

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. 10.90
RG-1143

Plaintiffs-in-Intervention.

**UNOPPOSED MOTION TO CORRECT PRIORITY DATE FOR
DOMESTIC/LIVESTOCK RIGHT (SUBFILE NO. 10.90, RG-1143)**

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 December 31, 1953, for the groundwater right adjudicated under Subfile No. 10.90 for domestic and livestock use from Well No. RG-1143. The State offers the following grounds for this motion:

1. The attached May 8, 1968 “Order” (“Subfile Order”) entered in Subfile No. 10.90 adjudicated a groundwater right for domestic and livestock use under NMSA 1978, Section 72-12-1, for diversion from Well No. RG-1143 in the name of Jose Luis Roybal. *See* Subfile Order attached as *Exhibit 1*. The Subfile Order adopted a July 23, 1957 priority for this right based upon the filing date of an *Application to Appropriate Underground Waters in*

Accordance with Section 72-12-1 New Mexico Statutes (“Domestic Well Permit”) granted with respect to the subject well. The Domestic Well Permit states that application was filed “to clean out existing well and possibly deepen to second water.” See Domestic Well Permit attached as *Exhibit 2*.

2. The subfile defendant, Jose Luis Roybal, 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-1143. This evidence consists of the June 10, 2016, affidavit of Mr. Roybal, attached as *Exhibit 3*, wherein he states that he had the subject well drilled in 1953 by Barney Isbell, and that he filed application for the Domestic Well Permit in 1957 because the well had collapsed and needed to be deepened.

3. Based on the foregoing evidence, the State believes it is reasonable to conclude that Well No. RG-1143 is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right.¹ The State therefore proposes to correct Paragraph 5.B of the Subfile Order by adopting a priority of December 31, 1953, for the domestic and livestock right adjudicated for diversion from Well No. RG-1143, and clarifying that said right is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right. The State’s proposed order is attached as *Exhibit 4*.

4. Jose Luis Roybal does not oppose the motion.

WHEREFORE, the State requests that the Court enter the attached order correcting Paragraph 5.B of the May 8, 1968, Order entered in 10.90 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,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 18, 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

JOSE LUIS ROYBAL
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