

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,)
))
Plaintiffs-in-Intervention.)

No. 66cv6639 WJ/WPL

**MOTION TO BAR UNTIMELY “ERROR AND OMISSION AAMODT LITIGATION
WATER RIGHTS TOWN OF JACONA LAND GRANT”**

The State of New Mexico (“State”), by and through its counsel, moves to bar the “Error and Ommision [sic] Aamodt Litigation Water Rights Town of Jacona Land Grant” (Doc. 10768, July 26, 2016) (the “Notice”) filed by Paul Ortiz. The State offers the following grounds for the motion:

INTRODUCTION

1. The adjudication of water rights in the Nambe-Pojoaque-Tesuque stream system (“NPT”) commenced in this Court in 1966. The Office of the New Mexico State Engineer’s (“OSE”) hydrographic survey of non-Indian surface and groundwater uses was filed with the Court that same year. The hydrographic survey described the beneficial use of water within the NPT, including the beneficial use of surface and groundwater on lands irrigated from ditches

located within the boundaries of the Town of Jacona Land Grant (“Land Grant”). Claimants to water rights based on these uses were joined as parties, and by 1969 adjudication of these claims was mostly completed. The adjudication of water rights from domestic wells, including wells located on the Land Grant, began in the 1980s and is now nearing conclusion. No claim for additional water rights based upon beneficial use of surface or groundwater within the Land Grant has ever been asserted on behalf of the Land Grant.

2. Under the *Procedural Order for Notice by Publication of Claims Deadline* (Doc. 7919, August 15, 2013), the State published Notice between September 5, 2013, and September 26, 2013 that all claims to water rights in the NPT were required to be filed by November 10, 2013. No claim was filed on behalf of the Land Grant.

3. On July 26, 2016, Paul Ortiz filed the Notice, alleging for the first time an “error and omission” of certain water rights in the NPT from the Aamodt adjudication on behalf of the Land Grant. Though he claims that the Land Grant ownership of the alleged water rights are based on “a warranty deed” from the King of Spain, the Notice provides no information concerning any water use or any of the elements necessary to identify any “omitted” water rights.

4. Mr. Ortiz provided no evidence that he is authorized to file a purported claim on behalf of the Land Grant or that the Land Grant does not require representation by an attorney.

THE NOTICE SHOULD BE BARRED AS UNTIMELY

5. The Notice should be barred as untimely pursuant to the Court’s Procedural Order. That Order required unknown persons who may claim a right to use the surface or groundwater of the NPT stream system, and who were not previously joined in these proceedings and whose claims were not included in the State’s hydrographic survey, to file claims to surface or groundwater rights with the Court within forty-five (45) days after the last publication of the

State's *Notice of Deadline for Unknown Claimants of Interest to File Water Rights Claims* ("Notice of Deadline"). See Notice of Deadline attached as Exhibit 2 to the State's *Motion to Adopt Procedural Order for Notice by Publication* (Doc. 7900, July 15, 2013). As shown by the State's *Proof of Publication of Notice of Deadline for Unknown Claimants of Interest to File Water Rights Claims* (Doc. 7981, October 25, 2013), the deadline for unknown claimants of interest to file such claims to water rights within the NPT stream system claim was November 10, 2013, nearly three (3) years ago.

6. Mr. Ortiz alleges in the Notice:

The Town of Jacona Land Grant has water rights granted from the King of Spain since 1699. The water rights are guaranteed in documents from the King of Spain in 1699 and documents in 1703. This is all guaranteed in a warranty deed from the King of Spain. *The Town of Jacona Land Grant claims water rights and will submit a declaration of water rights to the New Mexico State Engineer.*

(emphasis added). The Notice further states "the [Land Grant] is not included in the Aamodt litigation" but acknowledges that no claim to water rights within the NPT was asserted on behalf of the Land Grant prior to filing the Notice on July 27, 2013. If the Notice is intended to be a statement of claim to water rights in the NPT system, it was required to be filed on or before the November 10, 2013, deadline established by the Court's Procedural Order. Having failed to meet that deadline, the Notice is barred.

7. Mr. Ortiz' claim that water rights within the borders of the Land Grant have been ignored or overlooked is not supported by the record in this case. The Court's docket is replete with orders adjudicating water rights within the boundaries of the Land Grant. These rights include surface water irrigation rights appurtenant to lands within the Land Grant, all of which have been adjudicated between the State and individual subfile defendants. Currently, the Court has adjudicated surface water rights in approximately 38 subfiles that receive water through the

Acequia de la Otra Vanda, Acequia Larga de Jacona (aka Acequia Larga), Acequia del Barranco de Jacona, or El Rancho Ditch. The Court has also adjudicated approximately 76 domestic, livestock, and supplemental groundwater irrigation water rights from wells located within the Land Grant. Consequently, there is no legal or factual basis for the Land Grant's claim that "thousands of acres" comprising the Land Grant have been ignored in this adjudication case. The Notice should be barred.

8. The Notice was filed by Paul Ortiz as President of the Land Grant. Undersigned counsel was unable to find a phone number for Mr. Ortiz, and therefore was unable to ascertain the Land Grant's position on this motion. Due to the nature of the relief sought, the motion is deemed opposed.

WHEREFORE, for the foregoing reasons, the State respectfully requests that the Court bar Paul Ortiz' *Error and Ommision Aamodt Litigation Water Rights Town of Jacona Land Grant* (Doc. 10768, July 26, 2016).

Electronically Filed,

/s/ Kelly Brooks Smith
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2016, I filed the foregoing *Motion to Bar as Untimely "Error and Omission Aamodt Litigation Water Rights Town of Jacona Land Grant"* 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 by U.S. mail to the recipients listed below.

Paul Ortiz
Town of Jacona Land Grant
11 W. Gutierrez Ste 3769
Santa Fe, NM 87506

/s/ Kelly Brooks Smith
Kelly Brooks Smith