

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

Acequia de Jose V. Martinez

**MOTION FOR ORDER ON PRIORITY DATE OF WATER RIGHTS
UNDER ACEQUIA DE JOSE V. MARTINEZ**

The Plaintiff State of New Mexico, *ex rel.* State Engineer (“State”), by and through its undersigned counsel, requests the Court to enter an Order revising the priority date of all water rights under the Acequia de Jose V. Martinez in Section 1 of the Chama Mainstream Section, and in support of this Motion states the following:

1. Pursuant to the *Amended Order on the Adjudication of Water Right Priorities* (Doc. No. 3497, filed July 8, 1994), each defendant water rights owner and each defendant community ditch in Section 1 of the Rio Chama Stream System was required to be served a Notice and Order to Show Cause setting forth the priority dates for such water rights proposed by the court-appointed expert witness Dr. John O. Baxter or the State of New Mexico.

2. All know and unknown claimants of water rights under the Acequia de Jose V. Martinez were served with a Notice and Order to Show Cause setting forth a priority date of 1740 for their water rights under this acequia. *See Certificate of Service* filed October 20, 1994 (Doc. No.

3526.A); *New Mexico's Certificate of Publication for Priority Date Notices and Orders to Show Cause* filed November 29, 1995 (Doc. No. 4413). The commissioners of the Acequia de Jose V. Martinez were served with a Notice and Order to Show Cause setting forth a priority date of 1740 for the water rights under this acequia. *See Certificate of Service* filed December 12, 1994 (Doc. No. 3979.33).

3. The Acequia de Jose V. Martinez, by and through the commissioners of the acequia, filed an objection to the priority date proposed by the State (1740). *See Objection to Order to Show Cause and Priority Date* filed February 3, 1995 (Docket No. 3993.4). Pete Fresquez (Subfile 417) also filed an objection to the proposed priority date. *See Objection to Order to Show Cause and Priority Date* filed December 7, 1994 (Docket No. 3974.1).

4. On December 27, 1995, the State and the Acequia de Jose V. Martinez, by and through it's counsel of record, Fred J. Waltz, stipulated that the priority date of the acequia date ought to be 1735. *See Stipulation on Priority Date for Acequia de Jose V. Martinez* filed December 27, 1995 (Docket No. 4444).

5. The Court should enter an Order approving and adopting the *Stipulation on Priority Date for Acequia de Jose V. Martinez* filed December 27, 1995 (Docket No. 4444), determine that 1735 is the priority date of the water rights under this acequia, and amend all subfile orders entered to date for water rights under the Acequia de Jose V. Martinez. The requested Order should be entered as a final order subject to the right of other water rights owners to file objections to individual adjudication orders prior to the entry of a final decree.

6. A proposed form of Order granting this motion is attached hereto.

7. Fred J. Waltz, counsel for the Acequia de Jose V. Martinez, does not oppose the

granting of this motion.

8. A proposed Order granting this Motion is attached hereto as Exhibit 1.

WHEREFORE, the State respectfully requests the Court to enter an Order that approves and adopts the *Stipulation on Priority Date for Acequia de Jose V. Martinez* filed December 27, 1995 (Docket No. 4444), and that makes the determination that 1735 is the priority date of the water rights served by the Acequia de Jose V. Martinez.

FURTHER, the State requests the Court to amend the individual subfile orders for water rights under the Acequia de Jose V. Martinez to state that 1735 is the priority date of those rights.

FURTHER, the State requests that the Court enter the requested Order as a final judgment, subject to the right of other water rights owners to file objections to individual adjudication orders prior to the entry of a final decree.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th, day of April 2011, 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 the following non-CM/ECF Participants in the manner indicated:

via first class mail, postage prepaid addressed as shown on the attached Service List.

/s/ Ed Newville
EDWARD G. NEWVILLE