

6TH JUDICIAL DISTRICT COURT
HIDALGO COUNTY, NM
FILED IN THIS OFFICE
4/22/2014 9:44:08 AM
MELISSA FROST

STATE OF NEW MEXICO
COUNTY OF HIDALGO
SIXTH JUDICIAL DISTRICT COURT

AMO

STATE OF NEW MEXICO *ex rel.*
NEW MEXICO STATE ENGINEER,
Plaintiff,

CV 2005-0054

v.

Hon. J. C. Robinson

ROSETTE, INC., *et al.*
Defendants.

Animas Underground
Water Basin

**PROCEDURAL ORDER GOVERNING EXPEDITED *INTER SE*
ADJUDICATION OF STATE LAW WATER RIGHTS**

THIS COURT previously ordered that all water rights claims in the Animas Underground Water Basin (the "Basin") be adjudicated in expedited *inter se* proceedings and, to ensure that the adjudication proceeds expeditiously and in accordance with due process, also ordered that: (a) Notice be given to all known and unknown water rights claimants in the Basin of the procedure to be followed when providing water rights claimants with notice of court hearings and the filing of orders, motions and other documents with the Clerk; and (b) certain basin-wide issues, including farm delivery requirements and consumptive irrigation requirements for all water rights in the Basin, be resolved in basin-wide proceedings prior to the adjudication of state law water rights claims in expedited *inter se* proceedings. See Case Management Order Mandating Basin-wide Issue Proceedings and Expedited *Inter Se* Proceedings and Prescribing Procedure for Providing Basin-wide Notice of All Proceedings, filed August, 9, 2012 (the "Case Management Order").

The forgoing tasks having been accomplished, the adjudication of state law water rights claims in expedited *inter se* proceedings can now proceed in accordance with the procedures set forth in this Order.

IT IS THEREFORE ORDERED THAT:

A. Adjudication by Hydrographic Survey Sections

The State of New Mexico *ex rel.* State Engineer (the "State") has, for purposes of conducting the hydrographic survey required by NMSA 1978, Section 72-4-13 (1982), divided the Basin into four geographic sections to aid in the adjudication process:

Section 1 (Steins Area)

Section 2 (Cotton City)

Section 3 (Village of Animas)

Section 4 (Animas Peak Area)

The State filed the hydrographic survey for Sections 1, 3, and 4 on October 25, 2011 and filed the hydrographic survey for Section 2 on February 26, 2014.

B. Joinder and Service

1. Pursuant to Rule 1-071.1 NMRA, the State shall join as a party to this adjudication each person who claims a water right in the Basin ("claimant"). Joinder shall be by geographic sections, to the extent practicable, commencing with claimants of irrigation water rights in Section 1. Upon completion of joinder of claimants to irrigation and other water rights, the State thereafter shall join persons claiming domestic and stock well uses whose claims were not adjudicated when adjudicating irrigation or other rights. Pursuant to Rule 1-071.1(B) NMRA, the service of adjudication packets as provided below shall constitute service of process on a water right claimant and joinder of that claimant as a defendant to this adjudication.
2. As soon as practicable, the State shall commence serving adjudication packets on known irrigation water right claimants identified in the hydrographic survey.

beginning with Section 1. Service shall be by certified mail, pursuant to Rule 1-004(E) NMRA. Any claimants who refuse service by certified mail shall be personally served. Known claimants who cannot reasonably be served by other means shall be served by publication, as authorized by NMSA 1978, Section 72-4-17 (1965) and Rule 1-004(K) NMRA. For each claimant for whom a signed return or proof of service has not been received, the State shall file a motion, accompanied by the affidavit required by Rule 1-004(J) NMRA, requesting an order authorizing service by publication.

3. The adjudication packet shall consist of the following documents:

- (a) a summons issued by the Plaintiff's designated personnel, in the form of Exhibit A hereto;
- (b) a description of the adjudication process and instructions to Respondents, which shall be in the form of Exhibit B hereto.;
- (c) a Proposed Judgment containing a description of the subfile claimant's water rights, as determined by the State. When joining a claimant of an irrigation water right, if the State has record of a domestic or stock well that is owned by the claimant and is located on the same hydrographic map as the irrigation water right, the State shall include the domestic or stock well in the Proposed Judgment. Otherwise, domestic and stock wells shall be separately adjudicated.
- (d) The form of a Proposed Judgment shall differ depending upon whether the water right described therein is or is not based on a license to appropriate water issued by the State Engineer.
 - i. If the Proposed Judgment is based on a license, it shall be in the form of Exhibit C hereto, contain a description of the water right substantially

as it appears in the license and include a copy of the license and a map showing the location and amount of irrigated acreage or place of use and the location of the point of diversion; or

- ii. If the Proposed Judgment is not based on a license, it shall be in the form of Exhibit D hereto, contain a description of the claimant's water right, as determined by the State and include a subfile map showing the location and amount of irrigated acreage or place of use and the location of the point of diversion;

- (e) A Response and Request for Consultation (the "Consultation Request") for use by claimants who do not accept the State's determination of their water rights as set forth in the Proposed Judgment. The form of Consultation Request shall differ depending on whether or not the Proposed Judgment is based on a license. If the Proposed Judgment is based on a license, the Consultation Request shall be in the form of Exhibit E hereto, and if the Proposed Judgment is not based on a license, the Consultation Request shall be in the form of Exhibit F.

- (f) an envelope addressed to the State for the claimant to mail an appropriate responsive document signed by the claimant, as required by Paragraph C below;
and

- (g) contact information for the State, the Joe M. Stell Ombudsman Program at the Utton Transboundary Resources Center, and the Court.

4. By the 20th day of each month after the State begins service of summons, the State shall file with the Clerk of the Court the following information, by Subfile and date, for the previous calendar month:

- (a) A list of claimants for whom service has been completed, together with a

proof of service or publication, as required by Rule 1-004(L) NMRA;

- (b) A list of claimants who have provided the State with a signed judgment, which signed judgments shall be separately filed with the Court;
- (c) A list of claimants who have requested consultation with the State;
- (d) A list of claimants whose consultation process has been terminated by the State; and
- (e) A list of claimants who are subject to default for failure to respond in accordance with this Order.

C. Claimant's Obligation to Respond to Adjudication Packet: Consultation with the State

- 1. Claimants must respond to the adjudication packets served upon them by the State by the date set forth in the Summons, which shall be no less than 30 days and no more than 45 days from the date of the Summons, by returning to the State:
 - (a) a signed and dated Proposed Judgment signifying the claimant's agreement to the adjudication of its water rights as described in the Proposed Judgment that was included in the claimant's adjudication packet; or
 - (b) a Consultation Request, whereby the claimant states its objections to the Proposed Judgment that was included in the claimant's adjudication packet and requests a consultation with the State regarding the Proposed Judgment.

The State shall submit to the Court each Proposed Judgment that has been accepted by the claimant within five (5) business days after the State receives the accepted judgment from the claimant.

- 2. Claimants who file a Consultation Request must discuss their Proposed Judgment with representatives of the State. The State shall contact claimants

to discuss the Proposed Judgment and to arrange for further consultation as may be necessary, and may seek assistance for this process from the Ombudsman. If this contact does not result in an acceptance or final rejection of the Proposed Judgment, the claimant shall meet with representatives of the State at the Office of the State Engineer Water Rights Division's District III office (301 South Tin, Deming, New Mexico) at a mutually agreeable time. The State may be contacted at:

Stacey J. Goodwin
Special Assistant Attorney General
Law Offices of Randall W. Childress
300 Galisteo Street, Suite 205
Santa Fe, New Mexico 87501
(505) 982-4147

Counsel for the State of New Mexico

Claimants who fail to consult with the State at the Deming District Office after being afforded a reasonable opportunity to do so shall be defaulted to the water right described in the Proposed Judgment included in their adjudication packets.

3. At the consultation at the State's Deming District Office, the claimant shall produce all documents in its possession or control pertaining to its water right claim, and likewise the State shall produce the documents that form the basis for its assessment of the claimant's water right as set forth in the Proposed Judgment. If the State determines a field inspection is necessary or appropriate, a representative from the State and the claimant shall schedule an inspection as soon as practicable. Unless otherwise agreed to by the parties, the claimant or the claimant's representative shall be present during the field inspection and shall allow field personnel from the State access to the claimant's property as reasonably necessary to verify and inspect the Claimant's water rights claims.

If the consultation results in an agreement on the terms of the originally proposed or a revised Subfile Judgment, the State shall promptly prepare an agreed-upon judgment and the parties shall sign and submit the agreed-upon judgment to the Court.

D. Termination of Consultation; Rejection by Claimant

1. The State shall serve a Notice Terminating Water Rights Consultation ("Termination Notice"), attached hereto as Exhibit G, on each water right claimant who served a Consultation Request on the State but who did not subsequently accept a Proposed Judgment, no later than ninety days after the Consultation Request was served on the State. The Court may extend the time for serving a Termination Notice with respect to a specific subfile upon written motion by the State for good cause shown. The Termination Notice shall be served by first-class mail or hand-delivered. A form entitled Rejection of Proposed Subfile Final Judgment ("Rejection"), attached hereto as Exhibit H, shall be enclosed with the Termination Notice. The Termination Notice shall:
 - (a) notify the claimant of the deadline for filing the Rejection; and
 - (b) state that the Court may adjudicate the claimant's water right in the manner described in the Proposed Judgment if the claimant fails to complete and return the Rejection.
2. The claimant shall complete and file the Rejection with the Court Clerk and serve the State within twenty days after mailing of the Termination Notice.

E. Default Judgment Upon Failure to Respond to Adjudication Packet or Notice Terminating Water Rights Consultation

1. Claimants who, without good cause, either:
 - (a) fail to respond to the adjudication packet within the time set by the Court by delivering to the State either a signed Proposed Judgment or a Consultation Request; or
 - (b) fail to respond to a Termination Notice within the time set by the Court by returning to the State either a signed Proposed Judgment or by filing with the Court a Rejection shall be defaulted to the water right described in the Proposed Judgment.
2. Promptly following the respective deadlines for responding to the adjudication packet or Termination Notice, as applicable, the Court Clerk shall review the court record and, if appropriate, issue a Clerk's Certificate of Default certifying either that: (i) a proof of service pertaining to the claimant is on file with the Court but no signed Subfile Final Judgment or Request for Consultation is on file; or (ii) a certificate of service of Termination Notice is on file with the Court, but no Rejection is on file with the Court.
3. Within fifteen (15) days of issuance of the Clerk's Certificate of Default, the State shall file a Motion for Default Judgment, and serve the motion on the claimant(s), unless a signed judgment has been received by the State or a Rejection has been filed with the Court.

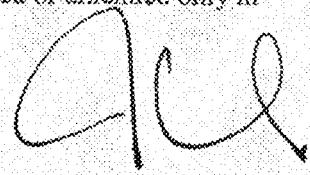
F. Expedited Inter Se Proceeding Concerning Proposed Judgments. All water rights claimants in the Basin shall be provided with the opportunity to participate in an expedited *inter se* proceeding concerning each Proposed Judgment submitted to the Court.

1. All claimants in the Basin who object to or would like to participate in the final resolution of a Proposed Judgment shall file a Notice of Intent to Participate in *Inter Se* Proceedings ("*Inter Se* Notice"), attached hereto as Exhibit I, within forty-five days after a notification first appears in the Monthly Adjudication Report that a copy of the Proposed Judgment is available for inspection on the Court's website.
2. The Monthly Adjudication Report shall include a section entitled "Proposed Subfile Judgments Awaiting *Inter Se* Proceedings" that contains, by Subfile:
 - (a) each Proposed Judgment that has been accepted or rejected by a claimant or as to which a Motion for Default Judgment is pending;
 - (b) the Rejection, if any; and
 - (c) any *inter se* notices relating to the proposed Judgment or Rejection.
3. The Court will enter a final judgment adjudicating the water rights for a specific subfile in accordance with the following procedure:
 - (a) If no *inter se* notices are filed to a Proposed Judgment accepted by the claimant named in the judgment or as to which a motion for default judgment is pending and if the judgment is otherwise proper, the Court will enter a final judgment adjudicating the water rights described therein as between the State and the claimant and as among the claimant and all other claimants in the Basin without further notice or hearing;
 - (b) If a claimant rejects its Proposed Judgment or another claimant files an *Inter Se* Notice in a subfile in which a Proposed Judgment has been filed, the Court will transfer the subfile to its Contested Subfile Docket. The Court will promptly set a scheduling conference for each subfile assigned to the

Contested Subfile Docket. At the scheduling conference the Court will determine whether a discovery and trial schedule should be set for that subfile or the subfile should be referred to mediation before such a schedule is set.

4. A final judgment in a subfile (i) constitutes a "judgment" within the meaning of Rule 1-054(A) NMRA from which an appeal may lie and (ii) is binding on the State, the claimant and all other water right claimants in the Basin regardless of whether the other claimants were served and joined as defendants, participated in or received actual notice of the subfile proceeding, or filed an *inter se* notice pertaining to the water rights adjudicated by the judgment. A final judgment in a subfile, once entered by the Court, may be modified or amended only in accordance with Rule 1-060 NMRA.

IT IS SO ORDERED.



JC Robinson
District Judge