

**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 NAMBÉ,)
PUEBLO DE POJOAQUE,)
PUEBLO DE SAN ILDEFONSO,)
and PUEBLO DE TESUQUE,)
)
Plaintiffs-in-Intervention.)

No. 66cv6639 MV/WPL

**STATE OF NEW MEXICO’S RESPONSE TO DEFENDANTS TRUJILLOS’ MOTION TO
QUASH THE PRELIMINARY INJUNCTION OR FOR THREE JUDGE COURT**

Plaintiff State of New Mexico hereby responds to Defendants Elisa Trujillo and Arsenio Trujillo’s November 1, 2014 *Motion to Quash the Preliminary Injunction Or, Alternatively, For Three Judge Court* (“*Motion to Quash*”) (No. 9906), and in support thereof, states as follows:

I. Introduction.

Defendant Elisa Trujillo and Defendant Arsenio Trujillo, both represented by the same attorney, Lorenzo Atencio, have individually challenged the 1983 *Order* granting a preliminary injunction a combined total of eight times over the last five years. Each time their motions have been denied. Now the two come together, and jointly file the same motion that has been

repeatedly denied, to quash the same 1983 *Order* the Court has already upheld on numerous occasions.

This Court has previously held that a challenge to the 1983 *Order* is a motion to reconsider. See e.g., March 30, 2012 *Memorandum Opinion and Order* at 6 (No. 7579).

Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. *Id.* at 11. With their new challenge to the 1983 *Order*, Defendants fail again to meet or even address that standard. They identify no change in the controlling law, no new evidence, and fail to identify any clear error. Their *Motion to Quash* should be denied.

II. This, and Any Further Challenges to the 1983 Order Filed by Defendants' Attorney, Lorenzo Atencio, Should Be Summarily Dismissed

The State has spent significant resources in recent years responding to repeated objections to the 1983 *Order* by Defendants Elisa Trujillo and Arsenio Trujillo, both represented by attorney Lorenzo Atencio. Lorenzo Atencio¹ has now many, many times argued and reargued that the preliminary injunction against outdoor use should be prohibited. All his challenges have been addressed and rejected by this Court, and any further challenges must be considered to not have been made in good faith. Rule 11 provides:

By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief, formed after inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to

¹ Perhaps not unsurprisingly, on November 12, 2014, six days ago, attorney Lorenzo Atencio filed yet two more *Subfile Answers*, each once again challenging the limitation to indoor use required by the 1983 *Order*. (Nos. 9917 and 9918). Absent strong correction from this Court, it is unreasonable to expect Mr. Atencio will cease filing these spurious challenges to the 1983 *Order*, and the State will have no choice but to continue expending significant resources litigating them.

harass, cause unnecessary delay, or needlessly increase the cost of litigation;

- (2) The claims, defenses, and other legal contentions are warranted by existing law or by nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law . . .

Fed.R.Civ.P. 11(b). There is no reasonable basis for Mr. Atencio to continue to believe his legal contentions are “warranted by existing law” or that they are “nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law,” and the State must conclude that these repeated filings are being presented for an “improper purpose.” At a minimum, the practical effect has been to cause unnecessary delay to this litigation.

Indeed, this Court has already cautioned Mr. Atencio that continuing to assert his challenges to the 1983 injunction could run him afoul of Rule 11. *See* July 22, 2013 *Memorandum Opinion and Order* at 6 (“The Court advises Trujillo’s counsel, Lorenzo Atencio, to heed the provisions of Rule 11 . . .”) (No. 7905); *see also* September 20, 2013 *Order Limiting the Scope of the Deposition of Mr. Vince Chavez* at p. 5 (“Mr. Trujillo, however, should consider the express admonitions of the Court [regarding Rule 11] in the Memorandum Opinion and Order, at 6 . . .”) (No. 7967). In its September 30, 2012 *Memorandum Opinion and Order* the Court specifically noted “[t]he Court has previously denied a motion, filed by Trujillo’s counsel, to quash the 1983 injunction,” and concluded that:

Filing an over overbroad discovery request for information that is irrelevant to the adjudication of a domestic well water right in an attempt to challenge a previous ruling by the Court unreasonably causes the State to incur excess costs and attorneys’ fees. See 28 U.S.C. § 1927 (“Any attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”).

No. 7905 at 6 (emphasis added). For that reason, on November 15, 2013, the State, in its *Response to Defendant Arsenio Trujillo's Motion for Summary Judgment*, noted that it has already spent significant resources responding to Defendants' counsel's repeated challenge to the 1983 injunction over the years:

Over the last several years the State has expended significant resources in repeatedly responding to Defendant's counsel's arguments. The State requests the Court direct Defendant's counsel not to make this argument regarding the 1983 *Order* again, and to the extent he does, that the State not be required to respond to it.

Response in Opposition to Arsenio C. Trujillo's Motion for Summary Judgment and Memorandum of Law at p. 8 (No. 8014). The resulting Special Master's report denying summary judgment to Defendant Arsenio Trujillo was silent on the State's request. *Order Denying Defendant Arsenio C. Trujillo's Motion for Summary Judgment and Granting Plaintiff the State of New Mexico's Motion for Summary Judgment on the Claims of Arsenio Trujillo Under Subfile PM-67833* (No. 8119). The State renews its concern now, and again requests that the Court direct Defendants' counsel not to continually raise the same arguments regarding the 1983 *Order* in repeated filings, and to the extent he does, that the State not be required to respond to them. Defendants' *Motion to Quash* should be summarily denied without further briefing.

III. Elisa Trujillo's Numerous Challenges to the 1983 Order Have Repeatedly Been Denied

Six times this Court has rejected Defendant Elisa Trujillo's arguments concerning the Court's January 13, 1983 *Order*. In four separate Memorandum Opinion and Orders and two Special Master rulings, this Court has stated and restated its position on this issue, and ruled that the 1983 *Order* will stand. See April 17, 2013 *Memorandum Opinion and Order* at 6 (No. 7870) ("The Court will deny Trujillo's Motion for Reconsideration because she has not shown any

grounds warranting a motion to reconsider. Further, there is no legal basis to grant Trujillo the right to use water outdoors or in an amount greater than 0.5 acre-feet per year.”); September 20, 2012 *Memorandum Opinion and Order* at 13 (No. 7757) (“The Court concludes . . . that the permit condition arising from the Court’s 1983 Order limiting her to indoor water use only does not cause her to be denied due process and equal protection of the law . . .”); March 30, 2012 *Memorandum Opinion and Order* (No. 7579) (The Court denied Trujillo’s motion to quash the 1983 Order after concluding that: (1) she was not statutorily entitled to a certain amount of water under the domestic well statute, (2) she had not demonstrated that the 1983 Order should be vacated on due process or equal protection grounds, and (3) the Court has subject matter jurisdiction because the United State is a plaintiff in the case); June 2, 2011 *Memorandum Opinion and Order* at 4 (No. 7398) (“The Court will deny Trujillo’s Motion for Relief from the January 13, 1983 Order pursuant to Rule 60(b) and will overrule her appeal of the Special Master’s Recommendation.”); June 29, 2010 *Recommendation of Special Master to Deny Defendant Elisa Trujillo’s Motion for Relief from Order Regarding Subfile PM-43319* at 5 (No. 7011) (“Moreover, Defendant Trujillo, even while not a party to the proceedings at the time the injunction was issued, is bound by the injunction of the Court, particularly as reflected in specific condition [of] approval No. 8 of the permit, because through the permit she has actual notice of the terms of the injunction.”); and February 26, 2010 *Order Granting Motion for Summary Judgment Regarding the Claims of Elisa Trujillo Under Subfile PM-43319* at 7 (No. 6917) (“In addition to the controlling injunction, Defendant Trujillo’s rights under subfile PM-43319 are controlled by the permit language.”).

IV. Arsenio Trujillo's Challenges Likewise Have All Been Denied

Following the multiple denials of Elisa Trujillo's challenges to the 1983 *Order*, Ms. Trujillo's attorney, Lorenzo Atencio, began filing challenges on behalf of Defendant Arsenio Trujillo. So far, the Court has denied his challenges to the 1983 injunction on two occasions. See February 24, 2014 *Order Denying Defendant Arsenio Trujillo's Motion for Summary Judgment and Granting Plaintiff State of New Mexico's Motion for Summary Judgment on the Claims of Arsenio Trujillo Under Subfile PM-67833* at 11 (No. 8119) ("In addition, Defendant Trujillo once again renews his argument that the 1983 injunction should be lifted. The Court has already denied this argument."); and July 22, 2013 *Memorandum Opinion and Order* at 4 (denying Defendant Arsenio Trujillo's discovery requests because they are aimed at mounting "a collateral challenge to the Court's 1983 injunction.") (No. 7905).²

In addition, this year the Court has denied two other challenges to the 1983 *Order* by other parties, each also represented by attorney Lorenzo Atencio. See February 28, 2014 *Order Denying Defendants Melissa Ortiz and Darren Quintana's Motion for Summary Judgment and Granting Plaintiff State of New Mexico's Motion for Summary Judgment on the Claims of Melissa Ortiz and Darren Quintana Under Subfile PM-68445* (No. 8140); and February 26, 2014 *Order Denying Defendant Mary Habeeb's Motion for Summary Judgment and Granting Plaintiff State of New Mexico's Motion for Summary Judgment on the Claims of Mary Habeeb Under Subfile*

² One further challenge by Defendant Arsenio Trujillo to the 1983 *Order* remains pending. See March 12, 2014 *Objections to the Order Denying Defendant Arsenio C. Trujillo's Motion for Summary Judgment and Granting Plaintiff the State's Motion for Summary Judgment on the Claims of Arsenio Trujillo Under Subfile PM-67833* at 8-10 (No. 8223).

PM-77023 (No. 8139).³ All in all, between 2010 and 2014, this Court has entered five Memorandum Opinions and Orders and five Special Master’s Reports and Recommendations dismissing Defendants’ arguments against the 1983 *Order*, including that the injunction constitutes a takings, that it is a violation of due process and equal protection, that it is inconsistent with New Mexico’s domestic wells statute and New Mexico’s adjudication statute, and many more, on the basis that they are not well taken and fail to meet the standard of a motion to reconsider.

V. Defendants Trujillo do not present grounds to reconsider the 1983 Injunction

Defendant Elisa Trujillo and Defendant Arsenio Trujillo now jointly move to quash the preliminary injunction again. In the opinions and orders cited above, the Court found repeatedly that Defendants Trujillo, and others represented by attorney Lorenzo Atencio, had failed to meet the standard for a motion to reconsider. And once again, Defendants Trujillo fail to do so. Defendants Trujillo have not identified “an intervening change in the controlling law,” or presented any “new evidence previously unavailable” or established “the need to correct clear error or prevent manifest injustice.”

Defendants cite, not an intervening change in the controlling law, but rather two federal statutes that existed at the time of their previous eight challenges to the 1983 *Order*. Neither is applicable to this matter. The first, 28 U.S.C. §2283, provides that: “A Court of the United States may not grant an injunction to stay proceedings in a State court, except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” No “proceedings in a state court” are being enjoined by the 1983 *Order*.

³ In 2003 the Court denied yet another motion challenging the 1983 *Order*, this one actually filed by someone other than Lorenzo Atencio. November 18, 2003 *Order* (No. 6078).

The second, 28 U.S.C. 2284, provides that:

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

(emphasis added). Defendants Trujillo fail to identify any Act of Congress which would require a three judge panel in the instant matter. Defendants' arguments don't meet the standard for a motion to reconsider, and in particular, fail to establish the need to correct clear error or prevent manifest injustice, and should be overruled. Defendants' request for an award of attorney fees incurred by Defendants' attempt to quash the 1983 *Order (Motion to Quash* at 12) should be denied.

VI. Conclusion

Defendants Trujillos' joint *Motion to Quash* fails to present grounds for the Court to reconsider the 1983 *Order*, or even address the standard for such a motion. Such arguments as Defendants do make are not applicable to the instant matter, and should be denied, as should their request for attorneys' fees. Moreover, this Court should sanction Mr. Atencio under Rule 11(b)(2) for making "claims, defenses, and other legal contentions" that are not "warranted by existing law," and which he is well aware the Court has already ruled against on eleven different occasions.

WHEREFORE, the State requests Defendant Elisa Trujillo and Defendant Arsenio Trujillo's *Motion to Quash* and request for attorney fees be denied.

RESPECTFULLY SUBMITTED

/s/ Edward C. Bagley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 18, 2014, I filed the foregoing 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.