

**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 NAMBÉ,)
PUEBLO DE POJOAQUE,)
PUEBLO DE SAN ILDEFONSO,)
PUEBLO DE TESUQUE,)
)
Plaintiffs-in-Intervention.)

No. 66cv6639 WJ/WPL

Defendants Trujillos’ REPLY on their Motion to Quash the Preliminary Injunction
Or,
Alternatively, For Three Judge Court, (Dkt. #9906, November 1, 2014)

Defendants Arsenio Trujillo and Elisa Trujillo submit the following REPLY to the Plaintiff Parties’ RESPONSES (Dkt. # 9926 and Dkt. # 9927) on Motion to Quash the Preliminary Injunction entered herein on January 13, 1983 (Dkt. # 641) for want of Jurisdiction. Alternatively, Defendants move the Court to convene a three judge court to hear and determine the preliminary injunction.

I. The Anti-Injunction Act Applies.

In this case, neither the Plaintiffs-in-Intervention or the State Engineer deny that the preliminary injunction (Dkt. #641, January 13, 1983) is an injunction by a federal district

judge against the New Mexico state engineer, a state officer, that restrains the state engineer from enforcing a state statute, namely §72-12-1.1, as enacted by the Legislature of New Mexico.

As such, the preliminary injunction is a violation of the federal Anti-Injunction Act 28 U.S.C. §2283, which prohibits a court of the United States from granting 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.

Title 28 U.S.C. §2281 adds another exemption to the Anti-Injunction Act where an injunction is sought to restrain the operation of a state statute as unconstitutional, a three-judge court is required.

The purpose of § 2281 is "...to prevent a single federal judge from being able to paralyze totally the operation of an entire regulatory scheme . . . by issuance of a broad injunctive order" *Moody v. Flowers*, 387 U.S. 97 (1967).

As a direct result of the unlawful injunction, Defendants Trujillo have been deprived of their statutory right to use water from their domestic well for outdoor irrigation of non-commercial trees, lawns and gardens as granted by the state statute.

The Court is without subject matter jurisdiction to enter the preliminary injunction without complying with Title 28 U.S.C. §2284(b)(3)'s requirement that the Court make a specific finding based on evidence that the Plaintiff Parties will suffer irreparable harm if the injunction is not granted. The preliminary injunction does not even give a reason for the injunction. Because the preliminary injunction restrains the enforcement of a state statute, it is controlled by Title 28 U.S.C. §2281. Because the preliminary injunction enjoins a state officer

from enforcing a state statute that is challenged as unconstitutional, §2281 and §2284 are invoked for authority and procedure to convene a three judge court.

Plaintiff Parties do not claim that the preliminary injunction is exempted from the Anti-Injunction Act. Plaintiff Parties argue that the Anti-Injunction Act does not apply because the injunction does not enjoin or stay a “State court proceeding”. Plaintiffs-in-Intervention Response at p. 2.

II. This is a State Court Proceeding for Purposes of the Anti-Injunction Act.

The waiver of sovereign immunity enacted by Congress in the McCarran Amendment, Title 43 U.S.C. 666 (1951)), in general water adjudication cases redirected federal water policy to allow the states to administer their own water laws which are presumably more responsive to local needs and customs.

The decision to shift the federal water policy was also based on the assumption that the state adjudications were adequate to quantify the rights at issue in the federal suits, and taking into account the McCarran Amendment policies, the expertise and administrative machinery available to the state courts, the infancy of the federal suits, the general judicial bias against piecemeal litigation and the convenience to the parties, the district courts are correct in deferring to the state proceedings. (*Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 103 S.Ct. 3201 77 L.Ed.2d. 837 (1983)),

Considering that Congress determined that states are best qualified to administer the waters within its borders¹, that the state and federal courts have concurrent jurisdiction², and that the courts have decided that state water laws apply in general water adjudication cases³, this proceeding is effectively a “State court proceeding” being heard in a federal court.

The Anti-Injunction Act applies to proceedings that attempt to restrain enforcement of a state statute even when there is no proceeding in state court. See, e.g., *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73 80 S.Ct. 568 (1960)(§2281 applies to state statute.); *Idlewild Bon Voyage Liquor Corporation V. Epstein*, 370 U.S. 713, 714, 82 S. Ct. 1294, 1295-96, 8 L. Ed. 2d 794 (1962)(28 U.S.C. §2281 and §2284 required a three-judge court although there was no relevant litigation then pending in the state courts.)

III. The Preliminary Injunction Violates the Anti-Injunction Act.

The preliminary injunction restrains the state engineer from enforcing the state Domestic Well Statute as enacted. Enforcement of a state statute can only be restrained when there is a challenge to the constitutionality of the statute. See §2281. The Anti-Injunction Act is the Act of Congress that authorizes the three judge court pursuant to §2281 and §2284(b)(3) to determine the unconstitutionality of a state statute. Thus, the review of preliminary injunction entered by the single court judge is authorized by the Anti-Injunction Act.

The court in *Younger v. Harris*, 401 U.S. 37, 91 U.S. 746 (1971) traced the Anti-Injunction and its policy from 1793 to 1971 and noted, after comparing the Act with 28 U.S.C.

¹ S. Rep. No. 755, 82nd Cong., 1st Sess. (1951)

² *Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 103 S.Ct. 3201 77 L.Ed.2d. 837 (1983); *Colorado River Conservation District v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1951).

³ *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976),

2283, how little the Act had changed over the years. *Id.* at 401 U.S. p. 43. The Act has been codified and tweaked in Title 28 U.S.C. §§380, 2281 2282 2283, and 2284. Each new version of the Act is based on the prior versions.

III. In the alternative: the Three Judge Court is Authorized by the Anti-Injunction Act.

Title 28 U.S.C. §2281 and Title 28 U.S.C. §2282 were enacted June 25, 1948, ch. 646, 62 Stat. 1119. On August 12, 1976, these statutes were repealed and replaced by Title 28 U.S.C. §2283 and Title 28 U.S.C. §2284 on August 12, 1976.

Title 28 U.S.C. §2281 and Title 28 U.S.C. §2282 versions of the Anti-Injunction Act were in effect on April 20, 1966 when this case was filed.

Title 28 U.S.C. §2281, Repealed. Pub. L. 94-381, §§1,2, August 12, 1976, 90 Stat.1119, provided that an interlocutory or permanent injunction restraining the enforcement, operations or execution of a State statute on grounds of unconstitutionality should not be granted unless application has been heard and determined by a three judge district court. The statute was enacted on June 25, 1948, and repealed on August 12, 1976. Title 28 U.S.C. §2281 and §2282 were in effect on April 20, 1966 when this case was filed and so are controlling law in this case. Thus, *Schneider v. Rusk*, 372 U.S. 224, 83 S. Ct. 621, 9 L. Ed. 2d 695 (1963) which held that §2282 requires the single judge to review the complaint for a substantial federal question, but is precluded from any decision on the merits if the single judge finds that the federal question is not plainly unsubstantial. The case is good law for the purposes of this case.

§2284(b)(3) allows the single court judge to determine initially whether the complaint raises a federal question sufficiently substantial to invoke jurisdiction prior to convening a three

judge panel. §2281 required all challenges to State statutes to be decided by three judges. §2284 now allows the single court judge to determine initially from the face of the complaint whether or not a significant federal question is presented. The determination of the constitutionality of the challenged statute must be made by the three judge court. *Id.*

If the single court judge determines from the face of the complaint that a significant federal question is presented regarding the constitutionality of the challenged, the court must convene a three judge court as set forth in 28 U.S.C. §2284(3). The single court judge does not have subject matter jurisdiction during the time it takes to convene a three judge court. §2284(3).

The preliminary injunction (Dkt. No. 641, January 13, 1983) does not comply with Title 28 U.S.C §2281 and Title 28 U.S.C §2282 and should be quashed. An order to quash the preliminary injunction and dismiss the motion for preliminary injunction (Dkt. #641) renders the request for three judge court moot.

IV. Conclusion.

It is clear that the preliminary injunction in this case violates the Anti-Injunction Act prohibition against a stay or injunction by a federal court against enforcement of a state statute challenged as unconstitutional. The preliminary injunction restrains an officer of the State of New Mexico from enforcing the Domestic Well Statute, §72-12-1.1, as enacted by the State Legislature. The injunction is issued without a determination of the state statute's constitutionality as required by Title 28 U.S.C. §2281 and Title 28 U.S.C. §2284.

Defendants Trujillo are now, and continue to be, damaged by the unlawful preliminary injunction. For these reasons, Defendants Elisa Trujillo and Arsenio Trujillo respectfully

request the Court to find that jurisdiction for this motion arises out of the Anti-Injunction Act, and to enter judgment as follows:

1. The preliminary injunction violates the Anti-Injunction Act,
2. The preliminary injunction is void *ab initio* for lack of subject matter jurisdiction,
3. To dismiss the motion for injunctive relief,
4. Award costs and attorneys fees, and
5. Such other relief as the Court deems proper and just.

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Filed electronically
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I hereby certify that 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 on this 28th day of November, 2014.

Filed electronically
Lorenzo E. Atencio