

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 1, Chama Mainstream

MOTION TO EXCLUDE ADDITIONAL EVIDENCE
IN MEMORANDUM BY PRO SE PARTY TINA GARCIA

The State of New Mexico *ex rel.* State Engineer (“State”), by and through the undersigned counsel, respectfully requests the Court to exclude from consideration the evidence presented in *pro se* party Tina Garcia’s *Memorandum: Information on Parciente Pro Se Party of the Acequia de Chamita Tina Garcia (Augustina Candelaria Garcia) - Docs. 9589 and 9583, Filed 2/16/2010 and Doc. 9657, Filed 3/31/2010, (“Memorandum”)* (Doc. No. 9940) filed August 17, 2010, for the reasons presented below.

1. On April 28, 2010, in its *Memorandum Opinion and Order (“Order Limiting Consideration”)* (Doc. No. 9700) the Court granted the State of New Mexico’s *Motion to Limit Consideration of Objections to Special Master’s Report Filed December 16, 2009 to Parties Subject to the Pretrial Order on Mainstream Priorities filed March 25, 1996 (“Motion to Limit Consideration”)* (Doc. No. 9606) filed February 25, 2010. The Court held that it “will limit its consideration of objections to the Special Master’s Report to those filed by persons that timely

objected to the Notices and Orders to Show Cause or their successors-in-interest.” *Order Limiting Consideration*, p. 4.

2. As previously noted in the State’s *Motion to Exclude Additional Evidence* filed on July 12, 2010 (Doc. No. 9912), on June 25, 2010, the Court granted the *State of New Mexico’s Motion to Limit Review to Evidence Presented to Special Master at Hearings on Disputed Priorities of Acequias de Chamita, Hernandez and Los Salazares* (“*Motion to Limit Review*”) (Doc. No. 9683) filed April 19, 2010, in its *Memorandum Opinion and Order* (“*Order Limiting Review*”) (Doc. No. 9910). The Court held that it “will limit its review of the objections to the Special Master’s Report to the evidence and testimony presented to the Special Master at the hearings on the disputed priorities in August 1996.” *Order Limiting Review*, p. 3.

3. Ms. Garcia’s *Memorandum* asserts that she is descended from persons that worked and irrigated lands from the “Acequia at San Gabriel in 1598” and submits “Genealogical Evidence and San Gabriel Settlement and Familial History” in apparent support of that claim. *Memorandum*, pp. 2-4.

4. To the extent that Ms. Garcia is offering evidence in the *Memorandum* for the Court to consider in support of her *Objections to the Assignment of a 1600 Priority Date to the Concerned Water Rights of the Parcientos of the Acequia de Chamita* (Doc. No. 9589), filed February 16, 2010, and the *Joint Amended Objections* (Doc. No. 9657), filed March 31, 2010, it should be excluded. Ms. Ortiz did not timely file an objection to the Notice and Order to Show Cause in 1995 or 1996, nor is she a successor-in-interest to the owner of a subfile who did timely object. The Court therefore is not considering her objections. *See Order Limiting Consideration*, p. 4. Further, even if the Court were to consider Ms. Garcia’s objections, there is no showing that the additional material was not readily

available at the time of the hearing, is newly discovered evidence, or could not have been discovered with the exercise of due diligence. *See Order Limiting Review*, pp. 2-3. The Court should therefore exclude this additional material.

WHEREFORE the State respectfully requests the Court to exclude from consideration the evidence presented in *pro se* party Tina Garcia's *Memorandum* as evidence beyond the scope of this Court's review.

Respectfully submitted,

/s/ Ed Newville

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of August, 2010, I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM/ECF Participant in the manner indicated:

via first class mail, postage prepaid addressed as follows:

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