

IN THE DISTRICT COURT OF CHAVES COUNTY

STATE OF NEW MEXICO

STATE OF NEW MEXICO, on the relation of S. E. Reynolds, State Engineer, and PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT

Plaintiffs,

vs.

L. T. LEWIS, LOREN P. KING, H. A. KIPER, M.L. RHODES, VINCENTE FLORES, ORAN C. DALE, JOE W. MASSEY, CLYDE KEITH, WILLIAM W. THOMAS, CHARLIE STONE, C. V. HOKE, MRS. C. V. HOKE, A. W. LANGENEGGER, W. J. GRAHAM, CHARLES H. WHITMAN, H. A. LINDLEY, JOE MITCHELL, J. T. MITCHELL, E. O. MOORE, JR., OSCAR T. KINKEL, CARL DAY, JAMES R. NORRIS, WAYNE NORRIS, ALICE NORRIS, NELLA B. TAYLOR, DOROTHY NORRIS, LUCILE MOORE, JOHNNIE MAE LAMAN, GEORGE REX NORRIS, and MAX WIGGINS, et al.,

Defendants.

DISTRICT COURT CHAVES COUNTY, N.M. FILED in My Office FEB 21 1962 BY JEAN WILLIS CLERK OF THE DISTRICT COURT

NO. 20294

AMENDED SUPPLEMENTAL PETITION

FIRST CAUSE OF ACTION

COME NOW the plaintiffs and by leave of the Court first had and obtained, file this their Amended Supplemental Petition herein, and allege:

I.

That S. E. Reynolds is the duly appointed, qualified and acting state engineer of the state of New Mexico and maintains this action on behalf of the state of New Mexico in said capacity.

II.

That the plaintiff, Pecos Valley Artesian Conservancy District was created to conserve where necessary the waters of

the Roswell Artesian Basin and has concurrent power and authority with the state engineer to enforce the statutes and rules and regulations provided thereunder insofar as the waters of the Roswell Artesian Basin are affected and that this action is necessary in order to conserve the waters of said artesian basin and in order to prevent waste.

III.

That all of the underground waters in the Roswell Artesian Basin belong to the public and are subject to appropriation for beneficial use; that said basin is shown and described on a map attached hereto marked Exhibit A, and by reference made a part hereof.

IV.

That the lands within the boundaries of the Roswell Artesian Basin, as shown by said Exhibit A, contain the waters of underground streams, channels, artesian basins, reservoirs or lakes having reasonably ascertainable boundaries and which have been declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use only in the manner provided by law.

V.

That on July 29, 1959, the plaintiff, S. E. Reynolds, New Mexico State Engineer, entered his Order Number 77, which order extended the areas and boundaries of the Roswell Artesian Basin, and a true and correct copy of such Order is attached hereto and made a part hereof as Exhibit B.

VI.

That the defendants, and each of them, claim some

right to the use of a portion of the aforesaid underground waters and that there are others who own land in the Roswell Artesian Basin and who make claims to said water and that such others should be made parties defendant, on the Court's own action without further notice, as their interests appear, to the end that complete relief may be accorded to all interested parties.

VII.

That the plaintiffs are informed and believe and, based upon such information and belief, allege that the defendants, or some of them, have taken and will continue to take water from the Roswell Artesian Basin for the irrigation of lands that have no water rights, contrary to law, and to the detriment of the public and owners of valid water rights.

VIII.

That the defendants, or some of them, make adverse claims to the rights of the public and contrary to the statutory rights and duties of the Pecos Valley Artesian Conservancy District, all without right and to the great and irreparable injury of the plaintiffs.

IX.

That the plaintiffs are informed and believe and, based upon such information and belief, allege that the defendants, or some of them, are diverting and will continue to divert large quantities of water over and above the amounts required for properly irrigating their lands and in excess of what they can beneficially use and in excess of the duty of water set out in their permits; that said use of water is adverse to the rights of other defendants and in conflict with the rights of the public.

X.

That a hydrographic survey is being conducted and prepared by the plaintiffs and when portions of said survey are completed, they will be filed in this Court and plaintiffs hereby ask the Court to order the naming of additional parties on its own motion as soon as their identity becomes known.

XI.

That it will be necessary to take voluminous testimony and it will not be practical nor feasible for this Court to hear all the testimony in this cause and that such an exceptional condition exists as requires the appointment of a special master to hear the evidence and make recommended findings of fact and conclusions of law to this Court, in order that this matter may be diligently pursued to judgment and that the interests of the public may be preserved.

XII.

That due to the tremendous amount of land and the large number of defendants claiming interest in the water of the Roswell Artesian Basin, it is impossible to name all parties and to hear all evidence at one time.

XIII.

That it is necessary that the Court direct the Special Master to hear the testimony concerning the water rights of the parties in Township 14 South, Range 25 East, Chaves County, New Mexico, and, such being the township in which the defendants above named claim some interest in the water, that the special master hear the evidence concerning such township and make recommendations for such interlocutory decrees as are mete and just.

XIV.

That it is necessary, upon the conclusion of the testimony in said township, that the Special Master proceed in like manner to hear testimony concerning all other townships in the Roswell Artesian Basin in such manner and in such order as is feasible and make such recommendations for orders concerning the use of water of each township as are mete and just.

XV.

That when the said Special Master has heard all the testimony concerning water rights in each of the several townships contained in the Roswell Artesian Basin, it is necessary that said Special Master hear and receive all testimony necessary to the determination of all general and specific issues of fact concerning the entire basin and make such recommendations for final findings of fact and conclusions of law and final decree as the Court may direct.

WHEREFORE, plaintiffs pray:

1. That the defendants, and each of them, be required to appear before the Court and describe fully and in detail what rights, if any, they have to the use of the waters of the Roswell Artesian Basin and state:

- (a) When said water right was initiated.
- (b) The lands to which said water right is appurtenant.
- (c) Source of water.
- (d) Purpose for which it is used.
- (e) The quantity and duty of water necessary for the beneficial use for which it was appropriated.

2. That the Court quiet title to the defendants'

valid appropriation and use of water and that it determine and define the water rights of each of the several defendants as to priority, lands to which water rights are appurtenant, source of water, purpose of use and duty of water in the Roswell Artesian Basin.

3. That the Court enter its order enjoining all illegal use of underground water in the Roswell Artesian Basin.

4. That the Court name additional parties, without further notice, from time to time as it appears necessary to determine and adjudicate all the water rights of the Roswell Artesian Basin.

5. That the Court appoint a Special Master to hear the evidence and make such recommendations to the Court as are necessary in the premises and that the Court enter such preliminary, interlocutory and final orders as are necessary to a final determination and adjudication of all water rights of the Roswell Artesian Basin and that the plaintiffs recover such costs as are meted and just.

SECOND CAUSE OF ACTION

COME NOW the plaintiffs, by and through their attorneys, and petition this Court for declaratory relief and for their second cause of action state:

I.

That plaintiffs adopt by reference all the allegations contained in the First Cause of Action.

II.

That it is necessary for the proper administration of the Roswell Artesian Basin for the plaintiffs to obtain a

declaratory judgment from this Court setting out the priorities of the various water rights, the lands to which said water rights are appurtenant, source of water, the purpose for which it is used and the quantity and duty of water necessary for the beneficial use for which it was appropriated.

III.

That there is an actual controversy and conflicting claims between the plaintiffs and defendants and/or among the defendants as to the priorities of the various water rights, the lands to which said water rights are appurtenant, source of water, the purpose for which it is used and the quantity and duty of water necessary for the beneficial use for which it was appropriated.

WHEREFORE, plaintiffs pray:

1. That the defendants, and each of them, be required to appear before the Court and describe fully and in detail what rights, if any, they have to the use of the waters of the Roswell Artesian Basin and state:

- (a) When said water right was initiated.
- (b) The lands to which said water right is appurtenant.
- (c) Source of water.
- (d) Purpose for which it is used.
- (e) The quantity and duty of water necessary for the beneficial use for which it was appropriated.

2. That the Court enter a declaratory judgment determining and declaring the water rights of each of the defendants as to priority, lands to which water rights are appurtenant, source

of water, purpose of use and duty of water in the Roswell Artesian Basin.

3. That the Court enter its order enjoining all illegal use of underground water in the Roswell Artesian Basin.

4. That the Court name additional parties, without further notice, from time to time as it appears necessary to determine and adjudicate all the water rights of the Roswell Artesian Basin.

5. That the Court appoint a Special Master to hear the evidence and make such recommendations to the Court as are necessary in the premises and that the Court enter such preliminary, interlocutory and final orders as are necessary to a final determination and adjudication of all water rights of the Roswell Artesian Basin and that the plaintiffs recover such costs as are meted and just.

CHARLES D. HARRIS,
Special Assistant Attorney General
J. LEE CATHEY,
Special Assistant Attorney General
401 North Richardson
Roswell, New Mexico
ATTORNEYS FOR PLAINTIFFS

I hereby certify that on the 17 day of July, 1972 By: J. Lee Cathey
I mailed a true copy of the foregoing pleading to
opposing counsel of record.