

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 de los Indios
Subfile No. 2.4, 2.17, 2.18,
2.20
RG-43443

Plaintiffs-in-Intervention.

**MOTION TO CORRECT SUBFILE ORDER TO ADOPT PRIORITY DATE AND
CLARIFY PLACE OF USE FOR DOMESTIC RIGHT AND SUPPLEMENTAL
GROUNDWATER IRRIGATION WATER RIGHT
(SUBFILE NOS. 2.4, 2.17, 2.18 & 2.20)**

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 Nos. 2.4, 2.17, 2.18 and 2.20 by:

- (a) changing the priority date of the adjudicated domestic/livestock groundwater right (Well No. RG-43443) from 1954 to December 31, 1943, and clarifying that this right was adjudicated under Subfile 2.4 only; and
- (b) adopting a December 31, 1954 priority for the supplemental groundwater irrigation water right adjudicated for diversion from a private well for irrigation supplemental to

the Acequia de los Indios, and clarifying that the place of use of this supplemental groundwater irrigation water right is the water rights acreage under Subfile No. 2.4 only.

The State offers the following grounds for this motion:

1. On March 14, 1969, the Court entered an “Order” (“Subfile Order”) in Subfile Nos. 2.4, 2.17, 2.18 and 2.20, which is attached as *Exhibit 1*. The Subfile Order adjudicated a pre-basin groundwater right with a 1954 priority for domestic and/or livestock use in the name of Bernardino Herrera. The Subfile Order did not specify which subfile the right was adjudicated under.

2. *Declaration of Owner of Underground Water Right RG-43443* (“Declaration”), dated March 20, 1985, and attached as *Exhibit 2*, incorporates the March 14, 1985, affidavit of Bernardino Herrera. Mr. Herrera avers in the affidavit that the domestic/livestock well (identified as Well No. RG-43443 in the Declaration) adjudicated under the Subfile Order was hand dug in 1943 to serve the household associated with Subfile 2.4.

3. The State therefore proposes that the Subfile Order be corrected to change the priority for Well No. RG-43443 to December 31, 1943 and clarify that it was adjudicated under Subfile 2.4 only.

4. The Subfile Order also adjudicated a groundwater irrigation water right supplemental to the Acequia de Los Indios for diversion from a private well located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 9, T. 19N, R. 8E. The Subfile Order omitted a priority date for this right and did not specify which subfile tract(s) are irrigable from the well. The Herrera affidavit clarifies that the irrigation well, rather than the domestic/livestock well, was drilled in 1954 and that it serves tract 2.4 only.

5. The State therefore proposes that the Subfile Order be corrected to adopt a December 31, 1954 priority for the supplemental groundwater irrigation right adjudicated for diversion from the private well described above, and to clarify that the place of use for this right is the water rights acreage adjudicated under Subfile 2.4.

6. Accordingly, subpart (1) under “Groundwater” in Subpart A (“Purpose – Irrigation”) of paragraph 5 of the Subfile Order should be corrected to state the following:

- (1) Well located in SW ¼ SW ¼ NE ¼ Sec. 9, T. 19N, R. 8E, for irrigation of 3.27 acres described below and shown on hydrographic survey map sheet No. 2, Tract 4.
Priority: 12/31/1954

Additionally, subpart B (“Purpose – Domestic and/or Stock (underground water)”) of paragraph 5 of the Subfile Order should be corrected to state the following:

State Engineer File No.: RG-43443
Priority: 12/31/1954

7. Except as requested by this motion, all other elements of the rights adjudicated under Subfile Nos. 2.4, 2.17, 2.18 and 2.20 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 on all parties or persons who, according to the records of the State, may have an ownership interest in Subfile Subfile Nos. 2.4, 2.17, 2.18 and 2.20. The State’s proposed order is attached as *Exhibit 3*.

WHEREFORE, the State requests that the Court enter the attached order correcting the May 8, 1968 Order entered in Subfile Nos. 2.4, 2.17, 2.18 and 2.20 as set forth in paragraph 6 above.

Electronically Filed,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 16, 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:

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