

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/WPL

Subfile No.:PM-30627
PM-89217

(Defendants Duran, Duran and Gossein)

JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN

Pursuant to Fed.R.Civ.P. 26(f), a meeting was held by telephone on January 28, 2015, and a second meeting was held in person on February 16, 2015 at the Office of the State Engineer, 130 S. Capitol Street, Santa Fe, New Mexico, both attended by:

Edward Bagley, Esq., for Plaintiff State of New Mexico.

Lorenzo Atencio, Esq., for Defendants Anthony R. Duran, Donna L. Duran and Christian Gossein.

NATURE OF THE CASE

A determination of Defendants’ post-1982 domestic well water rights in this general stream system water rights adjudication.

AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES

Plaintiff does not intend to file any additional pleadings or join additional parties.

Defendants do not intend to file any additional pleadings or join additional parties at this time but reserve the right to do so.

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties are willing to further stipulate to the following facts: None.

The parties further stipulate and agree that the law governing this case is: the law of the State of New Mexico.

PLAINTIFF'S CONTENTIONS:

Defendants' post-1982 domestic well water rights should be limited to indoor use only pursuant to the permit restriction and the order of this Court, and adjudicated an amount of water not to exceed a diversion and consumption of 0.5 acre feet per year from the well unless a more restrictive diversion limit applies pursuant to court order, covenant or ordinance.

DEFENDANTS' CONTENTIONS

Defendants' post-1982 domestic well water rights should allow for outdoor water use of their permit quantities of 3.0 acre feet per year. Defendants claim a water right of 3.0 AFY pursuant to Section 72-12-1.1, Defendant's Domestic well permit, and N.M.A.C. 19.27.5.9(D). Defendants further submit that the preliminary injunction filed on January 13, 1982 is void for lack of jurisdiction.

Defendants demand a jury of their peers on all issues of fact.

PROVISIONAL DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan:

Plaintiff may call witnesses yet to be named to identify or authenticate documents, if necessary.

Defendants may call witnesses yet to be named to identify or authenticate documents, if necessary.

Defendants will offer the following exhibits at the trial: State Engineer documents relating to the well.

Plaintiff-the-State contends that Discovery will be needed on the following subjects: Information regarding the use of water by Defendants and Defendants' predecessors-in-interest only.

Defendants alternatively contend that Discovery will be needed on the following subjects: Defendants' water use, water use generally, the history of their permitted domestic well rights, and the extent of any other water rights associated with their property. Also, Defendants seek discovery of Plaintiff's records relating to availability of underground water in the N-P-T Basin and the impact of underground water pumping on the surface waters as it relates to N.M.A.C. 19.27.5.9(D).

Maximum of 40 interrogatories by each party to any other party. (Responses due 20 days after service).

Maximum of 10 requests for admission by each party to any other party. (Response due 20 days after service).

Maximum of 2 depositions by Plaintiff(s) and 5 by Defendant(s), which may take place only with the consent of all parties to the subfile proceeding.

Each deposition limited to maximum of 4 hours unless extended by agreement of

parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff(s) by April 30, 2015.

from Defendant(s) by April 30, 2015.

Rebuttal Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff(s) by May 31, 2015

from Defendant(s) by May 31, 2015.

Supplementation under Rule 26(e) due 10 Days after the new information has been acquired.

All discovery commenced in time to be complete by July 31, 2015.

PRETRIAL MOTIONS

Plaintiff intends to file: none at this time.

Defendants intends to file: none at this time.

ESTIMATED TRIAL TIME

Plaintiff the State estimates trial will require 1 day.

Defendants estimate trial will require 3 days.

This is a non-jury case.

This is a jury case. (Defendants have demanded a jury on issues of fact.)

The parties request a pretrial conference in August 2015.

SETTLEMENT

The possibility of settlement in this case is considered unlikely.

APPROVED

/s/ Edward C. Bagley

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Approved electronically

Lorenzo Atencio
Attorney for Defendants Duran and Gossein
Subfiles: PM-30627 and PM-89217
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 18, 2015, I filed the foregoing Joint Status Report and Provisional Discovery Plan 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.