

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY NM
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DEE J. CLEM
CLERK DISTRICT COURT

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

Membership Phase
Hydrographic Surveys,
Sections 1 and 2

PROCEDURAL ORDER

**This Order Sets Forth Procedures to be Followed in
Connection With the Adjudication of Water Rights Claims of
Members of the Carlsbad Irrigation District Relating to
Hydrographic Surveys, Section 1 and 2**

THIS MATTER comes on for consideration by the Court in connection with the entry of an order setting forth procedures to be followed in regard to the adjudication of water rights claims of members of the Carlsbad Irrigation District (CID) in the Membership Phase of these proceedings for CID Hydrographic Survey Sections 1 and 2.

The proceedings in connection with CID Hydrographic Survey Sections 1 and 2 will determine the water rights claims of members of CID as between the State and Claimant(s) through Offers of Judgment with Consent Orders or after evidentiary hearings, if required. A Claimant's adjudicated water rights may be subject to challenge in *inter se* phase(s) by other Claimants with adjudicated water rights (see Section B. below).

The Court, having considered the comments and recommendations of the Hydrographic Survey Section of the Office of the State Engineer, interested counsel, and parties appearing *pro se* and being otherwise sufficiently advised in the premises;

IT IS THEREFORE ORDERED that the following procedures should be and they are hereby adopted in proceedings involving the determination of water rights claims of members of CID in the Membership Phase in connection with Hydrographic Survey Sections 1 and 2:

A. PROCEDURES IN THE MEMBERSHIP PHASE

1. Hydrographic Surveys. New Mexico law requires that a hydrographic survey be prepared in connection with all general stream adjudication proceedings concerning the determination of water rights. CID Hydrographic Survey Sections 1 and 2 are portions of this general stream adjudication proceeding and have been prepared by the State Engineer in connection with the adjudication of water right claims of members of CID in the membership phase of this proceeding. NMSA 1978, 72-4-17.
2. Hydrographic Surveys Sections 1 and 2. Hydrographic Survey Sections 1 and 2 have been completed and have been filed with the Court in accordance with the following schedule:

Section 1 - Filed with the Court on September 4, 2002.

Section 2 - Filed with the Court on April 14, 2003.

3. Parties Appearing Without Counsel. Claimants appearing without counsel (*pro se*) shall be held to the same standards of compliance with all procedural rules and orders of the Court as though counsel represented them.

4. Joinder and Substitution of Claimants. Water rights Claimants must be joined in order for their water rights to be adjudicated. Parties are joined or substituted throughout the adjudication process as title abstracting and field work is conducted. Claimants of water rights in connection with CID Hydrographic Survey Sections 1 and 2 have been joined and served.

The State shall take such actions as are necessary to join or substitute additional parties, as they become known. Where possible, counsel for the State shall obtain the consent of parties being substituted and those being dismissed prior to filing a motion to substitute. Service of the order joining a party shall be limited to the Claimant(s) to be joined as a party.

5. Ownership, Title Abstracting, and Notices of Changes.

a. Ownership verification and updating is necessary to properly adjudicate water rights. Changes in ownership occur throughout the adjudication process and require ongoing ownership and title verification. All Claimants, regardless of whether they are represented by counsel, shall file a notice with counsel for the State and with the Clerk of the District Court setting forth both their mailing and street address (if different) and telephone number(s).

b. Claimants represented by counsel or appearing *pro se* shall notify the State's counsel and the Court Clerk, within thirty (30) days after changes occur, of:

- 1) Changes in mailing address or physical address;
- 2) Changes in telephone number;

- 3) Changes related to the information contained in CID assessment rolls;
 - 4) Changes in points or places of diversion of water;
 - 5) Changes in places of use of water; and
 - 6) Other changes related to claimed water rights.
- c. When the State receives a notice as contemplated by paragraphs A.4.a. and b. above, it shall take such action as may be necessary to update its records. A Defendant who fail to report changes as required by this Order shall be deemed in default and the adjudication of that Claimant(s') water rights may proceed on the basis of the record then before the Court. In the event a Defendant transfers the entirety of his or her water rights to another person or entity, the transferring Defendant shall be responsible for notifying the Court Clerk and the State under this paragraph. If the transferring Defendant fails to comply with this paragraph, he or she may be found liable for costs and expenses expended by the State related to the Defendant's failure to comply with the provisions of this paragraph.

6. Service.

- a. Counsel for the State shall be responsible for service of process, pleadings, and notices upon water rights Claimants unless otherwise ordered by the Court.
- b. Service shall be in accordance with Rules 1-004, 1-005 and 1-025 NMRA, and upon required repositories, unless otherwise ordered by the Court. Unidentified or unknown Claimants in interest shall be joined by publication when appropriate. As new Claimants are joined in this proceeding, the State shall send by regular mail a service packet that includes:

- 1) an explanatory transmittal letter;
- 2) a form of waiver of service of summons;

- 3) a service packet instruction sheet;
- 4) a copy of the State's Supplemental Complaint dated May 30, 1978;
- 5) a copy of this order; and
- 6) a copy of the Court's Order joining the Claimant(s) as a party(ies).

c. A Certificate of Service of the service packet shall be completed by counsel for the State and filed with the Clerk of the Court. If Claimant(s) do not return the executed Waiver of Service and the Receipt of Service within twenty (20) days of mailing, the State shall request the Clerk to issue a summons and shall mail the summons and the Service Packet to the Claimant(s) by certified mail, return receipt requested. If Claimant(s) do not respond to the service packet sent by certified mail within twenty (20) days of receipt as indicated by the date on the return notice by the U.S. Postal Service, or if the Claimant(s) fail or refuse to accept the certified mail and the State receives notice from the U.S. Postal Service of the claimant(s) failure or refusal to accept the certified mail, the State may serve the Claimant in person and the Claimant shall be liable, upon motion by the State, for the cost of such service. If the State is unable after diligent search and inquiry to locate the Claimant, the State may serve the Claimant by publication.

7. Limitation of Service of Documents

- a. Service of pleadings and other papers required by law to be served and relating to subfile orders between the Claimant(s) and the State shall be limited to the State and the Claimant(s) involved in the particular subfile matter.
- b. Service of pleadings and other papers required by law to be served and relating to partial final orders for a section of this adjudication shall be limited to the State and all Claimants within the section.

- c. Service of pleadings and other papers required by law to be served and relating to final orders for the entire Pecos River stream system shall be served on every party to this adjudication proceeding.
- d. Pleadings and other papers required by law to be served and not specifically mentioned above, shall be served on counsel of record and Claimants appearing *pro se*, unless otherwise ordered by the Court.

8. Motion Practice

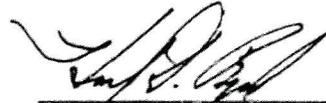
- a. Motion practice shall be in accordance with Rules 1-007 B and 1-007.1 NMRA.
- b. Local Rule LR 5-701 shall not apply to these proceedings. The State shall seek the concurrence of Claimants for any motion, except a motion to join, made by the State and relating solely to a subfile order among Claimants and the State. Motions for an extension of time and continuance of trial and other settings are not favored. Motions will be determined with due regard to the facts and circumstances that exist at the time the motion is filed.

9. Threshold Legal Issues. Whenever threshold legal issues or other matters of general application in the adjudication proceedings become apparent to counsel or parties appearing *pro se*, they shall notify the Court. A procedure for addressing the issues, including an appropriate briefing schedule, will then be adopted.

B. *INTER SE* PROCEEDINGS. After all members' water rights have been adjudicated in the Membership Phase, the Court will hold *inter se* proceedings for the Carlsbad Irrigation District Section. In the *inter se* proceedings a person owning an adjudicated water right may object to the elements of a water right of another person in the Membership Phase. Following resolution of all *inter se* claims in the Membership Phase in the Carlsbad Irrigation District Section, the Court will enter a partial final decree regarding the Section.

IT IS SO ORDERED

Dated this 23rd day of May, 2003.



HARL D. BYRD
DISTRICT JUDGE *PRO TEMPORE*