

**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,)
)
 Plaintiffs-in-Intervention.)
 _____)

NO. 66cv6639 WJ/WPL

Subfile: PM-62343

**MOTION TO AMEND ORDER ADJUDICATING POST-1982 DOMESTIC WELL
SUBFILE PM-62343 TO CORRECT PRIORITY DATE**

The State of New Mexico ex rel. State Engineer (“State”) hereby moves the Court to, pursuant to Fed. R. Civ. P. 60(b), amend its January 5, 2011 *Order Adjudicating Post-1982 Domestic Well Water Rights* (No. 7241) to correct the priority date to state “12/31/1960,” the Amount to state “Not to exceed a diversion and consumption of 0.7 acre feet per year from the well described above unless a more restrictive diversion limit applies pursuant to court order, covenant or ordinance,” and the Other Conditions to state “All conditions of State Engineer Permit No. RG-62343 for the above described well are also incorporated herein.” In support thereof, the State states as follows:

1. On December 8, 2010, the State forwarded to the Court a proposed Order Adjudicating Post-1982 Domestic Well Water Rights under subfile PM-62343 for Defendant Oso Loco Tract “D” Trust.

2. The attorney for the State, Barbara Brill, correctly certified in that document that the Defendant had not submitted a request for consultation.

3. On January 5, 2011, the Court entered the *Order Adjudicating Post-1982 Domestic Well Water Rights* (No. 7241). The Order provided that the Priority of the domestic well water right was 4/4/1995. *Id.* at 2.

4. Subsequent to the entry of the *Order*, the State was contacted on behalf of the successor-in-interest to Oso Loco Tract “D” Trust, Mirtha Davalos, and was alerted to the fact that the records of the Santa Fe County Assessor’s Office stated that the house on the property had been built in 1960, indicating that the well had been there since that time.

5. The State undertook an investigation of the Defendant’s assertion, and found it to be correct.

6. The State therefore requests the Court amend the Priority stated on page 2 of the Order from “4/4/1995” to read instead “12/31/1960.”

7. A 1960 priority date will make this well a pre-moratorium well, not subject to the January 13, 1983 *Order* (No. 641) limiting domestic wells permitted after that date to indoor use only.

8. Therefore, the State also requests the Court amend the Amount of Water, which is currently stated on page 2 of the *Orders* as

not to exceed a diversion and consumption of 0.5 acre feet per year from the well described above unless a more restrictive diversion limit applies pursuant to court order, covenant or ordinance

to instead read:

Not to exceed a diversion and consumption of 0.7 acre feet per year from the well described above unless a more restrictive diversion limit applies pursuant to court order, covenant or ordinance

which is consistent with the amount being adjudicated to pre-moratorium wells. See March

18, 2013 *Order to Show Cause* at 2 (No. 7861).

9. The State also requests the Court amend the Other Conditions, which is currently stated on page 3 of the *Orders* as

Use shall be limited strictly to household, drinking and sanitary purposes; water shall be conveyed from the well to the place of use in closed conduit and the effluent returned to the underground so that it will not appear on the surface. No irrigation of lawns, gardens, trees or use in any type of pool or pond is authorized. All other conditions of State Engineer Permit No. RG-62343 for the above described well are also incorporated herein.

to instead read:

All conditions of State Engineer Permit No. RG-62343 for the above described well are also incorporated herein.

which is consistent with the amount being adjudicated to pre-moratorium wells. See March 18,

2013 *Order to Show Cause* at 2 (No. 7861).

10. The successor-in-interest to Oso Loco Tract “D” Trust, Mirtha Davalos, does not object to this motion. Counsel for Oso Loco Tract “D” Trust, Peter Shoenfeld, Esq., has indicated he no longer represents that entity.

WHEREFORE, the State requests that the Court amend its January 5, 2011 *Order Adjudicating Post-1982 Domestic Well Water Rights* (No. 7241) to correct the priority date to state “12/31/1960,” the Amount to state “Not to exceed a diversion and consumption of 0.7 acre feet per year from the well described above unless a more restrictive diversion limit applies pursuant to court

order, covenant or ordinance,” and the Other Conditions to state “All conditions of State Engineer Permit No. RG-62343 for the above described well are also incorporated herein.”

Electronically Filed

/s/ Edward C. Bagley

Edward C. Bagley
Special Assistant Attorney General
Attorney for State of New Mexico
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 8, 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 upon the following by United States First Class mail:

Mirtha Davalos
3005 Betatarkin Circle
Santa Fe, NM 87507

Oso Loco Tract "D" Trust
c/o Peter Shoenfeld
P.O. Box 2421
Santa Fe, NM 87504-2421