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COUNTY OF CHAVES
NEW MEXICO

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DISTRICT COURT

STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*
STATE ENGINEER
and PECOS VALLEY ARTESIAN
CONSERVANCY DISTRICT,

Plaintiffs,

vs.

L.T. LEWIS, *et al.* and
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

Hon. James J. Wechsler
Presiding Judge

Carlsbad Irrigation District Section,
Membership Phase

CV-WH-03-01

**MOTION FOR ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE ON
SURFACE WATER RIGHTS AND SUPPLEMENTAL RIGHTS IN THE MEMBERSHIP
PHASE OF THE CARLSBAD IRRIGATION DISTRICT SECTION OF THE PECOS
RIVER STREAM SYSTEM ADJUDICATION**

The State of New Mexico *ex rel.* State Engineer (“State”) by and through its counsel,
moves the Court for entry of the Partial Final Judgment and Decree on Surface Water Rights and
Supplemental Rights in the Membership Phase of the Carlsbad Irrigation District Section of the
Pecos River Stream System Adjudication (“Partial Final Decree”). Attached to this Motion is a
Proposed Partial Final Judgment and Decree on Surface Water Rights and Supplemental Rights

in the Membership Phase of the Carlsbad Irrigation District Section of the Pecos River Stream System Adjudication (“Proposed Decree”).

1. This case is a general adjudication of all rights to divert, impound, store, and beneficially use the public surface and underground waters of the Pecos River Stream System.

2. This Motion is made in accordance with the Court’s Order Establishing Procedures for Conducting *Inter Se* Proceedings and Adjudicating Omitted Supplemental Rights in the Membership Phase of the CID Section of the Pecos River Stream System Adjudication entered September 25, 2012.

3. On December 10, 2004, the Court entered a Partial Final Decree (“Project Phase Decree”) adjudicating between and among the United States, the State, the Carlsbad Irrigation District (the “CID”), the Pecos Valley Artesian Conservancy District (the “PVACD”), and all persons claiming water rights in the CID: (a) the maximum allowable annual diversion and storage rights of the CID and the United States regarding certain waters of the Pecos River Stream System and (b) the right of the CID to deliver surface water to its Members.¹ (For ease of reference, the term “Members” refers to the Members of CID who were joined to the CID adjudication as defendants as well as their successors in interest.) Prior to entry of the Project Phase Decree, the Court had determined in a series of orders (the “Threshold Orders”) that the Members are the beneficial owners of Project water rights but that the nature and extent of their beneficial interest is governed by certain federal and state laws, the consent or other final orders in all subfile proceedings, the rules and regulations of the CID, and any applicable contracts among the CID and its Members. The Threshold Orders are included in their entirety in Appendix E to the Proposed Decree. The Project Phase Decree and the Threshold Orders are

¹ Attached to the Project Phase Decree as an exhibit is a Settlement Agreement (“Settlement”) executed on March 25, 2003 among the State, the CID, the United States, and the PVACD. The Settlement Agreement is a part of and incorporated into the Project Phase Decree.

binding on the Members of CID, their successors in interest, and any other persons claiming water rights in the CID. In addition, under the Project Phase Decree, no party to the Settlement shall present any claim or objection in the Membership Phase or any *Inter Se* phase of the adjudication that is inconsistent with the Project Phase Decree.²

4. The Project Phase Decree determined two elements of the surface water rights of the Members: priority and amount of water. The remaining elements of the Members' surface water rights (including location and amount of irrigated acreage, purposes of use, and sources of water), and the Members' rights to groundwater as a supplemental supply to surface water rights ("supplemental rights") remained for determination in the so-called "Membership Phase" of the adjudication of the CID Section of the Pecos River. In the Membership Phase, the State joined the Members as defendants and adjudicated, by means of consent orders, default judgments, or other final orders (collectively "Subfile Orders"), each Member's individual water rights. The Subfile Orders are binding on the Members who were joined as defendants and their successors in interest.

5. Upon completion of the CID Section *Inter Se* Proceedings, and after the entry of all orders and the resolution of all issues and objections raised during those proceedings, the CID adjudication shall be complete and all claims to the surface water rights and supplemental rights in the CID Section shall have been determined and adjudicated by the Court. The Appendices and the Addendum to the Appendices to the Proposed Decree summarize both: (a) the elements of the surface water rights that were adjudicated by the Project Phase Decree and (b) the elements of the surface water rights and supplemental rights that were adjudicated by the Subfile Orders, as those rights may have been modified by any orders amending or correcting Subfile Orders, as well as any final orders entered during *Inter Se* Proceedings.

² Settlement Parties' Joint Declaration of Settlement Implementation entered June 11, 2009.

6. All rights to the use of surface water and supplemental rights appurtenant to lands located within the boundaries of the CID, as set forth in previously filed orders and summarized in the Appendices and the Addendum to the Appendices attached to the Proposed Decree, shall be adjudicated with finality by the Partial Final Decree.

7. The State moves that, upon resolution of all *Inter Se* Proceedings, the Court enter a Partial Final Decree, based upon the form of the Proposed Decree, that will be a final adjudication of all surface water rights and supplemental rights beneficially used on lands located within the CID and which will be binding between and among the State and all Members and their successors in interest.

WHEREFORE, the State respectfully requests the Court grant its Motion and order:

1. Entry of the Partial Final Judgment and Decree on Surface Water Rights and Supplemental Rights in the Membership Phase of the Carlsbad Irrigation District Section of the Pecos River Stream System Adjudication; and
2. Such other relief as the Court deems appropriate.

Respectfully Submitted,



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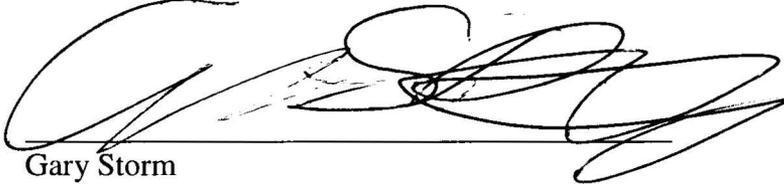
CERTIFICATE OF SERVICE

I certify that I have caused a copy of the above to be sent to the persons listed below by U.S. mail, postage prepaid, on October 15, 2012.

Stephen E. Snyder, Esq.
Special Master
4 Manzano Road
Corrales, NM 87048

Carlsbad Irrigation District
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Pecos Valley Artesian
Conservancy District
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Gary Storm

STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*
STATE ENGINEER
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Nos. 20294 and 22600 Consolidated

Hon. James J. Wechsler
Presiding Judge

Carlsbad Irrigation District Section,
Membership Phase

CV-WH-03-01

**PROPOSED
PARTIAL FINAL JUDGMENT AND DECREE ON SURFACE WATER RIGHTS AND
SUPPLEMENTAL RIGHTS IN THE MEMBERSHIP PHASE OF THE CARLSBAD
IRRIGATION DISTRICT SECTION OF THE PECOS RIVER STREAM SYSTEM
ADJUDICATION**

THIS MATTER comes before the Court upon the Motion of the State of New Mexico, *ex rel.* State Engineer, (the “State”) for entry of a Partial Final Judgment and Decree on Surface Water Rights and Supplemental Rights in the Membership Phase of the Carlsbad Irrigation District Section of the Pecos River Stream System Adjudication (the “Partial Final Decree”) filed

on October 15, 2012. The Court, having considered the Motion and orders previously filed or entered, and being fully advised in the premises, FINDS:

- A. The Court has jurisdiction over the subject matter and parties.
- B. This case is a general adjudication of all rights to divert, impound, store, and beneficially use the public surface and underground waters of the Pecos River Stream System.
- C. This Decree is entered in accordance with NMSA 1978, § 72-4-19 (1907), for all surface water rights and rights to groundwater as a supplemental supply to surface water rights (hereinafter “supplemental rights”) appurtenant to lands located within the boundaries of the Carlsbad Irrigation District (the “CID”).
- D. This Decree does not determine, affect, or adjudicate any other claims to the right to use groundwater within the boundaries of the CID. Those claims will be adjudicated in separate proceedings in the Carlsbad Underground Water Basin Section of this adjudication.
- E. On December 10, 2004, the Court entered a Partial Final Decree (“Project Phase Decree”) adjudicating between and among the United States, the State, the CID, the Pecos Valley Artesian Conservancy District (the “PVACD”), and all persons claiming water rights in the CID: (a) the maximum allowable annual diversion and storage rights of the CID and the United States regarding certain waters of the Pecos River Stream System and (b) the right of the CID to deliver surface water to its Members.¹ (For ease of reference, the term “Members” refers to the Members of CID who were joined to the CID adjudication as defendants as well as their successors in interest.) Prior to entry of the Project Phase Decree, the Court had determined in a series of orders (the “Threshold Orders”) that the Members are the beneficial owners of Project

¹ Attached to the Project Phase Decree as an exhibit is a Settlement Agreement (“Settlement”) executed on March 25, 2003, among the State, the CID, the United States, and the PVACD. The Settlement Agreement is a part of and incorporated into the Project Phase Decree.

water rights but that the nature and extent of their beneficial interest is governed by certain federal and state laws, the consent or other final orders in all subfile proceedings, the rules and regulations of the CID, and any applicable contracts among the CID and its Members. The Threshold Orders are included in their entirety in Appendix E to this Decree. The Project Phase Decree and the Threshold Orders are binding on the Members of CID, their successors in interest, and any other persons claiming water rights in the CID.

F. The Project Phase Decree determined two elements of the surface water rights of the Members: priority and amount of water. The remaining elements of the Members' surface water rights (including location and amount of irrigated acreage, purposes of use, and sources of water), and the Members' supplemental rights remained for determination in the so-called "Membership Phase" of the adjudication of the CID Section of the Pecos River. In the Membership Phase, the State joined the Members as defendants and adjudicated, by means of consent orders, default judgments, or other final orders (collectively "Subfile Orders"), each Member's individual water rights. The Court has entered Subfile Orders in all subfile proceedings in the CID Section and the Membership Phase of the CID Section adjudication is complete.

G. The Project Phase Decree and the Threshold Orders are binding on the Members of CID, their successors in interest, and any other persons claiming water rights in the CID. In addition, under the Project Phase Decree, no party to the Settlement shall present any claim or objection in the Membership Phase or any *Inter Se* phase of the adjudication that is inconsistent with the Project Phase Decree.² Each filed individual Subfile Order is binding between the

² Settlement Parties' Joint Declaration of Settlement Implementation entered June 11, 2009.

Defendant and any successor in interest (“Defendant”) and the State, and is binding among all Members and their successors in interest upon the entry of this Decree.

H. Under the Order Establishing Procedures for Conducting *Inter Se* Proceedings and Adjudicating Omitted Supplemental Rights in the Membership Phase of the CID Section of the Pecos River Stream System Adjudication entered on September 25, 2012, the State, on October 15, 2012, commenced *Inter Se* Proceedings by filing a Motion for Entry of Partial Final Judgment and Decree on Surface Water Rights and Supplemental Rights in the Membership Phase of the Carlsbad Irrigation District Section of the Pecos River Stream System Adjudication (the “Motion for Decree”). In the Motion for Decree, the State requested that the Court enter this Partial Final Decree adjudicating all surface water rights and all supplemental rights associated with those surface rights.

I. The Motion for Decree initiated the *Inter Se* Proceedings in which all Defendants were provided with an opportunity to file *Inter Se* Objections to certain aspects of the Subfile Orders. Specifically, those persons were permitted to file *Inter Se* Objections to: (a) those elements of other Defendants’ surface water rights that were not determined by the Project Phase Decree and (b) to all elements of other Defendants’ supplemental rights. *Inter Se* Objections challenging the Project Phase Decree were not permitted.

J. Additionally, the State informed the Court that, as it was preparing to initiate an *Inter Se* Proceeding, it discovered that the Subfile Orders of some Defendants did not adjudicate a supplemental right even though those Defendants may in fact have been entitled to such a right. The *Inter Se* Proceedings included a process that allowed Defendants who may own a subfile that had not already been adjudicated a supplemental right, an opportunity to assert a claim to a supplemental right.

K. The Court held hearings that resolved all *Inter Se* Objections and all supplemental right claims.

L. Throughout the course of these proceedings, all Defendants were provided with legally sufficient notice of all proceedings to adjudicate their water right claims and legally sufficient notice of all *Inter Se* Proceedings.

M. The CID Section *Inter Se* Proceeding is complete and all claims to the surface water rights and supplemental rights in the CID Section have been determined and adjudicated by the Court. The Appendices to this Decree, and the Addendum to those Appendices, summarize both: (a) the elements of the surface water rights that were adjudicated by the Project Phase Decree and (b) the elements of the surface water rights and supplemental rights that were adjudicated by the Subfile Orders, as those rights may have been modified by any orders amending or correcting Subfile Orders, as well as any final orders entered during *Inter Se* Proceedings.

N. Beneficial use is the basis, the measure, and the limit of all water rights determined in this Decree. This Decree is a final adjudication of all surface water rights and supplemental rights beneficially used on lands located within the CID and is binding between and among the State and all Defendants and their successors in interest.

O. The right to object to this Decree by parties to other sections of the Pecos River Stream System adjudication is expressly reserved until this Court orders further *Inter Se* Proceedings for those specific sections or for the Pecos River Stream System generally.

P. The water rights adjudicated herein may in the future be subject to general *Inter Se* Proceedings that involve all adjudicated water rights of the Pecos River Stream System and its tributaries.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. All rights to the use of surface water and all rights to groundwater as a supplemental supply to surface water rights appurtenant to lands located within the boundaries of the CID, as set forth in previously filed orders and summarized in the Appendices and Addendum to the Appendices attached hereto, are finally adjudicated by this Decree. The Subfile Orders or other Court orders that determine those water rights are expressly approved and confirmed as valid as of the date of the entry of the individual Subfile Order or other Court order.

2. The Appendices and Addendum to the Appendices are incorporated by reference as though fully set forth herein. In the event there is a discrepancy between a description of water rights set forth in the Appendices and Addendum to the Appendices and the specific Subfile Order or other Court order that determines that right, the specific order is controlling.

3. The Defendants whose water rights are adjudicated herein, and their successors in interest, are hereby enjoined from diverting, impounding, storing, or using the public surface and underground waters of the Pecos River Stream System except in strict accordance with this Decree and such other orders of the Court that may be entered in this cause.

4. There is no just reason for delay and the Court hereby expressly directs entry of this Decree as a final judgment as authorized by Rule 1-054(B) NMRA.

5. Jurisdiction is retained to determine and adjudicate *Inter Se* Proceedings between any or all of the Defendants in the CID Section and any or all defendants in other sections of the Pecos River Stream System.

IT IS SO ORDERED.

HON. JAMES J. WECHSLER
Presiding Judge

Respectfully Submitted By:

Approved By:

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