

**STATE OF NEW MEXICO
COUNTY OF LUNA
SIXTH JUDICIAL DISTRICT COURT**

ELIZABETH ANDERSON, P.E., New Mexico
State Engineer,

Plaintiff,

v.
UNITED STATES OF AMERICA,

No.
Water Region 2

Defendant.

**BARNARD CONSTRUCTION COMPANY,
INC.,**

Defendant.

**WYATT DRILLING ARIZONA, LLC; and
VINCENT WYATT, aka VINNIE WYATT,
DBA: H.E. BEEMAN WELL DRILLING,
BEEMAN DRILLING CO., BEEMAN
DRILLING, BEEMAN WELL DRILLING,
WYATT DRILLING, and WYATT DRILLING,
INC.,**

Defendant.

**CASCADE DRILLING, LP; and ANDREW
WHITSELL, DBA: CASCADE
ENVIRONMENTAL, LLC, CASCADE
ENVIRONMENTAL, CASCADE DRILLING,**

Defendant.

**COMPLAINT TO ENJOIN THE ILLEGAL DIVERSION AND USE OF WATER AND
FOR PAYBACK OF ILLEGALLY APPROPRIATED WATER**

Elizabeth Anderson, the State Engineer of New Mexico (“The State Engineer”), by and through undersigned counsel, files this Complaint to Enjoin the Illegal Diversion and Use of Water and for Payback of Illegally Appropriated Water against Defendants United States of America,

Barnard Construction Company, Inc. (“Barnard”), Wyatt Drilling Arizona, LLC (“Wyatt Drilling”), Vincent Wyatt, Cascade Drilling, LP (“Cascade”), and Andrew Whitsell. In support thereof, the State Engineer states as follows:

INTRODUCTION

1. The groundwater resources of New Mexico are finite, and the livelihoods of New Mexicans depend upon their continued access to clean water.

2. Citizens rely on the New Mexico’s groundwater supplies for agriculture, ranching, domestic use, and other activities essential to human life and the continued economic vitality of the State. Thus, careful management of these underground supplies is essential to the State’s and its residents’ economic and personal well-being. In Hidalgo and Luna Counties, groundwater accounts for 88% and 99% of all water use, respectively.¹

3. For almost a hundred years, groundwater in New Mexico has been managed and overseen by the New Mexico Office of the State Engineer (“OSE”) to ensure that New Mexicans have clearly delineated rights and predictable access to water for domestic use, irrigation, farming, manufacturing, and other uses. *See* NMSA 1978, §§ 72-1-1 to 72-20-103 (“New Mexico Water Code”); *Lion’s Gate Water v. D’Antonio*, 2009-NMSC-057, ¶ 24, 147 N.M. 523 (describing the purpose of the State Engineer’s powers as “to employ his or her expertise in hydrology and to manage . . . applications through an exclusive and comprehensive administrative process that maximizes resources through its efficiency, while seeking to protect the rights and interests of water rights applicants”).

4. The OSE administers a comprehensive regulatory framework pursuant to which groundwater is appropriated through a permitting process administered by the agency.

¹ Valdez, Julie, et al., New Mexico Water Use by Categories 2020, New Mexico Office of the State Engineer Technical Report 56, *available at* ose.nm.gov/WUC/wuc_waterUseData.php (last visited August 21, 2026).

5. It is illegal to drill a well and appropriate water without first applying for and being granted a permit from OSE, and permittees must abide by the Water Code, associated regulations, and the terms of their permit. *See, e.g.*, NMSA 1978, § 72-5-39 (1965) (“No person shall divert water or apply water to land without having a valid water right to do so, or apply it to purposes for which no valid water right exists.”); *id.* § 72-12-3(A) (requiring a permit prior to appropriation of groundwater); *id.* § 72-12-15 (“No person shall produce water from an underground source through any well drilled in violation of this act.”).

6. From the earliest days of the settlement of the American West, it has been a longstanding principle that the appropriation and use of water is controlled by the states, and the federal government must abide by state law in its diversion and use of this limited natural resource. *See, e.g.*, *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 163–64 (1935) (describing waters as being “subject to the plenary control of the designated states”); *California v. United States*, 438 U.S. 645, 662 (1978) (similar).

7. In contravention of this established legal obligation, and in reckless disregard of existing water rights holders, the United States Customs and Border Protection (“CBP”) and private well drillers operating pursuant to contracts with the CBP have recently drilled numerous wells in OSE-declared underground water basins along the United States-Mexico international boundary, without going through the OSE’s mandatory permitting process.

8. In addition, CBP and its contractors have evaded the State’s metering and plugging requirements, undermining OSE’s ability to regulate the shared water resources in the region and creating the potential for serious aquifer contamination which puts human health at risk.

9. Absent the oversight provided for by OSE’s permitting process, CBP and its contractors’ unauthorized well drilling and illegal depletion of limited groundwater resources

presents serious risks to existing water rights holders in the State of New Mexico, to New Mexico's interstate compact obligations, and to the health and sustainability of New Mexico's aquifers. Indeed, OSE has received numerous complaints from current water rights holders in the region who are concerned that their water rights will be impaired by CBP's unpermitted wells.

10. Rather than utilizing available legal mechanisms to obtain water for construction, CBP and its contractors have disregarded New Mexico's Water Code and OSE's role in protecting this resource. OSE therefore seeks injunctive relief and repayment of illegally diverted water to prevent further damage to the state's already constrained water supply.

JURISDICTION, VENUE, AND PARTIES

11. Plaintiff Elizabeth Anderson, in her official capacity as the New Mexico State Engineer, "has general supervision of waters of the state and of the measurement, appropriation, [and] distribution thereof," NMSA 1978, § 72-2-1 (1907), and specific "supervision of the apportionment of water in this state according to licenses issued by him and his predecessors and the adjudications of the courts," *id.* § 72-2-9 (1907).

12. The State Engineer is authorized to file actions in state district court to enjoin illegal appropriations of groundwater and unauthorized well drilling activity. *Id.* § 72-12-15.

13. United States Customs and Border Protection is a subdivision of the Department of Homeland Security which is an executive agency of the United States Government.

14. The United States has waived sovereign immunity for suits related to water rights administration. The 1952 McCarran Amendment explicitly waives sovereign immunity and gives consent to sue "(1) for the adjudication of rights to the use of water of a river system or other source, *or* (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by

purchase, by exchange, or otherwise. . . .” 43 U.S.C. § 666(a) (emphasis added). *See also discussion infra* ¶¶ 31-41.

15. “In the administration of and the adjudication of water rights under State laws the State courts are vested with the jurisdiction necessary for the proper and efficient disposition thereof, and by reason of the interlocking of adjudicated rights on any stream system, any order or action affecting one right affects all such rights.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 810–11 (1976) (quoting S. Rep. No.755, 82d Cong., 1st Sess., 4-5 (1951)).

16. CBP is currently constructing a border barrier between the United States and Mexico on the Roosevelt Reservation, a federal reservation of lands consisting of a 60-foot strip parallel to the international boundary between the United States and Mexico.

17. This construction stretches across 179 miles of land in Luna, Hidalgo, and Dona Ana Counties within the state of New Mexico. *Project Update: Secondary Barrier System Construction – Dona Ana, Luna and Hidalgo Counties, New Mexico – July 2026*, U.S. Customs and Border Protection, <https://www.cbp.gov/document/environmental-assessments/project-update-secondary-barrier-system-construction-do-ana-luna>.

18. To construct the border wall, CBP has employed various contractors who act at the direction of CBP. With regard to the drilling of wells and appropriation and use of water in New Mexico, CBP has directed its contractors to proceed without following state law surrounding licensing and permitting for water appropriation and use, including the drilling of new water wells.

19. This Court has personal jurisdiction over the CBP because it has field offices in multiple cities within the State, such as Deming, Las Cruces, Alamogordo, Truth or Consequences,

and Albuquerque, and operates ports of entry in Santa Teresa, Columbus, and Antelope Wells, New Mexico

20. Defendant Barnard Construction Co. (“Barnard”) is a corporate entity based in Bozeman, MT that provides construction engineering services. Barnard has been engaged in border wall construction in New Mexico pursuant to a federal contract award, including at all times relevant to the instant action.

21. As part of its federal contract and/or instructions from CBP, Barnard has been engaged in and has overseen the drilling of wells and appropriation and use of water without completing the mandatory licensing and permitting procedures of the State.

22. Defendant Wyatt Drilling Arizona, LLC (“Wyatt Drilling”) is a corporate entity based in Wilcox, AZ that provides water well drilling, utility system construction, and heavy engineering support services. Wyatt Drilling has been engaged in border wall construction in New Mexico pursuant to a subcontract with Defendant Barnard, including at all times relevant to the instant action.

23. Defendant Vincent Wyatt is the licensed driller on file for Wyatt Drilling in the State of New Mexico.

24. Upon information and belief, and as further set forth below, Defendants Vincent Wyatt and Wyatt Drilling have drilled numerous wells at the direction of CBP and/or Barnard for the construction of the border wall, including wells within Luna County.

25. Defendant Cascade Drilling LP (“Cascade Drilling”) is a corporate entity based in Peoria, AZ that provides services for environmental, mining and construction projects, including major drilling. Cascade Drilling has been engaged in border wall construction in New Mexico

pursuant to a subcontract with Defendant Barnard, including at all times relevant to the instant action.

26. Defendant Andrew Whitsell is the licensed driller on file for Cascade in the State of New Mexico.

27. Upon information and belief, and as further set forth below, Defendants Andrew Whitsell and Cascade have drilled numerous wells at the direction of CBP and/or Barnard for the construction of the border wall, including wells within Luna County.

28. As further set forth below, a substantial part of the Defendants' actions giving rise to this claim occurred in Luna County, New Mexico.

29. This Court has personal jurisdiction over Defendants Barnard, Wyatt Drilling, and Cascade Drilling (collectively, "Corporate Defendants") because each of these defendants conducts business in the State of New Mexico for purposes of NMSA 1978, Section 38-1-16 and has sufficient minimum contacts with the State to satisfy constitutional due process requirements.

30. Multiple wells drilled by or at the direction of CBP and the Corporate Defendants (collectively, "Defendants") without going through the OSE licensing and permitting process and that are at issue in this action are located in Luna County. Venue for this action therefore lies in Luna County pursuant to NMSA 1978, Section 38-3-1 (1988).

THE MCCARRAN AMENDMENT ALLOWS NEW MEXICO TO SUE TO ENFORCE THE ADMINISTRATION OF WATER RIGHTS IN NEW MEXICO

31. The longstanding policy of federal deference to state water law in the American West is embodied in the McCarran Amendment. Enacted in 1952, the McCarran Amendment sought to integrate federal water rights into state systems of adjudication and administration.

32. The McCarran Amendment "has . . . often been relied upon as evidence of congressional recognition of the primacy of the western states' interests in regulating and

administering water rights.” *United States v. City & Cnty. of Denver, By & Through Bd. of Water Comm’rs*, 656 P.2d 1, 9 (Colo. 1982).

33. Indeed, the Senate Report on the McCarran Amendment states:

In the arid Western States, for more than 80 years, the law has been that the water above and beneath the surface of the ground belongs to the public, and the right to the use thereof is to be acquired from the State in which it is found, which State is vested with the primary control thereof.... Since it is clear that the States have the control of water within their boundaries, it is essential that each and every owner along a given water course, including the United States, must be amenable to the law of the State, if there is to be a proper administration of the water law as it has developed over the years.

Id. (quoting S.Rep. No. 755, 82d Cong., 1st Sess. 3, 6 (1951)). Thus, “Congress recognized that the western states have a legitimate interest in and responsibility for the allocation of water resources within their borders, including the determination and adjudication of the water rights claimed by the United States.” *Id.*

34. To accomplish this purpose, the McCarran Amendment provides that:

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) ***for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit.***

43 U.S.C. § 666(a) (emphasis added). In other words, the McCarran Amendment waives the federal government’s sovereign immunity not only as to joinder in a suit to ***adjudicate*** water rights, but also litigation regarding the ***administration*** of such water rights. *Id.* § 666(a)(2).

35. The McCarran Amendment further provides that, when the United States is party to an action covered by its provisions, it “shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of

its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction” *Id.* at § 666(a).

36. The McCarren Amendment applies in the instant action primarily because the federal government has directed and required Corporate Defendants to engage in activities covered by the administration prong and because this suit seeks to administer the “rights to use the water of a river system or other source.” *Id.*

37. Defendants have drilled wells and utilized the water produced from them for border wall construction. Such conduct establishes that the federal government “is in the process of acquiring water rights...” 43 U.S.C. § 666(a). Drilling wells and utilizing the resulting water within a declared underground basin constitutes an “appropriation” for purposes of § 666(a) and requires a permit under state law. *See, e.g., Hanson v. Turney*, 2004-NMCA-069, ¶ 2, 136 N.M. 1, 2 (“Because the Estancia Basin is a declared basin, Plaintiff, who wished to appropriate water from this basin, had to apply for a permit to appropriate water.”); *State Engineer v. Diamond K Bar Ranch, LLC*, 2016-NMSC-036, ¶ 16, 4385 P.3d 626; NMSA 1978, § 72-5-39 (1965) (“No person shall divert water or apply water to land without having a valid water right to do so, or apply it to purposes for which no valid water right exists.”).

38. The State Engineer’s ability to approve or deny applications for new appropriations of groundwater, as well as the State Engineer’s ability to regulate the drilling and use of these wells pursuant to state law and the permit terms, are fundamental aspects of the administration of groundwater rights. *See, e.g., Stokes v. Morgan*, 1984-NMSC-032, ¶ 9, 101 N.M. 195, 199 (“The State Engineer has developed a system of administration for the Basin which is intended to provide a reasonable measure of protection to existing water rights without unduly restricting the full economic utilization of existing water supplies in the Basin . . . Decisions as to whether to allow

additional appropriations are based on the life expectancy of the administrative block and immediately surrounding blocks.”).

39. The McCarren Amendment also applies here because Defendants’ conduct involves the administration of rights that were established in a comprehensive basin-wide adjudication involving the United States and the protection of such rights from unauthorized diversions, known as the Mimbres Adjudication.

40. Multiple unpermitted wells at issue in this suit are located within the Mimbres Underground Water Basin. The Mimbres Basin has been fully adjudicated since 1993 when a final order was entered. **Exhibit 1**, *Final Decree, Mimbres River Stream System & Mimbres Underground Water Basin*, No. 6326 (N.M. Dist. Ct., Sixth Jud. Dist., Luna Cnty. Jan. 14, 1993).

41. Notably, the United States was a party to the Mimbres adjudication, which included groundwater, and at no time did the United States raise a claim as to water rights associated with the recently-drilled unpermitted wells. *See United States v. New Mexico*, 438 U.S. 696 (1978).

**WELL ESTABLISHED LEGAL PRINCIPLES AND FEDERAL STATUTES ARE
CLEAR THAT THE FEDERAL GOVERNMENT IS SUBJECT TO A STATE’S
REGULATORY AUTHORITY REGARDING THE APPROPRIATION OF WATER**

42. Federal deference to state regulation of the appropriation and use of water has been legislated through the Mining Act of 1866, the 1870 Amendments, and the Desert Land Act of 1877.

43. The Supreme Court of the United States has been clear regarding the combined effects of these various congressional acts. “What we hold is that following the act of 1877, if not before, all nonnavigable waters then a part of the public domain became publici juris, *subject to the plenary control of the designated states*, including those since created out of the territories named[.]” *California Oregon Power Co.*, 295 U.S., at 163–64 (emphasis added). In other words,

“all nonnavigable waters . . . should be reserved for the use of the public under the laws of the states and territories named.” *Id.* at 162.

44. The Mining Act of 1866 provides that “[w]henever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same[.]” *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 154–55 (1935) (quoting the Act of July 26, 1866, c. 262, § 9, 14 Stat. 251, 253).

45. The 1870 Amendments to the Mining Act further provides that “[a]ll patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by [Section 9 of the Mining Act of 1866].” *Id.* at 155 (quoting the Act of July 9, 1870, c. 235, § 17, 16 Stat. 217, 218).

46. As the United States Supreme Court has stated: “The effect of these acts is not limited to rights acquired before 1866. They reach into the future as well, and approve and confirm the policy of appropriation for a beneficial use, as recognized by local rules and customs, and the legislation and judicial decisions of the arid land states, as the test and measure of private rights in and to the nonnavigable waters on the public domain.” *Id.* at 155; *see also California v. United States*, 438 U.S. 645, 656 (1978) (“Congress intended ‘to recognize as valid the customary law with respect to the use of water which had grown up among the occupants of the public land under the peculiar necessities of their condition.’” (quoting *Basey v. Gallagher*, 87 U.S. 670, 684 (1875))).

47. The combined effect of the Mining Act of 1866, the 1870 Amendments, the Desert Land Act of 1877, and the McCarran Amendment has been that, “except where the reserved rights or navigation servitude of the United States are invoked, the State has total authority over its internal waters.” *California*, 438 U.S. at 662; *see also United States v. New Mexico*, 438 U.S. 696, 702 (1978) (“Where Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to the state law.”). This proposition, dating back to the earliest days of the settlement of the West, forms the foundation of western water law.

THE STATE ENGINEER IS RESPONSIBLE FOR ADMINISTERING WATER RIGHTS IN NEW MEXICO PURSUANT TO THE WATER CODE

48. The New Mexico Constitution provides that “[t]he public waters of the state are subject to appropriation through beneficial use, which is “the basis, the measure and the limit of the right to the use of water.” N.M. Const. art. XVI, §§ 2, 3.

49. The legislature has codified this relationship between state government and public waters as well. “All natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use.” NMSA 1978, § 72-1-1 (1907). Likewise, “[t]he water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, is declared to belong to the public and is subject to appropriation for beneficial use.” *Id.* § 72-12-1.

50. To implement these principles, the Legislature has delegated broad authority to the State Engineer to manage the state’s water resources. *See Lion’s Gate Water v. D’Antonio*, 2009-NMSC-057, ¶ 24, 147 N.M. 523. Thus, the State Engineer exercises general authority under the

Water Code to authorize and administer new appropriations of surface and ground water. *See* NMSA 1978, § 72-2-1.

51. The State Engineer’s duties include “general supervision of [the] waters of the state and of the measurement, appropriation, [and] distribution thereof and such other duties as required.” *Id.* This includes issuing licenses and conducting adjudications to apportion water rights in the State. *Id.* § 72-2- 9 (1907).

52. New Mexico’s regulatory scheme is based on the doctrine of prior appropriation, which can be described as “first in time, first in right.” *Elephant Butte Irr. Dist. v. Regents of New Mexico State Univ.*, 1993-NMCA-009, ¶ 14, 115 N.M. 229, 232, 849 P.2d 372, 375. The Water Code, as administered by the State Engineer, “provide[s] a complete and exclusive means to acquire water rights” in New Mexico, including by requiring individuals seeking to appropriate water to obtain a permit. *Lion’s Gate Water*, 2009-NMSC-057, ¶ 24. This comprehensive permitting scheme ensures that the existing water rights of other appropriators are not impaired, *see City of Roswell v. Berry*, 1969-NMSC-033, ¶ 5, 80 N.M. 110, 112, 452 P.2d 179, 181, and has provisions to ensure the conservation of water within the state, *see Aquifer Sci., LLC v. Verhines*, 2023-NMCA-020, ¶ 44, and to protect the public welfare of the state, *see Lion’s Gate*, 2009-NMSC-057, ¶ 11.

53. Thus, “[t]he diversion or application of water to lands in New Mexico absent a valid water right or permit is unlawful.” *State Engineer v. Diamond K Bar Ranch, LLC*, 2016-NMSC-036, ¶ 16, 438 P.3d 626; § 72-5-39 (1965) (“No person shall divert water or apply water to land without having a valid water right to do so, or apply it to purposes for which no valid water right exists.”).

54. As relevant here, Section 72-12-3 of the Water Code requires persons seeking a new appropriation of groundwater to first obtain a permit from the State Engineer. To do so, such persons must submit an application with information such as the beneficial use of the water, location of the well, and amount of water applied for. NMSA 1978, § 72-12-3(A). In determining whether to grant a permit, the State Engineer must consider whether the proposed appropriation would “impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state.” *Id.* § 72-12-3(E).

55. Failure to obtain a permit from the State Engineer prior to commencing the drilling of a well and using groundwater constitutes an illegal diversion. *Id.* § 72-12-15 (“No person shall produce water from an underground source through any well drilled in violation of this act.”); *see also Diamond K Bar Ranch*, 2016-NMSC-016, ¶ 16.

56. State Engineer regulations implement the Water Code and further govern well drilling. They require, among other things, annular seals, 19.27.4.30(C) NMAC, and proper plugging of the well after failure or discontinuance pursuant to a plugging plan of operations approved by the State Engineer, 19.27.4.30(C) NMAC. These regulations protect aquifers from contaminants that could enter groundwater through unsealed or unplugged wells.

57. Additionally, water users must comply with the terms of their permit. Permit conditions may include the installation of a totalizing meter, submission of meter readings, the acquisition of offsets, or other conditions. These conditions of approval are designed to further ensure that the exercise of the water right does not impair existing rights, ensure the conservation of water, and assist in the protection of the public welfare.

58. Section 72-12-15 of the Water Code authorizes the State Engineer to file actions in state district court to enjoin illegal appropriations of groundwater and unauthorized well drilling activity as follows:

The state engineer may apply for and obtain an injunction, in the district court of the county in which any well or land affected is situated, against any person, firm or corporation who shall drill or begin the drilling of a well in violation of the provisions of this act, or who shall cause, allow or permit the drilling of a well by a person other than a licensed well driller upon land owned or controlled by him, or who shall produce water from any well drilled in violation of this act, or who shall apply water from an underground source, as hereinabove defined, to lands having no valid water right for the purpose to which applied. These provisions shall in no way be construed to affect the existing right of a court of equity in the exercise of its general equity powers to grant relief to the state of New Mexico by injunction or otherwise.

**THE FEDERAL GOVERNMENT HAS RECOGNIZED THE STATE'S AUTHORITY
TO ADMINISTER WATER RIGHTS THROUGH PAST COMPLIANCE WITH
NEW MEXICO WATER LAW AND ADJUDICATION**

59. The federal government has historically recognized its legal obligation to abide by western state water law. In the past, the federal government has applied for, and the OSE has issued, permits for border wall construction. *See Exhibit 2* (MR-6 2019 Permit Application), *Exhibit 3* (MR-6 2023 Application), *Exhibit 4* (MR-10 Application), *Exhibit 5* (MR-12 Application). As a result, the federal government was permitted to construct and use wells on federal land to obtain water for dust control and other purposes in constructing the border wall at various times from 2019 through 2025. Those wells were constructed to standards necessary to protect groundwater from contamination and waste, and the depletions associated with those wells could be accounted for in administering all groundwater uses in the basin.

60. In addition, numerous water rights holders have filed applications to change the purpose of use of existent rights to allow for commercial sales so that they may supply the border wall project. *See, e.g., Exhibit 6* (PL-00014 Application).

61. As stated previously, *see supra* ¶¶ 40-41, the Mimbres Adjudication is long closed, and the United States was a party to that matter with numerous intensively litigated claims. The extensive participation of the United States in the Mimbres Adjudication also demonstrates that the federal government has long recognized the primacy of state law in the area of water rights.

**DEFENDANTS NOW CONTEND THAT THE FEDERAL GOVERNMENT IS NOT
SUBJECT TO STATE LAW GOVERNING WATER APPROPRIATION & USE,
DESPITE CLEARLY ESTABLISHED LAW TO THE CONTRARY**

62. Despite OSE's authority to regulate the appropriation, diversion, and use of water, the Defendants recently started drilling numerous wells along the southern border without any corresponding application or permit, in open disregard of OSE's regulatory authority.

63. On March 17, 2026, OSE staff received a call from a rancher and water rights owner in the Hachita Underground Water Basin advising that federal contractors were developing a well near the border wall. OSE staff made in-person contact with the drilling contractor and learned that the contractor had reached a depth of approximately 540 feet and intended to drill to 1000 feet. The well had an 8" casing. The contractor asserted that no permit from the OSE was required because the well was being drilled on federal lands.² **Exhibit 7** (March 17, 2026, Field Inspection Report, Jake Vega and Karl E. Frisch).

64. During the March 17, 2026, site visit, the drilling contractor identified himself as Defendant Vincent Wyatt and was doing business as Defendant Wyatt Drilling. *Id.*

65. The drill rig present was marked Beeman Drilling. Wyatt Drilling and Beeman Drilling are the same company. The Arizona Department of Water Resources, United States Department of Transportation, and Better Business Bureau all list Wyatt Drilling and Beeman Drilling as alternative names for the same enterprise. **Exhibits 8, 9, 10** (Wyatt and Beeman Drilling

² Approximate location 31° 47' 1.93" N -108° 9' 18.66" W.

documents with AZDWR, DOT, and BBB). In addition, Wyatt Drilling's Facebook page shows photographs of a drill rig labeled Beeman Drilling and lists a website for Beeman Drilling. **Exhibit 11**.

66. During the March 17, 2026, site visit, Defendant Barnard agreed to file an application for an exploratory well permit within 24 hours, and agreed that no water could be diverted from the well without a valid water right. *Id.*

67. The following day, March 18, 2026, Defendant Barnard, the lead contractor for the border wall project, filed an application for permit for an exploratory well and an application under Section 72-12-1.3 for a temporary public works construction permit for the well in question. **Exhibit 12** (Temporary Public Works Construction Application), **Exhibit 13** (Exploratory Well Application).

68. In addition, Defendant Barnard filed for a second temporary public works construction permit for a different well for the border wall project, also in the Hachita Basin. **Exhibit 14** (Temporary Public Works Construction Application).

69. However, on March 24, 2026, Defendant Barnard withdrew all permit applications related to border wall construction, stating that CBP had instructed them to proceed with drilling wells on federal land in the absence of OSE permits. **Exhibit 15** (Email from Jeff Pinto to Jake Vega).

70. On March 24, 2026, CBP Director of Infrastructure Portfolio, Paul Enriquez, sent a letter to OSE District III personnel Jake Vega explaining that CBP is "executing a border barrier system project known as El Paso 2, which involves the construction of approximately 98.3 miles of barrier systems in Luna and Hidalgo Counties, New Mexico." **Exhibit 16** (CBP's March 24, 2026 Letter to Jake Vega).

71. Enriquez further explained that CBP’s contractor, Defendant Barnard, had drilled four wells to date and expected to drill additional wells to complete the project. *Id.*

72. In that letter, CBP asserted that the wells at issue “are on federal property. Because they are on federal property, they are immune from state permitting requirements.” *Id.*

73. However, this proposition is directly contrary to the New Mexico Constitution, clearly established prior appropriation law, and the Water Code, whereby water rights are based on beneficial use rather than the location of land. *Hydro Res. Corp. v. Gray*, 2007-NMSC-061, ¶ 20, 143 N.M. 142, 148, 173 P.3d 749, 755 (“Our law expressly disavows connecting water rights to land . . . Established water law principles reach the opposite conclusion: water rights are separate from the surrounding land and may be owned separately from the land”); N.M. Const. art. XVI, § 3, (“Beneficial use shall be the basis, the measure and the limit of the right to the use of water.”)

74. OSE’s General Counsel responded to CBP on March 31, 2026, outlining various legal provisions related to the Western States’ rights to regulate water. *See Exhibit 17* (March 31, 2026, Letter from Nathaniel Chakeres to CBP).

75. On April 1, 2026, CBP again wrote to the OSE maintaining the position that the federal statutes cited by OSE do not apply and that CBP was not required to obtain any permits to drill wells and/or appropriate water on federal land. *See Exhibit 18* (Letter from CBP to Nathaniel Chakeres dated April 1, 2026).

OSE FIELD VISITS REVEAL MULTIPLE DEFENDANTS DRILLING AND OPERATING UNPERMITTED WELLS

76. Since April, OSE field staff have observed seven illegally drilled wells within the boundaries of the district. **Exhibit 19** (Map of Illegal Wells in OSE District III), all within declared underground water basins (Mimbres, Hachita, and Lower Rio Grande) where a permit is necessary for any new appropriations of water. Some were missing annular seals which are required to

prevent contamination of the surrounding soil and water. Others had seals but no means of determining whether they met state standards or were unable to be verified as having been sealed at all.

77. During these visits, OSE staff also observed unpermitted diversions from a livestock well, switching of meters in violation of permit conditions, well-plugging in the absence of a legally mandated plugging plan, and collapsed boreholes that were either plugged without a plugging plan or left exposed.

April 2026 OSE Field Checks Revealed Improper Use of and Tampering with Meters on Previously Permitted CBP Wells

78. On April 28, 2026, OSE staff conducted a field check on a different well with OSE File No. MR-00012 that had been previously permitted to CBP for temporary public works construction purposes on December 12, 2025. *See Exhibit 20* (MR-00012 Permit). The conditions of approval for this permit required the installation of a totalizing meter and imposed a diversion limit of three acre-feet per annum (approximately 977,553 gallons). *Id.*

79. The diversion limit is the amount of water that may be appropriated under the permit, and the totalizing meter allows OSE to track the total amount of water diverted throughout the year to ensure that the permittee does not appropriate more than the limit. If a permittee goes over the limit, they are in violation of their permit.

80. During the April 28, 2026, field check, the totalizing meter observed was a Flomtec TM Series digital meter with a reading of 115,476 gallons pumped. *See Exhibit 21* (MR-00012 Field Inspection Report).

81. On June 18, 2026, OSE staff performed a subsequent field check on the MR-00012 well. At the time of this field check, OSE staff discovered that a different meter had been installed

on the well. *Id.* The new meter was a non-digital McCrometer meter with a reading of 130 gallons pumped. *Id.*

82. On July 16, 2026, OSE staff performed another field check on the MR-00012 well and discovered that the meter had been switched back to the same Flomec TM Series digital model first observed in April, and it had a reading of 360,819 gallons pumped. *Id.*

83. The conditions of approval for well MR-00012 require that OSE be advised of the make, model, serial number, date of installation, and initial reading of the meter prior to diversion of water. **Exhibit 20** at 17-5A.

84. Because the meter was switched, OSE is unable to determine the actual amount of water diverted, and therefore is unable to determine whether CBP has pumped within its permit terms. Switching meters is suggestive of an attempt to disguise overdiversions of a water right.

Subsequent OSE Field Checks Identified New Unpermitted Drilling by Defendants, Including a Borehole Collapse, in the Mimbres and Hachita Basins

85. On July 16, 2026, OSE staff observed unpermitted drilling activities within the Roosevelt Reservation, along the border area in Luna County and within the Mimbres Declared Underground Water Basin.³ **Exhibit 22** (July 16, 2026, Field Inspection Report).

86. The Mimbres Basin was the first underground water basin declared in New Mexico, in 1931, and it has been fully adjudicated since 1993. **Exhibit 23** (Deming-Columbus Administrative Area Guidelines for Review of Water Right Applications); Final Decree, Mimbres River Stream System & Mimbres Underground Water Basin, No. 6326 (N.M. Dist. Ct., Sixth Jud. Dist., Luna Cnty. Jan. 14, 1993). Portions of the Mimbres Basin have been closed since 1945 and continue to be under a Critical Management Area restriction. **Exhibit 24** (Index of State Engineer

³ Approximate location 31° 47' 01.61" N, -107° 25' 03.59" W.

Orders). The longstanding restrictions in the Mimbres Basin are the result of very limited groundwater supplies in the area.

87. OSE staff located two rigs on site, neither of which were operating pursuant to any permit from OSE. **Exhibit 22**. The drillers identified themselves as being employees of Defendant Cascade Drilling and stated that one rig was inoperable due to a borehole collapsing during the drilling process. *Id.*

88. A borehole collapse is considered a failed well drilling attempt and must be properly plugged in accordance with a plugging plan submitted to OSE under 19.27.4.30(C) NMAC. There is a significant risk of contamination if underground wells are not plugged in accordance with all applicable standards and regulations.

89. OSE staff were unable to obtain any additional information regarding plugging plans due to lack of cooperation from personnel on site and extensive construction in the area. **Exhibit 22**.

90. On July 23, 2025, OSE staff returned to the site and observed a Cascade Drilling rig with its mast up in the act of drilling. **Exhibit 25** (July 23, 2026, Field Inspection Report). Staff photographed and observed the drilling activities from a distance. *Id.*

91. On July 21, 2026, OSE staff returned to the site of initial contact with Defendant Wyatt Drilling for a field inspection of the well in the Hachita Basin. **Exhibit 26** (July 21, 2026, Field Inspection Report). Upon inspection, the well was found to be plugged. *Id.* No plugging plan had been submitted to OSE, and it is therefore unknown whether the plugging was accomplished according to applicable regulations.

92. Also on July 21, 2026, WRD staff observed two rigs belonging to Wyatt Drilling at a location where unauthorized drilling activity was taking place within the Mimbres

Underground Water Basin in Luna County.⁴ **Exhibit 27** (July 23, 2026, Field Inspection Report). One rig was clearly marked as belonging to Beeman Drilling. This was the same drill rig OSE staff had previously observed being operated by Vincent Wyatt on March 17, 2026. Because of heavy rainfall the previous night, no active drilling was in progress.

93. On July 23, 2026, staff returned to the location and observed and photographed active drilling activities. *Id.*

***Separate OSE Field Checks Uncover More Unpermitted Wells,
Some Lacking State-Mandated Annular Seals***

94. On July 22, 2026, OSE staff performed a sweep of the bootheel area of New Mexico to ascertain what well drilling operations were in progress and how many wells had already been drilled without a permit. On that date, OSE staff observed four illegally drilled wells in the Hachita and Playas Underground Water Basins.⁵ **Exhibits 28, 29, 30, 31** (July 21, 2026, and July 22, 2026, Field Inspection Reports). Two wells were located approximately 50 feet from the border wall, one well was located approximately 500 feet from the border wall, and an additional well was located approximately 3.25 miles from the border wall. *Id.*

95. Of the four wells observed, two did not have an annular seal, which is required under 19.27.4.30(A) NMAC. *Id.*

96. In the absence of an annular seal, contaminants such as sewage, septic discharge, oil, or other unsanitary and contaminated surface water can infiltrate potable aquifers. During monsoon season, large amounts of surface water can wash across significant distances over any exposed wellheads. This surface water can carry contaminants which pose immediate and serious

⁴ Approximate location 31° 47' 01.87" N, -107° 55' 12.28" W.

⁵ Approximate locations 31° 32' 41" N -108° 12' 36" W, 31° 37' 14"N -108° 15' 50"W, 31° 37' 8" N -108° 12' 31" W, and 31° 47' 2"N -108° 3' 20"W.

risks to the health of humans and livestock. It is therefore imperative that exposed wellheads be properly plugged prior to monsoon rains so as to avoid hazardous impacts on those who rely on these aquifers for drinking water, livestock watering, and farming, especially as we are currently in the midst of monsoon season which runs from June 15 to September 30. *2026 Monsoon Drought Status Update for the Southwest U.S.*, National Integrated Drought Information System, <https://www.drought.gov/drought-status-updates/2026-monsoon-drought-status-update-southwest-us-2026-06-18>.

97. Complaints from ranchers in the area of these drilling activities have also raised concerns regarding the impact of unauthorized drilling on Corrizalillo Spring. **Exhibit 32** (Email from Russell Johnston to OSE). Ranchers have stated that this historic spring has documented use dating back at least to the 1800s and is a longstanding and important water source in the area. *Id.* Because springs are highly dependent on underground pressure and fracture systems, there is serious concern among area residents that changes in groundwater conditions could significantly reduce or eliminate flow to the spring. *Id.* Border wall construction has permanently reduced pressure at springs in other areas of heavy pumping and construction. Sarah Henry, *Border Wall Construction Threatens Groundwater, Fragile Springs in San Rafael Valley, Arizona Republic*, November 20, 2025.

OSE Field Staff Also Observed Unpermitted Drilling in the Rio Grande Underground Water Basin and Received a Map showing Defendants' Plans for Continued Unpermitted Water Appropriation and Use

98. In addition, on July 24, 2026, OSE District IV staff conducted an investigation and observed unpermitted drilling activity at a location in Dona Ana County within the Lower Rio Grande Underground Water Basin. **Exhibit 33** (July 24, 2026, Field Inspection Report).

99. OSE staff had previously received a map of locations at which Defendant Barnard planned to drill wells to supply construction for the section of the border wall being built between Columbus, NM and Sunland Park, NM. *Id.* The map was produced by Defendant Barnard as the lead contractor for the project. The Barnard map does not include the locations of wells drilled in the areas between the Arizona state line and Columbus, NM.

100. The goal of the July 24, 2026, investigation was to examine the areas on the Barnard map where OSE was aware that CBP planned to drill additional wells and ascertain whether drilling had commenced in these areas. *Id.*

101. OSE staff observed Defendant Cascade Drilling engaged in active drilling activities at a location designated on the Barnard map as “BP #3.”⁶ *Id.*

102. On information and belief, this well is designated as such because Defendants CBP and Barnard plan to utilize the well for a cement batch plant for border wall construction.

103. OSE staff observed the clearing of native vegetation from approximately 10-15 acres of land north of the drill site, which appeared to be preparation for the construction of the cement batch plant. *Id.*

104. The BP #3 well is located within the Mesilla Valley Administrative Area (“MVAA”). *Id.*; **Exhibit 34** (MVAA Guidelines).

⁶ Approximate location 31°47'2.11"N, 106°57'30.80"W.

105. The MVAA Guidelines require offsets for all groundwater appropriations which impact surface waters beyond acceptable depletions. *Id.*

106. Surface water impacts on the Rio Grande risk imperiling New Mexico's deliveries of water to Texas under the Rio Grande Compact. On May 26, 2026, the Supreme Court of the United States approved a settlement ending 13 years of litigation, between, *inter alia*, New Mexico, Texas, and the United States regarding New Mexico's groundwater pumping and alleged violations of the Rio Grande Compact. *U.S. Supreme Court Approves Rio Grande Compact Settlement – Agreement Ends 13-Year Interstate Dispute*, Office of the Governor, <https://www.governor.state.nm.us/2026/05/28/u-s-supreme-court-approves-rio-grande-compact-settlement-agreement-ends-13-year-interstate-dispute/>, (May 28, 2026).

107. Unpermitted well drilling in the MVAA could affect New Mexico's ability to deliver water to Texas under the States' Compact Decree. The Compact Decree requires New Mexico, beginning in 2027, to meet water delivery obligations at the El Paso state line. Compact Decree § II.B, *available* at https://www.ose.nm.gov/ISC/texas_v_nm_settlement.php. In addition, the United States has agreed to a Groundwater Settlement Agreement with New Mexico requiring New Mexico to maintain aquifer levels at specified levels, and ensure that surface water deliveries to Texas are not lost to excessive groundwater pumping. Groundwater Settlement Agreement § IV, *available* at https://www.ose.nm.gov/ISC/texas_v_nm_settlement.php. The proposed pumping of groundwater in the MVAA risks immediately imperiling these recently executed settlement agreements, one of which is signed by the United States.

108. The Barnard map illustrates plans to drill numerous additional wells within the MVAA. These unpermitted wells may have additional impacts on surface water bodies in the area, including the Rio Grande.

***CBP Publicly Claims to Have Ceased Illegal Well Drilling,
but Makes No Commitments to OSE***

109. On August 6, 2026, a CBP spokesperson stated in the media that CBP had instructed contractors to cease drilling further wells for border wall construction. Mikella Schuettler, *Contractors Building Border Wall Ordered to Stop Drilling Wells in Drought-Stricken New Mexico*, Associated Press, August 6, 2026, <https://apnews.com/article/border-wall-wells-water-ranch-new-mexico-5ad8fcbcbef112381a6cc56ba3566002>. However, the CBP spokesperson did not comment on whether the agency would continue to pump the illegally drilled wells already in existence. Nor did the CBP spokesperson express any intent for CBP to properly plug wells and boreholes, repay illegally diverted water, or source water for future construction needs from lawful sources.

110. Furthermore, despite ongoing communication between OSE and the federal government, OSE has not received any communication from CBP regarding even the limited concessions made in the media. As of the date of this filing, CBP has made no commitments whatsoever to OSE regarding the cessation of illegal drilling, plugging of illegally drilled wells and boreholes, repayment of illegally diverted water, or sourcing of all water needed for future construction from lawful sources.

Drillers Cap but Do Not Properly Plug Certain Wells and Illegal Diversions Continue

111. On August 4, 2026, OSE sent administrative Notices of Violation to Wyatt Drilling and Cascade under NMSA 1978, Section 72-2-18 regarding the unauthorized drilling of certain wells associated with each driller. Wyatt Drilling received a Notice of Violation regarding one active well and one improperly plugged well, and Cascade received a Notice of Violation regarding two active wells. The Notices of Violation stated that the wells must be properly plugged in

accordance with a State Engineer approved plugging plan within 30 days, or that administrative penalties including fines and license revocation may follow.

112. On August 20, 2026, OSE District III staff conducted a field check of all known illegally drilled wells within the district. OSE staff observed that the three active wells listed in the Notices of Violation were capped with welded plates. The pumps, equipment, fill stations, and generators had been removed. However, OSE regulations require that a discontinued well be plugged in accordance with 19.27.4.30(C) NMAC. These regulations require that the entire well be filled from the bottom upwards to ground surface with cement or other sealant, and that a plugging plan first be approved by the State Engineer to ensure that the plugging method will adequately protect the aquifer from contamination. *Id.* A surface layer cap in the absence of an approved plugging plan does not adequately protect the aquifer and may allow for the infiltration of contaminants. Moreover, a welded cap may easily be removed and the wells can quickly be re-equipped and operational.

113. The remaining illegally drilled wells within District III remained operational. OSE observed three unauthorized wells in the bootheel area which were equipped and appeared to still be in use. One of the wells was in operation and water trucks were actively filling at the site. In addition, OSE staff observed continued unauthorized diversions from the PL-1167-POD1 livestock well for construction purposes. PL-1167-POD1 was actively pumping and numerous cement trucks were on site.

114. CBP therefore appears to have capped but not properly plugged only the wells on which Notices of Violation were issued to well drillers, while continuing to illegally appropriate from other sources.

Count I

UNAUTHORIZED DIVERSION OF GROUNDWATER (NMSA 1978, § 72-12-3, NMSA 1978, § 72-12-15)

115. The State Engineer incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

116. The Water Code requires all new appropriations of groundwater to be permitted by OSE. NMSA 1978, § 72-12-3(A). It is illegal to produce water from a well that is not permitted or otherwise is not drilled in compliance with the Water Code. NMSA 1978, § 72-12-15.

117. NMSA 1978, Section 72-12-15 states that “No person shall produce water from an underground source through any well drilled in violation of this act,” and that the State Engineer has the right to obtain equitable relief “by injunction or otherwise.”

118. Defendant United States has appropriated underground waters without a permit, in violation of the Water Code, NMSA 1978, Sections 72-12-3(A), 72-12-15.

119. Defendants Barnard, Wyatt Drilling, Wyatt, Cascade, and Whitsell have participated and assisted in this violation of the Water Code at the direction of Defendant United States by drilling unauthorized wells and utilizing the water produced from these wells in construction.

Count II

IMPROPER WELL CONSTRUCTION AND DRILLING (19.27.4.30 NMAC, 19.27.4.21 NMAC)

120. The State Engineer incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

121. 19.27.4.30(A) NMAC requires that wells be completed with an annular seal surrounding the outermost casing to prevent the entry of contaminants into the borehole.

122. 19.27.4.21(D) NMAC states that it is a violation to drill a well in any declared underground water basin without a permit.

123. Defendants Wyatt Drilling, Wyatt, Cascade, and Whitsell, at the direction of Defendant United States, have improperly drilled wells in declared underground basins without a permit.

124. Multiple unpermitted wells drilled at the direction of Defendant United States are improperly constructed and lack an annular seal.

Count III

UNAUTHORIZED PLUGGING (19.27.4.30 NMAC)

125. The State Engineer incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

126. 19.27.4.30(C) NMAC states that a well-plugging plan of operations must be approved by the State Engineer prior to plugging a well.

127. 19.27.4.30(C) NMAC states that a failed drilling attempt shall be plugged.

128. Defendants Wyatt Drilling and Wyatt, at the direction of Defendant United States, have improperly plugged a well borehole without submitting any plugging plan to the State Engineer.

129. Defendants Cascade and Whitsell, at the direction of Defendant United States, have either improperly plugged a collapsed borehole in the absence of a plugging plan or have left the results of this failed attempt unplugged and exposed.

Count IV

TAMPERING WITH TOTALIZING METER

(Permit Terms, NMSA 1978, § 72-12-1.3)

130. The State Engineer incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

131. “[T]he State Engineer has the power to develop regulations and impose conditions on groundwater applications . . . in order to prevent impairment of existing rights.” *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 14, 141 N.M. 21, 26.

132. NMSA 1978, § 72-12-1.3 allows for temporary permits for the use of underground waters for the construction of public works in an amount not to exceed three acre feet per annum.

133. The conditions of approval of OSE File No. MR-00012 require that OSE be advised of the make, model, serial number, date of installation, and initial reading of the meter prior to appropriation of water.

134. In contravention of this permit condition, Defendant Barnard, at the direction of Defendant United States, has replaced meters on well MR-00012 without notice to the State Engineer while continuing to appropriate water.

PRAYER FOR RELIEF

WHEREFORE, the State Engineer respectfully requests the following relief:

135. An Order of the Court enjoining Defendants from drilling any additional wells in the absence of a permit or diverting any water in the absence of a valid water right unless and until Defendants obtain a permit from the Office of the State Engineer to do so;

136. An Order of the Court directing Defendants to immediately submit proper plugging plans for all boreholes and proper remediation plans for all improperly constructed wells;

137. An order of the Court directing Defendants to comply with conditions of approval on all existent permits;

138. An Order of the Court directing Defendants to account for all illegally diverted water;

139. An Order of the Court ordering Defendants to effectuate double repayment of all illegally diverted water; and

140. Any other appropriate relief deemed proper by the Court.

Respectfully submitted,

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NEW MEXICO STATE ENGINEER

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