

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. 6.76,
RG-1032

Plaintiffs-in-Intervention.

MOTION TO CORRECT PRIORITY DATE FOR DOMESTIC/LIVESTOCK RIGHT
(SUBFILE NO. 6.76, RG-1032)

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 December 31, 1938 priority date for the groundwater right adjudicated for domestic/livestock use from Well No. RG-1032 under Subfile No. 6.76.

The State offers the following grounds for this motion:

1. The attached September 5, 1967, “Order” (“Subfile Order”) entered in Subfile No. 6.76 adjudicated a groundwater right for domestic and/or livestock use under NMSA 1978, Section 72-12-1, for diversion from Well No. RG-1032, in the name of Jose Pablo Roybal. The Subfile Order adopted a June 26, 1957 priority for this right based upon an Application for Permit to appropriate the Underground Waters of the State of New Mexico (“Permit”) filed with

the New Mexico Office of the State Engineer on June 26, 1957. *See* Subfile Order and Permit attached joint as *Exhibit 1*.

3. Jose Pablo Roybal's successor, Richard F. Roybal, has submitted evidence to the State in support of his request for an earlier priority for the domestic/livestock right adjudicated for diversion from Well No. RG-1032. This evidence consists of the affidavit of Jose Pablo Roybal's son, Jose V. Roybal, stating personal knowledge concerning the history of well dating to 1938. The affidavit is attached as *Exhibit 2*.

4. The State believes there is sufficient evidence on which to conclude first beneficial use of water for this right occurred in or about 1938. The State therefore proposes to correct Paragraph 5.B of the Subfile Order by adopting a priority date of December 31, 1938 for the domestic/livestock right adjudicated for diversion from Well No. RG-1032, and clarifying that said domestic/livestock right is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right.

5. Except as requested by this motion, all other elements of the rights adjudicated under Subfile No. 6.76 should remain as stated in the September 5, 1967, Order and subsequent orders of this Court.

6. 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. 6.76. The State's proposed order is attached as *Exhibit 3*.

WHEREFORE, the State requests that the Court enter the attached order correcting Paragraph 5.B of the September 5, 1967, Order in Subfile No. 6.76 by adopting a December 31, 1938 priority for the groundwater right adjudicated for domestic and/or livestock use under Subfile No. RG-1032.

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 26, 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:

RICHARD F. ROYBAL
DONNA ROYBAL
15 CAMINO DE ROYBAL
SANTA FE, NM 87501

MIGUEL A. (MIKE) DURAN
6 CUATES Y RABO LANE S
SANTA FE, NM 87506

CAMILLO PEREZ
CURTIS NOVAK
RT. 5, BOX 244-C
SANTA FE, NM 87506

JESSICA A. TRUJILLO
241 COUNTY ROAD 84
SANTA FE, NM 87506

/s/ Brett Olsen
Brett J. Olsen