

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.

6:69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 1, Chama Mainstream

Acequia de Chamita  
Subfile No. 267

**JOINT STATUS REPORT AND PROVISIONAL DISCOVERY PLAN**

Pursuant to FED. R. CIV. P. 26(f), a meeting was held on January 26, 2012 at the Office of the State Engineer in Santa Fe, New Mexico and was attended by:

Edward G. Newville, Esq. for Plaintiff(s)

David M. Ortiz, pro se for Defendant(s)

**NATURE OF THE CASE**

General adjudication of the water rights of the Rio Chama Stream System.

The matter at hand is a limited subfile proceeding to determine the priority of water rights described in Subfile 267 in Section 1 for Tract 22.17 irrigated from the Acequia de Chamita. *See Notice and Order to Show Cause* filed December 13, 2011 (Docket No 10669); *Objection and Response to Notice and Order to Show Cause* filed December 19, 2011 (Docket No. 10672).

**STIPULATIONS**

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties are willing to stipulate to the following facts:

*In 1598, Don Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico.*

**PLAINTIFF'S CONTENTIONS:**

The Oñate expedition arrived at present San Juan Pueblo (now Ohkay Owingeh) on July 11, 1598. On August 11, 1598, with the assistance of 1,500 Pueblo Indians, Oñate, began work on an acequia for a new city to be called "San Francisco de los Españoles." The acequia constructed by Oñate in 1598 was located on the east side of the Rio Grande near the present site of San Juan Pueblo. In late 1599 or 1600, the Spanish settlers moved across the Rio Grande and established a new settlement in the partially abandoned pueblo of Yunque-Yunque. The new settlement was located in the area now known as Chamita. The settlers promptly established an irrigation system constructing an acequia that diverted water for irrigation purposes from the Rio Chama. The tract of land now owned by David and Cecilia Ortiz (Tract 22.17 under the Acequia de Chamita) was first placed under irrigation at that time (1600). The priority date of the irrigation water rights appurtenant to Tract 22.17 is 1600.

**DEFENDANTS' CONTENTIONS**

The Oñate advance army and carts arrived at an Indian Pueblo, now known as Ohkay Owingeh, (formerly San Juan Pueblo) on July 11, 1598. On August 11, (1598), we began work on the irrigation ditch for the city of our father Saint Francis. Some fifteen hundred barbarian Indians gathered on this day and helped us with our work. The Acequia constructed by Onate on the 11<sup>th</sup>, (August, 1598) was located in the Indian Pueblo of Owingeh on the west bank of the Rio Grande. The Acequia irrigation waters were taken out of the Rio Chama as they still are today (2/10/12). The tract of land now owned by David and Cecilia Ortiz (Tract 22.17 under the Acequia de Chamita) was established on August 11, 1598. Therefore, the priority date should be August 11, 1598 for water rights appurtenant to Tract 22.17.

**PROVISIONAL DISCOVERY PLAN**

The parties jointly propose to the Court the following discovery plan:

**State of New Mexico**

Witnesses who may either testify or be deposed:

Dr. John O. Baxter  
507 Camino Monte Sol  
Santa Fe, New Mexico 87501

Dr. Baxter will provide expert witness testimony concerning the settlement of New Mexico by the Oñate expedition, the interpretation of historical documents concerning that settlement, the location of the acequia described in those documents constructed in 1598, and the date of construction of the Acequia de Chamita.

Documents which will be exhibits at trial:

- (1) The New Mexico Historical Review, Volume 1, 1926, pp. 316-21
- (2) History of Arizona and New Mexico, 1962, 130-33
- (3) Illustrated History of New Mexico, 1912, 217-22
- (4) New Mexico, November 24, 1914.

**David & Cecilia Ortiz**

Witnesses who may either testify or be deposed:

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Documents which will be exhibits at trial:

- (1) Onate the Colonizer, Hammond/Rey 1595-1628
- (2) Historia de la Nueva Mexico, 1610, Villagra
- (3) Torquemada, Libro Quinto XXXVII & XXXX
- (4) The "Bible", Doc.9657, filed 3/31/2010, 59 pages, 1-32 points of evidence, Exhibits A-X.
- (5) Document 9917, Who is David Ortiz, subfile 267, map 22, tract 17?
- (6) Document 10680, Ortiz Objection to 1600, filed 1/11/2012

Discovery will be needed on the following subjects:

Interpretation of historical documents describing the settlement of New Mexico and San Gabriel.

Maximum of 20 interrogatories by each party to any other party. (Responses due 30 days after service).

Maximum of 20 requests for admission by each party to any other party. (Response due 30 days after service).

Maximum of one deposition of each witness identified by Plaintiff(s) and one deposition of each witness identified by Defendant(s).

Each deposition limited to maximum of 4 hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from Plaintiff(s) by March 15, 2012

from Defendant(s) by March 15, 2012

Supplementation under Rule 26(e) due 1<sup>st</sup> of each month.

All discovery commenced in time to be complete by July 15, 2012.

#### **PRETRIAL MOTIONS**

Plaintiff intends to file: None at this time.

Defendant intends to file: -----

#### **ESTIMATED TRIAL TIME**

The parties estimate trial will require 1 day day.

X This is a non-jury case.

The parties request a pretrial conference in August 2012.

#### **SETTLEMENT**

The possibility of settlement in this case is considered unlikely.

APPROVED WITH/WITHOUT EXCEPTIONS

/s/ Ed Newville  
For Plaintiff State of New Mexico

telephonically approved 2/16/2012  
Defendants David Ortiz and Cecilia Ortiz, pro se