

**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.)

No. 66cv6639 MV/LCS

**APRIL 2008 QUARTERLY STATUS REPORT REGARDING THE ADJUDICATION OF
DOMESTIC WELL AND SURFACE RIGHTS**

The State of New Mexico on the Relation of the State Engineer (“State”), pursuant to the Court’s July 5, 2006 *Order* (No. 6174), hereby reports to the Court, addressing the status of “the work completed the previous quarter and the work to be completed during the subsequent quarter for both domestic well and surface water rights.” *Order*, p. 1.

I. Claims to Domestic Well Rights – Previous Quarter

1. During the previous quarter, the State's survey teams completed their initial investigations of unadjudicated post-1982 domestic wells located in Section IV.¹

2. Of 248 potential wells sited in that Section:

-- 66 have been found to be good to go, meaning all paperwork with the State

was found to be in good order, an owner was identified, and a well and a dwelling located on the property. The State has already moved for the joinder of 39 these owners, and will shortly move to join the remainder.

Packets containing proposed Domestic Well Orders have been sent to those already joined.

-- 72 had various deficiencies, such as an expired permit, no drillers well log ever being filed with the State as required by the permit, or the State's hydrographic survey team's field investigators being unable to identify a well on the property. The permittees have been contacted by letter, and asked to contact the State so that these issues may be resolved.

-- 32 were determined either not to be post-1982 wells, or were situations where post-1982 well permits had been issued, but expired without any well ever having been drilled.

¹ As noted in the State's January 2008 Quarterly Status Report (No. 6291), to expedite the process of investigating wells, the State has divided the entire Nambe-Pojoaque-Tesuque stream system into four sub-areas, identified as Sections I, II, III and IV. For convenience, a map is again attached to this Status Report as Exhibit 1.

-- 13 indicated a completed well, but no associated dwelling was found to exist on the property, and as such, no use could be associated with the well. These were set aside for the time being, until such time as a structure might be built and a use initiated.

-- 65 required further investigation by the State.

3. The 65 potential well sites in Section IV that require further investigation by the State indicate both those situations where further field investigations are called for, and those where it is necessary for the State's Hydrographic Survey Bureau to do further work to reconcile the location and ownership data of surveyed domestic wells with the State's permit (WATERS) database and the Court's adjudication record. This work is ongoing.

4. With regard to those 72 potential well claims where owners were sent letters asking for further information, in the event no response is received, the State will send a follow up letter. If no response is received to the second letter, the claims will be evaluated on a case-by-case basis to determine whether a domestic well right exists.

5. Also during the previous quarter, the State's survey teams began their initial investigations of unadjudicated post-1982 domestic wells located in Section II.

6. Of 197 potential wells sited in that Section, in addition to the 68 already investigated, 26 more have been field checked, and of those:

-- 5 have been found to be good to go, meaning all paperwork with the State was found to be in good order, an owner was identified, and a well and a

dwelling located on the property. The State will shortly move for the joinder of these owners.

-- 9 had various deficiencies, such as an expired permit, no drillers well log ever being filed with the State as required by the permit, or the State's hydrographic survey team's field investigators being unable to identify a well on the property. The permittees will be contacted by letter, and asked to contact the State so that these issues may be resolved.

-- 11 were determined either not to be post-1982 wells, or were situations where post-1982 well permits had been issued, but expired without any well ever having been drilled.

-- 1 indicated a completed well, but no associated dwelling was found to exist on the property, and as such, no use could be associated with the well. This subfile was set aside for the time being, until such time as a structure might be built and a use initiated.

-- 0 required further investigation by the State.

7. On April 4, 2008, the State filed its third Motion to Join Additional Parties Defendant (No. 6313) with regard to 34 claimants of previously adjudicated water rights arising from post-1982 wells.

8. On April 23, 2008, the Court entered its Order (No. 6319) granting the State's Motion to Join.

9. On May 2, 2008, the State mailed packets to those post-1982 domestic well water right claimants.

II. Claims to Domestic Well Rights – Subsequent Quarter

10. During the subsequent quarter, the period from the date of this Status Report through July 15, 2008, the State expects to complete the field investigation of the remaining 103 wells in Section II that have not yet been surveyed.

11. The State expects to begin the survey of one of the remaining Sections, either Section I or Section III, during this period as well.

12. The State's Hydrographic Survey Bureau will continue the process of reconciling domestic wells which have been investigated and located by the survey teams with the State's permit (WATERS) database and the Court's adjudication record.

13. The State's survey teams will also continue to undertake follow up visits to Sections II and IV for those situations where further investigations are called for.

14. The State will continue to file motions to join post-1982 water right claimants as their ownership information and well locations are confirmed.

15. As those motions are granted, the State will prepare and mail packets to those claimants so joined.

16. The State will continue undertaking consultations with joined post-1982 well owners who disagree with their proposed Domestic Well Orders.

17. Also, during the subsequent quarter, the State expects to begin filing motions with the Court for entry of individual domestic well orders adjudicating the post-1982 domestic well

water rights of defendants who have been joined and served and provided Notice pursuant to the Court's Order to Show Cause and Procedural and Scheduling Order, and for whom the time to respond has passed.

III. Claims to Surface Water Rights – Previous Quarter

18. During the previous quarter, on January 15, 2008, the State filed its Motion to Enter a Procedural and Scheduling Order for the Determination of Surface Right Priorities (No. 6287).

19. On February 21, 2008, a telephonic hearing on the State's Motion was held before Magistrate Judge Smith to address provisions for notice, and other issues regarding the proposed Procedural and Scheduling Order.

20. On February 21, 2008, following the hearing, Magistrate Judge Smith entered an Order (No. 6301) requiring the State to revise the proposed Procedural and Scheduling Order to reflect that: 1) notice will be given surface water right owners as determined from the State's records; 2) the State will file a proposed draft Notice for Court approval before sending Notice to defendants; 3) the approved Notice shall be published in the Santa Fe New Mexican and the Albuquerque Journal; and 4) after the deadline has expired for filing objections to priority dates, the State will file a motion with a proposed case management order.

21. On February 29, 2008, the State filed a revised Procedural and Scheduling Order with the Court (No. 6304), reflecting the revisions ordered by Magistrate Judge Smith.

22. On March 4, 2008, various non-Pueblo Defendants filed a response (No. 6306) raising concerns that under the revised Procedural and Scheduling Order, claimants must object

to other claimants' proposed priorities before those priorities are finally determined. They urged that an additional opportunity to present *inter se* challenges be allowed if the priority date, when finally determined between the State and the claimant, is earlier than that proposed in the State's Notice.

23. On April 9, 2008, Magistrate Judge Smith entered a Procedural and Scheduling Order for the Adjudication of Surface Right Priorities (No. 6315) substantially adopting the revised proposed Procedural and Scheduling Order filed by the State on February 29, 2008, but with a revision to address the *inter se* concerns of the various non-Indian Defendants.

IV. Claims to Surface Water Rights – Subsequent Quarter

24. With regard to work to be completed during the subsequent quarter, the period from the date of this Status Report through July 15, 2008, the State expects to develop the priority date proposals it intends to serve on subfile defendants.

25. No later than June 9, 2008, the State will file a Motion for Approval of Form of Notice and Order to Show Cause with respect to the priority date proposals that the State intends to serve on subfile defendants.

26. Depending on when and how the Court acts on the State's Motion, the State may also begin service of the Notice and Order to Show Cause on individual subfile defendants, all surface rights owners as determined from the State Engineer's records and the Commissioners of community ditches during this same period, as well.

Respectfully submitted this 2nd day of May, 2008.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 2, 2008, I filed the foregoing April 2008 Quarterly Status Report Regarding the Adjudication of Domestic Well and Surface Rights electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.