

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,)

No. 66cv6639 WJ/WPL

El Rancho Ditch
Subfile No. 5.61

Plaintiffs-in-Intervention.

**MOTION TO CORRECT SUBFILE ORDER TO ADD OMITTED GROUNDWATER
POINT OF DIVERSION AND ADOPT PRIORITY
FOR DOMESTIC/LIVESTOCK WELL (SUBFILE NO. 5.61)**

Pursuant to Section A.2 of the July 23, 2013, *Procedural Order for Correcting Subfile Errors* (Doc. 7909), the State of New Mexico (“State”), by and through its counsel, requests the Court to enter the attached Order: (1) providing the legal description of the point of diversion (i.e., well location) for the groundwater right adjudicated for domestic and livestock use under Subfile No. 5.61; and (2) adopting a November 28, 1956 priority for said right. The State offers the following grounds for this motion:

1. On March 14, 1969, the Court entered an “Order” under Subfile No. 5.61 adjudicating a groundwater right for domestic and/or livestock use to Saloman Roybal (“Subfile Order”). The Subfile Order omitted a legal description of the location of the domestic/livestock

well, and instead described the point of diversion as “[w]ithin the Jacona Grant.” *See* Subfile Order as *Exhibit 1*. The Subfile Order should therefore be corrected to provide the legal description for point of diversion (i.e., well location) of the subject groundwater right.

2. The Subfile Order also omitted a priority date for the domestic/livestock right. The State has searched its files and the files of the OSE Water Rights Division for an OSE permit, a Declaration of Owner of Underground Water Right, or other evidence concerning first beneficial use of water on which to adjudicate priority for the right. To date, the State has found no such evidence. It is reasonable to assume given the absence of any OSE filings for the right that it relates to a pre-basin well. The State therefore proposes that the Court adopt a November 28, 1956 priority which is the day prior to the date of the State Engineer’s order declaring the Rio Grande Underground Water Basin. *See* Rule 19.27.49.8.A NMAC.

3. Accordingly, Subpart B of Paragraph 5 of the March 14, 1969, Subfile Order entered in Subfile No. 5.61 should therefore be corrected to add the legal description for the point of diversion of the domestic/livestock groundwater right, and adopt priority for said right as follows:

Purpose: Non NMSA § 72-12-1 and -1.1 Domestic use for One Household and/or Livestock (Groundwater Only)

State Engineer File No.: None

Priority: November 28, 1956

Point of Diversion: X= 546,916 Y= 1,779,768 on the New Mexico State Plane Coordinate System, Central Zone, 1927 N.A.D.

Place of Use: Within the property owned by the Defendant(s) served by the well

Amount of Water: Not to exceed a diversion of 3.0 acre-feet per year from the well described above or the historic beneficial use, whichever is less.

3. Except as requested by this motion, all other elements of the rights adjudicated under Subfile No. 5.61 should remain as stated in the March 14, 1969, Subfile Order and subsequent orders of this Court.

4. The State is serving a copy of this motion and a proposed order granting the motion on all parties or persons who, according to the records of the State, may have an ownership interest in Subfile No. 5.61. The State's proposed order is attached as *Exhibit 2*.

WHEREFORE, the State requests that the Court enter the attached order correcting Subpart B of Paragraph 5 of the March 14, 1969, Subfile Order entered in Subfile No. 5.61 as described above in paragraph 2 by: (a) adding the legal description for the point of diversion (well location) for the domestic/livestock groundwater right adjudicated under the Subfile Order; and (b) adopting a November 28, 1956, priority for said.

Electronically Filed,
By /s/ Brett J. Olsen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2015, 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, and to the following person(s) by U.S. mail:

/s/ Brett Olsen
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