

**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 32708

**DEFENDANTS JOHN VALENCIA  
AND MONA VALENCIA SUBFILE ANSWER**

**COME(S) NOW, Mona Valencia and John Valencia**, Defendants, who are husband and wife and respond herein jointly 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. The approved permit No. RG-32708 from the New Mexico State Engineer of June 12, 1979, was issued to serve two households on two separate tracts or parcels of land. (See attached Survey of the two parcels Exhibit 1).
2. RG-32708 is a pre-1982 multiple-user (or shared) well located on tract 2 (See Survey Exhibit 1) and serving both tract 1 and tract 2. Because the well is set to serve two users of the well

or two households, the 0.7 acre feet contained in the consent order should at minimum be doubled to accommodate the two properties for a total diversion of 1.4 acre feet per year from that well.

3. The map provided by the State Engineer in their service packet shows RG-32708 located on Tract 1. This is incorrect. RG-32708 is located on Tract 2 (Santa Fe County Location ID 33819264) and currently serves both Tract 2 and the household on Tract 1, which is where the Valencia's currently reside (Santa Fe County Location ID 38501244). This property is located in El Rancho, within the outer boundaries of the Pueblo de San Ildefonso.
4. Defendants claim water rights in the Rio Grande Water Basin for the following well described below as follows:

**a. Well RG-32708**

Purpose of Use: Domestic and outdoor irrigation of up to 1 acre of non-commercial trees, lawns and garden Livestock under 72-12-1 NMSA 1978  
Priority: June 12, 1979  
Amount: 3.0 AFY  
Location of Well: NE ¼ NE¼ NW ¼ of Section 09, Township 19N, Range 08E in Santa Fe County (New Mexico Principal Meridian PLSS Description); and within the boundaries of tract 2 as described in the Survey (Exhibit 1 Survey).  
X: 546,695.6 Y: 1780004.8 (NAD 1927) (See Exhibit 2 Map of Well Location)  
Notes: \*Please see attached Exhibit 3 Well Permit RG-32708, for priority date and other information.

5. Defendants and their predecessors in interest have put more than 0.7 acre feet of water per year to beneficial use from the above described well under NMSA 72-12-2 1978 by irrigation of noncommercial trees, plants 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.
6. The Valencias have a 0.15 acre garden on Tract 2 that is irrigated by RG-32708.

7. Based on information or belief, it takes 0.45 acre feet of water to irrigate the 0.15 acre garden located on Tract 2.
8. Based on information or belief Defendants have used water from RG-32708 to water cows and irrigate trees on both properties in addition to its use for the 0.15 acre garden on Tract 2.
9. The Valencias also have alfalfa fields on Tract 1 that are irrigated by surface water rights when water is available but RG-32708 serves as a backup to those surface water rights in years of drought or limited surface water supplies.
10. Based on information or belief, it will take at least 1.40 acre feet of water, or possibly more, to serve these two properties in conformity with the historic beneficial use of water from well RG-32708.
11. Plaintiff State Engineer did not require that RG-32708 was metered because the second household has not been completed.
12. Defendants do not believe that 0.7 acre feet of water would meet the minimum usage requirements for two domestic households and outdoor irrigation as described above and would result in a decrease from their historic beneficial use of water from that well, which would violate their right to irrigate outdoors in accordance with the domestic well statute §72-12-1.1 NMSA 1978, violate their right to show beneficial use of their permitted waters (See §72-12-4 NMSA 1978 and §72-12-5 NMSA 1978), right to a fair trial, and state and federal substantive due process rights N.M. Const. §18; US Const. Art V.
13. Plaintiff, State Engineer has the duty to administer water in the State of New Mexico. §72-2-9 NMSA 1978.
14. Part of the State Engineer's duty in administration of New Mexico's waters includes a duty to institute forfeiture or abandonment proceedings where water is not being placed to

beneficial use in accordance with New Mexico water laws. §72-12-8 NMSA 1978 (See also *State ex rel. Reynolds v. South Springs Co.*, 80 NM 144, 452 P.2d 478 (NM 1969) for more on differences between abandonment and forfeiture of water rights).

15. Plaintiff, State Engineer has not alleged any violation of 72-12-8 NMSA 1978 or made any claim of abandonment of water rights by the Valencias.
16. Defendants also add that their property value is partially based on the value of the well water rights and a decrease in those water rights from that well's historic beneficial use could result in inadequate water supply to either or both households and a decrease in property value, or could result in loss of the garden, non-commercial trees and overall aesthetic value of the two tracts.
17. Defendants request a hearing before the special master and opportunity to provide evidence regarding historic beneficial use of RG-32708 as well as evidence that RG-32708 serves two tracts of land and two users among other issues.
18. Defendants made a good faith effort to resolve their disagreement with the State by:
  - a. Hand delivering a request for consultation to the State Engineer on June 28, 2015, and
  - b. Making several telephone calls back and forth throughout July, 2015 to the State Engineer's Office to schedule a meeting; which never occurred.
  - c. The Valencia's are still willing to engage in negotiation with the State Engineer's Office regarding their well if they are provided with an opportunity to do so.

#### **PRAYER FOR RELIEF**

Defendants respectfully request that the historic beneficial use of RG-32708 and requirements for serving two households on a shared multiple user domestic well be adopted by

the special master in place of the 0.7 acre foot recommendation made by the State Engineer in the Order to Show Cause.

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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