

MAY 9 1994

BEE J. CLEM, CLERK

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel. )  
STATE ENGINEER and PECOS )  
VALLEY ARTESIAN CONSERVANCY )  
DISTRICT, )

Plaintiffs, )

vs. )

L.T. LEWIS, et al., and )  
UNITED STATES OF AMERICA, )

Defendants, )

and )

STATE OF NEW MEXICO ex rel. )  
STATE ENGINEER and PECOS )  
VALLEY ARTESIAN CONSERVANCY )  
DISTRICT, )

Plaintiffs, )

vs. )

HAGERMAN CANAL CO., et al., )

Defendants. )

Nos.. 20294 and 22600  
Consolidated

Carlsbad Irrigation District  
Section

PRETRIAL ORDER

THE MATTER of procedure for the adjudication of the Carlsbad Project water rights having come before the Court February 2, 1994, at a pretrial conference pursuant to SCRA 1986, 1-016 (1992 Repl.Pamp.), said procedure having been revised, distributed to, and further considered by counsel appearing at the pretrial conference, counsel for plaintiff State of New Mexico ex rel. State Engineer (State) and defendants United States of America (United States) and Carlsbad Irrigation District (District) having agreed

to the form and substance of this pretrial order, and the Court being fully advised, it is hereby ordered that the following determinations and procedure shall control the adjudication:

I. General Nature of Adjudication and Claims.

- A. The Carlsbad Project is a federal water project developed by the United States through the Bureau of Reclamation and managed, operated, and maintained by the District for the benefit of District members.
- B. The project water rights encompass the right to divert, impound, and store surface waters of the Pecos River stream system for irrigation, domestic, and stock watering uses.
- C. The State, United States, and the District shall describe the elements of the project rights in an offer of settlement by the State to the United States and the District or in a statement of claims made by the United States and the District.
- D. All water right claimants of record in the Pecos River stream system, including all members of the District, shall be served with copies of the offer or the claims and allowed to object thereto, as hereinafter provided.

II. Adjudication Procedure.

- A. Within 15 days from the entry of this pretrial order, State shall serve on the United States and the District an offer of settlement describing the diversion, impoundment, storage, and beneficial consumptive use

rights for the Carlsbad Project, said offer to include the following essential elements:

1. Diversion rights

- (1) Purpose
- (2) Sources (Pecos River stream system, including the Black River)
- (3) Points of diversion (Pecos and Black Rivers)
- (4) Place of use, including the total acreage thereof
- (5) Amount of water, including --
  - (a) Annual diversion amount
  - (b) Farm delivery amount
  - (c) Consumptive irrigation requirement
  - (d) Off-farm conveyance efficiency
  - (e) On-farm irrigation efficiency
  - (f) Annual depletion amount
- (6) Priorities

2. Impoundment and storage rights

- (1) Purpose
- (2) Source
- (3) Places and locations of impoundment and storage
- (4) Amounts of water storage
- (5) Priorities

B. Within 30 days from the date of receipt of the offer, the United States and the District shall accept or reject the offer.

1. Within 210 days of an acceptance of the offer of settlement, the State shall serve or cause to be served on all parties, including all members of the District and all water rights claimants of record within the Pecos River stream system, and shall publish in newspapers of general circulation in the Pecos River stream system, a copy of the accepted offer and a notice of the date by which objections to said offer must be filed.

2. Within 210 days of a rejection of the offer, the United States and the District shall serve on all parties, including all members of the District, all water rights claimants of record within the Pecos River stream system, and the State, and shall publish in newspapers of general circulation in the Pecos River stream system, a copy of a statement of water right claims for the Carlsbad Project (said statement to include all elements of the offer listed in II.A.1. and II.A.2. above) and a notice of the date by which objections to said statement of claims must be filed. The State is directed to assist in the preparation of the service list by providing to the United States and the District relevant information from permits maintained and declarations filed in the State Engineer Office, existing adjudications, subfile orders, and other relevant records.
  3. Objections filed under either II.B.1 or II.B.2 above may address the binding effect of the decree in United States of America v. Hope Community Ditch, et al., U.S. District Court, Cause No. 712 Equity (1933), and matters deemed appropriate for decision by the Court as threshold legal issues.
- C. Within 30 days from the date by which objections to the offer or statement of claims are due, the United States

and the District shall respond to objections or request the Court to dismiss any objections based on lack of standing to object or for other grounds.

- D. Within 60 days following the date by which the United States and the District shall respond to objections or request the Court to dismiss objections, this pretrial order shall be amended to include a schedule for completion of discovery and for hearing.

### **III. Times for Submissions.**

The times set forth in this pretrial order represent maximum times permitted for filings, responses and other submissions for accomplishing the tasks set forth. All counsel and parties appearing pro se shall timely comply with all of the aforesaid schedules and dates. If deadlines cannot be met, proposed extensions shall be granted only upon the filing of a motion and for good cause.

All counsel, parties appearing pro se and the Court shall cooperate and use their best efforts to expedite completion of this phase of the proceedings in order that it may be concluded as expeditiously as possible and prior to the times permitted in this pretrial order.

### **IV. Court Hearings and Orders.**

Following hearing on any objections to the offer or statement of claims the Court shall direct such further hearings as it may deem necessary or enter an order adjudicating the project water right claims of the United States and the District. The order

shall be final and binding on all parties and on all water right claimants within the Pecos River stream system, subject only to such future modification as may be authorized by the Court.

**V. Pretrial Order Control and Amendment.**

This pretrial order will control the course of the adjudication and may not be changed without either the consent of the State, United States, District, and Court, or the order of the Court to prevent injustice.



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HARL D. BYRD  
District Judge Pro Tempore