2) above. The website of the Office of the State Engineer is [www.ose.state.nm.us](http://www.ose.state.nm.us).

10. The website of the Third Judicial District Court will have a link to the Lower Rio Grande Adjudication website set forth in paragraph D(2) above. The website of the Third Judicial District Court is [www.thirddistrictcourt.gov](http://www.thirddistrictcourt.gov).

**E. After Designation of a Stream System Issue or an Expedited *Inter Se* Proceeding.**

1. Service on non-participating claimants shall be by posting with the Monthly Report.

2. All participating parties in stream system issue or expedited *inter se* proceeding shall comply with Rule 1-005 of the New Mexico Rules of Civil Procedure (NMRA), for service on other participating parties. All participating parties shall comply with all New Mexico Rules of Civil Procedure with regard to other participating parties.

3. Rule 1-007.1 (D) NMRA shall apply to the filing of motions except that the time for filing responses and replies shall be enlarged from 15 days to 30 days after the document is posted or the date that subscribers are mailed the Monthly Report, unless the Court posts a different briefing schedule or enlarges the time for filing a responsive pleading.

4. Participating parties are not required to serve any notice, order, judgment, decree, pleading, motion, brief, memorandum or other documents or papers to 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.

**F. Form of Title of Documents.**

The title of each motion and each responsive document filed after designation must clearly state the nature of the document. The title of a motion will be listed in pending matters section of the Monthly Report until the Court has resolved the issue by entry of an order.

**G. Court Orders.**

1. A final decision by the Court on a stream system issue or in an expedited *inter se* proceeding will bind all parties whether or not they have participated in the proceeding.
2. An order that resolves a motion will be posted in the Monthly Report once, and then archived.
3. Each order resolving a stream system issue or concluding an expedited *inter se* proceeding shall be a final appealable order in accordance with Rule 1-054(B) NMRA.
4. An order resolving a stream system issue or concluding an expedited *inter se* proceeding 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.

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


1. If a claimant moves or change telephone numbers after having been joined, claimant shall timely file a notice of Change of Address or Telephone Number, Adjudication Form

D, and mail a copy of this notice to the Office of the State Engineer. If a claimant does not file the Notice of Change of Address or Telephone Number, Form D, 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 file a Notice of Transfer of Interest with the Court, Adjudication Form E, and mail a copy of this notice to the Office of the State Engineer. 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 Notice of Transfer of Interest, and the former owner refuses to do so, the new owner may file a Notice of Transfer of Interest without the former owner's acknowledgment and mail a copy to the Office of the State Engineer. 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 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