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Partial Final Judgment and Decree on the Water Rights of Taos Pueblo

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Partial Final Judgement 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 (Feb. 11, 2016)

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

STATE OF NEW MEXICO on the)	
Relation of the State Engineer,)	
)	
Plaintiff,)	
)	
v.)	
)	
EDUARDO ABEYTA, et al.,)	No. CV 69-7896 MV/WPL &
CELSO ARELLANO, et al.,)	No. CV 69-7939 MV/WPL
Defendants,)	(Consolidated)
)	
)	(Rio Pueblo de Taos and
)	Rio Hondo Stream Systems)
_____)	

PARTIAL FINAL JUDGMENT AND DECREE
ON THE WATER RIGHTS OF TAOS PUEBLO

THIS MATTER comes before the Court pursuant to the Joint Motion to Approve and Enter Partial Final Judgment and Decree on the Water Rights of Taos Pueblo (“Joint Motion”), submitted on May 31, 2013 (No. 5553), by Taos Pueblo (“Pueblo”), the United States of America (“United States”), the State of New Mexico *ex rel.* State Engineer (“State”), the Town of Taos (“Town”), the Taos Valley Acequia Association (“TVAA”) on its own behalf and 54 of its 55 member Acequias on their own behalves, the El Prado Water and Sanitation District (“EPWSD”), and the Twelve (12) Taos-area Mutual Domestic Water Consumer Associations (“MDWCAs”) (collectively, the “Movants”). The Court, having considered the Joint Motion and the Movants’ Settlement Agreement attached hereto as Exhibit A,¹ including all attachments thereto and specifically the July 1997 Taos Pueblo Water Use Survey as amended and

¹ The full title of Exhibit A is *Abeyta Water Rights Adjudication: Settlement Agreement Among the United States Of America, Taos Pueblo, The State Of New Mexico, The Taos Valley Acequia Association And Its 55 Member Acequias, The Town Of Taos, El Prado Water And Sanitation District, And The 12 Taos Area Mutual Domestic Water Consumers’ Associations, Dated December 12, 2012.*

supplemented in 2011 that is Attachment 7 to the Settlement Agreement, all objections filed regarding the Joint Motion and all attached Exhibits, and being otherwise fully advised in the premises, FINDS:

1. The Court has jurisdiction over the subject matter and the parties in this cause.
2. This cause is a consolidated general adjudication of all rights to divert, impound, or use the public surface and underground waters of the Rio Pueblo de Taos and Rio Hondo stream systems, pursuant to NMSA 1978, §§ 72-4-13 through -19.
3. All rights of the Pueblo to divert, impound, or use the public surface and underground waters within the Rio Pueblo de Taos and Rio Hondo stream systems are decreed in this Partial Final Judgment and Decree.
4. This Partial Final Judgment and Decree is the product of the Movants' negotiated settlement.
5. Notice of the deadline for filing and serving objections to the water rights of the Pueblo described in this Partial Final Judgment and Decree was served on all parties to this case and on all potential water rights claimants, known and unknown. All water right owners in the Rio Pueblo de Taos and Rio Hondo stream systems have been provided a full and fair opportunity to review the relevant documents and to be heard on any objections prior to the Court's decision on whether to approve and enter this Partial Final Judgment and Decree, including the Settlement Agreement attached hereto as Exhibit A.
6. The Joint Motion is well taken and should be granted.
7. The rights of the Pueblo adjudicated in this Partial Final Judgment and Decree may in the future be subject to general *inter se* proceedings involving all adjudicated water rights of the Rio Grande stream system and its tributaries.

8. There is no just reason for delay in the entry of this Partial Final Judgment and Decree as a final judgment pursuant to Fed. R. Civ. P. 54 (b).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. APPROVAL OF SETTLEMENT AGREEMENT. Upon consideration of the Joint Motion, Exhibit A, and for good cause shown, the Court approves the Movants' Settlement Agreement, which is attached hereto as Exhibit A and which is incorporated into this Partial Final Judgment and Decree by reference, including all attachments thereto, as if fully set forth herein.

2. CONTRACT RIGHTS TO WATER. The Pueblo has a contract right to the annual diversion and depletion of Two Thousand Two Hundred and Fifteen (2,215) acre-feet from the San Juan-Chama Project, to be delivered at the existing outlet works at Heron reservoir unless otherwise agreed under the terms of the Contract dated December 28, 2011, between the Secretary of the Interior and the Pueblo and required by Congress in Section 508(b)(1) of the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291, tit. V, 124 Stat. 3064, 3122-34 (2010) ("Settlement Act"). Nothing herein is intended to confer jurisdiction on this Court over any action to enforce or challenge said contract or over any action for breach thereof.

3. HISTORIC AND EXISTING USE WATER RIGHTS. The Pueblo has an aboriginal water right, unless otherwise specified herein, for all of its historic and existing water uses, which are described in this Partial Final Judgment and Decree. Regardless of the means used for quantifying the Pueblo's water rights under this Partial Final Judgment and Decree or Exhibit A, the Pueblo may devote such rights to any use. Such uses and any changes in points of diversion, place or purpose of use, shall be subject to the requirements of Exhibit A and applicable law.

A. HISTORICALLY IRRIGATED ACREAGE USE. Subject to the provisions of Exhibit A, the Pueblo has the right to divert and consume the waters of the Rio Pueblo de Taos and Rio Hondo stream systems to irrigate the Five Thousand Seven Hundred Twelve and Seventy-Eight Hundredths (5,712.78) acres of land identified and described in Attachment 7 to Exhibit A. Such right has an aboriginal priority date, and entitles the Pueblo to divert from streams in the Rio Pueblo de Taos and Rio Hondo stream systems annually a combined total amount of water not to exceed that amount sufficient to irrigate the 5,712.78 acres, or Twenty-Two Thousand Five Hundred Eight and Thirty-Five Hundredths (22,508.35) acre-feet, whichever is less, and to consume annually a combined total amount of water not to exceed that amount consumed by the irrigation of the 5,712.78 acres, or Seven Thousand Eight Hundred Eighty-Three and Sixty-Four Hundredths (7,883.64) acre-feet, whichever is less.

B. MUNICIPAL, DOMESTIC, AND INDUSTRIAL USE. For municipal, domestic, and industrial use, the Pueblo has the right to divert and consume annually Three Hundred (300.00) acre-feet of groundwater. The individual wells currently exercising this right are identified, located and described in Exhibit A and Attachment 7 thereto.

C. LIVESTOCK USE.

(1) LIVESTOCK IMPOUNDMENT RIGHT. The Pueblo has the right to fill and maintain Fifty and Twenty Hundredths (50.20) acres of surface water impoundments for stock watering purposes, as those features are depicted in Attachment 7 to Exhibit A. Such right entitles the Pueblo to divert annually Seventy Seven and Fifty-One Hundredths (77.51) acre-feet and consume annually One Hundred Fourteen and Thirty-Five Hundredths (114.35) acre-feet at the places identified in Attachment 7 to Exhibit A. The specific priority, diversion, if any, and consumption amounts for each impoundment are described in

Exhibit A, Article 5.1.2. All impoundments identified in Exhibit A, Article 5.1.2.1 shall have the priority therein described, and all impoundments identified in Exhibit A, Article 5.1.2.2 shall not be subject to priority administration.

(2) **LIVESTOCK WELL RIGHT.** The Pueblo has the right to divert and consume annually Fourteen and Seventy-Two Hundredths (14.72) acre-feet of groundwater for stock watering purposes. The locations of individual stock wells are identified and described in Attachment 7 to Exhibit A. The specific diversion and consumption amounts and the priority date for each well are described in Exhibit A, Article 5.2.2.

4. **ADDITIONAL GROUNDWATER RIGHT.** Subject to the provisions of Exhibit A, the Pueblo has the right to divert and consume annually One Thousand Three Hundred (1,300.00) acre-feet of groundwater. Such right has an aboriginal priority date.

5. **DISCLAIMERS.** This Partial Final Judgment and Decree does not resolve any issue that may exist as to whether the State Engineer of New Mexico or the Pueblo has, or should have, jurisdiction to administer or regulate water rights. This Partial Final Judgment and Decree does not confer jurisdiction on, or limit the authority of, the State Engineer of New Mexico to administer or regulate the use of water or water rights within the Rio Pueblo de Taos and Rio Hondo stream systems, as provided by law; nor does this Partial Final Judgment and Decree confer jurisdiction on, or limit the authority of, the Pueblo to administer or regulate the use of water or water rights within the Rio Pueblo de Taos and Rio Hondo stream systems, as provided by law. Because the description of the Pueblo's water rights adjudicated to it hereby is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Pueblo's water rights herein shall not be binding under the law of the case doctrine upon any other water right claimant, the State, or the United States in the adjudication of other water rights

in this case, and should not be relied upon as precedent under the *stare decisis* doctrine in any other water right adjudication suit. Nothing in this Partial Final Judgment and Decree shall be construed as establishing any standard to be used for the quantification of Federal reserved water rights, aboriginal claims, or any other Indian claims to water or water impoundment structures in any judicial or administrative proceeding.

6. RECORDS OF WATER USE. The Pueblo shall maintain records and perform calculations of its actual diversions and depletions of Rio Pueblo de Taos and Rio Hondo waters, and on or before June 1 of each year, the Pueblo shall prepare and submit to the Secretary of the Interior a report of its records and calculations of those diversions and depletions for the previous calendar year, who shall then provide a copy of this report to the Office of the State Engineer and the Taos County Clerk.

7. CHANGE OF USE. Changes in point of diversion or purpose or place of use of a water right from a location within Pueblo lands to a location outside of said lands shall be in accordance with State law; *provided*, that the Pueblo may later change the point of diversion or purpose or place of use of the water right to which the Pueblo retains an ownership interest back to a place of use within Pueblo lands without reduction in the amounts of water adjudicated in this Partial Final Judgment and Decree.

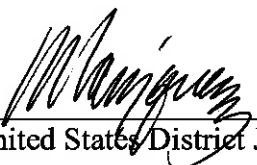
8. RIGHTS HELD IN TRUST. Pursuant to Section 504(a) of the Settlement Act, the rights to which the Pueblo is entitled under this Decree shall be held in trust by the United States on behalf of the Pueblo and shall not be subject to forfeiture, abandonment, or permanent alienation.

9. CONCLUSIONS.

A. The Pueblo has no right to divert and use the public waters of the Rio Pueblo de Taos and Rio Hondo stream systems except as set forth in this Partial Final Judgment and Decree, Exhibit A, and other orders entered by this Court in this cause.

B. The Pueblo, and the Pueblo's successors, representatives, lessees, and assigns, are permanently enjoined from any diversion, impoundment, or use of the public waters of the Rio Pueblo de Taos and Rio Hondo stream systems, except in strict accordance with this Partial Final Judgment and Decree, Exhibit A, and other orders entered by this Court in this cause.

10. ENTRY AND MODIFICATION OF DECREE. The Court expressly determines that there is no just reason for delay and directs the entry of this Partial Final Judgment and Decree as a final judgment pursuant to Fed. R. Civ. P. 54(b). This Partial Final Judgment and Decree may be modified only pursuant to Rule 60(b).


United States District Judge