

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT  
CHAVES COUNTY NM  
FILED IN MY OFFICE

2003 APR 14 PM 2: 25

BEE J CLEM  
DISTRICT COURT 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 and 22600  
Consolidated

Honorable Harl D. Byrd  
District Judge *Pro Tempore*

Carlsbad Basin Section  
Carlsbad Irrigation District Section  
Project (Offer) Phase

**ORDER**

**This Order Implements Matters Considered at the March 10, 2003  
Scheduling Conference and Stays Proceedings in the Project (Offer) Phase  
Until the Further Order of the Court**

THIS MATTER comes on for consideration by the Court in connection with the entry of  
an order implementing matters initially discussed during the course of a Rule 1-016 NMRA 2003

scheduling conference held during a telephone conference call on March 10, 2003. Matters concerning whether the Project (Offer) Phase should be further stayed are also considered by the Court.

In connection with this matter, the Court has reviewed the JOINT MOTION FOR ORDER IMPLEMENTING THE MARCH 10, 2003 SCHEDULING CONFERENCE filed by the State of New Mexico (State), the Carlsbad Irrigation District (CID), the Pecos Valley Artesian Conservancy District (PVACD), and the United States of America (United States), hereafter collectively referred to as Joint Movants, served on April 7, 2003. The Joint Movants have advised that they will file a separate proposed form of scheduling and procedural order in connection with their JOINT MOTION FOR ENTRY OF A PARTIAL FINAL DECREE filed herein on March 28, 2003 for the Court's consideration.

The March 10, 2003 scheduling conference was held by the Court with counsel for the parties to the January 28, 2003, Pecos River Settlement Term Sheet (Term Sheet), members of Committee Counsel, James S. Lockwood, Esq., facilitator in connection with the preparation and implementation of the Term Sheet (Facilitator), and other interested parties. Those participating included David W. Gehlert, Esq., United States Department of Justice, counsel for the United States; DL Sanders and Christopher G. Schatzman, Special Assistant Attorneys General, Office of the State Engineer, counsel for the State; Steven L. Hernandez, Esq., counsel for CID; Stewart D. Shanor, Esq., Fred H. Hennighausen, Esq., and Richard A. Simms, Esq., counsel for PVACD; Susan C. Kery, Esq., counsel for New Mexico State University (NMSU); Paul L. Bloom, Esq., counsel for the Tracy/Eddy Interests; and W.T. Martin, Jr. Esq., counsel for the Brantleys. A. J. Olsen, Esq., counsel for certain parties who filed objections in the Project

(Offer) Phase did not participate in the conference.

The Court has been advised by the Facilitator and Counsel for the Joint Movants that the following action and scheduling of events implementing the terms and conditions of the Term Sheet and the Settlement Agreement dated March 25, 2003 (hereafter the Settlement Agreement) among the parties has been completed or will be completed as stated:

1. The United States, the State, the Interstate Stream Commission (ISC), CID, and PVACD (Negotiating Parties) successfully negotiated, drafted and circulated a Term Sheet setting forth their agreements which were subsequently incorporated into the Settlement Agreement. The Facilitator and counsel for the Negotiating Parties have advised the Court that the terms and provisions of the Term Sheet and the Settlement Agreement meet the conditions required by the Legislature of the State of New Mexico before expenditures can be made pursuant to NMSA 1978, Section 72-1-2.4 (2002).<sup>1</sup>

2. All public meetings in connection with the Term Sheet have been completed and the time for public input and comments has expired.

3. Presentations by the Negotiating Parties concerning the Term Sheet have been made to the New Mexico State Legislature and have been completed.

4. The Boards of Directors of CID and PVACD, respectively, the Interstate Stream Commission, the United States and the State approved the Term Sheet and authorized their representatives to prepare and execute the Settlement Agreement and to begin the process of implementing the Settlement Agreement.

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<sup>1</sup>Enacted as Laws 2002, Ch 94, Section 2.

5. The Negotiating Parties have agreed that the Settlement Agreement incorporates the entire agreement and understandings among the Negotiating Parties and that all prior or contemporaneous agreements and understandings are merged therein.

6. On March 25, 2003, the State by and through the State Engineer, the New Mexico Interstate Stream Commission and the Fort Sumner Irrigation District entered into an agreement intended to satisfy the requirements of the New Mexico State Legislature as a condition precedent to the expenditure of funds by the ISC appropriated pursuant to NMSA 1978, §72-1-2.4 to ensure that the expenditures by the ISC authorized under the section will be effective toward permanent compliance with the State's obligations under the Pecos River Compact and the Pecos River Decree. NMSA 1978, §72-1-2.4 (C). The terms and provisions of the agreement are incorporated herein by reference as though set forth in detail.

7. Computer modeling as required by the Term Sheet as implemented by the Settlement Agreement has been completed by the State and approved by the parties.

8. The Negotiating Parties filed a JOINT MOTION FOR ENTRY OF FINAL DECREE ON MARCH 28, 2003 requesting that the Court enter an order to be served on all parties to these proceedings stating that the Court intends to accept the Settlement Agreement and enter a Partial Final Decree incorporating the Settlement Agreement as set forth in Exhibit A to the Joint Motion. The Joint Motion also requests that the Court order that any parties who have not filed Withdrawals as described in paragraph 6 of the Joint Motion to show cause as to why the Court should not enter the stipulated Partial Final Decree incorporating the attached Settlement Agreement.

Based upon the foregoing, the following action and schedule of events should be and they

are hereby approved by the Court:

A. Counsel for the Brantleys and the Tracey/Eddy Interests respectively are granted leave until May 1, 2003 to submit comments regarding the procedures set forth in the FORM OF SCHEDULING AND PROCEDURAL ORDER ON JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE attached hereto as Exhibit A (Draft Order), governing the proposed process of providing notice of and opportunity to object to the entry of the Partial Final Decree. Any comments that counsel for the Brantleys and for the Tracy/Eddy Interests may choose to submit are separate from any objections they may raise to the terms of the Partial Final Decree and Settlement Agreement, which objections shall be heard in accordance with procedures hereafter established by the Court pursuant to the Draft Order.

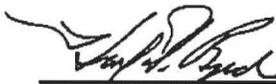
Counsel for the Negotiating Parties and counsel for the Brantleys and for the Tracy/Eddy Interests will have until May 15, 2003 to reach agreement regarding the procedures to be followed in giving notice of, and opportunity to object to, the entry of the Partial Final Decree (Notice Procedures). If agreement is not reached, counsel for the Brantleys and for the Tracy/Eddy Interests will have until May 26, 2003 to file a written request with the Court for a hearing, specifying the issues they wish to be resolved by the court in relation to the Notice Procedures set forth in the Draft Order. The Court will hear the Notice Procedures issues raised by the Brantleys and Tracy-Eddy Interests after May 27, 2003 but prior to June 13, 2003, if they have not been otherwise resolved prior to such hearing.

B. Pending the Court's Order on the Joint Motion for Entry of Partial final Decree, the Negotiating Parties shall proceed with due diligence to implement the Project Settlement Agreement during the period that action in connection with the Project (Offer) Phase

is stayed as hereafter provided. The State and the Court shall expedite all proceedings in connection with the Membership Phase of these proceedings.

Action by the court in connection with the JOINT MOTION TO EXTEND THE PROJECT (OFFER) PHASE STAY TO IMPLEMENT SETTLEMENT and on the JOINT MOTION FOR ENTRY OF A PARTIAL FINAL DECREE filed by the Negotiating Parties in these proceedings shall be deferred until the Court has had an opportunity to conduct and complete the proceedings set forth herein. In the interim, all proceedings in connection with the Project (Offer) Phase are stayed, subject to further order of this Court.

IT IS SO ORDERED.



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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, )  
Plaintiffs, )

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

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Nos. 20294 and 22600

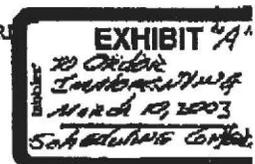
Consolidated  
Honorable Harl D. Byrd  
District Judge *Pro Tempore*

Carlsbad Basin Section  
Carlsbad Irrigation District  
Sub- Section  
Project (Offer) Phase

**FORM OF  
SCHEDULING AND PROCEDURAL ORDER  
ON JOINT MOTION FOR ENTRY OF A PARTIAL FINAL DECREE**

THIS MATTER came before the Court upon the Joint Motion for Entry of Partial Final Decree, filed March <sup>28<sup>th</sup> Nov</sup> 20, 2003, by the United States, the state of New Mexico, the Carlsbad Irrigation District, and the Pecos Valley Artesian Conservancy District (the "Negotiating Parties"). The Court being fully advised thereon, hereby ORDERS:

1 - FORM OF SCHEDULING AND PROCEDURAL ORDER ON JOINT MOTION FOR ENTRY OF A PARTIAL FINAL DECREE



A. NOTICE TO MEMBERS OF THE CARLSBAD IRRIGATION DISTRICT REGARDING PROJECT SETTLEMENT; OPPORTUNITY TO OBJECT. The Carlsbad Irrigation District ("CID") and the State shall prepare a Notice to be mailed via first class U. S. mail, postage prepaid, to the members of the CID listed on the 2003 CID Assessment Roll, notifying them of the proposed Partial Final Decree, with incorporated Settlement Agreement, for the Project (Offer) Phase of this adjudication (the "Project Settlement Agreement"),<sup>1</sup> of locations at which they may review the settlement documents, and of their opportunity to object to the entry of the Partial Final Decree by the Court (the "Mailed Notice"). The Mailed Notice shall be mailed no later than fifteen days after entry of this Scheduling and Procedural Order. Simultaneously with the mailing of the Mailed Notice, the CID and the State also shall publish Notice of the Project Settlement Agreement and the Joint Motion for Entry of Partial Final Decree in a newspaper of general circulation in Eddy County (the "Published Notice"). The CID and the State shall file with the Court an affidavit of mailing of the Mailed Notice and an affidavit of publication of the Published Notice.

Members of the CID who intend to file objections to the Partial Final Decree, must file with the Court and serve on all parties to the Project (Offer) Phase no later than forty days after the date of the mailing of the Mailed Notice,<sup>2</sup> a statement of their intent to file such objections pursuant to the procedure set forth in this Order (the "Statement of Intent to Object"). Any such Statement of Intent to Object shall include an address or other location for service of process. Any CID members

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<sup>1</sup> The proposed Partial Final Decree, with incorporated Settlement Agreement, was filed with the Court by the Negotiating Parties' Joint Motion for Entry of Partial Final Decree.

<sup>2</sup> Said forty days being fifty-five days after the entry of this Scheduling and Procedural Order.

who choose to file a Statement of Intent to Object shall thereafter be subject to the procedures set forth in Paragraph C, below.

B. SOLICITING AND FILING WITHDRAWALS OF OBJECTIONS AND CONSENT TO ENTRY OF PARTIAL FINAL DECREE. The CID and the PVACD will solicit from their respective constituencies withdrawals of the objections filed with the Court to the Stipulated Offer of Judgment in the Project (Offer) Phase filed by the State on June 22, 1994. Said withdrawals shall be in the form attached hereto as Exhibit "A" and shall be filed with the Court. The CID and the PVACD shall complete the process of soliciting and filing such withdrawals by fifty-five days after the entry of this Scheduling and Procedural Order. Parties who do not file a Withdrawal of the Objection and Consent to Entry of Partial Final Decree by fifty-five days after the entry of this Scheduling and Procedural Order shall thereafter be subject to the provisions of Paragraph C, below.

C. ORDERS TO SHOW CAUSE, SCHEDULING CONFERENCES, AND HEARINGS ON OBJECTIONS NOT WITHDRAWN. The procedures set forth in this paragraph are designed to expedite the hearings on the Orders to Show Cause issued by the Court and the Court's ultimate decisions on any objections made to the entry of a Partial Final Decree. All parties who previously filed objections to the Stipulated Offer of Judgment in the Project (Offer) Phase and have not subsequently withdrawn such objections, and all CID members who file Statements of Intent to Objection in response to the provisions of Paragraph A, (collectively, the "Objectors") shall comply with the provisions of this Paragraph C.

1. Issuance of Orders to Show Cause. Filing Statement Setting Forth Objections with Specificity. If all objections filed to the Stipulated Offer of Judgment in the Project (Offer)

Phase are not withdrawn by fifty-five days after the entry of this Scheduling and Procedural Order, or if any CID member files a Statement of Intent to Object as provided in Paragraph A above, the Court will direct Orders to Show Cause to be entered requiring the Objectors to show cause why the Partial Final Decree should not be made final and binding upon them (the "Orders to Show Cause"). The Orders to Show Cause will include notice of the provisions of this Paragraph C and will direct the Negotiating Parties to cause such orders to be personally served upon the Objectors within the jurisdiction of the Court whose whereabouts can be located with due inquiry and search. If the Negotiating Parties are unable to locate the whereabouts of an Objector after due inquiry and search, or if the objector is beyond the jurisdiction of this Court, the Clerk of the Court shall issue a notice of the pendency of the Order to Show Cause in accordance with the provisions of Rule 1-004(H) NMRA 2003 and shall publish such notice in accordance with the provisions of said rule. The Order to Show Cause and the Notice of Pendency shall be mailed by first class U.S. mail, postage prepaid, to the last know address of the Objector as to whom service by publication is intended.

Within thirty (30) days after service of an Order to Show Cause, or the last publication of Notice of the Order to Show Cause in the case of Objectors notified pursuant to the provisions of Rule 1-004(H), all Objectors who have not previously withdrawn their objections shall file with the Court and serve on all parties to the Project (Offer) Phase, a statement setting forth with particularity the grounds for their objection to entry of a Partial Final Decree approving the settlement and including, to the extent available to the Objector, a summary of the evidence that the Objector will present in support of the objection.

2. Rule 1-016 Pretrial Conference. After receipt of the statements provided for in the preceding paragraph from the remaining Objectors, the Court will schedule a pretrial

conference as provided by Rule 1-016. The conference shall establish a pretrial scheduling order, simplify and consolidate the issues presented, consolidate hearings on those issues where possible, establish a schedule and procedures for discovery, and address such other matters as may aid in disposition of the objections. The Court also will establish a schedule for hearings on the objections so such hearings will be completed and determinations made on the objections as expeditiously as possible.

3. Dismissal of Objections for Failure to Comply with Procedures Set Forth Herein. If an Objector does not fully comply with the requirements of this Paragraph C, the Negotiating Parties may file a Motion requesting the Court to enter its order dismissing the objection for failure to comply with the procedures set forth in this Order. Alternatively, the Court, *sua sponte*, may issue its order dismissing the objection for failure to comply with the procedures set forth in this Order.

D. ENTRY OF PARTIAL FINAL DECREE. Subsequent to completion of hearings on the Orders to Show Cause and issuance of its determinations on such Orders, the Court shall make its decision as to whether to enter the Partial Final Decree in this Phase of these proceedings.

Action by the Court in connection with the JOINT MOTION FOR ENTRY OF A PARTIAL FINAL DECREE shall be deferred until the Court has completed the proceedings contemplated by this Scheduling and Procedural Order. Pending completion of such proceedings and the Court's decision on the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE and the JOINT MOTION TO EXTEND THE PROJECT (OFFER) PHASE STAY TO IMPLEMENT SETTLEMENT, all proceedings in connection with the Project (Offer) Phase are stayed subject to the further order of this Court.

IT IS SO ORDERED.

HARL D. BYRD  
DISTRICT JUDGE *PRO TEMPORE*

Approved as to form:

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*DL Sanders*  
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Christopher G. Schatzman  
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FINAL DRAFT 4/2/03

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

*CKW/Slum*

STATE OF NEW MEXICO, ex rel. )  
 S.E. REYNOLDS, State Engineer )  
 and PECOS VALLEY ARTESIAN )  
 CONSERVANCY DISTRICT, )  
 )  
 Plaintiffs, )  
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 v. )  
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 L. T. LEWIS, et al., and )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendants. )

Nos. 20294 and 22600  
Consolidated

Carlsbad Basin Section  
Carlsbad Irr. Dist. Section

**WITHDRAWAL OF OBJECTION  
TO STIPULATED OFFER OF JUDGMENT  
AND CONSENT TO ENTRY OF PARTIAL FINAL DECREE**

THIS WITHDRAWAL OF OBJECTION TO STIPULATED OFFER OF JUDGMENT AND  
CONSENT TO ENTRY OF PARTIAL FINAL DECREE, (the "Withdrawal and Consent") is  
executed by the undersigned effective as of the 15<sup>th</sup> day of July, 2003.

**RECITALS**

A. The adjudication of the water rights for the Carlsbad Project was initiated by  
Stipulated Offer of Judgment submitted to the Adjudication Court herein by Plaintiff, State of New  
Mexico, ex rel. State Engineer, the United States of America and the Carlsbad Irrigation District and  
filed on June 22, 1994.

B. The undersigned duly filed his objections to the Stipulated Offer of Judgment as  
required by the Pretrial Order for the Carlsbad Project Water Right Claims.

EXHIBIT A  
To Copy of Schedule  
and Proposed  
Order on Entry of  
a Partial Final Decree

C. Copies of the following pleadings and documents are available to the undersigned for inspection at the offices of Pecos Valley Artesian Conservancy District:

1. Proposed Partial Final Decree to which is appended, for incorporation, a copy of a Settlement Agreement by and among the Interstate Streams Commission, the State of New Mexico, ex. rel State Engineer, the United States of America, the Carlsbad Irrigation District, and the Pecos Valley Artesian Conservancy District (collectively the "Negotiating Parties") which has been approved and signed on behalf of said parties as of March 25, 2003.

2. Joint Motion by which the Negotiating Parties request the Adjudication Court to approve the Partial Final Decree and the attached Settlement Agreement.

D. The agreement of the Negotiating Parties, as evidenced by the Partial Final Decree and the Settlement Agreement, represents a recommendation to the constituency of each Negotiating Party that the entry of the Partial Final Decree, adopting the Settlement Agreement, is in the best interests of the owners of water rights in the areas over which said Negotiating Parties have jurisdiction.

E. The Agreement of the Negotiating Parties contemplates that each Objector to the Stipulated Offer of Judgment shall be given the opportunity to withdraw his objections and to consent to the entry of the Partial Final Decree, which incorporates the Settlement Agreement.

F. Any Objector who does not execute and file a Withdrawal and Consent shall be served with an Order to Show Cause by the Adjudication Court pursuant to which such Objector shall be accorded a hearing before the Adjudication Court to show cause why the Adjudication Court should not enter the Partial Final Decree and approve the Settlement Agreement.

WITHDRAWAL AND CONSENT

1. The undersigned does hereby withdraw his objections to the Stipulated Offer of Judgment and does hereby consent to the entry of the Partial Final Decree, with Settlement Agreement incorporated therein, in the form approved by the Board of Directors of Pecos Valley Artesian Conservancy District, dated the 25<sup>th</sup> day of March, 2003.

2. The undersigned acknowledges that he understands that by signing this Withdrawal and Consent he is waiving any right to object to the adjudication of the rights of the Carlsbad Irrigation District and the United States in the Carlsbad Project Section (the Project (Offer) Phase) of the Adjudication Suit.

3. The undersigned acknowledges that he has had the opportunity to seek the advice of consultants or counsel of his own choosing in making the decision to execute and file with the Adjudication Court this Withdrawal and Consent and that he has relied upon his own judgment and not upon any representations made to him by any party other than those representations that may be contained in the contents of the Partial Final Decree and Settlement Agreement.

4. The undersigned agrees that the Adjudication Court may proceed with hearings on the Joint Motion, may proceed with hearings on Show Cause Orders served upon Objectors, and may otherwise proceed with the consideration and entry of a Partial Final Decree, incorporating the Settlement Agreement, without further notice, to or participation of, the undersigned in said proceedings.

5. The undersigned agrees, pursuant to paragraph 2(a) of the Settlement Agreement that upon entry of the Partial Final Decree, the undersigned shall not present any claim or objection in the membership or any inter se phase of the Adjudication that is inconsistent with the Partial Final Decree or the Settlement Agreement; provided, however, that nothing herein shall prevent the

undersigned from protesting any change in purpose and/or place of use based upon grounds provided by applicable law in proceedings before the State Engineer or an appeal therefrom.

EXECUTED this \_\_\_ day of \_\_\_\_\_, 2003, but effective as of the date above set forth.

OBJECTOR:

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone