

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

COPY

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY NM
FILING AND CLERK OFFICE

2004 DEC 10 AM 10:40

DEAN COLLM
DISTRICT COURT CLERK

STATE OF NEW MEXICO, *ex rel.*)
State Engineer)
and PECOS VALLEY ARTESIAN)
CONSERVANCY DISTRICT,)
Plaintiffs,)
vs.)
L.T. LEWIS, *et al.*,)
UNITED STATES OF AMERICA,)
Defendants,)
and)
STATE OF NEW MEXICO, *et al.*,)
State Engineer)
and PECOS VALLEY ARTESIAN)
CONSERVANCY DISTRICT,)
Plaintiffs,)
vs.)
HAGERMAN CANAL CO., *et al.*,)
Defendants.)

Nos. 20294 and 22600
Consolidated

Honorable David W. Bonem
District Judge *Pro Tempore*

Carlsbad Basin Section
Carlsbad Irrigation District
Sub-Section
Project (Offer) Phase

ORDER GRANTING SUMMARY JUDGMENT AGAINST OBJECTORS HOPE
COMMUNITY DITCH ASSOCIATION AND TRACY/EDDY TRUSTS AND FARMS

This matter comes before the Court on the Motions for Summary Judgment filed by the Carlsbad Irrigation District, (“CID”), and the Pecos Valley Artesian Conservancy District, (“PVACD”), and the Motion to Dismiss filed by the State of New Mexico, *ex rel.*, the State Engineer (“State”),¹ (collectively the “Movants”), directed to the Statements of Objection filed by the Hope Community Ditch Association and the Tracy/Eddy Trusts and Farms, (collectively, the “Objectors”) objecting to the entry of the Partial Final Decree and approval of the Settlement Agreement incorporated therein.

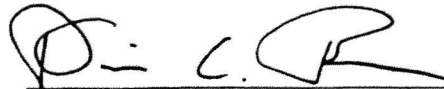
¹ The State’s Motion to Dismiss has been treated as a Motion for Summary Judgment as matters outside the pleadings have been presented and considered in support of that Motion. NMRA 2004, Rule 1-012 (B).

The Objectors filed their Statements of Objection on March 4, 2004 in response to the Orders to Show Cause which were issued by the Court pursuant to the October 2, 2003 Scheduling and Procedural Order on Joint Motion for Entry of Partial Final Decree. The Scheduling and Procedural Order provided that objections could be made on the grounds that: (1) a person's water rights would be adversely affected by entry of the proposed Partial Final Decree and approval of the Settlement Agreement; or (2) the Negotiating Parties lack legal authority to enter the agreements contained in the proposed Partial Final Decree or the Settlement Agreement. *See* Scheduling and Procedural Order, p. 13-14 and Order to Show Cause, p. 2.

Having considered the Parties' pleadings, motions, and memoranda of law in support thereof, and having heard the oral arguments presented on November 22, 2004, and the Court having issued its decision in a telephonic hearing on November 30, 2004 (the transcript of which is part of the record of these proceedings), the Court finds that no genuine issues of material fact exist. The Movants are entitled to summary judgment as a matter of law. The Court therefore orders that all objections are dismissed with prejudice and summary judgment is entered in favor of the Movants.

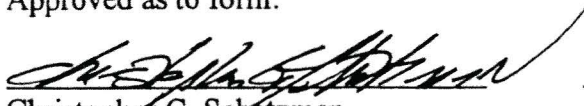
All objections to entry of the Partial Final Decree having been resolved,² the Court will enter the Partial Final Decree with the incorporated Settlement Agreement submitted to the Court by the State, CID, PVACD, and the United States on March 28, 2003.

² The City of Alamogordo and the City of Santa Rosa withdrew their objections to the entry of the proposed PFD. The Brantley Interests, by and through counsel, telephonically informed the Court on November 15, 2004, that no evidence would be presented in support of its objection and the Court could enter the PFD without regard to their objection.



DAVID W. BONEM
DISTRICT JUDGE *PRO TEMPORE*

Approved as to form:



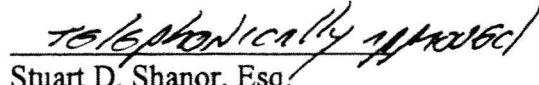
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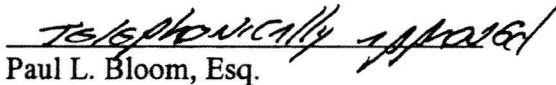
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