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

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

Plaintiff,

v.

R. LEE AAMODT, *et al.*,

Defendants.

and

UNITED STATES OF AMERICA
PUEBLO DE NAMBE,
PUEBLO DE POJOAQUE
PUEBLO DE SAN ILDEFONSO,
and PUEBLO DE TESUQUE,

Plaintiffs-in-Intervention

CASE NO. 6:66-cv-6639 WJ/WPL

PLAINTIFFS-IN-INTERVENTION THE UNITED STATES, PUEBLO DE NAMBÉ, PUEBLO DE POJOAQUE, PUEBLO DE SAN ILDEFONSO, AND PUEBLO DE TESUQUE'S MEMORANDUM REPLY BRIEF IN SUPPORT OF APPROVAL OF THE SETTLEMENT AGREEMENT AND ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE AND INTERIM ADMINISTRATIVE ORDER

TABLE OF CONTENTS

Table of Authorities ii

I. Introduction 1

II. Applicable Legal Standard 3

III. Argument 6

A. Objections to the Future Administration of Water Rights do Not Present a Basis to Disapprove the Settlement Agreement or to Decline to Enter the Partial Final Judgment and Decree 6

1. The Partial Final Judgment and Decree and proposed settlement implementation and administration are not unlawful and fully comply with State law 7

a. The Dunn Response misinterprets the Settlement Agreement terms with regard to State law regarding priority administration 8

b. The Settlement Agreement provides for administration fully consistent with State law 9

2. Concerns regarding the administration of the Settlement Agreement are speculative and do not provide a basis to disapprove the Settlement Agreement or to decline to enter the Partial Final Judgment and Decree 13

B. The Settlement Agreement and Entry of the Partial Final Judgment and Decree Do Not Unfairly Impact Non- Settling Parties 15

C. The Responses Fail to Substantiate Any Legal or Factual Objections to the Settlement Agreement or Partial Final Judgment and Decree 17

1. The Settlement Agreement and Partial Final Judgment and Decree properly utilize federal law to quantify the Pueblos' water rights 17

2. The State properly executed the Settlement Agreement and is a proper party 20

3. The Settlement Agreement does not violate any property rights 21

D. No Response Establishes the Need for Additional Procedures 26

IV. Conclusion 28

TABLE OF AUTHORITIES

Cases

Arizona v. San Carlos Apache Tribe of Ariz., 463 U.S. 545 (1983) 19

Bounds v. State ex rel. D'Antonio, 306 P.3d 457 (N.M. 2013)..14, 22

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)..................17

In re the General Adjudication the Rights to Use Water in the Gila River System, 173 P.3d 440 (Ariz. 2007)...5, 19

In Re The General Adjudication the Rights to Use Water in the Gila River System and Source, 224 P.3d 178 (Ariz. 2010) 5

Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir. 1979) 18

Johnson v. Lodge #93 of Fraternal Order of Police, 393 F.3d 1096 (10th Cir. 2004)........5, 27

Landis v. N. Am. Co., 299 U.S. 248 (1936) 27

Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland, 478 U.S. 501 (1986)...5, 21

Morton v. Mancari, 417 U.S. 535 (1974) 17, 18

Mugler v. Kansas, 123 U.S. 623 (1887) 23

Nevada v. United States, 463 U.S. 110 (1983) 26

New Mexico ex rel. Clark v. Johnson, 904 P.2d 11 (N.M. 1995) 20

New Mexico v. Aamodt, 537 F.2d 1102 (10th Cir. 1976) 17, 18, 19

New Mexico ex rel. Reynolds v. Aamodt, 618 F. Supp. 993 (D.N.M. 1985) 9, 18

New Mexico ex rel. Reynolds v. Aamodt, 800 P.2d 1061 (N.M. 1990) 14

New Mexico ex rel. State Eng'r v. Aamodt, 582 F. Supp. 2d 1313 (D.N.M. 2007)...........2, 3, 4

New Mexico ex rel. Office of State Engineer v. Lewis, 150 P.3d 375 (N.M. Ct. App. 2006) 5, 11, 12

New Mexico ex rel. Reynolds v. Lewis, 508 P.2d 577 (N.M. 1973)..21

N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n, 808 P.2d 592 (N.M. 1991)......13

Ratzlaff v. Seven Bar Flying Serv., Inc., 646 P.2d 586 (N.M. Ct. App. 1982) 27

San Juan Cnty., Utah v. United States, 503 F.3d 1163 (10th Cir. 2007)................................21

Texas v. United States, 523 U.S. 296 (1998) 13

Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio, 289 P.3d 1232 (N.M. 2012) 10

United States v. Bluewater-Toltec Irr. Dist., 580 F. Supp. 1434 (D.N.M. 1984)....................26

United States v. Chem. Found., 272 U.S. 1 (1926)..8

Utah v. U.S. Dep't of Interior, 535 F.3d 1184 (10th Cir. 2008)...13

Walker v. United States, 162 P.3d 882 (N.M. 2007) 21

Statutes

28 U.S.C. § 2283...23

28 U.S.C. § 2284...23

43 U.S.C. § 666..17, 18, 19

Aamodt Litigation Settlement Act, Pub. L. 111-291, 124 Stat. 3149 (Dec. 8, 2010) 2, 20

N.M. Stat. Ann. § 36-1-22 21

N.M. Stat. Ann. § 72-1-2 22

N.M. Stat. Ann. § 72-2-8 14

N.M. Stat. Ann. § 72-2-9 24

N.M. Stat. Ann § 72-4-15 21

N.M. Stat. Ann. § 72-4-17 21

N.M. Stat. Ann. § 72-4-19 26

N.M. Stat. Ann. § 72-12-1.1 ....14, 22

Regulations

N.M. Admin. Code § 19.27.5.9 21

N.M. Admin. Code § 19.27.5.13 14

Other Authorities

Special Master's Report and Recommendations Regarding Objections to Partial Final Judgment and Decree on the Water Rights of Taos Pueblo, No. 69-cv-07896 (Jan. 23, 2015) (Doc. 5927) 4

Order, *New Mexico v. Interstate Stream Comm'n*, No. 34,702 (N.M. May 30, 2014) 20

H.J.M. 22, Indian Water Rights Disputes Funding, Reg. Sess. (N.M. 2013) 21

H.M. 3, Native American Water Rights Settlement Funds, Reg. Sess. (N.M. 2006) 21

I. INTRODUCTION.

This Memorandum replies to the *Response in Opposition to Motion to Approve Settlement Agreement and Entry of Proposed Partial Final Judgment and Decree*, filed by objecting defendants represented by A. Blair Dunn (Jan. 5, 2015) (Doc. 9972) ("Dunn Resp."), and the *Objectors' Response to Motions in Support of Entry of a Partial Final Judgment and Decree*, filed by objecting defendants represented by Lorenzo Atencio (Jan. 7, 2015) (Doc. 9973) ("Atencio Resp.")[1] (collectively, "Responses"). It also addresses certain points raised in the *Rio de Tesuque Association, Inc.'s Memorandum in Support of Settlement Agreement and Entry of a Partial Final Decree on the Pueblos' Rights*, filed by settling defendants represented by Larry C. White (Nov. 6, 2014) (Doc. 9911) ("White Mem."), and *Certain Non-Pueblo Defendants' Memorandum in Support of Entry of Partial Final Judgment and Decree Incorporating Settlement Agreement and Adjudicating Pueblos' Water Rights*, filed by settling defendants represented by Mark F. Sheridan (Nov. 6, 2014) (Doc. 9912) ("Sheridan Mem."). For the reasons set forth here and in the *Memorandum of Points and Authorities in Support of Entry of Partial Final Judgment and Decree* (Nov. 6, 2014) (Doc. 9910) ("U.S. & Pueblos Mem.") and the *State of New Mexico, Santa Fe County and City of Santa Fe's Joint Memorandum in Support of Settlement* (Nov. 6, 2014) (Doc. 9913) ("State Mem."), the Court should approve the Settlement Agreement and enter the Partial Final Judgment and Decree and Interim Administrative Order.

The Court has before it two separate but interrelated tasks. The Court must first determine whether to approve the *Settlement Agreement* (Apr. 19, 2012) (Doc. 7970-1)

[1] The Atencio Response was filed after the deadline established by the Court, and should not be considered for that reason alone. In the event the Court considers it, this Reply demonstrates why the Court should reject the Atencio Response's arguments.

("Settlement Agreement")[2] which establishes certain rights and responsibilities among the Settlement parties. Second, it must determine whether to enter the *[Proposed] Partial Final Judgment and Decree of the Water Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque* (Oct. 2, 2013) (Doc. 7970-3) and the *[Proposed] Interim Administrative Order* (Oct. 2, 2013) (Doc. 7970-2) (collectively, "Partial Final Judgment and Decree"). The Settlement Agreement will be effective as to those parties who voluntarily join the Settlement and will govern the administration of the rights subject to the Settlement Agreement. The Partial Final Judgment and Decree, which will be binding on all parties, (1) establishes the quantity and priority of the water rights for the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque (collectively, "Pueblos"); and (2) provides for the administration of the Pueblos' rights in accordance with the Settlement Agreement.

If entered by the Court, the Partial Final Judgment and Decree is the final order and adjudication of the rights of the Pueblos in this stream adjudication and, as such, will bind all parties. The process established by the Court to consider approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree allowed any party to file an objection where that party believed his or her water right would be specifically harmed by approval of the Settlement Agreement and entry of the Partial Final Decree. *See New Mexico ex rel. State Eng'r v. Aamodt*, 582 F. Supp. 2d 1313, 1315 (D.N.M. 2007) ("*Aamodt III*"). Objecting parties were to file responsive memoranda in support of their objections which "describe the specific harm the Objectors would suffer by entry of the Partial Final Decree . . . ." *Case Management and Service Order* at 7 (Aug. 8, 2014) (Doc. 9506) ("CMO"). Objecting parties were further ordered to "address with specificity why approval of the Settlement Agreement and entry of the Partial

[2] The Aamodt Litigation Settlement Act, Pub. L. 111-291, §§ 601-26, 124 Stat. 3149, 3134-56 (Dec. 8, 2010) ("Settlement Act"), codified the Settlement Agreement which is now federal law.

Final Decree is not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law." *Id.* (quotation marks and citation omitted).

As shown below, the objections in the two Responses fail to demonstrate approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree is "not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law" or that Settlement Agreement approval and entry of the Partial Final Judgment and Decree will harm any objectors' water right in a specific and legally cognizable way. *See Aamodt III*, 582 F. Supp. 2d at 1315; CMO at 7 (quotation marks and citations omitted). The objections and arguments raised in the Responses are either incorrect, irrelevant to the issues before the Court, or premised on a misreading of the Settlement Agreement and applicable law. Accordingly, the Court should (1) approve the Settlement Agreement; and (2) enter the Partial Final Judgment and Decree.

II. APPLICABLE LEGAL STANDARD.

The standard and procedure for the Court's consideration of the objections to approval of the Settlement Agreement and entry of a Partial Final Judgment and Decree is long established in this case:

> Each response must describe the specific harm the Objectors would suffer by entry of the Partial Final Decree, [and] address with specificity why approval of the Settlement Agreement and entry of the Partial Final Decree is not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law. Objectors should also describe with specificity which of the Settlement Parties' allegations are disputed, state why their objections should be sustained or not overruled at this time, support their legal positions with legal authority, and support factual positions with materials which demonstrate either that (1) the factual position at issue is not disputed or (2) further proceedings are required to address relevant factual matters. If any party filing a response asserts that additional procedures are required before the Court addresses his/her objections to approval of the Settlement Agreement, those parties shall set forth those procedures and the reasons that those procedures are required. Legal positions must be supported by legal authority; factual positions must be supported by authority which demonstrates that there are no disputed material facts at issue.

CMO at 7-8 (internal quotation marks and citations omitted); *see also Aamodt III*, 582 F. Supp. 2d at 1315 ("The Court will require that any person objecting to the settlement agreement must state in their objection how the objector will be injured or harmed by the settlement agreement in a legally cognizable way.").[3] The Responses, which do not dispute that the "fair and reasonable standard" applies, *see* Dunn Resp. at 4; Atencio Resp. at 3, fail to demonstrate that the Settlement Agreement and Partial Final Judgment and Decree are not fair, adequate, reasonable, in the public interest, and consistent with applicable law. The Dunn Response is quite limited and does not satisfy the Court's standard. Its attack focuses primarily on the future administration of water rights that would allegedly occur if the Court enters the Partial Final Judgment and Decree. *See* Section III.A.1.a, III.B, *infra*. Similarly, the Atencio Response does not mount a legally sustainable opposition to the Settlement Agreement, and its attempt to create a factual dispute is both superficial and irrelevant, and even if relevant, fails to demonstrate any issue of fact. *See* Section III.C, *infra*.

The Sheridan Memorandum, filed prior to the objecting Responses, attempts to alter the standard the Court has established for the entry of the Partial Final Judgment and Decree. Although it acknowledges the Court will review the Settlement Agreement under the fair and reasonable standard, Sheridan Mem. at 2, 10, it argues for the imposition of a different, and legally unsupported standard that the Partial Final Judgment and Decree be entered only if "there is a reasonable basis to conclude that the water rights to be adjudicated to each Pueblo are no more extensive than could be secured at a trial, and that the Agreement and the PFJD will reduce or eliminate impacts on junior water rights," *id.* at 2-3. This requirement is incorrect. Where an

[3] After opening briefs were filed here, the Rio Taos/Rio Hondo Adjudication Special Master has adopted the fair and reasonable standard established in this case. *See Special Master's Report and Recommendations Regarding Objections to Partial Final Judgment and Decree on the Water Rights of Taos Pueblo*, No. 69-cv-07896 at 9-10 (Jan. 23, 2015) (Doc. 5927).

objecting party is provided the opportunity "to file written objections to the consent decree in the district court, and to participate in the fairness hearings as a full party to the litigation[,]" the objecting party is "afforded 'all the process that [it] was due,'" *Johnson v. Lodge #93 of Fraternal Order of Police*, 393 F.3d 1096, 1109 (10th Cir. 2004) (quoting *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986)), and no further merits based inquiry is required. Here, the objecting parties have failed to make a colorable claim that their water rights, which are not determined under either the Settlement Agreement or Partial Final Judgment and Decree, "would be or have been adversely affected by the settlement agreement and decree." *New Mexico ex rel. Office of State Engineer v. Lewis*, 150 P.3d 375, 394 (N.M. Ct. App. 2006) ("*Lewis*"). Accordingly, as explained below, there is no reason for the Court to decline to approve the Settlement Agreement and enter to the Partial Final Judgment and Decree. *Id.* at 392 (objecting parties must show that they "will be unjustly harmed by not receiving the amount of water to which they are entitled"). As articulated throughout the United States and Pueblos' Memorandum and in this reply, the Court previously established the correct standard and procedure by which it would review the Settlement Agreement and the Partial Final Judgment and Decree and that should remain unchanged. Nevertheless, the Sheridan Memorandum asks the Court to revisit the issue and argues for application of a new merit-based standard and review procedure. Sheridan Mem. at 10 and Ex. A at 7-8. Notably, in its reliance on the 1990 Arizona Supreme Court Order governing Indian water rights settlements in the Gila River Basin, the Sheridan Memorandum argument ignores the Arizona Supreme Court's review and application of the very language on which it relies. *See In re the General Adjudication the Rights to Use Water in the Gila River* System, 173 P.3d 440 (Ariz. 2007) ("*Gila VII*"); *In Re The General Adjudication the Rights to Use Water in the Gila River System and*

Source, 224 P.3d 178, 187 (Ariz. 2010) ("*Gila VIII*"). This review and application is not consistent with what the Sheridan Memorandum proposes.

The Court has determined the appropriate standard for evaluating the Settlement Agreement and Partial Final Judgment and Decree in this case. The Court need not adopt a new or different standard for the entry of the Partial Final Judgment and Decree which the Sheridan Memorandum represents was applied in other adjudications. Under the established standard in this case, the Court should find the Settlement Agreement and Partial Final Judgment and Decree are fair and reasonable, in the public interest, and consistent with all applicable laws. None of the Responses, nor the objections filed by the April 7, 2014 deadline, demonstrate that approval of the Settlement Agreement or entry of the Partial Final Judgment and Decree do not satisfy this standard or would otherwise harm any water user.

III. ARGUMENT.

A. Objections to the Future Administration of Water Rights do Not Present a Basis to Disapprove the Settlement Agreement or to Decline to Enter the Partial Final Judgment and Decree.

The Dunn Response relies on speculative and hypothetical issues that may arise when the Office of the State Engineer ("OSE") administers water rights in the Nambé-Pojoaque-Tesuque Basin ("Basin"). Based on its speculation, the Dunn Response objects that the Settlement Agreement "create[s] law" on priority administration. Dunn Resp. at 2. What is significant is that the Dunn Response does *not* challenge the determination of the Pueblos' water rights in the Settlement Agreement and Partial Final Judgment and Decree. *Id.* at 16 ("The issue of the objectors is not the water acreage sought to be established by the United States on behalf of the Pueblos."). It does not object to the four corners of the Settlement Agreement, the Partial Final Judgment and Decree, or the quantity of the Pueblos' water rights. *Id.* at 2 ("Defendant-

Objectors do not contest that water rights of the Pueblos are and should be adjudicated in accordance with previous decisions of this Court and the 10th Cir. Court of Appeals . . . .").[4]

1. The Partial Final Judgment and Decree and proposed settlement implementation and administration are not unlawful and fully comply with State law.

While the Settlement Agreement and the administrative provisions of the Partial Final Judgment and Decree provide for the Pueblos to forgo priority calls against non-Pueblo settling parties under certain circumstances, those provisions do not direct that in administering the Partial Final Judgment and Decree, the OSE must administer the Basin so that the Pueblos remain whole despite the concessions to the settling parties in the Settlement Agreement. Rather, those provisions may allow for a sharing of physical shortages among the parties to the Settlement Agreement. The provisions do not require the non-settling parties to fill any shortfall resulting from the Pueblos' concessions to the settling parties; the provisions only require the non-settling parties to make up any deficit resulting from their own junior water use. In other words, there is no requirement to read the Settlement Agreement and Partial Final Judgment and Decree to place the non-settling parties in any different position than they are today—that is, subject to a call by the senior rights of the Pueblos.

[4] The Court's order is clear: objecting parties were required to address the harm to them from entry of the Partial Final Judgment and Decree and approval of the Settlement Agreement with specificity. Objecting parties were further required to show why the Settlement Agreement was "not fair, adequate, reasonable, is not in the public interest, or is not consistent with applicable law." CMO at 7 (internal citation omitted). The Dunn Response purports to do so only with respect to its misguided view that the Settlement Agreement wrongly distorts the administration of non-Pueblo water rights and, under that distorted view, is not authorized under state law. As such, it must be rejected, any objections by the Dunn Parties that were not briefed in accordance with the CMO were waived.

a. The Dunn Response misinterprets the Settlement Agreement terms with regard to State law regarding priority administration.

The Dunn Response's sole challenge is grounded in a hypothetical, and faulty, method of administration of water rights in the future, although Dunn characterizes the challenge as one to the Settlement Agreement under State and Federal law. *Id.* at 3. Regardless, both the Settlement Agreement and proposed future administration under the Partial Final Judgment and Decree fully comport with the doctrine of prior appropriation and all other aspects of state law and no objector, or any water user in the Basin, is harmed.[5] Dunn asks this Court to presume, in the absence of any evidence, that the OSE will adopt regulations to administer the basin that violate applicable law, and this is something a Court should not do. *See United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926) ("The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.").

The Dunn Response has one fundamental complaint about the Settlement Agreement and the Partial Final Judgment and Decree. It mistakenly contends that entry of the Partial Final Judgment and Decree will disadvantage non-settling parties against non-Pueblo settlement parties in the event of a priority call by the Pueblos, or that in administration of Pueblo rights under the Partial Final Judgment and Decree, the priority protections afforded non-Pueblo water users under the Settlement Agreement will result in a detriment to the non-settling parties. Dunn Resp. at 2-3, 16. The hypothetical set forth in the Dunn Response, at 3, underscores the confusion which that Response creates between quantification of the Pueblo water rights in the

[5] The rules necessary to fully implement the administration are under development and will include a clear accounting mechanism to lawfully effectuate the provisions of the Settlement Agreement, and such rules will comply with all Court rulings and all applicable law, including the law of prior appropriation.

Partial Final Judgment and Decree and ultimate administration of those rights by the OSE consistent with the Settlement Agreement. The hypothetical describes two non-Pueblo parties who made different elections with respect to the Settlement Agreement, and then speculates on the outcome of those different choices under priority administration after the Partial Final Judgment and Decree is entered. This hypothetical ignores the fact that the parties made *choices* to either limit their water right in exchange for protection from strict priority administration, or to not limit their right and remain—as they always have been—subject to priority administration. Moreover, under State administration of the Settlement Agreement, the posed hypothetical need not occur. There is no new law being created "that elevates certain junior water rights over other senior water rights during a priority call." Dunn Resp. at 10-11.[6] The Settlement Agreement and Partial Final Judgment and Decree do not change the status quo. Both before and after approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree, the Pueblo and non-Pueblo rights in the Basin will be subject to priority administration in accord with the law of prior appropriation embodied in New Mexico law.

b. The Settlement Agreement provides for administration fully consistent with State law.

The Pueblo rights are the senior rights in the Basin. *See New Mexico ex rel. Reynolds v. Aamodt*, 618 F. Supp. 993, 1010 (D.N.M. 1985) ("*Aamodt II*"). All other rights are junior and subject to a priority call by the Pueblos in times of shortage. *See id.* Under the Settlement Agreement, some junior, non-Pueblo water users have, by choice, limited their water use, thereby decreasing impacts on available water supply, and in exchange will be free from

[6] The Dunn Response appears to be limited to issues regarding ground water administration. *See*, *e.g.*, Dunn Resp. at 3 (hypothetical regarding administration of groundwater water rights). Regardless, whether surface or groundwater, the Dunn Response raises no valid argument that the Settlement Agreement is illegal because it violates the doctrine of prior appropriation.

enforcement of any potential priority call by the Pueblos. *See* Settlement Agreement § 3.1.7. However, that amount of water relating to priority-protected non-Pueblo water rights will not be the subject of priority call for the benefit of the Pueblos as against either junior or senior non-Pueblo users who have chosen *not* to join the Settlement and reduce water use so as to be free from priority enforcement. No water user will be injured by not joining the Settlement Agreement, because under the Partial Final Judgment and Decree they will be subject to the same priority administration which exists today, but in a more secure supply, and in an amount relative only to their water rights.[7] "A junior water rights holder cannot complain of deprivation when its water is curtailed to serve others more senior in the system, regardless of whether the junior's rights have been formally adjudicated. Such are the demands of our state's system of prior appropriation." *Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 289 P.3d 1232, 1243 (N.M. 2012).

Arguing that the Settlement Agreement's administrative provisions are contrary to the law regarding priority administration, the Dunn Response appears to assume that the OSE will create an administrative scheme of selective enforcement. *See* Dunn Resp. at 27-28. As discussed above, however, this is not the case. Regardless, the Dunn Response is based on mere conjecture. Nothing in the Settlement Agreement violates the New Mexico Constitution or any other provision of New Mexico law, and nothing in the entry of the Partial Final Judgment and Decree will harm any non-settling party. The Settlement Agreement provides for priority administration. The OSE has the right to administer water and the right to do so in a manner

[7] The Dunn Response, at 17, appears to miscomprehend the result of a non-Pueblo water rights holder joining in the Settlement Agreement. Becoming a settling party does not result in the change in priority date, and does not establish priority dates as between two non-Pueblo water users. If it did, then there would be no need for the Court to continue to enter orders in each separate subfile before it.

which fully protects all water rights. Exactly how the OSE does this can be flexible and is entitled to deference. *See* Settlement Agreement § 5.2.

The New Mexico Court of Appeals' opinion in *Lewis*, is highly instructive on this issue. In *Lewis*, certain stream adjudication parties objected to the entry of a partial final decree, based on a settlement agreement among some, but not all, parties, that incorporated a water conservation plan not unlike the flexible priority administration contemplated by the Settlement Agreement and Partial Final Judgment and Decree in this case. 150 P.3d at 382. The objectors argued, like here, that the decree violated the doctrine of prior appropriation and that the district court did not have the authority to enter a decree based on a settlement agreement. *Id.* The settlement agreement, negotiated between the State, the United States, an irrigation district, and a conservancy district, "placed a priority call in reserve." *Id.* at 380, 392. All defendants in the adjudication, which included members of the irrigation and conservancy districts, were provided "an opportunity to object to the settlement and propose partial final decree" by making "a *prima facie* case showing how their water rights . . . will be adversely affected by the priority, amount, purpose, periods and place of use, or other matters set forth in the Proposed Partial Final Decree." *Id.* at 381 (internal quotation marks and citations omitted). The district court permitted dispositive briefing, and overruled all objections, concluding no objector demonstrated an adverse effect. *Id.* at 381.

The Court of Appeals affirmed the entry of the decree, stating

> By their settlement agreement, the negotiating parties sought to cut the water shortage Gordian knot through a process more flexible than strict priority enforcement, yet still comply with the doctrine of prior appropriation. The settlement agreement and decree are constitutional and an otherwise lawful resolution of the longstanding water rights and shortages issues.

Id. at 385. Concluding that the settlement agreement was consistent with an applicable statute, the court affirmed the settlement agreement's "flexible approach" to administration, concluding it "[saw]no reason to read [the prior appropriation provision of the Constitution] . . . to require a priority call as the first and only, and thus exclusive, response to water shortage concerns." *Id.* at 386. "[A]lthough priority calls have been and continue to be on the table to protect senior users' rights, such a fixed and strict administration is not designated in the Constitution or laws of New Mexico as the sole or exclusive means to resolve water shortages where senior users can be protected by other means." *Id.* *Lewis* found important that priority calls remained an option, among others, in the settlement agreement to ensure water delivery. *Id.* at 388.

Lewis held New Mexico's stream adjudication statutes were not "inconsistent with the authority of the district court to adjudicate water rights as has occurred through the settlement agreement and decree." *Id.* at 391. *Lewis* also held the district court did not err in finding no fact issues prevented approval of the settlement agreement or entry of the decree, as "[t]he court presumably could have rejected the settlement agreement if it *unfairly and adversely* affected the water rights of third parties who were allowed to object to it." *Id.* at 392 (emphasis added). Because the objecting parties made no *prima facie* showing of harm, however, the settlement agreement and decree was properly approved. *Id.* at 394.[8] *Lewis* demonstrates the Settlement Agreement and Partial Final Judgment and Decree are consistent with New Mexico law.

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[8] Because the Settlement Agreement and any administration following therefore fully complies with New Mexico law, the argument by the Dunn Response, at 3, that it "drafts" new law and therefore requires any additional State approval must be rejected.

2. Concerns regarding the administration of the Settlement Agreement are speculative and do not provide a basis to disapprove the Settlement Agreement or to decline to enter the Partial Final Judgment and Decree.

As demonstrated in Section III.A.1.b, *supra*, the Settlement Agreement and its administration should fully comply with all provisions of State law. Speculative challenges to that future administration and implementation of the Partial Final Judgment and Decree do not present a ripe challenge to the Settlement Agreement. "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks and citations omitted). Until the Court approves the Settlement Agreement and the OSE begins administering water rights in accordance therewith, no challenge to administration is ripe. *See Utah v. U.S. Dep't of Interior*, 535 F.3d 1184, 1196 (10th Cir. 2008) (holding a challenge to future administrative action not ripe where it was speculative, as the court "would be resolving a nullity if further administrative action would have afforded the settlement a less dire interpretation"); *see also N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 808 P.2d 592, 599-600 (N.M. 1991) ("The basic purpose of ripeness law is and always has been to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems.") (internal quotation marks and citations omitted).

To the extent the Responses rest solely on hypothetical constructs regarding future administration by the OSE, those issues are not ripe for ruling by the Court and do not present any reason for the Court to disapprove the Settlement Agreement or to decline to enter the Partial Final Judgment and Decree. Dunn Resp. at 3; Atencio Resp. at 9 (arguing the OSE will have a "dual system of administration . . . resulting in a double-standard that treats the Pueblos and non-Indians differently"). The Dunn Response's hypothetical depiction of injury to non-settling

parties does not comply with the directive of the Court to describe in detail the specific "harm" that would occur to such parties from entry of the Partial Final Judgment and Decree. Indeed, the Dunn Response provides no specifics at all. It does not (1) describe whether the rights at issue are from surface supplies or groundwater, (2) identify whether the issue it is raising supposedly occurs on the main stem of the Pojoaque or on the Tesuque, (3) state which Pueblo needs the additional water at issue, (4) identify the location of the Non-Pueblo Settlement Party water use supposedly causing the problem, and, (5) perhaps most importantly, does not identify which of the Dunn Parties' rights are allegedly being injured.

Similarly speculative, the Atencio Response incorrectly assumes that, if the OSE administers water consistent with the Settlement Agreement and Partial Final Judgment and Decree, the OSE will be acting *ultra vires*. Atencio Mem. at 23-24. N.M. Admin. Code § 19.27.5.13(B)(6) expressly states that administration can be limited by court-imposed restrictions and obviously nothing can authorize the OSE to act in an *ultra vires* manner.[9] And the Atencio Response wrongly ignores the broad authority of the OSE. *See New Mexico ex rel. Reynolds v. Aamodt*, 800 P.2d 1061, 1062 (N.M. 1990) ("The legislature granted the State Engineer broad powers to implement and enforce the water laws administered by him."). Administering water rights consistent with this Court's order would not transform the OSE's role to an adjudicator. *See* N.M. Stat. Ann. § 72-2-8(H) ("Any . . . order issued by the state engineer is presumed to be in proper implementation of the provisions of the water laws administered by him."). Any

[9] The Settlement Agreement does not violate the Domestic Well Statute, N.M. Stat. Ann. § 72-12-1.1 ("DWS"), *see* Atencio Resp. at 7, as established in the unrefuted argument in the United States' and Pueblos' Memorandum at 41-48; *id.* at 46 (water permitted under the DWS is subject to court-imposed limitations). *See also Bounds v. State ex rel. D'Antonio*, 306 P.3d 457, 466 (N.M. 2013) (stating the DWS "do[es] not create an absolute right to take water").

speculation that the OSE's administration would violate State law or this Court's order is unfounded and otherwise not ripe for consideration.

B. The Settlement Agreement and Entry of the Partial Final Judgment and Decree Do Not Unfairly Impact Non- Settling Parties.

The Dunn Response devotes substantial effort to arguing the Settlement Agreement "negatively harms and impacts non-settling parties." Dunn Resp. at 7.[10] This appears to be based on an interrelated, two-fold argument that, (1) the implementation of the Settlement Agreement will violate the doctrine of priority administration; and (2) water users are harmed by priority administration. The Settlement Agreement, however, in addition to providing many protections and benefits to settling non-Pueblo water users, merely confirms the status quo, and in no way penalizes non-settling parties. The argument that the Settlement Agreement subjects non-settling parties to priority enforcement remarkably ignores that these water users, as all water users in the Basin, have always been subject to priority administration. Approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree will not change this and, as described above, need not result in any more onerous priority enforcement as against non-settling parties. Indeed, through the Settlement Agreement, the Pueblos are compromising a significant amount of the water to which they likely would be awarded at trial. Accordingly, if the Settlement Agreement and Partial Final Judgment and Decree are not approved, the risk of a priority call would be substantially greater for all non-Pueblo users. Not only are both settling and non-settling water users not harmed by the Settlement Agreement, they are significantly

[10] The citation to Settlement Agreement § 2.4.4.2.2 does not demonstrate any harm to non-settling parties. That section is part of the consideration provided to settling parties with surface water rights: it requires the Pueblos to offset any interference with Non-Pueblo surface water rights, in accordance with Section 4, which provides limitations on enforcement of priority rights for non-Pueblo well users who elected to join the Settlement Agreement. These provisions are not penalties against non-settling parties; they represent a compromise among the settling parties.

benefited by the Settlement Agreement and its implementation as a result of greater security and certainty of water supply.

In the end a crucial point is missed by the Responses: the Settlement Agreement and Partial Final Judgment and Decree adjudicate and settle the water rights of the Pueblos. Neither adjudicates the quantity, priority, or any other aspect of any non-Pueblo rights. The Settlement Agreement itself does not "cram it[s terms] down the Objectors' collective throats." Atencio Resp. at 28. The benefits of the Settlement Agreement to settling non-Pueblo water rights owners cannot be overstated. It provides ample consideration, in the form of protection from Pueblo priority calls, for domestic well owners who choose to join. *See* Settlement Agreement § 3.1; *see generally* U.S. & Pueblo Mem. at 39-41 (discussing benefits to domestic well owners). Indeed, the offer and acceptance of the consideration in Section 3.1.7.2 is a crucial aspect of the Settlement Agreement for all. The Settlement Agreement does not prevent an *inter se* between the non-Pueblo parties. It does, however, protect all parties from an *inter se* challenge by the United States or the Pueblos. Settlement Agreement § 6.1; *see* White Mem. at 9 (noting a benefit of the Settlement Agreement is dismissal with prejudice of the 1983 *inter se* challenges). As between the non-settling parties, the status quo remains; settling parties, in consideration for reduction in use, receive protection from priority enforcement by the Pueblos with no harm to non-settling non-Pueblo water users.

The White Memorandum properly recognizes that the Settlement Agreement provides the Pueblos with substantially less water than is available under the Court's prior rulings, and demonstrates the Settlement Agreement fairly balances the surface water rights of Pueblo and non-Pueblo users. *See* White Mem. at 7-8. Under the Settlement Agreement, a surface water right "is not 'forfeited,' it only loses priority protection *which protection it would not even have*

without the Settlement." *Id.* at 8 (emphasis added). The Settlement Agreement does not unfairly harm non-settling non-Pueblo ground or surface water rights holders and none of the objections or Responses substantiate any harm.

C. The Responses Fail to Substantiate Any Legal or Factual Objections to the Settlement Agreement or Partial Final Judgment and Decree.

1. The Settlement Agreement and Partial Final Judgment and Decree properly utilize federal law to quantify the Pueblos' water rights.

The objections that federal law has no role in the adjudication of the Pueblos' rights are incorrect and must be rejected for at least two reasons. *See* Atencio Resp. at 8. First, it is beyond debate that Pueblo water rights are determined under and controlled by federal law. *See New Mexico v. Aamodt*, 537 F.2d 1102, 1112 (10th Cir. 1976) ("*Aamodt I*"); U.S. & Pueblo Mem. at 15-19. Second, this Court's rulings in the adjudication comport with the McCarran Amendment, 43 U.S.C. § 666, a statute that is procedural in nature and does not affect the substantive rights of the parties to a stream adjudication or otherwise direct that the Pueblos' federal water rights should be determined under anything but federal law.

The Responses ignore the Tenth Circuit's ruling in this case that "[t]he rights of the non-Indians are subject to the water laws of New Mexico. The water rights of the Pueblos are not subject to the laws of New Mexico because the United States has never surrendered its jurisdiction and control." *Aamodt I*, 537 F.2d at 1112. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 812-13 (1976), only instructs that federal Indian water rights, the quantity of which are governed by federal law, may be adjudicated in a stream adjudication. *Cf.* Atencio Resp. at 9, 13. *Morton v. Mancari*, 417 U.S. 535, 554 (1974), does not require the Court to apply state law to quantify the Pueblos' water rights as argued in the Atencio Response, at 9-10. The Atencio Response ignores that *Morton* is in the line of cases which

"establishes that the Pueblos have aboriginal title, Indian rights or original Indian rights to their lands and the use of them including appurtenances." *Aamodt II*, 618 F. Supp. at 1009. Furthermore, there is no limitation on the uses to which the Pueblos may put the water to which they have water rights. *Compare Memorandum Opinion and Order* at 3-4 (Dec. 1, 1986) (Doc. 2879) ("Congress did not abrogate the Pueblo's right to transfer water to unenumerated uses.") *with* Atencio Resp. at 10 ("Leasing the water was not the primary purpose for reserving the Pueblos' water in this case.").

The use of Federal law and State law in the same adjudication does not violate equal protection. *See* Atencio Resp. at 24-26; Dunn Resp. at 15-18. To accept the Responses' allegations of a "double standard" of treatment for Pueblo and non-Pueblo water claimants, the Court must ignore that treatment of Native Americans as a separate class is "not violative of the Equal Protection principle." *Jicarilla Apache Tribe v. United States*, 601 F.2d 1116, 1126 (10th Cir. 1979). Adjudicating the Pueblos' water rights under federal law and the non-Pueblo rights under state law does not require a "compelling reason"; rather, it needs to be rationally related to "furthering Indian self-government . . . ." *Morton*, 417 U.S. at 550. The goal of federal law governing Pueblo water rights, is exactly this, *see Aamodt I*, 537 F.2d at 1108, and thus application of two sets of laws in this adjudication does not violate equal protection.[11] *See* U.S. & Pueblo Mem. at 14-20.

Finally, the Responses confuse the procedural protections of the McCarran Amendment for a substantive requirement of stream adjudications involving federal law. Atencio Resp. at 6, 8-9. The McCarran Amendment waives the United States' sovereign immunity for stream

[11] The Atencio Response argues the United States and Pueblos should be realigned as defendants. Atencio Resp. at 8, 26. The Court has already rejected this argument. *Memorandum Opinion & Order* (July 29, 2011) (Doc. 7454); *see also Order* (Feb. 13, 1967) (Doc. 143) (realigning the United States and the Pueblos as plaintiffs).

adjudications and, to a limited extent not relevant here, administration. It does not discuss, much less direct, the law that must be used to determine the quantity and type of water rights. *See Gila VII*, 173 P.3d at 446 (rejecting the contention that the settlement of federal water rights claims of the Tohono O'odham Nation violates the McCarran Amendment). The Atencio Response argues that the McCarran Amendment subjects the adjudication of the United States' and Pueblos' water rights claims to state law. Atencio Resp. at 8. The Pueblo water rights are plainly determined under and controlled by federal law, and nothing in the McCarran Amendment alters that substantive law. *Aamodt I*, 537 F.2d at 1112; U.S. & Pueblo Mem. at 15-19.

Moreover, the McCarran Amendment permits, but does not require federal law-based claims to be adjudicated in state court. *See* U.S. & Pueblos' Mem. at 55; *see Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 566-67, 571 (1983). But even if this was a stream adjudication in a New Mexico state court addressing the claims in the Basin, that would not alter the fact that the United States' and Pueblos' claims must be adjudicated under federal law, regardless of the forum. It is incorrect as a matter of long established law to assert that "the McCarran Amendment places the U.S.A. and the Pueblos under a single legal standard as all other claimants." Atencio Resp. at 9. The United States' and Pueblos' claims must be adjudicated under a different legal standard than claims asserted under state law, regardless of the forum in which the claims are adjudicated, because those claims arise under a different legal standard. *See* U.S. & Pueblos' Mem. at 50. The Supreme Court has emphasized that its opinions "in no way change[] the substantive law by which Indian rights in state water adjudications must be judged. State courts, as much as federal courts, have a solemn obligation to follow federal law." *San Carlos Apache Tribe*, 463 U.S. at 571. Administration of the United States' and Pueblos' rights under a legal regime that is different from the administration of rights claimed

under New Mexico law is the correct result of the settlement of the Pueblos' claims under the Settlement Act and long-standing federal law.

2. The State properly executed the Settlement Agreement and is a proper party.

Relying on its baseless argument that the Settlement Agreement creates new law, *see* Section III.A.1, *supra*, the Dunn Response argues the State does not have the authority to enter into the Settlement Agreement. Dunn Resp. at 8-9, 23-24. The Settlement Agreement was negotiated pursuant to Court-ordered mediation to resolve this longstanding litigation among the parties including the State of New Mexico. Subsequently the parties and the State properly executed the result of that mediated resolution and ultimately the Settlement Agreement was approved by federal legislation. *See* Settlement Act. The Dunn Response now attempts to convert the Settlement Agreement into something it is not: a federal water compact. In *New Mexico ex rel. Clark v. Johnson*, on which the Dunn Response, at 23, relies, the New Mexico governor negotiated and entered into a number of gaming compacts with New Mexico Pueblos. 904 P.2d 11, 16 (N.M. 1995). The New Mexico Supreme Court concluded that by doing so, the governor violated state constitutional separation of powers principles by changing existing law without legislative approval. *Id.* at 26. The Dunn Response fails to explain why this Court should treat a settlement agreement between numerous parties, in a stream adjudication nearing its fifth decade, as a unilateral compact negotiation by the State of New Mexico. The settlement of litigation is wholly within the purview of the executive branch.[12] And, as explained in Section III.A.1.b, *supra*, nothing in the Settlement Agreement changes State law.

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[12] The New Mexico Supreme Court recently denied a Writ of Mandamus raising the same issue with regard to the settlement of the Navajo Nation water rights claims in the context of the San Juan River stream adjudication. *See Order*, *New Mexico v. Interstate Stream Comm'n*, No. 34,702 (N.M. May 30, 2014).

Moreover, under New Mexico law, "only the courts are given the power and authority to adjudicate water rights." *New Mexico ex rel. Reynolds v. Lewis*, 508 P.2d 577, 581 (N.M. 1973); *see* N.M. Stat. Ann. § 72-4-17 (providing courts with exclusive jurisdiction over stream adjudications). Thus, converse to the argument presented in the Dunn Response, separation of powers principles would be violated if the New Mexico Legislature were to attempt to assert authority over any aspect of this litigation or its settlement.[13] Furthermore, it is the inherent right of a party to litigation to enter into a settlement agreement. *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1173 (10th Cir. 2007) ("'It has never been supposed that one party—whether an original party, a party that was joined later, or an intervenor—could preclude other parties from settling their own disputes and thereby withdrawing from litigation.'") (quoting *Local No. 93*, 478 U.S. at 528–29). The State, through the Attorney General, was fully authorized to enter into the Settlement Agreement. *See* N.M. Stat. Ann § 72-4-15 (stating the Attorney General is authorized to prosecute stream adjudications); *id.* § 36-1-22 (stating the Attorney General is authorized to settle claims in litigation). The attempt to characterize the Settlement Agreement as a compact requiring legislative approval is groundless.

3. The Settlement Agreement does not violate any property rights.

In New Mexico, a water right is a real property right. *Walker v. United States*, 162 P.3d 882, 893 (N.M. 2007). This does not mean, however, that limitation of the amount a well owner may use, whether by consensual settlement or by an administrative rebuttable presumption, violates a property right, contrary to the Atencio Response's contentions, at 19-21. *See* U.S. &

[13] The New Mexico House of Representatives has, however, issued House Memorials in support of the settlement of the claims in this litigation on multiple occasions, including prior to the signing of the Settlement Agreement in the 2006 Regular Session. *See* H.M. 3, Native American Water Rights Settlement Funds, Reg. Sess. (N.M. 2006); *see also* H.J.M. 22, Indian Water Rights Disputes Funding, Reg. Sess. (N.M. 2013).

Pueblo Mem. at 44-48, 55; State Mem. at 46-50. Indeed, the New Mexico Supreme Court's holding in *Bounds*, 306 P.3d at 466, forecloses such an argument. No New Mexico statute or regulation creates an "entitlement" to 3.0 acre-feet per year ("afy"), as the Atencio Response, at 22-23, insists. Indeed, N.M. Admin. Code § 19.27.5.9(D), upon which the Atencio Response relies, expressly provides that a diversion is limited to 1.0 afy, unless an applicant demonstrates that a larger diversion will not impair existing rights. *See* U.S. & Pueblo Mem. at 43; *Memorandum Opinion & Order* at 7 (Mar. 30, 2012) (Doc. 7579) (rejecting the argument that a permit creates an "entitlement" and concluded that the DWS "does not grant a domestic well permit holder an absolute right to use one acre-foot of water for noncommercial irrigation"). Because permit holders have no entitlement to a specific quantity of water, the Settlement Agreement, by allowing a *presumption* of .5 afy for a domestic well right subject to demonstrating a higher beneficial use, does not violate due process by depriving the objectors of a protected property interest. *Id.* at 8; *see also Bounds*, 306 P.3d at 469. There is no protected property interest in 3 afy absent a demonstration of beneficial use.

Regardless, neither the Settlement Agreement nor the Partial Final Judgment and Decree adjudicates any domestic well right, or any other water right other than the rights of the Pueblos. The water rights of non-Pueblo users are quantified under State law, which permits a water claimant to set forth evidence of beneficial use to establish a priority date. *See* N.M. Stat. Ann. § 72-1-2.[14] Section 3.1.2.2 provides all DWS wells "shall be limited to the historic beneficial use from such well" of no greater than 3 afy, with the presumption of historic beneficial use of .5 afy per household, "unless a greater historic beneficial use is shown or unless a more restrictive

[14] The Atencio Response posits that "non-Indians residing in the Pojoaque Basin also acquired rights before 1956 and before 1848" and argues that pre-1848 wells are omitted from the Settlement Agreement. Atencio Resp. at 16-17. The Settlement Agreement, however, expressly permits priority to be adjudicated for a pre-1956 well. Settlement Agreement, § 3.1.1.1.

diversion limit applies pursuant to court order, covenant or ordinance." All non-Pueblo well owners are entitled to an adjudication of their water right fully in accord with existing state law.

Nor has procedural due process been violated, and the Settlement Agreement is not *fait accompli*, as the Atencio Response, at 28-30, suggests.[15] A substantial opportunity to file objections, and briefs supporting those objections, was provided through the CMO. The statement that, "[i]f the [S]ettlement [A]greement is approved, the Objectors will be required to immediately transfer equitable title to their water rights to the County of Santa Fe, and to commit to transfer their ownership of all water rights to the County, or agree to reduce their use to 0.3 afy," Atencio Resp. at 30, is patently false. The Settlement Agreement does not require any transfer let alone "immediate" transfer. Rather, based on a voluntary choice to connect to the County Water Utility, discontinuation of the use of the domestic well and the actual connection to the utility, then, and only then is there a voluntary transfer of the settling parties' former rights to its well in consideration for service from the Regional Water System. Settlement Agreement § 3.1.8.1.

The Atencio Response lists a number of additional reasons the Settlement Agreement is allegedly unfair.[16] The Atencio Response argues that: (1) the Settlement Agreement would declare the basin closed to new permits for domestic wells; (2) there is no showing that the Basin

[15] The Dunn Response, at 18-19, concedes that procedural due process has been satisfied, and the United States and the Pueblos do not see the relevance of the Dunn Response's sole authority in support of its due process argument, *Mugler v. Kansas*, 123 U.S. 623, 675 (1887) (holding a statute prohibiting beer production did not violate the due process rights of a beer producer).

[16] The Atencio Response also argues—albeit with improperly cited statutes—the Court's Order dated January 13, 1983 (Doc. 641) violates the Anti-Injunction Act, 28 U.S.C. § 2283, and the statute requiring three-judge panels in limited circumstances, 28 U.S.C. § 2284. Atencio Resp. at 4-5. For the reasons stated in *Plaintiffs-in-Intervention Response Opposing Defendant Trujillos' Motion to Quash the Preliminary Injunction Or, Alternatively, For Three Judge Court* at 2-3 (Nov. 18, 2014) (Doc. 9927), neither statutory provision is applicable in this case.

is entirely appropriated; (3) the Settlement Agreement does not address use of unappropriated water; (4) the proposed regional water system will not cover the entire Basin; (5) the construction of the regional water system is not guaranteed; (6) domestic well owners are not allowed to irrigate; (7) the preliminary injunction on outdoor irrigation is made permanent by the Settlement Agreement without a hearing; and (8) Basin water will be leased to the City and County, when they could have taken the water by eminent domain and provided just compensation. Atencio Resp. at 32-33. Each objection may be briefly addressed and disposed.

The first, second, and third arguments essentially argue that the Basin is not fully appropriated, and thus there is no need for limitations on water use. The Settlement Agreement, however, declares that the Basin is fully appropriated. Settlement Agreement § 5.1.1. The OSE has full discretion to declare a basin closed. *See* N.M. Stat. Ann. § 72-2-9. Furthermore, the decades of litigation over water supports that this is a water-short Basin, and that in order to properly recognize Pueblo senior water rights, and protect *all* existing water rights, the OSE acted within its discretion in declaring the Basin closed. The Atencio Response's proffered "uncontroverted" evidence cannot create an issue of fact. Atencio Resp. at 23, and Ex. 1. The single page conclusory letter from Francis West, dated August 30, 2012, states, without analysis, that the surface water and ground water in the Basin is not hydrologically connected, and the aquifer contains 55 million acre feet of water. This "evidence" is disproven by the Court's findings made on record evidence. Hydrology issues were thoroughly litigated before Special Master Harl Byrd in the early 1990s. See *Order Re Hydrology Matters* (July 17, 1991) (Doc. 3783); *Order Re Hydrology* Segment (Aug. 19, 1991) (Doc. 3826); *Order to Show Cause* (Aug. 6, 1992) (Doc. 4006). Counsel and hydrologists for the State, the United States, the Pueblos, and certain non-Pueblo parties participated in the creation of the proposed findings. The Special

Master submitted his report to the Court recommending adoption of the findings a year later. *Special Master's Report to the Court Recommending Adoption of Findings of Fact Pertaining to Hydrology* (April 6, 1993) (Doc. 4163) ("Hydrology Report"). The Report details the extensive legal and hydrological work that was done at that time and all of the responses of various parties to the Order to Show Cause, including hearings on February 16 and March 11, 1993, where evidence was presented. *Id.*, Appendix A at 8. It concluded that the Basin's groundwater and surface water are hydrologically connected, *id.* at 6, ¶ 8, and that groundwater storage contains approximately five to ten million acre feet, *id.* at 14, ¶ 42. The Court adopted the Findings of Fact. *Order* (May 6, 1993) (Doc. 4178). The Findings establish that the issues raised by the Atencio Response were addressed at that time.

The fourth and fifth arguments concern the regional water system, and are essentially identical objections which were addressed in the United States and Pueblos' Memorandum, at 67-69, and referenced and incorporated herein. The sixth and seventh arguments concern limits on outdoor irrigation, and are addressed in the States' Memorandum, at 51-54, and referenced and incorporated herein. The eighth argument addresses the Pueblos' leasing rights and argues that the County should use its power of eminent domain to obtain necessary water, essentially conceding that the Settlement Agreement does not effectuate a taking. The leasing provisions are fair, reasonable, and consistent with the law, thus there is no need for the Court to rewrite them. *See* States' Mem. at 34-37.

The Atencio Response also seems to argue that rulings made prior to the time water rights holders were joined as parties are not binding on those parties. Atencio Resp. at 31-32. This is not legally supportable. The Partial Final Judgment and Decree adjudicates only the water rights of the four Pueblos. The water right of each individual party is adjudicated in a

separate sub-file. Because a stream adjudication is "in the nature of an *in rem* proceeding," each separate sub-file order binds the water right owner and subsequent owners of those adjudicated water rights. *Nevada v. United States*, 463 U.S. 110, 144 (1983). Furthermore, while a water right owner's right is adjudicated in a sub-file, that right is subject to limitations on its exercise as determined in the adjudication and by all applicable laws. *See* N.M. Stat. Ann. § 72-4-19. A water right owner has no right to relitigate how a water right may be exercised. If the Court enters the Partial Final Judgment and Decree, it will be binding on all current parties to this adjudication. *See United States v. Bluewater-Toltec Irr. Dist.*, 580 F. Supp. 1434, 1438 (D.N.M. 1984) *aff'd sub nom. U.S. for & on Behalf of Acoma & Laguna Indian Pueblos v. Bluewater-Toltec Irrigation Dist. of N.M.*, 806 F.2d 986 (10th Cir. 1986) ("Before a decree as provided in section 72–4–19, can be entered, known claimants must be impleaded. That is not to say, however, that all potential claimants must be made parties at the time the complaint is filed.") (internal citations omitted).

The objections set forth in the Atencio Response asserting the Court's established procedure is infirm and that the Settlement Agreement and Partial Final Judgment and Decree are unfair should be overruled.

D. No Response Establishes the Need for Additional Procedures.

The procedures established by the Court in the CMO have proved more than satisfactory for presenting all objections to the Settlement Agreement. The Atencio Response asserts, in passing only, that the lack of discovery has limited their ability to support their arguments. *See* Atencio Resp. at 22 ("[D]iscovery on the amounts of groundwater and use amounts has been severely restricted.") (citing Doc. 7967, an order limiting the scope of a single deposition); *id.* at 27-28. As discussed above, significant litigation occurred, however, prior to the Court's

adoption of the Hydrology Report, and need not be revisited. Regardless, any discovery the Atencio Response may believe is necessary appears to be related to individual subfile proceedings and those proceedings are unrelated to the Settlement Agreement and thus the request for discovery is irrelevant.[17]

The Atencio Response argues the Federal Rules of Civil Procedure are not being applied by the CMO's procedures. Atencio Resp. at 29-30. This argument ignores that a settlement agreement is *not* a complaint, and also ignores the inherent control the Court has over the case which has been before it since 1966. *See Ratzlaff v. Seven Bar Flying Serv., Inc.*, 646 P.2d 586, 591 (N.M. Ct. App. 1982);[18] *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (noting "the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"). Objecting parties are not "entitled to a trial on the merits of their objections," Atencio Resp. at 30; the procedure established in the CMO provides ample opportunity for objections to be made, evidence to be presented, and the Court to consider whether approval of the Settlement Agreement and entry of the Partial Final Judgment and Decree would harm the objecting parties and whether that action and approval of the Settlement Agreement is not fair and reasonable, not in the public interest or inconsistent with applicable law. *See Johnson*, 393 F.3d at 1109.

No further proceedings are needed. The Responses have not articulated any harm to any individual objectors' water right or otherwise shown why the Settlement Agreement and Partial

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[17] The Pueblos' existing water rights, and uses, are set forth in the Partial Final Judgment and Decree, and thus no discovery is necessary on that point. The multi-decade litigation in this case provides ample technical and related information regarding all aspects of the Pueblos' rights and water use in the basin.

[18] The Dunn Response objects to reliance on *Ratzlaff*. Dunn Resp. at 6-7. The effort of the Dunn Response's attack on *Ratzlaff* is puzzling, as it was cited to demonstrate New Mexico's policy of favoring settlements, a point not disputed. U.S. & Pueblo Resp. at 27.

Final Judgment and Decree are not fair, adequate, reasonable, not in the public interest, or not consistent with applicable law. The deadline for objections and supporting briefs has passed, the objectors have not established that they are specifically harmed by the Settlement Agreement or entry of the Partial Final Judgment and Decree. There is absolutely no rational justification legally, factually or procedurally, for further briefing on the same subject, nor an evidentiary hearing, nor for oral argument beyond any the Court schedules in conjunction with the present briefing.

IV. CONCLUSION.

For the reasons set forth in the United States and Pueblos' Memorandum, the States' Memorandum, and herein, the Court should overrule all objections, approve the Settlement Agreement, and enter the Partial Final Judgment and Decree and further orders as the Court deems necessary.

Respectfully submitted this 4th day of February, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that, on February 4th, 2015, the **PLAINTIFFS-IN-INTERVENTION REPLY IN SUPPORT OF ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE** was filed electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I further certify that, on February 4th, 2015, copies of the foregoing were mailed by first-class United States mail to the following non-CM/ECF Participants:

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