

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)	

**[CORRECTED] 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

subject matter jurisdiction over this action.¹ This Motion, too and again, should be denied because the Court has subject matter jurisdiction over this action, and the Motion cites no authority permitting a three judge court to review the January 13, 1983 Order.

I. The Court has jurisdiction.

As this Court has previously determined on more than one occasion, the Court has confirmed its subject matter jurisdiction, both in this matter and to issue the January 13, 1983 Order. *See Mem. Op. and Order* at 5 (Sept. 20, 2012) (Doc. 7757) (citing *Mem. Op. and Order* at 11 (March 20, 2012) (Doc. 7579), 28 U.S.C. § 1345, and *United States v. Lahey Clinic Hospital, Inc.*, 399 F.3d 1, 9 (1st Cir. 2005)).

II. The January 13, 1983 Order does not violate the Anti-Injunction Act.

Movants' newest challenge the Court's jurisdiction to enter the January 13, 1983 Order centers on the Anti-Injunction Act, 28 U.S.C. § 2283. The Anti-Injunction Act, by its own terms, does not apply. "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (emphasis added). Yet Movants admit that the January 13, 1983 Order applies to the New Mexico State Engineer, not to any proceeding in a State court. Motion at 4, ¶ 11. Therefore, on

¹ Through its orders, this Court has very recently and repeatedly rejected Movants' challenges to the January 13, 1983 Order. *See Order Denying Defendant Arsenio Trujillo's Motion for Summary Judgment and Granting Plaintiff State of New Mexico's Motion for Summary Judgment on the Claims of Arsenio Trujillo Under Subfile PM-67833* (Feb. 24, 2014) (Doc. 8119); *Memorandum Opinion and Order* (July 22, 2013) (Doc. 7905); *Memorandum Opinion and Order* (April 17, 2013) (Doc. 7870); *Memorandum Opinion and Order* (Sept. 20, 2012) (Doc. 7757); *Memorandum Opinion and Order* (March 30, 2012) (Doc. 7579); *Memorandum Opinion and Order* (June 2, 2011) (Doc. 7398); *Recommendation of Special Master to Deny Defendant Elisa Trujillo's Motion for Relief from Order Regarding Subfile PM-43319* (June 29, 2010) (Doc. 7011); and *Order Granting Motion for Summary Judgment Regarding the Claims of Elisa Trujillo Under Subfile PM-43319* (Feb. 26, 2010) (Doc. 6917). In addition, over the course of the last decade this Court has likewise denied three other challenges to the January 13, 1983 Order. *Order Denying Defendant Mary Habeeb's Motion for Summary Judgment and Granting Plaintiff State of New Mexico's Motion for Summary Judgment on the Claims of Mary Habeeb Under Subfile PM-77023* (Feb. 26, 2014) (Doc. 8139); *Order Denying Defendants Melissa Ortiz and Darren Quintana's Motion for Summary Judgment and Granting Plaintiff State of New Mexico's Motion for Summary Judgment on the Claims of Melissa Ortiz and Darren Quintana Under Subfile PM-68445* (Feb. 28, 2014) (Doc. 8140); and *Order* (Nov. 18, 2003) (Doc. 6078).

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 [*Corrected*] **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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