

OCT 02 2003

BEE J. CLEM, CLERK

FIFTH JUDICIAL DISTRICT COURT
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,)
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 David W. Bonem
District Judge <i>Pro Tempore</i>
Carlsbad Basin Section
Carlsbad Irrigation District
Sub-Section
Project (Offer) Phase

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

THIS MATTER comes on for consideration by the Court in connection with the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE filed March 26, 2003, by the United States of America ("United States"), the State of New Mexico ("State"), the Carlsbad Irrigation District ("CID"), and the Pecos Valley Artesian Conservancy District ("PVACD") (collectively the "Negotiating Parties") ("Negotiating Parties March 2003 Joint Motion"), the JOINT MOTION FOR ENTRY OF SCHEDULING AND PROCEDURAL ORDER ON JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE of the Negotiating Parties filed on May 29, 2003 (the "JOINT

MOTION FOR ENTRY OF SCHEDULING AND PROCEDURAL ORDER”), the SUPPLEMENTAL JOINT MOTION REQUESTING APPROVAL OF SERVICE PROCEDURE PURSUANT TO RULE 1-004(L) NMRA 2003 of the Negotiating Parties, submitted for filing on July 17, 2003, and the AFFIDAVIT OF CHRISTOPHER G. SCHATZMAN IN SUPPORT OF SERVICE PROCEDURE PURSUANT TO RULE 1-004(H), OR IN THE ALTERNATIVE, RULE 1-004(L) NMRA 2003, filed with the Court subsequent to the filing of the aforementioned SUPPLEMENTAL JOINT MOTION.

In its August 16, 1996 Order Relating to Procedural Issues, and its July 17, 1996 Letter Order attached thereto, the Court determined that when entered, the order, judgment and decree concerning whether the Stipulated Offer of Judgment entered into by the State, the United States, and the CID and filed with the Court on June 22, 1994, should be approved or disapproved, would be binding upon the following persons:

1. All persons served with summons and mailed a copy of the notice of proceedings;
2. All persons joined as parties in accordance with the Order of Judge Snead dated August 30, 1991, and mailed a copy of the notice of proceedings;
3. Those who have entered appearance or have participated in these proceedings;
4. All water users through the PVACD (notwithstanding that they are not individual parties) to the extent that PVACD is the agent of such water users;
5. All known water rights claimants of the Pecos River stream system ascertained as provided in the Affidavit of LeRoy R. Warren dated November 30, 1995 and filed with this Court;
6. All unknown persons who may claim an interest or right to the use of the water of the Pecos River stream system.

The Court finds that the procedures for the service of notice by mail and by publication set forth in this Order are substantially similar to those followed by the State in 1995 in serving notice of the Stipulated Offer of Judgment and approved by this Court. The Court further finds that the continued development of databases available to the State that were used to develop the list for service of notice by mail of the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE and of the manner in which affected persons may object to the entry of the proposed Partial Final Decree (the "Proposed Partial Final Decree") will result in an increased number of persons served by mail as opposed to being served strictly by publication.

For the reasons and based on the authorities set forth in its Order Relating to Procedural Issues, dated August 16, 1996 and the Court's letter Order dated July 17, 1996, the Court finds and ORDERS that the order, judgment and decree concerning whether the Proposed Partial Final Decree shall be entered, shall be binding on those persons set forth in Paragraphs 1 through 6 above. As regards "all unknown persons who may claim an interest or right to the use of the water of the Pecos River stream system," the Court states that Paragraph 6 above includes all unknown heirs of any deceased person who made claim of any right or interest to the water of the Pecos River stream system during his or her lifetime, and that the claims of such unknown persons and their heirs includes, without limitation, any claims of right or interest to the water of the Pecos River stream system that have not yet been identified or reported in a hydrographic survey but which may be identified or reported in such a survey or in some other document at some future date. The Court further finds that its order, judgment and decree concerning whether the Proposed Partial Final Decree shall be entered, shall also be binding upon those added by the State to the service list provided for in this order and given notice by mail according to the provisions of this Order.

The following procedure should be and it is hereby established and adopted for the purpose of considering the Proposed Partial Final Decree, with attached Settlement Agreement, filed with the Court by the Negotiating Parties pursuant to the Negotiating Parties March 2003 Joint Motion.

A. SOLICITING AND FILING WITHDRAWALS OF OBJECTIONS AND CONSENTS TO ENTRY OF PROPOSED PARTIAL FINAL DECREE BY CID AND PVACD. The CID and the PVACD are in the process of soliciting and filing with the Clerk of the Court withdrawals of objections of members of CID and PVACD filed with the Clerk of the Court pertaining to the Stipulated Offer of Judgment in the Project (Offer) Phase filed by the State on June 22, 1994, and obtaining consents from said members to the entry of the Proposed Partial Final Decree. The CID and the PVACD shall complete the process of soliciting and filing such withdrawals within thirty-five days (35) after the entry of this Scheduling and Procedural Order. Upon completion of the process, counsel for CID and PVACD shall file a certificate of service with the Clerk of the Court. Parties who do not file a withdrawal of objections and consent to the entry of the Proposed Partial Final Decree within thirty-five (35) days after the entry of this Scheduling and Procedural Order shall thereafter be subject to the provisions of Paragraph G, below, provided, however, that withdrawals of objections and consents to the entry of the Proposed Partial Final Decree received later than thirty-five (35) days after the entry of this order shall be accepted by the Court as timely filed at any time prior to the entry of the Partial Final Decree.

B. ADOPTION OF PROCEDURES FOR SERVICE OF NOTICE PURSUANT TO RULE 1-004 (H) NMRA 2003 OR, IN THE ALTERNATIVE, BY RULE 1-004 (L) NMRA 2003. A case such as the adjudication of water rights in the Pecos River stream system involves thousands of potential water rights claimants. In order to adjudicate the Carlsbad Project's water rights, water

rights claimants in the Pecos River stream system must be notified of the proposed adjudication by settlement of those rights and of their opportunity to object to the entry of a decree adjudicating those water rights. To provide such notice, the Negotiating Parties have requested the Court's approval of a procedure that utilizes both mailed and published notice to notify all persons, both known and unknown, claiming water rights in the Pecos River stream system of the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE and the manner in which they might object to the entry of the proposed decree. The State has developed a service list that the Negotiating Parties propose to use to mail notice of such JOINT MOTION that includes in excess of 7,700 known water rights claimants on the Pecos River stream system. In order to provide notice to (1) unknown water rights claimants, (2) known water rights claimants for whom the State does not have current mailing address and has been unable to determine such address after due inquiry and search, (3) known claimants who are deliberately concealing their whereabouts to avoid service, and (4) unknown heirs of any deceased water rights claimants, the Negotiating Parties have proposed to publish notice of the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE, which includes a statement of the manner in which water rights claimants may object to the entry of the proposed decree in nine newspapers of general circulation which are published in, or distributed in, communities in the Pecos River stream system.

The Court finds that publication of notice in the manner set forth in Paragraph D below, in addition to service by mail as set forth in Paragraph C below, is appropriate so that notice may reasonably be provided to claimants in those categories listed above of said JOINT MOTION and of their opportunity to object to its entry. The Court further finds that publication of notice in the manner set forth in Paragraph D below is within the purpose and the spirit of the laws of New

Mexico relating to the adjudication of water rights and the New Mexico Rules of Civil Procedure, including specifically Rule 1-004(H).

In the alternative, the Court finds that by their SUPPLEMENTAL JOINT MOTION REQUESTING APPROVAL OF SERVICE PROCEDURE PURSUANT TO RULE 1-004(L) NMRA 2003, and by the AFFIDAVIT OF CHRISTOPHER G. SCHATZMAN IN SUPPORT OF SERVICE PROCEDURE UNDER RULE 1-004(H) AND 1-004 (L) NMRA 2003, the Negotiating Parties have made the necessary showing that service of notice to persons claiming water rights in the Pecos River stream system whose water rights interests may be affected by entry of the Proposed Partial Final Decree of the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE and of the manner in which they might object to the entry of such proposed decree cannot reasonably be made personally, or by mail, or by publication as otherwise provided in Rule 1-004 NMRA 2003. As a consequence, pursuant to Rule 1-004(L), the Court also finds that service of such notice will most effectively be made upon such persons by a combination of mailing and publication of such notice as set forth in Paragraphs C and D below. The Court further finds that service carried out in such a manner is within the purpose and the spirit of the laws of New Mexico relating to the adjudication of water rights and the New Mexico Rules of Civil Procedure, including specifically of Rule 1-004(L), and is reasonably calculated under the circumstances presented in these proceedings to provide water rights claimants in the Pecos River stream system with notice of the JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE and of their opportunity to object to the entry of the Proposed Partial Final Decree.

The Court notes the efforts of the Negotiating Parties and their counsel to give public notice of the Proposed Partial Final Decree and of the terms of the Settlement Agreement, and of the public

meetings that were held to explain and seek public comment upon the proposed terms of the Proposed Partial Final Decree and the Settlement Agreement. The fact of these meetings, and the wide public notice in connection therewith, informs the decision of this Court that the methods adopted herein for the service meets the standards set forth in *Mullane v. Central Hanover Bank & Trust Co., et al*, 339 U.S. 306 (1950) and the purposes of New Mexico law relating to the adjudication of water rights and the New Mexico Rules of Civil Procedure.

Pursuant to the findings set forth above, the Court ORDERS that service of notice shall be made by a combination of serving notice by mail in the manner set forth in Paragraph C, below, and by publication in the manner set forth in Paragraph D, below.

C. SERVICE OF NOTICES OF JOINT MOTION FOR ENTRY OF PARTIAL FINAL DECREE; OPPORTUNITY TO OBJECT.

1. Notice to Members of the Carlsbad Irrigation District. Under the direction of Counsel for CID, CID shall mail by first class U.S. mail, postage prepaid, a “NOTICE TO CID MEMBERS REGARDING PROJECT SETTLEMENT AGREEMENT; OPPORTUNITY TO OBJECT” in the form attached hereto as Exhibit A, the content of which is incorporated herein by this reference, to members of CID as shown on the CID’s most recent assessment roll no later than thirty-five (35) days after the date of entry of this Scheduling and Procedural Order. Included with the Notice in the mailed packet shall be a copy of the Negotiating Parties’ Joint Motion for Entry of Partial Final Decree, together with the Proposed Partial Final Decree and the Settlement Agreement between the CID, the PVACD, the United States, and the State (the “Settlement Agreement”), and the Agreement between the New Mexico State Engineer, the New Mexico Interstate Stream Commission, and the Fort Sumner Irrigation District (the “FSID/ISC Agreement”), that the Negotiating Parties have

previously filed with the Court. Upon completing the mailing to CID members, counsel for CID shall file an affidavit of such mailing with the Clerk of the Court.

2. Notice to Known Persons Claiming Water Rights in the Pecos River Stream System Who are Not Members of CID. Under the direction of Counsel for the State, notice in the form attached hereto as Exhibit B, the content of which is incorporated herein by this reference, shall be mailed by first class U. S. mail, postage prepaid, no later than thirty-five (35) days after the entry of this Scheduling and Procedural Order to all persons whose names appear on the list attached to the Certificate of Service filed with the Court by counsel for the State on April 4, 1995 (the “April 4, 1995 Service List”), plus any additional persons whose names appear in:

1. Pecos River stream system water rights claim files, other than files identified in the database as domestic well permits filed under NMSA 1978, § 72-12-1 (2003), that have been abstracted into the State’s W.A.T.E.R.S.¹ database as of May 1, 2003.²
2. All water rights claimants whose names appear on a list prepared by the Office of the State Engineer’s Office, of water rights claims in the Roswell Artesian Basin (“RAB”), of the Middle Pecos River Pumpers, and on the Black River.
3. All names appearing on a list obtained from the Chaves County Tax Assessor’s Office intended to include all irrigators located within the boundaries of the PVACD.³

¹ “Water Administration Technical Engineering Resource System”

² As of May 1, 2003, the files abstracted into the W.A.T.E.R.S. database are primarily for claims in the Fort Sumner area, and in the Roswell Artesian Basin (the “RAB”) from the current date back to the early 1930s.

³ The State will endeavor to eliminate duplicate entries from the lists described above where there is an exact match of names and addresses. The April 4, 1995 list included CID members. As those members will be served separately, the State will endeavor to eliminate CID members from the compiled list where there is an exact match.

Upon completion of the mailing of the notice in the form attached as Exhibit B, the State shall file an affidavit of such mailing with the Clerk of the Court.

D. NOTICE BY PUBLICATION TO ALL PERSONS CLAIMING WATER RIGHTS IN THE PECOS RIVER STREAM SYSTEM WITHIN THE STATE OF NEW MEXICO WHO MAY CLAIM AN INTEREST IN OR THE RIGHT TO USE WATER OF THE PECOS RIVER STREAM SYSTEM. The Negotiating Parties shall cause to be published as legal notices, a notice in the form attached hereto as Exhibit C, once each week for four consecutive weeks, commencing not later than fifteen (15) days following entry of this Scheduling and Procedural Order in the following newspapers: the Carlsbad Current Argus, the Roswell Daily Record, the Ruidoso News, the Lincoln County News, the De Baca County News, the Santa Rosa News, the Las Vegas Optic, the Albuquerque Journal, and the Santa Fe New Mexican. Upon completion of publication as set forth above, the State, CID, and PVACD shall file publishers' affidavits of publication with the Clerk of the Court.

E. REPOSITORIES. For the purposes of providing water rights claimants on the Pecos River Stream System additional notice and opportunity to review the Negotiating Parties March 2003 Joint Motion, the Proposed Partial Final Decree, the Settlement Agreement, and the FSID/ISC Agreement, and an opportunity to object thereto, counsel for the State is directed to carry out the measures set forth in this Paragraph E.

1. Counsel for the State will place on file with the District Court Clerk's Office for the Fifth Judicial District, the CID and PVACD repositories, the Office of the State Engineer's Roswell District Office, and the State Engineer's Litigation and Adjudication Program office in Santa Fe,

NM, copies of the Joint Motion for Entry of Partial Final Decree, the Proposed Partial Final Decree, the Settlement Agreement, and the FSID/ISC Agreement.

2. From the time of entry of this Scheduling and Procedural Order until the Court has entered its order on the Negotiating Parties' Joint Motion for Entry of Partial Final Decree, the State is directed to re-establish the repositories with the District Court Clerk's Offices in De Baca County and Guadalupe County,⁴ and is further directed to establish repositories with the District Court Clerk's Offices in Eddy County, San Miguel County and Lincoln County. Such repositories shall be the official repositories of the Court. The State will place on file with those repositories copies of the Joint Motion for Entry of Partial Final Decree, the Proposed Partial Final Decree, the Settlement Agreement, and the FSID/ISC Agreement. After the Court has made its determination on whether to enter the Partial Final Decree in this phase of these proceedings and entered its order on the Joint Motion for Entry of Partial Final Decree, these five repositories shall be discontinued and copies of all documents deposited as herein provided may be destroyed without further order of the Court.

3. The State has posted copies of the Negotiating Parties March 2003 Joint Motion, the Proposed Partial Final Decree, the Settlement Agreement, and the FSID/ISC Agreement on the Office of the State Engineer's web site for review by the public. The documents are located at the following web address: "www.state.seo.state.nm.us/hot-topics/index.html" under the heading "Pecos River - Carlsbad Project Settlement." The State is directed to maintain these documents on its web

⁴ The Guadalupe County Courthouse and the De Baca County Courthouse repositories were terminated by an Order of the Court entered on February 11, 2003.

sites at the location described until the Court has entered its order on the Negotiating Parties' Joint Motion for Entry of Partial Final Decree.

By means of the Affidavit of Christopher G. Schatzman described above, the State has informed the Court of the efforts it has made to supplement the service list that was described in the Affidavit of LeRoy R. Warren dated November 30, 1995. The State also has informed the Court that it does not have available a current, completely reliable list of all water rights claimants in the Pecos River stream system and that compiling such a list is a time-consuming, expensive process. Given frequent changes in the ownership of property and claims to water rights, there is no means to ensure that such a list will remain adequate or complete once compiled for the time period pertinent to these proceedings. The Negotiating Parties have presented argument to the Court that the notice process set forth in Paragraphs C and D above should ensure that broad notice is provided to water rights claimants within the Pecos River stream system of the Negotiating Parties March 2003 Joint Motion and the Proposed Partial Final Decree and the Settlement Agreement, particularly to those most likely to be affected by the terms of the proposed decree and settlement, that such notice will provide reasonable opportunity for interested persons to object to the entry of the Partial Final Decree submitted to the Court by the Negotiating Parties, should they choose to do so and that the standards set forth in *Mullane v. Central Hanover Bank & Trust Co., et al*, 339 U.S. 306, 314 (1950) will be complied with and due process requirements met.

The Court finds that within the limits of practicability and reasonableness the notice procedures proposed by the Negotiating Parties, and adopted by the Court in this Order, are reasonably calculated to reach all persons, whether known or unknown, and the heirs of all such persons, claiming any right or interest to the water of the Pecos River stream system, whether now

known or hereafter identified, whose right or interest may be affected by entry of the Proposed Partial Final Decree and satisfy the due process standards set forth in *Mullane*. Such notice is likely to safeguard the interests of all interested water rights claimants, as any objections to the entry of the Proposed Partial Final Decree sustained would inure to the benefit of all affected persons claiming water rights in the Pecos River stream system. *See Id., at 319.*

F. PERSONS INTENDING TO FILE OBJECTIONS; STATEMENT OF INTENT TO FILE OBJECTION. All persons served with notices as provided pursuant to Paragraphs C and D above who intend to file objections to the entry of the Proposed Partial Final Decree, must file with the Court and serve on counsel for the Negotiating Parties no later than thirty (30) days after the date of the mailing of the Notice provided by Paragraph C, or thirty days (30) after the last date of publication provided by Paragraph D, a statement declaring their intent to file objections pursuant to the procedure set forth in this Order. Such statements of intent to file objection shall include a residential or business address or other location for service of process and for service by mail of other proceedings. Any person who chooses to file a statement of intent to file objections shall thereafter be subject to the procedures set forth in Paragraph G, below.

G. 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 to be 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 who have not subsequently withdrawn such objections and all persons who file statements of intent to file

objections in response to the notice set forth in Paragraphs C and D (collectively, the “Objectors”) shall comply with the provisions of this Paragraph G.

1. Issuance and Mailing of Orders to Show Cause. If objections to the entry of the Proposed Partial Final Decree remain and have not been withdrawn within thirty-five (35) days after the entry of this Scheduling and Procedural Order, or if any person files a statement of intent to file an objection, the Court will direct that Orders to Show Cause be entered requiring that the remaining Objectors show cause why the Proposed 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 G and will direct the Negotiating Parties to serve the Orders to Show Cause upon the remaining Objectors. Service of the Orders to Show Cause shall be made by the Negotiating Parties by first class mail, postage prepaid, to the last known address of the remaining Objectors no later than fifteen (15) days after the issuance of the Orders to Show Cause. Upon the mailing of such notice the Negotiating Parties shall file an affidavit of mailing with the Court. If the Negotiating Parties are unable to locate the whereabouts of an Objector after due inquiry and search, the Negotiating Parties shall ask the Clerk of the Court to issue a notice of the pendency of the Order to Show Cause in accordance with the provisions of Rule 1-004 (H) and (L) NMRA 2003 and counsel for the State shall publish such notice in accordance with the provisions of said Rule.

2. Filing Statement Setting Forth Objections with Specificity. Within thirty (30) days after service of an Order to Show Cause, the Objector served shall file with the Court and serve on counsel for the Negotiating Parties, a statement setting forth with particularity the grounds for objection to entry of the Proposed Partial Final Decree, together with a statement setting forth with particularity objections to: the legal authority of a Negotiating Party(ies) to enter the agreements

contained in such Decree or the Settlement Agreement incorporated therein, or how the water rights of the Objector will be adversely affected by the priority, amount, purpose, periods and place of use, together with other conditions as set forth in the Proposed Partial Final Decree. Said statement shall also include, to the extent available to the Objector, a summary of the evidence the Objector will present in support of the objection.

3. Rule 1-016 Scheduling Order and Pretrial Conferences. After filing of the statements provided for in the preceding sub-paragraph by Objectors, the Court will schedule a scheduling and prehearing conference as provided by Rule 1-016 NMRA 2003. The conference shall establish a pretrial scheduling order, clarify, simplify and consolidate the issues presented, consolidate hearings on all 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 will also establish a schedule for hearings on the objections so that hearings will be completed and determinations made on the objections as expeditiously as possible.

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

5. Hearings on Orders to Show Cause. At the hearings on the Orders to Show Cause, the Objector shall bear the initial burden to make a *prima facie* case showing how the water rights of the Objector will be adversely affected by the priority, amount, purpose, periods and place of use, or other matters as set forth in the Proposed Partial Final Decree. Upon such a showing by an

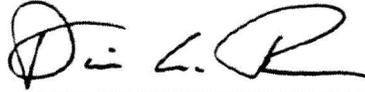
Objector, the Negotiating Parties shall have the burden of overcoming such a *prima facie* case by a preponderance of the evidence that the Objector will not be adversely affected by the priority, amount, purpose, periods and place of use, or other matters as set forth in the Proposed Partial Final Decree. If the Court determines that the entry of the Proposed Partial Final Decree will adversely affect valid water rights of the Objector making such a *prima facie* case, the Court shall afford the Negotiating Parties an opportunity to propose terms or conditions in the Proposed Partial Final Decree which would prevent or ameliorate such effect, without further notice to water rights claimants on the Pecos River stream system other than those who have filed an objection and have not been dismissed as provided above for failure to comply with the procedures set forth herein.

H. 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 Proposed Partial Final Decree in this Phase of these proceedings. The Partial Final Decree shall include any additional or revised terms and conditions proposed by the Negotiating Parties and approved by the Court that are intended to ameliorate any adverse effect the Proposed Partial Final Decree would have on any Objector as proven in any Order to Show Cause proceeding provided for herein. The Proposed Partial Final Decree shall not otherwise be amended by the Court. Nothing contained in this paragraph, however, shall be deemed or construed to prevent the Court from determining whether the Proposed Partial Final Decree should be approved by the Court.

Further action by the Court in connection with the Negotiating Parties March 2003 joint Motion 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

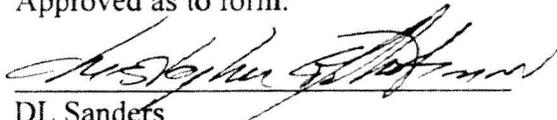
Negotiating Parties March 2003 Joint Motion, all proceedings in connection with the Project (Offer) Phase shall be and they are hereby stayed subject to the further order of this Court.

IT IS SO ORDERED.

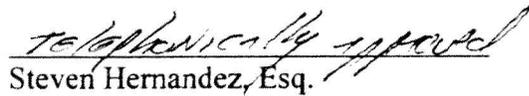


DAVID W. BONEM
DISTRICT JUDGE *PRO TEMPORE*

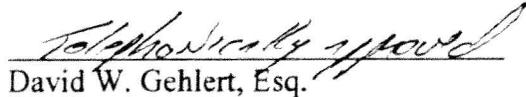
Approved as to form:



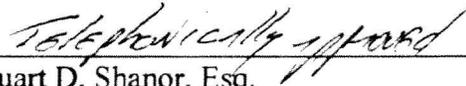
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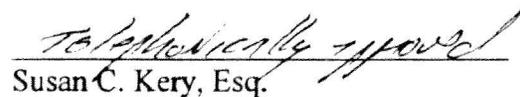
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EXHIBIT "A"

NOTICE TO CID MEMBERS REGARDING PROJECT SETTLEMENT AGREEMENT; OPPORTUNITY TO OBJECT.

On June 22, 1994, Carlsbad Irrigation District ("CID") and the United States of America ("United States") accepted a Stipulated Offer of Judgment (the "Project Offer") from the State of New Mexico ("State") regarding the right to surface waters of the Pecos River Stream System for use in the Carlsbad Project. After the opportunity to object to the Project Offer was given, objections to the Project Offer were filed with the Court by several CID members, as well as by non-CID members.

The CID, United States, State, and the Pecos Valley Artesian Conservancy District ("PVACD") successfully negotiated a Term Sheet that contained agreements that would resolve most of the objections to the Project Offer. On January 28, 2003, the CID held a membership meeting at the Carlsbad Civic Center. The Term Sheet was distributed and representatives of CID, United States, and the State provided explanations of the proposed settlement. The CID Board of Directors received CID member input on the proposed settlement at that meeting and in written comments. The Term Sheet was revised to incorporate member input where appropriate.

On February 11, 2003, the CID Board of Directors at its regularly scheduled monthly board meeting approved the final version of the Term Sheet and authorized the President, Treasurer/Manager and Attorney for CID to execute the necessary final settlement documents and to begin the process of implementing the settlement. Attorneys for the parties, including CID, transferred the language from the Term Sheet to the Partial Final Decree and to the Settlement Agreement between the CID, PVACD, the United States, and the State, which was signed by representatives of the CID, PVACD, United States, and the State on March 25, 2003 and filed with the Court.

This notice gives CID members a final opportunity to review the proposed Partial Final Decree, the Settlement Agreement and related documents and object to the entry of the Partial Final Decree and the approval of the Settlement Agreement. Copies of the Joint Motion for Entry of Partial Final Decree, the proposed Partial Final Decree, the Settlement Agreement, and the Agreement between the Office of the State Engineer, the Interstate Stream Commission, and the Fort Sumner Irrigation District are enclosed. The documents also can be reviewed at the CID Office, 201 South Canal, Carlsbad, NM, 88220, the Office of the State Engineer's Roswell District Office, 1900 W. Second, Roswell, NM 88201, and on the Office of the State Engineers website at "www.seo.state.nm.us/hot-topics/index" (copies of the documents can be printed from the website).

If you do not wish to object to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree, you do not have to take any action. If you wish to object to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree, you must file a Statement of Intent to File Objections with the District Court Clerk's Office for the Fifth Judicial District at the address shown below. A form of

the Statement of Intent to file Objection may be obtained from: the Office of the State Engineer's web site at "www.seo.state.nm.us/hot-topics/index"; the Office of the State Engineer's Roswell District Office, 1900 W. Second St., Roswell, NM 88201, 505-622-6467; the Office of the State Engineer's Litigation and Adjudication Program, 130 S. Capitol Pl, Santa Fe, NM 87504-5102, or the CID Office, 201 S. Canal, Carlsbad, NM 88220. Alternatively, you may file a Statement of Intent to File Objection in a letter. The letter must clearly state that it is a Statement of Intent to File Objection and must include an address or other location where you are available to be served with process. Statements of Intent to File Objection must be sent or delivered no later than _____ to:

**Bee J. Clem, District Court Clerk
Fifth Judicial District
P.O. Box 1776, Roswell, NM 88202-1776
1597 South Main, Roswell, NM 88203
ATTN: Pecos River Stream System Water Rights Adjudication
Statement of Intent to File Objection**

Any person who files a Statement of Intent to File Objection, whether by form or by letter, shall be subject to the procedures established by the Court for hearing all objections filed, including without limitation filing of a Statement Setting Forth Objections with Specificity, pretrial conferences, and other hearings to adopt appropriate scheduling orders. Persons who file Statements of Intent to File Objection, or subsequently file a Statement Setting Forth Objections with Specificity, who do not fully comply with the procedural requirements governing the hearing of all objections filed are subject to having their objections dismissed.

Failure of a defendant in the Pecos River stream system water rights adjudication or a person claiming water rights in the Pecos River stream system whose water rights interests may be affected by the proposed Partial Final Decree, to file a Statement of Intent to File Objection and to subsequently file a Statement Setting Forth Objections with Specificity, shall forever bar his or her subsequent objection to the diversion, storage, and delivery rights claimed by the CID and the United States as set forth in the proposed Partial Final Decree.

Should you wish legal advice regarding this Notice or your rights under it, you are urged to contact counsel of your choosing.

Carlsbad Irrigation District

Date

EXHIBIT "B"

NOTICE TO BE MAILED TO KNOWN WATER RIGHTS CLAIMANTS ON PECOS RIVER
STREAM SYSTEM WHO ARE NOT MEMBERS OF THE CID

By (enter date 35 days after entry of Court's Order), Counsel for the Office of the State Engineer will direct the mailing of a copy of the following published notice to defendants in the Pecos River stream system water rights adjudication and to water rights claimants in the Pecos River stream system as known to the Office of the State Engineer, other than members of the Carlsbad Irrigation District ("CID"). CID members will be mailed a separate notice. The published notice will appear in this newspaper once each week for four consecutive weeks pursuant to NMSA 1978, § 14-11-10.

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.)	
State Engineer and PECOS VALLEY)	
ARTESIAN CONSERVANCY DISTRICT,)	
Plaintiffs,)	
vs.)	Nos. 20294 and 22600
L.T. LEWIS, et al.,)	Consolidated
UNITED STATES OF AMERICA,)	
Defendants,)	Honorable Harl D. Byrd
and)	District Judge <i>Pro Tempore</i>
STATE OF NEW MEXICO, ex rel,)	
State Engineer and PECOS VALLEY)	
ARTESIAN CONSERVANCY DISTRICT,)	Carlsbad Basin Section
Plaintiffs,)	Carlsbad Irrigation District
vs.)	Sub- Section
HAGERMAN CANAL CO., et al.,)	Project (Offer) Phase
Defendants.)	

TO: ALL DEFENDANTS IN THE PECOS RIVER STREAM SYSTEM WATER RIGHTS ADJUDICATION AND ALL PERSONS CLAIMING WATER RIGHTS IN THE PECOS RIVER STREAM SYSTEM, INCLUDING ITS TRIBUTARIES AND UNDERGROUND BASINS, WITHIN THE STATE OF NEW MEXICO. This notice is provided pursuant to the order of the Court entered _____ in the above entitled action.

You are hereby notified of the presentation to the Court of a proposed Partial Final Decree adjudicating the diversion, storage, and delivery rights claimed by the Carlsbad Irrigation District ("CID") and of the United States of America ("United States"), the terms of which are summarized below. The purpose of this notice is to inform all defendants in the Pecos River stream system water rights adjudication proceedings and all persons claiming water rights in the Pecos River stream system whose water rights interests may be affected by the proposed Partial Final Decree of (1) their

right to object to all or any part of proposed Partial Final Decree and (2) the manner in which they may file a Statement of Intention to File Objection.

Copies of the Joint Motion for Entry of Partial Final Decree, the proposed Partial Final Decree, the Settlement Agreement among the CID, Pecos Valley Artesian Conservancy District ("PVACD"), the United States, and the State of New Mexico (the "State") (the "Settlement Agreement"), and the Agreement among the New Mexico State Engineer, the New Mexico Interstate Stream Commission, and the Fort Sumner Irrigation District (the "FSID/ISC Agreement") may be reviewed at: the Office of the State Engineer's web site at "www.seo.state.nm.us/hot-topics/index" (copies of the documents can be printed from the website); the Office of the State Engineer's Roswell District Office, 1900 W. Second St., Roswell, NM 88201, 505-622-6467; the Office of the State Engineer's Litigation and Adjudication Program, 130 S. Capitol Pl, Santa Fe, NM 87504-5102, the PVACD Office, 2303 E. Second St., Roswell, NM 88201, or the CID Office, 201 S. Canal, Carlsbad, NM 88220. The documents also may be reviewed at the following District Clerk's Offices: Chaves County - Fifth Judicial District Clerk's Office, 1597 South Main, Roswell, NM 88203; DeBaca County - Tenth Judicial District Clerk's Office, 514 Avenue C, Fort Sumner, NM 88119; Eddy County - Fifth Judicial District Clerk's Office, 102 N. Canal, #240, Carlsbad, NM 88220; Guadalupe County - Fourth Judicial District Clerk's Office, 420 Parker Ave. #5, Santa Rosa, NM 88435; Lincoln County - Twelfth Judicial District Clerk's Office, 300 Central, Carrizozo, NM 88301; San Miguel County - Fourth Judicial District Clerk's Office, 500 W. National Ave., Las Vegas, NM 87701.

If you do not wish to object to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree, you do not have to take any action. If you wish to object to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree, you must file a Statement of Intent to File Objection with the District Court Clerk's Office for the Fifth Judicial District at the address shown below. A form of the Statement of Intent to file Objection may be obtained from: the Office of the State Engineer's web site at "www.seo.state.nm.us/hot-topics/index"; the Office of the State Engineer's Roswell District Office, 1900 W. Second St., Roswell, NM 88201, 505-622-6467; the Office of the State Engineer's Litigation and Adjudication Program, 130 S. Capitol Pl, Santa Fe, NM 87504-5102, the PVACD Office, 2303 E. Second St., Roswell, NM 88201, or the CID Office, 201 S. Canal, Carlsbad, NM 88220. Alternatively, you may file a Statement of Intent to File Objection in a letter. The letter must clearly state that it is a Statement of Intent to File Objection and must include an address or other location for service of process. Statements of Intent to File Objection must be sent or delivered no later than _____ to:

**Bee J. Clem, District Court Clerk
Fifth Judicial District Court
P.O. Box 1776, Roswell, NM 88202-1776
1597 South Main, Roswell, NM 88203
ATTN: Pecos River Stream System Water Rights Adjudication
Statement of Intent to File Objection**

Any person who files a Statement of Intent to File Objection, whether by form or by letter, shall be subject to the procedures established by the Court for hearing all objections filed, including without

limitation filing of a Statement Setting Forth Objection with Specificity, pretrial conferences, and other hearings to adopt appropriate scheduling orders. Persons who file Statements of Intent to File Objection, and subsequently file a Statement Setting Forth Objection with Specificity, who do not fully comply with the procedural requirements governing the hearing of all objections filed are subject to having their objections dismissed.

Failure of a defendant in the Pecos River stream system water rights adjudication or a person claiming water rights in the Pecos River stream system whose water rights interests may be affected by the proposed Partial Final Decree, to file a Statement of Intent to File Objection, and to subsequently to file a Statement Setting Forth Objections with Specificity, shall forever bar his or her subsequent objection to the diversion, storage, and delivery rights claimed by the CID and the United States and set forth in the proposed Partial Final Decree.

Commencing fifteen days after entry of the Court's Order directing publication of this Notice, the Notice and the accompanying summary of the proposed Partial Final Decree shall be published once a week for four consecutive weeks in the following newspapers of general circulation in the Pecos River stream system: Carlsbad Current Argus, Roswell Daily Record, Ruidoso News, Lincoln County News, DeBaca County News, Santa Rosa News, Las Vegas Optic. In addition, the notice and the summary shall be published once a week for four consecutive weeks in the Albuquerque Journal and the Santa Fe New Mexican.

By:

Bee J. Clem
District Court Clerk, Fifth Judicial District Court
P.O. Box 1776, Roswell, NM 88202-1776
505-622-2212

SUMMARY OF PROPOSED PARTIAL FINAL DECREE

A COMPLETE COPY OF THE PARTIAL FINAL DECREE MAY BE REVIEWED AT THE LOCATIONS LISTED ABOVE

The following summarizes the proposed Partial Final Decree submitted to the Court by the United States, CID, the State, and PVACD, addressing the claims of the United States and CID in connection with the Carlsbad Project. The proposed Decree judicially establishes the maximum allowable annual diversion and storage rights of the United States and CID, and CID's right to deliver water for the members of the CID. Each individual CID member's surface water rights, to be further determined in the Membership Phase of the Carlsbad Irrigation District Sub-Section of these proceedings, shall be limited by the diversion, storage, and delivery rights held by the United States and CID and shall be subject to applicable state and federal law.

Under the proposed decree, the United States and CID shall have the right to divert and to store public surface waters from the Pecos River stream system to irrigate an area within the CID (a/k/a the "Carlsbad Project") not exceeding 25,055.00 acres.

1. Priority dates for diversions of water:

A. Pecos River, State Engineer File Number 6: July 31, 1888, for an amount not to exceed 101,283 acre-feet annually; April 10, 1915, for an amount not to exceed 22,625 acre-feet annually; and June 24, 1919, for an amount not to exceed 1,292 acre-feet annually. The above priorities shall be subject to such superior rights of the FSID and the Storrie Project Water Users Association established by the Final Decree in *United States of America v. Hope Community Ditch*, U.S. District Court Cause No. 712 Equity (1933), in addition to being subject to all other water rights having senior priority dates.

B. Black River, State Engineer File Number 1927: December 31, 1889.

2. Place of Use: The CID consists of 25,055.00 acres, located in T. 21S., R. 26E.; T. 21S., R. 27E.; T. 22S., R. 26E.; T. 22S., R. 27E.; T. 22S., R. 28E.; T. 23S., R. 27E.; T. 23S., R. 28E.; T. 23S., R. 29E.; T. 24S., R. 27E.; T. 24S., R. 28E.; T. 24S., R. 29E., N.M.P.N. as shown on "Plat of the Carlsbad Irrigation District, Eddy County, New Mexico," filed for record April 16, 1993, in Eddy County, NM. The CID boundaries may be changed pursuant to and as authorized by state law.

3. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use.

4. Points of diversion: Pecos River - Avalon Dam gate into the CID Main Canal in Sec. 12, T. 21 S., R. 26 E., N.M.P.M, Eddy County, NM; Black River - junction at which the CID Black River Canal intersects the Black River, in Sec. 12, T. 24 S., R. 27 E., N.M.P.M., Eddy County, NM.

5. Allowable annual diversion: The combined annual diversion of water shall not exceed the lesser of (i) 125,200 acre-feet or (ii) the quantity of water necessary to supply an annual depletion of 55,572 acre-feet. The right, allotment or entitlement of use within the CID for each acre irrigated from the Pecos River shall be based on an amount of water at the point of diversion that shall not exceed a diversion of 4.997 acre-feet per year, a farm delivery of 3.697 acre-feet per year, and a consumptive irrigation requirement of 2.218 acre-feet per year. The right, allotment or entitlement of use within the CID for that acreage irrigated from the Black River, shall not exceed a total maximum diversion of 2,800 acre-feet per year, a farm delivery of 3.697 acre-feet per year, and a consumptive irrigation requirement of 2.218 acre-feet per year; such diversion to be governed by the State Engineer Findings and Order dated June 10, 1964, as the same exists or may be amended in the future.

6. Diversion, impoundment, and storage of public surface waters of the Pecos River for the United States and CID, under State Engineer File Number 6.

A. Lake Avalon, the headwall at the Avalon Dam outlet gate being in Sec. 12, T. 21S., R. 26E., N.M.P.M., Eddy County, NM: Amount of water - the amount of total reservoir capacity available, but not more than 7,000 acre-feet, with the right to fill and refill as often as waters are available; Priority - October 31, 1889.

B. Brantley Lake, the control tower at Brantley Dam outlet gate being in Sec. 28, T. 20S., R. 26E., N.M.P.M., Eddy County, NM: Amount of water - an amount not to exceed 40,000 acre-

feet, with the right to fill and refill as waters are available, said 40,000 acre-feet to include the quantity of water in bank storage which returns to and is available for release from Brantley Lake; Priority - October 31, 1893.

C. Lake Sumner, the center of Sumner Dam being in Sec. 34, T. 5N., R. 24E., N.M.P.M., DeBaca and Guadalupe Counties, NM: Amount of water - the total reservoir capacity in acre-feet available at elevation 4,261 above sea level, provided that the elevation of 4,261 feet above sea level may be exceeded during the period from October 1 of each year to April 30 of the following year so long as the water level is reduced to an elevation not exceeding 4,261 feet above sea level by April 30 of each year and, provided further, that such impoundment and storage rights shall never be less than 20,000 acre-feet so long as the storage capacity at any elevation is 20,000 acre-feet or more; Priority - February 2, 1906.

D. Santa Rosa Lake, the outlet gates at Santa Rosa Dam being near lat. 35° 01' 47", long. 104° 41' 30", Jose Perea Grant. Guadalupe County, NM: Amount of water - Not to exceed 176,500 acre-feet less the total reservoir capacity in acre-feet available for the storage of water for release for use by CID in Lake Avalon, Brantley Lake, and Lake Sumner (or any replacement or additional lake or reservoir that may be constructed to impound and store water for use by CID) as determined from current sediment surveys of those lakes, or by determining reservoir capacity by estimating sediment deposition by the use of generally accepted techniques for those years when the actual sediment surveys are not available, and the contract between the United States Department of the Interior, Bureau of Reclamation, and CID dated September 8, 1971; Priority - February 2, 1906.

SUMMARY OF PROPOSED SETTLEMENT AGREEMENT

A COMPLETE COPY OF THE PROPOSED SETTLEMENT AGREEMENT MAY BE REVIEWED AT THE LOCATIONS LISTED ABOVE

The following summarizes the Settlement Agreement among the State of New Mexico (the "State"), the New Mexico Interstate Stream Commission ("ISC"), the United States Department of the Interior, Bureau of Reclamation, CID, and PVACD. The Settlement Agreement, which is an integral part of the Partial Final Decree adjudicating the diversion and storage rights of the United States and CID for the Carlsbad Project, is a water conservation plan among the State, ISC, the United States Department of the Interior, Bureau of Reclamation, CID, and PVACD designed to augment the surface flows of the lower Pecos River to: (a) secure the delivery of Project water; (b) meet the State's obligations to the State of Texas under the Pecos River Compact; and, (c) limit the circumstances under which the United States and CID are entitled to make a call for the administration of water right priorities. Among other points summarized below, fundamental to the Settlement Agreement is the construction or development of a wellfield (the "Augmentation Wells") to facilitate the physical delivery of groundwater directly into the Pecos River under certain, specified conditions, the purchase and transfer to the wellfield of existing groundwater rights in the Roswell Artesian Basin ("RAB") by the ISC, and the purchase and retirement of irrigated land within PVACD and CID. The Settlement Agreement also defines the conditions under which the land purchased by the ISC in the CID will be allotted and receive water.

1. **Satisfaction of Conditions Precedent.** The obligations of CID, the United States, PVACD, ISC and the State under the Settlement Agreement, and the force and effect of the Partial Final Decree are contingent upon either the satisfaction or waiver by express agreement of the Conditions Precedent set forth in the Settlement Agreement on or before December 31, 2004, or such later date as the Parties may agree to. The Conditions Precedent include:

A. **Entry of a Partial Final Decree.** The Court shall enter a Partial Final Decree containing the same terms contained in the form of decree submitted to the Court. PVACD and CID shall seek to have as many of the objectors in the Project (Offer) Phase of the Adjudication as possible withdraw their objections to the Stipulated Offer of Judgment and consent to the entry of the Partial Final Decree.

B. **Initial Purchase of Land; Augmentation Wells.** ISC shall acquire at least 4,500 acres of land on the CID assessment rolls that are entitled to the delivery of Project water, and 7,500 acres of irrigation water rights in the RAB. In addition, ISC shall construct, lease or purchase Augmentation Wells sufficient to undertake the augmentation pumping plan outlined in the Settlement Agreement, to a minimum capacity of 15,750 acre-feet of water per year.

C. **Federal Contracts and Environmental Compliance.** Bureau of Reclamation, CID, and ISC shall enter or extend contracts to effectuate the purposes of the Settlement Agreement. Bureau of Reclamation shall complete all necessary environmental compliance related to those contracts, including compliance under the National Environmental Policy Act and the Endangered Species Act.

2. **Supplemental Well Pumping.** The State Engineer shall limit groundwater diversions from each supplemental well within CID to a quantity of water equal to a combined maximum Farm Delivery Requirement ("FDR") of 3.697 acre-feet per acre per year, minus surface water allotments by CID. In the Membership Phase, the State shall include in offers of judgment made to CID members owning supplemental wells serving acreage within the CID entitled to receive water delivered by CID, a provision whereby each such Supplemental Well Owner will execute an assignment in favor of ISC for the purpose of preventing excess depletions to the annual surface water supply of the Pecos River. The assignments shall be exercised in accordance with regulations to be adopted by the State Engineer.

3. **ISC Water Right Acquisition, Sale Back and Lease Back.** To effectuate the Settlement Agreement, ISC will use its best efforts to purchase land as follows: (a) up to 6000 acres of land on the CID assessment rolls that are entitled to delivery of Project water; (b) up to 1,000 acres of irrigation water rights between the Acme gage to and including the FSID; (c) up to 11,000 acres of irrigation water rights in the RAB, of which approximately 3,000 acres shall be water rights in the shallow aquifers and approximately 8,000 acres shall be water rights in the artesian aquifers. By owning land on the CID assessment roll, ISC shall become a CID member, entitled to the rights and benefits, and subject to the obligations, assessments, rules and regulations, of such membership, on the same basis as other CID members. ISC may sell or lease water rights, pursuant to the terms of the Settlement Agreement and in accordance with the terms of NMSA 1978, § 72-1-2.4.

4. CID allotment of water; Transfers of Allotments Within CID. CID shall allot water on a *pro rata* basis to 25,055 acres of land on the assessment rolls of CID. CID shall deliver through the Carlsbad Project to Avalon Reservoir all water allotted by CID to lands owned by ISC and shall make such water available to ISC and account for it as provided in the Settlement Agreement. Notwithstanding the FDR limitation of 3.697 acre-feet per acre per year of land within CID set forth in the Partial Final Decree, nothing in the Settlement Agreement shall limit CID's authority pursuant to NMSA 1978 §73-10-16 to approve transfers of allotments from the acreage to which the allotment was originally made to other acreage within CID, which may result in total water deliveries to the land to which the transfer is made in excess of an FDR of 3.697 acre-feet per acre per year; provided, that for purposes of determining the diversion limitation for any supplemental well on the land from which the allotment has been moved for stacking purposes, the allotment shall be charged to the acreage to which the allotment was originally made.

5. CID Membership Phase. The State shall use its best efforts to expedite the Membership Phase. CID may provide technical assistance to any member served with an offer of judgment and may facilitate settlement of any dispute concerning the surface water rights elements of named owner, delivery ditch, and amount of irrigated land set forth in the offer of judgment. Upon entry of the Partial Final Decree containing the same terms as contained in the Partial Final Decree filed by the Parties, no Party shall present any claim or objection in the Membership Phase or any *inter se* phase of the Adjudication that is inconsistent with the Partial Final Decree and the Settlement Agreement; provided, however, nothing shall prevent any Party from protesting any change in purpose and/or place of use based on grounds provided by applicable law in proceedings before the State Engineer.

6. Augmentation Well Pumping. ISC will develop the Augmentation Wells, or will lease or purchase existing wells in the RAB drilled into the Roswell Basin aquifer, to pump water to augment the flow of the Pecos River. ISC will acquire water rights in the RAB and FSID and transfer the rights to the Augmentation Wells pursuant to the statutes governing the acquisition and transfer of water rights and the rules and regulations and the administrative basin guidelines of the State Engineer. ISC will consult with PVACD in the purchase, lease or development of the Augmentation Wells, and shall make a reasonable effort to locate the Wells so their operation will not cause impairment to any valid existing water rights. ISC shall not divert from the Augmentation Wells more than 100,000 acre-feet during each five-year accounting period used for RAB administration, and in no event more than 35,000 acre-feet in any one year of such accounting period. ISC may use the Augmentation Wells to deliver water to the Pecos River in a Pecos River Decree Shortfall Condition as described in the Settlement Agreement. ISC shall not operate the Augmentation Wells to augment Pecos River flows for the purpose of conserving species listed as threatened or endangered under the Endangered Species Act, except as may be wholly incidental to the primary purposes established in the Settlement Agreement.

7. Limitation on CID and United States Call Pursuant to the Partial Final Decree. Neither CID nor the United States shall place a call for administration of priorities or otherwise seek to curtail water uses in the RAB, and shall not store or divert water resulting from a call or curtailment exercised by others (including without limitation for the delivery of water to the New Mexico-Texas state line for purposes of compliance with the Pecos River Compact or any United States Supreme Court Decree or court order relating thereto), except to the extent necessary to supply not more than 50,000

acre-feet in any one year at the Avalon Dam gate for delivery into the CID main canal, as provided for in the Settlement Agreement.

8. Pecos River Decree Shortfall Condition. In the event that the U.S. Supreme Court Pecos River Master determines that a net shortfall exists in New Mexico's delivery obligations to Texas under the Pecos River Compact ("Shortfall"), the Parties agree that the interests of the Pecos River Basin and the state of New Mexico will best be served by implementing voluntary measures to increase flows at the New Mexico-Texas state line. In the event of a Shortfall, ISC will use its best efforts to prepare a proposed plan pursuant to Article II (A) (2) of the Pecos River Decree that shall be based upon the following actions that will increase the amount of water at the New Mexico-Texas state line by March 31 of the calendar year following the accounting year in the amount of the Shortfall, in the following order of priority: (a) ISC may operate the Augmentation Wells to deliver water to the Pecos River to meet the Shortfall, subject to the limitations in any state permit under which the Wells operate. The State Engineer shall administer the river to insure that the water delivered to the Pecos River from the Augmentation Wells is passed through Carlsbad Project facilities, subject to normal stream conveyance losses, for delivery to the New Mexico-Texas state line; CID and the United States agree to comply with such administration. Any water delivered to the Pecos River from the Augmentation Wells to meet a Shortfall shall be subject to the 100,000 acre-feet over five years and 35,000 acre-feet in any one-year limitations specified in the Settlement Agreement. To the extent necessary to meet the Shortfall, PVACD shall make available by loan without charge to ISC for a reasonable period of time, water rights held by PVACD in its retirement program for temporary transfer to the Augmentation Wells in an amount necessary for such purpose. (b) The State Engineer and/or ISC may develop a proposed plan pursuant to Article II (A) (2) of the Pecos River Decree.

9. Water Master. The State shall petition the District Court to expand the Pecos River Water Master's duties to include authority to: (a) order meters and records for the diversion of water from the Augmentation Wells, and administer the delivery of such water; (b) administer deliveries of water from the Augmentation Wells to Avalon Reservoir, and deliveries of water from Avalon Reservoir to the New Mexico-Texas state line in compliance with the Settlement Agreement by preventing by injunction any diversion of such water from the Pecos River by any person; provided, however, that the Water Master shall have no authority over Carlsbad Project internal operations and deliveries of water to CID members; (c) order records from CID for the deliveries of water from Project facilities to Avalon Reservoir and from Avalon Reservoir to and within the CID, to assure compliance with the Settlement Agreement; and (d) order meters and records for the diversion of water from supplemental wells within CID, and enforce by injunction the limitations on supplemental well pumping within CID set forth in the Settlement Agreement.

THE SUMMARIES PRESENTED ABOVE ARE DESIGNED TO IDENTIFY THE MOST IMPORTANT PROVISIONS IN THE PARTIAL FINAL DECREE AND THE SETTLEMENT AGREEMENT. A REVIEW OF THE ENTIRE TEXT OF BOTH DOCUMENTS IS REQUIRED FOR A FULL UNDERSTANDING OF THEIR TERMS. COMPLETE COPIES OF THE DOCUMENTS MAY BE REVIEWED AT THE REPOSITORIES LISTED ABOVE.

EXHIBIT "C"
 NOTICE TO BE PUBLISHED IN DESIGNATED NEWSPAPERS

By (enter date 35 days after entry of Court's Order), Counsel for the Office of the State Engineer will direct the mailing of a copy of the following published notice to defendants in the Pecos River stream system water rights adjudication and to water rights claimants in the Pecos River stream system as known to the Office of the State Engineer, other than members of the Carlsbad Irrigation District ("CID"). CID members will be mailed a separate notice. The published notice will appear in this newspaper once each week for four consecutive weeks pursuant to NMSA 1978, § 14-11-10.

FIFTH JUDICIAL DISTRICT COURT
 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,) 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 <i>Pro Tempore</i> Carlsbad Basin Section Carlsbad Irrigation District Sub- Section Project (Offer) Phase
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TO: ALL DEFENDANTS IN THE PECOS RIVER STREAM SYSTEM WATER RIGHTS ADJUDICATION AND ALL PERSONS CLAIMING WATER RIGHTS IN THE PECOS RIVER STREAM SYSTEM, INCLUDING ITS TRIBUTARIES AND UNDERGROUND BASINS, WITHIN THE STATE OF NEW MEXICO. This notice is provided pursuant to the order of the Court entered _____ in the above titled action.

You are hereby notified of the presentation to the Court of a proposed Partial Final Decree adjudicating the diversion, storage, and delivery rights claimed by the Carlsbad Irrigation District ("CID") and of the United States of America ("United States"), the terms of which are summarized below. The purpose of this notice is to inform all defendants in the Pecos River stream system water rights adjudication and all persons claiming water rights in the Pecos River stream system whose water rights interests may be affected by the proposed Partial Final Decree of (1) their right to object to all or any part of proposed Partial Final Decree and (2) the manner in which they may file a

Statement of Intention to File Objection.

Copies of the Joint Motion for Entry of Partial Final Decree, the proposed Partial Final Decree, the Settlement Agreement among the CID, Pecos Valley Artesian Conservancy District ("PVACD"), the United States, and the State of New Mexico (the "State") (the "Settlement Agreement"), and the Agreement among the New Mexico State Engineer, the New Mexico Interstate Stream Commission, and the Fort Sumner Irrigation District (the "FSID/ISC Agreement") may be reviewed at: the Office of the State Engineer's web site at "www.seo.state.nm.us/hot-topics/index" (copies of the documents can be printed from the website); the Office of the State Engineer's Roswell District Office, 1900 W. Second St., Roswell, NM 88201, 505-622-6467; the Office of the State Engineer's Litigation and Adjudication Program, 130 S. Capitol Pl, Santa Fe, NM 87504-5102, the PVACD Office, 2303 E. Second St., Roswell, NM 88201, or the CID Office, 201 S. Canal, Carlsbad, NM 88220. The documents also may be reviewed at the following District Clerk's Offices: Chaves County - Fifth Judicial District Clerk's Office, 1597 South Main, Roswell, NM 88203; DeBaca County - Tenth Judicial District Clerk's Office, 514 Avenue C, Fort Sumner, NM 88119; Eddy County - Fifth Judicial District Clerk's Office, 102 N. Canal, #240, Carlsbad, NM 88220; Guadalupe County - Fourth Judicial District Clerk's Office, 420 Parker Ave. #5, Santa Rosa, NM 88435; Lincoln County - Twelfth Judicial District Clerk's Office, 300 Central, Carrizozo, NM 88301; San Miguel County - Fourth Judicial District Clerk's Office, 500 W. National Ave., Las Vegas, NM 87701.

If you do not wish to object to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree, you do not have to take any action. If you wish to object to all or any part of the water rights that would be adjudicated by the proposed Partial Final Decree, you must file a Statement of Intent to File Objection with the District Court Clerk's Office for the Fifth Judicial District at the address shown below. A form of the Statement of Intent to file Objection may be obtained from: the Office of the State Engineer's web site at "www.seo.state.nm.us/hot-topics/index"; the Office of the State Engineer's Roswell District Office, 1900 W. Second St., Roswell, NM 88201, 505-622-6467; the Office of the State Engineer's Litigation and Adjudication Program, 130 S. Capitol Pl, Santa Fe, NM 87504-5102, the PVACD Office, 2303 E. Second St., Roswell, NM 88201, or the CID Office, 201 S. Canal, Carlsbad, NM 88220. Alternatively, you may file a Statement of Intent to File Objection in a letter. The letter must clearly state that it is a Statement of Intent to File Objection and must include an address or other location for service of process. Statements of Intent to File Objection must be sent or delivered no later than _____ to:

**Bee J. Clem, District Court Clerk
Fifth Judicial District Court
P.O. Box 1776, Roswell, NM 88202-1776
1597 South Main, Roswell, NM 88203
ATTN: Pecos River Stream System Water Rights Adjudication
Statement of Intent to File Objection**

Any person who files a Statement of Intent to File Objection, whether by form or by letter, shall be subject to the procedures established by the Court for hearing all objections filed, including without limitation filing of a Statement Setting Forth Objection with Specificity, pretrial conferences, and

other hearings to adopt appropriate scheduling orders. Persons who file Statements of Intent to File Objection, and subsequently file a Statement Setting Forth Objection with Specificity, who do not fully comply with the procedural requirements governing the hearing of all objections filed are subject to having their objections dismissed.

Failure of a defendant in the Pecos River stream system water rights adjudication or a person claiming water rights in the Pecos River stream system whose water rights interests may be affected by the proposed Partial Final Decree, to file a Statement of Intent to File Objection, and to subsequently to file a Statement Setting Forth Objections with Specificity, shall forever bar his or her subsequent objection to the diversion, storage, and delivery rights claimed by the CID and the United States and set forth in the proposed Partial Final Decree.

Commencing fifteen days after entry of the Court's Order directing publication of this Notice, the Notice and the accompanying summary of the proposed Partial Final Decree shall be published once a week for four consecutive weeks in the following newspapers of general circulation in the Pecos River stream system: Carlsbad Current Argus, Roswell Daily Record, Ruidoso News, Lincoln County News, DeBaca County News, Santa Rosa News, Las Vegas Optic. In addition, the notice and the summary shall be published once a week for four consecutive weeks in the Albuquerque Journal and the Santa Fe New Mexican.

By:

Bee J. Clem
District Clerk, Fifth Judicial District
P.O. Box 1776, Roswell, NM 88202-1776
505-622-2212

SUMMARY OF PROPOSED PARTIAL FINAL DECREE

**A COMPLETE COPY OF THE PARTIAL FINAL DECREE MAY BE REVIEWED AT THE
LOCATIONS LISTED ABOVE**

The following summarizes the proposed Partial Final Decree submitted to the Court by the United States, CID, the State, and PVACD, addressing the claims of the United States and CID in connection with the Carlsbad Project. The proposed Decree judicially establishes the maximum allowable annual diversion and storage rights of the United States and CID, and CID's right to deliver water for the members of the CID. Each individual CID member's surface water rights, to be further determined in the Membership Phase of the Carlsbad Irrigation District Sub-Section of these proceedings, shall be limited by the diversion, storage, and delivery rights held by the United States and CID and shall be subject to applicable state and federal law.

Under the proposed decree, the United States and CID shall have the right to divert and to store public surface waters from the Pecos River stream system to irrigate an area within the CID (a/k/a the "Carlsbad Project") not exceeding 25,055.00 acres.

1. Priority dates for diversions of water:

A. Pecos River, State Engineer File Number 6: July 31, 1888, for an amount not to exceed 101,283 acre-feet annually; April 10, 1915, for an amount not to exceed 22,625 acre-feet annually; and June 24, 1919, for an amount not to exceed 1,292 acre-feet annually. The above priorities shall be subject to such superior rights of the FSID and the Storrie Project Water Users Association established by the Final Decree in *United States of America v. Hope Community Ditch*, U.S. District Court Cause No. 712 Equity (1933), in addition to being subject to all other water rights having senior priority dates.

B. Black River, State Engineer File Number 1927: December 31, 1889.

2. Place of Use: The CID consists of 25,055.00 acres, located in T. 21S., R. 26E.; T. 21S., R. 27E.; T. 22S., R. 26E.; T. 22S., R. 27E.; T. 22S., R. 28E.; T. 23S., R. 27E.; T. 23S., R. 28E.; T. 23S., R. 29E.; T. 24S., R. 27E.; T. 24S., R. 28E.; T. 24S., R. 29E., N.M.P.N. as shown on "Plat of the Carlsbad Irrigation District, Eddy County, New Mexico," filed for record April 16, 1993, in Eddy County, NM. The CID boundaries may be changed pursuant to and as authorized by state law.

3. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use.

4. Points of diversion: Pecos River - Avalon Dam gate into the CID Main Canal in Sec. 12, T. 21 S., R. 26 E., N.M.P.M, Eddy County, NM; Black River - junction at which the CID Black River Canal intersects the Black River, in Sec. 12, T. 24 S., R. 27 E., N.M.P.M., Eddy County, NM.

5. Allowable annual diversion: The combined annual diversion of water shall not exceed the lesser of (i) 125,200 acre-feet or (ii) the quantity of water necessary to supply an annual depletion of 55,572 acre-feet. The right, allotment or entitlement of use within the CID for each acre irrigated from the Pecos River shall be based on an amount of water at the point of diversion that shall not exceed a diversion of 4.997 acre-feet per year, a farm delivery of 3.697 acre-feet per year, and a consumptive irrigation requirement of 2.218 acre-feet per year. The right, allotment or entitlement of use within the CID for that acreage irrigated from the Black River, shall not exceed a total maximum diversion of 2,800 acre-feet per year, a farm delivery of 3.697 acre-feet per year, and a consumptive irrigation requirement of 2.218 acre-feet per year; such diversion to be governed by the State Engineer Findings and Order dated June 10, 1964, as the same exists or may be amended in the future.

6. Diversion, impoundment, and storage of public surface waters of the Pecos River for the United States and CID, under State Engineer File Number 6.

A. Lake Avalon, the headwall at the Avalon Dam outlet gate being in Sec. 12, T. 21S., R. 26E., N.M.P.M., Eddy County, NM: Amount of water - the amount of total reservoir capacity available, but not more than 7,000 acre-feet, with the right to fill and refill as often as waters are available; Priority - October 31, 1889.

B. Brantley Lake, the control tower at Brantley Dam outlet gate being in Sec. 28, T. 20S., R. 26E., N.M.P.M., Eddy County, NM: Amount of water - an amount not to exceed 40,000 acre-feet, with the right to fill and refill as waters are available, said 40,000 acre-feet to include the

quantity of water in bank storage which returns to and is available for release from Brantley Lake; Priority - October 31, 1893.

C. Lake Sumner, the center of Sumner Dam being in Sec. 34, T. 5N., R. 24E., N.M.P.M., DeBaca and Guadalupe Counties, NM: Amount of water - the total reservoir capacity in acre-feet available at elevation 4,261 above sea level, provided that the elevation of 4,261 feet above sea level may be exceeded during the period from October 1 of each year to April 30 of the following year so long as the water level is reduced to an elevation not exceeding 4,261 feet above sea level by April 30 of each year and, provided further, that such impoundment and storage rights shall never be less than 20,000 acre-feet so long as the storage capacity at any elevation is 20,000 acre-feet or more; Priority - February 2, 1906.

D. Santa Rosa Lake, the outlet gates at Santa Rosa Dam being near lat. 35° 01' 47", long. 104° 41' 30", Jose Perea Grant. Guadalupe County, NM: Amount of water - Not to exceed 176,500 acre-feet less the total reservoir capacity in acre-feet available for the storage of water for release for use by CID in Lake Avalon, Brantley Lake, and Lake Sumner (or any replacement or additional lake or reservoir that may be constructed to impound and store water for use by CID) as determined from current sediment surveys of those lakes, or by determining reservoir capacity by estimating sediment deposition by the use of generally accepted techniques for those years when the actual sediment surveys are not available, and the contract between the United States Department of the Interior, Bureau of Reclamation, and CID dated September 8, 1971; Priority - February 2, 1906.

SUMMARY OF PROPOSED SETTLEMENT AGREEMENT

A COMPLETE COPY OF THE PROPOSED SETTLEMENT AGREEMENT MAY BE REVIEWED AT THE LOCATIONS LISTED ABOVE

The following summarizes the Settlement Agreement among the State of New Mexico (the "State"), the New Mexico Interstate Stream Commission ("ISC"), the United States Department of the Interior, Bureau of Reclamation, CID, and PVACD. The Settlement Agreement, which is an integral part of the Partial Final Decree adjudicating the diversion and storage rights of the United States and CID for the Carlsbad Project, is a water conservation plan among the State, ISC, the United States Department of the Interior, Bureau of Reclamation, CID, and PVACD designed to augment the surface flows of the lower Pecos River to: (a) secure the delivery of Project water; (b) meet the State's obligations to the State of Texas under the Pecos River Compact; and, (c) limit the circumstances under which the United States and CID are entitled to make a call for the administration of water right priorities. Among other points summarized below, fundamental to the Settlement Agreement is the construction or development of a wellfield (the "Augmentation Wells") to facilitate the physical delivery of groundwater directly into the Pecos River under certain, specified conditions, the purchase and transfer to the wellfield of existing groundwater rights in the Roswell Artesian Basin ("RAB") by the ISC, and the purchase and retirement of irrigated land within PVACD and CID. The Settlement Agreement also defines the conditions under which the land purchased by the ISC in the CID will be allotted and receive water.

1. Satisfaction of Conditions Precedent. The obligations of CID, the United States, PVACD, ISC

and the State under the Settlement Agreement, and the force and effect of the Partial Final Decree are contingent upon either the satisfaction or waiver by express agreement of the Conditions Precedent set forth in the Settlement Agreement on or before December 31, 2004, or such later date as the Parties may agree to. The Conditions Precedent include:

A. Entry of a Partial Final Decree. The Court shall enter a Partial Final Decree containing the same terms contained in the form of decree submitted to the Court. PVACD and CID shall seek to have as many of the objectors in the Project (Offer) Phase of the Adjudication as possible withdraw their objections to the Stipulated Offer of Judgment and consent to the entry of the Partial Final Decree.

B. Initial Purchase of Land; Augmentation Wells. ISC shall acquire at least 4,500 acres of land on the CID assessment rolls that are entitled to the delivery of Project water, and 7,500 acres of irrigation water rights in the RAB. In addition, ISC shall construct, lease or purchase Augmentation Wells sufficient to undertake the augmentation pumping plan outlined in the Settlement Agreement, to a minimum capacity of 15,750 acre-feet of water per year.

C. Federal Contracts and Environmental Compliance. Bureau of Reclamation, CID, and ISC shall enter or extend contracts to effectuate the purposes of the Settlement Agreement. Bureau of Reclamation shall complete all necessary environmental compliance related to those contracts, including compliance under the National Environmental Policy Act and the Endangered Species Act.

2. Supplemental Well Pumping. The State Engineer shall limit groundwater diversions from each supplemental well within CID to a quantity of water equal to a combined maximum Farm Delivery Requirement ("FDR") of 3.697 acre-feet per acre per year, minus surface water allotments by CID. In the Membership Phase, the State shall include in offers of judgment made to CID members owning supplemental wells serving acreage within the CID entitled to receive water delivered by CID, a provision whereby each such Supplemental Well Owner will execute an assignment in favor of ISC for the purpose of preventing excess depletions to the annual surface water supply of the Pecos River. The assignments shall be exercised in accordance with regulations to be adopted by the State Engineer.

3. ISC Water Right Acquisition, Sale Back and Lease Back. To effectuate the Settlement Agreement, ISC will use its best efforts to purchase land as follows: (a) up to 6000 acres of land on the CID assessment rolls that are entitled to delivery of Project water; (b) up to 1,000 acres of irrigation water rights between the Acme gage to and including the FSID; (c) up to 11,000 acres of irrigation water rights in the RAB, of which approximately 3,000 acres shall be water rights in the shallow aquifers and approximately 8,000 acres shall be water rights in the artesian aquifers. By owning land on the CID assessment roll, ISC shall become a CID member, entitled to the rights and benefits, and subject to the obligations, assessments, rules and regulations, of such membership, on the same basis as other CID members. ISC may sell or lease water rights, pursuant to the terms of the Settlement Agreement and in accordance with the terms of NMSA 1978, § 72-1-2.4.

4. CID allotment of water; Transfers of Allotments Within CID. CID shall allot water on a *pro rata* basis to 25,055 acres of land on the assessment rolls of CID. CID shall deliver through the

Carlsbad Project to Avalon Reservoir all water allotted by CID to lands owned by ISC and shall make such water available to ISC and account for it as provided in the Settlement Agreement. Notwithstanding the FDR limitation of 3.697 acre-feet per acre per year of land within CID set forth in the Partial Final Decree, nothing in the Settlement Agreement shall limit CID's authority pursuant to NMSA 1978 §73-10-16 to approve transfers of allotments from the acreage to which the allotment was originally made to other acreage within CID, which may result in total water deliveries to the land to which the transfer is made in excess of an FDR of 3.697 acre-feet per acre per year; provided, that for purposes of determining the diversion limitation for any supplemental well on the land from which the allotment has been moved for stacking purposes, the allotment shall be charged to the acreage to which the allotment was originally made.

5. CID Membership Phase. The State shall use its best efforts to expedite the Membership Phase. CID may provide technical assistance to any member served with an offer of judgment and may facilitate settlement of any dispute concerning the surface water rights elements of named owner, delivery ditch, and amount of irrigated land set forth in the offer of judgment. Upon entry of the Partial Final Decree containing the same terms as contained in the Partial Final Decree filed by the Parties, no Party shall present any claim or objection in the Membership Phase or any *inter se* phase of the Adjudication that is inconsistent with the Partial Final Decree and the Settlement Agreement; provided, however, nothing shall prevent any Party from protesting any change in purpose and/or place of use based on grounds provided by applicable law in proceedings before the State Engineer.

6. Augmentation Well Pumping. ISC will develop the Augmentation Wells, or will lease or purchase existing wells in the RAB drilled into the Roswell Basin aquifer, to pump water to augment the flow of the Pecos River. ISC will acquire water rights in the RAB and FSID and transfer the rights to the Augmentation Wells pursuant to the statutes governing the acquisition and transfer of water rights and the rules and regulations and the administrative basin guidelines of the State Engineer. ISC will consult with PVACD in the purchase, lease or development of the Augmentation Wells, and shall make a reasonable effort to locate the Wells so their operation will not cause impairment to any valid existing water rights. ISC shall not divert from the Augmentation Wells more than 100,000 acre-feet during each five-year accounting period used for RAB administration, and in no event more than 35,000 acre-feet in any one year of such accounting period. ISC may use the Augmentation Wells to deliver water to the Pecos River in a Pecos River Decree Shortfall Condition as described in the Settlement Agreement. ISC shall not operate the Augmentation Wells to augment Pecos River flows for the purpose of conserving species listed as threatened or endangered under the Endangered Species Act, except as may be wholly incidental to the primary purposes established in the Settlement Agreement.

7. Limitation on CID and United States Call Pursuant to the Partial Final Decree. Neither CID nor the United States shall place a call for administration of priorities or otherwise seek to curtail water uses in the RAB, and shall not store or divert water resulting from a call or curtailment exercised by others (including without limitation for the delivery of water to the New Mexico-Texas state line for purposes of compliance with the Pecos River Compact or any United States Supreme Court Decree or court order relating thereto), except to the extent necessary to supply not more than 50,000 acre-feet in any one year at the Avalon Dam gate for delivery into the CID main canal, as provided for in the Settlement Agreement.

8. Pecos River Decree Shortfall Condition. In the event that the U.S. Supreme Court Pecos River Master determines that a net shortfall exists in New Mexico's delivery obligations to Texas under the Pecos River Compact ("Shortfall"), the Parties agree that the interests of the Pecos River Basin and the state of New Mexico will best be served by implementing voluntary measures to increase flows at the New Mexico-Texas state line. In the event of a Shortfall, ISC will use its best efforts to prepare a proposed plan pursuant to Article II (A) (2) of the Pecos River Decree that shall be based upon the following actions that will increase the amount of water at the New Mexico-Texas state line by March 31 of the calendar year following the accounting year in the amount of the Shortfall, in the following order of priority: (a) ISC may operate the Augmentation Wells to deliver water to the Pecos River to meet the Shortfall, subject to the limitations in any state permit under which the Wells operate. The State Engineer shall administer the river to insure that the water delivered to the Pecos River from the Augmentation Wells is passed through Carlsbad Project facilities, subject to normal stream conveyance losses, for delivery to the New Mexico-Texas state line; CID and the United States agree to comply with such administration. Any water delivered to the Pecos River from the Augmentation Wells to meet a Shortfall shall be subject to the 100,000 acre-feet over five years and 35,000 acre-feet in any one-year limitations specified in the Settlement Agreement. To the extent necessary to meet the Shortfall, PVACD shall make available by loan without charge to ISC for a reasonable period of time, water rights held by PVACD in its retirement program for temporary transfer to the Augmentation Wells in an amount necessary for such purpose. (b) The State Engineer and/or ISC may develop a proposed plan pursuant to Article II (A) (2) of the Pecos River Decree.

9. Water Master. The State shall petition the District Court to expand the Pecos River Water Master's duties to include authority to: (a) order meters and records for the diversion of water from the Augmentation Wells, and administer the delivery of such water; (b) administer deliveries of water from the Augmentation Wells to Avalon Reservoir, and deliveries of water from Avalon Reservoir to the New Mexico-Texas state line in compliance with the Settlement Agreement by preventing by injunction any diversion of such water from the Pecos River by any person; provided, however, that the Water Master shall have no authority over Carlsbad Project internal operations and deliveries of water to CID members; (c) order records from CID for the deliveries of water from Project facilities to Avalon Reservoir and from Avalon Reservoir to and within the CID, to assure compliance with the Settlement Agreement; and (d) order meters and records for the diversion of water from supplemental wells within CID, and enforce by injunction the limitations on supplemental well pumping within CID set forth in the Settlement Agreement.

THE SUMMARIES PRESENTED ABOVE ARE DESIGNED TO IDENTIFY THE MOST IMPORTANT PROVISIONS IN THE PARTIAL FINAL DECREE AND THE SETTLEMENT AGREEMENT. A REVIEW OF THE ENTIRE TEXT OF BOTH DOCUMENTS IS REQUIRED FOR A FULL UNDERSTANDING OF THEIR TERMS. COMPLETE COPIES OF THE DOCUMENTS MAY BE REVIEWED AT THE REPOSITORIES LISTED ABOVE.