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Procedural & Scheduling Order for Review of Proposed Settlement Agreement & Partial Final Decree (Taos)

USDC, DCNM

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Procedural and Scheduling Order for Review of Proposed Settlement Agreement and Partial Final Judgment and Decree on the Water Rights of Taos Pueblo (5546), State of New Mexico ex rel., State Engineer, et al., v. Eduardo Abeyta et al., and Celso Arellano, et al., 69cv07896 and 69cv07939, USDC, DCNM (Mar. 11, 2013)

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

STATE OF NEW MEXICO, <i>ex rel.</i> ,)	
State Engineer, <i>et al.</i> ,)	
)	
Plaintiffs,	)	69cv07896 MV
	)	<u>RIO PUEBLO DE TAOS</u>
	)	<u>ADJUDICATION</u>
v.)	
	)	69cv07939 MV
EDUARDO ABEYTA, <i>et al.</i> , and	)	<u>RIO HONDO ADJUDICATION</u>
CELSO ARELLANO, <i>et al.</i> ,)	
	)	(CONSOLIDATED)
Defendants.)	
)	
)	

**PROCEDURAL AND SCHEDULING ORDER FOR REVIEW OF PROPOSED
SETTLEMENT AGREEMENT AND PARTIAL FINAL JUDGMENT AND
DECREE ON THE WATER RIGHTS OF TAOS PUEBLO**

This matter comes before the Court upon the joint motion [Doc 5492] filed July 29, 2011, by the United States of America (“United States”), the State of New Mexico *ex rel.* State Engineer (“State”), Taos Pueblo (“Pueblo”), the Taos Valley Acequia Association (“TVAA”) on its own behalf and its 55 member Acequias on their own behalves, the Town of Taos (“Town”), the El Prado Water and Sanitation District (“EPWSD”), and 12 Taos Area Mutual Domestic Water Consumers’ Associations (“MDWCAs”) (collectively the “Settlement Parties”) seeking approval of procedures for (1) providing notice to all claimants of water rights within the Rio Pueblo de Taos and Rio Hondo stream systems of the Settlement Agreement executed by the Settlement Parties and of the Partial Final Judgment and Decree on the Water Rights of Taos Pueblo (“proposed Partial Final Judgment and Decree”) that the Settlement Parties seek consistent with their Settlement Agreement; and (2) hearing any objections to the

Settlement Agreement or the proposed Partial Final Judgment and Decree. Having considered the Settlement Parties' motion; the responses filed thereto; and the provisions of the Taos Pueblo Indian Water Rights Settlement Act enacted as Title V of the Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064, 3122-34 (2010) (the "Settlement Act"); the Court hereby FINDS:

1. The *Notice of Expedited Proceeding Concerning Settlement Agreement and Proposed Judgment and Decree on the Water Rights of the Taos Pueblo* ("Notice") attached as Exhibit 1 to this Order, with the objection deadline inserted as calculated pursuant to the terms of this Order, fairly and reasonably informs defendants and all known and unknown water rights claimants in the Rio Pueblo de Taos and Rio Hondo stream systems of the proposed Settlement Agreement and proposed Partial Final Judgment and Decree and of their rights to file objections and be heard on any objection prior to the Court's decision whether to approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree.

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 approve the Settlement Agreement and enter the proposed Partial Final Judgment and 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 can not reasonably be determined, along with the other notice procedures and public meetings required by this Order, constitute

reasonable diligence in attempting to identify and give notice to all known and unknown water right claimants in the Rio Pueblo de Taos and Rio Hondo stream systems.

4. The time period and procedure for filing objections to the Settlement Agreement and the proposed Partial Final Judgment and Decree established by this Order will provide a full and fair opportunity for all water right owners in the Rio Pueblo de Taos and Rio Hondo stream systems to review the necessary documents and to be heard on any objections prior to the Court's decision on whether to approve the Settlement Agreement and enter the proposed Partial Final Judgment and Decree.

5. All who file timely objections will thereafter be ordered to attend a mandatory Scheduling Conference. Following the Scheduling Conference the Court will enter a scheduling order setting, *inter alia*, (1) a deadline for all objectors to file detailed responses to the Settlement Parties' joint motion requesting the Court to approve the Settlement Agreement and enter the proposed Partial Final Decree; (2) a deadline for the Settlement Parties to reply to the objectors' responses; and (3) a hearing on the Settlement Parties' joint motion and all objections to the proposed Partial Final Decree.

Accordingly, and for good cause shown, IT IS HEREBY ORDERED that the Settlement Parties' motion be GRANTED.

IT IS FURTHER ORDERED: As soon as possible after all Settlement Parties have executed the Settlement Agreement as revised to conform to the Settlement Act ("Conformed Settlement Agreement"), but in no event later than 24 months before the Expiration Date of March 31, 2017 specified by Section 509(h)(1) of the Settlement Act, or the Expiration Date as it may be extended pursuant to Section 509(j), the Settlement Parties shall file a joint motion requesting the Court to approve their Conformed Settlement Agreement and enter a proposed Partial Final Judgment and

Decree that is consistent with that agreement and the Settlement Act (“Motion to Approve and Enter”). In the event the Expiration Date is extended, pursuant to Section 509(j) of the Settlement Act, the Settlement Parties shall promptly file a notice informing the Court and the other parties of the extended Expiration Date.

IT IS FURTHER ORDERED: The filing of responses to the Motion to Approve and Enter shall be stayed until after the Court enters a scheduling order following the initial mandatory Scheduling Conference specified herein.

IT IS FURTHER ORDERED: Within 60 days of the filing of the Motion to Approve and Enter, the State shall file an updated list of the parties to the adjudication and other known water right claimants (including groundwater claimants) in the Rio Pueblo de Taos and Rio Hondo stream systems (“Updated List”), together with a description of the procedures used to prepare the list showing that it includes all claimants so far as they can be ascertained with reasonable diligence.

IT IS FURTHER ORDERED: Within 30 days after the date on which the State files the Updated List, the United States and the State shall mail the Notice attached as Exhibit 1 to this Order to all persons on the Updated List by first class mail, and file certificates of such mailing. The deadline for the filing of objections to be stated in the Notice shall be the first business date not less than 150 days after the filing of the Motion to Approve and Enter.

IT IS FURTHER ORDERED: The Settlement Parties shall establish and maintain online and hard copy document repositories that will include copies of the Settlement Agreement, the proposed Partial Final Judgment and Decree, and the amended statements of claim filed by the United States and the Pueblo in 1997, at the Internet address and locations specified in the Notice.

IT IS FURTHER ORDERED: Within 90 days after the filing of the Motion to Approve and Enter, the United States and the State shall publish the Notice in the *Albuquerque Journal* and *The Taos News* once a week for four weeks, and file proof of said publication with the Court.

IT IS FURTHER ORDERED: Following service and publication of the Notice and before the deadline for filing objections, the Settlement Parties shall hold two public meetings within the adjudication area.

Vickie L. Gabin

SPECIAL MASTER

EXHIBIT 1
NOTICE OF EXPEDITED PROCEEDING

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

STATE OF NEW MEXICO, <i>ex rel.</i> ,)	
State Engineer, <i>et al.</i> ,)	
)	
Plaintiffs,	)	69cv07896 MV
	)	<u>RIO PUEBLO DE TAOS ADJUDICATION</u>
v.)	
	)	69cv07939 MV
EDUARDO ABEYTA, <i>et al.</i> , and	)	<u>RIO HONDO ADJUDICATION</u>
CELSO ARELLANO, <i>et al.</i> ,)	
	)	(CONSOLIDATED)
Defendants.)	
)	
)	

**NOTICE OF EXPEDITED PROCEEDING CONCERNING SETTLEMENT
AGREEMENT AND PROPOSED JUDGMENT AND DECREE ON THE WATER
RIGHTS OF TAOS PUEBLO**

TO: ALL PERSONS OWNING WATER RIGHTS IN THE RIO PUEBLO DE TAOS STREAM SYSTEM, THE RIO HONDO STREAM SYSTEM, THEIR TRIBUTARIES AND ASSOCIATED UNDERGROUND WATER BASIN, INCLUDING PERSONS PREVIOUSLY JOINED AS DEFENDANTS IN THE ABOVE-CAPTIONED ACTION AND ALL UNKNOWN CLAIMANTS.

YOU ARE HEREBY NOTIFIED of the expedited proceeding established by the United States District Court, District of New Mexico, for the filing and hearing of objections to a proposed partial final judgment and decree (“proposed Decree”) which would adjudicate the water rights of Taos Pueblo (“Pueblo”) in the Rio Pueblo de Taos and Rio Hondo stream systems, and of objections to a settlement agreement (“Agreement”) negotiated by the Pueblo, the State of New Mexico (“State”), the United States of America (“United States”), the Taos Valley Acequia Association (“TVAA”) and its 55 member Acequias, the Town of Taos (“Town”), the El Prado Water and Sanitation District (“EPWSD”), and 12 Taos Area Mutual Domestic Water Consumers’ Associations (“MDWCAs”) (collectively the “Settlement Parties”). This proceeding will result in entry by the Court of a final adjudication decree that will be final and binding on all water right claimants in these stream systems.

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

By Order of the United States District Court, an expedited proceeding has been scheduled so that all water right claimants within the Rio Pueblo de Taos and Rio Hondo stream systems may be given notice, and an opportunity to be heard, concerning the Agreement and proposed

Decree. **This expedited proceeding will not adjudicate your own water rights, but will be the only opportunity you have to challenge the Agreement or the Pueblo's water rights in the Rio Pueblo de Taos and Rio Hondo stream systems.** If you claim water rights in the Rio Pueblo de Taos or Rio Hondo stream systems, you have the right to file an objection to the Agreement or the proposed Decree, but must exercise that right in the manner, and within the deadlines, established by the Court. **THE COURT HAS ESTABLISHED _____ AS THE DEADLINE FOR FILING SUCH OBJECTIONS.**

Brief Summary of the Proceedings:

Separate lawsuits to determine all surface and underground water rights in the Rio Taos and Rio Hondo stream systems began in 1969 and were consolidated into one proceeding. The United States was made a party to the consolidated suit on its own behalf and on behalf of the Pueblo, and the Pueblo has intervened on its own behalf. The United States and the Pueblo both filed statements of water rights claims on behalf of the Pueblo. These claims were last amended in 1997. Negotiations for settlement of the Pueblo's water rights in this suit began in 1989. In 2010, Congress enacted the Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064 ("Settlement Act"). Title V of that Act concerns the Agreement and the proposed Decree. The Settlement Act authorized the Secretary of the Interior to execute the Agreement, as amended to be consistent with the Settlement Act. However, other provisions of the Settlement Act, and of the Agreement, are contingent upon entry of a partial final decree of the Pueblo's water rights by March 31, 2017. Accordingly, the Settlement Parties have asked the Court to approve their Agreement and enter the proposed Decree and the Court has established this expedited proceeding to determine whether that request should be granted.

Brief Summary of the Proposed Decree:

The proposed Decree will approve the Agreement and, subject to the terms of that Agreement, adjudicate to the Pueblo (1) an aboriginal priority right to divert and consume the waters of the Rio Pueblo de Taos and Rio Hondo stream systems to irrigate 5,712.78 acres of lands historically irrigated by the Pueblo; (2) rights to fill and maintain specific impoundments, including 81 impoundments fed by ditches, with various specified priority dates; (3) rights to divert and consume 14.72 acre-feet of groundwater annually for stock watering purposes from 12 specified wells with various specified priority dates; (4) the right to divert and consume 300 acre-feet of groundwater annually for municipal, domestic, and industrial use with an aboriginal priority; and (5) the right to divert and consume annually an additional 1,300 acre-feet of groundwater with an aboriginal priority date. The proposed Decree further recognizes the Pueblo's contract right to the annual diversion and depletion of 2,215 acre-feet of water from the San Juan-Chama Project.

Brief Summary of the Settlement Agreement:

In addition to the terms described in the above brief summary of the proposed Decree, the Agreement includes: (1) protections for the 55 Acequias and their members' water rights, consistent with longstanding customs of water sharing and allocation, (2) resolution of the dispute between the State of New Mexico and the 12 MDWCAs regarding water rights of the MDWCAs; (3) resolution of Pueblo-Acequia disputes over the allocation of the waters of the Rio Lucero; (4) waivers of objections to certain water rights in the Taos Valley; (5) cooperative

mechanisms for the protection of the Buffalo Pasture, a sacred Pueblo wetland, including agreement by the Town of Taos and El Prado Water and Sanitation District to limit their use of existing wells located in the vicinity of the Buffalo Pasture in exchange for new wells to be located further away from the Buffalo Pasture; (6) San Juan-Chama Project water contracts for the Pueblo, the Town of Taos and El Prado Water and Sanitation District; (7) mitigation mechanisms for offsetting surface water depletion effects of Taos Valley groundwater development; (8) well spacing provisions to help avoid adverse effects on other wells; (9) cooperative hydrologic monitoring of surface and groundwater; (10) specific protections from priority calls; (11) waivers of specific claims by the United States and the Pueblo; and (12) Federal and State funding to implement the Settlement.

These are only brief summaries of the proceedings, the Agreement, and the proposed Decree. The complete texts of the Agreement and the proposed Decree are available to you as described below.

Rights and Options of Water Right Owners and Claimants:

If you own or claim water rights in the Rio Pueblo de Taos or Rio Hondo stream systems, or their tributaries or associated underground water basin, you have the following rights and options:

1. You may do nothing. If you do not wish to file an objection to the Agreement or the proposed Decree you do not have to take any further action. In that case, you will be bound by the Court's decision. Any claimant of water rights in the Rio Pueblo de Taos or Rio Hondo stream systems that fails to file a timely objection may not thereafter be heard to object to the Agreement or the proposed Decree.
2. You may file an objection to the Agreement or proposed Decree. If you wish to object, you or your attorney must, no later than _____, file an objection to the Agreement or proposed Decree with the Clerk of the United States District Court, District of New Mexico, 333 Lomas N.W., Albuquerque, NM 87102. An objection must include (a) the caption and civil action number (69cv07896-MV) of this case; (b) the name, mailing address, and telephone number of the objector(s) submitting the objection; (c) a description of the water rights claimed by the objector(s); and (d) if applicable, the name, address, and telephone number of the attorney filing the objection on behalf of the objector(s). For convenience, an objection form is available at the locations and websites specified below and attached to mailed copies of this Notice. Filing an objection constitutes a voluntary appearance in this civil action and affirmative submission to the jurisdiction of this Court with respect to all matters in this case.

If you file an objection by _____, you will receive a Court order setting a **mandatory** scheduling conference. Further proceedings on the proposed Decree will be scheduled at that conference. **ANY PARTY NOT APPEARING AT THE MANDATORY SCHEDULING CONFERENCE IN PERSON OR BY COUNSEL WILL THEREAFTER BE PRECLUDED FROM PARTICIPATING IN THE EXPEDITED PROCEEDING, NOTWITHSTANDING THE FILING OF A TIMELY OBJECTION.**

For Further Information:

The full text of the proposed Decree, the Agreement, and of the amended statements of

claim filed by the United States and the Pueblo in 1997, are available online at:

<http://www.ose.state.nm.us>

<http://www.taosgov.com> and

<http://www.taospueblo.com/>

In addition, hard copies of these documents are also available for you to review, and copy at your expense, at the following locations:

- TVAA Office, Taos County Agricultural Center, 202 Chamisa Rd, Suite D, Taos, NM
- Taos Public Library, 402 Camino de la Placita, Taos, NM

Before the date when objections are due, the Settlement Parties will host two public meetings regarding the Agreement, the proposed Decree, and this proceeding to adjudicate the Pueblo's water rights. Information concerning these meetings will be published in local media and on the web sites listed above.

Notice approved this ____ day of _____, 20__.

SPECIAL MASTER

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

STATE OF NEW MEXICO, <i>ex rel.</i> ,)	
State Engineer, <i>et al.</i> ,)	
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Plaintiffs,)	69cv07896 MV
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CELSO ARELLANO, <i>et al.</i> ,)	
)	(CONSOLIDATED)
Defendants.)	
)	
)	

**OBJECTION TO SETTLEMENT AGREEMENT OR PROPOSED PARTIAL FINAL
JUDGMENT AND DECREE ON THE WATER RIGHTS OF TAOS PUEBLO**

The party named below claims water rights in the Rio Pueblo de Taos or Rio Hondo stream systems and objects to the Settlement Agreement signed by the Settlement Parties or to the proposed Partial Final Judgment and Decree on the Water Rights of Taos Pueblo.

FULL NAME OF PARTY: _____
MAILING ADDRESS: _____

TELEPHONE NUMBER: () _____
SUBFILE NO., PERMIT NO., ACEQUIA NAME, OR OTHER DESCRIPTION OF WATER RIGHTS CLAIMED: _____

Is this objection filed by an attorney on behalf of the party? Yes No
If the answer to the preceding question is "Yes," the attorney must also provide the following information, otherwise the following lines may be left blank:

FULL NAME OF ATTORNEY: _____
ATTORNEY'S ADDRESS: _____

TELEPHONE NUMBER: () _____

I understand that I will be sent an order setting a mandatory scheduling conference and that my objection will not be considered by the Court unless I attend that scheduling conference.

Signed: _____ Dated: _____

This Notice must be received by the Court no later than _____. Attorneys must file electronically. Parties not represented by an attorney may mail this document to the Clerk's Office, U.S. District Court, 333 Lomas N.W., Albuquerque, NM 87102.