

FIFTH JUDICIAL DISTRICT COURT
CHAVES COUNTY NM
FILED IN MY OFFICE

**FIFTH JUDICIAL DISTRICT
CHAVES COUNTY
STATE OF NEW MEXICO**

**Nos. 20294 and 22600
Consolidated 2017 APR 26 AM 11:54**

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

L. MARIE ESPINOZA
DISTRICT COURT CLERK

**Hon. James Wechsler
District Judge**

Plaintiffs,

v.

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

D504. WS. 19000001

Defendants.

MOTION FOR APPROVAL OF APPOINTMENT OF WATER MASTER

PURSUANT TO paragraph 5 on page 4 of the Partial Final Judgment and Decree entered in this case on December 23, 1970, the State of New Mexico moves the Court to issue an order vacating the appointment of Mr. David L. Thomas as Water Master and approving the appointment of Mr. John Stewart as Water Master in this case. As grounds for this motion, the State states the following:

1. Mr. David L. Thomas, the current Water Master, has retired from his employment with the Office of the State Engineer ("OSE");

2. Pursuant to State Engineer Order No. 174, the State Engineer may declare sub-districts and appoint sub-district water masters (see OSE Order No. 174, Conclusions of Law, Administration of Affected Water Rights, Section 6b, and Creation of Water Master District and Appointment of Water Master, Section 1),

State Engineer Order No. 174 attached hereto and incorporated herein as **Exhibit A**;

3. A Water Master is needed to carry on the duties previously assigned to Mr. Thomas;

4. Mr. John Stewart has been appointed by the State Engineer and is qualified to serve as Water Master, a copy of his appointment is attached hereto and incorporated herein as **Exhibit B**;

5. Pursuant to Rule 1-007.1, NMRA, the State sought the concurrence of counsel of record in this case by letter dated October 26, 2016 asking for concurrence or objections by March 30, 2017, or the State would take the position that the counsel of record and pro se parties who do not respond do not oppose or object to this motion.

6. None of the parties entitled to service responded in opposition to this motion.

WHEREFORE, pursuant to the Partial Final Judgment and Decree dated December 22, 1970, the State of New Mexico requests the Court's approval of the appointment of John Stewart as the Water Master of the Roswell Artesian Basin by issuing the proposed Order Approving Appointment of Water Master attached hereto.


Respectfully submitted,



Owen K. Kellum
Special Assistant Attorney General
Administrative Litigation Unit
Office of the State Engineer
P.O. Box 25102
Santa Fe, New Mexico 87504-5102
For the State of New Mexico

CERTIFICATE OF SERVICE

I hereby certify that the following Motion to Appoint Water Master was mailed to the parties listed below on the 26th day of April, 2017.



Theresa L. Vargas
Administrative Litigation Unit

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

IN THE MATTER OF THE CREATION OF)
THE LOWER PECOS RIVER BASIN WATER)
MASTER DISTRICT FOR THE)
ADMINISTRATION OF RIGHTS TO THE USE)
OF SURFACE WATERS AND UNDERGROUND)
WATERS FROM THE LOWER PECOS RIVER)
BASIN OF NEW MEXICO)

Order No. 174

The State Engineer for the State of New Mexico ("State Engineer") is authorized by statute to divide the State into water districts in conformity with the drainage areas for the purpose of performing the essential governmental function of distributing water among water right owners in accordance with the laws of the State of New Mexico. The State Engineer may appoint a water master who will have immediate charge of such apportionment of waters.

STATUTORY AUTHORITIES

1. New Mexico law declares that all natural water flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the State of New Mexico, belongs to the public and is subject to appropriation for beneficial use. NMSA 1978, § 72-1-1.
2. The State Engineer has a statutory responsibility to supervise, measure, appropriate, and distribute the waters of the State, NMSA 1978, § 72-2-1, including surface waters, NMSA 1978, §§ 72-5-1 through 37, and groundwaters, NMSA 1978, §§ 72-12-1 through 28, in accordance with the prior appropriation doctrine, as established by New Mexico law, NM Const. art. XVI; NMSA 1978, § 72-1-2.
3. The State Engineer is authorized, if it is in the best interest of the State and the owners of water rights, to establish water districts upon any stream system within the State of New Mexico as necessary for the economical and satisfactory apportionment of said waters. NMSA 1978, § 72-3-1.
4. The State Engineer is authorized, if it is in the interest of public safety and the best interest of water users, to appoint a water master who shall appropriate, regulate and control the waters of such water districts so as to prevent waste. NMSA 1978, § 72-3-2.

FINDINGS OF FACT

1. In order to properly apportion the waters of the Lower Pecos River Basin in Lea, Roosevelt, De Baca, Chaves, Eddy, Quay, Lincoln, Guadalupe and Otero Counties, New Mexico, the establishment of the Lower Pecos River Basin Water Master District ("District") and the appointment of a Water Master in and for the District are necessary.
2. The amount of water in the District is finite and varies from year to year based on annual precipitation.

3. The Carlsbad Irrigation District and its members, the Fort Sumner Irrigation District, Roswell, Artesia, Carlsbad, Ruidoso, the Pecos Valley Artesian Conservancy District, the Hagerman Irrigation Company, a number of small municipalities, a number of mutual domestic water users associations, and a number of commercial and industrial water right owners, are all water users in the District.
4. Adjudication of the surface and groundwater rights in the Lower Pecos River Basin is ongoing.
5. The recent drought in the State of New Mexico has exacerbated a water shortage crisis in the Lower Pecos River Basin.
6. The shortage of water in the Lower Pecos River Basin is a problem affecting all citizens of the Lower Pecos River Basin.
7. The State of New Mexico is subject to an Amended Decree by the United States Supreme Court, 485 U.S. 388 (1988), which requires the State to comply with the water delivery requirements of the Pecos River Compact.
8. The Pecos Settlement entered the Interim Phase of implementation on December 10, 2004, and the State is moving towards full implementation of the requirements and terms of the Settlement.
9. The State Engineer declared a Water Master sub-district in the Hondo Basin on December 3, 2004.
10. Creation of the District and sub-districts is necessary to implement the Pecos Settlement, and to ensure the economical and satisfactory apportionment of water in the District.
11. Appointment of a Water Master is necessary to ensure the public safety of water users in the District and to ensure protection of existing senior water rights in the District from impairment.

CONCLUSIONS OF LAW

Creation of Water Master District and Appointment of Water Master

1. The State Engineer concludes that, for the economical and satisfactory apportionment of water within the District, it is in the interest of the public safety and in the interest of the water users that the LOWER PECOS RIVER BASIN WATER MASTER DISTRICT ("District") and the Fort Sumner, Carlsbad, and Roswell Artesian Basin sub-districts should be formed and a Water Master appointed on a permanent basis, so as to administer the surface waters and groundwaters of the District and in the Fort Sumner, Carlsbad, Roswell Artesian Basin and Hondo sub-districts, in accordance with New Mexico law.
2. The District Water Master shall have immediate charge of the apportionment of waters in the District under the general supervision of the State Engineer, and shall appropriate, regulate and control the waters of the District so as to prevent impairment of senior water right owners and to prevent waste.
3. This Order applies to all surface water and groundwater rights and all diversions of groundwater supplemental to surface water rights in the Lower Pecos River Basin Water Master District, located in Lower Pecos River Basin in Lea,

Roosevelt, De Baca, Chaves, Eddy, Quay, Lincoln, Guadalupe and Otero Counties, State of New Mexico.

Administration of Affected Water Rights

1. The State Engineer concludes that the immediate administration of water rights in the District is necessary to implement the terms of the Pecos Settlement or to protect senior water rights in case the Settlement fails; and for the economical and satisfactory apportionment of those water rights in the District not affected by the Settlement, to ensure the public safety or interests of water users in the District, and for the prevention of waste.
2. With respect to water rights affected by the Pecos Settlement, the State Engineer concludes that the Water Master of the District, created by this Order shall apportion the waters of the District in accordance with the Pecos Settlement during the Interim Period and after implementation of the Pecos Settlement; or in accordance with the Active Water Resource Administration regulations for the Lower Pecos River Basin Water Master District if the Pecos Settlement fails to be implemented or is no longer in the Interim Phase; other existing or future regulations; any future Water Master manuals; and any guidelines, directions and supervision provided by the State Engineer.
3. With respect to water rights not affected by the Pecos Settlement, the State Engineer concludes that the Water Master of the District created by this Order shall apportion the waters of the District in accordance with the Active Water Resource Management regulations for the Lower Pecos River Basin Water Master District; Water Master Manuals; and any guidelines, directions and supervision provided by the State Engineer.
4. The State Engineer concludes that the Water Master of the District created by this Order shall perform the following specific duties:
 - a. Curtail illegal diversions as defined by the Lower Pecos River Basin district-specific rules and regulations; and
 - b. Measure and report water usage in the District; and
 - c. Administer water usage and augmentation wells according to the terms of the Pecos Settlement; and
 - d. Curtail out-of-priority diversions determined by the State Engineer to be causing injury to senior priority water rights; and
 - e. Administer all water rights affected by the Settlement according to the terms of the Settlement; and
 - f. Administer all water rights not affected by the Settlement in accordance with the Active Water Resource Management regulations for the Lower Pecos River Basin Water Master District, the Water Master Manual and any guidelines, directions and supervision provided by the State Engineer; and
 - g. Supervise all sub-district water masters.
5. Water Master manuals and other future State Engineer instructions to the Water Master for the administration of water rights in the District will be based upon available water rights data, hydrologic models, and the State Engineer's best professional judgment.

6. The State Engineer concludes that the District created by this Order shall include the following organizational features:
- a. The appointment of a single Water Master for the District.
 - b. The State Engineer may declare additional sub-districts and appoint sub-district water masters if he deems it necessary.
 - c. The Water Master will be a direct employec of the Office of the State Engineer and shall receive compensation in an amount to be determined by the State Engineer. The Water Master shall also be compensated for all actual and necessary expenses incurred in performing the duties of Water Master.
 - d. The salary and expenses of the Water Master shall be paid monthly by the water right owners through the boards of county commissioners of De Baca, Chaves, Eddy, Quay, Lincoln, and Otero Counties, New Mexico, in accordance with the requirements of NMSA 1978, § 72-3-4, or by alternative means provided by the Legislature. If the Legislature adopts alternative means to fund the salary and expenses of the Water Master, then such means will be substituted for monthly payment by the water right owners in each county listed above. The amount to be paid by each water right owner will be based on the amount of water used by each water right owner, or as otherwise provided for by future legislative acts.
 - e. The boundaries of the District may be changed from time to time, as may be necessary in the opinion of the State Engineer, for the economical and satisfactory apportionment of water in the District.

ORDER

IT IS ORDERED that:

1. The LOWER PECOS RIVER BASIN WATER MASTER DISTRICT and the Fort Sumner, Carlsbad, and Roswell Artesian sub-districts are hereby created and a Water Master appointed on a permanent basis, so as to administer the surface and groundwaters within the drainage of the Lower Pecos River Water Master District and in the Fort Sumner, Carlsbad, Roswell Artesian Basin and Hondo sub-districts, in accordance with New Mexico law, within the area depicted on the maps attached hereto as Attachments A - D and incorporated herein by reference.
2. The State Engineer hereby authorizes the appointment of a Water Master for the District for the purpose of implementation of the Pecos Settlement and the administration and apportionment of the surface and groundwaters of the District.

DATED this 19th day of January, 2006.



John R. D'Antonio, Jr.
 JOHN R. D'ANTONIO JR., P.E.
 State Engineer

Exhibit A



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

IN THE MATTER OF THE APPOINTMENT
OF JOHN STEWART AS WATER MASTER
OF THE ROSWELL ARTESIAN BASIN IN
THE STATE OF NEW MEXICO

ORDER

WHEREAS pursuant to NMSA 1978, Section 72-3-2(A) (2007), the State Engineer may appoint a water master for service in the interests of the water users of any district of the state; and

WHEREAS pursuant to NMSA 1978 Section 72-3-2(A) (2007), the water master shall have immediate charge of the apportionment of waters in the water master district, and shall so appropriate, regulate and control the waters of the district so as to prevent waste; and


WHEREAS the Water Master of the Roswell Artesian Basin ("RAB") has retired, requiring the position of RAB Water Master to be filled; and

WHEREAS the State Engineer, having determined that there is a need to fill the position of RAB water master has reviewed the qualifications of John Stewart to serve in the position of Water Master and finds he is qualified to serve in the position;

THEREFORE IT IS HEREBY ORDERED that the State Engineer appoints John Stewart as the Water Master of the RAB with all the duties appurtenant to that position.

Issued this 02nd day of February, 2017.




Tom Blaine, P.E.
New Mexico State Engineer

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY
STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.
STATE ENGINEER
And PECOS VALLEY ARTESIAN
CONSERVANCY DISTRICT

Plaintiffs,

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

Defendants.

ORDER APPROVING APPOINTMENT OF WATER MASTER

PURSUANT TO paragraph 5 on page 4 of the Partial Final Judgment and Decree entered in this case on December 23, 1970, the State of New Mexico moved the Court to issue an order vacating the appointment of Mr. David L. Thomas as Water Master and approving the appointment of Mr. John Stewart as Water Master of the Roswell Artesian Basin. Pursuant to State Engineer Order No. 174, the State Engineer may declare sub-districts and appoint sub-district water masters. Due to the retirement of the previous Water Master Mr. Thomas, there is a need to for a water master to carry on his duties. The State Engineer has appointed Mr. John Stewart as the Water master of the Roswell Artesian Basin, and on his behalf the State moved the court to approve the appointment of Mr. Stewart pursuant to the Partial Final Judgment and Decree dated December 22, 1970, in the above

Hon. James J. Wechsler
Presiding Judge

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Consolidated

captioned matter. After consideration of the foregoing this Court FINDS AND CONCLUDES:

1. Mr. David L. Thomas, the former Water Master, has retired from his employment with the Office of the State Engineer;
2. A Water Master is needed to carry on the duties previously assigned to Mr. Thomas;
3. Mr. John Stewart has been appointed by the State Engineer and is qualified to serve as Water Master.
4. Pursuant to Rule 1-007.1, NMRA, the State sought the concurrence of counsel of record in this case by letter dated February 21, 2017 asking for concurrence or objections by March 23, 2017, or the State would take the position that the counsel of record and pro se parties who do not respond do not oppose or object to this motion.
5. None of the parties entitled to service responded in opposition to this motion.
6. This Court hereby approves of the appointment of Mr. John Stewart as the Water Master of the Roswell Artesian Basin.

IT IS SO ORDERED.

James J. Wechsler
Presiding Judge