

**STATE OF NEW MEXICO
COUNTY OF HILDALGO
SIXTH JUDICIAL DISTRICT COURT**

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

v.

**CV 2005-0054
Hon. JC Robinson**

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

**Animas Underground
Basin Adjudication**

**SPECIAL MASTER’S ORDER DENYING WITHOUT PREJUDICE THE STATE OF
NEW MEXICO’S MOTION FOR CONSOLIDATED ADJUDICATION OF DOMESTIC
AND LIVESTOCK WATER RIGHTS AND ORDER TO SHOW CAUSE**

THE ANIMAS UNDERGROUND BASIN ADJUDICATION came before the Special Master for a hearing on December 14, 2016 on the Motion for Consolidated Adjudication of Domestic and Livestock Water Rights and Order to Show Cause, filed by the State of New Mexico, *ex rel* State Engineer, (the “State”) on October 3, 2016. Ms. Susan Kerry, *Esq.* and Ms. Laurie Knowles, *Esq.* appeared for the State; Mr. Dalva Moellenberg, *Esq.* appeared for Pyramid Peak Mining, LLC; and Mr. D. L. Sanders, *Esq.* appeared by telephone for Lighting Dock Geothermal HI-01 LLC.

In its motion, the State requests that the Court approve a show cause procedure for adjudicating domestic and livestock water rights. The motion states it supplements a Proposed Order for Procedures to Identify and Adjudicate Water Rights Claims Omitted from the Hydrographic Survey, filed June 15, 2015. Although the State apparently served counsel with a copy of the Proposed Order, the order was not filed with the Court.

At the hearing, I requested that the State clarify the procedure it proposes be used for adjudicating irrigation, domestic, livestock and other water rights that were omitted from the

Hydrographic Survey (“Omitted Claims”). Based on the statements of the State’s counsel, it is my understanding that there are two categories of claimants whose water rights are not described in the Hydrographic Survey: (a) Claimants who are known to the State because they filed a permit application or declaration with, or were issued a permit or license by, the State Engineer; and (b) persons whose identity is unknown because they did not file any of the forgoing documents with the State Engineer. As I understand the State’s proposal for adjudicating Omitted Claims, known claimants would be notified of the deadline for asserting Omitted Claims by means of the Court’s Monthly Adjudication Report and unknown claimants would be notified by publication.

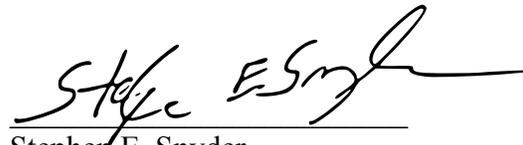
I have two concerns about the State’s proposed procedure for adjudicating Omitted Claims. First, the procedure is not fully and completely explained in documents on file with the Court nor did the State tender, with its proposal, exemplars of the notice, show cause order or other documents it suggests be used when adjudicating Omitted Claims.

Second, I have concerns about the State’s proposal that known claimants be served by means of the Monthly Adjudication Report. It is true that, in this adjudication, claimants are served with notice of their opportunity to file inter se objections by means of the Monthly Adjudication Report. Service by means of the Monthly Adjudication Report is sufficient because a proceeding to resolve inter se objections among claimants is an *in rem* proceeding. *See* Rule 1-071.2.D NMRA. However, in New Mexico known water rights claimants must be personally served before their own water rights can be adjudicated. Rule 1-071.1; *see also* NMSA § 72-4-17 (“all those whose claim to the use of [the waters of any steam system] are of record ...shall be made parties”). While I am confident that a show cause or other expedited

procedure, if properly designed, can be used to adjudicate Omitted Claims, personal service of known claimants may be necessary.

For the forgoing reasons, the State's Motion is denied without prejudiced. The State shall file a motion proposing a revised procedure for adjudicating Omitted Claims by February 15, 2017. A suggested procedural order for adjudicating Omitted Claims, together with exemplars of the notice, show cause order and other documents referenced in the suggested order, shall be attached to the motion.

IT IS SO ORDERED



Stephen E. Snyder
Special Master