

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 Nos. 6.3, 19.16,
RG-3460

Plaintiffs-in-Intervention.

**MOTION TO PARTIALLY VACATE SUBFILE ORDER
AND CORRECT PRIORITY DATE FOR DOMESTIC/LIVESTOCK RIGHT
(SUBFILE NOS. 6.3, 19.16, RG-3460)**

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 that the Court:

- (1) vacate paragraph 5.B of May 8, 1968, subfile order entered in Subfile 6.3.; and
- (2) correct paragraph 5.B of the March 14, 1969 subfile order entered in Subfile No.

19.16 to identify the well referenced therein as Well No. RG-3460 and adopt a December 31, 1941 priority for the groundwater water right adjudicated for domestic/livestock use from Well No. RG-3460.

The State offers the following grounds for this motion:

1. On May 8, 1968, the Court entered an “Order” under Subfile No. 6.3 in the name of Elena Ortiz adjudicating a groundwater right for domestic/livestock use from Well No. RG-3460 located in the SE ¼ SE ¼ NE ¼ Section 12, Township 19 North, Range 8 East (“Subfile Order 6.3”). *See* Subfile Order 6.3, attached as *Exhibit 1*, ¶5.B.

2. On March 14, 1969, the Court entered an “Order” under Subfile No. 19.16 adjudicating a groundwater right to Elena Ortiz for domestic/livestock use from a well located in “P.C. 169, Complaint 9, Sec. 12, T. 19 N., R. 8. E.” (“Subfile Order 19.16”). *See* Subfile Order 19.16, attached as *Exhibit 2*, ¶5.B. This well was subsequently designated by the Office of the State Engineer (“OSE”) as RG-44530. *See* Declaration of Owner of Underground Water Right No. RG-44530 (“Declaration”), attached as *Exhibit 3*.

3. The State’s review of Subfile Orders 6.3 and 19.16, OSE records, and documents submitted by Jose Carlos Ortiz, successor-in-interest to Elena Ortiz as to Subfile Order 19.16 and the Personal Representative of the Estate of Elena Ortiz, indicates: (a) the well referenced in both subfile orders is the same well, Well No. RG-3460; and (b) Well No. RG-3460 is located on Subfile Tract No. 19.16.

4. Additionally, Jose Carlos Ortiz 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-3460. This evidence includes the above-referenced Declaration which incorporates the August 30, 1985 affidavit of Juanita Ortiz. *See Exhibit 3*. The affidavit describes Juanita Ortiz’s personal knowledge dating to the 1941 concerning domestic use of the subject well to serve two homes located in the SE ¼ SE ¼ NE ¼ Section 12, Township 19 N, Range 8 East. *See id.* Based on the foregoing evidence the State believes it is reasonable to conclude that Well No. RG-3460 is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1

right, and that first beneficial use of water from Well No. RG-3460 for domestic purposes occurred no later than 1941.¹

5. Accordingly, Paragraph 5.B of Subfile Order 6.3 should be vacated to remove reference to Well No. RG-3460 and the related domestic/livestock groundwater right. Paragraph 5.B of Subfile Order 19.16 should be corrected to describe the domestic/livestock groundwater right adjudicated therein as follow:

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

State Engineer File No.: RG-3460

Priority: 12/31/1941

Point of Diversion: SE ¼ SE ¼ NE ¼ Sec. 12, T. 19N, R. 8E

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.

6. Except as requested by this motion, all other elements of the rights adjudicated under Subfile Nos. 6.3 and 19.16 should remain as stated in the May 8, 1968 Order (Subfile No. 6.3), the March 14, 1969 Order (Subfile No. 19.16), and subsequent orders of this Court.

7. 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 Nos. 6.3, 19.16, and RG-3460. The State's proposed order is attached as *Exhibit 4*.

WHEREFORE, the State requests that the Court enter the attached order vacating Paragraph 5.B of the May 8, 1968 Order in Subfile No. 6.3 and correcting the March 14, 1969 Order in Subfile No. 19.16 as described above in paragraph 5.

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 20, 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:

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