

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel.
STATE ENGINEER,

Plaintiff,

vs.

CIVIL NO. 69-7941 BB/LFG

ROMAN ARAGON, et al.,

RIO CHAMA ADJUDICATION

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Motion requesting Senior Priority call by the Acequia de Chamita Parciantes by Acequia spokesman, David Ortiz. [Doc. 10933]. The Court will DENY the motion for the reasons stated below.

On July 26, 1071, the Court entered a Partial Final Judgment and Decree [“Decree”] which, among other things, ordered the State Engineer to appoint and employ a water master, subject to approval of the Court, to administer and enforce the Decree. [Doc. 1778]. On July 16, 2013, the Court approved the appointment of Antonio Trujillo as the new water master following the retirement of the previous water master. [Doc. 10929]. On July 18, 2013, Rio Chama water master Trujillo filed a notice stating that priority administration of diversions will now be based on priorities that have been determined by Court orders and lists those priorities. [Doc. 10930]. The notice shows that the Acequia de Chamita has a priority of 1 with a priority date of 1600.

On July 29, 2013, David Ortiz filed a motion, on behalf of the parciantes of the Acequia de Chamita, requesting a priority call. [Doc. 10933]. The motion asks “that the Court order the WaterMaster honor and enforce the Priority call of the Parciantes of the Acequia de Chamita and that those other individuals be ordered to quit obstructing the WaterMaster from performing his

duties as WaterMaster Rules and Regulations and Document 10930 and 10930-1 instruct him.” [Doc. 10933]. The State of New Mexico [Doc. 10940], the MB Community Ditch Association [Doc. 10924], the Rio Chama Acequia Association [Doc. 10943], the Asociación de Acéquias Norteñas de Rio Arriba [Doc. 10944], and Chama Troutstalkers LLC [Doc. 10946], filed responses to Mr. Ortiz’ motion.

In his reply, Mr. Ortiz states “At the present time, August 9, 2013, because of the recent and continual rains, I believe it is not necessary at the present time for a Senior Priority call.” [Doc. 10950]. Consequently, the Court will DENY Mr. Ortiz’ request for a priority call as moot.

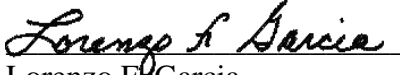
Mr. Ortiz discusses the various communications between the Acequia de Chamita and the State, asks many questions and “seek[s] the Court’s clarification on certain issues for the future Senior Priority Water call, if needed.” [Doc. 10950]. The Court will DENY Mr. Ortiz’ request for clarification for two reasons. Because Mr. Ortiz has withdrawn his request for a priority call, there is no “substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *See Columbian Financial Corp. v. BankInsure, Inc.*, 650 F.3d 1372, 1376 (10th Cir. 2011). Accordingly, any opinion the Court would provide in clarifying the priority call procedure would be advisory. Article III of the Constitution has long been interpreted as forbidding federal courts from rendering advisory opinions. *See Flast v. Cohen*, 392 U.S. 83, 96 (1968).

Second, Mr. Ortiz has not shown that his objection to the water master’s acts and decision regarding the priority call procedure is within the scope of this adjudication. The primary purpose of this adjudication is to determine for the water rights adjudged to each party, the priority, amount, purpose, periods and place of use. *See* N.M. Stat. Ann. § 72-4-19. While the Decree states that the water master shall serve under the general supervision of the Court, it also states that “nothing

contained in this judgment and decree shall limit the authority of the State Engineer to administer the public waters of the Rio Chama Mainstream or the groundwaters related thereto as adjudicated in this suit and as otherwise provided by law.” [Doc.1778]. State law provides that persons who object to the acts or decisions of a water master may appeal to the State Engineer, who shall determine the matter in dispute, and the State Engineer’s decision is final unless an appeal is taken to state district court. *See* N.M. Stat. Ann. § 72-3-3.

Finally, the Court notifies Mr. Ortiz, who is not an attorney, that he cannot represent the Acequia de Chamita. The Local Rules for the District of New Mexico provide that a “corporation, partnership or business entity other than a natural person must be represented by an attorney authorized to practice before this Court.” D.N.M.LR-Civ. 83.7.

IT IS SO ORDERED.


Lorenzo F. Garcia
United States Magistrate Judge