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FILED

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

03 APR -2 AM 11:05
COURT
DONA ANA COUNTY, NM
PATRINE SANCHEZ

STATE OF NEW MEXICO <i>ex rel.</i>)
OFFICE OF THE STATE ENGINEER,)
)
Plaintiff,)
)
vs.)
)
ELEPHANT BUTTE IRRIGATION DISTRICT, <i>et al.</i> ,)
)
Defendants.)

No. CV 96-888
Hon. Jerald A.
Valentine

ORDER ON UNITED STATES MOTION TO AMEND COMPLAINT

This matter having come before the Court on the United States "Motion for Amended Complaint" dated August 16, 2002, the Court, having considered the briefs and arguments of the parties, concludes the following as a matter of law:

1. This Court's determination of the interests of the United States does not require extending the geographic boundary of the Lower Rio Grande adjudication to the headwaters of the Reservoir.
2. This Court is bound by the precedent of the Court of Appeals which already unambiguously determined the geographic boundaries of the adjudication in *Elephant Butte Irrigation Dist. v. Board of Regents of New Mexico State Univ.*, 115 N.M. 229, 849 P.2d 378 (1993).
3. The Court of Appeals in *Board of Regents* determined that a general adjudication of the Rio Grande between Elephant Butte Reservoir and the Texas state line substantially complies with the requirements of the

adjudication statutes because the delivered but unapportioned water delivered into Elephant Butte Reservoir may be considered a separate "river system" for purposes of the McCarran Amendment and a separate "stream system" for purposes of Section 72-4-17 and, therefore, adjudicating the *inter se* rights of parties below the dam will not result in a piecemeal decree because users above the dam may not use an amount of water in contravention of New Mexico's delivery obligations.

4. Since New Mexico's delivery obligation occurs at the dam, use of waters above the dam necessarily must be charged to the Middle Rio Grande portion and counted against the Middle Rio Grande users' interests.
5. The Compact delivery requirement of New Mexico remains the same regardless of usage of water above the dam.
6. Usage of water above the dam does not modify the amount of water that must be available to users south of the dam.
7. A hydrographic survey of the reservoir is not required because that would determine usage of water in the Middle Rio Grande portion and that is irrelevant to usage in the Lower Rio Grande.
8. The storage and diversion interests of the Bureau of Reclamation in the Reservoir are necessarily already part of the Lower Rio Grande stream adjudication.
9. The Reservoir is the source of the water to be used by users below the dam.
10. Water stored in the reservoir is committed to uses below the dam.

11. Requiring joinder of all users of the New Mexico portion of the Rio Grande to the Colorado state line would be in direct contravention of the *Board of Regents* case.
12. Determination by this Court of the storage and diversion interests of the United States does not make any equitable apportionment of the stream system, nor does it adjudicate Texas water rights.
13. The storage right of the United States is not the right to apply water to beneficial use.
14. The Rio Grande Compact defines "Project Storage" as follows: "Project Storage" is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands⁶ of the Rio Grande Project, but not more than a total of 2,638,860 acre-feet.
15. Water stored in the reservoir is committed to uses below the dam.
16. The storage of water is not a "beneficial use" interest.
17. Addressing the concerns of the Tenth Circuit Court of Appeals in *United States v. City of Las Cruces*, 289 F.3d 1170 (10th Cir. 2002) that the United States has a forum to determine its interests, this Court rules that it has jurisdiction to provide this forum to determine the United States' interests.

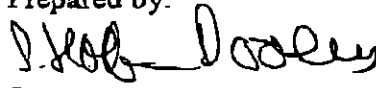
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The United States' Motion to Amend Complaint is hereby denied.
2. The State need not amend the current (Fourth amended) Complaint.


3. The United States' interest in storage and diversion in Elephant Butte Reservoir will be adjudicated in this adjudication.
4. Nothing in this order shall affect the ability of the State to make offers of judgment to other parties.
5. All other requests for relief in the United States' Motion are denied.



 DISTRICT JUDGE

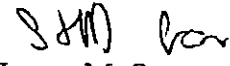
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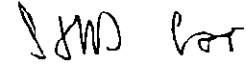

 Susanne Hoffman-Dooley
 Counsel for State of New Mexico
ex rel. Office of the State Engineer

Approved as to Form:

 for
 R. Lee Leininger
 Christopher Rich
 Counsel for the United States
 3/31/03 3:50 p.m.

 for
 Beverly J. Singleman
 Stephen Hubert
 Counsel for Elephant Butte Irrigation District
 3/31/03 2:45 p.m.

 for
 James M. Speer
 Timothy J. DeYoung
 Counsel for El Paso County Water Improvement
 District No. 1
 3/31/03 3:50 p.m.

 for
 Benjamin Phillips
 Rebecca Dempsey
 Counsel for City of El Paso
 3/31/03 3:55 p.m.

SND for 3/31/03 2:35 p.m.

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