

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

02 FEB 15 AM 8:17

CLERK OF DISTRICT COURT

STATE OF NEW MEXICO, ex rel. )  
State Engineer )  
and PECOS VALLEY ARTESIAN )  
CONSERVANCY DISTRICT, )

Nos. 20294 and 22600  
Consolidated

Plaintiffs, )

vs. )

Hon. Harl D. Byrd  
District Judge *Pro Tempore*

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

Carlsbad Irrigation  
District Section

Defendants, )

Membership Phase  
Project (Offer) Phase

and )

STATE OF NEW MEXICO, ex rel, )  
State Engineer )  
and PECOS VALLEY ARTESIAN )  
CONSERVANCY DISTRICT, )

Plaintiffs, )

vs. )

HAGERMAN CANAL CO., et al., )

Defendants. )

**ORDER**

**This Order Appoints Additional Members and Reconstitutes Committee Counsel, Refers Certain Matters to Committee Counsel For Recommendations, Directs the Entry of a Final Order Re Disposition of Threshold Legal Issue No. 3 and Reschedules the Time For Certain Submissions in Connection with Prior Court Decisions**

THIS MATTER comes on for consideration by the Court in connection with matters discussed during a telephone conference among counsel and the Court held on January 23, 2002, concerning: the status of settlement negotiations; the reconstitution of Committee Counsel; submitting certain matters to Committee Counsel for recommendations; the entry of an order re disposition of all matters pertaining to Threshold Legal Issue No. 3; and revising the time for submitting responses to requests of the Court set forth in the Court's SUPPLEMENTAL DECISION AND ORDER (December Supplemental Decision) served on December 19, 2001, the Court's January 7, 2002 DECISION AND ORDER (January Decision) addressing issues and matters set forth in the Court's April 6, 2001 Order re the claims of the United States of America (United States) and the Carlsbad Irrigation District (CID) concerning the rights, duties and obligations of the United States in connection with the diversion and storage of Project water and the rights, duties and obligations of CID in connection with the distribution of Project water, and the Court's January 7, 2002 memorandum concerning a proposed draft of Offer of Judgment for use by the State in connection with its efforts to resolve water rights claims of members of CID.

Attorneys participating in the conference included: Fred H. Hennighausen, Esq., Stuart D. Shanor, Esq., Eric Biggs, Esq., and Richard A. Simms, Esq. on behalf of Pecos Valley Artesian Conservancy District (PVACD); W.T. Martin, Jr., Esq. on behalf of the Brantleys, Tracy/Eddys' interests; Steven L. Hernandez, Esq. and Beverly J. Singleman, Esq., on behalf of CID; Susan C. Kery, Esq., on behalf of New Mexico State University (NMSU); Lynn Johnson, Esq., on behalf of the United States; and Christopher G. Schatzman, Esq., and Christopher Bulman, Esq. on behalf of the State of New Mexico (State). Jay Stein, Esq. counsel for the Carlsbad Water Defense Association, Inc. (CWDA) and certain of its members, was unable to participate.

The following matters were considered and action taken as hereafter specified:

1. Counsel advised the Court that there were no active settlement negotiations and that they did not believe that negotiations would be productive at this time; however, counsel for the parties remain open to future good faith negotiations if it appears that such negotiations might result in progress toward the settlement of the remaining issues and controversies among the parties.

2. The following attorneys shall collectively constitute Committee Counsel which was originally established by the Court's February 26, 1996 Pretrial Order :

Christopher G. Schatzman, Esq. and Christopher Bulman, Esq.,  
counsel for the State  
David W. Gehlert, Esq. counsel for the United States  
Steven L. Hernandez, Esq., one of the attorneys for CID  
Frederick H. Hennighausen, Esq. and Stuart D. Shanor, Esq., both of  
whom are counsel for PVACD  
W.T. Martin, Jr., Esq., counsel for the Brantleys and the Tracy/Eddys  
Jay Stein, Esq., counsel for CWDA and certain of its members

3. Issues were discussed regarding service and the procedure which has been adopted concerning participation in phases of these proceedings. Committee Counsel are requested to review these issues with Ms. Singleman and other interested counsel. The issues are referred to Committee Counsel for the purpose of submitting appropriate recommendations to the Court.

In submitting recommendations to the Court, Committee Counsel should consider the Court's prior orders concerning these issues, including the Court's ORDER LIMITING SERVICE OF PLEADINGS AND OTHER PAPERS AND ESTABLISHING PROCEDURES FOR HEARING OBJECTIONS TO THE ORDERS OF THE COURT filed on August 30, 1991, the Court's February 26, 1996 Pretrial Order commencing at page 10 under the caption LIMITATIONS ON SERVICE and the Court's March 20, 2001 DECISION AND ORDER at page 22, paragraph 11. regarding

notice to members of CID concerning the terms and provisions of the order and affording them an opportunity to submit objections, comments and recommendations.

Recommendation of Committee Counsel shall be submitted to the Court on or before March 15, 2002.

4. On or before March 25, 2002, the parties shall submit a proposed final order regarding the Court's disposition of Threshold Legal Issue No. 3. The proposed order shall not address the rights, duties and obligations of the United States in connection with the diversion or storage of Project water or the rights, duties and obligations of CID in connection with the distribution of Project water.

Following the Court's issuance of a final decision re Threshold Legal Issue No. 3, these proceedings will enter the Project (Offer) Phase of these proceedings.

5. In Connection with the Court's January 7, 2002 memorandum:

On or before March 29, 2002, interested parties may submit comments and suggestions concerning the Court's January 7, 2002 memorandum pertaining to a proposed draft Offer of Judgment for use by the State in connection with efforts of the State to resolve water rights claims of members of CID. The Court's previous order requiring that comments and suggestions be filed within thirty (30) days of service of the January 7, 2002 memorandum is hereby vacated

6. In connection with the Court's December Supplemental Decision:

A. The deadline for submitting requested findings of fact and conclusions of law set forth in the December Supplemental Decision, at page 37, paragraph 3, is hereby vacated. Issues concerning the necessity of submitting requested findings of fact and conclusions of law and the time for such submissions are referred to Committee Counsel for appropriate recommendations to the

Court. Recommendations of Committee Counsel shall be submitted to the Court within thirty (30) days after the Court has filed a second supplemental decision and order in connection with the December Supplemental Decision.

If requested findings of fact are recommended and submitted, they shall include page references to exhibits relied upon in support of each requested findings of fact.

If requested conclusions of law are recommended and submitted, authorities shall be cited in connection with each conclusions of law.

7. In connection with the Court's January Decision:

A. Comments, suggestions or objections shall be served on or before February 11, 2002.

B. Paragraph 3, page 65 of the January Decision is deleted.

Committee Counsel shall submit recommendations to the Court concerning the necessity of submitting requested findings of fact and conclusions of law or the form and content of a proposed order to be entered in connection with the rights, duties and obligations of the United States pertaining to the diversion and storage of Project water and the rights, duties and obligations of CID in connection with the distribution of Project water within thirty (30) days after the Court has filed a second supplemental decision and order in connection with the December Supplemental Decision.

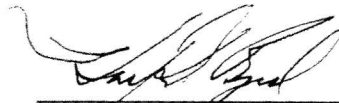
If requested findings of fact are recommended and submitted, they shall include page references to exhibits relied upon in support of each requested findings of fact.

If requested conclusions of law are recommended and submitted, authorities shall be cited in connection with each conclusions of law.

8. Paragraph 4, page 65 of the January Decision is deleted.

Within forty-five (45) days after the Court enters its supplemental decision and order in connection with the Court's January Decision, the parties are requested to confer and submit alternate dates for a pretrial conference in connection with the Project (Offer) Phase of these proceedings. Committee Counsel are requested to submit a proposed prehearing order to the Court at the time that the parties submit alternative dates for a prehearing conference.

IT IS SO ORDERED.



---

HARL D. BYRD  
DISTRICT JUDGE *PRO TEMPORE*

Lynn A Johnson Esq  
David W. Gehlert Esq  
U.S. Dept of Justice  
Environment & Natural Resources  
999 Eighteenth Street Suite 945  
Denver, Co 80202

Richard Simms, Esq.  
Simms & Biggs, P.C.  
P O Box 3329  
Hailey, ID 83333

Stephen L. Hernandez Esq  
Beverly Singleman Esq  
Hubert & Hernandez, P.A.  
P O Drawer 2857  
Las Cruces, NM 88004-2857

Fred Hennighausen Esq  
Hennighausen, Olsen & Stevens, L.L.P.  
PO Box 1415  
Roswell, NM 88202-1415

Eric Biggs Esq  
Simms & Biggs, P.C.  
129A West Houghton Street  
Santa Fe, NM 87505

Stuart D. Shanor Esq  
Hinkle Cox Eaton Coffield & Hensley  
PO Box 10  
Roswell, NM 88202

W.T. Martin Esq  
Law Office of W.T. Martin Jr., P.A.  
PO Box 2168  
Carlsbad, NM 88221-2168

Susan C. Kery Esq  
Sheehan Sheehan & Stelzner  
PO Box 271  
Albuquerque, NM 87103

Jay F. Stein, Esq.  
Stein & Brockmann, P.A.  
P O Box 5250  
Santa Fe, NM 87504-5102

Harl D. Byrd

February 13, 2002

Ms Trudy Hale  
Deputy Clerk  
Fifth Judicial District Court  
P O Box 1776  
Roswell, NM 88202-1776

**Re: State v. Lewis et al., Chaves County Cause No. 20294 and 22600  
Consolidated, Carlsbad Irrigation District, Carlsbad Basin Section -  
Order Reconstituting Committee Counsel, Referring Certain Matters to  
Committee Counsel For Recommendations and Rescheduling The Time For  
Certain Submissions in Connection With Prior Decisions of the Court**

Dear Ms. Hale:

Enclosed please find the above-captioned order for filing in the Membership Phase and Project (Offer) Phase of these proceedings.

Counsel for the State is requested to serve copies of the order upon all interested counsel, parties appearing *pro se* and repositories.

If any party desires a conformed copy of the order, they should make arrangements directly with you.

Thank you for your cooperation and assistance.

Very truly yours,



Harl D. Byrd

HDB/jes  
cc w/o enc. Counsel appearing on attached Exhibit A.  
Cc w/enc Christopher Bulman, Esq.  
Christopher G. Schatzman