

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

STATE OF NEW MEXICO, <i>ex rel.</i> STATE ENGINEER,)	
)	
)	
Plaintiff,)	
)	
v.)	
)	
R. LEE AAMODT, <i>et al.</i> ,)	
)	
Defendants,)	No. 66cv6639 MV/WPL
)	
and)	
)	
UNITED STATES OF AMERICA,)	
PUEBLO DE NAMBÉ,)	
PUEBLO DE POJOAQUE,)	
PUEBLO DE SAN ILDEFONSO, and)	
PUEBLO DE TESUQUE,)	
)	
Plaintiffs-in-Intervention.)	

**ORDER TO SHOW CAUSE
AND NOTICE OF PROCEEDING TO APPROVE SETTLEMENT AGREEMENT
AND ENTER PROPOSED PARTIAL FINAL JUDGMENT AND DECREE
ON THE WATER RIGHTS OF THE PUEBLOS OF
TESUQUE, POJOAQUE, NAMBÉ, AND SAN ILDEFONSO**

TO: ALL PERSONS CLAIMING WATER RIGHTS IN THE NAMBÉ-POJOAQUE-
TESUQUE STREAM SYSTEM AND ASSOCIATED UNDERGROUND WATER BASIN,
INCLUDING PERSONS PREVIOUSLY JOINED AS DEFENDANTS IN THE ABOVE-
CAPTIONED ACTION AND ALL UNKNOWN CLAIMANTS.

The United States District Court, District of New Mexico has ordered a proceeding to adjudicate the water rights of the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque (the “Pueblos”) in the Nambé–Pojoaque-Tesuque stream system (“Pojoaque Basin”), in accordance with the Settlement Agreement dated April 19, 2012 (“Agreement”) entered into by the Pueblos, the State of New Mexico (“State”), the United States of America (“United States”), the City of Santa Fe, and Santa Fe County (collectively the “Settlement Parties”). Representatives of non-Pueblo water users participated in the negotiation of the Agreement. This proceeding will result

in a final judgment of the Court that will be binding on all water right claimants in the Pojoaque Basin.

PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES THE ONLY OPPORTUNITY YOU WILL HAVE TO OBJECT TO THE AGREEMENT AND THE PROPOSED DECREE AND MAY AFFECT YOUR LEGAL RIGHTS.

YOU ARE ORDERED TO SHOW CAUSE why the Court should not approve the Agreement, enter the proposed Partial Final Judgment and Decree (“Proposed Decree”) adjudicating the Pueblos’ water rights pursuant to the Agreement, and enter the Interim Administrative Order (“Interim Order”). The Interim Order will govern the administration of water rights in the Pojoaque Basin until the entry of a Final Judgment and Decree adjudicating all Pueblo and non-Pueblo water rights in the Pojoaque Basin (“Final Decree”).

This proceeding will not adjudicate your water rights, but it is your only opportunity to object to the Agreement and the determination of the Pueblos’ water rights in the Pojoaque Basin. If you claim water rights in the Pojoaque Basin, you have the right to sign the Agreement or file an objection to the Agreement and Proposed Decree, but you must exercise that right in the manner, and within the deadlines, established by the Court. **The deadline for you to file an objection to the Agreement and Proposed Decree is April 7, 2014.** **If you do not object, you will be bound by the decisions of the Court, even if the terms of any decree entered by the Court differ from the terms of the Proposed Decree.**

I. Summary of the Proceedings

This case was filed in 1966 to adjudicate all surface and ground water rights in the Pojoaque Basin. Negotiations to settle the Pueblos’ water rights claims began in 2000. In 2010, Congress enacted the Claims Resolution Act of 2010, Title VI of which is the Aamodt Litigation Settlement Act, Pub. L. No. 111-291, 124 Stat. 3064, 3134-3156 (“Settlement Act”), which approved the Agreement to settle the Pueblos’ claims. The Settlement Act requires the Court to enter a partial final decree of the Pueblos’ water rights before September 15, 2017. The Settlement Act provides for the funding and construction of a Regional Water System to supply water to Pueblo and non-Pueblo parties. The United States will acquire, and Santa Fe County has acquired, water rights to supply water for the Regional Water System; the water to be

diverted from the Rio Grande. This proceeding is to determine whether the Court should approve the Agreement and enter the Proposed Decree and Interim Order.

II. Summary of the Proposed Decree

The Proposed Decree approves the Agreement and, subject to the terms of the Agreement, will adjudicate the water rights of the Pueblos of Nambé, Pojoaque, Tesuque, and San Ildefonso in the Pojoaque Basin, which may be used for agriculture, domestic, community, commercial, industrial and livestock uses, summarized as follows (all quantities refer to consumptive use).¹

1. The Pueblo of Nambé has Pueblo First Priority water rights to use 1459 acre-feet per year (afy) pursuant to the Agreement (Section 2.1.2), of which 522 afy are Existing Basin Use Rights (Section 2.3), and 937 afy of which are Future Basin Use Rights (Section 2.4). The Pueblo has a reserved right of 302 afy with a 1902 priority, to be exercised in accordance with Section 2.6.2. of the Agreement.

2. The Pueblo of Pojoaque has Pueblo First Priority water rights to use 236 afy, which are all Existing Basin Use Rights (Section 2.3). The Pueblo has Supplemental Pueblo Rights of 475 afy to be exercised, and subordinated, in accordance with Section 2.2. of the Agreement.

3. The Pueblo of Tesuque has Pueblo First Priority water rights to use 719 afy pursuant to the Agreement (Section 2.1.2), of which 345 afy are Existing Basin Use Rights (Section 2.3), and 374 afy of which are Future Basin Use Rights (Section 2.4).

4. The Pueblo de San Ildefonso has Pueblo First Priority water rights to use 1,246 afy pursuant to the Agreement (Section 2.1.2), of which 288 afy are Existing Basin Use Rights (Section 2.3), and 958 afy of which are Future Basin Use Rights (Section 2.4). The Pueblo has a reserved right for its eastern reservation for 4.82 afy for grazing purposes, with a 1939 priority (Section 2.6).

The above rights include the right to fill and maintain specific impoundments, and divert and consumptively use surface and ground water. Enforcement and administration of the Pueblos' water rights shall be in accordance with the Agreement. For administrative purposes,

¹ References are to sections of the Agreement.

for each Pueblo there is an Appendix to the Proposed Decree which identifies the points of diversion and places of use currently available for the Existing Basin Use Rights and, for the Pueblo of Pojoaque, its Supplemental Pueblo Rights. The Pueblos' water rights are not subject to abandonment, forfeiture, or loss by non-use.

III. Summary of the Settlement Agreement

1. The Pueblos will be adjudicated the water rights described in the Summary of the Proposed Decree. The Pueblos' Existing Basin Use rights have "first priority" and can be enforced against non-Pueblo surface water rights. Existing non-Pueblo surface water rights are, however, protected from priority enforcement of the Pueblos' Future Basin Use Rights so long as those non-Pueblo surface water rights are being used. Additional protections are provided to non-Pueblo existing uses against interference and impairment caused by the Pueblos' use of their Future Basin Use Rights. The Pueblos, to the extent feasible, will take water for new uses from the Regional Water System before exercising their Future Basin Use Rights.

2. Non-Pueblo well water right owners who sign the Agreement and elect to (a) connect to the County Water Utility ("CWU") when service is available; or (b) reduce their uses as set forth in Section 3.1.7.4 of the Agreement are protected from priority administration with regard to Pueblo uses. The Agreement does not require involuntary capping of any wells. A party who agrees to connect to the CWU will be required to discontinue use from the well for domestic purposes upon connection to the CWU. Domestic well water right owners who connect and transfer their domestic use water rights to the CWU will not be charged a water rights acquisition fee.

3. The State will establish a Connection Fund to assist non-Pueblo domestic well water right owners who sign the Agreement and agree to connect to the CWU. The State will establish an Impairment Fund to mitigate impairment to non-Pueblo groundwater rights as a result of new Pueblo uses.

4. The Pueblos and the United States on their behalf agree not to challenge the quantity or priority of the water rights of non-Pueblo parties who sign the Agreement and do not object to the entry of the Proposed Decree.

5. The Agreement will become enforceable (Enforcement Date) when the Court enters the Proposed Decree and Interim Order.

6. The Pojoaque Basin is fully appropriated and there will be no new appropriations after the Enforcement Date of the Agreement.

7. The Pueblos have agreed that the State Engineer will serve as Water Master for administration of the Pueblos' water rights as described in the Agreement. Under the Agreement, the State Engineer, as Water Master, has the authority to curtail Pueblo surface and ground water diversions to ensure compliance with the Interim Order and the Final Decree. The State Engineer will administer non-Pueblo water rights pursuant to the Agreement and his statutory authority. All groundwater diversions from both Pueblo and non-Pueblo wells will be metered, reported, and monitored. All surface water diversions into Pueblo and non-Pueblo ditches will be measured, reported and monitored.

8. The Agreement includes waivers and releases of claims by all Settlement Parties.

9. Before the Court enters the Final Decree the water supply for the Regional Water System must be secured, all funding required under the Settlement Act (other than for construction of the Regional Water System) must be appropriated, rules and regulations to govern the administration of water rights in the Pojoaque Basin under the Agreement must be adopted, and various agreements among the governmental parties must be executed.

10. The Agreement will no longer be effective if a Final Decree is not entered by September 15, 2017, although that date may be extended by agreement of the governmental Settlement Parties.

11. Under the terms of the Settlement Act and the Agreement, the Agreement and the Final Decree may be voided by the Court on notice from a Pueblo or the United States that the Secretary of the Interior has determined that the Regional Water System is not, or will not be substantially complete by June 30, 2024. The process for determining Substantial Completion cannot be initiated until June 30, 2021.

IV. Summary of the Interim Administrative Order

The Interim Order provides that, prior to the entry of a Final Decree, the Pueblos have the rights to use water recognized in the Agreement and the Proposed Decree, and state law water rights shall be governed by subfile orders entered in the adjudication or otherwise in accordance with state law, subject to the terms of the Agreement.

V. Rights and Options of Water Right Owners

If you claim water rights in the Pojoaque Basin, you have the following rights and options:

1. **You may become a Settlement Party (Option 1).** If you become a Settlement Party, you will be entitled to the benefits of the Agreement, including the protections from priority calls by the Pueblos as described above in the Summary of Settlement Agreement. **If you own a water right in a domestic well, you must also make an election about that well pursuant to Section 3.1.7.2 of the Agreement.** That section requires that domestic water right owners elect one of three options as to whether, or when, they will connect to the planned Regional Water System and whether they will be eligible to receive funds from the State for the costs of connection to the system. The Notice of Domestic Well Election is part of the Acceptance form, so individuals wishing to become a settlement party need file only one document.

You may become a Settlement Party by filing with the Court an original and two signed copies of the Acceptance of Settlement Agreement and Notice of Domestic Well Election (“Acceptance and Election”). An Acceptance and Election form is attached to this Order and available at the locations and websites specified below. You must file the original and two copies of the Acceptance and Election by taking the original and the two copies to the Clerk’s Office at one of the United States Courthouses which are located at 120 South Federal Place in Santa Fe; 333 Lomas Blvd. NW, Suite 270 in Albuquerque; and 200 E. Griggs in Las Cruces. Those individuals who file in person must take an additional copy with them if they want a Court-stamped copy back.

You may also file your Acceptance and Election by mailing a signed original and two copies to:

United States District Court
333 Lomas Blvd. NW, Suite 270
Albuquerque, NM 87102

Those individuals who file by mail and desire a Court-stamped copy must provide an additional copy of the Acceptance and Election and a pre-addressed, stamped envelope.

If you file the Acceptance and make an Election for your well, you need do nothing further in this proceeding.

2. You may file an objection to the Agreement and Proposed Decree (Option 2).

If you wish to object to the Agreement and the Proposed Decree, you or your attorney must, no later than April 7, 2014, file an original and two copies of your objection using the objection form available at the locations and websites specified below, and attached to mailed copies of this Order to Show Cause.

You may file an Objection by taking the original and two copies to the Clerk's Office at one of the United States Courthouses which are located at 120 South Federal Place in Santa Fe; 333 Lomas Blvd. NW, Suite 270 in Albuquerque; and 200 E. Griggs in Las Cruces. Those individuals who file in person must take an additional copy with them if they want a Court-stamped copy back.

You may also file your objection by mailing a signed original and two copies to:

United States District Court
333 Lomas Blvd. NW, Suite 270
Albuquerque, NM 87102.

Those individuals who file their objection by mail and desire a Court-stamped copy must provide an additional copy of the objection and a pre-addressed, stamped envelope.

Within thirty (30) days after the deadline for objection has closed, the Settlement Parties shall file a motion with a proposed case management order to address the objection process. After the deadlines for filing responses and replies expire, the Court will set a case management conference to address the objection process.

If you are the owner of a water right in a well, and you do not choose either Option 1 or Option 2 above, you will be deemed a "non-responding owner" according to Section 3.1.9 of the Agreement, and you may be subject to further proceedings to determine why you should not be required to comply with Section 3.1.7.2.1 of the Agreement and otherwise be bound by and receive the benefits of the Agreement and be deemed a Settlement Party.

You will be bound by the decisions of the Court, including any decree(s) entered by the Court that differ(s) from the Proposed Decree whether you become a Settlement Party under Option 1 or file an objection to the Agreement and Proposed Decree under Option 2.

VI. For Further Information

This Order to Show Cause provides only a brief summary of the Agreement and the Proposed Decree. Copies of the Agreement, Proposed Decree, Interim Order, Acceptance and Election Form, and Objection Form are available for you to review at the following locations:

Santa Fe County
Pojoaque Satellite Office
5 West Gutierrez, Suite 9
Pojoaque, New Mexico 87506

(Open Noon to 6pm, Tues., Wed., Thurs.)

Office of the State Engineer
Water Rights Division
407 Galisteo St.
Bataan Memorial Building, Rm. 101

Santa Fe, New Mexico

These documents are also available for your review online at the Office of the State Engineer's website: http://www.ose.state.nm.us/legal_ose_aamodt_info.html.

In addition, the County will include information in the mailing of this Order setting forth the dates and times of public meetings where further information will be available.

Information explaining the Agreement and how to file an Acceptance or Objection may be obtained from the Joe M. Stell Water Ombudsman Program at the Utton Transboundary Center of the University of New Mexico School of Law. You may call the toll-free Water Adjudication Helpline at 1-877-775-8333 or directly at (505)-277-0551. Leave your name, phone number, and question. They will attempt to call you back by the next business day.

Additional information may be found at the Center's website at:
<http://uttoncenter.unm.edu/ombudsman/npt.php>

IT IS SO ORDERED.



WILLIAM P. LYNCH
UNITED STATES MAGISTRATE JUDGE