

FIFTH JUDICIAL DISTRICT COURT)
COUNTY OF CHAVES)
STATE OF NEW MEXICO)
))
))
STATE OF NEW MEXICO, ex rel.)
THOMAS C. TURNEY, State Engineer,)
and PECOS VALLEY ARTESIAN)
CONSERVANCY DISTRICT,)
))
Plaintiffs,)
vs.)
))
L. T. LEWIS, et al., and)
UNITED STATES OF AMERICA,)
))
Defendants.)
_____)

Nos. 20294 and 22600
CONSOLIDATED
Carlsbad Irrigation
District Section

ORDER ADDRESSING THRESHOLD LEGAL ISSUE NO. 2

Pursuant to the Court’s Final Decision Re Threshold Legal Issue No. 2, filed May 12, 2000, as amended May 30, 2000, the Court hereby concludes:

Findings of Ultimate Fact:

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1. The *Hope Decree* is a final judgment on the merits.
2. As to the water diversion, storage and distribution rights claimed by the United States, the *Hope Decree* involved the same cause of action as that involved in this proceeding
3. The submissions of the parties have not established that all objectors in the current proceeding were parties to *Hope* or are in privity with parties to *Hope*.
4. Defendants in *Hope* who were properly notified and served and those who appeared therein were afforded a full and fair opportunity to litigate their claims, defenses and contentions concerning the water diversion, storage and distribution rights of the United States in connection with the Carlsbad Project and were accorded due process.
5. Defendants in *Hope* who were properly notified and served and those who appeared therein were provided fundamental fairness.
6. The issues and subject matter concerning the water diversion, storage and

distribution rights claims of the United States adjudicated in *Hope* are identical to the issues and subject matter being adjudicated in connection with said rights and interests in these proceedings.

7. Matters pertaining to the water diversion, storage and distribution rights of the United States were actually and necessarily litigated and determined in *Hope* and incorporated into the *Hope Decree*, a final judgment on the merits.

Conclusions of Law:

1. The determinations of the court in *United States v. Hope Community Ditch et al.*, No. 712 Equity (D. NM 1933) (the *Hope Decree*) are not universally binding on all objectors in these proceedings under the doctrine of *res judicata*. The *Hope Decree* is binding upon persons joined as parties in *Hope*; those who entered an appearance or participated in *Hope*; all unknown claimants in interest, provided that they were afforded procedural due process (given proper notice, were properly served and given an opportunity to assert their objections, claims and contentions concerning the diversion, storage and distribution water right claims of the United States in connection with the Project); and those who were not joined as parties but were notified of the claims and contentions of the United States and afforded an opportunity to assert objections and defenses thereto. All those in privity with the aforesaid persons and the successors in interest of the aforesaid persons are also bound.
2. The determinations in *Hope* concerning the water diversion, storage and distribution rights of the United States in connection with the Project are, in a limited sense rules of property. They are not rules of property under the rule of property doctrine, however, because they are not general legal propositions or settled legal principles which have been established beyond contention and dispute, particularly when considered in the context of this proceeding.
3. If it is ultimately determined that the doctrine of *res judicata* is not applicable to matters determined in *Hope*, issues of fact in connection with the Project water diversion, storage and distribution rights of the United States determined in *Hope* are binding upon persons given proper notice of the claims of the United States and properly served with such notice in *Hope* and otherwise afforded due process, and those in privity with said parties and their successors in interest under the doctrine of collateral estoppel.
4. While the Court recognizes there have been significant decisions since *Hope* affecting water and other rights in connection with reclamation projects generally, Objectors do not cite any changes in law which would have any significant impact upon the determinations to be made by the Court in connection with determining the United States' diversion, storage, and distribution water rights.

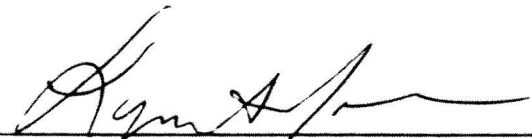
The United States has elected to forgo any appeals pursuant to Rule 54(C) in connection with Threshold Legal Issue No.2.

Dated: _____

HARL D. BYRD
DISTRICT JUDGE *PRO TEMPORE*

Submitted by:

Dated: 11/14/00



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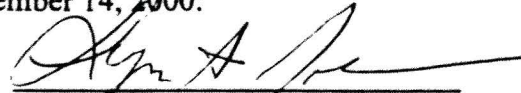
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CERTIFICATE OF SERVICE

I served a true and correct copy of the foregoing **UNITED STATES' RESPONSE TO THE COURT'S ORDER OF OCTOBER 26, 2000 and [proposed] ORDER ADDRESSING THRESHOLD LEGAL ISSUE NO. 2** by depositing a copy thereof in the U.S. mail, postage pre-paid to the following counsel of record on November 14, 2000:


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