

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

STATE OF NEW MEXICO ex rel.)
State Engineer,)
)
Plaintiff,)
v.)
)
R. LEE AAMODT, et al.,)
)
Defendants,)
and)
)
UNITED STATES OF AMERICA,)
PUEBLO DE NAMBE,)
PUEBLO DE POJOAQUE,)
PUEBLO DE SAN ILDEFONSO,)
and PUEBLO DE TESUQUE,)
)
Plaintiffs-in-Intervention.)
_____)

NO. 66cv6639 WJ/WPL

APPLICATION FOR ORDER TO SHOW CAUSE

The State of New Mexico on the relation of the State Engineer (“State”), pursuant to the Court’s August 2, 2012 *Procedural and Scheduling Order for the Adjudication of Water Rights for Domestic Wells, Including Pre-Basin Domestic Wells, Drilled or Permitted Prior to This Court’s Order of January 13, 1983* (No. 7736), hereby moves the Court to order all defendants with claims to domestic well water rights developed prior to the November 29, 1956 declaration of the Rio Grande Underground Water Basin to show cause within forty-five (45) days after service of the order why the defendant’s water right should not be adjudicated as follows: (1) in the quantity of 0.7 acre feet per year (afy) per household; and (2) otherwise consistent with the findings of the State’s hydrographic survey, in the proposed form attached to this application.

In support of this application for order to show cause, the State states that:

I. Introduction

Given the very similar nature and extremely limited quantity of all domestic well water uses, the need for a resource-intensive consent order approach to their adjudication is not necessary. An order to show cause process for the adjudication of water rights claimed under domestic wells developed prior to the November 29, 1956 declaration of the Rio Grande Underground Water Basin (“Pre-Basin Domestic Wells”), will have the effect of significantly speeding up the adjudication, reducing the resource demands on both the State and the Court, and limiting the need for claimants to undertake any action themselves, while allowing any claimant who objects to the terms of the order to be heard.

An order to show cause process for the adjudication of water rights developed under Pre-Basin Domestic Wells will allow those making claims greater in amount than indicated by the order to show cause to present evidence and have their claims heard. Correspondingly, those with no objection to the order to show cause can have their water rights adjudicated without any need for further interaction with the State or the Court.

A copy of the proposed Order to Show Cause is attached hereto as Exhibit A.

II. Defendant’s Water Right Quantity Should be Presumed to be 0.7afy

The New Mexico Constitution provides that beneficial use is the “measure, the basis and the limit” of all water rights in New Mexico. New Mexico Constitution, Article XVI, Section 2.

The quantity of beneficial use of water used by a household from a domestic well for both indoor and outdoor purposes is typically no greater than 0.5 afy state-wide, and is usually substantially less. This amount of use is supported by data in the State’s annual Water Master Reports. See e.g. May 29, 2012 *Notice of Filing 2010 Report of Post Moratorium Wells Water*

Master (No. 7693). This report includes meter readings for hundreds of domestic wells in the Nambe-Pojoaque-Tesuque stream system. Id. The meter records indicate an average use of 0.3 afy per domestic well. Id. These meter records, and the average quantity of 0.3 acre-feet per annum per well based on them, were all taken from domestic wells with adjudicated rights that allowed for *both* the indoor and outdoor use of water.

Pre-Basin Domestic Wells are also entitled to both the indoor and outdoor use of water.

The Court has accepted an evidentiary presumption that the amount of beneficial use from domestic wells permitted prior to January 13, 1983, and where use is similarly allowed for both indoor and outdoor purposes is 0.7 acre feet per year per household. See March 18, 2013 *Order to Show Cause* (No. 7861). As such, those claiming a water right under Pre-Basin Domestic Wells that have not yet been adjudicated should be required by this Court to show cause why their water right quantity should not also be adjudicated in that same amount, based upon a evidentiary presumption of beneficial use not to exceed 0.7 acre feet per annum for both indoor and outdoor uses.

III. Defendant's Water Right Should Otherwise be Adjudicated Consistent With the State's Hydrographic Survey

All other elements of the permitted water right, including priority, purpose of use, place of use, and point of diversion, have been identified by the State's hydrographic survey of those rights. Those claiming a water right under Pre-Basin Domestic Wells should be required by this Court to show cause why their water right should not otherwise be adjudicated consistent with the findings of the State's survey.

Given the large number of opposing counsel, contacting all of them in advance of filing would not be possible, so opposition has been assumed with regard to this Application.

WHEREFORE, the State prays the Court order all defendants with claims to water rights under Pre-Basin Domestic Wells which have not yet been adjudicated to show cause within forty-five (45) days after service of the order why the defendant's water right should not be adjudicated as follows: (1) in the quantity of 0.7 acre feet per year per household; and (2) otherwise consistent with the findings of the State's hydrographic survey.

Respectfully submitted this 19th day of December, 2014.

RESPECTFULLY SUBMITTED

/s/ Edward C. Bagley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 19, 2014, I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.