

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-MV/LFG

RIO CHAMA STREAM SYSTEM

RESPONSE BY STATE OF NEW MEXICO
TO MOTION REQUESTING SENIOR PRIORITY CALL
BY ACEQUIA DE CHAMITA SPOKESMAN, DAVID ORTIZ

Pursuant to the *Order* filed July 31, 2013 (Doc. 10937), the State of New Mexico, *ex rel.* State Engineer, files this response to the *Motion Requesting Senior Priority Call by the Acequia de Chamita Parciantes by Acequia Spokesman, David Ortiz*. (Doc. 10933) (“*Motion*”).

David Ortiz, as spokesman for the Acequia de Chamita, has requested that the water master for Section 1 of the Rio Chama restrict junior diversions above and below Abiquiu Dam. *Motion* at 3, ¶ 1. At this time, and at all times during this irrigation season, there has been no shortfall of native water available for diversion and use by the Acequia de Chamita at the acequia’s point of diversion on the Rio Chama. Accordingly, even assuming that Mr. Ortiz has the authority to request a priority call on behalf of the acequia, there is no need for the restriction of junior diversions for the benefit of senior water rights under the Acequia de Chamita. The water rights owners under the Acequia de Chamita have suffered no actual or impending harm by junior diversions elsewhere in the stream system.

The court is most likely well aware that extreme to exceptional drought conditions presently exist throughout New Mexico including the watershed of the Rio Chama Stream System in Rio Arriba County. Under Article 3-11 of the *Watermaster's Rules and Regulations* (Doc. 1949), the Rio Chama water master is required to restrict diversions in accordance with priorities in the event there is imported water flowing in the Rio Chama and the native flow of the Rio Chama is less than the amount then required by all diverters. *Watermaster's Rules and Regulations*, Art. 3-11 at 5. This season the amount of native water available for diversion and use below Abiquiu Dam is much reduced, and the large majority of water in the Rio Chama below Abiquiu Dam is now imported water used for endangered species operations downstream, or water stored by the Bureau of Reclamation used to meet the direct diversion needs of the six Middle Rio Grande Pueblos.

The Rio Chama water master has been able to avoid the restriction of diversions below Abiquiu Dam this season in order to avoid unauthorized diversion of imported water because of the cooperation of water rights owners in Section 1 (the Chama Mainstream Section between El Vado Dam and Española) and water rights owners in Section 7 (Tierra Amarilla, Rio Brazos, Rutherford & Plaza Blanca, Cañones Creek, Village of Chama) to voluntarily reduce their diversions. This voluntary action by ditches in both sections has increased the supply of native water in the lower section of the river such that restriction of diversions and priority administration by the water master in Section 1 has been unnecessary. Two acequia associations have been instrumental in achieving this cooperation: the Rio Chama Acequia Association (RCAA) in Section 1 and the Asociación de Acéquias Norteñas de Rio Arriba (Acéquias Norteñas) in Section 7. Both associations have encouraged their member ditches to reduce diversions, or to rotate the timing of their diversions. Staff from the Office of the State Engineer (including the Rio Chama water master) and the Interstate

Stream Commission have participated in discussions with the two association's members, and have encouraged all concerned to reduce their diversions in order to avoid the need for priority administration. The reductions that have been made have been entirely voluntary.

In a meeting on July 16th with the water master and other State Engineer staff, representatives of the Acequia de Chamita and Ohkay Owingay stated that they would not agree to any reduction in diversions by the Chamita ditch. This was not opposed by either the water master or other staff of the Office of the State Engineer, and the Chamita ditch continues to divert water from the Rio Chama subject only to the maximum allowable rate of flow authorized by the water master (18.0 cfs). The water master and Office of the State Engineer have not sought to reduce those diversions.¹

Diversions by the Acequia de Chamita have consistently averaged between 8 and 12 cubic-feet per second since early May. *Exhibit 1* (graph showing daily average diversion rate of Chamita ditch).² Recently, the ditch has increased its diversions to over 14 cubic-feet per second. *Exhibit 2* (real time rates of diversions for ditches in Upper and Lower Rio Chama on July 31, 2013). During

¹ The maximum rates of flow for ditches in Section 1 were determined by the first water master for Section 1, George Shaw. Although the precise methodology and calculations used by Mr. Shaw are not known at this time, the determinations appear to be based on methodology described in the Hydrographic Survey Report for Section 1 completed in 1961. The calculations were based on the amount of water that would required to irrigate all of the acreage under the ditch at the time of the maximum demand during the irrigation season (July), and under the assumption that there would be no precipitation during that month. The rate took into account conveyance losses as determined by field studies, and stock watering and domestic needs as well. Mr. Shaw determined that the maximum allowable flow rate for the Acequia de Chamita was 18.0 cubic-feet per second.

² There are some brief periods of time after about July 1st when the diversion of water by the Acequia de Chamita measured 0 or nearly so. This was a result of dam operations and a significant decrease in the amount of water released from Abiquiu Dam. Releases from the dam decreased the flow in the river from about 1,000 cfs to about 100 cfs. Many of the diversions structures along the Rio Chama below Abiquiu Dam were required to be reconstructed or modified at this time in order to continue their diversion of surface water.

this time unused water has been observed in the drainage ditch at the end of the Chamita ditch leading back to the river.

Although the availability of native water for irrigation has been much reduced this irrigation season, the Acequia de Chamita has at all times continued to divert sufficient water to meet the needs of its members. The records of the diversions made by the Chamita ditch show that the ditch has not suffered any reduction in supply or limitation on its ability to divert and use surface water for irrigation or other purposes. Taking into account the supply of native water still available for diversion below Abiquiu Dam, and the current diversions being made by the Chamita ditch ranging from 12 to 14 cubic-feet per second, the Rio Chama Watermaster has determined that no restriction of junior ditches in Section 1 is required. *Exhibit 3* (letter dated August 1, 2013, to David Ortiz).

No restriction of junior diversions is required because the water users under the Acequia de Chamita have suffered no injury or any impairment to their senior water rights, nor is there any impending impairment to those rights. Sufficient evidence of actual or impending impairment to senior water rights is a requirement for making a priority call. *See Bounds v. D'Antonio*, NMSC No. 32,713 filed July 25, 2012, ¶¶ 45,46. In the matter before the Court, there has been no showing of any actual or impending injury. There is no impending injury because if it becomes necessary for the water master to require the restriction of diversions in Section 1 to avoid the unauthorized diversion of imported water, the water master will restrict the diversions of the water rights in Section 1 that are junior to the Acequia de Chamita. *See Notice by Rio Chama Watermaster* (Doc. 10930, filed July 18, 2013).

The State points out that the existing *Watermaster's Rules and Regulations* (Doc. 1949) and the authority of the Rio Chama water master to restrict diversions is presently limited to Section 1.

In the event that the water master is indeed required at some point to restrict diversions in Section 1 in order to avoid unauthorized diversion of imported water, affected water users in Section 1 could in response make a priority call against junior water users located upstream in Section 7. In order for the water master to effectively carry out priority administration in both Sections 1 and 7, the Court would need to expand the responsibilities and authority of the water master to include Section 7, and direct the water master to revise the existing *Watermaster's Rules and Regulations* to include the regulation and use of water in Section 7 above El Vado Dam.

For the reasons stated above, and because the water users under the Acequia de Chamita have not suffered any actual or impending impairment to their senior water rights, the Court should deny the request to restrict diversions of junior water rights owners made by Mr. Ortiz. Further, the Court should be mindful that the Rio Chama water master's authority to administer water rights is currently limited to the Chama Mainstream Section (Section 1).

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 telephone
(505) 867-2299 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August, 2013, 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 participants in the manner indicated.

Via first class mail, postage prepaid addressed as follows:

David Ortiz
P.O. Box 1082
San Juan Pueblo, NM 87566

and by email to the following address:
davidortiz@windstream.net

/s/ Ed Newville

EDWARD G. NEWVILLE