

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

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 7: Rito de Tierra Amarilla,

Subfile Nos. CHTA-002-0003
CHTA-003-0001

MOTION TO ALLOW SERVICE BY PUBLICATION

COMES NOW the plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) and requests the Court to enter its order allowing service by publication on the unknown heirs of Lucas Martinez, Carlota L. Martinez and Levi Martinez, and in support of this motion the undersigned counsel for the State of New Mexico states as follows:

1. The State seeks to serve the unknown heirs of Lucas Martinez, Carlota L. Martinez and Levi Martinez by publication pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure and Rule 1-004(K) of the Rules of Civil Procedure for the District Courts of the State of New Mexico.
2. The State has recently been informed that title to the land mapped under subfiles CHTA-002-0003 and CHTA-003-0001 is the subject of a quiet title lawsuit involving the heirs of Lucas Martinez, Carlota L. Martinez and Levi Martinez.
3. The unknown heirs of Lucas Martinez, Carlota L. Martinez and Levi Martinez should be required to enter an appearance in these proceedings and state their claims to water rights appurtenant to the lands mapped under subfiles CHTA-002-0003 and CHTA-003-0001, or accept the

State's offer with respect to the determination of the water rights in these subfiles.

WHEREFORE, the plaintiff State of New Mexico *ex rel.* State Engineer requests the Court to enter its order allowing service of process by publication upon the unknown heirs of Lucas Martinez, Carlota L. Martinez and Levi Martinez.

Dated: September 16, 2008

Respectfully submitted,

/s/ Ed Newville
EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 867-7444
(505) 867-2299 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September, 2008 I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served on the following non-CM/ECF participants in the manner indicated:

Via first class mail, postage prepaid addressed as follows:

Heirs of Levi Martinez
c/o Peter F. Wirth, Esq.
Sawtell, Wirth & Biedscheid, P.C.
708 Paseo de Peralta
Santa Fe, NM 87501

Frank A. Martinez
346 Forest Rd. 314
Jemez Springs, NM 87025

/s/ Ed Newville
Edward G. Newville

