

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

ENDORSED COPY:
ORG. FILED DIST. COURT

MAY 22 2002

BEE J. CLEM, CLERK

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

Plaintiffs.)

vs.)

L.T. LEWIS, et al.; 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 & 22600
Consolidated

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

Carlsbad Irrigation
District Section

Membership Phase

Final Order Regarding Threshold Legal Issues No. 3 and Completion of Second Phase Regarding Threshold Legal Issues

THIS MATTER having come before the Court in the second phase of these proceedings as set forth in the Pretrial Order for Carlsbad Project Water Right Claims, filed on February 26, 1996; the Court having previously entered its Decisions and Orders as to all threshold legal issues identified in the Pretrial Order, including, but not limited to, those involving Threshold Legal Issue No. 3, which issue was:

Whether project rights described in the Offer are rights of the United States and/or the District or rights of the District members?

[See Pretrial Order, filed February 26, 1996, at 6]; the parties agreeing, and the Court concurring, that oral argument is not necessary in connection with the entry of a final decision and order concerning disposition of Threshold Issue No. 3; and the Court having filed the following Orders and Decisions regarding all matters the Court deemed appropriate for rulings under Threshold Legal Issue No. 3:

1. Opinion Re Threshold Legal Issue No. 3, filed November 3, 1997;
2. Court's Decisions and Orders Regarding 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, filed on January 9, 1998;
3. 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), filed on March 19, 1998;
4. Decision and Order Denying and Granting, in Part, State's Motion to Adopt, in Part, Certain Recommendations Concerning the Adjudication of Water Right Claims of CID Members, Partially Defining Issues Re Elements of Quantification, Purpose and Priority and Scheduling Times For the Submission of Memorandum Briefs in Connection Therewith, filed on March 20, 2001;
20 Nov
5. Decision and Order Addressing the Issues Set Forth in the Court's March 20, 2001 Decision and Order Concerning the Quantification, Purpose of Use and Priority of Water Rights Claims of Members of the Carlsbad Irrigation District (CID), filed October 19, 2001;
22 Nov
6. Supplemental Decision and Order Addressing the Comments, Suggestions, Objections and Memorandum Briefs of Counsel for the Parties Set Forth in Their Respective Responses to the Court's October 19, 2001 Decision and Order Concerning the Water Rights Claims of Members of CID, filed on December 19, 2001; and
7. Second Supplemental Decision and Orders in Response to Submission Re The Court's Decision and Order Served on December 19, 2001, filed on March 4, 2002;

The Court hereby FINDS that all matters to be decided under Threshold Issue No. 3 are now concluded or reserved in said orders to be determined in the Project (Offer) phase, and that pursuant to this Court's ORDER served on February 13, 2002, effective immediately upon the filing of this Order, these proceedings will enter the Project (Offer) Phase as set forth in the Pretrial Order of February 26, 1996.

This Order does not address the respective rights, duties, and obligations of the United States in connection with the diversion or storage of Project water, or the rights, duties, and obligations of Carlsbad Irrigation District in connection with the distribution of Project water which shall be determined by the Court in a separate phase of these proceedings.

IT IS SO ORDERED.



Harl D. Byrd
District Judge *Pro Tempore*

Submitted by:

HUBERT & HERNANDEZ, P.A.



Beverly J. Singleman

Steven L. Hernandez

P.O. Drawer 2857

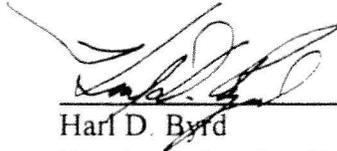
Las Cruces, NM 88004

(505) 526-2101

Attorneys for Carlsbad Irrigation District

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he caused to be mailed, postage prepaid, a copy of the forgoing order to counsel and repositories specified on attached Exhibit A on this 20th day of May, 2002.



Harl D. Byrd
District Judge *Pro Tempore*

David W. Gehlert Esq
U.S. Dept of Justice
Environment & Natural Resources
999 Eighteenth Street Suite 945
Denver, Co 80202

Stephen L. Hernandez Esq
Beverly Singleman Esq
Hubert & Hernandez, P.A.
P O Drawer 2857
Las Cruces, NM 88004-2857

Christopher Schatzman Esq
Christopher Bulman Esq.
Special Assistant Attorney Generals
P O Box 25102
Santa Fe, NM 87504-5102

Fred Hennighausen Esq
A.J. Olsen Esq.
Hennighausen, Olsen & Stevens, L.L.P.
PO Box 1415
Roswell, NM 88202-1415

Eric Biggs Esq
Simms & Biggs, P.C.
129A West Houghton Street
Santa Fe, NM 87505

Stuart D. Shanor Esq
Hinkle Cox Eaton Coffield & Hensley
PO Box 10
Roswell, NM 88202

W.T. Martin Esq
Law Office of W.T. Martin Jr., P.A.
PO Box 2168
Carlsbad, NM 88221-2168

Susan C. Kery Esq
Sheehan Sheehan & Stelzner
PO Box 271
Albuquerque, NM 87103

Jay F. Stein, Esq.
Stein & Brockmann, P.A.
P O Box 5250
Santa Fe, NM 87504-5102

Richard Simms, Esq.
Simms & Biggs, P.C.
P O Box 3329
Hailey, ID 83333

Chaves County Courthouse
P O Box 1776
Roswell NM 88201

DeBaca County Courthouse
P O Box 910
Ft Sumner NM 88119

Georgia Gomez, Clerk
Guadalupe County Courthouse
420 Parker, 2nd Floor
Santa Rosa NM 88435