

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

STATE OF NEW MEXICO on the)	
relation of State Engineer,)	
)	
Plaintiff,)	69cv07896-MV
)	RIO TAOS ADJUDICATION
-v-)	
)	69cv07939-MV
EDUARDO ABEYTA, et al. &)	RIO HONDO ADJUDICATION
CELSO ARELLANO, et al.,)	(Consolidated)
)	
Defendants.)	Water Rights of Taos Pueblo
_____)	

Initial Scheduling and Planning Order for Expedited Proceeding on Objections to the Proposed Partial Final Judgment and Decree on the Water Rights of Taos Pueblo

The Special Master enters this Order pursuant to Fed. R. Civ. P. 16(b) and the December 11, 2013, Interim Procedural Order (Docket No. 5694) to guide the expedited proceeding on the water rights of Taos Pueblo. In entering this Order, the Special Master is guided by concerns for efficiency and for the resources of all parties. The Special Master has considered the comments of counsel and parties *pro se* at the December 9, 2013, Planning and Scheduling Conference, the Statements of Issues, and the proposals for further proceedings.¹

I. Parties to This Proceeding

A. Background

Pursuant to this Court’s March 11, 2013, *Procedural and Scheduling Order for Review of Proposed Settlement Agreement and Partial Final Judgment and Decree on the Water Rights of*

¹The Interim Procedural Order requested the Settling Parties and any interested objectors to file and serve proposals for further proceedings, informed by the legal and factual issues raised by the parties in their Statements of Issues. The United States, the State of New Mexico, *ex rel.* State Engineer, the Taos Valley Acequia Association, the Town of Taos, and the Mutual Domestic Water Consumer Associations as well as numerous objectors responded with proposals January 30 through February 20, 2014.

Taos Pueblo (No. 5546) (“March 11, 2013, Procedural Order”), this expedited proceeding was commenced by the May 31, 2013, *Joint Motion to Approve and Enter Partial Final Judgment and Decree on the Water Rights of Taos Pueblo* (No. 5553) filed by the United States of America, the State of New Mexico, *ex rel.* State Engineer, Taos Pueblo, the Taos Valley Acequia Association on its own behalf and 54 of its 55 member Acequias on their own behalves (“TVAA”), the Town of Taos, the El Prado Water and Sanitation District (“El Prado”), and 12 Taos Area Mutual Domestic Water Consumer Associations (“MDWCAs”) (“May 31, 2013, Joint Motion”). For purposes of this Order, these parties shall be referred to as the “Settling Parties.”

In accordance with the March 11, 2013, Procedural Order, all defendants and other potential water right claimants were provided notice via mail, publication and public meetings, that only those parties who timely filed an objection to the Proposed Partial Final Judgment and Decree on the Water Rights of Taos Pueblo (“Decree”) on or before October 28, 2013, and who appeared at a mandatory scheduling conference, would be permitted to participate actively in this proceeding. Following the December 9, 2013, scheduling conference, the Special Master entered the Interim Procedural Order requiring those who timely filed objections to the Decree and who appeared at the scheduling conference to file a brief Statement of Issues certifying that they own water rights in the Taos Stream System and describing the legal and/or factual issues which they intend to pursue in this proceeding. Statements of Issues were required to be postmarked no later than January 10, 2014.

B. Parties

Upon examination of the Clerk of Court’s Docket, and pursuant to the attendance roll taken at the scheduling conference, the Special Master hereby finds that the following individuals or

entities timely filed objections, attended the mandatory scheduling conference, and timely filed

Statements of Issues:

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106 Siler Rd.
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andersonkarmar@msn.com

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Fay Lucile Leigh-Griender
P.O. Box 1350
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Jose Manuel Santistevan (Est)
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Taos, NM 87571

Jerome F. Lucero
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El Prado, NM 87529

Alfred Trujillo
P.O. Box 367
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For purposes of this Order, these parties shall be referred to as “Objectors.” Only the Objectors listed above, or other parties permitted special leave to participate by the Court, shall be entitled to participate in this proceeding and receive service of pleadings and other papers.

C. Withdrawal

At any time, an Objector may request to withdraw from this proceeding by filing a Request to Withdraw Objection.

D. Representation

Pursuant to D.N.M.LR-Civ 83.7, entities other than a natural person must be represented by an attorney in this Court. Accordingly, the Special Master finds that

The Estate of Jose Manuel Santistevan

must be represented by counsel to participate in this proceeding after the entry of this Order.

All Objectors are cautioned that they cannot represent any person other than themselves.

E. Conduct of the Case

All parties participating in this expedited proceeding will be expected to comply with the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of New Mexico, and all orders entered by this Court.

II. Preliminary Case Plan and Schedule

A. Service of Pleadings and Documents

The Special Master finds that, as provided by Paragraph (3) of this Court’s CM/ECF Administrative Procedures Manual, all parties represented by counsel of record and all *pro se* Objectors who have registered an e-mail address with the Court’s CM/ECF system, will be

electronically served with all filed documents via the CM/ECF system and have waived their rights under the Federal Rule of Civil Procedure 5 to personal service or service by mail of such documents.

Upon examination of the Clerk of Court's Docket, the Special Master finds further that the following *pro se* Objectors have not registered an e-mail address, and shall be served as provided by the Federal Rules of Civil Procedure:

Glorianna D. Atencio P.O. Box 235 Española, NM 87532	Fay Lucile Leigh-Grieder P.O. Box 1350 El Prado, NM 87529	Jose Manuel Santistevan (Est) c/o Mary Ann Romo 211 Ribak Lane Taos, NM 87571
Bruce McDowell Brown P.O. Box 193 Arroyo Seco, NM 87514	Judith Hovetter & Gray Mercer P.O. Box 2164 El Prado, NM 87529	Whitney Mechem Nieman P.O. Box 357 El Prado, NM 87529
Elaine S. Spray P.O. Box 201 El Prado, NM 87529	Alfred Trujillo P.O. Box 367 Arroyo Hondo, NM 87513	Gail Ann Viola 275 Camino Ovejero El Prado, NM 87529

This means that *pro se* Objectors must ensure that all pleadings and documents they file after the date of entry of this Order are served in accordance with Rule 5. Regardless of how service is accomplished, a certificate of service is required. Fed. R. Civ. P. 5(d)(1).

B. Briefing of the May 31, 2013 Motion

The March 11, 2013, Procedural Order stayed the filing of responses to the May 31, 2013, Joint Motion until after the entry of this Scheduling and Planning Order. The Special Master now finds that formal briefing in support of, and responses in opposition to, the May 31, 2013, Joint Motion is necessary to frame issues and to provide information essential to the Court's further management of this case. The Settling Parties must show that they have legally cognizable grounds for their motion to be granted. Objectors must show they have legally cognizable grounds for their

objections to be considered by the Court and must include sufficient detail that will permit the parties and the Court to identify and group common issues of law or fact for efficient resolution, and assess the need for discovery, further briefing, and any evidentiary hearings. In other words, legal positions must be supported by legal authority; factual positions must be supported by materials which would demonstrate that there are relevant facts at issue which must be developed in further proceedings. The Special Master finds further that for the purposes of this initial briefing, discovery is not warranted.

Accordingly,

1. On or before **March 26, 2014**, the Settling Parties shall file and serve their opening briefs setting forth the facts and legal authority they assert, including, consistent with D.N.M.LR-Civ 7.3(b), any additional evidence, in the form of affidavits, deposition excerpts or other documents in support of their allegations of fact. In lieu of the limitation provided by D.N.LR-Civ. 7.5, each of the Settling Parties' opening briefs must not exceed 50 double-spaced pages, excluding the certificates of service and any supporting exhibits. The Settling Parties are urged to consult among themselves and, where possible, avoid duplication of arguments and attachments.²

2. On or before **June 26, 2014**, Objectors shall file and serve their response briefs that cite legal authority in support of their legal positions, set forth any facts that Objectors contend will show harm to them by entry of the Decree, and specify which of the Settling Parties' allegations are disputed. In lieu of the limitation provided by D.N.LR-Civ. 7.5, each Objector's response to each Settling Party's brief must not exceed 50 double-spaced pages, excluding the certificates of service and any supporting exhibits. Objectors are urged to consolidate their responses to the Settling

² As an example: if the Settling Parties agree on the standard of review, that legal argument could be advanced in one opening brief, with a statement that all other Settling Parties concur.

Parties' briefs where possible to avoid duplication of arguments and attachments. Objectors may elect to file one consolidated response brief if that brief is limited to 50 pages. Objectors may apply for a waiver to this limit for good cause shown. **An Objector's failure to timely file response briefs will constitute consent to grant the May 31, 2013, Joint Motion, and will bar the Objector from participating further in these proceedings.**

3. The Settling Parties may, on or before **August 4, 2014**, file and serve reply briefs. In lieu of the limitation provided by D.N.LR-Civ. 7.5, each reply to each objector must not exceed 20 double-spaced pages, excluding the certificates of service and any supporting exhibits. Consolidation of replies is encouraged.

Local Rule 10.5, which limits exhibits to a total of 50 pages, is hereby waived, although parties are strongly encouraged to curate carefully their exhibits. The submission of copies of cases, voluminous treatises, extensive legislation and the like are strongly discouraged for this initial briefing.

C. Discovery

No party shall conduct discovery concerning the subject matter of this expedited proceeding at this time. The need for and scope of disclosures and discovery will be assessed at the pretrial conference following the conclusion of the initial briefing.

D. Document Depositories

Provisions for physical and electronic document depositories will be determined at the Fed.R.Civ.P. 16 pretrial conference following completion of the initial briefing.

E. Local Rule Waiver

Rule 7 of the Local Rules of Civil Procedure provides in part "[m]ovants must determine

whether a motion is opposed, and a motion that omits recitation of a good-faith request for concurrence may be summarily denied.” Taking into account the number of parties to this proceeding, the Special Master finds that complying with this provision would result in large expenditures of time and effort without significant benefit to this case. Accordingly, this provision shall be waived for these proceedings except when a party seeks an extension of time to file a pleading or to take some other required action. In that case, all parties who have registered an e-mail address with the Court’s CM/ECF system must be consulted. If all parties agree to the extension, the party seeking the extension of time need only file and serve a notice of the agreed-upon extension.

F. Meetings

After reviewing Objectors’ Statements of Issues, the Special Master finds that Objectors would benefit from an opportunity, or opportunities, to meet with representatives of the Settling Parties, including experts, and discuss their concerns, as soon as practicable but before June 26, when response briefs are due. The Settling Parties shall coordinate with the Utton Center to organize one or more group meetings in Taos with the Objectors, and shall be available further, to the greatest extent possible, for individual discussions with the Objectors.

G. Pretrial Conference

A Rule 16(b) Pretrial Conference will be held in August, following the close of briefing, at a time and date to be announced.

IT IS SO ORDERED.

/electronic signature/
Vickie L. Gabin, Special Master