

COPY

FIFTH JUDICIAL DISTRICT  
CHAVES COUNTY NM  
FILED

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SEE J. CLEM  
DISTRICT COURT CLERK

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. )  
State Engineer )  
and PECOS VALLEY ARTESIAN )  
CONSERVANCY DISTRICT, )  
Plaintiffs, )

Nos. 20294 and 22600  
Consolidated

vs. )

Hon. Harl D. Byrd  
District Judge *Pro Tempore*

L. T. LEWIS, et al., )  
UNITED STATES OF AMERICA, )  
Defendants, )

Carlsbad Irrigation  
District Section

Carlsbad Basin Section

and )

STATE OF NEW MEXICO, ex rel, )  
State Engineer )  
and PECOS VALLEY ARTESIAN )  
CONSERVANCY DISTRICT, )  
Plaintiffs, )

vs. )

HAGERMAN CANAL CO., et al., )  
Defendants. )

**SUPPLEMENTAL DECISION AND ORDER**

**This Supplemental Decision And Order Addresses The Objections,  
Comments And Suggestions of Counsel Re The Court's January 10, 2002  
Decision And Order Concerning The Claims of The United States of America  
Pertaining to Its Rights, Duties And Obligations in Connection With The  
Diversion And Storage of Project Water And The Claims of The Carlsbad  
Irrigation District Pertaining to Its Rights, Duties And Obligations in**

## **Connection with the Distribution of Project Water**

THIS MATTER comes on for consideration by the Court in connection with the objections, comments and suggestions of counsel concerning the form and content of the Court's January 10, 2002 Decision and Order (January 2002 Decision) pertaining to the April 6, 2001 Order of the Court re the claims of the United States of American (United States) pertaining to its rights, duties and obligations in connection with the diversion and storage of Project water and the claims of the Carlsbad Irrigation District pertaining to its rights, duties and obligations in connection with the distribution of Project water.

The Court has reviewed the following:

1. The submissions described at pp. 2-3 of the January 2002 Decision.
2. The UNITED STATES' COMMENTS ON COURT'S JANUARY 7, 2002 DECISION AND ORDER (United States's Comments) filed on February 11, 2002.
3. The STATE OF NEW MEXICO'S RESPONSE TO THE COURT'S JANUARY 7, 2002 DECISION AND ORDER (State's Response) filed on February 13, 2002.
4. PVACD'S COMMENTS ON THE DECISION AND ORDER OF JANUARY 7, 2002 (PVACD's Comments) filed on February 11, 2002.

Other than the foregoing submissions, no objections, comments, suggestions or memorandum briefs were received by the Court in connection with this matter.

## **INTRODUCTION**

Nothing contained in this decision shall be deemed or construed as a determination of any claim, contention or assertion of any party not specifically set forth herein or in the Court's SECOND SUPPLEMENTAL DECISION AND ORDER (Second Supplemental Decision) filed

on March 6, 2002.

Matters not specifically determined have not been addressed because they are inconsistent with determinations of the Court, or they are not well founded, or determinations in connection therewith are not required in order to dispose of matters presently pending before the Court.

### **MATTERS PREVIOUSLY CONSIDERED BY THE COURT**

#### United States' Comments

1. The matters discussed in the United States' Comments under the caption: **1. The Court states that "the State does not dispute that the language of the 1906 contract imposed certain limitations on deliveries of Project water to members of CID. The State, however, is requested to specify the claimed limitations. Others may also respond." January 7, 2002, Decision and Order at 5, ¶ 4,** at pp. 1-2, have been considered in connection with the Court's Second Supplemental Decision<sup>1</sup>, pp. 5-11.

2. The matters discussed in the United States' Comments under the caption: **2. Issue No. 20: Do CID members, as owners of water rights administered and allocated by CID have the right to apply their annual allotment, whatever that *pro rata* share may be, to all or any part of the designated tract of land assessed and assigned said water rights by CID without penalty or forfeiture? January 7, 2002 Decision and Order at 24.,** at p. 2 are noted.

#### State's Response:

1. The Court has addressed in its Second Supplemental Decision, pp. 11-17, the

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<sup>1</sup> It appears that the State did not respond to this issue as requested.

matters set forth in the State's Response under the caption: 1. CAN THE DIVERSION AND STORAGE RIGHTS OF THE UNITED STATES IN CONNECTION WITH PROJECT WATER BE FORFEITED?, at pp. 2-7 and II. CONCLUSION, pp. 7-8.

PVACD's Comments:

1. The Court has considered in its Second Supplemental Decision, pp. 5-9, the matters set forth in PVACD's Comments under the captions: 1. WATER RIGHTS PERFECTED ON THE BASIS OF APPLICATION TO BENEFICIAL USE NECESSARILY REQUIRE THE RECOGNITION OF INDIVIDUAL PRIORITIES, at pp. 1-6.

2. The matters set forth in PVACD's Comments under the caption: 2. WATER RIGHTS ARE APPURTENANT TO LANDS IRRIGATED BY INDIVIDUAL MEMBERS OF THE CID -- NOT TO LANDS TAXED BY THE UNITED STATES, pp. 6-7 will be considered in connection with the Project (Offer) Phase of these proceedings.

3. The matters set forth in PVACD's Comments under the caption: 3. THE FEDERAL GOVERNMENT'S INTEREST IN THE DIVERSION AND STORAGE OF PROJECT WATER IS NOT PROPRIETARY IN NATURE, pp. 7-9, have been considered in the Court's Second Supplemental Decision, pp. 11-18.

**IT IS THEREFORE ORDERED that:**

1. To reiterate, and as set forth in the Court's Order filed on February 15, 2002 (February 2002 Order), at paragraph 7.B., p. 5:

Paragraph 3, page 65 of the January Decision is deleted.

Committee Counsel shall submit recommendations to the Court concerning the necessity of submitting requested findings of fact and conclusions of law or the form and content of a proposed

order to be entered in connection with the rights, duties and obligations of the United States pertaining to the diversion and storage of Project water and the rights, duties and obligations of CID in connection with the distribution of Project water within thirty (30) days after the Court has filed a second supplemental decision and order in connection with the December Supplemental Decision.

2. To reiterate, and as set forth in the Court's February 2002 Order, paragraph 8, p. 6

Paragraph 4, page 65 of the January Decision is deleted.

Within forty-five (45) days after the Court enters its supplemental decision and order in connection with the Court's January Decision, the parties are requested to confer and submit alternate dates for a pretrial conference in connection with the Project (Offer) Phase of these proceedings. Committee Counsel are requested to submit a proposed prehearing order to the Court at the time that the parties submit alternative dates for a prehearing conference.

3. Counsel for the State is requested to serve a copy of this Supplemental Decision and Order upon all counsel and parties appearing *pro se* in this phase of these proceedings.

Date: 03-12-2002



HARL D. BYRD  
DISTRICT JUDGE *PRO TEMPORE*

Harl D. Byrd

March 12, 2002

Ms Trudy Hale  
Deputy Clerk  
Fifth Judicial District Court  
P O Box 1776  
Roswell, NM 88202-1776

**Re: State v. Lewis et al., Chaves County Cause No. 20294 and 22600  
Consolidated, Carlsbad Irrigation District Section, Carlsbad Basin Section -  
This Supplemental Decision And Order Addresses The Objections,  
Comments And Suggestions of Counsel Re The Court's January 10, 2002  
Decision And Order Concerning The Claims of The United States of America  
Pertaining to Its Rights, Duties And Obligations in Connection With The  
Diversion And Storage of Project Water And The Claims of The Carlsbad  
Irrigation District Pertaining to Its Rights, Duties And Obligations in  
Connection with the Distribution of Project Water**

Dear Ms. Hale:

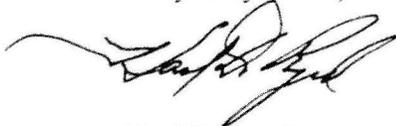
Enclosed please find the above-captioned Supplemental Decision and Order for filing.

I am forwarding a copy of the decision and order to counsel for the State who are requested to serve copies upon all counsel and parties appearing *pro se* in this phase of these proceedings.

If conformed copies are required by any party, they should make arrangements directly with you.

Thank you for your cooperation and assistance.

Very truly yours,



Harl D. Byrd

HDB/jes

cc w/ Decision and Order: Counsel for the State  
cc w/o enc.: All counsel and repositories set forth on Exhibit A.

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