

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. STATE ENGINEER,	)	
	)	
Plaintiff,	)	CASE NO. 66cv6639 MV/WPL
	)	
v.	)	<b>JOINT MOTION TO MODIFY THE PROPOSED FINAL JUDGMENT AND DECREE</b>
	)	
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	)	

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The United States of America and the Pueblos of Nambé, Pojoaque, San Ildefonso, Tesuque, and (collectively “United States and Pueblos”) jointly move this Court to modify the [Proposed] Final Decree presented by the State of New Mexico to ensure that it is consistent with the Aamodt Litigation Settlement Act, Pub. L. No. 111-291, §§ 601-26, 124 Stat. 3064, 3134-56 (2010) (“Settlement Act”) and the *Settlement Agreement* (Apr. 19, 2012) (“Settlement Agreement”), by including a paragraph in the Final Decree providing that: (1) the New Mexico State Engineer is appointed by the Court to be the Water Master to administer the Final Decree for the Pueblo water rights recognized in the *Partial Final Judgment and Decree of the Water*

*Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque* (Mar. 23, 2016) (Doc. 10547) (“Partial Final Decree”); (2) the State Engineer shall administer the Non-Pueblo water rights adjudicated by the Court as set forth in the Final Decree; and (3) the Court maintains continuing jurisdiction to interpret and enforce its Final Decree. Specifically, the United States and Pueblos request that the following paragraph be included in the Final Decree:

As specified in the Settlement Agreement dated April 19, 2012, this Court incorporates by reference the Settlement Agreement and appoints the State Engineer to be the Water Master responsible for administering the water rights adjudicated to the Pueblos under this Decree. The State Engineer shall administer both the Pueblo and the Non-Pueblo water rights adjudicated by this Court pursuant to the Final Decree. This Court maintains continuing jurisdiction to interpret and enforce the terms, provisions, and conditions of the Settlement Agreement dated April 19, 2012, and this Decree.

The paragraphs below are provided in support of this motion.

## I. INTRODUCTION

More than fifty years ago, the State of New Mexico invoked this Court’s jurisdiction to adjudicate all water rights of the Nambé-Pojoaque-Tesuque River stream system (“NPT”). Over the course of decades, the Court and the parties have addressed innumerable issues and resolved hundreds of water rights claims. Among the significant water rights claims that have been resolved are the water rights of the Pueblos. As the Court is aware, the Pueblos’ water rights claims were resolved by the Settlement Act, the Settlement Agreement, and adjudicated by this Court under an expedited inter se process. *See generally Memorandum Opinion and Order Approving Settlement Agreement* (Mar. 21, 2016) (Doc. 10543). In the process of resolving the Pueblos’ water rights, the Court approved the Settlement Agreement, incorporated the Settlement Agreement into the Partial Final Decree, and entered the Partial Final Decree. *Id.* at 23-24.

Today, the Court and the parties are engaged in the final steps of this adjudication to have this Court enter a Final Judgment and Decree for this adjudication. Pursuant to the Settlement Act, the Final Decree for this adjudication must be entered well before September 15, 2017. *See*

Settlement Act § 623(a)(1). In the course of completing this adjudication, the State of New Mexico has submitted a form of a proposed Final Decree that would incorporate all partial decrees of water rights determined in the NPT. *[Proposed] Final Judgment and Decree of the Water Rights of the Nambé, Pojoaque and Tesuque Stream System* (Dec. 9, 2016) (Doc. 11186-1) (“Proposed Final Decree”). The United States and Pueblos have identified omissions that should be addressed in the Proposed Final Decree. The Proposed Final Decree does not expressly incorporate the Settlement Agreement, identify the State Engineer as the Water Master over the Pueblo water rights decreed by the Court, provide that the State Engineer shall administer the Pueblo and Non-Pueblo water rights in accordance with the Final Decree, or provide for the Court’s continuing jurisdiction over the Final Decree and Settlement Agreement. The United States and Pueblos have drafted an additional paragraph to the Proposed Final Decree to maintain the Court’s continuing jurisdiction over the Final Decree and Settlement Agreement. *See supra* at 2.

## II. ARGUMENT

It is well-established that a decree court may retain jurisdiction to oversee, administer, and modify its decree in the future. *Arizona v. California*, 460 U.S. 605, 617-18 (1983). Nevertheless, to the extent that parties or a federal district court wish to have a court’s jurisdiction extend beyond the entry of a final decree, the court must specify that jurisdiction is retained; otherwise, an independent basis for jurisdiction is required for the court to address any dispute that develops from the underlying suit. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381-82 (1994).

Here, the parties have long sought to have the Court exercise continuing jurisdiction. In the State of New Mexico’s initial complaint, it specified the relief that it sought: “[t]hat the Court enter its order enjoining all illegal use of surface and underground water of the Nambé-

Pojoaque River System . . .” *Complaint* ¶ 4 at 9 (Apr. 20, 1966) (Doc. 1). Likewise, the United States requested “[t]hat the Court appoint a water master to administer the waters of the Nambé-Pojoaque River and the respective rights of all users therefrom . . .” *Complaint in Intervention* ¶ 5, at 5-6 (Feb. 13, 1967).

Decades after the initial complaints were filed, the United States, the Pueblos, the State of New Mexico, and many others arrived at the Settlement Agreement to determine the Pueblos’ water rights. The Settlement Agreement was reviewed and approved by the Court and the Partial Final Decree adjudicating the Pueblos’ water rights was entered based on the terms and conditions of the Settlement Agreement.

In the Settlement Agreement, as incorporated in the Partial Final Decree and approved by this Court, the parties contemplated that this Court would be the Decree Court: “‘Decree Court’ means the United States District Court for the District of New Mexico.” Settlement Agreement § 1.6.12. Likewise, the parties contemplated that this Court would issue a final judgment and decree that would adjudicate all water rights in the stream system, Pueblo and Non-Pueblo alike: “‘Final Decree’ means the final judgment adjudicating all claims and rights in the Aamodt case consistent with this Agreement.” *Id.* § 1.6.16. Further, the parties to the Settlement Agreement specifically contemplated the Court’s continuing jurisdiction in conjunction with the Final Decree for this longstanding, comprehensive general stream adjudication. The Settlement Agreement expressly provides that “[t]he Final Decree entered by the Decree Court shall incorporate by reference this Agreement and the Decree Court shall retain continuing jurisdiction to interpret and enforce the terms, provisions, and conditions of the Agreement, the Interim Administrative Order, and the Final Decree.” *Id.* § 1.5.

Here, the parties to the Settlement Agreement have agreed, and the Court approved, that the State Engineer would be responsible for administration of the Final Decree, including the

Pueblos' water rights. *Id* at § 5.2.1.1 (Non-Pueblo water right administration by the State Engineer); §§ 5.2.1.2, 5.6 (Pueblo water right administration overseen by the State Engineer acting as the water master). At all times, the performance of the State Engineer “shall be solely in accordance with, and limited by, [the Settlement] Agreement, the Final Decree, and further orders of the Decree Court.” *Id.* § 5.2.

In the end, this Court should articulate in its Final Decree the terms already determined by the Court. As previously contemplated by the parties and approved by the Court, the State Engineer should oversee administration of all the water rights adjudicated in the Final Decree as provided in the Settlement Agreement, and the Court should retain jurisdiction to interpret and enforce its Final Decree and the Settlement Agreement.

### **III. CONCLUSION**

For the reasons stated herein, this Court should include in the Final Decree the paragraph provided above concerning its continuing jurisdiction. The State of New Mexico has advised that it opposes this motion. The City of Santa Fe and Santa Fe County have advised that they support this motion. Counsel for the Rio de Tesuque Inc. has advised that he takes no position on this motion at this time.

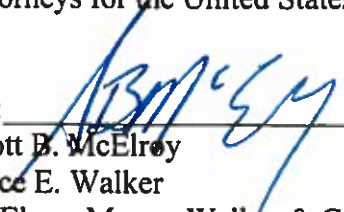
Respectfully submitted this \_\_\_ day of April, 2017,

Majel Russell  
Elk River Law Office  
145 Grand Avenue, Suite 5  
Billings, MT 59101  
Phone: 406-259-8611  
Fax: 406-259-3251  
mrussell@elkriverlaw.com  
Attorneys for the Pueblo of Tesuque

Maria O'Brien  
Sarah M. Stevenson  
Modrall Sperling  
P.O. Box 2168  
Albuquerque, NM 87103  
Phone: 505-848-1803  
Fax: 505-848-9710  
mobrien@modrall.com  
sstevenson@modrall.com  
Attorneys for the Pueblo of Pojoaque

Peter C. Chestnut  
Ann Berkley Rodgers  
Chestnut Law Offices  
P.O. Box 27190  
Albuquerque, NM 87125  
Phone: 505-842-5864  
Fax: 505-843-9249  
pcc@chestnutlaw.com  
abr@chestnutlaw.com  
Attorneys for the Pueblo de San Ildefonso

Andrew "Guss" Guarino  
U.S. Department of Justice Environmental  
and Natural Resources Division  
999 18th Street  
Denver, CO 80202  
Phone: 303-844-1343  
Fax: 303-844-1350  
Guss.Guarino@usdoj.gov  
Attorneys for the United States of America

By:   
\_\_\_\_\_  
Scott B. McElroy  
Alice E. Walker  
McElroy, Meyer, Walker & Condon, P.C.  
1007 Pearl Street, Suite 220  
Boulder, CO 80302  
Phone: 303-442-2021  
Fax: 303-444-3490  
smcelroy@mmwclaw.com  
Attorneys for the Pueblo of Nambé

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 24, 2017, the **UNITED STATES' AND PUEBLOS' MOTION FOR CLARIFICATION** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on April 24, 2017, copies of the foregoing **UNITED STATES' AND PUEBLOS' MOTION FOR CLARIFICATION** were mailed, by first-class U.S. mail, to the following non-CM/ECF participants:

Kay Lee Family  
Partnership  
P.O. Box 720339  
Dallas, TX 75372

Constance Dorn  
PO Box 32415  
Santa Fe, NM 87594

Elmer Lee Waite  
55 Banana Lane  
Santa Fe, NM 87506

Anthony J Baca SR.  
4-B Paseo de la Joya  
Santa Fe, NM 87506

Cynthia A. Miscikowski  
396 Fordyce Rd.  
Los Angeles, CA 90049

Jennifer L. Reglien  
106 County Road 84C  
Santa Fe, NM 87506

Barak Wolff  
28 Harriets Road  
Santa Fe, NM 87506

Deborah Dant  
PO Box 301  
Tesuque, NM 87574

Joe Gutierrez  
334 Kimberly Lane  
Los Alamos, NM 87544

Barbara A. Roybal  
11 J.R. Drive  
Santa Fe, NM 87506

Diane Senutovitch  
P.O. Box 303  
Santa Fe, NM 87504

John M Sena  
9709 Rio Grande NW  
Albuquerque, NM 87114

Barbara and Leroy Garcia  
18057-B US 84-285  
Santa Fe, NM 87506

Donald Yardman  
#16 Calle de Vecinos  
Santa Fe, NM 87506

John P. Bradley  
3 Las Joyas Lane  
Santa Fe, NM 87506

Brad Cameron  
P.O. Box 814  
Tesuque, NM 87574

Edward H. Ortiz  
3 Rancho Enrique  
Nambe, NM 87506

John and Mona Valencia  
441 County Road 84  
Santa Fe, NM 87506

CHRISTIAN GOSSEIN  
45 Bouquet Lane  
Santa Fe, NM 87506

Eileen Carter  
44 Summer Road  
Santa Fe, NM 87506

Jose and Margarita Trujillo  
28A Grazing Elk Drive  
Santa Fe, NM 87506

Cecilia G Popp  
28 Harriets Road  
Santa Fe, NM 87506-0022

Elaine Yardman  
#16 Calle de Vecinos  
Santa Fe, NM 87506

Kenny Kalfin  
94 N. Shining Sun Rd.  
Santa Fe, NM 87506

Leo E. Gonzales  
18A Avenida de Molino  
Española, NM 87532

Leslie Beaty  
P.O. Box 177  
Tesuque, NM 87574

Manuel R. Lopez  
P.O. Box 763  
Tesuque, NM 87574

Margaret Klaer  
P.O. Box 177  
Tesuque, NM 87574

Marshall E Hunt  
11441 Allerton Park Drive  
Unit 219  
Las Vegas, NV 89135

Mary G.B. Waite  
55 Banana Lane  
Santa Fe, NM 87506

Michael A Talbott  
231A Tano Road  
Santa Fe, NM 87506

Patricia Mary  
P.O. Box 962  
Los Alamos, NM 87544

Petronila M. Lopez  
P.O. Box 763  
Tesuque, NM 87574

Phillip E. Duran  
17 Feather Road  
Santa Fe, NM 87506

Reymundo J Lopez  
12 Bouquet Lane  
Santa Fe, NM 87506

Richard Reinders  
106 N Shining Sun  
Santa Fe, NM 87506

Robert C Habbersett  
103 Vista Redonda  
Santa Fe, NM 87506

Sally Cleaver  
PO Box 124  
Tesuque, NM 87574

Steven Dean Godfrey  
83 Estates Dr.  
Santa Fe, NM 87506

