

Exhibit 5

4397

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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[Signature]
CLERK-ALBUQUERQUE

STATE OF NEW MEXICO, ex rel.
State Engineer,

Plaintiff,

v.

Civil No. 6639-M
RIO POJOAQUE ADJUDICATION

R. LEE AAMODT, et al.,

Defendants,

UNITED STATES OF AMERICA,
PUEBLO DE NAMBE, PUEBLO DE
POJOAQUE, PUEBLO DE TESUQUE,
PUEBLO DE SAN ILDEFONSO,

Plaintiffs-in-Intervention.

ORDER

Order of the Court relating to (1) provisions of subfile orders adjudicating the amount of water of non-Pueblo defendants' irrigation water rights and (2) provisions of subfile orders describing the purpose of use of non-Pueblo defendants' domestic and livestock well rights.

THIS MATTER comes on for consideration of New Mexico's Motion For Action on the Special Master's June 7, 1994 Report (Docket No. 4365). Having considered the motion, the Special Master's report (4348), and the Special Master's August 15, 1994 comments (4395); having found that no party filed objections or comments relating thereto; having made a de novo examination of relevant portions of the record and correspondence; and, being otherwise fully advised in the premises, I hereby adopt the following recommendations of the Special Master.

1. Irrigation Subfile Orders: I adopt the following from the Special Master's report as it relates to provisions set forth in irrigation subfile orders which describe the amount of water.

a. All such provisions shall be amended as set forth in subparagraphs i through iii.

i. All subfile orders involving water delivered from a ditch and adjudicating irrigation water rights in an amount "not to exceed three (3) acre-feet per acre per annum" are amended to read as follows:

Amount of water: Not to exceed 4.65 acre-feet per acre per year diverted by the ditch from the surface source of water, 3.35 acre-feet per acre per year delivered at the farm headgate, or a weighted consumptive irrigation requirement (CIR) of 1.84 acre-feet per acre per year, whichever amount is less.

ii. All subfile orders involving water delivered from both a ditch and an irrigation well(s) and adjudicating irrigation water rights in an amount "not to exceed three (3) acre-feet per acre per annum" are amended to read as follows:

Amount of water: Not to exceed 4.65 acre-feet per acre per year diverted by the ditch from the surface source of water, 3.35 acre-feet per acre per year delivered at the farm headgate or diverted from a well(s), or a weighted consumptive irrigation requirement (CIR) of 1.84 acre-feet per acre per year, whichever amount is less.

iii. All subfile orders adjudicating non-Pueblo defendants' irrigation water rights in an amount of less than "not to exceed three (3) acre feet per annum" shall be amended to reflect the amount of water as determined on an individual basis using procedures set forth in the Special Master's Report Concerning Pueblos' Irrigation Water Requirements filed on March

12, 1991 (3701) (Special Master's March 1991 Report), the modified Blaney Criddle calculus, and a cropping pattern based upon the 1966 Hydrographic Survey as modified to exclude fallow lands. (See subfiles 6.1, 6.1A, 6.1B, and 8.1A.)

b. All subfile orders entered hereafter adjudicating non-Pueblo defendants' irrigation water rights shall contain provisions describing the amount of such rights as determined through procedures set forth in the Special Master's March 1991 Report, the modified Blaney Criddle calculus, and a cropping pattern based upon the 1966 Hydrographic Survey as modified to exclude fallow lands.

2. Domestic & Livestock Subfile Orders: I will not address the language contained in permits of the New Mexico State Engineer. The language set forth in the Special Master's Interim Order, Exhibit B, Special Master's June 12, 1992 report (3994) which I approved in my August 17, 1992 Order (4014) shall remain in effect. The language found in the Interim Order does not apply retroactively to subfile orders previously entered nor to post-moratorium subfile orders. In preparing subfile orders, the Special Master, the State and the Data Manager may amend the language to exclude reference to livestock watering, where appropriate, without further application to the Court. The Data Manager's recommendations regarding deletion of the word "of" and insertion of commas in the approved text are clerical in nature and should be handled by the Special Master, the Data Manager and the State.

3. All other terms and provisions of the irrigation subfile orders and any subsequent amendments remain in full force and effect.

4. The Clerk of the Court shall serve this Order on all active counsel of record. The State of New Mexico shall serve this order on all inactive counsel of record, pro se parties and interested individuals whose names appear on the docket mailing list.

IT IS SO ORDERED.



SENIOR UNITED STATES DISTRICT JUDGE