

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.	)	
State Engineer and	)	
PECOS VALLEY ARTESIAN	)	
CONSERVANCY DISTRICT,	)	
	)	Nos. 20294 & 22600
Plaintiffs,	)	CONSOLIDATED
	)	
vs.	)	
	)	
L.T. LEWIS, et al.,	)	Carlsbad Basin Section
UNITED STATES OF AMERICA,	)	Carlsbad Irrigation District
	)	
Defendants.	)	

OPINION AND ORDER RE PROPOSED PROCEDURES FOR IDENTIFYING  
AND RESOLVING GENUINE ISSUES OF MATERIAL FACT  
THRESHOLD LEGAL ISSUE NO. 2

**THIS MATTER** comes on for consideration in connection with the JOINT PROPOSED PROCEDURE FOR IDENTIFYING AND RESOLVING ISSUES OF MATERIAL FACT RELATING TO THRESHOLD LEGAL ISSUE NO. 2-PRECLUSION DEFENSES (Proposed Procedure) served by counsel for the United States of America (United States), the Carlsbad Irrigation District (CID), the State of New Mexico (State) and Pecos Valley Artesian Conservancy District (PVACD) on November 17, 1997, and the Court being sufficiently advised in the premises;

**IT IS THEREFORE ORDERED** that:

1. The Court is of the opinion that all matters pertaining to the resolution of genuine issues of material fact concerning due process, privity, laches and the rule of property doctrine (hereafter remaining legal matters) which are the subject matter of the

Court's Opinion re Threshold Legal Issue No. 2 should have been undertaken and resolved prior to the filing of counsels' submissions regarding Threshold Legal Issue No. 2.

Proposed procedures were solicited from counsel by the Court in order to determine whether the issue of the existence of material facts could be resolved without an evidentiary hearing. (Underscoring for emphasis added.) In any event, Threshold Legal Issue No. 2 and the remaining legal matters in connection therewith cannot be decided as a matter of law if genuine issues of material fact exist in connection with a particular remaining legal matter.

2. The Proposed Procedure is not approved because proceedings to determine Threshold Legal Issue No. 2 and remaining legal matters in connection therewith should be given a much higher priority and concluded more expeditiously prior to the time suggested by counsel.

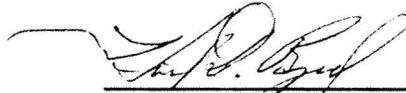
3. All investigative and other matters required for the United States and the CID to specifically identify all matters, factual and legal, which they claim have been precluded by the *Hope Proceedings* or the *Black River Proceedings* shall be concluded as expeditiously as possible and incorporated into a written submission filed with the Clerk of the Court and served upon the Court and all counsel no later than January 9, 1998 or they shall be deemed to waive their right to do so.

4. All matters pertaining to the preparation and exchanges of proposed stipulations concerning the resolution of genuine issues of material fact in connection with remaining legal matters shall be completed as expeditiously as possible. On or

before January 26, 1998, counsel and parties appearing *pro se* shall submit to the Court a precise description of all material facts required in order to determine the aforesaid legal matters and set forth with specificity those issues of material fact concerning the aforesaid legal matters that have been resolved by stipulation and those which will require an evidentiary hearing for their resolution.

5. Upon receipt of the aforesaid submissions of counsel by the Court, the Court will enter an order scheduling such additional proceedings as may be required in order to determine Threshold Legal Issue No. 2 and remaining legal matters.

Dated: 11-19-97

  
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Harl D. Byrd  
District Judge Pro Tempore

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of OPINION AND ORDER RE PROPOSED PROCEDURES FOR IDENTIFYING AND RESOLVING GENUINE ISSUES OF MATERIAL FACT THRESHOLD LEGAL ISSUE NO. 2 was served by mail, postage prepaid, on November 19, 1997 to the following counsel of record:

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Dated this 19TH day of November, 1997.



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HARL D. BYRD  
DISTRICT JUDGE PRO TEMPORE