

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

STATE OF NEW MEXICO ex rel.)
 State Engineer,)
)
 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.)
 _____)

NO. 66cv6639 WJ/WPL

**STATE OF NEW MEXICO’S RESPONSE TO MOTIONS FOR EXTENSION OF TIME
AND MODIFICATION OF CASE MANAGEMENT ORDER**

The State of New Mexico, ex rel., State Engineer (“State”), hereby responds to the November 8, 2014 *Defendant-Objectors[’] Motion for Extension of Time and Modification of Case Management Order* (“Dunn Motion”) (No. 9915), filed by attorney Blair Dunn, and the November 10, 2014 *Defendant-Objectors’ Motion for Extension of Time and Modification of Case Management Order* (“Atencio Motion”) (No. 9917), filed by attorney Lorenzo Atencio, and states as follows:

Both the Atencio Objector-Defendants and the Dunn Objector-Defendants responded in opposition to the Motions for entry of a case management order. *See* the May 21, 2014 *Response to Joint Motion for Entry of Case Management Order and the United States’ and Pueblos’ Notice of Proposed Case Management Order* (“Atencio Response”) (No. 9428) and May 21,

2014 Defendants' Response in Opposition to Plaintiffs' Joint Motions for Entry of Case Management and Service Order and Notice of Threshold Issues ("Dunn Response") (No. 9430).

The Court expressly considered both the *Atencio Response* and the *Dunn Response* in entering its *Case Management and Service Order*, and with regard to the *Atencio Defendant-Objectors'* arguments, specifically noted that:

The Defendants argue that they are allowed only 30 days after the filing of the initial briefs to file their responses, that the 30-day period is "prejudicially short," and request a 120-day period to respond.

Case Management and Service Order at 5. While the Court did not grant the *Atencio Defendant-Objectors'* entire request for 120 days to respond, it did provide 60 days for responses, 30 days more than originally proposed by the Settlement Parties. *Id.* at 7. Similarly, the Court considered the *Dunn Response*, noting that "a second group of Defendants also filed their response opposing the proposed case management order which sets forth three 'threshold issues.'" *Case Management and Service Order* at 5. The Court held the *Dunn Defendant-Objectors'* "threshold issues" arguments were either not relevant, lacking authority or had been already addressed, and on August 8, 2014, entered its *Case Management and Service Order* setting the deadlines for this proceeding. No. 9506 at 6-8. Neither group of *Defendant-Objectors* filed anything in response to the entry of the *Case Management and Service Order* to modify its deadlines either then, or during the three months which followed.

In its October 29, 2014 *Memorandum Opinion and Order Denying Motion for Leave to File Objection*, the Court further stated that it would not modify those deadlines absent a showing of good cause:

The Court has carefully considered the deadlines it has set in its orders, keeping in mind that the Settlement Agreement, if approved by the Court, will no longer be

effective if the Court does not enter a final decree in this case by the September 15, 2017 deadline set by Congress. See 124 Stat. 3134 § 623. Consequently, the Court will not modify those deadlines without a showing of good cause.

No. 9903 at 3 (emphasis added).

Despite having already been heard on this issue, both groups of Defendant-Objectors now seek to modify the deadlines set by the *Case Management and Service Order*, requesting the Court reconsider that *Order*. This Court has previously observed that “[g]rounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” March 30, 2012 *Memorandum Opinion and Order* at 6 (No. 7579). The Atencio and Dunn Defendant-Objectors have not alleged any of these.

The Atencio Defendant-Objectors, rather than state good cause for their request of an extension of time, speculatively assert that certain pending rulings by this Court on other water rights claims “may likely have an effect on the issues relating to the objections to the settlement agreement and having guidance on that very critical issue would promote judicial efficiency.” *Atencio Motion* at 2. Possible guidance from a future ruling is not a basis for a motion to reconsider. Further, these possible future rulings were known to the Atencio Defendant-Objectors at the time they opposed the entry of the *Case Management and Service Order*. The *Atencio Response* in opposition to entry of the *Case Management and Service Order* was filed May 21, 2014; the objections to the Special Master’s Orders cited by the Objectors as the source of these pending rulings were filed March 12, 2014, two months before. *Atencio Motion* at 1. As such, they could have raised this contingency in their original objection to the *Case*

Management and Service Order, but chose not to. To raise it now, in the context of a motion to reconsider, is untimely.

Moreover, the Atencio Defendant-Objectors do not request an extension of time to a date certain, but rather “request[] the Court extend the time to file a response to the briefs in support of the settlement agreement until such time as rulings on said objections to the Special Master’s orders on motions for summary judgment are filed.” Any delay in these proceedings is potentially troubling, but an open ended extension of time would be extremely prejudicial. On September 12, 2014, this Court denied attorney Lorenzo Atencio’s *Motion* (No. 9493) on behalf of these same Defendant-Objectors for a partial stay of these proceedings, noting, amongst other things:

The Settlement Act provides that if the Court does not approve the final decree in this case by September 15, 2017, the Settlement Agreement will no longer be effective. Granting the motion for a partial stay until the requested documents are available would likely delay the entry of the final decree beyond September 15, 2017.

Memorandum Opinion and Order Overruling Objection to Magistrate Judge’s Order Denying Motion for Partial Stay at 5 (No. 9674). On October 29, 2014, this Court similarly denied a *Motion* (No. 9676) by certain other parties to file a late objection citing the same concern.

Memorandum Opinion and Order Denying Motion For Leave to File Objection at 3 (No. 9903). The Atencio *Motion* should be denied.

Similarly, the Dunn Defendant-Objectors fail to show good cause for an extension of time. The Dunn *Motion* speculates that certain proposed draft legislation will “clarify issues pending before this Court,” but fails to identify what those “issues” are, what the proposed draft legislation does to clarify those issues, or when or how the Defendant-Objectors became aware of

the proposed draft legislation. *Dunn Motion* at ¶ 2. This is not good cause for extending the deadlines, but mere speculation. The *Dunn Defendant-Objectors* have already been heard on the issue of the Court's entry of the *Case Management and Service Order*, they fail to meet the standard of a motion to reconsider, and the *Dunn Motion* to extend the deadlines should be denied.

WHEREFORE the State requests that the Court deny both the *Defendant-Objectors'* *Motion for Extension of Time and Modification of Case Management Order* and the *Defendants-Objectors Group 1 Motion for Extension of Time and Modification of Case Management Order*.

Respectfully submitted this 26th day of November, 2014.

Electronically Filed

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I HEREBY CERTIFY that, on November 26, 2014 I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means, and to the following person(s) by United States Mail:

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