

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.	)	
State Engineer	)	
and PECOS VALLEY ARTESIAN	)	
CONSERVANCY DISTRICT,	)	Nos. 20294 and 22600
	)	Consolidated
Plaintiffs,	)	
	)	
vs.	)	
	)	Hon. Harl D. Byrd
	)	District Judge Pro Tempore
L.T. LEWIS, et al.,	)	
UNITED STATES OF AMERICA,	)	Carlsbad Irrigation
	)	District Section
	)	
Defendants,	)	Membership Phase
	)	
and	)	
	)	
STATE OF NEW MEXICO, ex rel,	)	
State Engineer	)	
and PECOS VALLEY ARTESIAN	)	
CONSERVANCY DISTRICT,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
HAGERMAN CANAL CO., et al.,	)	
	)	
Defendants.	)	

**ORDER**

**This Order Sets Forth the Proper Manner of Quantifying the Water Rights of Members of CID and Adopts a Form of Agreement and Consent Order and Decree for Use in Connection with the Determination of Their Water Rights**

THIS MATTER comes on for consideration by the Court in connection with the entry of an Order setting forth the proper manner of quantifying water rights claims of members of CID and the adoption of a combined form of agreement and consent order and decree for use in connection with the determination and adjudication of their water rights.

In connection with this matter, the Court has reviewed the following:

1. The Court's Decision and Order filed herein on March 20, 2001 (Court's March 2001 Decision) denying and granting, in part, the State's motion to adopt certain recommendations concerning the adjudication of water rights claims of CID members, defining issues re elements of quantification, purpose and priority and scheduling times for the submission of memoranda briefs in connection therewith.

2. The Court's Decision and Order filed herein on October 22, 2001 (Court's October 2001 Decision) addressing issues set forth in the Court's March 2001 Decision concerning the quantification, purpose of use and the priority date(s) of water rights of members of CID.

3. The Court's Supplemental Decision and Order served on December 19, 2001, filed herein on December 20, 2001, (Court's December 2001 Supplemental Decision), addressing the comments, suggestions, objections and memorandum briefs of counsel for the parties set forth in their respective responses to the Court's October 2001 Decision concerning the water rights claims of members of CID and requesting submissions concerning certain matters set forth therein.

4. The Court's memorandum to counsel and parties appearing pro se in the Membership Phase and the Project (Offer) Phase of these proceedings dated January 7, 2002

(Court's January Memorandum) captioned "Comments re Draft of Offer of Judgment".

5. The Court's Order filed herein on February 15, 2002 (Court's February 2002 Order) which, in part, refers certain matters to Committee Counsel for recommendations, directs the entry of a final order re disposition of Threshold Legal Issue No. 3 and reschedules the time for certain submissions.

6. The Court's Second Supplemental Decision and Order filed herein on March 6, 2002 (Court's Second Supplemental Decision) in response to submissions re the Court's decision and order served on December 19, 2001.

7. A letter dated March 29, 2002 from counsel for the State to the Court captioned "Offer of Judgment Form".

8. A letter dated April 9, 2002 from the Court to counsel for the State captioned "Proposed Form of Offer of Judgment For Use in Connection with Water Rights Claims of Members of CID".

9. A letter dated April 10, 2002 from Fred H. Hennighausen, Esq. on behalf of counsel for Pecos Valley Artesian Conservancy District (PVACD), captioned " Offer of Judgment Form".

10. A letter dated April 10, 2002 from Stuart Shanor, Esq. on behalf of counsel for PVACD, captioned "Offer of Judgment Form" which is identical in content to the letter referred to in paragraph 9.

11. A letter dated April 12, 2002 from counsel for the State captioned "Committee Counsel's recommendations re the necessity for submitting proposed findings of fact and conclusions of law".

12. A faxed letter dated May 17, 2002 from counsel for the State to the Court, captioned "update of pending tasks".
13. A letter dated June 7, 2002 from the Court to counsel for the State captioned "Update of Pending Tasks".
14. A letter dated June 11, 2002 to the Court from counsel for the State captioned "Response letter of the Honorable Harl D. Byrd dated May 20, 2000".
15. A letter dated June 26, 2002 from counsel for the State to the Court captioned "Proposed form of Consent Order For Use in Connection with Water Rights of Members of CID".
16. A letter dated July 12, 2002 from counsel for the State to the Court captioned "State's proposal regarding definitions for irrigation water requirement".
17. A letter dated July 17, 2002 from counsel for PVACD to the Court captioned "Proposed Form of Consent Order for Use in Connection of Water Rights Claims of Members of CID" reiterating PVACD's concern with respect to the previous draft since "The State, once again, has included in the Consent Order priority dates, duty of water, farm delivery requirement, consumptive irrigation requirement and project delivery requirement...All of these matters are major issues in the Project (Offer) Phase of of these proceedings and should not be in the consent order subject to the proviso. Certainly, the existence of the Consent Order with these elements set forth should not have any evidentiary effect."

The Court has also reviewed all of the matters referred to in the above decisions, orders, memorandum and correspondence.

The Court's Second Supplemental Decision provides in part:

The Court's Order served on February 13, 2002 also provided in pertinent part that:

5. In connection with the Court's January 7, 2002 memorandum:

On or before March 29, 2002, interested parties may submit comments and suggestions concerning the Court's January 7, 2002 memorandum pertaining to a proposed draft Offer of Judgment for use by the State in connection with efforts of the State to resolve water rights claims of members of CID. The Court's previous order requiring that comments and suggestions be filed within thirty (30) days of service of the January 7, 2002 memorandum is hereby vacated. (Underscoring for emphasis added). At p. 4.

After the Court has received (1) recommendations of Committee Counsel concerning the necessity of submitting requested findings of fact and conclusions of law and other recommendations concerning the form and content of an order to be entered in the Membership Phase of these proceedings setting forth the proper manner of quantifying the water rights of members of CID; and (2) comments and suggestions concerning the proposed Court's January 7, 2002 draft Offer of Judgment and the Court has had an opportunity to review these submissions, the Court will enter an appropriate implementing order. At p. 20:

The March 29, 2002 date was extended to April 12, 2002. See letter from counsel for the State to the Court referred to in paragraph 11, supra.

Committee Counsel recommended that the submission of requested findings of fact and conclusions of law should not be required by the Court in connection with the preparation of an order to be entered in the Membership Phase of these proceedings setting forth the proper manner of quantifying the water rights of members of CID. Counsel for the State's April 12, 2002 letter to the Court referred to in paragraph 11, supra. Committee Counsel did not submit comments

and suggestions concerning the Court's January 7, 2002 draft Offer of Judgment.

Counsel for the parties and parties appearing pro se were granted leave to submit comments and suggestions concerning the Court's January 2002 Memorandum, but were not required to do so.

The Court recognizes that matters pertaining to the issuance of offers of judgment by the State to members of CID involve contractual matters agreed upon between the State and members of CID and that the Court cannot impose terms, provisions or conditions upon the State or members of CID to which they do not mutually agree. The Court, however, has the duty and obligation to review offers of judgment submitted to the Court for review, approval or disapproval and to take appropriate action in order to be certain that matters contained therein are clear, unambiguous, properly set forth the manner of quantifying water rights of members of CID and comply with applicable laws concerning the quantification of water rights.

In the letter dated June 26, 2002 from counsel for the State to the Court (paragraph 15, *supra*) counsel stated in part:

Under separate cover, the State will forward its suggestions regarding definitions of the terms "Project diversion requirement", "farm delivery requirement" and "consumptive irrigation requirement" next week.

The State's suggestions are set forth in a letter to the Court dated July 12, 2002 referred to in paragraph 16, *supra*.

The first paragraph of counsel for the State's June 26, 2002 letter (paragraph 15, *supra*) to the Court refers to a "Consent Offer". Counsel for the State has advised the Court that a separate "Consent Offer" was never contemplated or intended and that the form attached to the

letter was intended to combine into one document a consent offer by the State, acceptance thereof by a member(s) of CID and a form of order to be entered in connection therewith.

Based upon a review of the aforesaid submissions, decisions, orders, memorandum and correspondence and the Court being otherwise sufficiently advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that:

**I. Proper Manner of Quantifying Water Rights of Members of CID**

This portion of the Court's decision, order and decree must be reviewed in connection with the proposed form of AGREEMENT AND CONSENT ORDER AND DECREE attached hereto as Exhibit A.

The water rights of members of CID and the quantification of the elements thereof shall be determined and adjudicated as follows:

A. The determinations of the Court set forth in the foregoing decisions and orders are incorporated herein by reference as though set forth in detail.

B. The following elements in connection with the quantification of water rights of members of CID shall be addressed and resolved by agreement between the State and members of CID and incorporated into a form of Agreement and Consent Order and Decree substantially as set forth in Exhibit A or the elements will be adjudicated and determined by the Court and shall be included as portions of agreements or Court orders entered in connection with the determination and adjudication of water rights of members of CID:

a. Purpose of Use<sup>1</sup>

The purpose of use portion shall provide:

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<sup>1</sup> See Exhibit A, subparagraph a., pp. 3, 5, and 7.

For irrigation, and incidental domestic and livestock watering uses related to irrigation use.

b. Source of Water

The source of water portion shall be as provided in Exhibit A.

c. Point(s) of Diversion<sup>2</sup>

The following provisions should be added to the Point(s) of Diversion Portion of the State's proposed form of Consent Order.

Point(s) of Diversions of Water By the United States of America (United States)

The point(s) of diversion of water by the United States in connection with the Carlsbad Irrigation District Project (Carlsbad Project) for the use and benefit of Offeree(s) will be determined in the Project (Offer) Phase of these proceedings .

Please refer to Exhibit A.

Point(s) of Delivery of Water by CID to Offerees

Point(s) of delivery of water by CID to its members will be determined in the Project (Offer) Phase of these proceedings.

Water shall be delivered, distributed and apportioned by CID among members of CID equitably and in accordance with applicable acts of Congress, rules and regulations of the Secretary of Interior and provisions of contracts concerning the distribution of water by CID to its members.

Please refer to Exhibit A.

d. Priority Date(s)<sup>3</sup>

The following provision shall be substituted for the Priority Date(s) portion of the State's proposed form of Consent Order.

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<sup>2</sup> See Exhibit A, subparagraph c., pp. 3, and 5.

<sup>3</sup> See Exhibit A, subparagraph d., pp. 3 and 6.

The priority date(s) for surface water rights set forth herein shall be the date(s) determined by the Court as the priority date when the United States first diverted water from the Pecos River for beneficial use by members of CID in connection with Carlsbad Irrigation District . The priority date(s) shall be determined in the Project (Offer) Phase of these proceedings. The Court's final determinations concerning priority dates will be incorporated into a supplemental consent order approved by the State, Offerees and the Court.

Please refer to Exhibit A.

e. The following should be added to the Place of Use portion of the State's proposed Consent Order:<sup>4</sup>

Offeree(s) shall have the right to apply the full amount of water to which Offerees are determined to be entitled as set forth herein to any part of the tract described in accordance with and subject to the provisions of NMSA 1978, §72-5-28.

Please refer to Exhibit A.

f. The following provision shall be substituted for "f. Amounts of Water" portion of the State's proposed Consent Order<sup>5</sup>

Amounts of Water

Offerees shall be allocated and there shall be distributed \_\_\_\_\_ acre feet per annum of water by CID to Offerees on an equitable and pro rata basis.

The irrigation water requirements of the Project will be finally adjudicated in the Project (Offer) Phase of these proceedings and incorporated into a supplemental order of the Court approved by the State, the interested member(s) of CID and the Court.

Please refer to Exhibit A.

**II. Additional Modifications to State's Proposed Consent Order**

A. The following modifications shall be made to the State's Proposed Consent Order

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<sup>4</sup> See Exhibit A, subparagraph e., pp. 4 and 7.

<sup>5</sup> See Exhibit A, subparagraph f., pp. 4 and 7.

and incorporated into Exhibit A.

a. Paragraph 5 is deleted and paragraphs 6-10, pp. 8 and 9 of the State's proposed Consent Order shall be changed to paragraphs II-VI.

b. The provisions of PROJECT DIVERSION REQUIREMENT AND STORAGE RIGHTS OF THE UNITED STATES AND THE DELIVERY RIGHTS OF CID set forth in paragraph 7., p. 8 of the State's proposed Consent Order are approved; however, in the 6<sup>th</sup> line before "water" insert "surface", in the 7<sup>th</sup> line, after CID, the phrase "in connection with the Carlsbad Irrigation District Project" should be added and in the 8<sup>th</sup> line, the word "laws" substituted for the word "law".

Please refer to Exhibit A.

c. Paragraph 9, p. 9 of the State's proposed Consent Order shall be revised to read as follows:

V. INTERSE OBJECTION(S) BY OTHER WATER RIGHT OWNERS HAVING STANDING IN A LATER PHASE OF THESE PROCEEDINGS. The water rights set forth above are subject to challenge or objection by other water rights owners having standing to object in the *interse* phase of these proceedings that will be held at a later time.

Please refer to Exhibit A.

d. In paragraph 10, p. 9 of the State's proposed Consent Order, FILING CHANGE OF OWNERSHIP; REPORTING WATER DIVERSIONS., 2<sup>nd</sup> line, after the word "file", add an "a". Add "on forms provided by the State Engineer".

Please refer to Exhibit A.

e. In paragraph A of the portion captioned "IT IS THEREFORE ORDERD (sic), ADJUDGED AND DECREED THAT", in the 4th line, add after "defendants" "subject to

further orders of the Court as set forth herein.”

Please refer to Exhibit A.

f. In paragraph C. of the portion captioned “IT IS THEREFORE ORDERD (sic), ADJUDGED AND DECREED THAT”, in the 2<sup>nd</sup> line, after the word “Engineer” add “on forms provided by the State Engineer”.

Please refer to Exhibit A.

g. Paragraph D. of the portion captioned “IT IS THEREFORE ORDERD (sic), ADJUDGED AND DECREED THAT”, should be revised to read as follows:

D. This Consent Order is binding on the Defendant(s) and his, her, or their heirs, personal representatives, successors and assigns and the Court may enjoin defendants and his, her, or their heirs, personal representatives, successors and assigns from any diversion or use of the waters of the Pecos River Stream System except in strict accordance with the rights adjudicated herein by the Court.

### **III. Adoption of Definitions of Consumptive Irrigation Requirement, Farm Delivery Requirement and Project Delivery Requirement or Off-farm Diversion Requirement.**

In the Court’s Decision and Order filed on March 20, 2001, the Court adopted definitions of CONSUMPTION IRRIGATION REQUIREMENT (CIR), FARM DELIVERY REQUIREMENT AND PROJECT DELIVERY REQUIREMENT or OFF FARM DIVERSION REQUIREMENT (Court’s March 2001 Order) to be inserted into a blanket order applicable to all subfile orders or into an individual subfile orders to be entered in connection with the determination, adjudication and quantification of water rights claims of members of CID. (See pp. 18-20 of Court’s March 2001 Order)

Apparently definitions of the Court were never adopted by the State and the Court’s

orders in connection therewith were never implemented.

On July 12, 2002 (over one year after the Court's March 2001 Order) counsel for the State wrote a letter to the Court recommending amendments to the definitions adopted by the Court. The proposed amendments are approved and the State is ordered to implement use of the definitions into a single order or into individual subfile orders in the Membership Phase of these proceedings.

Leave is granted counsel and parties appearing *pro se* to submit objections, comments or suggestions concerning the form or content of this order on or before August 21, 2002.



HARL D. BYRD  
DISTRICT JUDGE *PRO TEMPORE*

#### CERTIFICATE OF SERVICE

The undersigned does hereby certify that he caused to be mailed, postage prepaid, a copy of the forgoing decision to counsel and repositories specified on attached Exhibit B on this 30th day of July, 2002.



Harl D. Byrd  
District Judge *Pro Tempore*

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.	)	
State Engineer	)	
and PECOS VALLEY ARTESIAN	)	
CONSERVANCY DISTRICT,	)	Nos. 20294 and 22600
	)	Consolidated
Plaintiffs,	)	
	)	
vs.	)	
	)	Hon. Harl D. Byrd
	)	District Judge <i>Pro Tempore</i>
L. T. LEWIS, et al.,	)	
UNITED STATES OF AMERICA,	)	Carlsbad Section
	)	Carlsbad Member Subsection
	)	
Defendants,	)	
	)	
and	)	Court No.: <i>INSERT</i>
	)	OSE Subfile No.: <i>INSERT</i>
	)	
STATE OF NEW MEXICO, ex rel,	)	
State Engineer	)	
and PECOS VALLEY ARTESIAN	)	
CONSERVANCY DISTRICT,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
HAGERMAN CANAL CO., et al.,	)	
	)	
Defendants.	)	

AGREEMENT AND CONSENT ORDER AND DECREE

The Court, having considered the agreement between Plaintiff, State of New Mexico, *ex rel.* State Engineer (the “State”) and Defendant(s)

*INSERT*

to recognize the right of the Defendant(s) to place public surface and ground waters of the Pecos River Stream System to beneficial use as set forth below, and the Court having considered said agreement and being otherwise sufficiently advised in the premises adopts the following Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT

1. By their signatures affixed below, the State and the above-named Defendant(s) agree to the adjudication of the elements of Defendant's(s') right(s) to divert and place to beneficial use the public surface and ground waters of the Pecos River system as hereinafter set forth.

2. This Consent Order and Decree supersedes any and all prior Consent Orders or Offers of Judgment concerning the above-captioned Subfile numbers(s), including any filed of record.

3. There is no just reason for delay in the entry of this Consent Order finally adjudicating as between the Defendant(s) and the State the elements of the Defendant's(s') rights(s) to divert for beneficial use the public waters of the Pecos River Stream System.

#### CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes as matters of law:

1. The Court has jurisdiction over the parties and the subject matter of these proceedings.

2. The agreement between the State and the Defendant(s) concerning the right to divert and place to beneficial use public surface and ground water of the Pecos River Stream system set forth herein should be approved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the elements of the Defendant's(s') rights to divert public waters of the Pecos River Stream system for beneficial use are as follows:

*(INSERT THE FOLLOWING FOR LANDS IRRIGATED FROM A SURFACE WATER SOURCE ONLY)*

A. IRRIGATED ACREAGE (Surface Water Only):

1. Office of the State Engineer File No(s): 6 and 1927

a. Purpose of Use:

For irrigation and incidental domestic and livestock watering uses related to irrigation use.

b. Source of Water: (Select one or both)

Surface waters of the Pecos River.

Surface waters of the Black River tributary to the Pecos River.

c. Point(s) of Diversion:

Point of Diversion of Water by the United States of America (United States)

The point(s) of diversion of water by the United States in connection with the Carlsbad Irrigation District Project (Carlsbad Project) for the use and benefit of Offeree(s) will be determined in the Project (Offer) Phase of these proceedings

Point of Delivery of Water to Offeree(s)

Point(s) of delivery of water by CID to its members will be determined in the Project (Offer) Phase of these proceedings.

Water shall be delivered, distributed and apportioned by CID among members of CID equitably and in accordance with applicable acts of Congress, rules and regulations of the Secretary of Interior and provisions of contracts concerning the distribution of water by CID to its members.

Point of Diversion by Ditch and Location (Select ditch name and location)

Ditch Name: Carlsbad Irrigation District Main Canal  
Location: X: 566,383 feet Y: 542,270 feet

Ditch Name: Black River Canal  
Location: X: 600,928 feet Y: 447,649 feet

New Mexico State Plane Coordinate System, Eastern Zone, 1983 NAD.



1. Office of the State Engineer File No(s).

Surface Water: Office of the State Engineer File No(s): 6 and 1927

Groundwater: *INSERT WELL NUMBER*

a. Purpose of use:

For irrigation and incidental domestic and livestock watering uses related to irrigation use.

b. Source of Water:

Surface: (Select one or both, if applicable)

Surface water of the Pecos.

Surface water of the Black River Tributary to the Pecos River.

Groundwater: *INSERT WELL NUMBER AND STATE GROUNDWATER IS SUPPLEMENTAL TO SURFACE*

c. Point(s) of Diversion:

Point of Diversion of Water by the United States of America (United States)

The point(s) of diversion of water by the United States in connection with the Carlsbad Irrigation District Project (Carlsbad Project) for the use and benefit of Offeree(s) will be determined in the Project (Offer) Phase of these proceedings

Point of Delivery of Water to Offeree(s)

Point(s) of delivery of water by CID to its members will be determined in the Project (Offer) Phase of these proceedings.

Water shall be delivered, distributed and apportioned by CID among members of CID equitably and in accordance with applicable acts of Congress, rules and regulations of the Secretary of Interior and provisions of contracts concerning the distribution of water by CID to its members.

Point(s) of Diversion: (Select one or both, if applicable)

Surface Water:

Ditch Name: Carlsbad Irrigation District Main Canal

Location: X: 566,383 feet Y: 542,270 feet

Ditch Name: Black River Canal

Location: X: 600,928 feet Y: 447,649 feet

Groundwater:

Well No.: #

Location: X: feet Y: feet

New Mexico State Plane Coordinate System, Eastern Zone, 1983 NAD.

As to Surface water rights, the point(s) of diversion of water by the United States in connection with the Carlsbad Irrigation District Project (Carlsbad Project) for the use and benefit of Offeree(s) will be determined in the Project (Offer) Phase of these proceedings

d. Priority Date(s):

Surface Water:

The priority date(s) for surface water rights set forth herein shall be the date(s) determined by the Court as the priority date when the United States first diverted water from the Pecos River for beneficial use by members of CID in connection with the Carlsbad Irrigation District Project. The priority date(s) shall be determined in the Project (Offer) Phase of these proceedings. The Court's final determinations concerning priority dates will be incorporated into a supplemental consent order approved by the State, Offeree(s) and the Court.

Groundwater: *INSERT WELL NUMBER AND DATE OF DRILLING AS THE PRIORITY DATE*

e. Place of use:

*INSERT BASED ON HYDROGRAPHIC SURVEY FOR DEFENDANT'S(S) TRACT(S)*

Surface and Ground Water Combined: *(Use for surface supplemented by groundwater; groundwater from supplemental wells must be used on the same acreage as the primary surface water. The acreage descriptions must be verified on the well permit or license. )*

*(Insert acreage and location for each tract)*

**Total Water Right Acreage:** **acres**

As shown on the Hydrographic Survey Map *(insert map number(s))* and Subfile Maps *(insert map number(s))*.

Offeree(s) shall have the right to apply the full amount of surface water to which Offerees are determined to be entitled as set forth herein to any part of the tract described in accordance with and subject to the provisions of NMSA 1978, §72-5-28.

f. Amounts of Water:

Surface Water: Offerees shall be allocated and there shall be distributed \_\_\_\_\_ acre feet per annum of water by CID to Offerees on an equitable and pro rata basis.

The irrigation water requirements of the Project will be finally adjudicated in the Project (Offer) Phase of these proceedings and incorporated into a supplemental order of the Court approved by the State, the interested member(s) of CID and the Court.

Groundwater: *STATE THE GROUNDWATER IS SUPPLEMENTAL TO SURFACE AND INSERT LIMITS OR CONDITIONS LISTED IN THE PERMIT OR LICENSE.*

C. IRRIGATED ACREAGE (Groundwater Only).

1. Office of the State Engineer File No(s).

Groundwater: INSERT WELL NUMBER

a. Purpose of use:

For irrigation, and for incidental domestic and livestock watering uses related to irrigation use.

b. Source of Water:

Groundwater: INSERT WELL NUMBER

c. Point(s) of Diversion:

Groundwater:

Well No.:

Location: X:                      feet      Y:                      feet

New Mexico State Plane Coordinate System, Eastern Zone, 1983 NAD.

d. Priority Date(s):

INSERT WELL NUMBER AND DATE OF DRILLING AS THE PRIORITY DATE

e. Place of use:

INSERT BASED ON HYDROGRAPHIC SURVEY FOR DEFENDANT'S(S')  
TRACT(S)

*(Insert acreage and location for each tract)*

**Total Water Right Acreage:**

acres

As shown on the Hydrographic Survey Map *(insert map number(s))* and Subfile  
Maps *(insert map number(s))*.

f. Amount of Water: *(INSERT ANY LIMITS OR CONDITIONS LISTED IN THE  
PERMIT OR LICENSE)*

*(INSERT THE FOLLOWING FOR ON FARM IMPOUNDMENT)*

D. ON-FARM IMPOUNDMENT (Surface Water Only):

1. Office of the State Engineer File No(s): 6 and 1927.

a. Purpose of Use:

On-farm storage for irrigation, and incidental domestic and livestock watering  
uses related to irrigation.

b. Source of Water: (Select one or both only if applicable)

Surface Water of the Pecos River.

Surface Water of the Black River Tributary to the Pecos River.

c. Point(s) of Diversion: (Select one or both)

Ditch Name: Carlsbad Irrigation District Main Canal

Location: X: 566,383 feet Y: 542,270 feet

Ditch Name: Black River Canal

Location: X: 600,928 feet Y: 447,649 feet

New Mexico State Plane Coordinate System, Eastern Zone, 1983 NAD.

d. Priority Date(s):

The priority date(s) for surface water impoundment is:

e. Place of Use:

*INSERT BASED ON HYDROGRAPHIC SURVEY FOR DEFENDANT'S(S)  
TRACT(S)*

*(Insert acreage and location for each tract)*

**Water Right Total Acreage:** \_\_\_\_\_ **acres**

As shown on the Hydrographic Survey Map *(insert map number(s))* and  
Subfile Maps *(insert map number(s))*.

f. Amounts of Water:

Offeree(s) shall be entitled to impound and devote to beneficial use \_\_\_\_\_ acre  
feet of water.

II. AMOUNTS OF WATER (IRRIGATION WATER REQUIREMENTS). The  
irrigation water requirements will be finally adjudicated in the Project (Offer) Phase proceedings,  
and they will be incorporated into this Consent Order by supplemental order of the Court.

III. PROJECT DIVERSION REQUIREMENT AND STORAGE RIGHTS OF THE  
UNITED STATES AND DELIVERY RIGHTS OF THE CID. The project diversion  
requirement and storage rights of the United States and CID's rights to deliver water for the  
members of CID Members, will be determined in the Project (Offer) Phase of these proceedings.  
The respective rights held by the United States and CID are for the benefit of CID members.  
Defendant's(s') surface water rights described in this Consent Order are limited to the diversion,  
storage, and delivery rights held by the United States and the CID in connection with the  
Carlsbad Irrigation District Project and are subject to applicable state and federal laws and the  
further orders of this Court.

IV. STATE ENGINEER PERMIT AND LICENSE CONDITIONS. Any conditions  
contained in any permit or license issued by the State Engineer and relating to the water rights  
described above are incorporated into this Consent Order as if fully set forth herein.

V. INTERSE OBJECTION(S) BY OTHER WATER RIGHT OWNERS HAVING STANDING IN A LATER PHASE OF THESE PROCEEDINGS. The water rights set forth above are subject to challenge or objection by other water rights owners having standing to object in the *interse* phase of these proceedings that will be held at a later time.

VI. FILING CHANGE OF OWNERSHIP; REPORTING WATER DIVERSIONS. Defendant(s) will file a notice with the Court and provide the State Engineer with a copy of any change of ownership of all or any part of Defendant(s) water rights. Defendant(s) will meter and report annually to the New Mexico Office of the State Engineer all ground water diversions from each well described herein on forms provided by the State Engineer.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

A. This Consent Order sets forth all of the rights of the Defendant(s) to divert, impound, store, and place public surface and ground waters of the Pecos River Stream System to beneficial use, and pursuant to Rule 1-054(B)(2) NMRA finally adjudicates the elements of each right as between the State and the Defendant(s) subject to further orders of the Court as set forth herein. The Defendants and the State acknowledge that the Court's decisions regarding priority date(s) and amounts of water for the surface water rights set forth above shall be incorporated into this Consent Order by the further order of the Court.

B. Defendant(s) will file notice with the Court and provide the State Engineer with a copy of any change of ownership of all or any part of Defendant(s) water rights.

C. Defendant(s) will meter and report annually to the New Mexico Office of the State Engineer on forms provided by the State Engineer all ground water diversions from each well described herein.

D. This Consent Order is binding on the Defendant(s), and his, her or their heirs,

personal representatives, successors, and assigns, and the Court may enjoin Defendant(s), and his, her or their heirs, personal representatives, successors, and assigns from any diversion or use of the waters of the Pecos River Stream system except in strict accordance with the rights adjudicated herein by the Court.

E. The elements finally adjudicated by this Consent Order are subject to challenge *inter se* when conducted by the Court.

IT IS SO ORDERED

\_\_\_\_\_  
HARL D. BYRD  
DISTRICT JUDGE *PRO TEMPORE*

AGREED:

State of New Mexico  
Office of the State Engineer

By: \_\_\_\_\_  
Special Assistant Attorney General  
P.O. Box 25102  
Santa Fe, NM 87504-5104

Date: \_\_\_\_\_

OFFEREES:

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Name

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Signature

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Address: \_\_\_\_\_

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\_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT B**

Harl D. Byrd

July 30, 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, Carlsbad Basin Section — Filing  
of Order Setting Forth the Proper Manner of Quantifying the Water Rights  
of Members of CID and Adopting a Form of Agreement and Consent Order  
and Decree for Use in Connection with the Determination of Their Water  
Rights in the Form Attached as Exhibit A.**

Dear Trudy:

Enclosed please find executed original of the above-captioned order with Exhibit A attached for filing.

Counsel for the State is requested to serve a copy of this order upon all counsel and parties appearing pro se in the Membership Phase and the Project (Offer) Phase of these proceedings other than those set forth on attached Exhibit A.

Thank you for your cooperation and assistance.

Very truly yours,



Harl D. Byrd

HDB/jes  
cc w/enc.

Counsel and Repositories listed on Exhibit A

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