

**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.*

Subfile

RG-56923

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**

THIS MATTER is before the Special Master, entered pursuant to the Order of Reference [Doc. No. 6336], as amended [Doc. No. 7736]. At a December 9, 2016 on-the-record status conference, the following exchange took place with respect to Subfile RG-56923, Oso Loco Tract “D” Trust, represented by attorney Peter Schoenfeld, Esq.:

SPECIAL MASTER LEVY: And a couple of days ago -- it may have been yesterday -- I got a call from Peter Shoenfeld.

MR. BAGLEY: Yes.

SPECIAL MASTER LEVY: He explained that he had a time conflict, that he anticipated resolution with respect to his clients. What I asked him to do was to send you a letter, giving you authority to put a report in the record. Did he do that, and are you prepared to put a report into the record with Respect to his clients?

MR. BAGLEY: He absolutely did. In fact, I have that letter in front of me, and there are two subfiles that are mentioned in the letter and a third one that's still

pending that Mr. Shoenfeld no longer represents but was on record as representing. And if it's okay, I'll go down the list and describe where we are with these.

SPECIAL MASTER LEVY: Please make the record that Mr. Shoenfeld authorized you to make so that we can have that in the record.

MR. BAGLEY: I spoke with Mr. Shoenfeld, and he sent me a letter dated October 26th, 2016, from which I'm referring to now, and Mr. Shoenfeld authorized me to speak on his behalf in court on these issues.

SPECIAL MASTER LEVY: All right.

MR. BAGLEY: With regard to his clients William and Mary Bennett, under subfile PM-81106, we are in agreement and have settled that and are wordsmithing the order, the Consent Order, now. Most recently, Peter and I had exchanged drafts, and I today, before the hearing, sent him the latest draft of the order, and I fully expect this to be resolved in the next, you know, five days or so.

SPECIAL MASTER LEVY: Okay. Let's get it resolved by December 30th.

MR. BAGLEY: Certainly before that.

SPECIAL MASTER LEVY: All right. Thank you.

MR. BAGLEY: For Mr. Shoenfeld's other client, Park Street Investment Trust, a similar process occurred. We're in agreement and have settled. His client is looking at the Consent Order right now, and, again, I expect to have this sent to the Court in the next five days.

SPECIAL MASTER LEVY: Thanks. Again, let's get it resolved by December 30th.

MR. BAGLEY: Will do, Special Master. There's another client, Oso Loco Tract D Trust, that Mr. Shoenfeld represented. The trust, I don't believe, exists any longer. Peter no longer represents that interest, and there's a new owner. I've had discussions with attorney John Hays, who, if he doesn't represent them, may have some information about who to contact to get this resolved. But that's -- Mr. Shoenfeld is no longer involved with the Oso Loco Tract D Trust.

SPECIAL MASTER LEVY: Did the Court allow his withdrawal?

MR. BAGLEY: I don't know the answer to that, Special Master. In fact, I can't say with confidence that he's moved for that. I don't know the answer.

SPECIAL MASTER LEVY: Would you please either call Mr. Shoenfeld or send him an email, something like that? I'm going to put him -- put the Oso Loco Tract D Trust on the calendar for the December 30th Status Conference, but if we can resolve these matters by telephonic conference with me sooner, I'm happy to do that. I think -- I don't want the Court to be left holding the bag with respect to the status of that claim. The trust either has a claim or no longer has a claim. Mr. Shoenfeld is representing them or is not. I don't have any clear information right now, and we need to get this clarified as soon as possible.

MR. BAGLEY: Special Master, I didn't mean to imply they didn't have a claim, just that Mr. Shoenfeld no longer represents them.

SPECIAL MASTER LEVY: Okay. Well, if he didn't move to withdraw, he represents them.

MR. BAGLEY: Understood.

SPECIAL MASTER LEVY: Okay. Would you please communicate with him?

MR. BAGLEY: I absolutely will.

Transcript of Status Conference, December 9, 2016, at 16:7-19:7, attached hereto as Exhibit "1."

Subsequent to that hearing, the Special Master set an off-the-record status conference for December 30, 2016, where Subfile RG-59623 was at issue. *See* Notice of Mandatory Off-the-Record Status Conference, filed December 12, 2016 [Doc. No. 11191]. This Notice specifically noted that absent agreement with Plaintiff the State of New Mexico, the appearance of subfile claimants was mandatory and that failure to appear may subject a party "to the entry of a default judgment or other order adjudicating that party's rights, subject to the *inter se* process." *Id.*


At the status conference held on December 30, 2016, attorney Peter Schoenfeld failed to appear. Attorney Schoenfeld has not communicated to the Special Master whether he has been allowed to withdraw from the representation of the Oso Loco Tract "D" Trust, Subfile RG-56923. At the status conference, Plaintiff the State of New Mexico represented that it had not heard from attorney Schoenfeld with respect to Oso Loco Tract "D" Trust, Subfile RG-56923.

THEREFORE,

IT IS HEREBY ORDERED that attorney Peter Schoenfeld, Esq. shall **show cause on or before Friday, January 6, 2017**, why the Special Master should not recommend sanctions to the Court for his failure to appear at the December 30, 2016 status conference, and failure to otherwise notify the Court that he has been allowed to withdraw from the representation of the Oso Loco Tract "D" Trust, Subfile RG-56923 and thus need not have appeared at the status conference.


**THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE [Doc. No. 10791] of a copy of this order, report, or recommendation, 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 fourteen day period if that party wants the District Judge to hear their objections. If no objections are filed within the fourteen day period, the District Judge may adopt the order, report of recommendations in whole.**

IT IS SO ORDERED.

  
\_\_\_\_\_  
Pierre Levy, Special Master

December 30, 2016

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 by the Court's CM/ECF system.

  
\_\_\_\_\_  
Pierre Levy

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3 NO. Civ. 66-06639 WJ/WPL  
4 STATE OF NEW MEXICO, ex rel.  
5 State Engineer,  
6 Plaintiff,  
7 vs.  
8 R. LEE AAMODT, et al.,  
9 Defendants,  
10 and  
11 UNITED STATES OF AMERICA,  
12 PUEBLO DE NAMBE,  
13 PUEBLO DE POJOAQUE,  
14 PUEBLO DE SAN ILDEFONSO,  
15 and PUEBLO DE TESUQUE,  
16 Plaintiffs-in-Intervention.  
17 STATUS CONFERENCE  
18 December 9th, 2016  
19 2:02 p.m.  
20 UNITED STATES COURTHOUSE  
21 120 South Federal Place  
22 Santa Fe, New Mexico 87504  
23 SPECIAL MASTER: MR. PIERRE LEVY  
24 REPORTED BY: MICHELE M. TRUJILLO, CCR No. 226  
25 WILLIAMS & ASSOCIATES, LLC  
1608 Fifth Street, Northwest  
Albuquerque, New Mexico 87102

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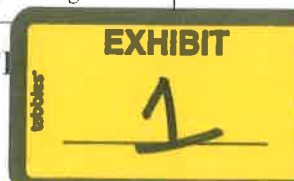
1 SPECIAL MASTER LEVY: Good afternoon.  
2 We're on the record in the State of New Mexico versus  
3 Aamodt, Number 66-6639.  
4 May I have appearances, please?  
5 MR. BAGLEY: Edward Bagley, for the State  
6 of New Mexico, Your Honor. Good afternoon.  
7 SPECIAL MASTER LEVY: Good afternoon,  
8 Mr. Bagley.  
9 Ms. Dempsey?  
10 MS. DEMPSEY: Rebecca Dempsey, for Pojoaque  
11 Valley School District Number 1.  
12 SPECIAL MASTER LEVY: Good afternoon,  
13 Ms. Dempsey.  
14 Mr. Sommer?  
15 MR. SOMMER: Kurt Sommer, on behalf of  
16 Republica Musicana and the Estate of Alberto  
17 Aguilera.  
18 SPECIAL MASTER LEVY: Good afternoon,  
19 Mr. Sommer.  
20 MR. SOMMER: Good afternoon.  
21 SPECIAL MASTER LEVY: I have your entry of  
22 appearance for the Estate of Alberto Aguilera. You  
23 mentioned another party?  
24 MR. SOMMER: Republica Musicana, which was  
25 an LLP owned by the decedent.

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1 SPECIAL MASTER LEVY: Is it all still  
2 subfile RG-60537, or is there more than that?  
3 MR. SOMMER: There are several subfiles.  
4 One is RG-53475 --  
5 SPECIAL MASTER LEVY: Okay. Hold on a  
6 second.  
7 MR. SOMMER: -- and RG-60536.  
8 SPECIAL MASTER LEVY: Let me read back  
9 those subfile numbers, make sure I've got them right.  
10 RG-60537, 53475, 60536?  
11 MR. SOMMER: That is correct.  
12 SPECIAL MASTER LEVY: Any others?  
13 MR. SOMMER: Those are the only two that I  
14 think are unresolved at this particular time. There  
15 are -- there were many others that the decedent  
16 owned, but I think they were all resolved.  
17 SPECIAL MASTER LEVY: Okay. Thank you,  
18 Mr. Sommer.  
19 Other appearances, please?  
20 MR. SCHEUER: Your Honor, Ralph Scheuer.  
21 SPECIAL MASTER LEVY: Good afternoon.  
22 MR. SCHEUER: I'm here on behalf of Herman  
23 Sieglar and Cornelia Bryer.  
24 SPECIAL MASTER LEVY: I know Mr. Yost,  
25 quite well. I've never had the pleasure of meeting

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1 you, so good afternoon.  
2 MR. SCHEUER: It's my pleasure, Your Honor.  
3 SPECIAL MASTER LEVY: Could you give me the  
4 subfile numbers for the record for your clients,  
5 please?  
6 MR. SCHEUER: RG-19967.  
7 SPECIAL MASTER LEVY: Any others, or --  
8 MR. SCHEUER: That's all I've got.  
9 SPECIAL MASTER LEVY: All right. Thank  
10 you.  
11 Any other appearances?  
12 MR. OGAZ: Zach Ogaz, for New Mexico  
13 Department of Transportation.  
14 SPECIAL MASTER LEVY: I'm sorry. I didn't  
15 catch the last name.  
16 MR. OGAZ: Ogaz, O-g-a-z.  
17 SPECIAL MASTER LEVY: Good afternoon,  
18 Mr. Ogaz.  
19 Any particular subfiles, or --  
20 MR. OGAZ: It's RG-79917, RG-80226,  
21 RG-65513, and I believe that is it.  
22 There was one more, possibly, outstanding.  
23 It's RG-19091, and we've been consulting on that one,  
24 a little bit.  
25 SPECIAL MASTER LEVY: All right, Mr. Ogaz.



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1 still not on the same page with you with respect to  
 2 the service issues. Explain to me again, please,  
 3 what you anticipate your motion to be asking, in  
 4 addition to joinder?  
 5 MR. BAGLEY: Nothing with regard to  
 6 service; rather, with regard to the process  
 7 afterwards, how long these individuals will have to  
 8 respond after service.  
 9 SPECIAL MASTER LEVY: All right.  
 10 MR. BAGLEY: I had some numbers, too, I was  
 11 hoping to share with you in terms of where we are  
 12 with our database and categories of subfiles and  
 13 total numbers. We have a total number of non-pueblo  
 14 subfiles of 3,372. Of those, 940 are post-moratorium  
 15 wells; 2,225 are surface subfiles, pre-basin, and  
 16 pre-moratorium wells.  
 17 The remaining 190 are provisional water  
 18 rights of various types, and these include 22 where  
 19 default is in process now; 36 where an offer has been  
 20 sent and a response is pending for the claimant; 47  
 21 where orders have been sent to the Court, but we've  
 22 not seen them cross the docket. They've not been  
 23 entered yet; and 83 that are provisional, in the  
 24 sense that we're in consultation with the claimant or  
 25 they're in that category where we need to join and

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1 serve.  
 2 And that's where we are today,  
 3 Special Master. We'll be filing the motion, as I  
 4 said, this day. We'll be mailing out notice next  
 5 week, and publication will commence then, as well.  
 6 SPECIAL MASTER LEVY: All right. So my  
 7 understanding is, with respect to the Naylor matter  
 8 that was discussed on November 18th, that's resolved,  
 9 correct?  
 10 MR. BAGLEY: That is correct.  
 11 SPECIAL MASTER LEVY: All right. What  
 12 about the Perez matter that was discussed on  
 13 November 18th?  
 14 MR. BAGLEY: I'm sorry, Special Master. I  
 15 didn't hear that.  
 16 SPECIAL MASTER LEVY: Perez.  
 17 MR. BAGLEY: Perez, I've been in contact  
 18 with. We've not settled with them. I spoke to them  
 19 on December 2nd, as you had directed, and talked to  
 20 Michael Perez, and we agreed to put together a  
 21 provisional discovery -- status report and  
 22 provisional discovery plan to govern the process of  
 23 litigating that claim.  
 24 I was hoping -- I've sent that to  
 25 Mr. Perez, and I'm waiting to hear back from him as

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1 to whether or not he approves of what I put in that  
 2 draft, and we'll file that with the Court. I was  
 3 hoping to have a Status Conference with you and the  
 4 Perezes at the earliest possible date.  
 5 SPECIAL MASTER LEVY: Do you have any dates  
 6 for Mr. Perez or Mrs. Perez, when they're available  
 7 for a Status Conference?  
 8 MR. BAGLEY: I do not, but I can quickly  
 9 find out. I can email you with possible dates from  
 10 them later today or Monday.  
 11 SPECIAL MASTER LEVY: Are you available on  
 12 December 30th? That's a Friday.  
 13 MR. BAGLEY: Yes.  
 14 SPECIAL MASTER LEVY: There was one other  
 15 subfile, and, I'm sorry, I don't remember the name,  
 16 right offhand, that was -- that appeared to be in  
 17 dispute at that Status Conference.  
 18 MR. BAGLEY: That was Shalicia Bishop,  
 19 Special Master, and that was RG Number PM-86591.  
 20 SPECIAL MASTER LEVY: What is the status?  
 21 MR. BAGLEY: I've spoken to Ms. Bishop.  
 22 Again, as you directed, I spoke with her last week,  
 23 and she said she was okay with the offer we had made  
 24 to her, and we've since mailed and emailed a Consent  
 25 Order consistent with that.

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1 SPECIAL MASTER LEVY: Do you anticipate  
 2 that that will be resolved?  
 3 MR. BAGLEY: Yes. She stated she was fine  
 4 with it and she'd get the Consent Order back to us as  
 5 quickly as possible.  
 6 SPECIAL MASTER LEVY: Thank you.  
 7 And a couple of days ago -- it may have  
 8 been yesterday -- I got a call from Peter Shoenfeld.  
 9 MR. BAGLEY: Yes.  
 10 SPECIAL MASTER LEVY: He explained that he  
 11 had a time conflict, that he anticipated resolution  
 12 with respect to his clients. What I asked him to do  
 13 was to send you a letter, giving you authority to put  
 14 a report in the record. Did he do that, and are  
 15 you prepared to put a report into the record with  
 16 respect to his clients?  
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 19 subfiles that are mentioned in the letter and a third  
 20 one that's still pending that Mr. Shoenfeld no longer  
 21 represents but was on record as representing. And if  
 22 it's okay, I'll go down the list and describe where  
 23 we are with these.  
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 25 record that Mr. Shoenfeld authorized you to make so



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 3 and he sent me a letter dated October 26th, 2016,  
 4 from which I'm referring to now, and Mr. Shoenfeld  
 5 authorized me to speak on his behalf in court on  
 6 these issues.  
 7 SPECIAL MASTER LEVY: All right.  
 8 MR. BAGLEY: With regard to his clients  
 9 William and Mary Bennett, under subfile PM-81106, we  
 10 are in agreement and have settled that and are  
 11 wordsmithing the order, the Consent Order, now.  
 12 Most recently, Peter and I had exchanged  
 13 drafts, and I today, before the hearing, sent him the  
 14 latest draft of the order, and I fully expect this to  
 15 be resolved in the next, you know, five days or so.  
 16 SPECIAL MASTER LEVY: Okay. Let's get it  
 17 resolved by December 30th.  
 18 MR. BAGLEY: Certainly before that.  
 19 SPECIAL MASTER LEVY: All right. Thank  
 20 you.  
 21 MR. BAGLEY: For Mr. Shoenfeld's other  
 22 client, Park Street Investment Trust, a similar  
 23 process occurred. We're in agreement and have  
 24 settled. His client is looking at the Consent Order  
 25 right now, and, again, I expect to have this sent to

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 3 get it resolved by December 30th.  
 4 MR. BAGLEY: Will do, Special Master.  
 5 There's another client, Oso Loco Tract D  
 6 Trust, that Mr. Shoenfeld represented. The trust, I  
 7 don't believe, exists any longer. Peter no longer  
 8 represents that interest, and there's a new owner.  
 9 I've had discussions with attorney John  
 10 Hays, who, if he doesn't represent them, may have  
 11 some information about who to contact to get this  
 12 resolved. But that's -- Mr. Shoenfeld is no longer  
 13 involved with the Oso Loco Tract D Trust.  
 14 SPECIAL MASTER LEVY: Did the Court allow  
 15 his withdrawal?  
 16 MR. BAGLEY: I don't know the answer to  
 17 that, Special Master. In fact, I can't say with  
 18 confidence that he's moved for that. I don't know  
 19 the answer.  
 20 SPECIAL MASTER LEVY: Would you please  
 21 either call Mr. Shoenfeld or send him an email,  
 22 something like that? I'm going to put him -- put the  
 23 Oso Loco Tract D Trust on the calendar for the  
 24 December 30th Status Conference, but if we can  
 25 resolve these matters by telephonic conference with

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1 me sooner, I'm happy to do that.  
 2 I think -- I don't want the Court to be  
 3 left holding the bag with respect to the status of  
 4 that claim. The trust either has a claim or no  
 5 longer has a claim. Mr. Shoenfeld is representing  
 6 them or is not. I don't have any clear information  
 7 right now, and we need to get this clarified as soon  
 8 as possible.  
 9 MR. BAGLEY: Special Master, I didn't mean  
 10 to imply they didn't have a claim, just that  
 11 Mr. Shoenfeld no longer represents them.  
 12 SPECIAL MASTER LEVY: Okay. Well, if he  
 13 didn't move to withdraw, he represents them.  
 14 MR. BAGLEY: Understood.  
 15 SPECIAL MASTER LEVY: Okay. Would you  
 16 please communicate with him?  
 17 MR. BAGLEY: I absolutely will.  
 18 SPECIAL MASTER LEVY: Thank you.  
 19 Any other matters with respect to  
 20 Mr. Shoenfeld's clients?  
 21 MR. BAGLEY: No, Special Master.  
 22 SPECIAL MASTER LEVY: Okay. Anything else  
 23 that you'd like to report on at this time?  
 24 MR. BAGLEY: With regard to the subfiles  
 25 that you've identified for our conference today, I'd

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1 be happy to speak to them. I didn't know how you  
 2 wanted to proceed, if you wanted to speak with the  
 3 other attorneys who are here on behalf of clients,  
 4 first, or not.  
 5 SPECIAL MASTER LEVY: Well, we'll certainly  
 6 hear from Ms. Dempsey and Mr. Sommer, but I'd like to  
 7 get an idea of what's disputed right now --  
 8 MR. BAGLEY: That sounds good.  
 9 SPECIAL MASTER LEVY: -- so that we can  
 10 schedule it. I would assume that would include, but  
 11 maybe not, all the subfiles that were noticed for  
 12 today?  
 13 MR. BAGLEY: Yes.  
 14 SPECIAL MASTER LEVY: I don't know, of  
 15 those, of those subfiles that were noticed, how many  
 16 have been resolved and how many are still pending,  
 17 but I'm trying to understand what's still disputed.  
 18 MR. BAGLEY: I would be happy to go down  
 19 that list, Special Master.  
 20 SPECIAL MASTER LEVY: Okay. Please do.  
 21 MR. BAGLEY: I'm sorry, Special Master.  
 22 SPECIAL MASTER LEVY: Take your time.  
 23 MR. BAGLEY: All right. Would it be okay  
 24 if I just go down subfile by subfile and --  
 25 SPECIAL MASTER LEVY: Yeah, just make sure