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STATE OF NEW MEXICO  
SAN JUAN COUNTY  
ELEVENTH JUDICIAL DISTRICT COURT

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

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,  
et al.,

Defendants,

vs.

THE JICARILLA APACHE TRIBE  
and the NAVAJO NATION,  
Defendant-Intervenors.

CV-75-184

Hon. James J. Wechsler  
Judge Pro Tempore

SAN JUAN RIVER STREAM  
SYSTEM ADJUDICATION

LA PLATA RIVER SECTION

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**SCHEDULING AND PROCEDURAL ORDER FOR THE ADJUDICATION OF  
SURFACE WATER RIGHT CLAIMS FOR DOMESTIC AND STOCK  
WATERING PURPOSES WITHIN THE LA PLATA RIVER SECTION**

This matter comes before the Court pursuant to the State of New Mexico's ("State") January 15, 2019 *Motion for Entry of (1) Scheduling and Procedural Order for the Adjudication of Surface Water Right Claims for Domestic and Stock Watering Purposes Within the La Plata River Section and (2) Order to Show Cause.*

For good cause shown, I hereby **GRANT** the *Motion for Scheduling and Procedural Order for Adjudication of Surface Water Right Claims for Domestic and Stock Watering Purposes Within the La Plata River Section.* I have concurrently entered the Notice and Order to Show Cause.

**IT IS THEREFORE ORDERED THAT** this *Scheduling and Procedural Order* governs the adjudication of surface water rights for domestic and stock watering purposes

by the Defendant mailing a Request for Consultation to counsel for the State at the following address:

Edward Bagley  
Special Assistant Attorney General  
Office of the State Engineer  
P.O. Box 25102  
Santa Fe, NM 87504

Service may also be accomplished by delivering the Request for Consultation in person to the following address:

Edward Bagley  
Special Assistant Attorney General  
Office of the State Engineer  
130 S. Capitol St.  
Santa Fe, NM 87501

2. Failure of a Defendant to serve a Request for Consultation on the State of New Mexico within forty-five (45) days from the date of mailing will result in the State moving the Court to amend the Defendant's subfile order to include the amendment, set forth above.

3. Defendants who submit a Request for Consultation form will have no more than thirty (30) days after being contacted by the State by telephone, email or mail, to consult with the State in an attempt to resolve their claims.

4. Good faith participation in consultation with the State is required to satisfy the discovery requirements of Rule 1-026 (A) and (B) of the New Mexico Rules of Civil Procedure, and must be accomplished before a dispute can be brought before the Court.

5. To the fullest extent possible, Defendants and the State should have information available at the consultation to support their respective positions. In the event the State does not have information readily available during the initial consultation

meeting, such information will be made available for examination at the Office of the State Engineer in Santa Fe, New Mexico.

6. If a disagreement between the Defendant and the State is resolved during the consultation period, the parties shall sign a Consent Order. The State will submit the signed Consent Order to the Court for approval and filing, and will send a copy of the filed Consent Order to the Defendant within thirty (30) days of the date of the Court's approval and filing.

**B. Procedures After Consultation Period Has Ended**

1. In the event a Defendant has consulted with the State, and the State makes a final offer to which a Defendant does not respond, the State will file with the Court and serve on the Defendant a *Notice That Consultation Period Has Ended*, along with a subfile answer form.

2. Defendant must file and serve a subfile answer within twenty (20) days of from the date of filing of the *Notice That Consultation Period Has Ended*.

3. A Defendant's failure to respond to the State's last offer or to file a subfile answer will be considered grounds for the entry of a default consent order, and the State will move the Court to enter a default order that incorporates the terms proposed by the State.

4. The State must request the Clerk of the Court, under Rule 1-055(A) NMRA, to enter the default of Defendants who have not signed and returned a Consent Order or filed and served a subfile answer within the time required above, provided that: (1) no default consent order may be entered until a Defendant has had at least twenty (20) days to review a proposed consent order sent by the State; and (2) no default may be entered if



within the La Plata River Section of the San Juan River Stream System. Consistent with this *Scheduling and Procedural Order*, the Court has entered a *Notice and Order to Show Cause*.

**IT IS FURTHER ORDERED THAT:**

**A. Service on Defendants**

1. The State shall serve on Defendants in the La Plata Section by mail, the following documents: (1) this *Notice and Order to Show Cause*, (2) the *Scheduling and Procedural Order for the Adjudication of Surface Water Right Claims for Domestic and Stock Watering Purposes Within the La Plata River Section*, and (3) the *Request for Consultation form*.

2. Defendants who agree that their subfile order adjudicating surface water irrigation rights should be amended to include an additional purpose of use to include domestic and stock watering purposes, as set forth above, need not respond. Those subfile orders will be amended by a global order from the Court, upon motion by the State.

**B. Request for Consultation with the State**

1. Any Defendant who opposes the amendment set forth above, or wishes to discuss the issue with the State, must serve the State with a Request for Consultation within forty-five (45) days after the date of mailing of the Notice and Order to Show Cause. The Request for Consultation form must identify the Defendant(s), the subfile number, contact information, and the specific nature of the dispute, including the amount of additional water claimed and the purpose of use. Such service may be accomplished

the State and Defendant jointly move the Court to extend the deadline for filing an answer.

5. If a Defendant timely files an Answer, the parties will proceed to litigation to resolve the claim for an additional amount of surface water for the purpose of domestic or livestock watering. Pursuant to Rule 1-016, Rules of Civil Procedure for the District Courts of New Mexico, the State will request that the Court schedule a pre-trial conference to begin the litigation process.

**IT IS SO ORDERED.**

  
JAMES J. WECHSLER  
JUDGE PRO TEMPORE