

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY, N.M.
FIVE-PARTY OFFICE

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JON J. CLEM
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.)

Nos. 20294 & 22600
CONSOLIDATED

Carlsbad Basin Section
Carlsbad Irrigation District

OPINION RE THRESHOLD LEGAL ISSUE NO. 4

THIS MATTER comes on for consideration by the Court in connection with
Threshold Legal Issue No. 4 which provides:

Whether the adjudication of the project rights described in the Offer may
proceed without first adjudicating the interests of the District members.

See PRETRIAL ORDER FOR CARLSBAD PROJECT WATER RIGHT CLAIMS (Pretrial
Order) filed on February 26, 1996, page 6.¹

I. SUBMISSIONS REVIEWED BY THE COURT.

In connection with the consideration of Threshold Legal Issue No. 4, the Court
has reviewed:

1. NEW MEXICO STATE UNIVERSITY'S BRIEF ON THRESHOLD LEGAL
ISSUES THREE AND FOUR served on October 25, 1996 by Sheehan,

¹The United States of America is referred to herein as United States. The State of New
Mexico is referred to herein as State. The Carlsbad Irrigation District is referred to herein as
CID. Pecos Valley Artesian Conservancy District is referred to herein as PVACD. The
Carlsbad Project is referred to herein as the Project.

Sheehan & Stelzner, P.A. through John W. Utton, Esq. and Cynthia Mojtabai, Esq.

2. DEFENDANTS' BRIEF ON THRESHOLD LEGAL ISSUES 1, 4 AND 5 served on October 28, 1996 by the Law Office of Hennighausen & Olsen through A. J. Olsen, Esq.
3. PVACD'S BRIEF ON THRESHOLD LEGAL ISSUE # 4 served on October 28, 1996 and prepared by Fred H. Hennighausen, Esq., Stuart D. Shanor, Esq. and Eric Biggs, Esq.
4. STATE'S RESPONSE BRIEF AS TO LEGAL THRESHOLD ISSUES 3 AND 4 served on March 26, 1997 by Rebecca Dempsey, Esq., Special Assistant Attorney General.
5. UNITED STATES OF AMERICA'S RESPONSE TO PVACD'S BRIEF ON THRESHOLD LEGAL ISSUE NO. 4 served on March 31, 1997 by the United States Department of Justice through Lynn A. Johnson, Esq. and David W. Gehlert, Esq.
6. CID CONCURRENCE IN AND ADOPTION OF DEFENDANT UNITED STATES RESPONSE BRIEFS ON THRESHOLD LEGAL ISSUES NOS. 3 AND 4 served on March 31, 1997 by Hubert & Hernandez, P.A. through Beverly J. Singleman, Esq. and Steven L. Hernandez, Esq.
7. CID'S RESPONSE IN OPPOSITION TO ARGUMENTS MADE IN STATE'S RESPONSE BRIEF AS TO LEGAL THRESHOLD ISSUES 3 AND 4 served on April 30, 1997 by Hubert & Hernandez, P.A. through Beverly J. Singleman, Esq.
8. NEW MEXICO STATE UNIVERSITY'S REPLY BRIEF ON THRESHOLD LEGAL ISSUES THREE AND FOUR served on April 30, 1997 by Sheehan, Sheehan & Stelzner through John W. Utton, Esq.
9. PVACD'S CONSOLIDATED REPLY REGARDING THRESHOLD LEGAL ISSUE # 4 (PVACD's Reply) served on May 1, 1997 by Fred H. Hennighausen, Esq., Stuart D. Shanor, Esq. and Eric Biggs, Esq.

II. BACKGROUND.

The terms and provisions of the proposed Stipulated Offer of Judgment (hereafter Offer) submitted by the State, the United States and the CID filed herein on

June 22, 1994, are incorporated herein by reference. A copy of the Offer is attached as Exhibit 4 to the US/CID Memorandum re Threshold Legal Issue No. 2.

The claims and objections of the parties concerning the proposed Offer in connection with the Project are set forth in the PRETRIAL ORDER FOR CARLSBAD PROJECT WATER RIGHTS CLAIMS filed on February 26, 1996.

Summarization of all of the claims, contentions and arguments of the parties in connection with Threshold Legal Issue No. 4 would serve no useful purpose. The aforesaid briefs are available to all interested parties for review.

The parties have agreed, and the Court concurs, that oral arguments are not necessary in connection with the determination of Threshold Legal Issue No. 4.

Opinions concerning Threshold Legal Issue No. 2 which provides:

Whether the decree in United States of America v. Hope Community District, U.S. District Court Cause No. 712 Equity (1933) provides the United States and the District with res judicata and estoppel defenses to filed objections.

and Threshold Legal Issue No. 3 which provides:

Whether project water rights described in the Offer are rights of the United States and/or the District or rights of the District members.

have been prepared. Objections, comments and suggestions concerning the opinions have been solicited by the Court and the time for submissions have been scheduled.

There is no reason to defer the consideration and determination of Threshold Legal Issue No. 4.

III. COURT'S OPINION RE THRESHOLD LEGAL ISSUE NO. 4.

The Court having reviewed the aforesaid submissions and being sufficiently advised in the premises submits this opinion in connection with Threshold Legal Issue No. 4.

Further proceedings in connection with issues involving Project water will include:

1. The determination and adjudication of the respective rights, interests, duties and obligations of the United States, the CID, and landowners in the Project pertaining to the diversion, storage, delivery and distribution of Project water; and
2. The determination and adjudication of the rights, interests, duties and obligations of landowners in connection with Project water, including but not limited to water rights in connection therewith. The determination and adjudication of Project water rights of landowners will require the determination of the amount of water devoted to beneficial use by landowners on lands within the Project.

The determination and adjudication of all of the aforesaid rights, interests, duties and obligations should be accomplished as a part of one consolidated proceeding. There is no necessity for, and no good reason has been shown why the rights and interests of the landowners should be determined and adjudicated before the rights and interests of the United States and the CID. Therefore, the adjudication of Project rights described in the Offer may proceed without first adjudicating the interests of the District

members.

On or before December 15, 1997, counsel shall submit their objections, comments, and suggestions concerning this decision to the Court.

Counsel for the State is requested to serve a copy of this opinion upon all interested parties who have elected to participate in this phase of these proceeding with the exception of counsel to whom the Court is mailing a copy.

Dated: 11-06-97



HARL D. BYRD
DISTRICT JUDGE PRO TEMPORE