

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,)	
)	
Plaintiffs,)	Nos. 20294 & 22600
)	CONSOLIDATED
)	
vs.)	
)	
L.T. LEWIS, et al.,)	Carlsbad Basin Section
UNITED STATES OF AMERICA,)	Carlsbad Irrigation District
)	
Defendants.)	

ORDERS RE MOTIONS TO STRIKE SUBMISSIONS OF THE UNITED STATES OF AMERICA RE REQUESTED INFORMATION AND OBJECTIONS, COMMENTS AND SUGGESTIONS - THRESHOLD LEGAL ISSUES NOS. 3 AND 4

THIS MATTER comes on for consideration by the Court in connection with the following motions which have been consolidated for purposes of disposition:¹

1. PVACD's MOTION TO STRIKE US SUBMISSION filed on December 17, 1997 by counsel for Pecos Valley Artesian District (PVACD);
2. DEFENDANTS' MOTION TO STRIKE U.S. SUBMISSION AND BRIEF IN SUPPORT OF DEFENDANTS' MOTION which adopted and incorporated PVACD's motion described in paragraph 1, above, and its memorandum brief in support thereof which was served by A. J. Olsen, Esq., of Hennighausen & Olsen, on December 26, 1997, on behalf of certain

¹See COURT'S DECISIONS AND ORDERS RE REQUEST FOR INFORMATION, OBJECTIONS, COMMENTS AND SUGGESTIONS RE OPINIONS - THRESHOLD LEGAL ISSUE NO. 3 AND THRESHOLD LEGAL ISSUE NO. 4 AND ORDER RE PREPARATION OF SUPPLEMENTAL PRE-HEARING ORDER (hereafter Court's January 9, 1998 Decision) served on January 9, 1998, at page 3.

All counsel are again requested to comply with all procedures concerning motion practice.

defendants identified on Exhibit A to the motion.

3. MOTION TO STRIKE THE UNITED STATES' SUBMISSION served on December 19, 1997 by counsel for Draper Brantley Jr., Estate of Draper Brantley, Sr., George and Mary Brantley Estate, Bettie Anne Brantley, George and Nancy Brantley, Riverside County Club, a New Mexico non profit corporation, of Carlsbad, New Mexico, Jack and Joy Volpato and Wayne E. Carpenter and Mary Carpenter (hereafter collectively referred to as the Martin Clients);
4. PVACD'S MOTION TO STRIKE US OBJECTIONS filed on December 29, 1997 by counsel for PVACD.
5. DEFENDANTS' MOTION TO STRIKE U.S. OBJECTIONS AND BRIEF IN SUPPORT OF DEFENDANTS' MOTION which adopted and incorporated PVACD's motion described in paragraph 4 above and its memorandum brief in support thereof by A. J. Olsen of Hennighausen & Olsen, on behalf of certain defendants identified on Exhibit A to the motion, served on December 26, 1997

All of the motions refer to SCRA 1-012(F) in support thereof. This rule provides:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within thirty (30) days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

The motions of defendants described in numbered paragraphs 1, 2, and 3 are hereafter collectively referred to as Defendants' Motions to Strike United States' Submission. The motions described in numbered paragraphs 4 and 5 are hereafter collectively referred to as Defendants' Motions to Strike the United States' Objections, Comments and Suggestions.

The arguments and contentions of the United States and PVACD concerning the opinion of the Superior Court of the State of Washington in and for Yakima County are disposed of in the COURT'S DECISIONS AND ORDERS RE REQUEST FOR

INFORMATION, OBJECTIONS, COMMENTS AND SUGGESTIONS RE OPINIONS -
THRESHOLD LEGAL ISSUE NO. 3 AND THRESHOLD LEGAL ISSUE NO. 4 AND
ORDER RE PREPARATION OF SUPPLEMENTAL PRE-HEARING
ORDER, served on January 9, 1998, page 6.

Oral arguments would not be helpful in order to determine the issues involved in connection with the motions to strike. The motions will be determined based upon the submissions of the parties.

I. Submissions re Defendants' Motions to Strike the United States'

Submission.

The United States' Submission was in response to the Court's request that:

...Counsel are requested to confirm by reference to submitted exhibits or submit additional exhibits which cumulatively define the current respective ownership rights, interests, duties and obligations of the United States, CID, PVACD and members of CID in connection with Project water... .
These submissions should be made to the Court by December 8, 1997.

Court's November 1997 Opinion, page 8.

In connection with the Defendants' Motions to Strike the United States'

Submission, the Court has considered the following in addition to said motions:

1. The Court's OPINION RE THRESHOLD LEGAL ISSUE NO. 3 (Court's November 1997 Opinion) served on November 3, 1997, and, in particular, the Court's request for current information concerning ownership rights, interests, duties and obligations of the United States, CID, PVACD and members of CID in connection with Project water. Court's November 1997 Opinion, page 8.
2. The UNITED STATES' SUBMISSION IN RESPONSE TO THE COURT'S REQUEST IN COURT'S OPINION RE THRESHOLD LEGAL ISSUE NO. 3 (United States' Submission) and attachments served on December 5, 1997.

3. PVACD'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE US SUBMISSION served on December 17, 1997, by counsel for PVACD.
4. MEMORANDUM BRIEF IN SUPPORT OF MOTION TO STRIKE UNITED STATES' SUBMISSION ON LEGAL ISSUE NO. 3, served by W. T. Martin, Jr. on December 19, 1997, on behalf the Martin Clients.
5. UNITED STATES' OPPOSITION TO PVACD'S MOTION TO STRIKE US SUBMISSION and attached exhibits, served on December 23, 1997, by David W. Gehlert.
6. PVACD'S REPLY ON MOTION TO STRIKE US SUBMISSION and attached exhibits, served on January 7, 1998 by counsel for PVACD..

II. Basis of Defendants' Motion to Strike the United States' Submission.

The grounds relied upon in support of the motion of PVACD and the other parties represented by Hennighausen & Olsen to strike the United States' submission are that the submission is "...redundant, immaterial, impertinent, and should be striken...". The grounds relied upon in support of the Martin Clients' motion to strike the United States' submission are:

1. The submission is unresponsive to the instructions of the Court;
2. It is redundant in that the United States is attempting to reargue in an additional brief the issues previously argued in briefs submitted prior to the Court's Decision.
3. It is an attempt to argue points at a time in which there is no right of reply by any party. Numerous points are raised that are either incorrect or simply partially addressed. It is an attempt to gain advantage over parties where the parties have no right of reply or response. The United States had many months, with several extensions, in which to prepare an in depth argument in brief form for this Court to consider in arriving at its Decision on Legal Threshold Issue No. 3. The United States chose to rely upon the Carlsbad Irrigation District's ("CID") briefing. Now, the United States is obviously unhappy with the briefing and the Court's Opinion and wants [to] reargue matters it already had the opportunity to argue.

4. It is impertinent in that it is a direct violation of this Court's intent and instructions in its Opinion on Legal Threshold Issue No. 3.

III. Court's Decision re Defendants' Motions to Strike the United States' Submission.

The Court, having reviewed the Defendants' Motions to Strike United States' Submission, the submissions of counsel in connection therewith, and being otherwise sufficiently advised in the premises, finds, concludes and orders that:

1. Much of the material contained in the United States' Submission, in addition to it being unresponsive to the Court's request, is repetitious and redundant and reargues matters previously argued, considered and determined by the Court.

2. Except for the specific references to documents identified by the United States in the United States' Submission and explanatory matters in connection with the documents, the Defendants' Motions to Strike the United States' Submission are well taken and they should be and hereby granted.

IV. Submissions re Defendants' Motions to Strike the United States' Objections, Comments and Suggestions.

The United States' Objections, Comments and Suggestions were in response to the Court's general request that "...counsel shall submit their objections, comments and suggestions concerning this decision to the Court...". Court's November 1997 Opinion, page 28.

In connection with Defendants' Motions to Strike the United States' Objections, Comments and Suggestions, the Court has considered the following submissions in addition to the motions:

1. The UNITED STATES' OBJECTIONS, COMMENTS AND SUGGESTIONS CONCERNING THE COURT'S OPINIONS ON THRESHOLD LEGAL ISSUE NO. 3 AND THRESHOLD LEGAL ISSUE NO. 4 (United States' Objections, Comments and Suggestions) served on December 12, 1997 by counsel for the United States.
2. The Court's November 1997 Opinion, and, in particular, page 28.
3. PVACD'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE US OBJECTIONS filed on December 29, 1997 by counsel for PVACD.
4. UNITED STATES' OPPOSITION TO PVACD'S MOTION TO STRIKE US OBJECTIONS served on January 13, 1998.

V. Basis of Defendants' Motions to Strike the United States' Objections, Comments and Suggestions.

The grounds relied upon in support of the motions of PVACD and the other clients of Hennighausen & Olsen to strike the objections, comments and suggestions of the United States are "...that they are redundant, immaterial, burdensome to the record, prejudicial to the other parties, and should be stricken. All of these grounds are more fully explained in the accompanying memorandum...". PVACD's Motion to Strike US Objections filed December 29, 1997 at page 1.

VI. Court's Decision re Defendants' Motions to Strike the United States' Objections, Comments and Suggestions.

The Court having reviewed the Defendants' Motions to Strike the United States' Objections, Comments and Suggestions, the submissions of counsel in connection therewith, and being otherwise sufficiently advised in the premises, finds, concludes and orders that:

1. Much of the material contained in the United States' Objections,

Comments and Suggestions is repetitious, redundant, and reargues matters previously considered and ruled upon by this Court; however, in light of the Court's general request for objections, comments and suggestions concerning the Court's November 1997 Opinion, and while the United States' Objections should have been far more specific, the Court is of the opinion that the Defendants' Motions to Strike United States Objections, Comments and Suggestions should be and are hereby denied.

During subsequent phases of these proceedings, all adverse parties will be afforded a full, fair and complete opportunity to respond to all matters argued by the United States in connection with its objections, comments and suggestions.

VII. Preparation of Orders In Connection With Disposition of Motions To Strike.

Counsel for PVACD, the Martin Clients and Mr. Olsen are requested to prepare an order in accordance with this decision, submit to counsel for United States and CID for approval as to form and then submit it to the Court for execution and entry in this cause.

2 - 4 - 98



HARL D. BYRD
DISTRICT JUDGE PRO TEMPORE

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L.T. LEWIS, et al.,)	Carlsbad Basin Section
UNITED STATES OF AMERICA,)	Carlsbad Irrigation District
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Defendants.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of ORDERS RE MOTIONS TO STRIKE SUBMISSIONS OF THE UNITED STATES OF AMERICA RE REQUESTED INFORMATION AND OBJECTIONS, COMMENTS AND SUGGESTIONS - THRESHOLD LEGAL ISSUES NOS. 3 AND 4 was served by mail, postage prepaid, on February 4, 1998 to the following counsel of record:

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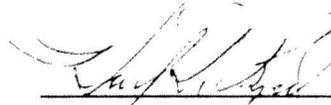
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Dated this 4TH day of February, 1998.



HARL D. BYRD
DISTRICT JUDGE PRO TEMPORE