

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

Subfile No. RG-37816

Plaintiffs-in-Intervention.

**UNOPPOSED MOTION TO CORRECT PRIORITY DATE
FOR DOMESTIC/LIVESTOCK RIGHT (SUBFILE NO. RG-37816)**

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 adopting a priority of “November 28, 1956, or date the well was completed if earlier” for the groundwater right adjudicated for domestic and livestock use under Subfile No. RG-37816. The State offers the following grounds for this motion:

1. The attached January 31, 1984, “Order” (“Subfile Order”) entered in Subfile No. RG-37816 adjudicated a groundwater right for domestic and livestock use under NMSA 1978, Section 72-12-1, for diversion from Well No. RG-37816, in the name of Jake C. Gonzales. The Subfile Order adopted an April 15, 1982 priority for this right based upon an April 15, 1982, *Application and Permit to Appropriate Underground Waters in Accordance with Section 72-12-1*

New Mexico Statutes (“Domestic Well Permit”) granted with respect to the subject well. *See* Subfile Order, Offer of Judgment, and Domestic Well Permit attached jointly as *Exhibit 1*. The Domestic Well Permit states that it was sought to “replace an old well not on record.” *See id.*

2. The subfile defendant, Jake C. Gonzales, has submitted evidence to the State in support of his request for an earlier priority for the domestic and livestock right adjudicated for diversion from Well No. RG-37816. This evidence includes the September 28, 2016, affidavit of Gilbert Garduno, attached as *Exhibit 2*, describing the affiant’s personal knowledge dating to the 1940s concerning the home and original well located on the property currently owned by Jake C. and Susan I. Gonzales. Gonzales has also submitted Assessor’s records, attached as *Exhibit 3*, stating that the home on the property was built during the 1940s.

3. Based on the foregoing evidence, the State believes it is reasonable to conclude that Well No. RG-37816 is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right.¹ The State therefore proposes to correct the Subfile Order by adopting a priority of “November 28, 1956, or date the well was completed if earlier” for the domestic and livestock right adjudicated for diversion from Well No. RG-37816, and clarifying that said right is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right.

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. RG-37816. The State’s proposed order is attached as *Exhibit 4*.

WHEREFORE, the State requests that the Court enter the attached order correcting the January 31, 1984, “Order” entered in Subfile No. RG-37816 as set forth in paragraph 3 above.

¹ The New Mexico State Engineer’s order declaring the Rio Grande Underground Water Basin is dated November 29, 1956. *See* Rule 19.27.49.8.A NMAC.

Electronically Filed,
/s/ Brett Olsen
Brett J. Olsen
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
Phone: (505) 827-3866
Attorneys for the State of New Mexico

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 3, 2016, 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
Brett J. Olsen

Jake C. Gonzales
Susan I. Gonzales
26 County Road 84G
Santa Fe, New Mexico 87506