

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

Subfile No. RG-20866

Plaintiffs-in-Intervention.

**UNOPPOSED MOTION TO CORRECT PRIORITY DATE FOR
DOMESTIC/LIVESTOCK RIGHT (SUBFILE NO. RG-20866)**

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 right adjudicated for domestic and livestock use under Subfile No. RG-20866. The State offers the following grounds for this motion:

1. The attached October 31, 1984, “Order” (“Subfile Order”) entered in Subfile No. RG-20866 adjudicated a groundwater right for domestic and livestock use under NMSA 1978, Section 72-12-1, for diversion from Well No. RG-20866, in the name of Manuel D. Martinez. The Subfile Order adopted an April 17, 1972 priority for this right. *See* Subfile Order, *Exhibit 1* hereto.

2. The subfile defendant, Manuel D. Martinez, has submitted evidence to the State in support of his request for an earlier priority for the domestic and livestock right adjudicated for diversion from Well No. RG-20866. This evidence consists of a May 19, 2016, affidavit of Ismael Ernesto Lujan, attached as *Exhibit 2*, wherein the affiant states that he purchased the property on which Well No. RG-20866 is located on or about May 26, 1958. The affiant further states that the subject well was in existence at that time. The State is not aware of a domestic well permit or other Office of the State Engineer (“OSE”) filing for Well No. RG-20866 that predates the affiant’s acquisition of the property in 1958. The State therefore believes it is reasonable to conclude that Well No. RG-20866 is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right.¹

3. The State therefore proposes to correct the Subfile Order by adopting a priority of “November 28, 1956, or date the well was completed if earlier” for the domestic and livestock right adjudicated for diversion from Well No. RG-20866, and clarifying that said right is a pre-basin, non-NMSA 1978, Section 72-12-1 and -1.1 right.

4. 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. RG-20866. The State’s proposed order is attached as *Exhibit 3*.

WHEREFORE, the State requests that the Court enter the attached order correcting the October 31, 1984, Order entered in Subfile No. RG-20866 as set forth in paragraph 3 above.

¹ 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.

Electronically Filed,

/s/ Brett Olsen

Brett J. Olsen
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
Phone: (505) 827-3866
Attorneys for the State of New Mexico

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 8, 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

Manuel D. Martinez
126 Cities of Gold Road
Santa Fe, New Mexico 87506