

STATE OF NEW MEXICO
THE ELEVENTH JUDICIAL DISTRICT COURT
SAN JUAN COUNTY

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2009 DEC 9 AM 11 47

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184

Hon. James J. Wechsler
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

LA PLATA RIVER
SECTION

**PLAINTIFF STATE OF NEW MEXICO'S EX PARTE MOTION
FOR SERVICE OF PROCESS BY PUBLICATION**

COMES NOW the Plaintiff, State of New Mexico *ex rel.* Office of the State Engineer ("State"), pursuant to Section I (C) of the Scheduling Order Governing Adjudication of Irrigation Water Rights in the La Plata River Section ("Scheduling Order") and Rule 1-004(K) NMRA (2005), and moves for an order of the Court authorizing service of process by publication on the known water right claimants upon whom the State has been unable to personally serve process by mail in the manner approved by the Court. See also NMSA 1978, §72-4-17 (1965).

The State, pursuant to the requirements of Rule 1- 004 (K) and in accordance with Form 4-209, NMRA, states that after diligent inquiry and search efforts the State has been unable to serve process personally on the defendants whose names, addresses, subfile numbers and case numbers are listed as Exhibit "A" attached to this motion.

The following diligent efforts were made to locate and serve said claimants personally by mail and with a summons and complaint in the manner approved by the Court:

- [X] service at the claimant's last known residential address as indicated by current records maintained by San Juan County Assessor office;
- [X] service at the address listed in the online telephone directory listing;
- [X] a search of the real estate records of the San Juan County Assessor office;
- [X] a search of the records of the Office of the State Engineer including the WATERS database;
- [X] a search using the following internet search engines: yellowpages.com, whitepages.com and google.com. The State also attempted to contact individuals for whom a phone number could be found.

In support of this motion the State would furthermore aver:

1. The State has attempted service by Certified Mail Restricted Delivery, under the procedures designated by the Scheduling Order, on the water right claimants identified in Exhibit "A."
2. The State has exercised reasonable diligence in attempting to obtain current addresses for the known claimants identified in Exhibit "A," but the whereabouts of those claimants cannot be discovered after due inquiry and search has been made.
3. The State has not been able to personally serve process on the claimants identified in Exhibit "A" by Certified Mail Restricted Delivery under the procedures approved by the Court. In this situation, the Court's Scheduling Order, the Rules

of Civil Procedure, and the statutes governing the adjudication of stream system water rights specifically authorize the service of process by publication. *See e.g.*, Scheduling Order Section I (C), NMSA 1978, §72-4-17 and Rule 1-004(K) NMRA (2005).

4. The State therefore should be authorized to serve process on all of the unlocated claimants described herein by publication, and the Clerk of the Court should be directed to issue the NOTICE OF PENDENCY OF WATER RIGHTS ADJUDICATION TO IDENTIFIED CLAIMANTS NOT PERSONALLY SERVED BY MAIL (the "Notice") attached hereto as Exhibit "B."
5. Because the State has not been able to locate the claimants identified in Exhibit "A," the State could not seek their concurrence in this motion, and this motion is presented to the Court *ex parte*. In addition, since this motion concerns matters relating to subfile proceedings that involve only the State and individual water right claimants, the State has not served this motion on other parties to this adjudication.

For the forgoing reasons, the State moves for an order of the Court:

1. directing the Clerk of the Court to issue the above-referenced Notice to unserved known claimants;
2. authorizing the State to accomplish service of process on the unserved claimants by publishing the Notice in a newspaper of general circulation in San Juan County for three consecutive weeks; and

3. directing the State to file proof of such publication with the Court. A proposed Order granting this motion is submitted herewith, along with the Notice to be published.

I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

Dated 12-7-09

Respectfully submitted,

Julie Sakura
Special Assistant Attorney General
PO Box 2246
Santa Fe, NM 87504
505-992-0811

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

Signed and sworn before me this 7 day of December, 2009

Notary

My commission expires:

01/28/2014

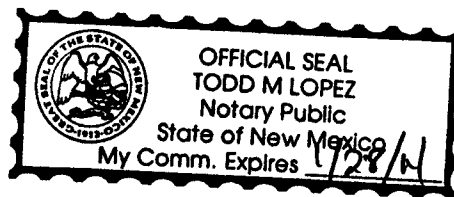


EXHIBIT A

DIXIE LEE ACTON	AF-01-578; SJLP-004-0029	PO BOX 445 La Plata, NM 87418
JERRY LEE ACTON	AF-01-578; SJLP-004-0029	PO BOX 445 La Plata, NM 87418
DOVIE J. ALLENBAUGH	AF-01-378; SJLP-008-0039	13 CR 1764, SP2 Farmington, NM 87401
MARK E. ALLENBAUGH	AF-01-378; SJLP-008-0039	13 CR 1764, SP2 Farmington, NM 87401
CHESTER H. BENALLY	AF-01-334; SJLP-007-0065	50 Road 1636, Farmington, NM 87401
ELOVONNE J. BENALLY	AF-01-334; SJLP-007-0065	50 Road 1636, Farmington, NM 87401
ROBERT G. BUTTES	AF-01-395; SJLP-008-0059	Riverstone Trailer Park #26 Farmington, NM 87401
VIRGINIA A. BUTTES	AF-01-395; SJLP-008-0059	Riverstone Trailer Park #26 Farmington, NM 87401
BRYAN C. CAGE	AF-01-524; SJLP-007-0035C	15 Road 1634, Farmington, NM 87401
BRADLEY P. CHESSER	AF-01-299; SJLP-007-0003B	2 CR 2468, Farmington, NM 87401
TERESA CHESSER	AF-01-299; SJLP-007-0003B	2 CR 2468, Farmington, NM 87401
MARQUITA EARLEY	AF-01-345; SJLP-008-0007	726 HWY 170, Farmington, NM 87401
WILLIAM EARLEY	AF-01-345; SJLP-008-0007	726 HWY 170, Farmington, NM 87401
CALVERY HOGUE	AF-01-510; SJLP-008-0008	722 HWY 170 #12, Farmington, NM 87401
LUCAS L. HOGUE	AF-01-510; SJLP-008-0008	722 HWY 170 #12, Farmington, NM 87401
SHAWN M. HOGUE	AF-01-510; SJLP-008-0008	722 HWY 170 #12, Farmington, NM 87401
VINCENT EARL JAMES	AF-01-181; SJLP-004-0048	315 NW 82 nd St., Seattle, WA 98117
ROBERT JOE, JR.	AF-01-296; SJLP-007-0001	Box 467, La Plata, NM 87418
BARBARA L. LASSITER	AF-01-455; SJLP-009-0003	1 CR 1799, Farmington, NM 87401
CHRIS LAWING	AF-01-384; SJLP-008-0046	688 NM 170, Farmington, NM 87401
JOY PALM LAWING	AF-01-384; SJLP-008-0046	688 NM 170, Farmington, NM 87401
EUGENE J. MARTIN, JR.	AF-01-552; SJLP-007-0042	876 HWY 170,

LINDA J. MATHEWS	AF-01-532; SJLP-008-0023	Farmington, NM 87401 15 Road 1738, Farmington, NM 87401
STEVEN P. MATHEWS	AF-01-532; SJLP-008-0023	15 Road 1738, Farmington, NM 87401
JOHN E. MEDINA	AF-01-447; SJLP-008-0113A	621 NM 170, Farmington, NM 87401
LANA K. MEDINA	AF-01-447; SJLP-008-0113A	621 NM 170, Farmington, NM 87401
CLIFFORD ALLEN PISTOLE	AF-01-278; SJLP-006-0025	5880 Boulder Falls St., Apt. 1 Henderson, NV 89011
DIANA REDHORSE	AF-01-428; SJLP-008-0096	681 HWY 170, Farmington, NM 87401
LEO REDHORSE	AF-01-428; SJLP-008-0096	681 HWY 170, Farmington, NM 87401
HEIDI J. RUYBALID	AF-01-148; SJLP-004-0003B	5 CR 1304, La Plata, NM 87418
JACOB A. RUYBALID	AF-01-148; SJLP-004-0003B	35 CR 1304, La Plata, NM 87418
RODNEY M. SEATON	AF-01-529; SJLP-003-0018B	459 Lowell Blvd., Denver, CO 80204
JACOB SEEBECK	AF-01-441; SJLP-008-0109	641 NM 170, Farmington, NM 87401
ELISABETHE J. SMITH	AF-01-422; SJLP-008-0089	7 RD 1783, Farmington, NM 87401
ELMER SMITH	AF-01-422; SJLP-008-0089	7 RD 1783, Farmington, NM 87401
JACKIE SORRELL	AF-01-461; SJLP-009-0007	51 CR 1800, Farmington, NM 87401
RANDOLPH SPECHT	AF-01-525; SJLP-007-0035B	3313 Northridge Dr., Farmington, NM 87401
RHONDA L. STOCKERT	AF-01-434; SJLP-008-0102	PO Box 6616, Farmington, NM 87499
CINDY L. STOCKTON	AF-01-335; SJLP-007-0066	54 Road 1636, Farmington, NM 87401
JEFFREY W. STOCKTON	AF-01-335; SJLP-007-0066	54 Road 1636, Farmington, NM 87401
ALLEN G. TACKITT TRUST, c/o BARBARA N. MCSMITH	AF-01-275; SJLP-006-0022	704 W. Animas St., Farmington, NM 87401
JOHN D. TAYLOR	AF-01-241; SJLP-005-0034	PO Box 170, Amistad, NM 88410
LAURAL K. TAYLOR	AF-01-241; SJLP-005-0034	PO Box 170, Amistad, NM 88410

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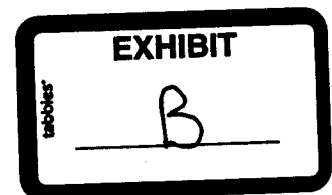
**LA PLATA RIVER
SECTION**

**NOTICE OF PENDENCY OF WATER RIGHTS ADJUDICATION TO
IDENTIFIED CLAIMANTS NOT PERSONALLY SERVED BY MAIL**

FROM: Clerk of the New Mexico Eleventh Judicial District Court

TO:

DIXIE LEE ACTON	AF-01-578; SJLP-004-0029	PO BOX 445 La Plata, NM 87418
JERRY LEE ACTON	AF-01-578; SJLP-004-0029	PO BOX 445 La Plata, NM 87418
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STEVEN P. MATHEWS	AF-01-532; SJLP-008-0023 15 Road 1738, Farmington, NM 87401
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LEO REDHORSE	AF-01-428; SJLP-008-0096 681 HWY 170, Farmington, NM 87401
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JACOB A. RUYBALID	AF-01-148; SJLP-004-0003B35 CR 1304, La Plata, NM 87418

RODNEY M. SEATON	AF-01-529; SJLP-003-0018B	459 Lowell Blvd., Denver, CO 80204
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You are hereby notified that the State of New Mexico ("State") has filed a water rights adjudication lawsuit in the Eleventh Judicial District of New Mexico, San Juan County, pursuant to NMSA 1978, §§ 72-4-15 through 72-4-17, under the caption and case number shown above. The purpose of this lawsuit, referred to as the "San Juan Adjudication," is to identify and determine all rights to use the surface and underground waters of the San Juan River Stream System within the State of New Mexico, which includes all tributary rivers of the San Juan River within New Mexico. The Court is proceeding on a river-by-river basis and is currently determining all rights to divert water from the La Plata River, or from a well, to irrigate land within the La Plata Section. The Court is conducting the adjudication in accordance with its April 30, 2006 Scheduling Order Governing Adjudication of Irrigation Water Rights in the La Plata Section ("Scheduling Order"), which imposes deadlines, detailed adjudication procedures, and filing requirements. A copy of the Scheduling Order and other pertinent information may be obtained from the Court's website at <http://www.11thjdc.com/modules/tinycontent/?id=79> or by contacting the State's attorney identified below. If you have not already been served in this adjudication, you are required to appear before the Court and describe what rights, if any, you claim to use the waters of the La Plata River. Unless you file a responsive pleading or Notice of Claim ("NOC"), which you may obtain from the Court's website, with the Court within sixty (60) days after the last date this Notice is published, any right you may have to use the waters of the La Plata River may be adjudicated by default judgment to the original or revised findings

of the State Engineer's 1938 Hydrographic Survey Report. The default judgment may include a determination that the claimant has no lands with appurtenant irrigation water rights within the La Plata Section and/or no right to divert surface water or underground water for irrigation within the La Plata Section.

Questions about the San Juan Adjudication can be directed to the Office of the State Engineer's attorney, Tracy Hofmann, at 505-827-6150

WITNESS the hand and seal of the Eleventh Judicial District Court, County of San Juan, State of New Mexico, this ____ day of _____, 2009.

District Court Clerk