

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 PUEBLOS DE TESUQUE,)
)
Plaintiffs-in-Intervention.)

No. 66cv6639 WPJ/WPL
*Sub-file 34378

SECOND AMENDED SUBFILE ANSWER

COME(S) NOW, **Leroy Manuel Garcia and Barbara R. Garcia**, Defendants, by and through their attorney of record and answer the complaint as follows: We object to the description of the water right(s) described by the proposed Consent Order for the above Sub-file because:

1. Defendants were improperly served with a packet and summons with an incorrect Sub-file number that failed to list any of the three wells they have water rights to in the Rio Grande Water Basin and assert their right to proper service of process as explained herein.
2. Defendants were mailed a packet on June 25, 2015 that included a copy of the complaint, summons, Order Granting the State Engineer’s Twelfth Motion to Join Pre-Basin Claimants, map and an Order to Show Cause. The packet was addressed to Leroy Garcia and a separate

and identical packet was addressed to Barbara Garcia (Defendants are husband and wife and respond herein jointly referred to herein as “the Garcias”). Defendants were properly joined, however, the Sub-file number on those packets was listed as RG-34378, which is incorrect.

3. The Garcia’s are the owners of the well identified on the map contained in that packet but the correct well number for the well identified on that map is RG-23468 and the State Engineer and Garcias have already identified that the water right to that well was fully adjudicated in this action. However, the Garcias also own two other wells described below that should be accounted for in this litigation if they have been omitted or if those rights have not already been adjudicated.
4. Because the Garcias’ well water rights as described herein have either already been adjudicated or were omitted in this action they demand that any omitted wells be included and that proper service is made for those wells and further provide these statements regarding their wells to preserve their rights to water in the Rio Grande Basin.
5. Defendants claim water rights in the Rio Grande Water Basin for each of the following wells described below as follows:

a. Well RG-23468

Purpose of Use: Domestic and Livestock under 72-12-1 NMSA 1978
Priority: June 7, 1973
Amount: 3.0 AFY
Location of Well: SW ¼ NE¼ of Section 07, Township 19N, Range 09E in Santa Fe County. (New Mexico Principal Meridian PLSS Description)
Notes: *Please see attached Exhibit 1 documents relating to Well RG-23468. Order was entered in this cause adjudicating this well at 3.0 acre feet per annum. Water right not disputed by State Engineer.

b. Well RG-22649

Purpose of Use: Domestic and Livestock under 72-12-1 and 72-12-4 NMSA 1978.

Priority: 1937 adjudicated at 3 acre feet per annum in *State of New Mexico ex rel., S.E. Reynolds v. USA* Sub-file DS-96 on October 4, 1966 as evidenced by signed Offer of Judgment.

Amount: 3.0 AFY

Location of Well: SE¹/₄ SW¹/₄ NE¹/₄ of Section 07, Township 19N, Range 09E in Santa Fe County. (New Mexico Principal Meridian PLSS Description).

Point of Diversion: N: 3,972,596 E: 407,640 (NAD (92)(Meters)).

Notes: *Please see attached Exhibit 2 documents relating to Well RG-22649. State Engineer disputes this water right is adjudicated at this time and requests proof of beneficial use of water. Both parties are seeking to locate an order entered in this cause for this well. This well water right has already been adjudicated since both parties signed the offer of judgment regardless of whether an final order was entered in this case. If an order cannot be located the Garcias will move the court to enter an order based on the signed offer of judgment.

c. Well RG-27268

Purpose of Use: Domestic and Livestock under 72-12-1 and 72-12-4 NMSA 1978.

Priority: About 1938 (NMSA 72-12-4) a permit was later issued to clean out well on May 15, 1977 at which time a well number was issued.

Amount: 3.0 AFY

Location of Well: NE¹/₄ SW¹/₄ NE¹/₄ of Section 07, Township 19N, Range 09E in Santa Fe County. (New Mexico Principal Meridian PLSS Description)

Notes: *Please see attached Exhibit 3 documents relating to Well RG-27268. State Engineer requests proof of beneficial use of this well. Both parties are searching for an order or offer of judgment entered in this cause regarding this well.

2. Defendants and their predecessors in interest have put water to beneficial use from the above described wells under NMSA 72-12-2 1978 by irrigation of noncommercial trees, plants or garden and for household or other domestic use in accordance with 72-12-1.1 NMSA 1978 and or have placed water to beneficial use for stock irrigation. Defendants additionally also lease the property containing well RG-22649 as a commercial property and the water from

that well has been used to support that lessee's business and operations, which may be lost if the water rights are decreased in a manner inconsistent with the needed water usage for that property.

3. Plaintiff, State Engineer has not alleged any violation of 72-12-20 NMSA 1978 by Defendants.
4. Plaintiff State Engineer did not require that any of these wells be metered.
5. Defendants add that their property value is partially based on the value of the attached water rights and a decrease in those water rights would result in decreased property value.
6. Defendants made a good faith effort to resolve their disagreement with the State by:
consulting with counsel for the State Engineer on August 14, 2015; and
 - a. The parties have identified that the water rights to RG-23468 were already fully adjudicated in this litigation in the amount of 3 acre feet per year and are undisputed and therefore that the Sub-file number on the service packet was incorrect.
 - b. The parties are still in the midst of negotiations regarding Wells RG-22649 and RG-27268 and the State Engineer has agreed that a new packet will be provided with service of a summons and complaint regarding those wells to cure any defects in service or omission of the Garcias' wells from the State Engineer's files or the court's files for this adjudication.
 - c. In addition, the State Engineer has agreed that they will search their records to see if they can locate an order entering the offer of judgment made to Josefa Sena (Mrs. Pablo) in October of 1966, who is the predecessor in interest to the property and water rights to which well RG-22649 is attached; and to see whether an order

or offer of judgment was entered previously adjudicating water rights to well RG-27268.

- d. The Garcias have agreed to permit the State Engineer to enter onto their property for the limited purpose of obtaining proper information regarding the location of the three wells and will schedule a site visit with the State Engineer for this purpose.

Respectfully Submitted,

By: /s/ Andrea La Cruz-Crawford electronically
Signature of Attorney

ATTORNEY'S NAME AND ADDRESS: Andrea La Cruz-Crawford

DBA THE STREEPER FIRM

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Attorney for: Leroy Garcia and Barbara Garcia
Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2015, I caused the foregoing Second Amended Sub-File Answer (RG-34378) to be filed electronically through the CM/ECF system which caused parties on the electronic service list to be served as described in the Notice of Electronic Filing and that I placed a copy of the same in the mail via certified mail on this 24th day of August, 2015 and properly addressed to:

Office of the State Engineer
Litigation and Adjudication Program
ATTN: Edward Bagley
PO Box 25102
Santa Fe, NM 87504-5102

/s/ Andrea La Cruz-Crawford electronically
Andrea La Cruz-Crawford