

**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.,)
))
Defendants,)
and)
))
UNITED STATES OF AMERICA,)
PUEBLO DE NAMBÉ,)
PUEBLO DE POJOAQUE,)
PUEBLO DE SAN ILDEFONSO,)
and PUEBLO DE TESUQUE,)
))
Plaintiffs-in-Intervention.)
_____)

No. 66cv6639 WJ/WPL

**ORDER GRANTING PLAINTIFF’S STATE OF NEW MEXICO’S MOTION TO ESTABLISH
PROCEDURES FOR FINAL *INTER SE* PROCEEDING AND ENTRY OF A FINAL
JUDGMENT AND DECREE [DOC. NO. 10761]**

THIS MATTER comes before the Court upon the State’s *Motion to Establish Procedures for Inter Se Proceedings on Remaining Non-Pueblo Water Rights and Entry of Final Judgment and Decree*, filed July 21, 2016 [Doc. No. 10761]. The only response filed to the motion, by the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque, and the United States of America, filed August 8, 2016 [Doc. No. 10784], does not oppose Plaintiff the State’s motion.

The Court, having considered the motion and the response filed thereto, and being otherwise fully informed, finds that the motion is well taken and should be granted, and finds as follows:

1. The *Notice of Proposed Final Judgment and Decree of Water Rights in the Nambe-Pojoaque-Tesuque Stream System* (“Notice”) attached as Exhibit 1 to this Order, with the objection deadline inserted by Plaintiff as calculated pursuant to the terms of this Order, fairly and reasonably informs defendants and all known and unknown water rights claimants in the Nambe-Pojoaque- Tesuque stream system (“Pojoaque Basin”) of the proposed Final Judgment and Decree (“Proposed Final Decree”) attached as Exhibit 2 to this Order, and of their right to file *inter se* objections as described below, and to be heard on any objection prior to the Court’s decision to enter the Proposed Final Decree, and that this *inter se* proceeding will be their only opportunity to file such objections. The Court hereby **approves** the Notice attached hereto as Exhibit 1.

2. The Notice and the procedures set forth in this Order are reasonably calculated to provide a full opportunity for participation of all defendants and potential water right claimants in the legal process prior to the Court’s decision whether to enter the Proposed Final Decree.

3. Service of the Notice by first class mail on all known claimants whose addresses are reasonably ascertainable, and by publication on all unknown claimants and claimants whose addresses cannot be reasonably ascertainable, along with the other notice procedures required by this Order, constitute reasonable diligence in attempting to identify and give notice to all known and unknown water right claimants in the Pojoaque Basin.

4. The time period and procedure for filing objections to the Proposed Final Decree established by this Order will provide a full and fair opportunity for all water rights owners in the Pojoaque Basin to review the necessary documents and to be heard on any objections prior to the Court’s decision on whether to enter the Proposed Final Decree.

5. All who timely file *inter se* objections will thereafter be ordered to attend a

mandatory Scheduling Conference. **Failure to attend this Scheduling Conference will be deemed a waiver of any *inter se* objections.** Further procedures for resolving objections shall be determined at the conference.

Accordingly, and for good cause show, **IT IS HEREBY ORDERED** that the motion is granted. The following procedures are approved and adopted by the Court:

A. Filing of Motion for Entry of Proposed Final Judgment and Decree

1. Upon the completion of the adjudication of all non-Pueblo water rights, as between the State and the claimants, the State shall move the Court to enter the Proposed Final Decree (“Motion to Enter”), **but in no event later than November 30, 2016.** 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.

B. Notice of *Inter se* Proceeding

1. Within 3 days after filing the Motion to Enter, the State shall file 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. The State shall file a description of the procedures used to prepare the list, showing that it includes all claimants entitled to notice, so far as they can be ascertained with reasonable diligence.

2. Within 3 days after the date of filing the Updated List, the State shall mail the Notice attached as Exhibit 1 to all persons on the Updated List by first class mail, and file

certificates of such mailing. The deadline for the filing of *inter se* objections to be stated in the Notice shall be the first business day not less than 50 days after the filing of the Motion to Enter.

4. Within 10 days after the filing the Motion to Enter, the State shall publish the Notice for Publication, attached as Exhibit 3 to this Order, 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. The State shall file its Proof of Publication with the Court following publication of the Notice. The Court hereby **approves** the Notice attached hereto as Exhibit 3. **In the Notice for Publication, Plaintiff the State shall insert the deadline for objections, to be determined as 25 days from the last date of publication.**

5. Within 3 business days after the filing of the Motion to Enter, the State shall make copies of the Notice, the Proposed Final Decree, the Addendum, 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 available for public inspection on the Office of the State Engineer's website and at the Federal District Court in Santa Fe and Albuquerque, the Utton Center at the UNM School of Law, the Office of the State Engineer District I, and the Santa Fe County Pojoaque Satellite Office at the following addresses:

Office of the Clerk
United States District Court
106 South Federal Place
Santa Fe, New Mexico

Office of the Clerk
United States District Court
333 Lomas Blvd. NW
Albuquerque, NM

Joe M Stell Ombudsman Program at the Utton Center
UNM School of Law
1117 Stanford NE Rm. 1216

Albuquerque, New Mexico

Office of the State Engineer
Water Resource Allocation Program
District I
Bataan Memorial Building, Rm. 102
Santa Fe, New Mexico

County of Santa Fe
Pojoaque Satellite Office
5 West Gutierrez, Suite 9
Pojoaque, New Mexico

6. The Notice shall state the following: If you have water rights in the Pojoaque Basin that may be affected by the final determination of the following water rights in the Proposed Decree, you have the right to file *inter se* objections and offer evidence to the Court in support of those objections:

- A. all elements of non-Pueblo groundwater rights;
- B. the source of water, point of diversion and priority dates of non-Pueblo surface water rights served by Las Acequias de Chupadero; or
- C. additional sources of water that have been adjudicated to non-Pueblo surface water rights since 1983, as follows:

(1) the 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 the Acequia Larga de Jacona, and

(2) Pojoaque Creek and the Rio Tesuque as additional sources of water for non-Pueblo surface water rights served by the Acequia Ancon de Jacona.

7. In addition, to the extent consistent with the prior orders of the court and the Settlement Agreement, the Pueblos and the United States may file objections to non-Pueblo surface water priorities, within the time limits imposed by the Federal Rules of Civil Procedure, Local Rules, and/or the Orders of this Court. No later than the date for filing *inter se* objections, the Pueblos and the United States shall identify which, if any, of the *inter se* objections previously filed by the Pueblos in 1983 they intend to pursue.

8. 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 25 days after the date of the last publication of the Notice for Publication. Plaintiff shall fill in the exact date that objections are due consistent with this Order, once that date is determined. 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 5 above. The form shall also be included with the Notice to be mailed. An Objection Form is attached as Exhibit 4. **Plaintiff the State shall insert the deadline for objections, to be determined as 25 days from the last date of publication.**

C. Objections


1. Objections shall be filed within 25 days of the date of the last publication of the *Notice for Publication*. The burden shall be on the objecting party to demonstrate that the rights proposed to be adjudicated is not consistent with applicable law. Objections must include the following: (1) name and address of objector; (2) description of water rights claimed by objector; (3); description of the water right(s) subject to the objection; (4) statement of the specific legal and factual basis of the objection; and (5) how the objector will be injured or harmed by the determination of the water right(s) objected to in a legally cognizable way.

2. 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 B.5, within 10 days of the deadline for filing objections. The State shall concurrently file this Report with the Court. 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.

D. Mandatory Scheduling Conference

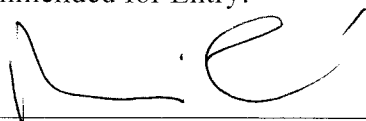
1. Persons who file timely *inter se* objections and the affected subfile parties/defendants shall be required to attend a scheduling conference with the Court in Santa Fe, to be held within 14 days of the deadline for filing objections. Further procedures for resolving objections shall be determined at the conference. 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.

IT IS SO ORDERED.



WILLIAM P. JOHNSON
UNITED STATES DISTRICT JUDGE

Recommended for Entry:



Pierre Levy, Special Master