

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

STATE OF NEW MEXICO, ex rel.  
State Engineer,

Plaintiff – Appellee,

UNITED STATES OF AMERICA,

Plaintiff - Intervenor

v.

No. 15-2047  
(D.C. No. 6:66-CV-006639-WJ-WPL)

ELISA TRUJILLO, et al.,

Defendants – Appellants.

**PLAINTIFF – APPELLEE STATE OF NEW MEXICO’S  
RESPONSE TO DEFENDANT – APPELLANT’S  
RESPONSE TO ORDER FOR BRIEF RE: JURISDICTION**

The Court’s March 27, 2015 Order (No. 01019406401) directed Defendant – Appellant Elisa Trujillo to submit a brief on two possible jurisdictional defects, and allowed Plaintiff – Appellee, State of New Mexico (“State”), to file a responsive memorandum brief. On April 15, 2015 Defendant – Appellant filed *Appellant’s Response to Order for Brief re: Jurisdiction* (“*Appellant’s Brief*”) (No. 01019415575). The State submits this memorandum brief, responding specifically to Defendant – Appellant’s arguments on the issues identified by the Court. Because Defendant – Appellant herself asserts that a decision by the district court on a motion still pending before the district court could affect the adjudication of the

water rights set forth in the January 12, 2015 “Order Adjudicating Post-1982 Domestic Well Water Rights” (“*Order*”) being appealed from, this Court should dismiss this appeal for lack of jurisdiction.

Defendant – Appellant’s November 14, 2014 “Motion to Quash the Preliminary Injunction, or, Alternatively, for Three Judge Court” (“*Motion*”) pending before the district court asks the district court to quash its January 13, 1983 Order enjoining the New Mexico State Engineer from issuing permits under Section 72-12-1, NMSA 1978, except for permits limited to indoor domestic uses, because Defendant – Appellant Trujillo contends that order violates 28 USC §2283. *Motion* at 5. This is the very same issue Defendant – Appellant Trujillo identifies in her *Docketing Statement* (No. 01019405625) as an issue raised in this appeal:

“A. Whether the preliminary injunction to restrain the state engineer from enforcing §72-12-1.1 (NMSA 2003) violates the Anti-Injunction Act, 28 USC §2283 and 28 USC §2284.” *Docketing Statement* at 6. Defendant – Appellant has asked this court to rule on precisely the same issue that she has presented to the district court for decision.

Defendant – Appellant Trujillo admits that “the decision on the *Motion* could modify the judgment.” *Appellant’s Brief* at 8. And most tellingly, Defendant – Appellant’s prayer for relief requests that this Court order “the district court to enter

a written decision on the [*Motion*], supported by findings, before it enters any other judgment,” and to “allow the stay of briefing to remain until the district court enters its written decision on the *Motion*.” *Appellant’s Brief* at 12. Therefore, despite any of the arguments raised by Defendant – Appellant in support of jurisdiction, by her own admission and prayer for relief Defendant – Appellant concedes that resolution of the pending *Motion* could affect the January 12, 2015 *Order*, depriving this court of jurisdiction.

In this circumstance, the court does not need to reach the issue of the second possible jurisdictional defect identified in the March 27, 2015 *Order*. Nor does it need to address the additional bases for jurisdiction presented for the first time in *Appellant’s Brief*. If, however, the court determines that it should address these issues, the State requests the opportunity to fully brief them at that time. Finally, in response to any equitable concerns raised in the *Appellant’s Brief*, the State notes that it is under a federal statutory deadline of September 30, 2017, by which to complete *inter se* proceedings and enter a Final Judgment and Decree finally adjudicating all water rights in this case.

WHEREFORE, for all the reasons above, Plaintiff – Appellee State of New Mexico respectfully requests this court to dismiss Defendant – Appellant’s appeal.

/s/ Edward C. Bagley

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on May 11, 2015, 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.