

## Legal Options for Owners of Pre-Basin Wells in the NPT Basin

**ATTENTION:** The recently filed court motion ONLY applies to pre-basin wells (pre-1956) that HAVE NOT been adjudicated. If you know that your well has been adjudicated, you do not need to do anything at this time. If you are unsure whether your well has been adjudicated, contact the Office of the State Engineer to verify. OSE phone number: (505) 827-6091

Recently, you filed a court document objecting to the NM Office of the State Engineer (OSE) court motion to adjudicate your pre-basin well to 0.7 acre/feet per year (AFY) of water. Under the proposed Aamodt Settlement, your non-adjudicated well is allowed 3.0 AFY once you have shown beneficial use or need of 3.0 AFY water. This letter is intended to inform you of some possible options in how to proceed with having your pre-basin well adjudicated by the OSE.

Option One - Do nothing. If you choose option this option your well will "automatically" be adjudicated to 0.7 AFY by the Court. This will be the maximum amount of water you may use for indoor and outdoor uses which is about 625 gallons/day. In deciding to use option, please consider the possible restrictive affect it may have future uses of your property and the appraised value of your property.

Option Two - File another motion objecting to the OSE court motion. Unlike your previous "pro se" motion to object to the Aamodt Settlement, with this "pro se" motion you will represent yourself in Court and will require you to submit documentation showing why you need 3.0 AFY. Usually this takes the form of electric bills for your well that will estimate how much water has been pumped, identifying the amount of acreage irrigated for agricultural purpose, or other special uses/needs. NNMProtects will help owners who select this option in identifying and preparing what evidence you will need to submit justifying your beneficial use of 3.0 AFY.

Option Three – Pre-basin well owners may hire a lawyer on their own to argue the adjudication for them. We do not know how much this option will cost and suggest you get legal advice regarding this option. If you choose to do this, contact NNM Protects in order to get the Barncastle Law Firm's contact information.

Option Four – NNMProtects has made arrangements with Barncastle Law Firm for pre-basin well owners to obtain legal assistance in defending their water rights. Barncastle law firm focuses on civil litigation, water law and water rights, and property and contract issues. Its clients include farmers, ranchers, local businesses, small municipalities, and public and private water systems. Ms. Barncastle has four years of experience with the Law Office of Steven L. Hernandez, P.C. as an attorney and two years with Hubert & Hernandez, P.C. as a law clerk, in which she strove to meet the needs of her unique client base. Through her focus on agriculture, water resources and business issues, she intends to maintain the excellent client relationships she has created over the last six years and meet her clients' needs well into the future.

With this option, a group of pre-basin well owners will pay for the Firm to argue the OSE cannot apply this restriction to your pre-basin well given that they have already adjudicated most pre-basin wells at their full 3.0 afy water right. To do this, the Firm will need a group of people willing to go in together to

challenge the OSE on behalf of them and all other “unknown” pre-basin well owners. This lawsuit will happen in three parts:

- a) The procedure for entering a motion of a “global issue” on behalf of these well owners would be researched. This motion would be filed on behalf of all these well owners together, and will argue that the OSE is not giving equal protection to these wells, as they are changing the policy of adjudicating pre-basin wells to 3.0 afy as they did with previously adjudicated pre-basin wells.
- b) If the Federal Court agrees to hearing the challenge, a schedule for a hearing will be set and the Firm will file a motion to stay any adjudication proceedings that may have already issued.
- c) At the hearing, evidence will be presented that there is no legal basis for adjudicating these particular wells to 0.7 afy when previously adjudicated pre-basin wells were given the full 3.0 afy. The judge will then rule based on the evidence presented.

Nothing guarantees that a judge will allow the lawsuit to reach step b. The estimate for this amount of work is \$5,000.00 to \$10,000.00 to be shared amongst the pre-basin well owners joining the case. If the case is heard and steps b and c happen, it is estimated it will take another \$20,000.00 to \$25,000.00 and about a calendar year to fight to completion.

By our calculations, if most pre-basin well owners who filed a “pro se” motion in January 2015 agree with having the Barncastle Law Firm represent them, it could cost about \$500/well owner to complete the court action. As in any legal or court proceeding, this estimate could be more or less depending on how the case develops. If other pre-basin well owners who did not file a “pro se” motion decide to join the group, the cost/owner will be lowered. If you select this option, NNMProtects will help coordinate the payment of attorney fees to the Barncastle Law Firm and will help the Firm in any way possible in preparing your case. We will ask the law firm to provide billing data to show the work done on the case as we proceed so that there is a full accounting of how your money is being used at each stage.

If we can get a firm commitment from many of you to join in option #4, we will arrange to have Ms. Barncastle visit the Pojoaque Valley soon to present information and to answer your questions.

**Although NNM Protects cannot give legal advice, after talking to the attorney about this issue, we believe that option #4 will be less costly overall to pre-basin well owners and that it will eliminate the hassle or cost needed to fight each of these well adjudications individually.**

Please send an email to [nnmprotects@gmail.com](mailto:nnmprotects@gmail.com) letting us know what option you have selected so we may help our community members in making an informed decision regarding their water rights.

**We are planning a meeting on April 2<sup>nd</sup> at 6:00 pm at the Don Quixote Distillery and Winery (old Line Camp). Ms. Barncastle will be joining us by video teleconference in order to answer any of your questions. Hope to see you all there. Refreshments will be served.**

**Pre-Basin Well Owner Sign Up Form**

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Name (as it appears on water rights record)

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Address (for mailing purposes)

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Physical address of well location (if different from mailing address)

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Phone Number

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Email address

Information about your well (year drilled/replacement dates/purpose of use/number of acres for place of use:

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Any other information you would like to provide about your well or water use:

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Do you wish for NNM Protects to store your name/email to update you on the case from time to time?

Yes

No

If yes, please sign/date here:

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Signature

Date