

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 SAN ILDEFONSO, and)

PUEBLO DE TESUQUE,)

Plaintiffs-in-Intervention)

No. 66cv6639 WJ/WPL

Acequia Barranco Blanco
Subfile Nos. 19.1, 19.1-A,
19.1-B, 19.2, 19.3, 19.4, 19.4-A,
19.4-B, 19.4-C, 19.5,
19.6, 19.7, 19.8, 19.9, 19.10, 19.11,
19.12, 19.13, 19.14, 19.16,
19.17, 19.18, 19.19, 19.20, 19.20-A,
19.21, 19.22, 19.23, 19.24, 6.2

**MOTION TO CORRECT SOURCES OF WATER AND POINTS OF DIVERSION, AND
CLARIFY PRIORITY DATE FOR WATER RIGHTS SERVED BY THE ACEQUIA
BARRANCO BLANCO**

Pursuant to 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 subfile orders for water rights served by the Acequia Barranco Blanco to identify all sources of water and points of diversion, and clarify the priority date for said water rights.

The State offers the following grounds for this motion:

1. Subfile orders adjudicating surface water irrigation water rights served by the Acequia Barranco Blanco were entered in the following subfiles: 19.1, 19.1-A, 19.1-B, 19.2, 19.3, 19.4, 19.4-A, 19.4-B, 19.4-C, 19.5, 19.6, 19.7, 19.8, 19.9, 19.10, 19.11, 19.12, 19.13,

19.14, 19.16, 19.17, 19.18, 19.19, 19.20, 19.20-A, 19.21, 19.22, 19.23, 19.24, and 6.2¹. These subfile orders contain a legal description of the ditch's surface water point of diversion from the Rio Tesuque, but do not reference any other point of diversion or source of water.

2. As reflected in Office of the State Engineer ("OSE") *Permit to appropriate the Underground Waters of the State of New Mexico No. RG-15636* ("Permit No. RG-15636") attached as *Exhibit 1*, on or about July 30, 1968, OSE permitted the transfer of the surface water rights under the Acequia Barranco Blanco from surface water of the Rio Tesuque to groundwater diverted from Well No. RG-15636. Pursuant to Permit No. RG-15636, the Acequia Barranco Blanco pumps groundwater from the well into the ditch for irrigation use.

3. Surface water rights served by the Acequia Barranco Blanco were adjudicated a ditch-wide priority of 1864. *See Order Granting the State's Motion for Order Making Final Determination of Priority Dates of Surface Water Rights in the Nambe-Pojoaque-Tesuque Stream System* [Doc. 9379, August 27, 2014] at page 8. The conditions of approval to Permit No. RG-15636 changing the point of diversion and source of water from surface to groundwater did not change the priority of the water rights served by the Acequia Barranco Blanco. *See Exhibit 1*.

4. Subfile orders adjudicating surface water rights served by the Acequia Barranco Blanco were entered between 1968 and 1976. None of the subfile orders, whether entered before or after Permit No. RG-15636 was granted, reference Well No. RG-15636 or the right to receive water from the well.

¹ Water rights appurtenant to a single tract were inadvertently adjudicated twice in two subfiles: 19.15 and 6.2. The March 14, 1969, Order entered in Subfile No. 19.15 was vacated by Order dated December 18, 2013 (Doc. 8063). Thus, the subfile tract is now referenced in the Court record and shown on the Hydrographic Survey as Subfile No. 6.2 only. Accordingly, the State seeks to correct Subfile No. 6.2 for the reasons set forth in this motion.

5. On August 20, 1990, OSE granted Permit No. 0144 & RG-15636 to partially change the point of diversion from Well No. RG-15636 to the Acequia Barranco Blanco's original surface water point of diversion for the purpose of supplementing groundwater diverted from Well No. RG-15636 with surface water from the Rio Tesuque. Permit No. 0144 & RG-15636 is attached as *Exhibit 2*.

6. In light of the foregoing chronology and administrative history, the State proposes that the subfile orders entered in Subfile Nos. 19.1, 19.1-A, 19.1-B, 19.2, 19.3, 19.4, 19.4-A, 19.4-B, 19.4-C, 19.5, 19.6, 19.7, 19.8, 19.9, 19.10, 19.11, 19.12, 19.13, 19.14, 19.16, 19.17, 19.18, 19.19, 19.20, 19.20-A, 19.21, 19.22, 19.23, 19.24, and 6.2 be corrected to identify all sources of water and points of diversion, and to clarify the ditch-wide priority for water rights served by the Acequia Barranco Blanco as follows:

Purpose – Irrigation

State Engineer File No: RG-15636 and 0144

Priority: 1864

Point of Diversion:

Groundwater: The Acequia Barranco Blanco is located in the SW ¼ SE ¼ SE ¼ Sec. 7, T. 19 N, R. 9 E., within the Pojoaque Pueblo Grant. The Acequia Barranco Blanco diverts groundwater from Well No. RG-15636 situated at a point located at X:567,821 and Y: 1,777,517, NM State Plane Coordinate System, Central Zone, NAD 1927. This water is then delivered through the ditch for irrigation of subfile tracts.

Surface: The Acequia Barranco Blanco diverts surface water from the Rio Tesuque at a point located in the SW ¼ SE ¼ SE ¼ Sec. 7, T. 19 N, R. 9 E., to supplement groundwater diverted from Well No. RG-15636.

7. 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 the subfiles listed in paragraphs 1 and 6 above. The State's proposed order is attached as *Exhibit 3*.

WHEREFORE, the State requests that the Court enter the attached order correcting the above-referenced subfile orders by: (a) identifying all sources of water and points of diversion for water rights served by the Acequia Barranco Blanco; and (b) clarifying the ditch-wide 1864 priority adjudicated to said water rights.

Respectfully Submitted,

/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 September 19, 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.

A separate Certificate of Service will be filed following completion of mailing to additional recipients.

/s/ Brett Olsen

Brett Olsen