

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 Ancon de Jacona
a/k/a Acequia de Jacona
Subfile Nos. 6.56 & 6.57

Plaintiffs-in-Intervention.

**MOTION TO CORRECT SUBFILE ORDER TO ADOPT PRIORITY
FOR DOMESTIC/LIVESTOCK GROUNDWATER RIGHT (SUBFILE NOS. 6.56 & 6.57)**

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 adopting a priority of “November 28, 1956, or date the well was completed if earlier,” for the groundwater water right adjudicated for domestic and/or livestock use under Subfile Nos. 6.56 & 6.57 without a priority date. The State offers the following grounds for this motion:

1. On February 26, 1974, the Court entered an “Order” under Subfile Nos. 6.56 & 6.57 adjudicating two groundwater water rights for domestic and/or livestock use to N.A. Owings (“Subfile Order”). The Subfile Order omitted a priority date for one of the two rights. *See* Subfile Order, subpart 5.B.1, attached as *Exhibit 1*.

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 with which to adjudicate priority for the domestic/livestock right. To date, the State has found no such evidence.

3. The 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 domestic/livestock right that the right and its associated well are pre-basin. The State therefore proposes that the Court adopt a priority of “November 28, 1956, or date the well was completed if earlier” for the domestic/livestock groundwater water right adjudicated without a priority date in the Subfile Order.

4. The State further proposes that Subpart B.1 of Paragraph 5 of the February 26, 1974 Subfile Order entered in Subfile Nos. 6.56 & 6.57 should be corrected to adopt priority and describe the domestic/livestock right as follows:

Purpose: Non NMSA § 72-12-1 and -1.1 Domestic use for One Household and/or Livestock (Groundwater Only)

State Engineer File No.: None

Priority: November 28, 1956, or date the well was completed if earlier

Point of Diversion: SW ¼ NW ¼ SE ¼ Sec. 12, T. 19N., R. 8E.

Place of Use: Within the property owned by the Defendant(s) served by the well

Amount of Water: Not to exceed a diversion of 3.0 acre-feet per year from the well described above or the historic beneficial use, whichever is less.

5. Except as requested by this motion, all other elements of the rights adjudicated under Subfile Nos. 6.56 & 6.57 should remain as stated in the February 26, 1974, Subfile Order and subsequent orders of this Court.

6. 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 Nos. 6.56 & 6.57. The State's proposed order is attached as *Exhibit 2*.

WHEREFORE, the State requests that the Court enter the attached order correcting subpart B.1 of Paragraph 5 of the February 26, 1974, Subfile Order entered in Subfile Nos. 6.56 & 6.57 by adopting a priority date of "November 28, 1956, or date the well was completed if earlier," for the domestic/livestock groundwater water right that was adjudicated in the Subfile Order without a priority date.

Electronically Filed,

/s/ Brett Olsen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 15, 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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