

Section (hereinafter "**Order Re Responses**") filed herein on March 12, 1993; and the Court being sufficiently advised in the premises; the following **Status Report and Scheduling Order** is entered in connection therewith:

I. GENERAL BACKGROUND AND SUMMARY OF CARLSBAD BASIN SECTION

The background, history and a general statement of the proceedings, and current and future outlook thereof involving the Carlsbad Basin are set forth in a September, 1989 publication of the New Mexico State Engineer's Office entitled "**PECOS RIVER WATER RIGHTS ADJUDICATION**". The Carlsbad Basin includes groundwater rights on the Black River. The information contained herein supplements the information in the publication pertaining to the Carlsbad Basin.

II. RESPONSES OF COUNSEL

The date, names and addresses of parties and their counsel responding to the aforesaid letter of the Court and **Order Re Responses**, together with corresponding Subfile numbers (to the extent submitted), and a summary of the status of these proceedings pertaining to the Carlsbad Irrigation District Section - Carlsbad Basin Section are as follows:

1.	02/10/93	State Engineer Bataan Memorial Building Room 101 P.O. Box 25102 Santa Fe, NM 87504-5102	Lee Warren, Esq. and other counsel of record Legal Services Division State Engineer Office P.O. Box 25102 Santa Fe, NM 87504-5102 (505) 827-6150
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SUMMARY OF STATE ENGINEER'S RESPONSE

Counsel for the State Engineer's (hereinafter called the "State") description of the Carlsbad Irrigation District Section is as follows:

"The Carlsbad Irrigation District is a United States Bureau of Reclamation project, consisting of 25,050 acres and around 550 members. The hydrographic survey of the district has been completed and the actions required to adjudicate the project water right are anticipated to begin, if not be completed, this year. It is anticipated that the adjudication of member rights, within the limits established for the project right, will follow."

"Procedures for the project adjudication are currently under discussion between representatives of the state, Bureau of Reclamation, and Carlsbad Irrigation District. Due to the significant claims of the project, the very early priority dates associated with those claims, and the impact of those claims on the Pecos River Basin, the adjudication of the project right will likely be performed on an inter se basis, with all claimants of record on the river being served the district's claims. We anticipate challenges regarding the adjudication of a project right, rather than an adjudication on a farm-by-farm basis, and the early priority dates."

Except for the foregoing, the State did not file any objections, comments or recommendations in response to the Court's **Order Re Responses** in connection with the scheduling or conduct of further proceedings involving the Carlsbad Basin Section.

2.	02/10/93	Carlsbad Irrigation District	Hubert & Hernandez, P.A. P.O. Drawer 2857 Las Cruces, NM 88004-2857 (505) 526-2101
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SUMMARY OF RESPONSE OF CARLSBAD IRRIGATION DISTRICT

Water rights of the project were previously adjudicated as a part of the Hope Decree in the name of the United States for the

project. Water rights of the Carlsbad Project vis a vis the United States and the Carlsbad Irrigation District is an issue although interests are aligned in terms of the total amount of project water rights. The Carlsbad Irrigation District defers to the State to inform as to status of the proceedings. The Carlsbad District states that the State has indicated that it will be submitting an offer of judgment on the Carlsbad Project shortly.

Except for the foregoing, the Carlsbad Irrigation District did not file any objections, comments or recommendations in response to the Court's **Order Re Responses** in connection with the scheduling or conduct of further proceedings involving the Carlsbad Basin Section.

ACTION BY THE COURT

Further action should be deferred in order to afford a reasonable time for submission and review of the offer of judgment by the State.

3.	02/08/93 and 03/29/93	United States of America (hereinafter called the "United States") See address of counsel	Don J. Svet, United States Attorney Herbert A. Becker, Assistant United States Attorney P.O. Box 607 Albuquerque, NM 87103 (505) 766-1060
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SUMMARY OF RESPONSE OF THE UNITED STATES

The United States may have claims in this section, but because it has not received the State's maps designating the surface area being adjudicated, it has not begun the preparation of claims.

The United States claims that the United States Bureau of Reclamation has extensive rights based on the Hope decree and that

some of these rights are used by the Carlsbad Irrigation District and some in various storage facilities. The United States claims that because of various endangered species, it is concerned about minimum-in-stream flows.

The State, the Carlsbad Irrigation District and the United States are engaged in finalizing an offer of judgment. When the process is completed, the United States requests a status conference among all interested parties to establish a final *inter se se* phase.

Counsel requests that they be included in the master mailing list for service in connection with this phase of the proceedings.

4.	02/03/93	Pecos Valley Artesian Conservancy District (PVACD) P.O. Box 1346 Roswell, NM 88201	Interjurist Law Firm through Fred H. Henninghausen United Bank Plaza, Suite 900 400 North Pennsylvania Avenue Roswell, NM 88201 P.O. Box 820 Roswell, NM 88202-0820 (505) 622-2800
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PVACD was a co-plaintiff in the original suit in the Hondo Section and a defendant in some of the individual subfiles as an owner of water rights purchased for retirement.

Mr. Henninghausen has also represented individual parties whose subfile adjudication have been completed. The names and subfile numbers pertaining to these individuals have not been submitted. Mr. Henninghausen has also represented Messrs. Mike, Herbert, David and William Corn in a matter involving the relation back of groundwater priority to surface water priority now on appeal to the New Mexico Court of Appeals.

SUMMARY OF RESPONSE OF PVACD

Counsel states, generally, that in connection with the proceedings, one of the remaining issues is whether stock and domestic uses within the Pecos River Steam System must be adjudicated or whether the effects of such user can be prorated as to existing water rights. Another may be whether the adjudication of the stream system can be "final" until all water rights in the drainage boundary, including those in the nondeclared areas are adjudicated. The response then states in connection with the Carlsbad Basin:

"In view of the expressed request of the Carlsbad Irrigation District for administration of the Pecos Stream System on a priority basis and the expressed intention of the State Engineer to utilize the adjudication in the Lewis suit for that purpose, the adjudication of the rights of the Carlsbad Irrigation District becomes of paramount interest to upstream parties. In view of this it would appear reasonable that certain issues should be addressed prior to adjudication of the rights of individual water users in the Carlsbad project. This procedure would preserve judicial economy by preventing relitigation of the same issues by inter se parties subsequent to the individual adjudications."

"The issues which will undoubtedly (sic) be raised as to the water right of the Carlsbad Irrigation District include (a) whether they are entitled to a "rate of flow" under New Mexico adjudication Statutes; (b) whether projects lands were developed within a reasonable time entitling them to the original priority claimed; (c) the relationship of additional storage and upstream reservoirs to the priority of the original right or, to the priority of the right claimed by application to the State Engineer; (d) historical availability of water in relation to the amount of water claimed; (e) the quantity of total land claimed to have a water right; (f) the ownership of the rights; (g) the status of supplemental wells, and other similar issues. It is the recommendation of the PVACD that these issues be heard prior to the adjudication of individual rights under the Carlsbad Irrigation District."

Prehearing conferences are recommended for each area to define procedures, issues and controversies with the necessity for written submissions, hearing and arguments determined at such conferences.

Except for the foregoing, the PVACD did not file any objections, comments or recommendations in response to the Court's **Order Re Responses** in connection with the scheduling or conduct of further proceedings involving the Carlsbad Basin Section.

5.	02/10/93	Water Defense Association	Simms & Stein, P.A. through James C. Brockmann P.O. Box 280 Santa Fe, NM 87504 (505) 983-3880
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Parties are represented by counsel for the Water Defense Association in this phase of the proceedings.

No specific recommendations concerning the Carlsbad Basin were made by counsel.

Except for the foregoing, the Water Defense Association did not file any objections, comments or recommendations in response to the Court's **Order Re Responses** in connection with the scheduling or conduct of further proceedings involving the Carlsbad Basin Section.

ACTION BY THE COURT CONCERNING ALL RESPONSES

A. Discussions among representatives of the State, the Carlsbad Irrigation District, the United States, the PVACD, the Water Defense Association and other interested parties represented by counsel and parties appearing *pro se* should continue discussions in order to determine whether a stipulated offer of judgment and

order can be agreed upon. The Court has received a letter dated May 5, 1993 from Lee Warren, Esq. regarding scheduling and pre-hearing conference(s). Counsel are requested to again advise the Court regarding the status of negotiations concerning these matters and their recommendations by submissions on or about July 15, 1993.

B. In connection with the aforesaid discussions and meetings, counsel and interested parties appearing *pro se* shall also identify additional issues and controversies, if any, other than those set forth above which may require scheduling of pre-trial conferences with the Court and submit their recommendations to the Court within sixty (60) days after the date of service of this Order.

C. Scheduling and pre-hearing conferences will be scheduled by the Court as required. Recommended places and dates for such conferences shall be submitted as a part of said submissions regarding such conferences.

D. The parties shall confer and submit to the Court at least fifteen (15) days prior to the date of any pre-hearing conference, a proposed pre-hearing order setting forth the respective claims of the parties, matters about which the parties are in agreement and matters which will require the Court's guidance and direction or which will otherwise have to be resolved by the Court. The submissions shall be patterned upon the form and content of customary pre-trial orders with appropriate modifications depending upon the particular issues and controversies to be determined. Said matters may include, but shall not necessarily be limited to,

those specified in SCRA 1986, 1-016 C.(1)-(12), those set forth in paragraphs 3, 4, and 5, pages 11 and 12 of the Court's Draft Status Report and other related matters. Times and places for final pre-trial conferences and trials will be thereafter set by the Court.

E. Fifteen (15) days after the date of pre-hearing conferences, a consolidated pre-hearing order shall be submitted by counsel to the Court incorporating the matters determined at the pre-hearing conference and addressing the legal and factual issues to be heard in subsequent proceedings, as well as timetables governing pre-hearing procedures, including discovery deadlines, filing of witness lists, exchanging exhibits, filing synopsis of testimony, filing of memoranda briefs, the filing of preliminary, tentative requested findings of fact and conclusions of law and other matters.

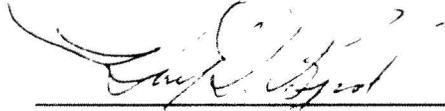
F. Except as specifically set forth herein, objections, comments, suggestions and arguments set forth in the responses to the Court's **Draft Status Report and Scheduling Order** are not adopted by the Court.

G. Counsel for the United States and its agencies and their addresses should be included in the master mailing list as follows:

Don J. Svet, Esq.
United States Attorney
Herbert A. Becker, Esq.
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103

FURTHER MISCELLANEOUS ORDERS

The cooperation and assistance of counsel for the State is solicited in serving this status report and scheduling order to all interested counsel of record and parties appearing *pro se* in connection with the aforesaid phase of this adjudication proceeding.



Harl D. Byrd
District Judge Pro Tempore
P.O. Box 423
Albuquerque, New Mexico 87102-0423
(505) 764-0098

*Law offices of
Karl D. Byrd*

January 19, 1993

**Re: State of New Mexico ex rel Reynolds v. Lewis, Fifth
Judicial District Nos. 20294 and 22600 (Consolidated)**

To: All Counsel of Record and Parties Appearing Pro Se

I have been appointed to act as judge pro tempore in the above-referenced proceeding.

Please furnish the following information to me at the address set forth below concerning each phase of these proceedings by February 10, 1993:

1. The names and addresses of each client represented by counsel. The name and address of each party appearing pro se.
2. To the extent deemed necessary or helpful in connection with determining the remaining issues and controversies in these proceedings, a brief history and background and the current status of each phase of these proceedings.
3. A concise description of the remaining issues and controversies involved in each phase of these proceedings.
4. The respective claims and contentions of the parties in connection with each remaining issue and controversy.
5. A summary of the current status of each remaining issue and controversy.
6. Recommendations for limiting, defining and clarifying remaining issues and controversies.
7. The possibility of stipulations regarding issues of fact and matters of law.
8. Identification of issues and controversies which may be resolved as matters of law and those which will require discovery and an evidentiary hearing together with estimates of the time required to prepare and present the matter for determination by the court.

200 W. Marcy, Suite 101 - P.O. Box 1567 - Santa Fe, N.M. 87504

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Exhibit A

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All Counsel of Record
and Parties Appearing Pro Se
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9. Recommendations concerning the order in which remaining issues and controversies should be considered together with a brief description of required action to be taken, the necessity of pre-hearing conferences, written submissions and arguments, hearings and other matters in connection therewith.

10. Recommendations concerning a time and place for a status and scheduling conference in connection with each phase or combined phases of these proceedings.

All parties are urged to submit additional information concerning the status of these proceedings and recommendations which will result in the expeditious determination of all remaining issues and controversies.

Harl D. Byrd