

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 Barranco de Jacona
Subfile No. 5.24

Plaintiffs-in-Intervention.

**MOTION TO CORRECT SUBFILE ORDER TO ADOPT PRIORITY DATE FOR
SUPPLEMENTAL GROUNDWATER IRRIGATION WATER RIGHT
(SUBFILE NO. 5.24)**

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 correct the subfile order entered in Subfile No. 5.24 by adopting a priority of “November 28, 1956, or date the well was completed if earlier” for the supplemental groundwater irrigation water right adjudicated under the subfile order without a priority date.

The State offers the following grounds for this motion:

1. On October 9, 1969, the Court entered an “Order ” (“Subfile Order”) identifying an unnumbered “[p]rivate irrigation well” as a groundwater point of diversion for irrigation of 9.82 acres as shown on Hydrographic Survey Map Sheet No. 5, Tract 24 (Tract 5.24). The

Subfile Order, attached as *Exhibit 1*, omitted a priority date for the supplemental groundwater irrigation water right adjudicated for diversion from this well.

2. The State has searched its files and the files of the Water Rights Division of the Office of the State Engineer (“OSE”) for an OSE permit, an OSE Declaration of Owner of Underground Water Right, or other evidence concerning first beneficial use of water on which to adjudicate priority for the supplemental groundwater irrigation water right adjudicated under the Subfile Order. To date, the State has found no such evidence.

3. 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. It is reasonable to assume given the absence of any OSE filings for the supplemental groundwater irrigation water right adjudicated in the Subfile Order that the right and associated well are pre-basin.

4. The State therefore proposes that the Court adopt a pre-basin priority of “November 28, 1956, or date the well was completed if earlier” for the supplemental groundwater irrigation water right adjudicated for diversion from a private irrigation well under the Subfile Order. The State further proposes that “Point of Diversion” in subpart A of Paragraph 5 of the Subfile Order should be corrected to state this priority for said right.

5. Except as requested by this motion, all other elements of the rights adjudicated under Subfile No. 5.24 should remain as stated in the Subfile Order and subsequent orders of this Court.

6. The State is serving a copy of this motion and a proposed order on all persons who, according to the records of the State, may have an ownership interest in Subfile No. 5.24. Undersigned counsel attempted unsuccessfully to make contact with these individuals prior to filing the motion. The State’s proposed order is attached as *Exhibit 2*.

WHEREFORE, the State requests that the Court enter the attached order correcting the October 9, 1969 Order entered in Subfile No. 5.24 by adopting a priority of “November 28, 1956, or date the well was completed if earlier” for the supplemental groundwater irrigation water right adjudicated without a priority date under Subfile No. 5.24.

Electronically Filed,

/s/ Brett Olsen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 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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