

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 MV/WPL
Subfile No. RG-70046

Plaintiffs-in-Intervention.

**UNOPPOSED MOTION TO VACATE ORDER ADJUDICATING POST-1982
DOMESTIC WELL SUBFILE RG-70046 FOR ROBERT A. THOMMEN II
AND TO DISMISS PARTY**

COMES NOW, Defendants Pawel Fludzinski and Janet Fludzinski, through their attorneys Egolf + Ferlic + Harwood, LLC (Kyle S. Harwood and Luke M. Pierpont appearing) and hereby move the Court to, pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 41(b) vacate its February 1, 2001, Interim Order (No. 5725) and dismiss Defendants Pawel Fludzinski and Janet Fludzinski as successors to Robert A Thommen II, as the domestic well adjudicated under Subfile No. RG-70046 is located outside of the basin boundary for the Nambe-Pojoaque-Tesuque basin. In support of the motion Defendants state the following:

1. On February 1, 2001, this Court entered an Interim Order adjudicating the water rights of Robert A. Thommen II for a post-1982 domestic well under Subfile No. RG-70046. The order is attached hereto as **Exhibit A**.

2. On August 4, 2016, Pawel Fludzinski and Janet Fludzinski filed a change of ownership with the Office of State Engineer, asserting their ownership of well RG-70046. Their change of ownership is attached hereto as **Exhibit B**.

3. Upon examination of the State Engineer's boundary map of the Nambe-Pojoaque-Tesuque basin Pawel Fludzinski and Janet Fludzinski have determined that their domestic well RG-70046 is outside of the basin boundary. The State Engineer's boundary map showing domestic well RG-70046 is attached hereto as **Exhibit C**.

4. Pawel Fludzinski and Janet Fludzinski have consulted with the Office of State Engineer which has confirmed that domestic well RG-70046 is located outside of the basin boundary.

5. It is apparent from this state of facts that the February 1, 2001, *Interim Order* (No. 5725) was entered in error and domestic well RG-70046 should not have been included in this litigation.

6. Pawel Fludzinski and Janet Fludzinski do not own, or claim, any right to the use of surface or underground waters of the Nambe-Pojoaque-Tesuque River System, as determined by the State Engineer's basin boundary.

7. This Court lacks subject matter jurisdiction to adjudicate domestic well RG-70046, owned by Pawel Fludzinski and Janet Fludzinski, which is located outside of the Nambe-Pojoaque-Tesuque River System, and should dismiss Pawel Fludzinski and Janet Fludzinski as Defendants to this matter.

8. Counsel for the New Mexico State Engineer has been consulted and does not oppose this motion.

WHEREFORE, Defendants Pawel Fludzinski and Janet Fludzinski respectfully request that the Court vacate its February 1, 2001, *Interim Order* (No. 5725) and dismiss Pawel Fludzinski and Janet Fludzinski, as owners of the domestic well RG-70046, from this matter.

Respectfully Submitted,

/s/ Luke M. Pierpont
Egolf +Ferlic +Harwood, LLC.
Luke M. Pierpont
luke@egolflaw.com
Kyle S. Harwood
kyle@egolflaw.com
123 W. San Francisco Street, Second Floor
Santa Fe, NM 87501
(505) 629-8999
Counsel for Pawel and Janet Fludzinski

CERTIFICATE OF SERVICE

I hereby certify that on 31st day of October, 2016, I caused the foregoing Unopposed Motion to Vacate Order to be filed electronically through the CM/ECF system, which caused parties on the electronic service list to be served as described in the Notice of Electronic Filing and to the following persons.

Joe Gutierrez
334 Kimberly Lane
Los Alamos, NM 87544

Leslie Beaty
P.O. Box 177
Tesuque, NM 87574

Edward H. Ortiz
3 Rancho Enrique
Nambe, NM 87506

Deborah Dant
PO Box 301
Tesuque, NM 87574

Jose and Margarita Trujillo
28A Grazing Elk Drive
Santa Fe, NM 87506

Richard Reinders
106 N Shining Sun
Santa Fe, NM 87506

Donald Yardman
#16 Calle de Vecinos
Santa Fe, NM 87506

Kay Lee Family
Partnership
6214 Preston Road
Dallas, TX 75205

Barbara A. Roybal
11 J.R. Drive
Santa Fe, NM 87506

Elaine Yardman
#16 Calle de Vecinos
Santa Fe, NM 87506

Marshall E Hunt
11441 Allerton Park Drive
Unit 219

Anthony J Baca SR.
4-B Paseo de la Joya
Santa Fe, NM 87506

Elmer Lee Waite
55 Banana Lane
Santa Fe, NM 87506

Las Vegas, NV 89135

Manuel R. Lopez
P.O. Box 763
Tesuque, NM 87574

Eileen Carter
44 Summer Road 113A
Santa Fe, NM 87506

John P. Bradley
3 Las Joyas Lane
Santa Fe, NM 87506

Petronila M. Lopez
P.O. Box 763
Tesuque, NM 87574

Cecilia G Popp
28 Harriets Road
Santa Fe, NM 87506-0022

Jennifer L. Reglien
106 County Road 84C
Santa Fe, NM 87506

Patricia Mary
P.O. Box 962
Los Alamos, NM 87544

Mary G.B. Waite
55 Banana Lane
Santa Fe, NM 87506

Michael A Talbott
231A Tano Road
Santa Fe, NM 87506

Phillip E. Duran
17 Feather Road
Santa Fe, NM 87506

Diane Senutovitch
P.O. Box 303
Santa Fe, NM 87504

Margaret Klaer
P.O. Box 177
Tesuque, NM 87574

Kenny Kalfin
94 N. Shining Sun Rd.
Santa Fe, NM 87506

John M Sena
9709 Rio Grande NW
Albuquerque, NM 87114