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September 28, 2017

D-623-CV-2005-00054

Special Master Steve Snyder
312 Plaza Bosque
Santa Fe New Mexico 87505
sesnyder@q.com

RE: Animas Adjudication – State of New Mexico’s Motion to Exclude Domestic and Livestock Water Rights From the Animas Adjudication, and “Copies of Orders mentioned in Oral Argument on September 20, 2017”

VIA ELECTRONIC MAIL

Dear Special Master Synder,

During the September 20, 2017 hearing on the State’s Motion to Exclude Domestic and Livestock Wells from the Animas Adjudication, Arianne Singer, Deputy General Counsel for the New Mexico State Engineer, seated in the audience, commented on the record, that domestic and livestock wells had been excluded as a class in other New Mexico water adjudication proceedings. Specifically, Ms. Singer stated that domestic and livestock rights were categorically excluded from the Red River Adjudication (*see* Order [Doc. 1200], *State of New Mexico v. Molybdenum Corp.*, No. 72-cv-9780 (D.N.M. December 1, 1988)), and the Jemez River Adjudication (*see* Order Amending the Pretrial Order [Doc. 1691], *State v. Abousleman*, No. 83-cv-1041 (D.N.M. June 22, 1987)).

I am attaching the Orders in each of those cases to which Ms. Singer was referring. If these are not the Orders to which she is referring, she can so advise. The Orders speak for themselves, but neither appears to exclude domestic or livestock wells as a class. To the contrary, each contains a holding that consumptive uses from a stream system that are so small as to be *de minimis* can be exempted from the statutory obligation to adjudicate “all” water rights in the Basin. These Orders draw no distinctions based upon kinds of uses; rather, the exclusion turns on the quantity of use. For example, a domestic well for only inside use consuming less than .10 acre-feet per annum is excluded. An irrigation use diverting a maximum of .07 acre-feet per annum would likewise be excluded. It would follow that any consumption in excess of these amounts would be included in the Adjudication.

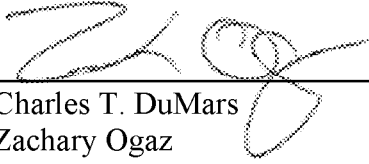
September 28, 2017
Page 2 of 2

Because the factual argument was being made that the above-referenced Orders could serve as precedent for the OSE's position in the Animas Adjudication, we considered it would be helpful to provide the actual Orders from these two cases.

Very truly yours,

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By: _____



Charles T. DuMars
Zachary Ogaz
Attorneys at Law

Attachments as noted

cc: Ms. Susan Kery, Esq. (Susan@UttonKery.com)
Ms. Arianne Singer, Esq. (arianne.singer@state.nm.us)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, for
itself and for the PUEBLOS
of JEMEZ, SANTA ANA and ZIA;
the STATE OF NEW MEXICO, ex rel.
S.E. Reynolds; and the Pueblos,
for themselves as Intervenor,

PROPOSED **07 JUN 82 AM 10:05**
NOT FILED

Exhibit *[Signature]* CLERK
to Special Master's
Report

Plaintiffs,

vs.

Civil No 83-1041 C
(Jemez River)

TOM ABOUSLEMAN, et al.,

Defendants.

ENTERED ON DOCKET
6-22-87

ORDER

AMENDING THE PRETRIAL ORDER

The plaintiffs, by motion, asked the Court to amend its pretrial order in certain respects. The Special Master has held a hearing upon the motion and reported his findings and recommendations to the Court, which are accepted and adopted.

IT IS ORDERED, that the "Pretrial Order", filed July 24, 1985, is amended to add a new paragraph, numbered, (8) with the existing paragraph numbered (8) renumbered (9).

The new paragraph (8) is as follows:

" 8. Exemption of Minimal Water Rights.

The orderly administration of this case during adjudication and afterward in enforcement of the Court's decree, and the ability of the Court to afford complete relief to the parties, within the purposes of Fed. R. Civ. P. 19, will be enhanced, by exempting certain minimal water rights, and

omitting as parties to this action , the owners of such minimal water rights

The owners of minimal water rights, need not be joined as parties to this adjudication, and they shall be exempt from any priority calls of other parties in the administration of the decrees entered hereafter in this cause.

Minimal water rights are defined as:

(a) Domestic well uses, with purposes limited to indoor household uses, drinking water or sanitary uses, which have a closed conduit system for conveying the water from the well to the place of use and returning the effluent underground;

(b) The use of groundwater for irrigation of not more than 1300 square-feet of land;

(c) The use of groundwater for livestock watering by means of a metal storage tank of a volume not exceeding one-quarter acre foot, (0.25AF), or

(d) Any combination of these uses. "

Dated: June 22, 1987

Anthony E. Camp
UNITED STATES DISTRICT JUDGE

Approved:

[Signature]
Special Master

Shirley J. Tippitt
Robert A. Beck
A. U. S. A.

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

88 DEC -1 PM 2:38

STATE OF NEW MEXICO, ex rel.)
S.E. REYNOLDS, State Engineer, and)
THE UNITED STATES OF AMERICA,)
)
Plaintiffs,)
)
-vs-)
)
MOLYCORP, INC., et al.,)
)
Defendants.)

928 *Chulcasaur* CLERK
No. CIV-7988-SC SANTA FE
RED RIVER ADJUDICATION

ENTERED ON DOCKET

12-1-88

ORDER

This matter having come before the court on the Joint Motion to exclude water users that are de minimis filed by the plaintiffs State of New Mexico and United States of America on November 19, 1988, the court having considered it, finds:

1. The water users described below are de minimis, are not necessary for a comprehensive stream adjudication, and should be excluded from the subject matter jurisdiction of this adjudication suit.

(a) Domestic well uses, with purposes limited to indoor, single household, drinking, and sanitary uses, with a closed conduit system for conveying the water from the well to the place of use and returning the effluent underground and diverting a maximum ^{acre-}0.50 acre-feet per annum and causing a maximum consumptive use of 0.10 acre-feet per annum.

(b) Irrigation from a well of not more than 1,300 square-feet of land and diverting a maximum of 0.07 acre-feet per

year and causing a maximum consumptive use of 0.04 acre-feet per year.

(c) Livestock watering use from a metal storage tank supplied by a well diverting a maximum of 0.25 acre-feet per year and causing a maximum consumptive use of 0.25 acre-feet per year.

(d) Any or all of the above uses combined, provided that the total diversion for all uses does not exceed 0.82 acre-feet per year and the resulting consumptive use does not exceed 0.39 acre-feet per year for all uses.


(2) The exclusion of these water uses that are de minimis from the subject matter jurisdiction in this adjudication suit will not materially affect the rights of the existing parties, and will further the purpose of Fed.R.Civ.P. 19 by improving the court's ability to provide complete relief to the parties to this suit.

IT IS THEREFORE ORDERED that those water uses described above are de minimis and need not be adjudicated in this case.

IT IS FURTHER ORDERED that these de minimus water uses described above are exempt from priority call by any water right adjudicated in this suite, unless and until there is clear and convincing evidence showing that such uses adversely affect senior water rights.


CHIEF DISTRICT JUDGE

Recommended for Adoption:


Special Master