

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 REPORT PURSUANT TO  
AMENDED ORDER SETTING STATUS CONFERENCE [DOC. NO. 10794]**

SPECIAL MASTER Pierre Levy, pursuant to the Court's Amended Order Setting Status Conference filed August 16, 2016 [Doc. No. 10794], hereby reports to the Court, as follows:

**Background**

On August 31, 2000 the Court entered a stipulated order staying further proceedings before the Special Master [Doc. No. 5623]. On June 30, 2008 the Court entered its Order of Reference [Doc. No. 6336] setting forth the Special Master's jurisdiction for further proceedings:

The Special Master shall hear and determine all claims and contentions of the parties, including related issues of joinder, relating to: 1) the priorities of state-law based rights to the surface waters of the stream system encompassed by this case; 2) all the elements of state-law based domestic use rights to the underground waters of

the stream system encompassed by this case; 3) any errors and omissions process which may follow; and 4) the final *inter se* phase of this adjudication. (*See* Proposed Order of Reference at 2). This direction shall include hearing and determining all motions, except that the Special Master shall not hear or determine any motion that presents only legal issues and no contested factual matters, unless directed by the Court. (*See id.*).

The Special Master shall not hear or determine any matters arising directly from the Settlement Agreement, including, but not limited to, the Court's settlement approval process, including the Court's consideration of a motion regarding notice procedures and the process for consideration of an Interim Administrative Order, and any objections to the Settlement Agreement. (*See id.*).

Order of Reference, at 4.

On August 2, 2012 the Court amended this Order of Reference, lifting the stay of proceedings before the Special Master "only for adjudication proceedings regarding domestic wells, including pre-Basin domestic wells, drilled or permitted prior to this Court's *Order of January 13, 1983* (No. 641)." Procedural and Scheduling Order for the Adjudication of Water Rights for Domestic Wells, including Pre-Basin Domestic Wells, Drilled or Permitted Prior to this Court's Order of January 13, 1983 (No. 641), [Doc. No. 7736].

The Court's August 16, 2016 Order setting a status conference instructed the Master, as appropriate, to report on the following:

1. the schedule for completing the adjudication of the remaining water rights, including adjudication of Chupadero priority dates and reconciliation work;
2. the schedule for the motion for order to show cause required under Section 3.1.9 of the Settlement Agreement regarding the default position of non-responding parties related to connection to the Regional Water Authority; and
3. the schedule for the preparation of the proposed Final Judgment and Decree and the *inter se* proceedings;
4. any items not on the State's Final Judgment and Decree Schedule that must be completed before entry of the Final Judgment and Decree. *See* Doc. 10770-1, filed

July 27, 2016.

**I. Schedule for completing the adjudication of remaining water rights, including Chupadero priority dates and reconciliation work**

**A. Schedule for completing the adjudication of remaining water rights.**

In its January 22, 2016 status report, Plaintiff the State reported that it had joined all the parties to the case by the end of 2015. In its July 15, 2016 Quarterly Status Report [Doc. No. 10770], Plaintiff the State reported that there is no anticipated litigation on any remaining subfile where a subfile order has not yet been entered by the Court.

Since completing all joinders, Plaintiff the State has focused on errors and omissions and reconciliation work. As reported herein, Plaintiff the State has set a deadline of no later than November 30, 2016 for completing all its tasks necessary before a final *inter se* process can begin.

**B. Chupadero priority dates.**

As noted by the Court, the matter of priority dates for trans-mountain water diverted from the Rio En Medio and conveyed through a common ditch to the Rio Chupadero has not been resolved. This particular issue falls outside the expedited *inter se* for surface water priorities conducted by the Court, and outside the Partial Final Decree on surface water right priorities entered by the Court on August 27, 2014, in its Order Granting the State of New Mexico's Motion for Order Making Final Determination of Priority Dates of Surface Water Rights in the Nambe-Pojoque-Tesuque Stream System [Doc. No. 9379]. [Doc. No. 9546].

On August 19, 2016, Plaintiff the State filed a motion for an order adjudicating those priority dates of trans-mountain water. [Doc. No. 10796]. Although one objection to the motion was filed,

the Court granted a motion to strike objection without prejudice on August 2, 2016 [Doc. No. 10779]. In its August 19th motion, Plaintiff the State represents that any objections to the proposed priority dates will be addressed in the final *inter se* phase of this adjudication. The time for objections to the State's motion has passed, and the Special Master has tendered a proposed form of Order for the Court's consideration.

**C. Errors and omissions/reconciliation.**

At the April 29, 2016 status conference, the State suggested the errors and omissions work would be completed by mid-summer. At the July 29, 2016 status conference, the State suggested the work would be completed by the mid October, 2016. On the record at that conference, the State represented to the Special Master:

MS. SMITH: There has been a lot of motions and orders filed that stemmed from errors and omissions or reconciliation work that Brett Olsen has been doing, and most of them are -- most of those orders that request motions are to correct orders adjusting the acreage.

Most of them are acreage that are less than what was adjudicated or resolve clerical mistakes or making sure that the hydrographic survey and the subfile order match. He's been pushing those through, and those have been getting signed; or an instance where there has been double-adjudicated surface water irrigation rights, and he's just cleaning up the record.

So he is reviewing all of the surface water subfiles and making sure that any errors that have been identified in the past are cleaned up so that the record is accurate.

SPECIAL MASTER LEVY: And my question into this particular process was solely to the timeline.

MS. SMITH: Okay.

SPECIAL MASTER LEVY: Because in the Status Conference that we had three months ago, basically my understanding from the record is that this would be done by midsummer. This entire process of errors and omissions would be done by midsummer. It appears or I read the status report that was filed a few days ago to suggest that that's now been pushed back to, basically, October 15th.

Do you have a better understanding of the timeline for this errors-and-

omissions review that Mr. Olsen is doing?

MS. SMITH: Right. So on the -- what we submitted to you is -- the errors-and-emissions portion is under the reconciliation work, and we're looking to have that done by the end of September, which includes both Mr. Olsen's reconciliation work and also the work that our hydrographic survey staff are doing, where they are actually comparing every single subfile order that has been entered with what is in our database, which is what is going to be used to produce the addendum that summarizes all of the water rights.

SPECIAL MASTER LEVY: And you think that will be done by the end of September?

MS. SMITH: We are optimistic. We are working very hard. We're staffing up, and we're switching people's priorities and putting everybody that we can on this project. So we're making a lot of progress.

Transcript of July 29 Status Conference, at 14:6-16:5.

Although a review of the docket shows that the State appears to be making progress, at this time it is uncertain when the State will have completed its errors and omissions/reconciliation process by October 15, 2016. In its most recent submission to the Special Master, in a proposed form of order for final *inter se* procedures, Plaintiff the State has set a deadline of November 30, 2016 for the completion of all work in the adjudication, with the exception of final *inter se*.

**II. Schedule for motion for order to show cause under Section 3.1.9 of the Settlement Agreement.**

This is a matter that is outside the jurisdiction of the Special Master, pursuant to the Order of Reference, as amended.

**III. Schedule for the preparation of the proposed Final Judgment and Decree and the *inter se* proceedings.**

Plaintiff the State filed motion to establish procedures for final *inter se* on July 21, 2016 [Doc. No. 10761]. No objections to the motion were filed. The Special Master reviewed the

proposed order for the motion, along with accompanying exhibits, to evaluate appropriate procedures for the final *inter se* phase of this adjudication. After discussions with the State on the proposed timing of certain events, Plaintiff the State revised its proposed form of Order and associated exhibits. The Special Master edited these documents further, and tendered them to the Court for its consideration on September 5, 2016.

Plaintiff the State has revised its proposed time line for the completion of the adjudication, which it first filed with the Court on July 27, 2016, [Doc. No. 10770-1]. Attached hereto as Exhibit 1 is the State's revision, suggesting that the adjudication could be completed as early as July, 2017.

Respectfully submitted,

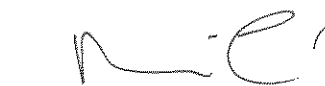


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Pierre Levy  
Special Master

**THE PARTIES ARE NOTIFIED THAT WITHIN 14 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 fourteen-day period, the District Judge may adopt the order, report or recommendations in whole.**

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, and for service by United States Mail to all persons on the Court's mailing list of record as of the time of this filing.

September 6, 2016

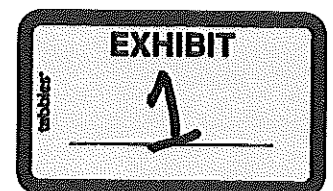


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Pierre Levy

Aamodt Final Judgment and Decree Schedule  
9-02-2016

Aamodt Final Judgment and Decree Schedule  
**Deadline for Completion of Aamodt Adjudication: September 15, 2017**

Category	Task	Estimated Deadline
<b>A. Adjudication of remaining water rights</b>	1. Joinder of all known claimants	Dec. 31, 2015 [completed]
	2. Publication to serve known but not located claimants	July/August 2016 (3 weeks) [in process]
	3. Publication of notice of deadline for unknown claimants of interest to file water rights claims pursuant to the Court's <i>Procedural Order for Notice by Publication of Claims Deadline</i>	Completed in 2013 Doc 7981
	4. File motions for default judgment against unknown claimants of interest and others who do not respond to publication notice and/or motions for judgment on any remaining subfiles	Completed 8/10/16 Doc 10789
	5. Default judgment entered against unknown claimants of interest	Aug./Sept. 2016
	6. Orders entered on all remaining water rights	Jan. to Sept. 2016
<b>B. Adjudication of Chupadero Priority Dates</b>	1. State serves Order to Show Cause on Chupadero priorities	Jan. 2016-Completed Doc 10426 (Order to Show Cause)
	2. Objections filed on Chupadero priorities	Mar. to April 2016 None
	3. States moves for Order on Chupadero priorities	July 2016 Completed 8/19/16 Doc 10796
	4. Court enters ruling on Chupadero priorities	Aug. 2016 Pending
<b>C. Reconciliation Work</b>	1. Conclude filing motions and obtaining orders amending or correcting subfile orders	Jan. 2016 to Sept. 2016
	2. Preparation of maps for addendum	Jan. 2016 to Sept.



Aamodt Final Judgment and Decree Schedule9/02/2016

Category	Task	Estimated Deadline
	to proposed Final Judgment and Decree	2016
<b>D. Motion for order to show cause required under Settlement Agreement re: default position of non-responding/non-settlement owners of water rights</b>		
	1. Pueblos, United States and State move for order to show cause re: default position of non-responding parties related to connection to regional water authority	
	2. Motion includes final election form for parties to submit regarding wells and connection to regional water authority	
	3. Briefing on motion for order to show cause	
	4. Entry of order on motion for order to show cause	
	5. Deadline for election forms to be filed with court	
<b>E. Preparation of Proposed Final Judgment and Decree ("FJD") and <i>Inter Se</i> Proceedings</b>		
	1. File motion for procedural order for final <i>inter se</i> proceeding and entry of FJD	July 21, 2016
	2. Internal technical and administrative work to compile description of water rights for addenda to FJD	June 2016 to Oct. 2016
	3. Briefing on procedure and scheduling order for <i>Inter Se</i>	July 21 to Aug. 18
	4. Special Master enters scheduling and procedure order on <i>inter se</i>	Sept. 2016
	5. Briefing on any objections to scheduling and procedure order on <i>inter se</i> and entry of order by Court	Sept. 2016 to Nov. 2016



Aamodt Final Judgment and Decree Schedule  
9-02-2016

Category	Task	Estimated Deadline
	6. State files Motion to Enter FJD	Nov 30, 2016
	7. State makes FJD available for public inspection, including addendum summarizing all water rights and forms for objections	Dec 5, 2016 3 business days after filing Motion to Enter
	8. State files updated service list	3 business days after filing of Motion to Enter Dec 5, 2016
	9. State mails and publishes notice of <i>inter se</i> proceeding	Dec 8, 2016 Mail 3 days after filing updated service list; publish for 3 weeks (publish week of 12/5, 12/12, 12/19)
	10. State files Proof of Publication of Notice and certificate of service	by Jan. 6, 2017
	11. Deadline for filing <i>inter se</i> objections	Jan. 2017 25 days after date of last publication of Notice of Motion to Enter (if last date of pub is Fri 12/23, then objections due 1/17)
	12. State files and posts report summarizing <i>inter se</i> objections and mails objections to water right owners	Jan. 27, 2017 10 days after deadline for filing objections
	13. Mandatory scheduling conference re: <i>inter se</i> objections	Jan. 31, 2017 14 days after deadline for filing objections
	14. Court conducts proceedings on <i>inter se</i> objections	March – April 2017
	15. Briefing on Motion to Enter FJD	Feb. – April 2017
	16. Court enters order resolving <i>inter se</i> objections	May – June 2017
	17. Briefing on any objections to order resolving <i>inter se</i> objections	June- July 2017
	18. Court enters Final Judgment & Decree	July 2017