

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. DS-95
RG-3604

Plaintiffs-in-Intervention.

**MOTION TO CORRECT PRIORITY DATE FOR DOMESTIC/LIVESTOCK RIGHT
AND PARTIALLY VACATE SUBFILE ORDER (SUBFILE NO. DS-95, RG-3604)**

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 correct the May 8, 1968, subfile order entered in Subfile No. DS-95 by:

- (1) correcting paragraph 5.B.1 of said order to adopt a December 31, 1946 priority for the groundwater water right adjudicated for domestic/livestock use from Well No. RG-3604; and
- (2) vacating paragraph 5.B.2 of said order which adjudicated a second domestic/livestock right in error.

The State offers the following grounds for this motion:

- 1. On May 8, 1968, the Court entered an “Order” under Subfile No. DS-95 (“Subfile Order”) in the name of “Santa Fe County Board of Education (Nambe Elementary School).” The

Subfile Order adjudicated two groundwater rights for domestic/livestock use on the same property as follows:

a. an NMSA 1978, Section 72-12-1, domestic/livestock right with a July 20, 1959 priority, diverted from Well No. RG-3604 located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 9, T. 19N, R. 9E; and

b. a pre-basin domestic/livestock right with a 1946 priority diverted from an unnumbered well located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 9, T. 19N, R. 9E.¹

See Subfile Order, attached as *Exhibit 1*, ¶¶5.B.1, 5.B.2.

2. The State's review of Office of the State Engineer records indicates that there is only one domestic/livestock groundwater right associated with the subject property. *Permit No. RG-3604 to Appropriate the Underground Waters of the State of New Mexico*, attached as *Exhibit 2*, was granted for the purpose of replacing an existing well on the property. The replacement well was designated as RG-3604.

3. The Subfile Order therefore should have adjudicated only one domestic/right, and that right should have been assigned a 1946 priority. Accordingly, the State proposes to vacate Paragraph 5.B.2 of the Subfile Order to remove reference to the domestic/livestock right adjudicated for diversion from an unnumbered well. The State further proposes to correct Paragraph 5.B.1 of the Subfile Order by adopting a priority of December 31, 1946, for the domestic and livestock right adjudicated for diversion from Well No. RG-3604, 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 3*.

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.

4. Except as requested by this motion, all other elements of the rights adjudicated under Subfile No. DS-95 should remain as stated in the May 8, 1968 Order and subsequent orders of this Court.

5. The State is serving a copy of the motion on the Pojoaque Valley School District, successor to the subfile defendant, Santa Fe County Board of Education.

WHEREFORE, the State requests that the Court enter the attached order vacating Paragraph 5.B.2 of the May 8, 1968 Order in Subfile No. DS-95 and correcting Paragraph 5.B.1 of said order to adopt a December 31, 1946 priority for the pre-basin, domestic/livestock groundwater right adjudicated for diversion from Well No. RG-3604.

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 November 4, 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:

Mel Morgan, Superintendent
Pojoaque Valley School District
1574 State Road 502 West
Santa Fe, NM 87506

/s/ Brett Olsen
Brett J. Olsen