

2012 AUG 24 PM 2:32

KARL J. WILSON
DISTRICT COURT CLERK

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.*
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 TO ESTABLISH 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**

Plaintiff, State of New Mexico, *ex rel.* State Engineer ("State") moves the Court to enter an order establishing procedures that will govern the 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 ("Partial

Final Decree"). A proposed form of order adopting the procedures proposed herein is attached as Exhibit One to this Motion.

A. 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 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 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

B. 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 (the "Remaining Elements") and the members' rights to groundwater as a supplemental supply to surface water rights ("supplemental rights") remained for determination

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.

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

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. For ease of reference, the term “Members” refers to the members of CID who were joined as defendants and their successors in interest.

C. The Court has entered Subfile Orders in all subfile proceedings in the CID. Those orders adjudicate, as between the State and each Member, the Remaining Elements of the Members’ surface water rights and supplemental rights associated with a Member’s surface rights. As stated, the other elements of the Members’ surface water rights were adjudicated by the Project Phase Decree.

D. What remains for determination in the CID Section is whether the Subfile Orders adjudicating each Member’s water rights are binding on all Members. This determination is to be made in an *Inter Se* Proceeding concerning the CID Section initiated by the State. The State has informed the Court that, as it was preparing to initiate an *Inter Se* Proceeding, it discovered that the Subfile Orders of some Members did not adjudicate a supplemental right even though those Members may in fact have been entitled to such a right.

E. The State is willing to consent to the amendment of the Subfile Orders that do not adjudicate a supplemental right for those Members who are entitled to such a right. However, the State is concerned that any significant delay in the commencement of *Inter Se* Proceedings pending an evaluation of omitted supplemental rights would be inefficient.

F. The delay in *Inter Se* Proceedings pending the adjudication of any supplemental rights omitted from Subfile Orders can be avoided by:

(1) Adjudicating as between the State and each affected Member, the Member's claim for an omitted supplemental right while *Inter Se* Proceedings are on-going; and

(2) Prior to the conclusion of *Inter Se* and the entry of a Partial Final Decree, providing all Members with an opportunity to object to any omitted supplemental rights adjudicated to certain Members during the *Inter Se* process.

THEREFORE THE STATE MOVES FOR THE FOLLOWING PROCEDURE:

1. The State shall initiate an *Inter Se* Proceeding for the purpose of adjudicating each Member's water rights as against all other Members and in that *Inter Se* Proceeding provide Members whose supplemental rights were omitted with the opportunity to assert those rights.

The *Inter Se* Proceeding shall be conducted in three phases:

- In Phase One, the Members will be provided with notice of and an opportunity to object to the adjudication of the Remaining Elements and supplemental rights as set forth in all Subfile Orders entered as of the date of the Order on this Motion. For ease of reference, the rights to the use of water adjudicated by Subfile Orders entered to date are referred to as the "Presently Adjudicated Rights."
- In Phase Two, Members whose Subfile Orders do not include a supplemental right may assert such rights and those omitted supplemental rights found to be valid will be adjudicated as between the Member and the State.
- In Phase Three, the Members and all other persons claiming water rights in the CID will be provided with notice of and an opportunity to object to any additional supplemental rights that are adjudicated as between the State and a Member during Phase Two.

Phase One and Two shall proceed concurrently, followed by Phase Three. After all *Inter Se*

Objections have been resolved, the Court will enter a Partial Final Decree adjudicating all water rights in the CID Section as among all persons claiming an interest in those water rights.

A. Phase One: *Inter Se* for Presently Adjudicated Rights

2. The State shall commence *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 shall request that the Court enter a Partial Final Decree adjudicating all surface water rights and all supplemental rights associated with those surface rights. The State shall not serve the Motion for Decree. Rather, notice of the filing of the Motion for Decree and of the time for filing *Inter Se* Objections shall be as provided in this Motion.

3. Attached as exhibits to the Motion for Decree shall be (a) 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 (the “Proposed Decree”) and (b) Appendices summarizing the Presently Adjudicated Rights. Specifically, the Appendices to the Motion, a description of which is provided by Exhibit A attached to Exhibit One to this Motion, shall:

(a) Summarize the surface water rights and supplemental rights adjudicated by each Subfile Order entered in the Membership Phase as of the date of the Order on this Motion;

(b) Clearly differentiate between the provisions of the Subfile Orders that are not subject to objection during *Inter Se* because they were determined by the Threshold Orders and Project Phase Decree, and the provisions to which *Inter Se* Objections may be

filed because they relate to the Remaining Elements or to supplemental rights adjudicated by the Subfile Orders.

The Appendices, as subsequently modified to reflect what transpires during *Inter Se*, will serve as appendices to the Partial Final Decree to be entered by the Court at the conclusion of *Inter Se*. In the event of any conflict between the Appendices and the Subfile Orders, the Subfile Orders control.

4. All Members shall be notified of the opportunity to object to the water rights of other Members in accordance with the following procedure:

(a) The State shall provide notice of the Proposed Decree by mail and by publication. The State shall provide notice by mail by preparing a Notice of 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 (the "*Inter Se* Notice"). The State shall serve the *Inter Se* Notice, together with a Notice of Filing of the Motion for Decree, and copies of a form for making *Inter Se* Objections, and the Notice of Intent to Participate form described in Paragraph 5, below, by first class mail to the last known address of each Member who was adjudicated a water right, as listed in the Court's records, and, in addition, to the current Members, as listed on the CID Tax Roll for 2012. The State shall file a Certificate of Service with the Court following service of the *Inter Se* Notice. The *Inter Se* Notice shall be in the form of Exhibit B attached to Exhibit One to this Motion.

(b) The State shall also provide notice of the Proposed Decree by publishing the Notice to be Published: Notice of Filing of 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, which is Exhibit C attached to Exhibit One to this Motion, (the "Published Notice") once each week for four consecutive weeks in the Carlsbad Current Argus, which the Court finds is a newspaper of general circulation in the CID, the City of Carlsbad, and Eddy County, New Mexico. The State shall file a Proof of Publication with the Court following publication of the Published Notice.

5. The *Inter Se* Notice and the Published Notice shall inform all persons, known and unknown:

(a) They have a right to object to the determination of water rights described in the Proposed Decree and offer evidence in support of their *Inter Se* Objections, that this *Inter Se* Proceeding will be their only opportunity to file objections to the determination of water rights described in the Proposed Decree, and that all *Inter Se* Objections to the Proposed Decree must be filed by November 19, 2012.

(b) On or before December 19, 2012, the State will (i) serve a copy by certified mail of the applicable *Inter Se* Objection on each Member whose subfile is the subject of an objection and (ii) file a Report with the Court identifying each Subfile in which an *Inter Se* Objection is filed and make copies of the Report available for inspection at the locations described below in Paragraph 7.

(c) Members whose subfiles are the subject of an objection and all persons who filed an *Inter Se* Objection in that subfile must participate in court proceedings to resolve the objection.

(d) Members may (but are not required to) participate in any subfile proceeding in which an *Inter Se* Objection was filed by another member provided they

file a Notice of Intent to Participate identifying the specific subfile in which they wish to participate by January 18, 2013. Members will only be notified by certified mail if an objection is filed in their own subfile but can determine whether an objection has been filed in another subfile by examining the Report filed by the State.

6. A form entitled *Inter Se* Objection to Water Rights Used Within the CID (the “*Inter Se* Objection”) that may be used for filing *Inter Se* Objections is attached as Exhibit D attached to Exhibit One to this Motion, and a form entitled Notice of Intent to Participate which members may use to give notice of their intent to participate in the resolution of an *Inter Se* Objection filed by another member is attached as Exhibit E attached to Exhibit One to this Motion. Members who do not file an objection, whose subfiles are not the subject of an objection, and who do not file a Notice of Intent to Participate will receive no further notice of any *Inter Se* Proceedings except as set forth in this Motion. Regardless of their participation, all members will be bound by the determinations and orders of the Court in the *Inter Se* Proceedings. Copies of the *Inter Se* Objection and Notice of Intent to Participate forms shall be included with and served on the Members as listed in the court record and on the current Members, as listed on the CID Tax Roll for 2012, when the *Inter Se* Notice is served. In addition, blank *Inter Se* Objection forms and Notice of Intent to Participate forms shall be available to the public with the Proposed Decree at the Office of the State Engineer (“OSE”) website and at the locations described in Paragraph 7 below.

7. The Proposed Decree, including Appendices and hydrographic survey maps showing the location of all rights described in the Appendices, shall be posted on the OSE website at <http://www.ose.state.nm.us/LAP/CID/deGREE.html>, and paper copies shall be available for public inspection at the offices of the CID in Carlsbad, the State Engineer’s Offices in

Roswell and Santa Fe, the Eddy County Court House in Carlsbad, and the Chaves County Court House in Roswell.

8. All *Inter Se* Objections must be filed by November 19, 2012, and the Court will not consider any objections filed after that date, except on a showing of excusable neglect. *Inter Se* Objections may be filed by successors in interest to Members who were joined as defendants without first being substituted as a party as required by Rule 1-026 NMRA, but the objections may not be prosecuted until the successor is substituted as a party.

9. On or before December 19, 2012, the State shall file with the Court a Report summarizing all timely filed *Inter Se* Objections and make the Report available for public inspection at the repositories and website described in Paragraph 7 above. In addition, the State shall serve by that same date by certified mail, return receipt requested, a copy of the applicable *Inter Se* Objection on each Member whose subfile is the subject of an objection.

10. Members may participate in the resolution of *Inter Se* Objections filed in subfiles in which they did not file an objection provided they file a Notice of Intent to Participate with the Court by January 18, 2013. As stated, Notices of Intent to Participate shall be in the form of Exhibit E attached to Exhibit One to this Motion and copies of the form shall be available for the Members use at all document repositories identified in Paragraph 7. In addition, copies shall be available for downloading from the OSE website at <http://www.ose.state.nm.us/LAP/CID/decree.html>.

11. After the deadline for filing Notices of Intent to Participate has expired, the Court will set a Scheduling Conference in the Fifth Judicial District Court in Carlsbad for the purpose of establishing the procedure to be used for resolving *Inter Se* Objections. The State shall serve a notice of the Scheduling Conference at least 30 days prior to the conference on the persons who

were the subfile claimants in the subfiles in which an objection is filed, their successors in interest, all persons filing an *Inter Se* Objection, and all persons filing a Notice of Intent to Participate. Attendance at the Scheduling Conference is mandatory and the Court, except for good cause shown, will deny the objection of any person who fails to attend the Scheduling Conference.

12. The Court will conduct one or more contested proceedings to resolve any objections filed but will not enter a Partial Final Decree for the CID until Phase 3 of the *Inter Se* Proceeding is concluded. The only persons who may participate in a contested proceeding for the resolution of an *Inter Se* Objection are the persons who file an *Inter Se* Objection, the Member whose subfile was subject of an objection, and any other Members who filed a Notice of Intent to Participate by the required date. Regardless of their participation in the *Inter Se* Proceedings, all Members or other persons claiming water rights in the CID shall be bound by the outcome of the contested proceedings to resolve any *Inter Se* Objections.

B. Phase Two: Adjudication of Omitted Supplemental Rights

13. Only those Members whose Subfile Orders **do not** contain a supplemental right may assert a claim for such a right provided they (a) file with the Court on or before November 19, 2012, using a form provided by the State, a Rule 1-060 NMRA Motion requesting that their Subfile Orders be amended to adjudicate such a right and (b) otherwise comply with the requirement of the Order on this Motion. Members whose Subfile Orders do contain a supplemental right may not assert a claim for an omitted supplemental right. Members who are successors in interest to Members who were joined as defendants may file Rule 1-060 Motions without being first substituted as a party as required by Rule 1-026, but may not prosecute their motions until they are substituted as a party.

14. On or before October 15, 2012, the State shall serve all Members in subfiles that do not contain a supplemental right with (a) a Notice of Opportunity to Assert Omitted Claim for Right to Groundwater as a Supplemental Supply to Surface Water Rights in the CID (the "Supplemental Claim Notice") and (b) a form for the Member's use when asserting such a claim entitled Rule 1-060(B)(6) NMRA Motion Requesting Adjudication of Omitted Supplemental Right (the "Supplemental Right Motion"). Service shall be by first class mail to the last known address of each Member, as listed in the Court's records, who is a current water right owner of a subfile with a possibly omitted supplemental right, and, in addition, to the Members who are current water right owners of subfiles with possibly omitted supplemental rights, as determined from the 2012 Tax Rolls of the Carlsbad Irrigation District. The Supplemental Claim Notice shall be in the form of Exhibit F attached to Exhibit One to this Motion and the Supplemental Right Motion shall be in the form of Exhibit G attached to Exhibit One to this Motion.

15. In addition to filing a Supplemental Right Motion by the required date, all Members asserting a claim for an omitted supplemental right must, within thirty days after they file their Motion, deliver for inspection and copying by the State, all deeds, abstracts of title, and other documents of title relevant to determining whether a supplemental right should be adjudicated for the Member's subfile. The documents must be submitted to the Roswell Office of the State Engineer, 1900 West Second Street Roswell, New Mexico 88201 or to a representative of the Roswell Office at a field office hosted each Monday, except holidays, on the second floor of the Eddy County Office Complex, 101 West Greene Street, Carlsbad New Mexico.

16. After a Member files a Supplemental Right Motion and otherwise complies with Paragraph 14 above, the State shall investigate whether the Member's claim to a supplemental

right is valid. If the State determines the claim is valid, the Member will be contacted by the State and will be required to complete and file a Change of Ownership Form with the Office of the State Engineer using the form prescribed by the State Engineer. Upon filing of the Change of Ownership, the State shall prepare a proposed Rule 1-060 Order granting the Supplemental Right Motion and adjudicating the Member a right to supplemental groundwater; the Member and the State shall sign the proposed order; and the State shall present the proposed order to the Court. If the Order is otherwise satisfactory, the Court will enter the Order, subject to the other Members' right to assert *Inter Se* Objections as set forth below. If the State determines the claim is not valid, the State shall file a response objecting to the Supplemental Right Motion and the Court will resolve the objection.

17. Except for good cause shown, the Court will deny the Supplemental Right Motion of any Member who does not file the required Change of Ownership form or does not produce the required documents within the prescribed 30-day period.

C. Phase 3: *Inter Se* for Supplemental Rights Adjudicated in Phase 2

18. After all Rule 1-060 Motions are resolved, the Court will set a Scheduling Conference in the Fifth Judicial District Court in Carlsbad for the purpose of establishing the procedures to be used for giving notice to all Members and persons claiming water rights in the CID of the opportunity to file *Inter Se* Objections to any supplemental rights adjudicated as between the State and a Member in Phase 2 of this *Inter Se*. The procedures to be followed and forms to be used will be similar to the forms used in Phase 1 but the Court may modify those procedures and forms, if necessary to address any issues that are unique to Phase 3.

19. The Court will enter a Partial Final Decree adjudicating all water rights in the CID as against all persons claiming a water right in the CID after Phase 3 is completed.

D. Miscellaneous

20. The following exhibits are attached to and by this reference made a part of the Order on this Motion, attached as Exhibit One:

Exhibit A: Description of Appendices Summarizing Presently Adjudicated Rights

Exhibit B: Notice of 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

Exhibit C: Notice to be Published: Notice of Filing of 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

Exhibit D: *Inter Se* Objection to Water Rights Used Within the CID

Exhibit E: Notice of Intent to Participate

Exhibit F: Notice of Deadline to Assert Claim for Supplemental Right

Exhibit G: Rule 1-060(B)(6) NMRA Motion Requesting Adjudication of Omitted Supplemental Right

Respectfully submitted,



Cynthia Sully, Gary B. Storm
Special Assistant Attorneys General
Office of the State Engineer
P. O. Box 25102
Santa Fe, NM 87504-5102
505/827-6150; 505/827-3887 (fax)

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the above to be sent to the following persons, and to the persons listed below, by U.S. mail, postage prepaid, on August 23, 2012.

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

Carlsbad Irrigation District
c/o Steven L. Hernandez, Esq.
P.O. Drawer 2857
Las Cruces, NM 88004-2857

Pecos Valley Artesian
Conservancy District
c/o A. J. Olsen, Esq.
P. O. Box 1415
Roswell, NM 88202-1415



Gary Storm

EXHIBIT ONE

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.*
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

**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**

THIS MATTER comes before the Court on the State of New Mexico's Motion to
Establish 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 filed August 23, 2012.

The COURT, after considering the State's Motion and reviewing the Court's file, FINDS AND CONCLUDES that:

A. On December 10, 2004, the Court entered a Partial Final Decree ("Project Phase Decree") adjudicating between and among the United States, the State of New Mexico, *ex rel.* State Engineer (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 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 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

B. 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 (the "Remaining Elements") and the members' rights to groundwater as a

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.

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

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. For ease of reference, the term “Members” refers to the members of CID who were joined as defendants and their successors in interest.

C. The Court has entered Subfile Orders in all subfile proceedings in the CID. Those orders adjudicate, as between the State and each Member, the Remaining Elements of the Members’ surface water rights and supplemental rights associated with a Member’s surface rights. As stated, the other elements of the Members’ surface water rights were adjudicated by the Project Phase Decree.

D. What remains for determination in the CID Section is whether the Subfile Orders adjudicating each Member’s water rights are binding on all Members. This determination is to be made in an *Inter Se* Proceeding concerning the CID Section initiated by the State. The State has informed the Court that, as it was preparing to initiate an *Inter Se* Proceeding, it discovered that the Subfile Orders of some Members did not adjudicate a supplemental right even though those Members may in fact have been entitled to such a right.

E. The State is willing to consent to the amendment of the Subfile Orders that do not adjudicate a supplemental right for those Members who are entitled to such a right. However, the State is concerned that any significant delay in the commencement of *Inter Se* Proceedings pending an evaluation of omitted supplemental rights would be inefficient.

F. The delay in *Inter Se* Proceedings pending the adjudication of any supplemental

rights omitted from Subfile Orders can be avoided by:

(1) Adjudicating as between the State and each affected Member, the Member's claim for an omitted supplemental right while *Inter Se* Proceedings are on-going; and

(2) Prior to the conclusion of *Inter Se* and the entry of a Partial Final Decree, providing all Members with an opportunity to object to any omitted supplemental rights adjudicated to certain Members during the *Inter Se* process.

IT IS THEREFORE ORDERED THAT:

1. The State shall initiate an *Inter Se* Proceeding for the purpose of adjudicating each Member's water rights as against all other Members and in that *Inter Se* Proceeding provide Members whose supplemental rights were omitted with the opportunity to assert those rights.

The *Inter Se* Proceeding shall be conducted in three phases:

- In Phase One, the Members will be provided with notice of and an opportunity to object to the adjudication of the Remaining Elements and supplemental rights as set forth in all Subfile Orders entered as of the date of this Order. For ease of reference, the rights to the use of water adjudicated by Subfile Orders entered to date are referred to as the "Presently Adjudicated Rights."
- In Phase Two, Members whose Subfile Orders do not include a supplemental right may assert such rights and those omitted supplemental rights found to be valid will be adjudicated as between the Member and the State.
- In Phase Three, the Members and all other persons claiming water rights in the CID will be provided with notice of and an opportunity to object to any additional supplemental rights that are adjudicated as between the State and a Member during Phase Two.

Phase One and Two shall proceed concurrently, followed by Phase Three. After all *Inter Se* Objections have been resolved, the Court will enter a Partial Final Decree adjudicating all water rights in the CID Section as among all persons claiming an interest in those water rights.

A. Phase One: *Inter Se* for Presently Adjudicated Rights

2. The State shall commence *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 shall request that the Court enter a Partial Final Decree adjudicating all surface water rights and all supplemental rights associated with those surface rights. The State shall not serve the Motion for Decree. Rather, notice of the filing of the Motion for Decree and of the time for filing *Inter Se* Objections shall be as provided in this Order.

3. Attached as exhibits to the Motion for Decree shall be (a) 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 (the “Proposed Decree”) and (b) Appendices summarizing the Presently Adjudicated Rights. Specifically, the Appendices to the Motion, a description of which is provided by Exhibit A to this Order, shall:

- (a) Summarize the surface water rights and supplemental rights adjudicated by each Subfile Order entered in the Membership Phase as of the date of this Order;
- (b) Clearly differentiate between the provisions of the Subfile Orders that are not subject to objection during *Inter Se* because they were determined by the Threshold Orders and Project Phase Decree, and the provisions to which *Inter Se* Objections may be

filed because they relate to the Remaining Elements or to supplemental rights adjudicated by the Subfile Orders.

The Appendices, as subsequently modified to reflect what transpires during *Inter Se*, will serve as appendices to the Partial Final Decree to be entered by the Court at the conclusion of *Inter Se*. In the event of any conflict between the Appendices and the Subfile Orders, the Subfile Orders control.

4. All Members shall be notified of the opportunity to object to the water rights of other Members in accordance with the following procedure:

(a) The State shall provide notice of the Proposed Decree by mail and by publication. The State shall provide notice by mail by preparing a Notice of 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 (the "*Inter Se* Notice"). The State shall serve the *Inter Se* Notice, together with a Notice of Filing of the Motion for Decree, and copies of a form for making *Inter Se* Objections, and the Notice of Intent to Participate form described in Paragraph 5, below, by first class mail to the last known address of each Member who was adjudicated a water right, as listed in the Court's records, and, in addition, to the current Members, as listed on the CID Tax Roll for 2012. The State shall file a Certificate of Service with the Court following service of the *Inter Se* Notice. The *Inter Se* Notice shall be in the form of Exhibit B to this Order.

(b) The State shall also provide notice of the Proposed Decree by publishing the Notice to be Published: Notice of Filing of 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, which is attached hereto as Exhibit C (the "Published Notice") once each week for four consecutive weeks in the Carlsbad Current Argus, which the Court finds is a newspaper of general circulation in the CID, the City of Carlsbad, and Eddy County, New Mexico. The State shall file a Proof of Publication with the Court following publication of the Published Notice.

5. The *Inter Se* Notice and the Published Notice shall inform all persons, known and unknown:

(a) They have a right to object to the determination of water rights described in the Proposed Decree and offer evidence in support of their *Inter Se* Objections, that this *Inter Se* Proceeding will be their only opportunity to file objections to the determination of water rights described in the Proposed Decree, and that all *Inter Se* Objections to the Proposed Decree must be filed by November 19, 2012.

(b) On or before December 19, 2012, the State will (i) serve a copy by certified mail of the applicable *Inter Se* Objection on each Member whose subfile is the subject of an objection and (ii) file a Report with the Court identifying each Subfile in which an *Inter Se* Objection is filed and make copies of the Report available for inspection at the locations described below in Paragraph 7.

(c) Members whose subfiles are the subject of an objection and all persons who filed an *Inter Se* Objection in that subfile must participate in court proceedings to resolve the objection.

(d) Members may (but are not required to) participate in any subfile proceeding in which an *Inter Se* Objection was filed by another member provided they

file a Notice of Intent to Participate identifying the specific subfile in which they wish to participate by January 18, 2013. Members will only be notified by certified mail if an objection is filed in their own subfile but can determine whether an objection has been filed in another subfile by examining the Report filed by the State.

6. A form entitled *Inter Se* Objection to Water Rights Used Within the CID (the “*Inter Se* Objection”) that may be used for filing *Inter Se* Objections is attached as Exhibit D to this Order, and a form entitled Notice of Intent to Participate which members may use to give notice of their intent to participate in the resolution of an *Inter Se* Objection filed by another member is attached as Exhibit E. Members who do not file an objection, whose subfiles are not the subject of an objection, and who do not file a Notice of Intent to Participate will receive no further notice of any *Inter Se* Proceedings except as set forth in this Order. Regardless of their participation, all members will be bound by the determinations and orders of the Court in the *Inter Se* Proceedings. Copies of the *Inter Se* Objection and Notice of Intent to Participate forms shall be included with and served on the Members as listed in the court record and on the current Members, as listed on the CID Tax Roll for 2012, when the *Inter Se* Notice is served. In addition, blank *Inter Se* Objection forms and Notice of Intent to Participate forms shall be available to the public with the Proposed Decree at the Office of the State Engineer (“OSE”) website and at the locations described in Paragraph 7 below.

7. The Proposed Decree, including Appendices and hydrographic survey maps showing the location of all rights described in the Appendices, shall be posted on the OSE website at <http://www.ose.state.nm.us/LAP/CID/decreed.html>, and paper copies shall be available for public inspection at the offices of the CID in Carlsbad, the State Engineer’s Offices in Roswell and Santa Fe, the Eddy County Court House in Carlsbad, and the Chaves County Court

House in Roswell.

8. All *Inter Se* Objections must be filed by November 19, 2012, and the Court will not consider any objections filed after that date, except on a showing of excusable neglect. *Inter Se* Objections may be filed by successors in interest to Members who were joined as defendants without first being substituted as a party as required by Rule 1-026 NMRA, but the objections may not be prosecuted until the successor is substituted as a party.

9. On or before December 19, 2012, the State shall file with the Court a Report summarizing all timely filed *Inter Se* Objections and make the Report available for public inspection at the repositories and website described in Paragraph 7 above. In addition, the State shall serve by that same date by certified mail, return receipt requested, a copy of the applicable *Inter Se* Objection on each Member whose subfile is the subject of an objection.

10. Members may participate in the resolution of *Inter Se* Objections filed in subfiles in which they did not file an objection provided they file a Notice of Intent to Participate with the Court by January 18, 2013. As stated, Notices of Intent to Participate shall be in the form of Exhibit E to this Order and copies of the form shall be available for the Members use at all document repositories identified in Paragraph 7. In addition, copies shall be available for downloading from the OSE website at <http://www.ose.state.nm.us/LAP/CID/decreed.html>.

11. After the deadline for filing Notices of Intent to Participate has expired, the Court will set a Scheduling Conference in the Fifth Judicial District Court in Carlsbad for the purpose of establishing the procedure to be used for resolving *Inter Se* Objections. The State shall serve a notice of the Scheduling Conference at least 30 days prior to the conference on the persons who were the subfile claimants in the subfiles in which an objection is filed, their successors in interest, all persons filing an *Inter Se* Objection, and all persons filing a Notice of Intent to

Participate. Attendance at the Scheduling Conference is mandatory and the Court, except for good cause shown, will deny the objection of any person who fails to attend the Scheduling Conference.

12. The Court will conduct one or more contested proceedings to resolve any objections filed but will not enter a Partial Final Decree for the CID until Phase 3 of the *Inter Se* Proceeding is concluded. The only persons who may participate in a contested proceeding for the resolution of an *Inter Se* Objection are the persons who file an *Inter Se* Objection, the Member whose subfile was subject of an objection, and any other Members who filed a Notice of Intent to Participate by the required date. Regardless of their participation in the *Inter Se* Proceedings, all Members or other persons claiming water rights in the CID shall be bound by the outcome of the contested proceedings to resolve any *Inter Se* Objections.

B. Phase Two: Adjudication of Omitted Supplemental Rights

13. Only those Members whose Subfile Orders **do not** contain a supplemental right may assert a claim for such a right provided they (a) file with the Court on or before November 19, 2012, using a form provided by the State, a Rule 1-060 NMRA Motion requesting that their Subfile Orders be amended to adjudicate such a right and (b) otherwise comply with the requirement of this Order. Members whose Subfile Orders do contain a supplemental right may not assert a claim for an omitted supplemental right. Members who are successors in interest to Members who were joined as defendants may file Rule 1-060 Motions without being first substituted as a party as required by Rule 1-026, but may not prosecute their motions until they are substituted as a party.

14. On or before October 15, 2012, the State shall serve all Members in subfiles that **do not** contain a supplemental right with (a) a Notice of Opportunity to Assert Omitted Claim for

Right to Groundwater as a Supplemental Supply to Surface Water Rights in the CID (the “Supplemental Claim Notice”) and (b) a form for the Member’s use when asserting such a claim entitled Rule 1-060(B)(6) NMRA Motion Requesting Adjudication of Omitted Supplemental Right (the “Supplemental Right Motion”). Service shall be by first class mail to the last known address of each Member, as listed in the Court’s records, who is a current water right owner of a subfile with a possibly omitted supplemental right, and, in addition, to the Members who are current water right owners of subfiles with possibly omitted supplemental rights, as determined from the 2012 Tax Rolls of the Carlsbad Irrigation District. The Supplemental Claim Notice shall be in the form of Exhibit F to this Order and the Supplemental Right Motion shall be in the form of Exhibit G.

15. In addition to filing a Supplemental Right Motion by the required date, all Members asserting a claim for an omitted supplemental right must, within thirty days after they file their Motion, deliver for inspection and copying by the State, all deeds, abstracts of title, and other documents of title relevant to determining whether a supplemental right should be adjudicated for the Member’s subfile. The documents must be submitted to the Roswell Office of the State Engineer, 1900 West Second Street Roswell, New Mexico 88201 or to a representative of the Roswell Office at a field office hosted each Monday, except holidays, on the second floor of the Eddy County Office Complex, 101 West Greene Street, Carlsbad New Mexico.

16. After a Member files a Supplemental Right Motion and otherwise complies with Paragraph 14 above, the State shall investigate whether the Member’s claim to a supplemental right is valid. If the State determines the claim is valid, the Member will be contacted by the State and will be required to complete and file a Change of Ownership Form with the Office of

the State Engineer using the form prescribed by the State Engineer. Upon filing of the Change of Ownership, the State shall prepare a proposed Rule 1-060 Order granting the Supplemental Right Motion and adjudicating the Member a right to supplemental groundwater; the Member and the State shall sign the proposed order; and the State shall present the proposed order to the Court. If the Order is otherwise satisfactory, the Court will enter the Order, subject to the other Members' right to assert *Inter Se* Objections as set forth below. If the State determines the claim is not valid, the State shall file a response objecting to the Supplemental Right Motion and the Court will resolve the objection.

17. Except for good cause shown, the Court will deny the Supplemental Right Motion of any Member who does not file the required Change of Ownership form or does not produce the required documents within the prescribed 30-day period.

C. Phase 3: *Inter Se* for Supplemental Rights Adjudicated in Phase 2

18. After all Rule 1-060 Motions are resolved, the Court will set a Scheduling Conference in the Fifth Judicial District Court in Carlsbad for the purpose of establishing the procedures to be used for giving notice to all Members and persons claiming water rights in the CID of the opportunity to file *Inter Se* Objections to any supplemental rights adjudicated as between the State and a Member in Phase 2 of this *Inter Se*. The procedures to be followed and forms to be used will be similar to the forms used in Phase 1 but the Court may modify those procedures and forms, if necessary to address any issues that are unique to Phase 3.

19. The Court will enter a Partial Final Decree adjudicating all water rights in the CID as against all persons claiming a water right in the CID after Phase 3 is completed.

D. Miscellaneous

20. The following exhibits are attached to and by this reference made a part of this

Order:

Exhibit A: Description of Appendices Summarizing Presently Adjudicated Rights

Exhibit B: Notice of 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

Exhibit C: Notice to be Published: Notice of Filing of 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

Exhibit D: *Inter Se* Objection to Water Rights Used Within the CID

Exhibit E: Notice of Intent to Participate

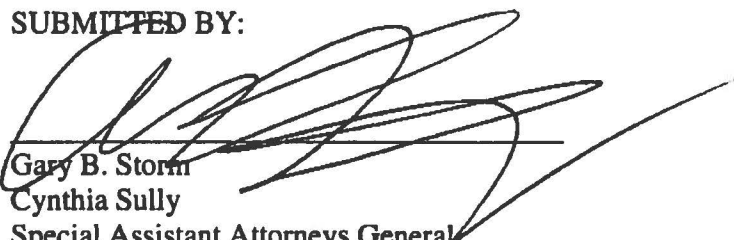
Exhibit F: Notice of Deadline to Assert Claim for Supplemental Right

Exhibit G: Rule 1-060(B)(6) NMRA Motion Requesting Adjudication of Omitted Supplemental Right

IT IS SO ORDERED.

James J. Wechsler
Presiding Judge

SUBMITTED BY:



Gary B. Storm
Cynthia Sully
Special Assistant Attorneys General
Office of the State Engineer
P. O. Box 25102
Santa Fe, NM 87504-5102
505/827-6150; 505/8278-3887 (fax)

APPROVED BY:

Stephen E. Snyder
Special Master

EXHIBIT A

DESCRIPTION OF APPENDICES SUMMARIZING PRESENTLY ADJUDICATED RIGHTS

The Appendix to 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 ("CID Partial Final Decree") summarizes the elements of all water rights in the Carlsbad Irrigation District ("CID") that were adjudicated by (a) the Partial Final Decree entered on December 10, 2004 (the "Project Phase Decree"), adjudicating the rights of the Carlsbad Irrigation District (the "CID") and the United States to divert, impound, store, and deliver the public surface waters of the Pecos River Stream System and (b) all consent, default, and other final orders entered in the individual subfiles ("Subfile Orders") of the CID, including any amendments and corrections to those Subfile Orders.

The Appendix is a summary only and does not replace, or in any way modify, the Project Phase Decree, the Threshold Orders, any Subfile Order or other order of the Court. In the event of a conflict between the Appendix and the Project Phase Decree or other court order, the Decree and court order are controlling.

A Subfile Order adjudicates the water rights described therein as of the date of the order and does not reflect any change in ownership or the elements of a water right occurring subsequent to that date.

There are eight Appendices to the CID Partial Final Decree:

- Appendix A is this introduction with explanatory notes and definitions of terms.
- Appendix B sets forth all conditions that are applicable to every subfile in the Membership Phase of the CID Section of the Pecos River Stream System adjudication ("Membership Phase") as a consequence of the Project Phase Decree. These include the priority dates and amounts of water for all surface water rights in the Membership Phase, all provisions for the storage and distribution of water, and the legal requirements that are binding on all subfiles.
- Appendix C lists, by Subfile Number, the title and date of filing of every consent order, amended consent order, amending order, and correcting order for every subfile in the CID Section.
- Appendix D contains Summaries of the water rights for each subfile in the Membership Phase, valid as of the date the subfile order was entered, with an individual map showing the irrigated acreage within that subfile.
- Appendix E contains the Threshold Orders and other orders entered by the Court, as well as other legal documents, that pertain to all subfiles in the Membership Phase.
- Appendix F contains large-scale CID Section Hydrographic Survey Map Sheets (1999-2012), showing the adjudicated irrigated tracts for all subfiles in the CID Section and

representing the Court record as of the date of the filing of the Proposed Partial Final Decree.

- Appendix G contains a list of points of diversion of surface water and supplemental rights for all water rights in the Carlsbad Irrigation District.
- Appendix H contains indices to the individual subfile Summaries in Appendix D. These allow the Summaries to be cross-referenced by Owner Name, CID Assessment Number, OSE Subfile Number, Court Number, OSE File Number for Supplemental Right or Surface Right, OSE Point of Diversion Number for Supplemental Right or Surface Right, and Large-Scale Hydrographic Survey Map Sheet Number.

The modification of the Appendices by any applicable orders entered during *Inter Se*, will be published as an Addendum. The Addendum will specifically reference those portions of the Appendices which it modifies. Markers will be inserted into the Appendices that will note those portions that have been updated by the Addendum.

The Appendices and the Addendum will constitute an exhibit to the Partial Final Decree as entered by the Court.

EXHIBIT B

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.*
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

**NOTICE OF 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**

Defendants who were adjudicated a surface water right or a right to groundwater as a supplemental supply to surface water rights (hereinafter "supplemental right") appurtenant to lands located within the boundaries of the Carlsbad Irrigation District ("CID"), and their successors in interest, are notified that 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") was filed with the State of New Mexico's 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, in the Fifth Judicial District Court, [on or before October 15, 2012]. The complete text of the Proposed Decree is included at the end of this Notice.

The filing of the Proposed Decree initiated an *Inter Se* Proceeding in which Defendants are offered the opportunity to object to any orders adjudicating the water rights of other Defendants, as against the State of New Mexico (“State”), to beneficially use surface water and supplemental rights appurtenant to lands located within the boundaries of the CID.

This *Inter Se* Proceeding is the only opportunity for Defendants who were adjudicated surface water rights and supplemental rights in the CID and their successors in interest to object to the determination of the surface water rights and supplemental rights of other Defendants and their successors in interest that are described in Appendix D to the Proposed Decree.

After resolving any objections, the Court will enter a Partial Final Decree¹ that binds all Defendants and their successors in interest to the final adjudication of all surface water rights and supplemental rights within the boundaries of the CID.

HISTORY OF THE PROCEEDINGS

This cause of action is part of the general adjudication of all rights to divert, impound, store, and beneficially use the public surface and underground waters of the Pecos River Stream System that was initiated in April 9, 1956, and entitled State v. Lewis.

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.²

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

¹ 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”).

² 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.

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.³

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 (the "Remaining Elements") 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. For ease of reference, the term "Members" refers to the members of CID who were joined as defendants and their successors in interest.

The final stage of the CID Section will be the entry of a Partial Final Decree, which will be binding on all CID water right owners and their successors in interest, whether or not they participated in the *Inter Se* process.

INSTRUCTIONS IF YOU WISH TO PARTICIPATE IN *INTER SE* PROCEEDINGS

If you own water rights in the CID, this is your only opportunity to exercise your right to file certain objections to the Proposed Decree and to offer evidence to the Court in support of those objections.

The Project Phase Decree has determined a number of issues to which no one may object and which are binding on all owners of surface water and supplemental rights in the CID.

For surface water rights in the CID Section, objections can only be made to the location and amount of irrigated acreage. Objections **cannot** be made to determinations of purposes of use; sources of water; priority dates; irrigation water requirements; project diversion requirement and storage rights of the United States; delivery rights of the CID; and the diversion, delivery, and apportionment of CID water among CID members.

For supplemental rights, objections can only be made to the points of diversion, priority dates, and location and amount of irrigated acreage. Objections **cannot** be made to the purpose of use and amount of water.

You **cannot** object to your own adjudicated water right.

³ Settlement Parties' Joint Declaration of Settlement Implementation entered June 11, 2009.

Copies of the Proposed Decree and Appendices, and hydrographic survey maps showing the location of all tracts described in the Decree, shall be made available for public inspection at the offices of the CID in Carlsbad at the following address:

Carlsbad Irrigation District
5117 Grandi Road
Carlsbad, NM 88220

Copies shall be available for inspection at the Office of the State Engineer's ("OSE") Offices at the following addresses:

Office of the State Engineer
District II
1900 West Second Street
Roswell, NM 88201-1712

Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
Santa Fe, NM 87504-5102

The Proposed Decree is also available on the OSE website at:
<http://www.ose.state.nm.us/LAP/CID/decree.html>.

Copies shall be available for inspection at the Fifth Judicial District Court in the Eddy County Court House in Carlsbad and the Chaves County Court House in Roswell at the following addresses:

Fifth Judicial District Court
102 North Canal #240
Carlsbad, NM 88220

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
Roswell, NM 88202

All Defendants and their successors in interest may file *Inter Se* Objections to the water rights of other individuals, as described in Appendix D of the Proposed Decree which can be viewed at the OSE website or one of the locations listed above.

If you choose not to exercise this sole opportunity to object to the water rights of other individuals, you do not need to take any further action. After any objections to the Proposed Decree are resolved by the Court, you will be bound by the provisions of the Proposed Decree.

HOW TO FILE AN OBJECTION

If you wish to object, you or your attorney must file an objection with the Fifth Judicial District Court of New Mexico.

***Inter Se* Objections must be filed on the form that is attached as Exhibit I to this Notice entitled *Inter Se* Objection to Water Rights Used Within the CID (“*Inter Se* Objection”). This form may also be obtained from the OSE website or one of the locations listed above.**

The *Inter Se* Objection must specify the case and subfile numbers of the person making the objection, and the case and subfile numbers of the water rights objected to, and identify the adjudicated owner of that water right. You can locate your case and subfile numbers and those of other CID members by consulting the Indices in Appendix H which can be viewed on the OSE website or one of the locations listed above. The first of these Indices is organized alphabetically by owner name. More detailed information about each Defendant’s water rights can be found in Appendix D of the Proposed Decree which is also available on the OSE website or one of the locations listed above. The person making the objection must provide a brief explanation of the reason for the objection and sign the *Inter Se* Objection form.

Inter Se Objections must be filed in person or by mail to be received by the Court no later than November 19, 2012, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

At the same time, a copy of the *Inter Se* Objection must be served in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

PARTICIPATION IN SUBFILES IN WHICH OBJECTIONS ARE FILED

On or before December 19, 2012, the State of New Mexico will:

- (a) serve a copy by certified mail of the applicable *Inter Se* Objection on each Defendant whose subfile is the subject of an objection; and
- (b) file a Report with the Court identifying each Subfile in which an *Inter Se* Objection is filed and make copies of the report available for inspection at the locations and website described above.

Defendants whose subfiles are the subject of an objection and all persons who filed an *Inter Se* Objection in that subfile **must** participate in the court proceedings to resolve the objection.

Defendants **may** (but are **not** required to) participate in the resolution of *Inter Se* Objections filed in Subfiles in which they did not file an *Inter Se* Objection provided they file a Notice of Intent to Participate with the Court by January 18, 2013. A copy of a Notice of Intent to Participate form is attached as Exhibit II to this Notice and copies of Notices of Intent to Participate will be also be available at the OSE website or one of the locations listed above.

Defendants will **only** be notified by certified mail if an *Inter Se* Objection is filed in their own subfile. Defendants can determine whether an *Inter Se* Objection has been filed in another subfile only by examining the Report filed by the State at the OSE website or one of the locations listed above.

MANDATORY SCHEDULING CONFERENCE

The Court will conduct a scheduling and pretrial conference in the Fifth Judicial District Court in Carlsbad for the purpose of establishing the procedure to be used for resolving *Inter Se* Objections. Each Defendant who timely files an *Inter Se* Objection and each Defendant whose subfile is the subject of an objection and each person who files a Notice of Intent to Participate, **MUST** attend the scheduling conference. Those who, without good cause, fail to attend shall be barred from participating in *Inter Se* Proceedings. The Court shall serve notice of the scheduling conference on all persons whose attendance is required by first class mail approximately 30 days prior to the conference.

All persons having water rights in the CID and their successors in interest will be bound by the outcome of the proceedings to resolve *Inter Se* Objections.

FOR ADDITIONAL INFORMATION

For additional information regarding this Notice or the Proposed Decree, you may call or write any of the following persons:

Gary B. Storm, Cynthia Sully
Special Assistant Attorneys General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
505-827-6150; 505-827-3887 (fax)

Carlsbad Irrigation District
5117 Grandi Road
Carlsbad, NM 88220
575-236-6390

FULL TEXT OF PROPOSED DECREE:

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.*
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

**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 or before 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.⁴ 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

⁴ 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.

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 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.⁵ Each filed individual Subfile Order is binding between the 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

⁵ Settlement Parties' Joint Declaration of Settlement Implementation entered June 11, 2009.

Pecos River Stream System Adjudication filed on _____ 2012, the State 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 and their successors in interest 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 and their successors in interest 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:

Gary B. Storm, Cynthia Sully
Special Assistant Attorneys General
Office of the State Engineer
P. O. Box 25102
Santa Fe, NM 87504 5102
Attorneys for Plaintiff State of New Mexico,
ex rel. State Engineer

STEPHEN E. SNYDER, Special Master

EXHIBIT I

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,

Nos. 20294 and 22600 Consolidated

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,
vs.

Carlsbad Irrigation District Section,
Membership Phase

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

Court No.: As stated in Part B
Subfile No.: As stated in Part B

Defendants.

INTER SE OBJECTION TO WATER RIGHTS USED WITHIN THE CID

Fill out one form for each subfile to which you object. Please type or print legibly.

The undersigned claims a right to use water within the Carlsbad Irrigation District ("CID") and files this *Inter Se* Objection to the water rights as set forth in the Appendix to the 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").

Part A: Your Information

1. Full name or names, mailing address, and telephone number: _____

2. The subfile number and court number of your water right. That information can be found in Appendix D and the Indices in Appendix H to the Proposed Decree:
Subfile Number: _____
Court Number: _____

Part B: Water Right to Which You Object (The subfile number, court number, owner of, and information about the water right can be found in Appendix D and the Indices in Appendix H to the of the Appendix to the Proposed Decree):

Subfile Number: _____
Court Number: _____

Defendant(s) name(s): _____

Basis of objection: _____

Part C: Notice to Claimant and Claimant Acknowledgements:

1. **IF YOU CHOOSE NOT TO COMPLETE THIS FORM, YOU WILL RECEIVE NO FURTHER OPPORTUNITY TO FILE OBJECTIONS TO THE DETERMINATION OF WATER RIGHTS DESCRIBED IN THE PROPOSED DECREE.**

2. You affirm that you (or your attorney) will attend a mandatory scheduling and pretrial conference to be held at a time and place to be announced in order to be allowed to participate in the resolution of *inter se* objections. Further procedures for resolving *inter se* objections will be determined at the conference.

3. **YOU ARE RESPONSIBLE FOR KEEPING YOUR CONTACT INFORMATION CURRENT IF YOU WISH TO RECEIVE NOTICE REGARDING THESE PROCEEDINGS. If you change your mailing address you must file your change of address with the Court and the Office of the State Engineer.**

Part D: Filing this Objection

1. This Objection must be filed with the Court, either in person or by mail, to be received by the Court, no later than November 19, 2012, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

2. At the same time this Objection is filed with the Court, a copy of this Objection must be served, either in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

Signed: _____ Dated: _____

EXHIBIT II

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,

Nos. 20294 and 22600 Consolidated

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,
vs.

Carlsbad Irrigation District Section,
Membership Phase

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

Court No.: As stated in Part B(1)
Subfile No.: As stated in Part B(1)

Defendants.

NOTICE OF INTENT TO PARTICIPATE

This form is to be used to notify the Court of your intent to participate in the resolution of an *Inter Se* Objection filed by another party. You must fill out a separate form for each subfile in which an inter se objection was filed.

The undersigned states as follows:

Part A: Your Information

I own an interest in the following water right in the Carlsbad Irrigation District. That information can be found in Appendix D and the Indices in Appendix H to the Proposed Decree:

Subfile Number: _____

Court Number: _____

Part B: The *Inter Se* Objection in which you wish to participate:

1. An *Inter Se* Objection has been filed to the water right described in the Subfile Order (the "Subfile Order") in the following subfile. That information can be found in the locations and website listed in Notice of 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, which accompanied this form:

Subfile Number: _____

Court Number: _____

2. I do **NOT** object to the adjudication of the water right in the manner described in the Subfile Order but I intend to participate in the court proceeding to resolve the *inter se* objection to that water right.

Part C: Your Contact Information

Name of Claimant Filing Notice of Intent to Participate

Signature of Claimant or Claimant's Attorney

Street or P.O. Address

City, State and Zip Code

Telephone Number with Area Code

Part D: Filing this Notice

1. To participate in the resolution of above described *Inter Se* Objections you must file this Notice with the Court, either in person or by mail, to be received by the Court, no later than January 18, 2013, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

2. At the same time this Notice is filed with the Court, a copy of this Notice must be served, either in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

EXHIBIT C

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.*
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

NOTICE TO BE PUBLISHED:

**NOTICE OF 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 NOTICE IS DIRECTED TO all defendants who were adjudicated a surface water right or a right to groundwater as a supplemental supply to surface water rights (hereinafter "supplemental right") appurtenant to lands located within the boundaries of the Carlsbad Irrigation District ("CID"), and their successors in interest;

AND

All unknown heirs of any deceased person who, in his or her lifetime, was adjudicated a surface water right or a supplemental right appurtenant to lands located within the boundaries of the CID:

Defendants who were adjudicated a surface water right or a right to groundwater as a supplemental supply to surface water rights (hereinafter "supplemental right") appurtenant to lands located within the boundaries of the Carlsbad Irrigation District ("CID"), and their successors in interest, are notified that 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") was filed with the State of New Mexico's 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, in the Fifth Judicial District Court, on [on or before October 15, 2012]. The complete text of the Proposed Decree is included at the end of this Notice.

The filing of the Proposed Decree initiated an *Inter Se* Proceeding in which Defendants are offered the opportunity to object to any Orders adjudicating the water rights of other Defendants, as against the State of New Mexico ("State"), to beneficially use surface water and supplemental rights appurtenant to lands located within the boundaries of the CID.

This *Inter Se* Proceeding is the only opportunity for Defendants who were adjudicated surface water rights and supplemental rights in the CID and their successors in interest to object to the determination of the surface water rights and supplemental rights of other Defendants and their successors in interest that are described in Appendix D to the Proposed Decree.

After resolving any objections, the Court will enter 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 that binds all Defendants and their successors in interest to the final adjudication of all surface water rights and supplemental rights within the boundaries of the CID.

HISTORY OF THE PROCEEDINGS

This cause of action is part of the general adjudication of all rights to divert, impound, store, and beneficially use the public surface and underground waters of the Pecos River Stream System that was initiated in April 9, 1956, and entitled State v. Lewis.

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. (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.)

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 binding on the members of CID, their successors in interest, and any other persons claiming water rights in the CID. In addition, (as directed by the Settlement Parties' Joint Declaration of Settlement Implementation entered June 11, 2009), 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.

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 (the "Remaining Elements") 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. For ease of reference, the term "Members" refers to the members of CID who were joined as defendants and their successors in interest.

The final stage of the CID Section will be the entry of a Partial Final Decree, which will be binding on all CID water right owners and their successors in interest, whether or not they participated in the *Inter Se* process.

INSTRUCTIONS IF YOU WISH TO PARTICIPATE IN *INTER SE* PROCEEDINGS

If you own water rights in the CID, this is your only opportunity to exercise your right to file certain objections to the Proposed Decree and to offer evidence to the Court in support of those objections.

The Project Phase Decree has determined a number of issues to which no one may object and which are binding on all owners of surface water and supplemental rights in the CID.

For surface water rights in the CID Section, objections can only be made to the location and amount of irrigated acreage. Objections **cannot** be made to determinations of purposes of use; sources of water; priority dates; irrigation water requirements; project diversion requirement and storage rights of the United States; delivery rights of the CID; and the diversion, delivery, and apportionment of CID water among CID members.

For supplemental rights, objections can only be made to the points of diversion, priority dates, and location and amount of irrigated acreage. Objections **cannot** be made to the purpose of use and amount of water.

You **cannot** object to your own adjudicated water right.

Copies of the Proposed Decree and Appendices, and hydrographic survey maps showing the location of all tracts described in the Decree, shall be made available for public inspection at the offices of the CID in Carlsbad at the following address:

Carlsbad Irrigation District
5117 Grandi Road
Carlsbad, NM 88220

Copies shall be available for inspection at the Office of the State Engineer's ("OSE") Offices at the following addresses:

Office of the State Engineer
District II
1900 West Second Street
Roswell, NM 88201-1712

Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
Santa Fe, NM 87504-5102

The Proposed Decree is also available on the OSE website at:
<http://www.ose.state.nm.us/LAP/CID/decreed.html>.

Copies shall be available for inspection at the Fifth Judicial District Court in the Eddy County Court House in Carlsbad and the Chaves County Court House in Roswell at the following addresses:

Fifth Judicial District Court
102 North Canal #240
Carlsbad, NM 88220

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
Roswell, NM 88202

All Defendants and their successors in interest may file *Inter Se* Objections to the water rights of other individuals, as described in Appendix D of the Proposed Decree, which can be viewed at the OSE website or one of the locations listed above.

If you choose not to exercise this sole opportunity to object to the water rights of other individuals, you do not need to take any further action. After any objections to the Proposed Decree are resolved by the Court, you will be bound by the provisions of the Proposed Decree.

HOW TO FILE AN OBJECTION

If you wish to object, you or your attorney must file an objection with the Fifth Judicial District Court of New Mexico.

***Inter Se* Objections must be filed on the form entitled *Inter Se* Objection to Water Rights Used Within the CID (“*Inter Se* Objection”). This form may be obtained from the OSE website or one of the locations listed above.**

The *Inter Se* Objection must specify the case and subfile numbers of the person making the objection, and the case and subfile numbers of the water rights objected to, and identify the adjudicated owner of that water right. You can locate your case and subfile numbers and those of other CID members by consulting the Indices in Appendix H which can be viewed on the OSE website or one of the locations listed above. The first of these Indices is organized alphabetically by owner name. More detailed information about each Defendant’s water rights can be found in Appendix D of the Proposed Decree which is also available on the OSE website or one of the locations listed above. The person making the objection must provide a brief explanation of the reason for the objection and sign the *Inter Se* Objection form.

Inter Se Objections must be filed in person or by mail to be received by the Court no later than November 19, 2012, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

At the same time, a copy of the *Inter Se* Objection must be served in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

PARTICIPATION IN SUBFILES IN WHICH OBJECTIONS ARE FILED

On or before December 19, 2012, the State of New Mexico will:

- (a) serve a copy by certified mail of the applicable *Inter Se* Objection on each Defendant whose subfile is the subject of an objection; and
- (b) file a Report with the Court identifying each Subfile in which an *Inter Se* Objection is filed and make copies of the report available for inspection at the locations and website described above.

Defendants whose subfiles are the subject of an objection and all persons who filed an *Inter Se* Objection in that subfile **must** participate in the court proceedings to resolve the objection. Defendants **may** (but are **not** required to) participate in the resolution of *Inter Se* Objections filed in Subfiles in which they did not file an *Inter Se* Objection provided they file a Notice of Intent to Participate with the Court by January 18, 2013. A copy of a Notice of Intent to Participate form is attached as Exhibit B to this Notice and copies of Notices of Intent to Participate will be also be available at the OSE website or one of the locations listed above.

Defendants will **only** be notified by certified mail if an *Inter Se* Objection is filed in their own subfile. Defendants can determine whether an *Inter Se* Objection has been filed in another subfile only by examining the Report filed by the State at the OSE website or one of the locations listed above.

MANDATORY SCHEDULING CONFERENCE

The Court will conduct a scheduling and pretrial conference in the Fifth Judicial District Court in Carlsbad for the purpose of establishing the procedure to be used for resolving *Inter Se* Objections. Each Defendant who timely files an *Inter Se* Objection and each Defendant whose subfile is the subject of an objection and each person who files a Notice of Intent to Participate, **MUST** attend the scheduling conference. Those who, without good cause, fail to attend shall be barred from participating in *Inter Se* Proceedings. The Court shall serve notice of the scheduling conference on all persons whose attendance is required by first class mail approximately 30 days prior to the conference.

All persons having water rights in the CID and their successors in interest will be bound by the outcome of the proceedings to resolve *Inter Se* Objections.

FOR ADDITIONAL INFORMATION

For additional information regarding this Notice or the Proposed Decree, you may call or write any of the following persons:

Gary B. Storm, Cynthia Sully
Special Assistant Attorneys General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
505-828-6150; 505-828-3887 (fax)

Carlsbad Irrigation District
5117 Grandi Road
Carlsbad, NM 88220
575-236-6390

FULL TEXT OF PROPOSED DECREE:

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.*
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

**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 or before 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 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

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.

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 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 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

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

Pecos River Stream System Adjudication filed on _____ 2012, the State 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 and their successors in interest 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 and their successors in interest 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:

Gary B. Storm, Cynthia Sully
Special Assistant Attorneys General
Office of the State Engineer
P. O. Box 25102
Santa Fe, NM 87504 5102
Attorneys for Plaintiff State of New Mexico,
ex rel. State Engineer

STEPHEN E. SNYDER, Special Master

EXHIBIT D

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,

Nos. 20294 and 22600 Consolidated

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,
vs.

Carlsbad Irrigation District Section,
Membership Phase

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

Court No.: As stated in Part B
Subfile No.: As stated in Part B

Defendants.

INTER SE OBJECTION TO WATER RIGHTS USED WITHIN THE CID

Fill out one form for each subfile to which you object. Please type or print legibly.

The undersigned claims a right to use water within the Carlsbad Irrigation District ("CID") and files this *Inter Se* Objection to the water rights as set forth in the Appendix to the 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").

Part A: Your Information

1. Full name or names, mailing address, and telephone number: _____

2. The subfile number and court number of your water right. That information can be found in Appendix D and the Indices in Appendix H to the Proposed Decree:
Subfile Number: _____
Court Number: _____

Part B: Water Right to Which You Object (The subfile number, court number, owner of, and information about the water right can be found in Appendix D and the Indices in Appendix H to the of the Appendix to the Proposed Decree):

Subfile Number: _____
Court Number: _____

Defendant(s) name(s): _____
Basis of objection: _____

Part C: Notice to Claimant and Claimant Acknowledgements:

1. **IF YOU CHOOSE NOT TO COMPLETE THIS FORM, YOU WILL RECEIVE NO FURTHER OPPORTUNITY TO FILE OBJECTIONS TO THE DETERMINATION OF WATER RIGHTS DESCRIBED IN THE PROPOSED DECREE.**

2. You affirm that you (or your attorney) will attend a mandatory scheduling and pretrial conference to be held at a time and place to be announced in order to be allowed to participate in the resolution of *inter se* objections. Further procedures for resolving *inter se* objections will be determined at the conference.

3. **YOU ARE RESPONSIBLE FOR KEEPING YOUR CONTACT INFORMATION CURRENT IF YOU WISH TO RECEIVE NOTICE REGARDING THESE PROCEEDINGS. If you change your mailing address you must file your change of address with the Court and the Office of the State Engineer.**

Part D: Filing this Objection

1. This Objection must be filed with the Court, either in person or by mail, to be received by the Court, no later than November 19, 2012, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

2. At the same time this Objection is filed with the Court, a copy of this Objection must be served, either in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

Signed: _____ Dated: _____

EXHIBIT E

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,

Nos. 20294 and 22600 Consolidated

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,
vs.

Carlsbad Irrigation District Section,
Membership Phase

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

Court No.: As stated in Part B(1)
Subfile No.: As stated in Part B(1)

Defendants.

NOTICE OF INTENT TO PARTICIPATE

This form is to be used to notify the Court of your intent to participate in the resolution of an *Inter Se* Objection filed by another party. You must fill out a separate form for each subfile in which an inter se objection was filed.

The undersigned states as follows:

Part A: Your Information

I own an interest in the following water right in the Carlsbad Irrigation District. That information can be found in Appendix D and the Indices in Appendix H to the Proposed Decree:

Subfile Number: _____

Court Number: _____

Part B: The *Inter Se* Objection in which you wish to participate:

1. An *Inter Se* Objection has been filed to the water right described in the Subfile Order (the "Subfile Order") in the following subfile. That information can be found in the locations and website listed in Notice of 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, which accompanied this form:

Subfile Number: _____

Court Number: _____

2. I do **NOT** object to the adjudication of the water right in the manner described in the Subfile Order but I intend to participate in the court proceeding to resolve the *inter se* objection to that water right.

Part C: Your Contact Information

Name of Claimant Filing Notice of Intent to Participate

Signature of Claimant or Claimant's Attorney

Street or P.O. Address

City, State and Zip Code

Telephone Number with Area Code

Part D: Filing this Notice

1. To participate in the resolution of above described *Inter Se* Objections you must file this Notice with the Court, either in person or by mail, to be received by the Court, no later than January 18, 2013, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

2. At the same time this Notice is filed with the Court, a copy of this Notice must be served, either in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

EXHIBIT F

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.*
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

**NOTICE OF OPPORTUNITY TO ASSERT OMITTED CLAIM FOR RIGHT TO
GROUNDWATER AS A SUPPLEMENTAL SUPPLY TO SURFACE WATER RIGHTS
IN THE CID**

**TO: ALL CLAIMANTS IN THE CARLSBAD IRRIGATION DISTRICT (hereinafter
"CID") WHO MAY OWN A RIGHT TO GROUNDWATER AS A SUPPLEMENTAL
SUPPLY TO SURFACE WATER RIGHTS (hereinafter "Supplemental Right") THAT WAS
NOT RECOGNIZED IN THE CID ADJUDICATION.**

Each claimant in the CID who receives this Notice is offered this sole opportunity to assert a claim to a Supplemental Right in the CID.

**IF YOU OWN A SUBFILE THAT WAS NOT ADJUDICATED A RIGHT TO
GROUNDWATER AS A SUPPLEMENTAL SUPPLY TO SURFACE WATER AND YOU
HAVE INFORMATION SUGGESTING YOUR SUBFILE MIGHT HAVE SUCH A RIGHT,
YOU MUST FOLLOW THE INSTRUCTIONS BELOW:**

1. You must, on or before November 19, 2012, (a) File, either in person or by mail, the attached Rule 1-060(B)(6) Motion Requesting Adjudication of Omitted Supplemental Right ("Rule 1-060 Motion") with the Court at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

(b) Serve a copy of Rule 1-060 Motion, either in person or by mail, on the Office of the State Engineer at the following address:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

2. You must within 30 days after you file your Rule 1-060 Motion, deliver to the Office of the State Engineer for inspection and copying, all deeds, abstracts of title, and other documents of title relevant to determining whether a supplemental right to groundwater should be adjudicated for the subfile in which you claim such a right. The documents must be submitted to Roswell Office of the State Engineer at the following address:

Office of the State Engineer
District II
1900 West Second Street
Roswell, NM 88201-1712

or to or to a representative of the Roswell Office at a field office hosted each Monday, except holidays, at:

Eddy County Office Complex
Second Floor
101 West Greene Street
Carlsbad, NM 88220

If you have questions you may contact Gary Storm, attorney for the State of New Mexico, at 1-800-928-3766 (press 2 at the voice prompt).

YOU MUST FILE THE RULE 1-060 MOTION WITH THE CLERK OF THE FIFTH JUDICIAL DISTRICT AND MAIL A COPY TO THE OFFICE OF THE STATE ENGINEER IN SANTA FE BY NOVEMBER 19, 2012 AT THE ADDRESSES LISTED ABOVE

AND

DELIVER WITHIN 30 DAYS THEREAFTER COPIES OF ALL DEEDS, ABSTRACTS OF TITLE, OR OTHER DOCUMENTS RELEVANT TO DETERMINING WHETHER A SUPPLEMENTAL RIGHT TO GROUNDWATER SHOULD BE ADJUDICATED FOR YOUR SUBFILE TO THE OFFICE OF THE STATE ENGINEER.

IF YOU FAIL TO COMPLY WITH THE FOREGOING REQUIREMENTS YOU MAY FORFEIT THE OPPORTUNITY TO ASSERT A CLAIM FOR AN OMITTED RIGHT TO SUPPLEMENTAL GROUNDWATER.

If you submit your Rule 1-060 Motion and the required documents to the Office of the State Engineer, the State Engineer will use the information you provide to determine whether you in fact have a right to supplemental groundwater. If you do own a supplemental right, you will be required to meet with representatives of the Roswell Office of the State Engineer to sign and have notarized a Change of Ownership form and possibly other administrative documents. Thereafter you will join with the State in filing a proposed order with the Court that will recognize your right to groundwater to supplement your CID surface water right.

If the State Engineer determines that you do not have a right to supplemental groundwater, you will be provided an opportunity to discuss the matter with the State and provide evidence that the supplemental right does exist. If, after the discussions, you still disagree with the State's determination, the Court will determine whether you have a right to supplemental groundwater.

THIS IS YOUR FINAL AND ONLY OPPORTUNITY TO ESTABLISH A CLAIM TO OWNERSHIP OF A RIGHT TO SUPPLEMENTAL GROUNDWATER IN THE CID

EXHIBIT G

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,

Nos. 20294 and 22600 Consolidated

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,

vs.

Carlsbad Irrigation District Section,
Membership Phase

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

Court No.: As stated in Part B(1)
Subfile No.: As stated in Part B(1)

Defendants.

**RULE 1-060(B)(6) NMRA MOTION REQUESTING ADJUDICATION OF OMITTED
SUPPLEMENTAL RIGHT**

**Fill out one form for each subfile for which you make a claim to a supplemental
groundwater right. Please type or print legibly.**

The undersigned claims a right to use water within the Carlsbad Irrigation District ("CID") and files this Motion under Rule 1-060(B)(6) NMRA to reopen the Subfile Order described herein based on a claim for a supplemental groundwater right which was not recognized in the Subfile Order.

Part A: Your Information

1. Full name or names, mailing address, and telephone number: _____

2. The subfile number and court number for the surface water right owned by you for which you claim a supplemental groundwater right. (Your subfile number and court number can be found in Appendix D and the Indices in Appendix H to the (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):

Subfile Number: _____

Court Number: _____

Part B: Support for Defendant’s Claim to a Supplemental Groundwater Right (Explain in as much detail as possible the grounds upon which you are asserting a claim for a supplemental right. Attach additional pages if necessary.):

Part C: Attachments: In support of this Claim for a Supplemental Groundwater Right, the Defendant attaches hereto:

1. Title instruments as follows:

2. Other supporting documents, as follows:

Part D: Notice to Defendant and Defendant Acknowledgements:

1. **THE DEFENDANT HAS BEEN INFORMED THAT FAILURE TO SUBMIT THIS MOTION WILL FORECLOSE ANY FUTURE OPPORTUNITY TO ESTABLISH A CLAIM TO OWNERSHIP OF A SUPPLEMENTAL GROUNDWATER RIGHT IN THE CID.**

2. **YOU ARE RESPONSIBLE FOR KEEPING YOUR CONTACT INFORMATION CURRENT IF YOU WISH TO RECEIVE NOTICE REGARDING THESE PROCEEDINGS. If you change your mailing address you must file your change of address with the Court and the Office of the State Engineer.**

Part E: Filing this Motion

1. This Motion must be filed with the Court, either in person or by mail, to be received by the Court, no later than November 19, 2012, at the following address:

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

2. At the same time this Motion is filed with the Court, a duplicate copy of this Motion must be served, either in person or by mail, on:

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

Respectfully submitted,

Signed: _____

Signed: _____

Signed: _____

Dated: _____

Defendant Name: _____

Defendant Name: _____

Defendant Name: _____

Defendant Address: _____

Defendant Phone: _____

ONE PERSON WILL NEED TO SIGN AND DATE THE CERTIFICATE OF SERVICE BELOW:

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the above to be sent to the following persons, and to the persons listed below, in person or by U.S. mail, postage prepaid, on _____, 2012.

Fifth Judicial District Court
Chaves County Courthouse
400 N Virginia Street
P.O. Box 1776
Roswell, NM 88202

Gary Storm
Office of the State Engineer
Litigation and Adjudication Program
130 South Capitol Place
P.O. Box 25102
Santa Fe, NM 87504-5102

Signed: _____ Dated: _____