

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, )

v. )

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 Basin Section  
Carlsbad Irr. Dist. Section

**SECOND SUPPLEMENTAL SCHEDULING ORDER**  
**RELATING TO THRESHOLD LEGAL ISSUES NO. 2 AND 3**

THIS MATTER came on to be heard before the Court by telephone conference calls held on January 3 and 10, 2000, for the purpose of establishing a time schedule for attending to certain current matters requiring hearings before, or submissions to, the Court; and the Court having noted

the participation in these conference calls of counsel of record for all parties participating in the litigation of Threshold Legal Issues No. 2 and No. 3, namely the United States of America, the State of New Mexico, the Carlsbad Irrigation District, the Brantley Defendants, the Tracy Defendants, and the Pecos Valley Artesian Conservancy District; and the Court, after hearing the presentations of counsel for the participating parties and being otherwise advised in the premises, took the following action.

The Court noted that its Supplemental Opinion and Decision Re Threshold Legal Issue No. 2 was filed and served on September 30, 1999. (The "Supplemental Opinion"). Thereafter, the Court had invited the parties to file objections, comments and suggestions to the Court's Supplemental Opinion by November 18, 1999, and to advise the Court by December 6, 1999, whether counsel ~~deemed~~<sup>deems</sup> it necessary or desirable that oral arguments be scheduled in connection with said objections, comments, and suggestions. Upon being served with the objections, comments and suggestions of the parties regarding the Supplemental Opinion and having been advised by the majority of counsel for the parties that oral argument is deemed advisable, the Court issued its Memorandum of December 13, 1999, to counsel for the parties and, contemporaneously therewith, delivered to counsel the Court's AGENDA AND OUTLINE OF MATTERS TO BE CONSIDERED IN CONNECTION WITH ORAL ARGUMENTS - THRESHOLD LEGAL ISSUE NO. 2 (the "Agenda"). In the Court's Agenda, the Court directed certain questions to each of the parties in which the Court sought to clarify the position of the parties on various issues and to solicit additional factual information deemed pertinent to the finalization of the Supplemental Opinion.

In connection with the directives of the Court contained in the Agenda, the following schedule is hereby adopted by the Court and IT IS, THEREFORE, ORDERED:

**AS TO THRESHOLD LEGAL ISSUE NO. 2**

1. On or before February 21, 2000, each party shall submit to the Court and serve upon other counsel, a succinct statement (without argument or legal briefing) setting forth its position regarding any issue raised by the Court in the Agenda with respect to any party and setting forth a response to each question posed by the Court to the responding party. Each statement of position or response shall be concisely stated in a simple paragraph. All statements of position and responses by all parties shall be filed simultaneously and no responses or replies thereto by adverse parties are contemplated. The statements of position and responses shall be calculated to advise the Court of the position which will be argued by that party at oral argument on each issue addressed.
2. Oral arguments on the Objections in connection with Threshold Legal Issue No. 2 are set for March 6 and 7, 2000, in Albuquerque, New Mexico at the United States Courthouse, 333 Lomas Avenue, N.W. in the Brazos Courtroom, located on the Fifth Floor, commencing at 9:00 a.m.
3. The parties shall be accorded the following time allowances for oral argument:

United States/CID	1-1/2 hours
PVACD	1 hour
State of New Mexico	30 minutes
Brantleys	45 minutes
Tracys	45 minutes

The foregoing time limits will be administered by the Court flexibly so as to afford adequate time for addressing the issues and responding to questions by the Court.

On or before February 28, 2000, the parties may submit new estimates of the amount of time reasonably required for their oral arguments, and the Court will consider revisions to the foregoing time allowances for oral argument.

**AS TO THRESHOLD LEGAL ISSUE NO. 3**

The Court filed its Opinion and Decision regarding Threshold Legal Issue No. 3 on November 3, 1997 and, thereafter, filed 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 on January 9, 1998, the 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 54C on March 19, 1998 and the Supplemental Pre-Hearing Order — Carlsbad Project Water Rights on March 23, 1998, (collectively the "Decisions"). It was noted in the Decisions that there may remain issues of fact and law relating to Threshold Legal Issue No. 3 to be decided by an evidentiary hearing and supplemental briefing by the parties.

The Court is desirous of having the parties identify any remaining undecided issues encompassed in Threshold Legal Issue No. 3. Accordingly, by February 14, 2000, each party participating in the litigation of Legal Issue No. 3 shall file with the Court, and serve upon opposing counsel: a) a statement clarifying and specifying remaining issues to be determined in connection with Threshold Legal Issue No. 3; b) a statement of genuine issues of material fact which must be resolved in connection with the determination of the remaining issues and controversies involving Threshold Legal Issue No. 3; and c) a description of the evidence, in outline form, upon which the party intends to rely in support of its claims and contentions concerning resolution of the remaining genuine issues

of material fact in connection with the determination of Threshold Legal Issue No. 3. Thereafter, the Court shall determine what issues of law and fact remain to be decided in connection with Threshold Legal Issue No. 3, and shall thereupon enter a Supplemental Scheduling Order which will accommodate the presentation of evidence by the parties, if necessary, and the submission of legal briefs on the issues and shall take such further appropriate action as may be necessary in order to consider and resolve all remaining unadjudicated issues and controversies concerning Threshold Legal Issue No. 3.

Counsel for the State is requested to serve a copy of this Second Supplemental Scheduling Order upon all interested parties who have elected to participate in <sup>connection with the proceedings involving the determination of</sup> Threshold Legal Issues No. 2 and No. 3 with the exception of counsel to whom the Court has mailed a copy as set forth in its Certificate of Service.



HARL D. BYRD  
DISTRICT JUDGE PRO TEMPORE

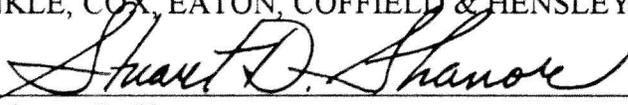
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CERTIFICATE OF SERVICE

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THE UNDERSIGNED HEREBY CERTIFIES that he caused to be mailed, postage prepaid, a copy of the aforesaid scheduling order to counsel and repositories set forth on attached "Exhibit A" on the 26<sup>th</sup> day of January, 2000.

Dated: 01-26-2000



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Harl D. Byrd  
District Judge *Pro Tempore*

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