

FIFTH JUDICIAL DISTRICT COURT
CHAVES COUNTY, NM
FILED IN MY OFFICE

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

2015 OCT -9 AM 9:26

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

Hon. James J. Wechsler
Presiding Judge
KATE L. GONZA
DISTRICT COURT CLERK

Pecos River Stream System
Cow Creek Section

vs.

Court No. CV-WS-19000001

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

**ORDER MANDATING THAT NOTICE OF THIS COURT'S
IN REM JURISDICTION BE GIVEN TO ALL
KNOWN AND UNKNOWN WATER RIGHTS CLAIMANTS IN THE
COW CREEK SECTION OF THE PECOS RIVER STREAM SYSTEM**

THE COW CREEK SECTION of the Pecos River Stream System Adjudication is before the Court on the Special Master's Report Recommending that Notice of this Court *In Rem* Jurisdiction Be Given to All Known and Unknown Water Rights Claimants in the Cow Creek Section ("Report"). After considering the Report, the Court finds and concludes that:

1. This Court has *in rem* jurisdiction over all water rights in the Pecos River Stream System including, without limitation, all water rights in the Cow Creek Section of the Pecos River Stream System. The Court will acquire personal jurisdiction over specific water rights claimants as they are joined and served as parties pursuant to NMSA 1978, Section 72-4-17 and Rule 1-071.1 NMRA.
2. The Court may exercise its *in rem* jurisdiction over water rights in a particular Pecos River section after all known and unknown water rights claimants in that section have been given due process notice of (a) the Court's jurisdiction, and (b) the procedure for requesting notice of all hearings, deadlines and court filings.
3. The State of New Mexico, *ex rel.* State Engineer ("State"), intends to commence adjudicating specific water rights claims in the Cow Creek Section by joining individual water

rights claimants as parties and serving them with proposed orders describing the State's findings with respect to their water rights. Prior to joinder of individual water rights claimants, the Court may exercise its *in rem* jurisdiction by resolving any issues ("stream system issues") the resolution of which could directly affect the water rights of all or a significant number of water rights claimants in the Cow Creek Section. *See* Rule 1-071.2.A NMRA.

4. The Court may adjudicate stream system issues as soon as all water rights claimants in the Cow Creek Section have been provided with due process notice of the procedure they must follow to obtain notice of all hearings, deadlines and court filings. The Court may adjudicate a water rights claim in an expedited *inter se* proceeding as soon as the claimant asserting the claim is joined as a party pursuant to NMSA 1978 Section 72-4-17 (1965) and all other claimants have been provided with due process notice of the procedure they must follow to obtain notice of hearings, deadlines and court filings.

IT IS THEREFORE ORDERED THAT:

A. Service of Notice of Pending Water Rights Adjudication

1. The State shall serve a Notice of Adjudication of Water Rights in the Cow Creek Section of the Pecos River Stream System ("Notice of Adjudication"), together with a form to be completed and filed with the Court by water rights claimants, entitled "Subscription to Monthly Adjudication Report" ("Subscription Form") on all known and unknown water rights claimants in the Cow Creek Section. The manner of service shall be as required by Rule 1-071.2.C and paragraphs 4 and 5 below.

2. The Notice of Adjudication shall inform claimants of the procedures specified in this Order for (i) serving all pleadings and court papers and (ii) requesting notice of all hearings, deadlines and court filings. The Subscription Form, when completed by a claimant and filed with the Court, shall constitute the claimant's request for a subscription to the Monthly Adjudication Report prepared by the Court Clerk pursuant to paragraph 8 below. The Notice of

Adjudication shall correspond to Exhibit 1 to this Order and the Subscription Form shall correspond to Attachment A of Exhibit 1.

B. Request for Prior Notice of Hearings, Deadlines and Court Filings

3. To receive prior notice of all court filings, deadlines and upcoming hearings, a water right claimant must file a Subscription Form with the Court by November 30, 2015. No court proceeding shall be commenced that could affect the substantive rights of the parties prior to November 30, 2015. Claimants may file Subscription Forms after that date, but, except for good cause shown, shall be deemed to have waived their right to notice of any deadline or hearing occurring prior to the filing.

C. Procedure for Serving Notice

4. The State shall serve the Notice of Adjudication and Subscription Form in the manner provided by Rule 1-071.2.C, by first class mail, by October 16, 2015. The State shall serve all persons who may claim water rights in the Cow Creek Section whose identity can be ascertained from the following records:

- Existing hydrographic survey records;
- The records of the San Miguel County Assessor;
- The public records of the State Engineer, and
- The public records of any irrigation districts, acequias, water conservancy districts and other water users associations in the Cow Creek Section.

5. The Notice of Adjudication shall also be served by publishing the Notice of Adjudication once a week for three consecutive weeks, pursuant to Rule 1-004(K) NMRA and NMSA § 14-11-10 (1978), in the Las Vegas Optic and Albuquerque Journal. Publication shall constitute notice to those persons claiming water rights in the Cow Creek Section whose addresses cannot reasonably be ascertained from the records described in paragraph 4.

6. After the State has complied with the foregoing requirements, it shall file with the Court a certificate of service attesting to its compliance with the service provisions of this Order.

D. Preparation and Service of Monthly Adjudication Report

7. Notice of hearings, deadlines and court filings shall be provided to all water rights claimants in the Cow Creek Section by means of a subscription to the Monthly Adjudication Report ("Monthly Report").

8. On the first Friday of every month, the Court will prepare a Monthly Report and post the Monthly Report on the website for the adjudication (<http://cowcreek.nmcourts.gov/>).

The Monthly Report shall contain:

- (i) the time and location of all upcoming hearings,
- (ii) all deadlines for responding to motions or other documents filed with the Court,
- (iii) a chronological listing of all documents filed with the Court since the publication of the last Monthly Report, and
- (iv) a brief summary of the motions listed in the Monthly Report

9. The Monthly Report will be served via email, free of charge, on any claimant who provides an email address on the Subscription Form.

10. Parties who do not provide an email address will be served with the Monthly Report by first class mail for an annual fee of \$60.00, to cover the costs of producing, copying and mailing the Monthly Report. The fee shall be payable by money order or cash (no personal checks) to the Clerk of the Court. Parties may subscribe to the Monthly Report at any time but the \$60.00 fee will be assessed regardless of the amount of time remaining in the fiscal year. The fee will not be prorated for partial years. Parties who are unable to pay the annual fee may include with their Subscription Form a request for waiver of the annual fee on the form provided by the Court. The waiver of the annual fee shall correspond to Attachment B of Exhibit 1. If the Notice of Adjudication is served by mail the Subscription Form shall be attached as Attachment A, and the request for waiver shall be attached as Attachment B. If the Notice of Adjudication is served by publication copies of the Subscription Form and request for waiver may be printed

from the Court's Cow Creek Adjudication website (<http://cowcreek.nmcourts.gov/>), or copies may be requested from the Fifth Judicial District Court of the State of New Mexico by phone (575) 622-2212, or email rosdmin@nmcourts.gov . The Monthly Report and all other documents pertaining to the Cow Creek Section adjudication will be available on the Court's website. Any party may obtain a copy of the Monthly Report or a document identified in the report by downloading the document from the Cow Creek Section's website or by requesting a hardcopy from the Court in writing addressed to:


Office of the Clerk, Civil Division
Attention: Pecos Water Rights Adjudication
Fifth Judicial District of the State of New Mexico
P.O. Box 1776
Roswell, NM 88202-1776

The request shall include a money order to cover copying costs, currently set at \$0.35 per page.

The request shall also include a self-addressed envelope of sufficient size and with sufficient postage for mailing the requested documents.

11. The Court will, without notice, remove from the subscription list any person who fails to maintain a deliverable email or postal address. Parties who fail to maintain a deliverable email or postal address, or who fail to pay the required fee or receive a waiver of the fee for a subscription by mail will be deemed to have waived their right to service pursuant to Rule 1-005.

IT IS SO ORDERED.


James J. Wechsler
Presiding Judge

Approved by:


Stephen E. Snyder, Special Master