

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
)	
Plaintiff,)	
v.)	
)	No. 66cv6639 WJ/WPL
R. LEE AAMODT, et.al.,)	
)	
Defendants,)	
)	
And)	Acequia del Rio
)	
UNITED STATES OF AMERICA,)	Subfile No. 2.36
PUEBLO DE NAMBE,)	OSE File Nos. RG-56157 & RG-56157-X
PUEBLO DE POJOAQUE,)	
PUEBLO DE SAN ILDEFONSO,)	
and PUEBLO DE TESUQUE,)	

Plaintiffs-in-Intervention.

**MOTION TO VACATE ORDER [DOCKET NO. 10421] AND CORRECT SUBFILE
ORDER TO ADD OMITTED SUPPLEMENTAL GROUNDWATER
IRRIGATION WATER RIGHT (SUBFILE NO. 2.36)**

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 enter the attached Order:

a. vacating the *Order Granting Motion to Correct Subfile Order to Add Omitted Supplemental Groundwater Points of Diversion for Irrigation Water Right (Subfile No. 2.36)* [Doc. 10421, December 23, 2015]; and

b. correcting the December 2, 1969, subfile order entered in Subfile No. 2.36 by adding Well Nos. RG-56157 and RG-56157-X as points of diversion for a previously omitted supplemental groundwater irrigation water right; and

c. adopting a May 31, 1952 priority for the supplemental groundwater irrigation water right to be adjudicated for diversion from Well Nos. RG-56157 and RG-56157-X.

The State offers the following grounds for this motion:

1. On May 3, 1974, the Court entered an “Order” under Subfile No. 2.36 (“Subfile Order”) adjudicating a surface water irrigation water right to Julio Gonzales for irrigation of 3.27 acres (“Tract 2.36”) from the Acequia del Rio. Subpart A of Paragraph 5 of the Subfile Order describes the surface water point of diversion for the water right under the Acequia del Rio. Subpart A of Paragraph 5 also references a “private well” as a groundwater point of diversion, but states that there is “no right” associated with this well. A copy of the Subfile Order is attached hereto as *Exhibit 1*.

2. The files of the Office of the State Engineer reflect that two wells were drilled in or about 1952 for irrigation of Tract 2.36 supplemental to the Acequia del Rio. These wells have been designated as RG-56157 and RG-56157-X. *See* Declaration of Owner of Underground Water Right No. RG-56157 (“Declaration”) attached as *Exhibit 2*.

3. By motion dated November 12, 2015 (Doc. 10401), the State moved to correct the Subfile Order to add Well Nos. RG-56157 and RG-56157-X as supplemental points of diversion for the surface water irrigation right adjudicated under the Acequia del Rio for irrigation of Tract 2.36. On December 23, 2015, the Court entered an *Order Granting Motion to Correct Subfile Order to Add Omitted Supplemental Groundwater Points of Diversion for Irrigation Water Right (Subfile No. 2.36)* (Doc. 10421) (“Order No. 10421”), which is attached as *Exhibit 3*.

4. The State’s motion and Order No. 10421 incorrectly describe Well Nos. RG-56157 and RG-56157-X as “supplemental groundwater points of diversion for surface water irrigation water rights adjudicated under Subfile No. 2.36.” *See Exhibit 3*. Instead, as reflected

in the Declaration, Well Nos. RG-56157 and RG-56157-X are groundwater points of diversion for a separate and supplemental groundwater irrigation water right for irrigation of Tract 2.36 that is supplemental to the surface water irrigation water right under the Acequia del Rio. *See Exhibit 2.* Order No. 10421 should therefore be vacated.

5. By way of this motion, the State proposes to correct the May 4, 1974 Subfile Order by adjudicating a supplemental groundwater irrigation water right for irrigation of Tract 2.36 from two points of diversion: Well Nos. RG-56157 and RG-56157-X. The State further proposes a May 31, 1952 priority for this right based upon the Declaration. *See Exhibit 2.*

6. Accordingly, "Point of Diversion" in Subpart A of Paragraph 5 of the Subfile Order should be corrected as follows to describe the supplemental groundwater irrigation water right under Subfile No. 2.36:

Groundwater: Well No. RG-56157 located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ T. 14N, R. 8E, and
Well No. RG-56157-X located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ T. 14N, R. 8E.

Priority: 5/31/1952

7. Except as requested by this motion, all other elements of the rights adjudicated under Subfile No. 2.36 should remain as stated in the Subfile Order and subsequent orders of this Court.

8. The State is serving a copy of this motion and a proposed order granting the motion on all parties or persons who, according to the records of the State, may have an ownership interest in Subfile No. 2.36. The State's proposed order is attached as *Exhibit 4*.

WHEREFORE, the State requests that the Court enter the attached order vacating its previous Order [Doc. 1041, December 23, 2015] and correcting the May 3, 1974, Subfile Order as set forth above in paragraphs 5 and 6 of the motion.

Electronically Filed,
/s/ Brett Olsen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 7, 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
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