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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. )

DISTRICT COURT  
DONA ANA COUNTY, NM  
NADINE SANCHEZ - 4

Judge Valentine  
No. CV -96-888

**CASE MANAGEMENT ORDER  
AUTHORIZING NOTICE BY A MONTHLY REPORT**

**THIS MATTER** having come before the Court following briefing and oral argument on the need for providing an efficient and inexpensive method of giving notice when the Court addresses matters of general concerns in the adjudication including stream system issues, the Court having considered the matter, and being fully advised in the premises,

**FINDS:** That additional procedures should be adopted.

**THE COURT ORDERS** the following procedures to establish a monthly stream system issue and expedited *inter se* report, hereinafter Monthly Report, to set out how stream system issues are brought to the court and to provide a consistent procedure to serve notice and maintain due process when the Court addresses these matters and other matters of general concern to the adjudication.

**A. Monthly Stream System Issue and Expedited Inter Se Report (Monthly Report).**

1. Each month, the Court shall prepare a Monthly Report for the purpose of providing notice of hearings and litigation activity in stream system issue and expedited *inter se* sub-proceedings.

2. The listing of the title of a filed paper in the Monthly Report shall be effective notice and service on all parties regardless whether a claimant has personal knowledge of the filing of the paper.
3. Any party may subscribe to the Monthly Report by filing a written request with a current mailing address and paying an annual fee as necessary to cover the costs of producing, copying and mailing the report. Monthly Reports, at the discretion of the Court, may not be prepared for the remainder of the fiscal year when this Order is filed. The fee for the fiscal year immediately following the filing of this order shall be \$100.00. The subscription fee shall be due thirty (30) days before the end of the preceding fiscal year. The Court will remove from the subscription list any party who fails to renew its subscription within thirty (30) days after the subscription fee is due. 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. The Court shall electronically transmit the Monthly Report to the State and the State shall post the Report on its website in PDF format.
5. The Court shall post the Monthly Report on the Court's website in PDF format on or before the fifteenth business day of the month.
6. Any party may obtain a copy of a document identified in the lists by requesting a copy from the Court, pursuant to procedures for obtaining copies of any civil matter court record and paying the usual fee set by the Court for such copies, or from such other document repositories as may be designated by the Court.

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

1. "Expedited *Inter Se*" is a type of stream system issue by which the Court may resolve objections of other water right owners to a specific water right before all sub-file proceedings have been resolved.

2. "Participating Parties" in a stream system issue or expedited *inter se* proceeding are the State, any party from whom specific relief is requested, all parties specifically named in a Motion requesting action of the Court, and water right owners or claimants who file Adjudication Form B, asking the Court for permission to participate in the stream system issue proceedings.

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.

**C. Designation of Stream System Issues.**

1. At any time, any party may file a motion to ask the Court to designate an issue as a stream system issue or to start an expedited *inter se*.

2. If the issue arose in a claimant's sub-file, a party filing a motion with the Court shall mail a copy to both the State and the claimant.

3. Notice of the filing of such a motion, and notice of the Court's intent to designate a stream system issue if the Court so decides, shall be served on all other parties by listing such notice in a Monthly Report.

4. A motion for this purpose shall contain the following:

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

- b. A statement why the moving party thinks the issue to is significant and better resolved as a stream system issue or expedited *inter se* proceeding;
  - c. A statement of the moving party's reasons explaining how this will promote judicial efficiency and completion of the adjudication;
  - d. The moving party's opinion as to when the Court should decide the issue;
  - e. The type of water right(s) which may be affected by the issue.
5. The Court may enter an order designating an issue as a stream system issue or starting an expedited *inter se* proceeding, if it finds that:
- a. There 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.

**D. Procedure Regarding Stream System Issues or Expedited *Inter Se* Proceedings - Notice of Intent to Participate.**

1. Commencement of stream system issue proceedings. Proceedings for the Court to decide a stream system issue after designation or expedited *inter se* will ordinarily be started after


- a. (i) All persons whom the State has identified as claiming water rights have been joined. Provided however, the Court may proceed before all parties are served the summons and complaint if due process can be maintained by effective notice to non-party water right owners; (ii) All parties joined before the date of this order have been notified of these adjudication procedures by mailing this order to the last known addresses of water right owners in the Court's data base. (iii) The State has published this Order pursuant to Rule 1-004 (K) NMRA.
- b. When these conditions have been met, the State shall file Notice of Completion of Conditions for Stream System Issue Determination.
- c. The Court, for good cause shown, may delay the start of an expedited *inter se* proceeding until after entry of a sub-file order between the water right owner and the State.
2. Filed papers relating to designated stream system issues that are not expedited *inter se* proceedings shall be docketed under a separate sub-proceeding within the general stream adjudication docket number. When the Court designates a stream system issue, it shall assign a stream system issue number and give a short explanation of the issue. The sub-proceeding docket number shall be the general stream adjudication docket number, but shall include a number that identifies a specific designated stream system issue number. [Eg. CV 96-888, Stream System Issue No. 1]. The clerk shall docket all filed papers pertaining to the resolution of the specific issue under that sub-proceeding.
3. Filed papers relating to expedited *inter se* sub-proceedings shall be filed under the sub-file number for the sub-file in question.

4. The Court will file an "Order Commencing Stream System Issue or Expedited *Inter Se* Sub-proceeding" for each separate matter. These orders shall be listed in the Monthly Report accompanied by a short, concise description of the issue designated and stating the deadline for claimants to file Adjudication Form B, Notice of Intent to Participate.
5. A hearing to address the matter will ordinarily be set no earlier than sixty (60) days after the notice of the hearing is listed in the Monthly Report unless good cause exists to shorten the time.
6. Claimants may participate in proceedings concerning a stream system issue if they meet the definition of "Participating Parties" in the Definition Paragraph B (2), herein. Participating parties filing papers asking for relief or action by the Court shall comply with New Mexico Rules of Civil Procedure for service of filed papers on other participating parties.
7. Notice of the proceedings for non-participating parties shall be by listing in the Monthly Report. No party shall be required to mail any notice, order, judgment, decree, pleading, motion, brief, memorandum or other papers to any non-participating party, unless such non-participating party expressly requests a copy in writing and provides a self addressed, stamped envelope.
8. A decision by the Court will bind all parties whether or not they have participated in the stream system sub-proceeding.
9. Each order resolving a stream system issue or expedited *inter se* shall be a final appealable order in accordance with the procedures in Rule 1-054(B). Additionally, the

order shall contain all findings necessary to enable parties to make an interlocutory appeal.

**E. Claimant's Obligations to Keep Address and Ownership Records Up to Date.**

1. Once joined, Rules of Court require that all claimants shall timely file notice of address changes and mail a copy of the notice of address change to the State. If a Claimant does not file notice of change of address and mail the notification to the State, all papers mailed to Claimant's last known address shall be effective service.
2. In case of any transfer of interest in the water right, the new owner shall file notice of the transfer with the Court, and the former owner shall acknowledge the transfer. If the new owner fails to file notice or fails to obtain the acknowledgment of the former owner, the adjudication will proceed against the former owner and the new owner will be bound by all decisions of the Court. If a new owner files notice and requests the former owner to acknowledge the transfer and the former owner refuses to do so, the now owner may file a request for the Court to determine ownership and serve the former owner.

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