

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.)	
_____)	

RESPONSE IN OPPOSITION ON BEHALF OF CHRISTIAN BROTHERS MAJOR SUPERIORS TO MOTION TO CORRECT ERRORS

COMES NOW, CHRISTIAN BROTHERS MAJOR SUPERIORS (“Christian Brothers”), by and through, Sommer Karnes & Associates LLP (Karl H. Sommer), hereby response in opposition to the Motion to Correct Subfile Order (Subfile No. 17.1) (filed March 16, 2017 Document No. 11433). As grounds for this opposition, Christian Brothers states as follows:

1. The Motion should be denied because:
 - a. It attempts to re-litigate an *inter se* matter that was determined in 1968;
 - b. It relies upon factual allegations that are not established by the Motion;
 - c. It raises factual disputes that are not appropriately determined by a motion to correct errors; and
 - d. It attempts to adjudicate a right by making claims that are subject to the defenses of statute of limitations and laches, both of which defenses are

errors.

2. Movants have styled the Motion as a correction of an error, but admits that is really an attempt to re-litigate an adjudicated water right. (See Motion, p. 4, Prayer for Relief, stating “WHEREFORE, Movants request that the Court enter the attached proposed order . . . adjudicating .072 acres of water rights to Las Acequias de Chupadero. . . .”) The Court entered its Order of May 8, 1968 (Document 11433-1 Filed 03/16/17), adjudicating Christian Brothers right which is now improperly challenged by the Movants – over 39 years after the Order was entered. Movants had a duty during the time allowed by the Court to bring an *inter se* action that challenged the Court’s Order of May 8, 1968. The time for that challenge in an *inter se* action passed decades ago. Movants’ attempt to bootstrap an adjudication decades after the Court-imposed deadline should not be countenanced by the Court.
3. The Motion relies on factual determinations that are not supported by the Motion and it relies upon factual allegation in the Motion that are disputed and denied by Christian Brothers. In order for the Movants to own a water right as alleged it is axiomatic that Movants would have to establish all of the elements of such right – purpose, place of use, priority date, etc. Movants do not even address these fundamental factual predicates necessary for Movants to establish that they have a water right – all which would have been part and parcel of the *inter se* action that Movants should have brought years ago. Now, Movants simply conveniently ask the Court to find that “all other elements [except ownership] should remain the same as stated in the May 8, 1968, Order” (Motion, p. 4) On what factual basis would the Court rely in making the findings necessary to establish a water right in the Movants, since no factual predicate has been established? Obviously, this failure is fatal to the Motion. Furthermore, the facts alleged in the Motion are

in Paragraphs 1, 5, 6, and 7.

4. Finally, Christian Brothers defense of its right adjudicated in 1968 would, if the Movants had properly raised the issue via an *inter se* action, would involve a claim of statute of limitation and laches, in addition to the general denial that Movants have not and cannot establish that it owns any water right whatever as to the 0.72 acres described in the Motion.

WHEREFORE, Christian Brothers request that the Motion be denied.

SOMMER KARNES & ASSOCIATES LLP,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 14, 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:

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