

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.

SPECIAL MASTER'S RECOMMENDATION OF 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. As recited in the 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, filed on March 17, 2015 [Doc. No. 10134], the Special Master has, for several years, been attempting to address 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.

2. In its Response to Order to Show Cause, filed April 2, 2015 [Doc. No. 10159], Plaintiff the State of New Mexico brings forth several points:

A. That the litigation has been ongoing for almost 50 years, with over 22 attorneys representing the State since the filing of the Complaint,

B. That Attorney Singer has multiple responsibilities within the Office of the State Engineer,

C. That Plaintiff the State’s attorneys have been working diligently on this case, and that Plaintiff the State has devoted considerable resources to this litigation,

D. That Attorney Singer did not make certain representations to the Special Master on October 24, 2014,

E. That Attorney Singer did not make certain representations to the Special Master on January 23, 2015,

F. That Plaintiff the State’s litigation efforts are within its discretion,

G. That Plaintiff the State was well represented at the working session of February 27, 2015,

H. That Attorney Singer timely excused herself from the working session.

See State of New Mexico’s Response to Order to Show Cause Why the Special Master Should Not Recommend Sanctions, filed April 2, 2015 [Doc. No. 10159].

3. After review of this Response, I am unpersuaded that Plaintiff the State of New Mexico has shown good cause sufficient to avoid a recommendation for sanctions. The diligence of attorneys for Plaintiff the State of New Mexico is not at issue. Moreover, I acknowledge that the pressures of litigation can create scheduling conflicts. Neither of these two factors, however, are

sufficient to excuse cavalier conduct in this case.

4. The ongoing length of the litigation, and the deadline set by law to have all matters of this adjudication concluded by September 15, 2017, all counsel in favor of strict, timely, and conscientious adherence to progress. The length of time the transmountain water issue has remained unresolved, and continues to remain unresolved, also demonstrates that diligent efforts to achieve resolution must be undertaken. Indeed, recently Plaintiff the State of New Mexico and Las Acequias de Chupadero requested an extension of time with respect to the issue, citing on-the-ground surveying concerns, necessitating yet another delay.

5. Moreover, Attorney Singer's multiple responsibilities are not sufficient for, *sua sponte*, announcing two days before the working session that she will not appear at the hearing where her attendance was required. *See* Exhibit 4 to Order to Show Cause. Attorney Singer knew of the working session as of February 9, 2015 when the notice of working session was filed as a matter of record [Doc. No. 10020], and was informed, through co-counsel, that her attendance was required as early as January 23, 2015. *See* Exhibit 3 to the Order to Show Cause. Had there been a serious and unavoidable scheduling conflict, a timely motion outlining and explaining the conflict would have been appropriate. No motion was filed. Rather, the e-mail of self-excusals merely stated:

Unfortunately, I will not be able to attend the working session on Friday. I will be out of the office on a previous engagement.

Exhibit 4 to Order to Show Cause.

Further, Plaintiff the State's assertions that Attorney Singer did not make certain representations to the Special Master are somewhat disingenuous, and not material. The assertions are disingenuous because counsel for Plaintiff the State told the Special Master, on October 24, 2014, that Attorney

Singer had certain concerns with respect to service of a final order on surface water priorities before addressing the Rio Chupadero/Rio en Medio issue, and because counsel for Plaintiff the State told the Special Master, on January 23, 2015, that he wanted to meet with Attorney Singer prior to the working session to discuss the transmountain water issue. Exhibits 2 and 3 to Order to Show Cause. The assertions are immaterial because the Special Master specifically required Attorney Singer to attend the working session. Exhibit 3 to Order to Show Cause.

5. The Court has the inherent power to control its docket. *See, e.g., Davis v. Internal Revenue Service*, 905 F. Supp. 2d 1253 (D.N.M. 2012). If attorneys take it upon themselves to unilaterally determine, without a motion and order, that they will not appear at a proceeding where their attendance has been required, the Court cannot function properly and efficiently.

6. In sum, I conclude that Plaintiff the State of New Mexico has not shown good cause why I should not recommend sanctions to the Court for the failure of Attorney Singer to attend the working session of February 17th, as required. Therefore, I respectfully recommend that the Court, after due consideration of this matter, issue appropriate sanctions.

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.

Respectfully Submitted,



Pierre Levy, Special Master

April 13, 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.

A handwritten signature in black ink, appearing to read "P. Levy", written over a horizontal line.

Pierre Levy