

ATTACHMENT "A"

Objections To Partial Final Decree, Interim Administrative Order And Settlement Agreement

1. By the terms of the settlement agreement (See Section 3), the beneficial use of 3.0 AFY of groundwater granted by permits issued after 1956 by the New Mexico State Engineer, are reduced to 0.5 AFY without just compensation, arbitrarily and in violation of the Domestic Well Statute (Sect 72-12.1.1; N.M.A.C. 19.27.5).
2. The settlement agreement summary and order to show cause have been mailed by the state engineer to claimants of water rights by first class mail rather than by certified mail, as the law requires. (Rule 4 FRCiv.P.). Thus, aside from these objections, there is no proof that Defendant received a copy of the order to show cause. Defendant objects. If the state engineer's mailing list contains any addressing errors causing claimants to not receive a copy of the order to show cause and a default judgment is entered, there is a potential for more litigation in the future by said claimants which may jeopardize all sub file orders, including Defendant's.
3. Section 3.19 of the settlement agreement provides that any well owner who does not respond to the order to show cause is a "settlement party". A "settlement party" is one who agrees with the settlement agreement. (Sec. 1.6.35)The state engineer's failure to use certified mail means that there is no easy way to know how many claimants are settlement parties that actually do not agree with the settlement agreement as a result of not receiving the order to show cause and not responding and being counted a settlement party.
4. The settlement agreement and the proposed regional water system are based on a preliminary design prepared in 2008 by HKM and paid for by the Pueblos. (Settlement Act Sec. 602(9)). A detailed design has not been made available to Defendant or approved. Defendant is unable to determine if it is feasible to install the water system to his property line. If construction costs exceed the preliminary estimate, the county tax payers, including Defendant, may be required to pay more taxes to cover the increase in costs. (See N.M. Constitution, Article IX, Sec. 10 – restrictions on county indebtedness).
5. The connection fund (Sect. 3.1.7.3) has not been funded. Defendant is unable to determine if he will be required to pay the connection cost at what cost.
6. If the Pueblos impair or damage the non-Indian's water rights, the impairment is to be compensated for from an impairment fund, provided there is money in the fund (Sec. 5.5). The Pueblos may continue the impairment even if the non-Indian is unable to receive such funds. The non-Indian is not given enforcement rights (Dkt # 7970-3, p. 12, Par 4). Thus,

if the impairment fund is without funds, the non-Indian has no adequate remedy for the impairment.

7. The proposed partial final decree (Dkt # 7970-3, p. 12, Par 4) provides the Pueblos a right of enforcement of the Pueblos' water rights but does not provide a private right of enforcement of Non-Indian's water rights.
8. The settlement agreement (Sec. 5.2.1.1) provides that the state engineer has the right to curtail Pueblo water rights to ensure compliance with the agreement, the interim administrative order and the final decree. The settlement agreement (Sec. 5.2.1.2) provides that the WaterMaster has the authority to curtail Non-Indians' water rights to ensure compliance with the agreement, the interim administrative order and the final decree. The state engineer is also the WaterMaster. (Sect. 5.2). The state engineer has a potential conflict of interest. The state engineer rules and the WaterMaster rules have not been adopted. The WaterMaster is required to comply with the agreement, the interim administrative order and the final decree and any other order of this court *exclusively*. The state engineer has a non-discretionary duty to comply with state water laws. (See also Sec. 2.10.2)
9. Defendant objects to entry of a partial final decree until such time as the Environmental Impact Statement required by the Settlement Act (Sec. 616 ) is filed.
10. The Pueblos and the USA enjoy sovereign immunity that is not expressly waived in the settlement agreement.
11. Defendant objects to entry of a partial final decree until all easements for the regional water system lines have been identified and acquired.
12. Defendant objects to the transfer of his domestic well water rights to the county water utility upon entry of the partial final decree (Sec. 8.1). Given the state of required agreements, rules, funding, and easement acquisition that have not been completed, Defendant would not be connected to the regional water system until the year 2024 (possibly) without just compensation. The settlement agreement is void for lack of consideration.
13. The Joint Powers Agreement and the Water Master Rules for the District WaterMaster and the WaterMaster Rules for the N-P-T WaterMaster, including but not limited to the rules required by Section 5 of the settlement agreement, have not been presented or approved. The operating agreement (Settlement Act Sect. 602(11), the cost sharing and integration agreement (Settlement Act, Sect. 602(5), and the joint powers agreement have not been

provided to Defendant or approved. Defendant objects to the to choose between accepting an agreement that has significant information regarding the organization and administration of the regional water system that has not been provided.

14. Defendant objects to the entry of the final decree before all funding, agreements, rules, and reports have been provided and approved. The order to show cause should be stayed until such time as all such information regarding the regional water system is provided.
15. Entry of the settlement agreement with "blank lines", as proposed, is a deprivation of property without standards as required by substantive Due Process.
16. The settlement agreement states at Section 4 that settlement parties will be protected from a priority call as consideration for the acceptance of the agreement. (Sec. 1.6.33). Defendant objects to the lack of discovery required to assess the likelihood, and therefore the value, of a priority call.
17. The Settlement Agreement denies the protection afforded by the New Mexico Legislature to domestic well owners by declaring a minimum amount of water used for household uses that is immune from priority call. (Sect. 72-12-1.1; NMAC 19.27.5.9). Defendant objects to the denial of protection afforded by the state water code and related rules and regulations. (NMAC 19.27.5)
18. The effective dates of the settlement agreement are not contingent on substantial completion of the county water system. (Sec. 8.1)
19. The settlement agreement is too vague and ambiguous regarding the lawfulness of removal of water from the Pojoaque Basin by a lessee of Pueblo water rights. Compare Section 2.1.5 with Sect. 8.1. and Sec. 2.3.4 and NMSA 1978 § 72-6-3 (2003)
20. Defendant objects to the application of different water laws to the Pueblos and the non-Indians as a violation of the McCarran Amendment, (Title 43 USC §666 - waives sovereignty in water adjudication cases such as the *Aamodi* case), and a denial of Equal Protection of the Law.
21. Defendant objects to the use of the federal reserve doctrine to determine the Pueblo's water rights as a violation of the McCarran Amendment, (Title 43 USC §666 waives sovereignty in water adjudication cases such as the *Aamodi* case).-
22. The settlement agreement is not clear and unequivocal that that the USA as trustee for the Pueblos is bound by the agreement.

23. Defendant objects to entry of the partial final decree without providing an *inter se* proceeding involving the Pueblos as required by Due Process. The state engineer is without authority to award “future” water rights to the Pueblos while requiring Defendant to prove historical use to establish water rights.
24. The partial final decree declares the N-P-T basin fully appropriated and proposes to close to new wells. (Sec. 3.1.4). The State Engineer has stated that he does not have evidence of how much water is in the N-P-T aquifer. Any unappropriated groundwater is owned by the people of New Mexico. The state engineer is without jurisdiction to unilaterally and arbitrarily close the N-P-T aquifer to further development. The state engineer is also prevented from closing the Pojoaque aquifer by the Domestic Well Statute which imposes a non-discretionary duty on the state engineer to issue a permit to divert groundwater for domestic uses to any person who applies for one and complies with the state engineer rules. (Sec. 72-12-1.1).
25. The settlement agreement protects the Pueblos’ surface water rights from forfeiture but does not protect non-Indians from forfeiture (Sec. 2.10.2). Forfeiture eliminates a member of the acequia and threatens the survival of the acequia system.
26. Defendant objects to the arbitrary restriction against outdoor use of a domestic well for irrigation of non-commercial trees, gardens or lawns as a deprivation of procedural and substantive Due Process of Law.

Defendant reserves the right to supplement these objections at any time prior to the entry of a partial final decree.