

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

STATE OF NEW MEXICO, *ex rel.*
State Engineer,
Plaintiff,

v.

No. Civ. 66-06639 WJ/WPL

R. LEE AAMODT *et al.*
Defendants,

and

UNITED STATES OF AMERICA,
PUEBLO DE NAMBÉ,
PUEBLO DE POJOAQUE,
PUEBLO DE SAN ILDEFONSO,
and PUEBLO DE TESUQUE,
Plaintiffs-in-Intervention.

**ORDER TO SHOW CAUSE
WHY THE SPECIAL MASTER SHOULD NOT RECOMMEND SANCTIONS
TO THE COURT FOR THE FAILURE
OF AN ATTORNEY TO ATTEND A WORKING SESSION
SET BY THE SPECIAL MASTER**

THIS MATTER is before the Special Master, entered pursuant to the Order of Reference [Doc. No. 6336], as amended [Doc. No. 7736]. The Order of Reference directs the Special Master, in part, to “hear and determine all claims and contentions of the parties... relating to... the priorities of state-law based rights to the surface waters of the stream system encompassed by this case.” Order of Reference, filed June 30, 2008 [Doc. No. 6336]. The Order of Reference directs the Special Master to file recommendations to the Court, and to proceed with all reasonable diligence. *Id.*

1. Almost four years ago, at a hearing on August 19, 2011 centering on priority dates for the Frank Ortiz Ditch No. 2, Plaintiff the State of New Mexico brought to the forefront the issue of “transmountain diversion water,” or “imported water,” with respect to surface water right priority dates involving the Rio en Medio and Rio Chupadero. *See* Transcript of Proceedings, August 19, 2011, 35:16-47:4, Exhibit 1.

2. On February 15, 2012, Plaintiff the State of New Mexico notified the Court, for the first time in a quarterly report, of its awareness of an issue involving priority dates of surface water supplied by the Rio en Medio and flowing through the Rio Chupadero. Specifically, Plaintiff the State reported:

With regard to work to be completed during the subsequent quarter, the period from the date of this *Status Report* through April 15, 2012, the State expects to file its motion for entry of a procedural and scheduling order to govern proceedings regarding the adjudication of priorities associated with water rights in the Rio Chupadero supplied by waters of the Rio en Medio.

January 15, 2012 Quarterly Status Report Regarding the Adjudication of Domestic Well and Surface Rights, ¶ 30 [Doc. No. 7565].

The report was filed over the signature block of attorney Arianne Singer, Esq.

Plaintiff the State did not file its motion by April 15, 2012.

3. On November 13, 2012, Plaintiff the State of New Mexico again reported to the Court that, by the quarter ending January 15, 2013, it would

file a motion for a procedural and scheduling order to address adjudication procedures for the priority date associated with trans-mountain water diverted from the Rio en Medio to the Rio Chupadero through Las Acequias de Chupadero.

October 15, 2012 Quarterly Status Report Regarding the Adjudication of Domestic Well and Surface Water Rights, ¶ 28 [Doc. No. 7790].

The report was filed over the signature block of attorney Arianne Singer, Esq.

Plaintiff the State did not file a motion by January 15, 2013.

4. On April 15, 2013, Plaintiff the State of New Mexico again reported to the Court that, by the quarter ending July 15, 2013, it expected to

file a motion for a procedural and scheduling order to address adjudication procedures for the priority date associated with trans-mountain water diverted from the Rio en Medio to the Rio Chupadero through Las Acequias de Chupadero.

April 15, 2013 Quarterly Status Report Regarding the Adjudication of Domestic Well and Surface Water Rights, ¶ 31 [Doc. No. 7867].

The report was filed over the signature block of attorney Arianne Singer, Esq.

Plaintiff the State did not file a motion by July 15, 2013.

5. On May 9, 2013, the Special Master issued an Order Setting Deadlines requiring Plaintiff the State of New Mexico, in part, to file by July 15, 2013 “a motion for a procedural and scheduling order to address adjudication procedures for the priority date associated with trans-mountain water diverted from the Rio en Medio to the Rio Chupadero through Acequias de Chupadero.” Order Setting Deadlines [Doc. No. 7878]. No party objected to the Order, but Plaintiff the State of New Mexico did not comply, resulting in the Special Master’s issuing an Order to Show Cause on July 18, 2013 [Doc. No. 7904].

6. Plaintiff the State of New Mexico responded to the Special Master’s Order to Show Cause on August 16, 2013 [Doc. No. 7920], explaining that it preferred to wait until the Court had ruled on its Motion for Order Making Final Determination of Priority Dates of Surface Water Rights in the Nambe-Pojoaque-Tesuque Stream System [Doc. No. 7792] prior to filing a motion on the Rio en Medio/Rio Chupadero matter, and requesting an extension of time. Response at 7-8. The Special

Master granted, in part, the request for extension of time, staying the deadline associated with the Rio en Medio/Rio Chupadero matter. Order Granting, in Part, the State of New Mexico's Motion for Extension of Time [Doc. No. 7920], filed August 19, 2013 [Doc. No. 7923].

7. After denying Plaintiff the State of New Mexico's first motion for making final determination of surface water right priorities, *see* [Doc. No. 7964], the Court granted a revised motion on August 27, 2014 [Doc. No. 9546]. The State's prior concerns with respect to address adjudication procedures for the priority date associate with the Rio en Medio/Rio Chupadero matter, therefore, had been addressed.

8. In its October 23, 2014 status report, Plaintiff the State of New Mexico again reported to the Court that, by the quarter ending January 15, 2015, it would

file a motion for a procedural and scheduling order to address adjudication procedures for the priority date associated with trans-mountain water diverted from the Rio en Medio to the Rio Chupadero through Las Acequias de Chupadero.

October 15, 20124 Quarterly Status Report Regarding the Adjudication of Domestic Well and Surface Water Rights, ¶ 24 [Doc. No. 9881].

Plaintiff the State did not file a motion by January 15, 2015.

9. On October 24, 2014, at a status conference, Plaintiff the State of New Mexico, even though the Court had entered an order finalizing surface water right priorities, then told the Special Master that attorney Arianne Singer now wanted to resolve the issue of service of the final order on priorities before filing its motion on the Rio en Medio/Chupadero matter. *See* Transcript of Proceedings, October 24, 2014, 19:10-24:15, Exhibit 2. The Special Master overruled the concern and directed Plaintiff the State of New Mexico, after conferring with Plaintiff and with Plaintiff's approval, to file a motion on the Rio en Medio/Chupadero matter no later than November 28, 2014.

Id. The Special Master entered an Order affirming this deadline on November 18, 2014. Order Setting Deadlines [Doc. No. 9924].

10. In response to a query from Plaintiff the State of New Mexico, the Special Master extended the deadline for a motion on the Rio en Medio/Chupadero matter to January 9, 2015. Order Extending Deadline, filed December 16, 2014 [Doc. No. 9958]. No motion was filed by January 9, 2015, but the Special Master agreed to take up the matter at an upcoming status conference.

11. On January 23, 2015, at a status conference, the Special Master again inquired about the Rio en Medio/Chupadero matter. *See* Transcript of Proceedings, January 23, 2015, 24:20-43:8, Exhibit 3. Plaintiff the State of New Mexico represented that it was not ready to file a motion, in part because of concerns over differing language in subfile orders that had been entered over the years. *Id.* Plaintiff the State of New Mexico also represented that attorney Singer, one of its lead counsel and still an attorney of record in the case, needed to “look at the cart-before-the-horse aspect of proceeding with priorities before we’ve addressed or resolved the issues with regard to these orders.” *Id.* at 39:24-40:7.

12. The Special Master then ordered that a working session take place, to be attended by attorney Singer, among others, to obtain a better understanding of the new issues Plaintiff the State of New Mexico had raised. *Id.* at 39:1-42:10. The Special Master requested proposed dates from Plaintiff the State of New Mexico for the working session. *Id.* When proposed dates were not forthcoming, the Special Master issued a Notice of Off-the-Record Working Session on February 9, 2015, setting February 27, 2015 as the date of the session. [Doc. No. 10020]. Attendance by attorney Singer was required. *Id.* Attorney Singer did not object, or contact the Special Master to voice any concern with respect to the working session.

13. Due to a scheduling conflict, the Special Master then changed the time, but not the date, of the working session. Amended Notice of Off-the-Record Working Session, filed February 17, 2015 [Doc. No. 10102].

14. On February 25, 2015 at 11:12 a.m., attorney Singer sent an e-mail to the Special Master, unilaterally stating she would not attend the working session, providing a summary explanation, and suggesting that the working session might be cancelled. Exhibit 4. Upon a follow-up e-mail from counsel, the Special Master instructed that the working session was not cancelled. Exhibit 5.

15. All counsel required to attend, including Mr. Olsen who traveled from Colorado during inclement weather, were present at the working session, with the exception of attorney Singer. Attorney Singer unilaterally excused herself from a Court-ordered proceeding, without any other notice than a cursory e-mail.

16. The proceedings with respect to the Rio en Medio/Rio Chupadero have been pending for years, and have been of some concern to the Special Master. The Special Master raised those concerns as far back as March, 2012. *See* Special Master's Minutes of Status Conference of March 9, 2012 [Doc. No. 7573] (“[n]o later than March 23, 2012, Plaintiff the State will propose to the Court a deadline by which it will file a motion addressing notice and adjudication procedures for trans-mountain water from the Rio en Medio diverted to the Rio Chupadero”); Transcript of Proceedings, September 27, 2013, 16:20-20:12, Exhibit 6; Transcript of Proceedings, April 25, 2014, 14:11-15:24, Exhibit 7; Transcript of Proceedings, October 24, 2014, 19:10-24:15, Exhibit 2.

16. Attorney Singer particularly believed that the Rio en Medio/Rio Chupadero matter needed to be delayed again for service reasons. Exhibit 2. Attorney Singer was specifically required to attend the February 27, 2015 working session. [Doc. Nos. 10020, 10103]. Attorney Singer

unilaterally excused herself from this session, without filing a motion or otherwise providing either good cause or timely notice that she would not appear. Exhibit 4.


17. The Special Master cannot faithfully proceed with all reasonable diligence in fulfilling the commands of the Order of Reference if attorneys who have entered an appearance in these proceedings take it upon themselves to decide not to attend proceedings which they have been required to attend.

For those reasons, then, attorney Arianne Singer is hereby **ordered to show cause on or before April 3, 2015** why the Special Master should not recommend sanctions to the Court for her failure to attend the working session of February 27, 2015.

IT IS SO ORDERED.

THE PARTIES ARE NOTIFIED THAT WITHIN 20 DAYS OF SERVICE of a copy of this order, report or recommendations, they may file written objections with the Clerk of the Court pursuant to Federal Rule of Civil Procedure 53(f)(2). A party must file any objections with the Clerk of the Court within the twenty-day period if that party wants the District Judge to hear their objections. If no objections are filed within the twenty-day period, the District Judge may adopt the order, report or recommendations in whole.

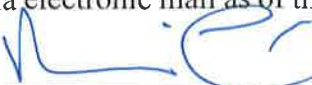
IT IS SO ORDERED.



Pierre Levy, Special Master

March 17, 2015

I hereby certify that on the date of filing, I caused the foregoing to be filed electronically through the CM/ECF system which caused the parties on the Court's service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail as of the time of this filing.



Pierre Levy