

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	)	
	)	NO. 66cv6639 WJ/WPL
UNITED STATES OF AMERICA,	)	
PUEBLO DE NAMBE,	)	Chupadero Irrigation Company Ditch
PUEBLO DE POJOAQUE,	)	Subfile No. 17.1
PUEBLO DE SAN ILDEFONSO,	)	
and PUEBLO DE TESUQUE,	)	
	)	
Plaintiffs-in-Intervention.	)	
_____	)	

**MOTION TO CORRECT SUBFILE ORDER (SUBFILE NO. 17.1)**

Pursuant to Section A.2 of the July 23, 2013, *Procedural Order for Correcting Subfile Errors* (Doc. 7909), Las Acequias de Chupadero (“Movant”) requests the Court to enter the attached proposed order renumbering a portion of the water rights acreage adjudicated under Subfile 17.1 to include a new Subfile 17.1A and correcting the amounts of water rights acreage under Subfile 17.1. Movant offers the following grounds for this Motion:

1. As explained below, acreage adjudicated under an Order entered in Subfile 17.1 under the name of the private landowner includes the surface area of an irrigation pond that is part and parcel of the ditch infrastructure of Movant for the supplying of irrigation water to all 27 adjudicated tracts of land under that particular ditch, including Tract 17.1.

2. On May 8, 1968, the Court entered an “Order” adjudicating a surface water right to the Christian Brothers Major Superiors under Subfile 17.1 for the irrigation of 20.64 acres under the Chupadero Irrigation Company Ditch, shown as Tract 1 on Hydrographic Survey Map Sheet 17 (“Tract 17.1”). A copy of this Order is attached as *Exhibit 1*.

3. The Chupadero Irrigation Company Ditch is one of the 12 ditches that comprise Las Acequias de Chupadero. Las Acequias de Chupadero is organized as a community acequia under New Mexico law, with a three-person commission and a mayordomo administering water delivery to the 12 separate ditches.

4. As shown on Hydrographic Survey Map Sheet 17, the 20.64 acres comprising Tract 17.1 appears to include an irrigation pond with a surface area of 0.72 acres. Although the delineation of this pond on Hydrographic Survey Map Sheet No. 17 as being part of Tract 17.1 is not entirely clear, the 0.72 acres appears to be included among the other acreages associated with Tract 17.1 to add up to a total of 20.64 acres. *See Map attached as Exhibit 2.*

5. The 0.72-acre irrigation pond is part of the infrastructure of Las Acequias de Chupadero for the supplying of irrigation water to all of its members irrigating from the Chupadero Irrigation Company Ditch, including, but not exclusively, the owners of Tract 17.1.

6. In fact, close examination of the hydrographic survey map shows that the entirety of the Chupadero Irrigation Company Ditch is directed into the 0.72-acre pond and then a single ditch emerges from the pond as the Chupadero Irrigation Company Ditch, which continues downstream as the ditch that supplies water to the 27 adjudicated tracts of land, including Tract 17.1. In other words, this is not a pond that has a diversion from the main ditch in order to fill it; rather this pond is part of the main ditch itself.

7. Other smaller ponds shown on Hydrographic Survey Map Sheet 17 whose surface areas are included in the acreage adjudicated for Tract 17.1 are correctly adjudicated as acreage belonging exclusively to the owners of tract 17.1, i.e., as “private” ponds. None of these private ponds are on the line of the main ditch as described in the above paragraph for the 0.72-acre pond.

8. In this adjudication, a similar error was corrected pursuant to the July 23, 2013 *Procedural Order for Correcting Subfile Errors*. On August 27, 2014, the Court entered an “Order Granting Motion to Correct Subfile Order” (Doc. 9548), wherein an irrigation reservoir was recognized as properly being in the name of the Acequia de los Ojitos Community Ditch Association, and the subfile for the individual landowner where the reservoir was located was amended to subtract the surface area of the reservoir from the adjudicated acreage amount for that landowner.

9. Movant proposes that the 0.72-acre portion of Tract 17.1 comprising the above-described pond be split off and renumbered as Subfile 17.1A, and that the water right associated with that subfile (but not the land) be recognized as owned by Las Acequias de Chupadero. *See Exhibit 2*. Movant stipulates that the land underlying and surrounding the pond is and has always been owned by the Christian Brothers Major Superiors and their predecessors in interest.

10. Additionally, Paragraph A of the May 8, 1968, Order adjudicating 20.64 acres of water rights to the Christian Brothers Major Superiors should be corrected to account for the renumbering of the 0.72 acres proposed to be adjudicated to Las Acequias de Chupadero to state the correct location and amount of water rights acreage remaining in Subfile 17.1 as follows:

**Part of S $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 5, T. 18 N., R. 10 E., and Part of N $\frac{1}{2}$ , Sec. 8, T. 18 N., R. 10 E., as shown on the hydrographic survey map sheet No. 17, Tract 1.**

**19.92 acres**

11. Except as requested by this motion, all other elements of the surface water rights should remain as stated in the May 8, 1968, Order attached as *Exhibit 1*, and subsequent orders of this Court.

12. Movants are serving a copy of this Motion and a proposed order granting the Motion on the State of New Mexico *ex rel.* State Engineer and the Christian Brothers Major Superiors. The Movant's proposed order is attached as *Exhibit C*.

13. Counsel for the Christian Brothers Major Superiors, Mr. John Fox, has been advised of and provided a copy of this Motion and is conferring with his clients in different parts of the country and the world, and states that he will provide his clients position on the Motion as expeditiously as possible. Counsel for the State, Mr. Edward Bagley, was contacted and opposes this Motion.

14. Any response in opposition or reply in support of this motion should be filed within the time period established by the District of New Mexico's Local Rule of Civil Procedure D.N.M.LR-Civ. 7.4(a).

WHEREFORE, Movants request that the Court enter the attached proposed order:

(1) adjudicating 0.72 acres of water rights acreage to Las Acequias de Chupadero under a newly designated Subfile 17.1A; and

(2) correcting Paragraph A of the May 8, 1968, Order adjudicating a surface right under Subfile 17.1 to describe the location and amount of water rights acreage as follows:

**Part of S $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 5, T. 18 N., R. 10 E., and Part of N $\frac{1}{2}$ , Sec. 8, T. 18 N., R. 10 E., as shown on the hydrographic**

survey map sheet No. 17, Tract 1.

19.92 acres

NEW MEXICO LEGAL AID, INC.

*/s/ David Benavides*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2017, 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:

Edward C. Bagley  
Kelly Brooks Smith  
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*/s/ David Benavides*  
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David Benavides