

IN THE DISTRICT COURT OF CHAVES COUNTY

STATE OF NEW MEXICO

FILED OCT. 21, 19

STATE OF NEW MEXICO, on the relation
of S. E. Reynolds, State Engineer, and
PECOS VALLEY ARTESIAN CONSERVANCY
DISTRICT,

Plaintiffs,

vs.

NO. 22600

HAGERMAN CANAL COMPANY, INC., CONNIE
 ANDREWS, LINDELL ANDREWS, T. G. ANDREWS, (2)
 DUB ANDRUS, JANE ANDRUS, HELEN G. ASTON, (3)
 MORRIS H. ASTON, OLIVE L. ASTON, ROBERT
 H. ASTON, HAL BOGLE, EFFIE ROBERTS BRAZEAL, (4) See also Roberts et al.
 LOUISE MICHELET BROWN, (5) BLANCHE MICHELET
 CASABONNE, (6) ROSE MICHELET CASABONNE, (7) FLOYD
 CHILDRESS, (8) EARL S. CORN, (9) ELDA M. CORN, (10)
 GRACE GOODART CUNNINGHAM, (11) PHILLIP RICHARD
 MONICAL, (12) ROBERT JAMES MONICAL AND DOROTHY
 MAXINE NOBLE, as trustees for JOSEPHINE
 NABEL DOCKERY, (13) GEO. R. DURAND, RAYMOND G.
 DURAND, (14) ALTA GEHMAN EVANS, (15) GEORGIA RUTH
 FREELAND, (16) J. B. FREELAND, (17) J. Z. GARCIA, (18)
 JEWELL G. GARNER, (19) JOHN D. GARNER, L. W.
 GARNER, (20) ELLEN GOODART, JAMES GOODART,
 JASPER GOODART, JOHN W. GOODART (also known
 as JOHN GOODART), JOSEPH GOODART, JUDSEN
 GOODART, JULIUS GOODART, (21) GEORGE L. GRASSIE,
 WALTER GRASSIE, CLARENCE C. HARSHEY, JUDITH
 A. HARSHEY, MARY LUCILLE HART, (22) FREDERIC
 CHARLES HEITMAN, WILLIAM LORENZ HEITMAN, (23)
 C. O. HOLLOWAY, OLIVE J. HOLLOWAY, (24) W. H.
 JENKINS, (25) HENRY W. JENNINGS, JOHN W.
 LANGENEGGER, (26) ROYCE LANKFORD, WILLIE LOU
 LANKFORD, (27) C. S. LATHROP, (28) CHARLES L.
 LATHROP, (29) ROSA D. LAWING (also known as ROSE
 LAWING AND ROSA LAWING), (30) RUSSELL LAWING,
 ROY I. LOCHHEAD, (31) JRY, (32) EVA H. LOSEY, (33) JEANETTE
 LOWE, (34) L. LOVE, DUDLEY ALTON LOWERY, ROSE
 LOWERY, (35) DONALD L. MEHLHOP, EFFIE M. MEHLHOP, (36)
 F. L. MEHLHOP, JOHN A. MEHLHOP, LELA GOODART
 MITCHELL, PHILLIP RICHARD MONICAL, ROBERT
 JAMES MONICAL, JAMES D. MCKINSTRY, LOVETA
 MCKINSTRY, (37) BERT BETH McNEW (also known as
 ANNA ELIZABETH McNEW), DOROTHY MAXINE NOBLE,
 IRENE NOWAK, STEVEN L. NOWAK, (38) BERTHA M.
 PILLEY, (39) WY H. PILLEY, (40) JOHN H. REID, (41) FRANK
 REINECKE, (42) W. T. RICHARDSON, (43) OLA ROBERTS, (44)
 RUDOLPH ROBERTS, (45) EDITH STINE, ALFRED T. STONE,
 (also known as A. T. STONE), (46) LLOYD E. STONE,
 MARY L. STONE, TRAVIS STONE, RUTH WIGGINS
 SERRANO, (47) ELMA ROBERTS TALBERT, (48) TONY TRUJILLO, (49)

HENRY WINDEN, JR. ()
 CHARLES R. WILKINS ()
 CHARLES R. WILKINS ()
 AND ALL UNKNOWN CLAIMANTS ()
 OF INTEREST OR RIGHT TO THE USE OF THE WATERS ()
 OF THE HAGERMAN CANAL. ()
 Defendants. ()

P E T I T I O N
FIRST CAUSE OF ACTION

COME NOW the plaintiffs, by and through their attorneys, and petition this court for declaratory relief, and for their first cause of action state:

I.

That S. E. Reynolds is the duly appointed, qualified and acting state engineer of the state of New Mexico and maintains this action on behalf of the state of New Mexico in said capacity.

II.

That the plaintiff, Pecos Valley Artesian Conservancy District, was created to conserve where necessary the waters of the Roswell Artesian Basin and has concurrent power and authority with the state engineer to enforce the statutes and rules and regulations provided thereunder insofar as the waters of the Roswell Artesian Basin are affected and that this action is necessary in order to conserve the waters of said artesian basin and in order to prevent waste.

III.

That all of the underground waters in the Roswell Artesian Basin belong to the public and are subject to appropriation for beneficial use only in the manner provided by law.

IV.

That the defendant, Hagonman Canal Company, a corporation, was adjudicated to have certain surface water rights to be diverted by means of the northern canal by order of the United States District Court for the district of New Mexico in Cause No. 712 In Equity, being United States of America v. Hope Community Ditch, et al., said decree being dated May 8, 1933.

V.

That in addition to the aforesaid surface water rights, the defendant, Canal Company, claims a right to the use of a portion of the aforesaid underground waters, and that said underground waters are diverted into the distribution system of the Canal Company and are co-mingled with the surface waters.

VI.

That the plaintiffs are informed and believe and, based upon such information and belief, allege that the defendants, or some of them, have taken and will continue to take water from the Roswell Artesian Basin for the irrigation of lands that have no water rights, contrary to law, and to the detriment of the public and owners of valid water rights.

VII.

That the defendants, or some of them, make adverse claims to the rights of the public and contrary to statutory rights and duties of the Pecos Valley Artesian Conservancy District, all without right and to the great and irreparable injury of the plaintiffs.

VIII.

That the plaintiffs are informed and believe and, based upon such information and belief, allege that the defendants, or some of them, are diverting and will continue to divert large quantities of water over and above the amounts required for properly irrigating their lands and in excess of what they can beneficially use and in excess of the duty of water set out in their permits; that said use of water is adverse to the rights of other defendants and in conflict with the rights of the public.

IX.

That it is necessary for the proper adjudication of the Roswell Artesian Basin to obtain a declaratory judgment from this court setting out the priorities of the various water rights of the defendant, Canal Company, the amount of water the defendant, Canal Company, is entitled to divert from surface water sources, the amount it is entitled to divert from underground water sources, the names of the contract purchasers of said waters and the lands to which said waters are appurtenant, and the quantity of water furnished by the defendant, Canal Company, to each of its respective contract purchasers.

X.

That there is an actual controversy and conflicting claims between the plaintiffs and defendants as to the source of water, the quantity of water from each of the sources, the priorities of the various water rights, the lands to which said water rights are appurtenant,

the purposes for which the water is used and the quantity and duty of water necessary for the beneficial use for which it was appropriated.

XI.

That it will be necessary to take voluminous testimony and it will not be practical nor feasible for this court to hear all the testimony in this cause and that such an exceptional condition exists as requires the appointment of a special master to hear the evidence and make recommended findings of fact and conclusions of law to this Court, in order that this matter may be diligently pursued to judgment and that the interests of the public may be preserved.

XII.

That it is necessary that the Court direct the special master to hear the testimony concerning the water rights of the parties and, that the special master hear the evidence and make recommendations for such interlocutory decrees as are mete and just.

XIII.

That when the said special master has heard all the testimony, it is necessary that said special master hear and receive all testimony necessary to the determination of all general and specific issues of fact concerning the lands irrigated by the Hagerman Canal System and make such recommendations for final findings of fact and conclusions of law and final decree as the Court may direct.

SECOND CAUSE OF ACTION

COME NOW the plaintiffs, by and through their attorneys, and petition this court for declaratory relief and for their second cause of action state:

I.

That the plaintiffs adopted by reference all of the allegations contained in the first cause of action.

II.

That the individual defendants and each of them, claim some right under contract to appropriate water furnished them by the defendant, Canal Company, and that in addition to and supplemental to the aforesaid waters from the Northern Canal, the individual defendants and each of them, claim some right to the use of a portion of the aforesaid underground waters and that the petitioners are unable to determine the amount of waters the defendants are entitled to appropriate from each of the respective sources, the lands to which said waters are appropriated, the priorities of the various water rights and the quantity and duty of water necessary for the beneficial use for which it was appropriated.

WHEREFORE, plaintiffs pray:

1. That the defendant, Canal Company, or its agents, be required to appear before the Court and describe fully and in detail what rights, if any they have, to the use of both surface and underground waters of the Roswell Artesian Basin and state:

(a) When said water right was initiated.

- (b) The source of water.
- (c) The quantity of water diverted from each of the sources.
- (d) The names of its contract purchasers and the lands to which said waters are appropriated.
- (e) The amount of water furnished each of the respective contract purchasers.

2. That the individual defendants and each of them be required to appear before the Court and describe fully and in detail what rights, if any they have, to the use of the waters of the Roswell Artesian Basin and state:

- (a) When said water right was initiated.
- (b) The lands to which said water right is appurtenant.
- (c) Source of water.
- (d) Purpose for which it is used.
- (e) The quantity and duty of water necessary for the beneficial use for which it was appropriated.

3. That the Court enter a declaratory judgment determining and declaring the water rights of the defendant, Canal Company, as to priority, source of water, quantity of water from each of the sources, the contract purchasers and the lands to which said waters are appropriated, the amount of water furnished each of the respective contract purchasers and the quantity and duty of water necessary for the beneficial use for which it was appropriated.

4. That the Court enter a declaratory judgment determining and declaring the water rights of the individual

defendants as to priority, lands to which water rights are appurtenant, source of water, purpose of use and duty of water.

5. That the Court enter its order enjoining all illegal use of underground water on the aforesaid acreage.

6. That the Court appoint a special master to hear the evidence and make such recommendations to the Court as are necessary in the premises, and that the Court enter such preliminary interlocutory and final orders as are necessary to a final determination and adjudication of all water rights of the defendant, Canal Company, and the individual defendants and that the plaintiffs recover such costs as are mete and just.

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Roswell, New Mexico

ATTORNEYS FOR PLAINTIFFS

BY: _____