

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.,	)	No. 66cv6639 WJ/WPL
Defendants,	)	
	)	
and	)	
	)	
UNITED STATES OF AMERICA,	)	
PUEBLO DE NAMBE,	)	
PUEBLO DE POJOAQUE,	)	
PUEBLO DE SAN ILDEFONSO,	)	
and PUEBLO DE TESUQUE,	)	
Plaintiffs-in-Intervention.	)	
_____	/	

**MOTION TO ESTABLISH PROCEDURES FOR FINAL *INTER SE* PROCEEDING  
AND ENTRY OF FINAL JUDGMENT AND DECREE**

The State of New Mexico, *ex rel.* State Engineer (“State”), hereby moves the Court to enter an order establishing procedures that will govern the entry of the Final Judgment and Decree of Water Rights in the Nambé-Pojoaque-Tesuque Stream System (“Pojoaque Basin”), including the *inter se* proceedings on remaining non-Pueblo water rights. A proposed form of order adopting the procedures is attached as Exhibit 1 to this Motion.

**I. INTRODUCTION**

This cause of action is a general adjudication of all water rights of the Pojoaque Basin, a tributary of the Rio Grande. The water rights of the Pueblos of Tesuque, Pojoaque, Nambé, and San Ildefonso were finally adjudicated in the *Partial Final Judgment and Decree of the Water Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque*, entered by the Court on

March 23, 2016 (Doc. 10547). The proprietary water rights claims of the United States were adjudicated in the Court's *Memorandum Opinion and Order* filed on January 24, 1986 (Doc. 2752) and confirmed as a final judgment on June 18, 1986 (Doc. 2781).

In 1983, the Court conducted an *inter se* proceeding on the nature and extent of all non-Pueblo surface water rights, except for priorities. *Order Setting Dates for filing Inter Sese Objections and for Hearing on Entry of Partial Final Decree* (Doc. 752, filed July 6, 1982); *Pretrial Order* (Doc. 654, filed February 2, 1983); *Order* (Doc 684, filed March 21, 1983) (collectively, "Pueblo 1983 Objections"). Only the Pueblos and United States filed *inter se* objections. *Pueblos' Objections to State's Proposed Order to Show Cause* (Doc. 724, filed June 6, 1983) and *United States' and Pueblos' Amended Objections to Subfile Judgments* (Doc. 758a, filed July 12, 1983). Under the Settlement Agreement approved by the Court on March 21, 2016, (Doc. 10543), all pending *inter se* objections between settlement parties shall be dismissed with prejudice, and any further *inter se* challenges between settlement parties are barred. *Settlement Agreement*, Section 6.1.

In 2008, the Court conducted an *inter se* proceeding on the priority dates for non-Pueblo surface water rights (except for water rights served by Las Acequias de Chupadero), which were finally adjudicated in the *Order Granting the State of New Mexico's Motion for Order Making Final Determination of Priority Dates of Surface Water Rights in the Nambe-Pojoaque-Tesuque Stream System* (Doc. 9546) on August 27, 2014. The United States and the Pueblos reserved their rights to file *inter se* objections, to the extent these objections are not barred under the Settlement Agreement.

The State is in the process of completing the adjudication of individual groundwater rights in the Pojoaque Basin. Claimants in the Pojoaque Basin have yet to be provided with an opportunity to file *inter se* objections to the elements of the groundwater rights in subfile orders that have been entered, or to the specific elements of surface water rights described below.

## **II. INTER SE PROCEEDINGS AND ENTRY OF FINAL JUDGMENT AND DECREE**

The State proposes the following procedures that would require all water rights claimants in the Pojoaque Basin to file *inter se* objections, if any, to the determination of the following water rights: (1) all elements of non-Pueblo groundwater rights, (2) the source of water, point of diversion and priority dates of non-Pueblo surface water rights served by Las Acequias de Chupadero, and (3) additional sources of water that have been adjudicated to non-Pueblo surface water rights since 1983, as follows: (a) Rio Tesuque, Barry's Spring, Dona Inez Spring, Spring "A," Spring "B," and Spring "C" as additional sources of water for non-Pueblo surface water rights served by Acequia Larga de Jacona and (b) Pojoaque Creek and Rio Tesuque as additional sources of water for non-Pueblo surface water rights served by Acequia Ancon de Jacona. In addition, to the extent consistent with prior orders of the Court and the Settlement Agreement, the Pueblos and the United States may file objections to non-Pueblo surface water priorities.

This *inter se* process is the final process necessary before entry of a Final Judgment and Decree of Water Rights in the Pojoaque Basin. All persons having water rights in the Pojoaque Basin will be bound by the outcome of the proceedings to resolve *inter se* objections.

1. The State shall prepare a Proposed Final Judgment and Decree ("Proposed Final Decree") (attached as Exhibit 2) of all water rights in the Pojoaque Basin and an Addendum that summarizes the non-Pueblo water rights adjudicated in the Pojoaque Basin. The Proposed Final

Decree, if approved by the Court after opportunity for *inter se* objections to the remaining non-Pueblo water rights and hearings thereon, will finally adjudicate all water rights in the Pojoaque Basin, and bind all claimants of water rights of any type in the Pojoaque Basin.

2. Upon the completion of the adjudication of all non-Pueblo water rights, the State shall move the Court to enter the Proposed Final Decree (“Motion to Enter”). The filing of responses to the Motion to Enter shall be stayed until after the Court enters a scheduling order following the initial mandatory scheduling conference.

3. The State shall prepare an updated service list of the parties to the adjudication and other known water right claimants in the Pojoaque Basin (“Updated List”), identified from the following sources: existing hydrographic survey and court records for the adjudication; the public records of the Santa Fe County Assessor; the public records of the State Engineer; and the respective public records of irrigation districts, acequias, water conservancy districts and other water users’ associations or commissions.

4. The State shall prepare a *Notice of Proposed Final Judgment and Decree of Water Rights in the Nambe-Pojoaque-Tesuque Stream System* (“Notice”) to be served on all persons on the Updated List by first class mail of their right to file *inter se* issue objections as described above, and that this *inter se* proceeding will be their only opportunity to file such objections. The proposed Notice is attached as Exhibit 3. The State shall file its Certificate of Service with the Court following the mailing of the Notice.

5. The State shall prepare a *Notice for Publication* to inform all known and unknown claimants of water rights in the Pojoaque Basin of their right to file *inter se* objections, and that this *inter se* proceeding will be their only opportunity to file such objections. The Notice for

Publication shall be published once each week for three consecutive weeks in the Rio Grande Sun and the Santa Fe New Mexican, which are newspapers of general circulation in the Pojoaque Basin. A proposed *Notice for Publication* is attached as Exhibit 4. The State shall file its Proof of Publication with the Court following publication of the Notice.

6. Copies of the Proposed Final Decree, and hydrographic survey maps showing the location of all non-Pueblo irrigated tracts and the location of all non-Pueblo wells described in the Proposed Final Decree, shall be made available for public inspection at the Santa Fe County satellite office in Pojoaque, at the Federal District Courts in Santa Fe and in Albuquerque, and at the Utton Center at the UNM School of Law. Copies shall also be available for inspection at the Water Resource Allocation Program (WRAP) of the Office of the State Engineer in Santa Fe. The Proposed Final Decree shall be posted on the Office of the State Engineer's website.

7. The Notice and the *Notice for Publication* shall state that all *inter se* objections must be filed with the Court, in person or by mail, for receipt no later than the date determined to be 20 days after date of last publication. No later than the date for filing *inter se* objections, the Pueblos and the United States shall identify which, if any, of the Pueblo 1983 Objections they intend to pursue. Blank forms that may be used for filing *inter se* issue objections shall be available with the Proposed Final Decree at the locations described in paragraph 6 above. The form shall also be included with the Notice to be mailed. A proposed Objection Form is attached as Exhibit 5.

8. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in the proceedings.

9. If *inter se* objections are timely filed, the State shall prepare a report that summarizes all objections and make the report available for public inspection at the locations described in paragraph 6 above, within 10 days after the deadline for filing of objections. The State shall mail a copy of the *inter se* objections to those persons whose water rights are the subject of those objections, by certified mail, return receipt requested, and file an appropriate Certificate of Service with the Court. Persons who file timely *inter se* objections and the affected subfile parties/defendants shall be required to attend the mandatory scheduling conference with the Court in Santa Fe. Further procedures for resolving objections shall be determined at the conference.

10. Following the scheduling conference, the Court will enter a scheduling order setting a deadline for filing responses and replies to the State's Motion to Enter.

WHEREFORE the State requests that the Court enter its Order granting this motion and adopting the procedures set forth herein for the purpose of entry of a Final Judgment and Decree of Water Rights in the Nambe-Pojoaque-Tesuque Stream System.

Submitted by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 21 , 2016, 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, and mailed the same to the parties listed on the attached service list by U.S. mail.

/s/ Kelly Brooks Smith  
Kelly Brooks Smith