

COPY

FIFTH JUDICIAL DISTRICT COURT )  
COUNTY OF CHAVES )  
STATE OF NEW MEXICO )  
) )  
STATE OF NEW MEXICO, ex rel. )  
THOMAS C. TURNEY, State Engineer, )  
and PECOS VALLEY ARTESIAN )  
CONSERVANCY DISTRICT, )  
) )  
Plaintiffs, )  
vs. )  
) )  
L. T. LEWIS, et al., and )  
UNITED STATES OF AMERICA, )  
) )  
Defendants. )  
\_\_\_\_\_ )

FIFTH JUDICIAL DISTRICT  
CHAVES COUNTY NM  
FILED CLERK OFFICE

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DEBRA CLEM  
DISTRICT COURT CLERK

Nos. 20294 and 22600  
CONSOLIDATED

Carlsbad Irrigation  
District Section

98 AUG 20 AM 10: 23

11151  
CHAVES COUNTY

**SUPPLEMENTAL PREHEARING ORDER-CARLSBAD PROJECT WATER RIGHTS**

THIS MATTER comes for consideration by the Court pursuant to the Court's March 23, 1998, Orders Re Preparation of Supplemental Prehearing Order and Scheduling Prehearing Conference. Pursuant to the March 23, 1998, Orders, Committee Counsel met and prepared a draft Supplemental Prehearing Order for review and consideration by this Court. Subsequent to the meeting of the Committee Counsel, a revised draft of the Supplemental Prehearing Order was distributed to the Committee Counsel and counsel for the other parties that participated in the briefing of the Threshold Legal Issues (hereinafter referred to as "interested parties").

**PURPOSE AND SCOPE OF SUPPLEMENTAL PREHEARING ORDER**

This Supplemental Prehearing Order supplements the Pretrial Order for Carlsbad Project Water Rights Claims entered by the Court on February 23, 1996. This Supplemental Prehearing Order supersedes all prior procedural orders and pretrial orders

only to the extent they are inconsistent with this Supplemental Prehearing Order.

The February 23, 1996 Pretrial Order identified three Procedural Issues to be resolved by the Court prior to consideration of the Threshold Legal Issues. Procedural Issue No. 3 was the only Procedural Issue identified in the February 23, 1996 Pretrial Order that was submitted to the Court for decision. The Court's Order of August 16, 1996 Relating to Procedural Issues, found that no party filed a brief in support of Procedural Issue Nos. 1 and 2, thus objections based upon these procedural grounds were deemed waived and objections based upon those grounds denied. After briefing, the Court also denied the objections based upon the procedural grounds set forth in Procedural Issue No. 3.

The February 23, 1996, Pretrial Order also identified six Threshold Legal Issues to be resolved prior to the consideration by the Court of the Offer Issues. Briefs were submitted to the Court on all of the Threshold Legal Issues. The Court entered its Opinion Re Threshold Legal Issue No. 1 on February 27, 1997 and its Opinion Re Threshold Legal Issue No. 5 on March 4, 1997. Briefing on Threshold Legal Issue No. 6 was completed but subsequently, on March 7, 1997, the Commissioner of Public Lands withdrew his objection and thereby mooted the issue.

The Court has issued the following rulings relating to Threshold Legal Issue No.

2:

1. *Opinion Re Threshold Legal Issue No. 2, September 19, 1997.*
2. *Amendment and Revision to Opinion Re Threshold Legal Issue No. 2, September, 20, 1997.*

3. Second Amendment and Revision to Opinion Re Threshold Legal Issue No. 2 and Order Requesting that Counsel Submit Alternate Dates for a Pretrial Conference, October 21, 1997.
4. Court's Decision and Orders Re Comments of US/CID and PVACD Re Opinion Threshold Legal Issue No. 2 - Request of US/CID for Additional Time to Supplement Submissions and for a Telephonic Status Conference, October 24, 1997.
5. Opinion and Order Re Proposed Procedures for Identifying and Resolving Genuine Issues of Material Fact Threshold Legal Issue No. 2, November 19, 1997.

The Court has issued the following rulings relating to Threshold Legal Issues Nos.

3 and 4:

1. Opinion Re Threshold Legal Issue No. 3, November 3, 1997.
2. Opinion Re Threshold Legal Issue No. 4, November 6, 1997.
3. 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, January 9, 1998.
4. Decision and Orders Re United States' Motion for Reconsideration and Clarification of Court's Decisions and Orders Re Threshold Legal Issue No. 3 or for Entry of Judgment Pursuant to Rule 54(C), March 19, 1998.

The Court has determined that there are material issues of fact that must be disposed of before final determination of Threshold Legal Issue No. 2. Further, the Court has stated in its orders of March 19, 1998 and March 23, 1998, that, having due regard for the Court's prior opinions on Threshold Legal Issue No. 3, there are remaining issues concerning "ownership rights, interests, duties and obligations of the parties in connection with Project water" that must be determined before a final ruling on Threshold Legal Issue No. 3 can be made by the Court. This Supplemental Prehearing

Order describes the procedures that will be followed so that any remaining issues relating to Threshold Legal Issues Nos. 2 and 3 can be resolved by the Court and those issues finally determined.

#### PROCEDURES FOR RESOLUTION OF THRESHOLD LEGAL ISSUE NO. 2

The Court and any interested party will use the following procedures to identify any genuine issues of material fact concerning Threshold Legal Issue No. 2, and to resolve any such genuine issues of material fact.

1. The parties will develop a statement of conclusions of law, and the ultimate issues of fact relating to the conclusions of law, that they believe may be necessary for the Court to determine in connection with a final ruling on Threshold Legal Issue No. 2. Each party will provide to other interested parties a statement of material evidentiary facts with specific reference to exhibits highlighted as to relevant portions which support that party's position on each of its stated ultimate issues of fact and conclusions of law. Any interested party that intends to develop a statement of material evidentiary facts and submit exhibits which support that party's position on ultimate issues of fact and conclusions of law in connection with Threshold Legal Issue No. 2, must give notice of that intention to all interested parties and the Court by July 24, 1998, for the purpose of coordinating with the other parties the development of a schedule for the exchange of statements of material evidentiary facts and supporting exhibits and stipulating to material facts about which there is no genuine issue.

If a referenced exhibit has previously been submitted to the Court and served upon all interested parties, each party shall have the option of either providing to the other

interested parties a copy of the exhibit with relevant portions clearly identified by highlighting or, rather than submitting a new copy of the exhibit, the party may instead identify the exhibit and provide references to page and line numbers identifying relevant portions of the exhibit. The procedure suggested herein does not preclude limited discovery if it is later determined to be necessary.

2. The interested parties will meet as necessary to identify (1) those material facts about which there are no genuine issues; and (2) those material facts that do involve genuine issues. At the present time, counsel believe that evidentiary issues can be resolved based upon the designated exhibits and without an evidentiary hearing. By September 22, 1998, the parties will submit to the Court a final statement of conclusions of law, ultimate issues of fact about which there are no genuine issues, and ultimate issues of fact with supporting material evidentiary facts, identifying for the Court those facts which are in dispute and will require resolution by the Court. If an evidentiary hearing is required, proposed alternate dates for such hearing will also be submitted to the Court.

Also by September 22, 1998, each party will identify and proffer to the Court by list or separate exhibit the exhibits upon which they rely, and contemporaneously, each party will submit to the Court a statement, without argument, of any objections to the admissibility of any exhibits of any other party. If a referenced exhibit has previously been submitted to the Court and served upon the interested parties, each party shall have the option of either (1) providing to the Court a copy of the exhibit with relevant portions clearly identified by highlighting or otherwise, or (2) if a copy of the exhibit has

previously been provided to the Court and to each interested party, rather than submit a new copy of the exhibit, the party may instead identify the exhibit and provide references to page and line numbers identifying relevant portions of the exhibit.

3. By September 22, 1998, the parties shall also submit for approval by the Court a proposed briefing schedule for matters concerning Threshold Legal Issue No 2 for which there will be no evidentiary hearing.

Oral argument will be scheduled at the convenience of the Court following the completion of the briefing schedule or at the conclusion of the evidentiary hearing if one is required. Thereupon, the Court will rule upon evidentiary issues and decide Threshold Legal Issue No. 2.

#### PROCEDURES FOR RESOLUTION OF THRESHOLD LEGAL ISSUE NO. 3

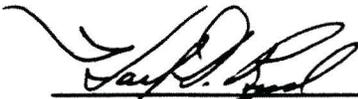
After the Court enters a ruling determining Threshold Legal Issue No. 2, procedures similar to those adopted for Threshold Legal Issue No. 2 will be established for the determination of all remaining issues and controversies of the parties concerning Threshold Legal Issue No. 3, including ownership rights, interests, duties and obligations of the parties in connection with Project water, having due regard for the Court's prior opinions on Threshold Legal Issue No. 3. Proceedings involving the determination of all remaining issues and controversies concerning Threshold Legal Issue No. 3 shall be initiated and concluded as expeditiously as possible.

#### OFFER ISSUES

Before procedures can be established to resolve the Offer Issues as identified in the February 23, 1996, Pretrial Order, as supplemented herein, the Court must enter

rulings that determine Threshold Legal Issues Nos. 2 and 3. Ruling upon these Threshold Legal Issues will assist in determining what Offer Issues remain to be resolved by the Court in these proceedings. In the interim, during the period Threshold Legal Issues Nos. 2 & 3 are being determined as aforesaid, and at the conclusion of the proceedings involving the determination of Threshold Legal Issues Nos. 2 & 3, the offer issues shall be reviewed in an effort to determine whether they can be consolidated simplified, or clarified.

Dated: 8/6/98

  
HARL D. BYRD  
District Judge Pro Tempore

Approved as to Form:

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