

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT  
CHAVES COUNTY NM  
FILED IN MY OFFICE

2002 JUN 19 AM 8:42

BEE J CLEM  
DISTRICT COURT CLERK

STATE OF NEW MEXICO, ex rel. )  
OFFICE OF THE STATE ENGINEER )  
and PECOS VALLEY ARTESIAN )  
CONSERVANCY DISTRICT, )  
Plaintiffs, )  
)  
)  
)  
)  
L. T. Lewis, et al., and )  
THE UNITED STATES OF AMERICA, )  
Defendants, )

Nos. 20294 and 2600  
Consolidated  
  
Carlsbad Basin Section  
Carlsbad Irrigation District  
  
Hon. Harl D. Byrd  
District Judge *Pro Tempore*

**DECISION AND ORDER RE THE UNITED STATES' MARCH 22, 2002  
MOTION FOR CLARIFICATION AND RESPONSE TO THE  
PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT'S MARCH 14, 2002  
MOTION FOR CLARIFICATION OR RECONSIDERATION**

THIS MATTER comes on for consideration by the Court in connection with the UNITED STATES' MOTION FOR CLARIFICATION AND RESPONSE TO PVACD'S MOTION FOR CLARIFICATION AND RECONSIDERATION (United States' Motion) filed on March 25, 2002, insofar as it requests clarification of certain portions of the Court's SECOND SUPPLEMENTAL DECISION AND ORDER filed March 6, 2002 (March 2002 Decision).<sup>1</sup>

In connection with the United States' Motion, the Court has reviewed the following:

1. The Court's March 2002 Decision.
2. The portion of the United States' Motion requesting clarification of portions of

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<sup>1</sup>In this Decision, the United States of America is referred to as the United States; the Carlsbad Irrigation District is referred to as CID; the Pecos Valley Artesian Conservancy District is referred to as PVACD.

the Court's March 2002 Decision.

3 The STATES' COMBINED RESPONSE TO PVACD'S MARCH 14, 2002  
MOTION FOR CLARIFICATION OR RECONSIDERATION AND MARCH  
22, 2002 REQUEST FOR ORAL ARGUMENT, AND THE UNITED STATES'  
MARCH 22, 2002 MOTION FOR RECONSIDERATION (State's Combined  
Responses) served on April 2, 2002, insofar as it pertains to the United States'  
Motion.

4 PVACD'S RESPONSE TO THE UNITED STATES' MOTION FOR  
CLARIFICATION (PVACD's Response) filed on April 10, 2002.

The United States' Motion sets forth four (4) separate requests for clarification which  
have been considered and determined by the Court in the same order and under the following  
paragraph headings which are quoted from the United States' Motion:

**A. The Court's Ruling on Legal Issue No. 1<sup>2</sup> Should be  
Clarified to Explain That the Membership Phase of This  
Proceeding Does Not Address Non-project Water.**

The Court does not consider that all water used within the boundaries of the Carlsbad  
Irrigation District Project should be defined as "Project Water". The Court considers that  
"Project Water" is water diverted or stored by the United States for the use and benefit of

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<sup>2</sup>Legal Issue No. 1 is:

Whether, in order to have any private non-Project water rights **diverted through or  
stored by Carlsbad Project facilities**, members of CID would have to have an  
independent contract **with the United States** under the Warren Act. See Act of February  
21, 1911, ch 141, 36 Stat 925, J.B. Bean v. United States, 163 F. Supp. 838, 841 (Ct. Cl.  
1958). March 2002 Decision at p. 3.

members of CID and distributed to them by CID in connection with the Carlsbad Irrigation District Reclamation Project (Project Water)

The Court states that the Membership Phase of these proceedings addresses Project Water, not Non-project Water

**B. The Court Should Clarify Whether Its Ruling on Issue No. 2<sup>3</sup> Is Addressing Priority Dates for Project or Non-project Water Rights.**

In connection with the Court's ruling on Issue No. 2, the Court is addressing the priority dates of members of CID, in respect to both Project Water and Non-project Water. The ruling acknowledges that Non-project Water rights may have a priority date earlier or later than Project Water rights.

**C. The Court Should Clarify That its Ruling on Issue No. 3<sup>4</sup> Is Not Addressing Project Water.**

The United States requests that the Court clarify that the "individual water rights claims" the Court is addressing in its March 2002 Decision are claims to Non-project water in connection with the Court's ruling that:

Except in connection with the distribution of Project Water by CID to its members, the Court concludes that members of CID did not

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<sup>3</sup>Legal Issue No. 2 is:

Are members of CID entitled to have individual priority dates determined in connection with their Project Water rights claims in the Membership Phase of these proceedings separate and apart from those determined as Project priority dates, with the understanding that Project water is to be distributed equitably and on a pro rata basis among members of CID? March 2002 Decision at p. 5

<sup>4</sup>Legal Issue No. 3 is:

Did members of CID relinquish or waive their right to claim individual priority dates in connection with their Project Water rights' claims? March 2002 Decision p. 9

waive or relinquish their right to claim individual priority dates in connection with their individual water rights claims by virtue of their agreements with the PWUA or with the United States or CID (Court's March 2002 Decision at p. 10, last full paragraph)

In its ruling the Court is addressing the priority dates of water rights of members of CID in connection with Non-project Water

**D. The Court's Ruling on Issue No. 4<sup>5</sup> Should be Clarified as to Whether it is Talking about the Project Water Rights, or Non-project Water Rights Which May Be Held by Project Members.**

The Court has concluded that abandoned or forfeited water rights of members of CID in connection with Project Water or Non-project Water revert to the public for appropriation to beneficial use, unless the water has been transferred to other lands as provided in NMSA 1978, §73-13-4. Court's March 2002 Decision at p. 11.

The State of New Mexico's Combined Responses set forth four (4) separate requests for affirmation which have been considered by the Court. In further response to the United States' Motion and as requested by the State, the Court enters the following additional orders in connection with the United States' Motion:

**A. The Court should Reaffirm That the Membership Phase of the Carlsbad Irrigation District Section of the Lewis Adjudication Does Not Address Non-project Water.**

The Membership Phase of these proceedings involves Project Water and does not involve claims that individual CID Members may have to water rights pertaining to Non-project Water.

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<sup>5</sup>Legal Issue No. 4 is:

What happens to the water rights of members of CID if they are forfeited or abandoned?  
March 2002 Decision at p. 11.

**B. The Court Should Affirm That All Individual CID Members Will Have a Single Set of Priority Dates for the Claims to Project Water.**

The Court reiterates that individual members of CID are not entitled to have individual priority dates determined in connection with their water rights claims in connection with Project Water.

**C. The Court Should Affirm That All Individual CID Members Relinquished Their Rights to Claim Individual Priority Dates For Project Water.**

The State's request that the Court reconsider its decision that the right to determination of an individual priority date was not waived or relinquished is denied.

**D. The Court Should Affirm That Project Water Can Be Forfeited or Abandoned.**

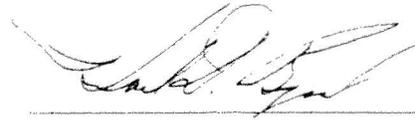
The Court reiterates and reaffirms its ruling in connection with Project Water that "in the event of forfeiture or abandonment of water rights of members of CID, unless the water has been transferred to other lands, as provided in NMSA 1978, §73-13-4, water reverts to the public and is regarded as unappropriated public water." March 2002 Decision at p. 11.

Except as specifically determined and set forth in this Decision and Order, nothing contained herein shall be deemed or construed as a determination of any matter argued or otherwise set forth in the submission of counsel in connection with the United States' Motion.

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

~~10/13~~  
~~this phase of these proceedings.~~

IT IS SO ORDERED



HARL D. BYRD  
DISTRICT JUDGE *PRO TEMPORE*

Submitted by:



David Gehlert

Attorney for the United States

Approved as to form:

Telephonically approved 6/13/02 by Beverly Singleman  
Steve Hernandez / Beverly Singleman

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Telephonically approved 6/14/02 by Stuart Shanor  
Fred Hennighausen / Richard Simms / Stuart Shanor

Attorneys for the Pecos Valley  
Artesian Conservancy District

Telephonically approved 6/10/02 by Chris Bulman  
Chris Schatzman / Chris Bulman

Attorneys for the State Engineer

No response received as of 6/14/02  
W. T. Martin

Attorney for the Brantleys and Tracy/Eddy Interests

Harl D. Byrd

June 17, 2002

Ms. Trudy Hale, Clerk  
Fifth Judicial District Court  
401 North Main St., Rm 202  
Roswell, NM 88201

**Re: State v. Lewis et al., Chaves County Cause No. 20294 and 22600  
Consolidated, Carlsbad Irrigation District, Carlsbad Basin Section -  
Order re United States' Motion for Clarification and Response to PVACD's  
Motion for Clarification and Reconsideration**

Dear Ms. Hale:

Enclosed please find the above-captioned order for filing.

I have made limited typographical changes to the order and have changed the provision concerning service to provide that counsel for the State shall serve copies of the order "upon all counsel and parties appearing *pro se* in connection with this phase of these proceedings."

Thank you for your cooperation and assistance.

Very truly yours,



Harl D. Byrd

HDB/jes

cc: All counsel set forth on Exhibit A.

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