

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
)	CASE NO. 66cv6639 MV/WPL
Plaintiff,)	
)	
v.)	
)	
R. LEE AAMODT, et al.,)	
)	
Defendants.)	
)	
and)	
)	
UNITED STATES OF AMERICA)	
PUEBLO DE NAMBE,)	
PUEBLO DE POJOAQUE)	
PUEBLO DE SAN ILDEFONSO,)	
and PUEBLO DE TESUQUE,)	
)	
Plaintiffs-in-Intervention)	

**PLAINTIFFS-IN-INTERVENTION RESPONSE OPPOSING
DEFENDANT TRUJILLOS' MOTION TO QUASH THE PRELIMINARY INJUNCTION
OR, ALTERNATIVELY, FOR THREE JUDGE COURT [DOC. 9906]**

The United States and the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque (collectively, the “Pueblos”), oppose Defendant Trujillos’ (“Movants”) Motion to Quash the Preliminary Injunction Or, Alternatively, For Three Judge Court (Doc. 9906) (“Motion”). The Motion requests the Court quash the Court’s order dated January 13, 1983 (Doc. 641) (“January 13, 1983 Order”), for lack of jurisdiction, or, alternatively, convene a three-judge court to review the January 13, 1983 Order. Motion at 1.

Movants have repeatedly challenged the January 13, 1983 Order. The Court has repeatedly rejected all previous challenges to the January 13, 1983 Order and found that it has

its face the Anti-Injunction Act does not apply to the Order affecting the State Engineer's ability to issue permits under the Domestic Well Statute. *See Copar Pumice Co. v. Morris*, No. CIV 07-0079 JB/ACT, 2009 WL 5201799, at *14 n.5 (D.N.M. Oct. 23, 2009) *aff'd*, 639 F.3d 1025 (10th Cir. 2011) ("Every . . . circuit that has addressed the issue has held that the Anti-Injunction Act does not apply to state administrative proceedings.").

III. A three-judge court is not authorized.

Movants' request for a three-judge court to review the January 13, 1983 Order also fails. 28 U.S.C. § 2284(a), on which Movants rely, provides, "A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." Movants have again not identified any statute that applies to the January 13, 1983 Order and requires a three judge court. Further, Movants' reliance on *Schneider v. Rusk*, 372 U.S. 224, 224 (1963) (per curiam), for the proposition that substantial questions of constitutional law should be referred to a three-judge court is likewise misplaced. *See* Motion at 5, ¶ 16. The federal statute on which *Schneider* turned, 28 U.S.C. § 2282 (which provided that an interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress on grounds of unconstitutionality should not be granted unless the application therefor has been heard and determined by a three-judge district court), was repealed by Pub. L. 94-381, § 2, 90 Stat. 1119 (Aug. 12, 1976). *Schneider*, therefore, is inapplicable. Because no authority exists for Movants' proposition that a three judge panel must review the Order, the Motion should be denied.

IV. Conclusion.

For the reasons articulated in the paragraphs above, the Motion should be denied.

Respectfully submitted this 18th day of November, 2014.

Electronic approval 11-18-14

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CERTIFICATE OF SERVICE

I hereby certify that, on November 18, 2014, the **PLAINTIFFS-IN-INTERVENTION RESPONSE OPPOSING DEFENDANT TRUJILLOS' MOTION TO QUASH THE PRELIMINARY INJUNCTION OR, ALTERNATIVELY, FOR THREE JUDGE COURT [DOC. 9906]** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on November 18, 2014, copies of the foregoing were mailed by first-class United States mail to the non-CM/ECF Participants listed below.

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