

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

Acequia del Cano
Subfile No. 10.82
RG-1485

Plaintiffs-in-Intervention.

**UNOPPOSED MOTION TO CORRECT SUBFILE ORDER TO ADOPT PRIORITY
DATE FOR SUPPLEMENTAL GROUNDWATER IRRIGATION WATER RIGHT,
PARTIALLY VACATE ORDER [DOC. 10766], AND CORRECT PRIORITY FOR
DOMESTIC/LIVESTOCK GROUNDWATER RIGHT (SUBFILE NO. 10.82, RG-1485)**

Pursuant to Section A.2 of the July 23, 2013, *Procedural Order for Correcting Subfile Errors* (Doc. 7909), Plaintiff State of New Mexico ex rel. State Engineer (“State”) requests the Court to:

(A) correct the April 20, 1998, Amended Order [Doc. 5381] entered in Subfile No. 10.82 by adopting a December 31, 1910 priority for the supplemental groundwater irrigation water right adjudicated for diversion from a private well, RG-1485, for irrigation supplemental to the Acequia del Cano;

(B) partially vacate the Court’s July 26, 2016, Order [Doc. 10766] which adopted a priority of “November 28, 1956, or date the well was completed if earlier” for the supplemental

groundwater irrigation water right adjudicated under Subfile 10.82 for diversion from Well No. RG-1485; and

(C) correct the April 20, 1998, Amended Order [Doc. 5381] entered in Subfile No. 10.82 to fully describe the domestic/livestock groundwater right adjudicated for diversion from Well No. RG-1485, and change the priority for said right from 1930 to December 31, 1910.

The State offers the following grounds for this motion:

1. On April 6, 1998, the State and defendant LTM Cattle Company filed a *Revised Joint Motion to Amend Subfile* [Doc. 5373] (“Revised Joint Motion”), attached as *Exhibit 1*, to correct the water rights adjudicated under Subfile No. 10.82. On April 20, 1998, the Court entered an Amended Order [Doc. 5381] (“Amended Subfile Order”) in Subfile No 10.82 adjudicating a groundwater irrigation water right supplemental to the Acequia del Cano for diversion from a private, supplemental irrigation well identified in the Office of the State Engineer’s records as RG-1485. *See* Amended Subfile Order, attached as *Exhibit 2*, at ¶1. The Amended Subfile Order did not adjudicate a priority date for this right. *See id.*

2. The “Affidavit of Robin Martin in Support of Joint Motion to Amend Subfile No. 10.82” (“Martin Affidavit”), filed as an attachment to the Revised Joint Motion, sets forth the results of Robin Martin’s investigation regarding Well No. RG-1485. As part of this investigation, Martin interviewed Pablita Ortiz who remembered use of the well for irrigation of an orchard on the property in or about 1910. *See Exhibit 1* (Martin Affidavit at ¶¶4-12). A transcript of the Ortiz interview was filed as an attachment to the Martin Affidavit. *See id.*

3. Based upon evidence in the Martin Affidavit reflecting beneficial use of Well No. RG-1485 for irrigation in or about 1910, the State proposes to adopt a December 31, 1910 priority for the supplemental groundwater irrigation water right adjudicated under Subfile 10.82

for diversion from Well No. RG-1485. Accordingly, Paragraph 1.a of the Amended Subfile Order should be corrected to state as follows¹:

1. Purpose: Irrigation
 - a) Priority:
 - Surface: 1789 (Acequia del Cano)
 - Groundwater: 12/31/1910 (Well No. RG-1485)

4. In conjunction with the foregoing correction to the Amended Subfile Order, the State requests that the Court partially vacate its July 26, 2016, Order [Doc. 10766]. That Order adopted a priority of “November 28, 1956, or date the well was completed if earlier” for supplemental groundwater irrigation water rights adjudicated under several subfiles including Subfile 10.82. It should be vacated as to Subfile No. 10.82 and Well No. RG-1485 only.

5. The State also requests that the Amended Subfile Order be corrected to include a description of the pre-basin domestic/livestock right that was adjudicated for diversion from Well No. RG-1485 in the October 10, 1974, subfile order entered in Subfile No. 10.82 attached hereto as *Exhibit 3*. That order adopted a 1930 priority for this right. However, the Martin Affidavit describes beneficial use of Well No. RG-1485 for domestic uses in or about 1910. *See Exhibit 1* (Martin Affidavit at ¶11). Accordingly, the State proposes that priority for the domestic/livestock right be changed from 1930 to December 31, 1910.

6. A proposed order granting the motion is attached as *Exhibit 4*. Except as requested by this motion, all other elements of the rights adjudicated under Subfile No. 10.82 should remain as stated in the Amended Subfile Order and other orders of this Court.

¹ Surface water irrigation water rights served by the Acequia del Cano were adjudicated a 1789 priority. *See Order Granting the State of New Mexico’s Motion for Order Making Final Determination of Priority Dates of Surface Water Rights in the Nambe-Pojoaque-Tesuque Stream System [Doc No. 9379] [Doc. 9379, August 27, 2014].*

7. The State's records show the Robin M. Martin Trust (the "Trust") as the successor-in-interest to the rights adjudicated under Subfile No. 10.82. The Trust does not oppose the Motion.

WHEREFORE, the State requests that the Court enter the attached order correcting the April 20, 1998, Amended Order [Doc. 5381] entered in Subfile No 10.82 as set forth above, and partially vacating its earlier Order [Doc. 1076, July 26, 2016] as to Subfile No. 10.82 only.

Electronically Filed,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 19, 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:

/s/ Brett Olsen
Brett J. Olsen

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