

Subfile Answer (“Subfile Answer”).¹ Defendant’s counsel did not respond to Plaintiffs’ consultation attempt and Plaintiffs assume that Defendant opposes this motion.

I. INTRODUCTION

Defendant is the owner of on well located in the Zuni River Basin. On April 25, 2007, Defendant was joined to this action with respect to its potential water right.² The single well owned by Defendant is at the center of the parties’ dispute. Consistent with this Court’s *Procedural and Scheduling Order for the Adjudication of Water Rights Claims (Ramah Sub-Area)*, No. 01cv0072 BB/WDS (ECF No. 954) (D.N.M. Jan. 11, 2007) (“Ramah Sub-Area Order”), Plaintiffs previously prepared and presented Defendant with a settlement offer in the form of a proposed consent order concerning the water rights associated with the subject property. Defendant did not accept Plaintiffs’ settlement offer. The water right to which Plaintiffs offered and are willing to stipulate is as follows:

WELL

Map Label: 3B-5-W063

OSE File No: None

Priority Date: 1/1/1970

Purpose of Use: PUBLIC WATER SUPPLY

Well Location: As shown on Hydrographic Survey Map 3B-5E

S. 35 T. 11N R. 16W 1/4, 1/16, 1/64: SW SE NW

X (ft): 2,524,278 **Y (ft):** 1,505,711

¹ ECF No. 3384.

² ECF No. 1126 at 33-34.

New Mexico State Plane Coordinate System, West Zone, NAD 1983

Amount of Water: 17.0 ac-ft per annum

On May 30, 2017, counsel for Plaintiffs attempted to consult with Defendant about this subfile action but received no response from Defendant. The United States subsequently filed its *Notice That the Consultation Period Has Ended*.³ Defendant then timely filed its Subfile Answer⁴. In its Subfile Answer, Defendant assert the following:

2. Any water rights attributed to the Ramah Domestic Utility Association in Subfile No. ZRB-5-[0056], should instead be attributed to the Ramah Water and Sanitation District in Subfile No. ZRB-5-[0057].
3. As a revoked nonprofit corporate entity Defendant makes no claim for the water right described by the proposed Consent Order in Subfile No. ZRB-5-[0056]⁵.

II. APPLICABLE LEGAL STANDARD

Fed. R. Civ. P. 12(c) provides: “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” In this subfile action, the Plaintiffs’ proposed consent order and Defendant’s Subfile Answer represent the “pleadings” as that term is used in Fed. R. Civ. P. 7(a).⁶ “A rule 12(c) motion is designed to provide a means of

³ ECF No. 3379.

⁴ See *Notice of Errata Regarding Subfile Nos. ZRB-5-0056 and ZRB-5-0057* (ECF No. 3385) (concerning transposed subfile action numbers associated with ZRB-5-0056 and ZRB-5-0057).

⁵ ECF No. 3384.

⁶ See Ramah Sub-Area Order at 2-4 (describing the generation and service of Consent Orders); at 5-6 (describing the process and requirements for filing a subfile answer); *Selman v. Delta*

disposing of cases when the material facts are not in dispute between the parties.”⁷

“Any party may move for judgment on the pleadings if no material facts are in dispute and the dispute can be resolved on both the pleadings and any facts of which the Court can take judicial notice.”⁸ Because a motion for judgment on the pleadings “is generally treated in the same manner as a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss, . . . [t]he court accepts all well-pleaded allegations of the non-moving party as true and views all facts in a light most favorable to the non-moving party.”⁹ The Court should grant a motion for judgment on the pleadings “if the pleadings demonstrate that the moving party is entitled to judgment as a matter of law.”¹⁰

III. ARGUMENT

In the Subfile Answer, Defendant makes no assertion that it is entitled to a water right different from the attributes presented by Plaintiffs in their proposed consent order as described above. Instead, Defendant asserts that it no longer exists as a corporate entity and that any water right previously held by Defendant should be recognized in the name of the Ramah Water and Sanitation District in Subfile Action ZRB-5-0057.

At the time of service, Defendant was the owner of record of the parcel in question, was

Airlines, Civ No. 07-1059 JB/WDS, 2008 WL 6022017, at *7 (D.N.M. Aug. 13, 2008) (describing the distinction made in Rule 7 between pleadings and motions).

⁷ *Peña v. Greffet*, 110 F. Supp. 3d 1103, 1112 (D.N.M. 2015) (citing *Kruzits v. Okuma Mach. Tool, Inc.*, 40 F.3d 52, 54 (3d Cir. 1994)).

⁸ *Ramirez v. Wal-Mart Stores, Inc.*, 192 F.R.D. 303, 304 (D.N.M. Mar. 22, 2000) (citing Rule 12(c)).

⁹ *Id.* at 304 (citing *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2d Cir. 1998) and *Fajardo v. Cty. of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999)).

¹⁰ *Peña*, 110 F. Supp. 3d at 1112 (citing *Ramirez*, 192 F.R.D. at 304).

properly served, and judgment may properly issue against Defendant.¹¹ Further, the Subfile Answer does not assert or dispute any facts material to the determination of Defendant's water rights. Even viewed in a light most favorable to the Defendant, the Subfile Answer raises no factual or legal issues on which the Defendant could possibly establish an entitlement to a water right different from that offered by Plaintiffs. As discussed below, Plaintiffs are entitled to judgment as a matter of law.

A. Defendant makes no claim to a water right different from that offered by Plaintiffs and judgment may be entered in Defendant's name.

As this Court has consistently recognized, "to the extent that any water right is disputed, Subfile Defendants generally bear the burden of proof in the first instance with respect to the disputed water right."¹² And, in this adjudication, the subfile answer is a claimant's opportunity to establish the basis on which it is entitled to a water right.

[The subfile answer] makes no factual statement whatsoever that it has historically used more water than what is offered in the proposed Consent Order. The Plaintiffs are not required to prove that the offered amount is the extent of the historical beneficial use. [Defendant] bears the burden of establishing historical beneficial use greater than that offered by the Plaintiffs.¹³

As described above, in the Subfile Answer, Defendant makes no water right claim of any

¹¹ See ECF No. 1126 at 33-34.

¹² *Order* (ECF No. 2985) at 4; see also *State v. Aamodt*, No. Civ. 66-6639 MV/WPL, Subfile PM-67833, Doc. 8119 at 6 (D.N.M. Feb. 24, 2014) (unpublished) ("The burden of proof with respect to quantifying a water right in a stream system adjudication falls squarely on a defendant, or the user of the water right.") (citing *Pecos Valley Artesian Conservancy Dist. v. Peters*, 193 P.2d 418, 422-23 (N.M. 1948)).

¹³ *Proposed Findings and Recommended Disposition, Subfile No. ZRB-5-0014* (ECF No. 3277) at 5; see also *Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition, Subfile No. ZRB-5-0014* (ECF No. 3351).

kind and presents no legal or factual basis for this Court to issue judgment in its favor. Therefore, with no legal or factual basis for a water right asserted, the only basis on which judgment may enter is that which the Plaintiffs are willing, for whatever reason, to stipulate.

Otherwise, in its Subfile Answer Defendant raises an issue that is simply not properly before the Court regarding substituting Defendant for the Ramah Water and Sanitation District. The Subfile Answer contends that Defendant's corporate form, designated the "Ramah Domestic Utilities Association," no longer exists and that its water right should be established in the name of the Ramah Water and Sanitation District.¹⁴ But these assertions do not constitute a water right claim, and certainly do not constitute a claim different from the water rights that Plaintiffs are willing to recognize. Further, the Federal Rules of Civil Procedure specify the only procedure by which the interests of one party may be transferred to another; otherwise, these proceedings must proceed against the original party.

The relevant rule provides:

If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.¹⁵

Here, no party has moved to be substituted into this subfile action that would allow it to be joined with or replace Defendant. And, as specified by the plain language of the rule, this subfile action may be resolved against Defendant as originally served.¹⁶ Ultimately though,

¹⁴ Subfile Answer at 1, ¶¶ 1 and 2.

¹⁵ Fed. R. Civ. P. 25(c).

¹⁶ And whether substitution is requested before or after judgment is entered on this subfile action, Plaintiffs recognize that "[s]ubstitution of a successor in interest . . . under Rule 25(c) is

substitution has no bearing on whether judgment should now enter and should not delay entry of judgment.

IV. CONCLUSION

Based upon the foregoing argument and authority, Plaintiffs request that the Court enter an order granting judgment on the pleadings in favor of Plaintiffs and against the Defendant consistent with the water rights set forth in Section I above.

Dated: September 18, 2017

Respectfully submitted,

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generally within the sound discretion of the trial court.” *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1324 (10th Cir. 1978).

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2017, I filed the foregoing electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Andrew "Guss" Guarino
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