

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

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

2017 APR 28 PM 1:25

Nos. 20294 and 22600
Consolidated

W. S. P. S. A.
DISTRICT COURT CLERK

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,)

Pecos River Stream System
Cow Creek Section

v.)

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

Court No. WS-19000001

Defendants.)

AMENDED PROCEDURAL ORDER GOVERNING THE ADJUDICATION OF WATER RIGHTS IN THE COW CREEK SECTION

This Order is entered by the Court pursuant to Rule 1-016(B) NMRA to guide the course of the adjudication of water rights claims in the Cow Creek section of the Pecos River Stream System. The Court ordered on October 9, 2015 that all known and unknown water right claimants in the Cow Creek section be given notice of the procedure to be followed when providing water right claimants with notice of court hearings and the filing of orders, motions, and other documents with the clerk. On January 5, 2016, the State of New Mexico (the State) filed its Certificate of Service, certifying that the Notice of Adjudication of Water Rights in the Cow Creek Section of the Pecos River Stream System had been served on all known and unknown water right claimants pursuant to Rule 1-071.2C NMRA. The Notice of Adjudication of Water Rights in the Cow Creek Section of the Pecos River Stream System required claimants to subscribe to a monthly adjudication report, found at <https://cowcreek.nmcourts.gov/>, to receive notice of all court proceedings and deadlines. Water right claimants who failed to subscribe to the monthly adjudication report within the required time relinquished their right to

notice of any deadline or hearing until such time as they subscribed to the report. The adjudication of water rights in the Cow Creek section can now proceed in accordance with the procedures set forth in this Order.

IT IS THEREFORE ORDERED THAT:

A. Service and Joinder

1. Pursuant to Rule 1-071.1 NMRA, the State shall join each person who claims a water right in the Cow Creek section (claimant) as a party to this adjudication. To the extent practicable, the State shall complete joining claimants on one ditch before joining claimants on a different ditch. The service of adjudication packets as provided below shall constitute service of process on a water right claimant and joinder of that claimant as a defendant to this adjudication.

2. Upon entry of this Order, the State shall commence serving adjudication packets on known water right claimants identified in the 2015 Cow Creek Watershed Hydrographic Survey (Hydrographic Survey). Service shall be by certified mail, pursuant to Rule 1-004(E) NMRA. Any claimants who refuse service by certified mail shall be personally served. Known claimants who cannot reasonably be served by other means shall be served by publication, as authorized by NMSA 1978, Section 72-4-17 (1965) and Rule 1-004(K) NMRA. For every claimant for whom a signed return or proof of service has not been received, the State shall file a motion, accompanied by the affidavit required by Rule 1-004(J) NMRA, requesting an order authorizing service by publication.

The State shall file with the Court a Certificate of Service of Adjudication Packet within 10 days of service of each adjudication packet. The State shall also file with the Court a Notice of Filing of Return of Service with the return service cards attached within 10 days of receipt of each card.

3. The adjudication packet shall consist of the following:

(a) a summons issued by the State's designated personnel pursuant to Rule 1-071.1B, in the form of the attached Exhibit A;

(b) a description of the adjudication process and instructions to claimants, which shall be in the form of the attached Exhibit B, together with a notice written in Spanish informing claimants that the State will provide a Spanish translation of Exhibit B upon request;

(c) a proposed subfile final judgment containing a description of the subfile claimant's water rights, as determined by the State, in the form of the attached Exhibit C;

(d) a form for response and request for consultation (Consultation Request), in the form of the attached Exhibit D, for use by claimants who do not accept the State's determination of their water rights as set forth in the proposed subfile final judgment; and

(e) an envelope addressed to the State for the claimant to mail an appropriate responsive document, signed by the claimant, as required by paragraph C below.

4. By the 20th day of each month after the State begins service of adjudication packets, the State shall file with the Clerk of the Court a report containing the following information, listed by subfile and date, for the previous calendar month:

(a) a list of the defendants for whom service has been completed;

(b) a list of the defendants who have provided the State with a signed proposed subfile final judgment;

(c) a list of the defendants who have requested consultation with the State;

(d) a list of the defendants whose consultation has been terminated by the State;

and

(e) a list of the defendants who are subject to default for failure to respond in accordance with this Order.

B. Claims Not Identified in the Hydrographic Survey

The State shall serve by means of the monthly adjudication report and by first-class mail to all known claimants and all property owners of record in the Cow Creek basin, a Notice of Deadline to File Omitted Claim. The notice (the "Omitted Claim Notice") shall describe how to claim a surface water right not depicted or described in the Hydrographic Survey. The Omitted Claim Notice shall include (a) a form to use for asserting a claim for a water right omitted from the Hydrographic Survey and (b) a conspicuous statement written in Spanish informing claimants that a Spanish translation of the form is available from the State upon request. Persons who claim a right to use the surface waters of Cow Creek or its tributaries that is not depicted or described in the Hydrographic Survey shall file with the Court and serve on the State a claim to surface water right no later than ninety days after Omitted Claim Notice is served by first class mail.

The claim to surface water right shall (i) set forth the claimant's name, telephone number, residence, and mailing address and (ii) for each claimed water right provide the priority date, point of diversion, source of water, amount of water, purpose of use, any Office of the State Engineer file number, and periods of use and places of use, in the form of the attached Exhibit E. Any claimant filing a claim to surface water right shall (a) attach to the claim a copy of the recorded deed or other proof of ownership of the land to which the purported water right is appurtenant or (b) attach a brief written statement explaining why no proof of ownership is attached.

After receiving a claim to surface water right, the State shall evaluate the claim, serve an adjudication packet on the claimant, and proceed according to Section A of this Order.

C. Defendant's Obligation to Respond to Adjudication Packet; Consultation with the State

1. Each defendant must respond to the adjudication packet served upon the defendant by the date set forth in the summons, which shall be at least 60 days from the date of the summons, by returning to the State one of the following:

(a) a signed and dated proposed subfile final judgment signifying the defendant's agreement to the adjudication of the defendant's water rights as described in the proposed subfile final judgment that was included in the defendant's adjudication packet; or

(b) a Consultation Request, in which the defendant states objections to the proposed subfile final judgment in the defendant's adjudication packet and requests a consultation with the State regarding the objections.

2. The State shall file with the Court each Consultation Request within 5 business days after the State receives the Consultation Request. The State shall submit to the Clerk for posting on the Court's website each proposed subfile final judgment that has been accepted by a defendant within 5 business days after the State receives the signed judgment. See ¶ F.3 infra.

3. Any defendant who files a Consultation Request must discuss the defendant's proposed subfile final judgment with representatives of the State. The State shall contact the defendant to schedule a consultation. The defendant shall meet with representatives of the State at the Office of the State Engineer, 130 South Capitol Street, Concha Ortiz y Pino Building, Santa Fe, New Mexico 87501 or another mutually agreeable location. The State may be contacted at:

Kelly Brooks Smith
Leila J. Reilly
Special Assistant Attorneys General
Litigation and Adjudication Program, Pecos River Adjudication Bureau
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
kelly.smith@state.nm.us
leila.reilly@state.nm.us
Attorneys for the State of New Mexico

4. At the consultation, the defendant shall produce all documents in its possession or control pertaining to its water right claim, and likewise, the State shall produce the documents that form the basis for its assessment of the defendant's water right as set forth in the proposed subfile final judgment. If the State determines that a field inspection is necessary or appropriate, a representative from the State and the defendant shall schedule an inspection as soon as practicable. Unless otherwise agreed to by the parties, the defendant or the defendant's representative shall be present during the field inspection and shall allow field personnel from the State to access the defendant's property as reasonably necessary to verify and inspect the defendant's water rights claims.

5. If the consultation results in an agreement on the terms of the originally proposed subfile final judgment or a revised proposed subfile final judgment, the State shall promptly prepare an agreed-upon proposed subfile final judgment and the parties shall sign and submit the agreed-upon proposed subfile final judgment to the Court within 10 days.

D. Termination of Consultation; Order for Defendant to File Claim

1. The State shall serve a Notice of Termination of Consultation Concerning Proposed Subfile Judgment ("Termination Notice"), attached as Exhibit F, on each water right defendant who served a Consultation Request on the State but who did not subsequently accept a proposed

subfile final judgment no later than 90 days after the Consultation Request was served on the State. The Court may extend the time for service of the Termination Notice with respect to a specific subfile upon written motion by the State for good cause shown. The Termination Notice shall be served on the defendant by first-class mail or hand-delivered and a copy filed with the Court. Upon the filing of the Termination Notice, the Defendant shall be deemed to have rejected the proposed subfile judgment.

2. Promptly after the State files the Termination Notice, the Court (or Special Master) will transfer the subfile to its contested subfile docket. The Court will set a scheduling conference for each subfile assigned to the contested subfile docket at such time as is consistent with the effective management of this adjudication. At the scheduling conference the Court will determine whether a discovery and trial schedule should be set for that subfile or the State, defendant(s) and any Inter Se objectors should be referred to mediation before such a schedule is set. See ¶ F *infra*. At the scheduling conference the Court may also enter an order in the form of Exhibit G requiring the defendant to complete and file a Statement of Water Right Claim with the Court clerk. The Court may impose sanctions against the defendant should defendant fail to comply with the deadlines imposed at the scheduling conference. *See* Rule 1-016(F).

E. Judgment Upon Failure to Respond to Adjudication Packet or Failure to Comply with the Court's Scheduling Order for Contested Subfiles

1. Default Judgment: Defendants may be defaulted to the water right described in the proposed subfile final judgment if, without good cause, the defendant fails to respond to the adjudication packet within the time set by the Court by delivering to the State either a signed proposed subfile final judgment or a Consultation Request.

a) Promptly following the deadline for responding to the adjudication packet, the Court clerk, upon the State's filing of an application for entry of default, shall review the court record and, if appropriate, issue a clerk's certificate of default certifying either that a proof of service of an adjudication packet is on file with the Court but no signed proposed subfile final judgment or Consultation Request is on file.

b) Within 15 days of issuance of the clerk's certificate of default, the State shall file a motion for default judgment and serve the motion on the defendant(s), unless a signed proposed subfile final judgment has been received by the State. Unless the defendant files a written response to the motion within fifteen days after service as required by Rule 1-008(D) or unless an *Inter Se* Notice objecting to the proposed judgment is filed pursuant to Paragraph F of this order, the Court may enter a default judgment adjudicating the water right in question without further notice or hearing. If the Court decides that a default judgment should be entered, the Clerk shall post the proposed default judgement on the Court's website pursuant to Paragraph F.2 and the Court shall enter the judgment unless an *inter se* notice objecting to the judgment is filed within the required time.

2. Implied Consent Judgment: If the defendant made an appearance in the case by responding to the adjudication packet, but fails to comply with a requirement set by the Court in contested subfile proceedings, the Court may request that the State submit a signed "Implied Consent Subfile Judgment" to the Court.

a. The description of the water right in the Implied Consent Subfile Judgment shall be the same as stated in the Proposed Subfile Judgment. If the Court approves and enters the Implied Subfile Judgment, the Court will send the State a file-stamped copy and the State shall mail a copy to the non-responding defendant.

b. A non-responding defendant shall have twenty (20) days following entry of the Implied Subfile Judgment to file a motion to reconsider.

F. Expedited Inter Se Proceedings

1. All water rights claimants in the Cow Creek section shall be provided with the opportunity to participate in expedited inter se proceedings pursuant to Rule 1-071.2 NMRA.

2. The State shall provide the Clerk, for posting on the Cow Creek adjudication website, with a copy of each proposed subfile judgment that has been accepted or deemed to have been rejected, or is the subject of a motion for default judgment. The Clerk shall post the proposed judgments on the Cow Creek website under the heading "Proposed Subfile Judgments Awaiting Inter Se Objections and Notices of Intent." The monthly adjudication report shall also include a section entitled "Proposed Subfile Judgments Awaiting Inter Se Objections and Notices of Intent". The Clerk shall list in the monthly adjudication report under that heading all proposed judgments that have been posted on the website since the last report.

3. All claimants in the Cow Creek section who object to or would like to participate in the final resolution of a water right subfile proceeding shall file a form entitled "Inter Se Objection to Proposed Subfile Judgment—Notice of Intent to Appear in Support of Proposed Subfile Judgment," a copy of which is attached as Exhibit H (the "Inter Se Notice"). In that notice, claimants shall indicate whether (a) they object to the water right that is described in the proposed judgment for that subfile and/or (b) they wish to participate in inter se proceedings concerning the proposed judgment. Claimants shall file the Inter Se Notice within 45 days after the proposed judgment to which the notice pertains is first listed in the Court's monthly adjudication report as a Proposed Subfile Judgment Awaiting Inter Se Objections and Notices of Intent. Upon motion for good cause shown, the Court may extend the 45-day period. After the

time for filing *inter se* notices expires, the Clerk shall file a Certificate of Service in the appropriate subfiles certifying that notice of the deadline for filing *inter se* notices was given in the manner required by this Order.

4. If no Inter Se Notices are filed to a proposed subfile final judgment accepted by the defendant named in the proposed subfile final judgment and if the proposed subfile final judgment otherwise meets the Court's approval, the Court will enter the subfile final judgment adjudicating the water rights described in the subfile final judgment as between the State, the defendant, and all other water right claimants in the Cow Creek section without further notice or hearing.

5. If no Inter Se Notices are filed to a proposed subfile final judgment as to which a motion for default judgment is pending and if no response to the motion has been filed, the Court will enter a default judgment adjudicating the water rights described in the proposed judgment.

6. If a defendant rejects a proposed subfile final judgment or another water right claimant files an Inter Se Notice objecting to a proposed subfile final judgment listed in the monthly adjudication report, the Court will transfer the subfile to its contested subfile docket. The Court will promptly set a scheduling conference for each subfile assigned to the contested subfile docket. At the scheduling conference, the Court will determine whether a discovery and trial schedule should be set for that subfile or whether the State, defendant(s), and Inter Se objectors should be referred to mediation before such a schedule is set.

G. Final Judgment

A subfile final judgment in a subfile (i) constitutes a "judgment" within the meaning of Rule 1-054(A) NMRA from which an appeal may lie and (ii) is binding on the State, the defendant, and all other water right claimants in the Cow Creek section as described in Rule

1-071.2 NMRA. A subfile final judgment, once entered by the Court, may be modified or amended only in accordance with Rule 1-060 NMRA or a Pecos River wide *inter se* proceeding.

IT IS SO ORDERED.



James J. Wechsler
Presiding Judge

Exhibit A to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,

Pecos River Stream System
Cow Creek Section

v.)

Court No. WS-[CASE NUMBER]

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

Subfile No. [SUBFILE NUMBER]

Defendants.)

SUMMONS

To: [CLAIMANT]
[ADDRESS LINE 1]
[ADDRESS LINE 2]

You are hereby notified that the Court has ordered that you be made a defendant in the Cow Creek section of the Pecos River adjudication and that you be served with the Cow Creek section adjudication packet. Pursuant to the [DATE] Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section, service of the adjudication packet authorizes and completes your joinder in this adjudication.

You must respond in writing by completing and returning the enclosed "Subfile Final Judgment" or "Response and Request for Consultation" no later than [60 days from the date you are served with this summons OR DATE]. If you do not respond in writing by returning one of these forms, the Court may enter a default judgment against you in conformance with the proposed subfile final judgment.

Attorneys for Plaintiff State of New Mexico are:

Kelly Brooks Smith and Leila J. Reilly
Special Assistant Attorneys General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
Ph: (505) 827-6150 / Fax: (505) 827-3887

This summons is issued pursuant to New Mexico Rule of Civil Procedure 1-071.1(B) NMRA by the Plaintiff State of New Mexico on this _____ day of _____, 2016.

By: [DESIGNATED PERSONNEL]

Exhibit B to Procedural Order

COW CREEK SECTION WATER RIGHTS ADJUDICATION PROCESS AND INSTRUCTIONS

1. What is this all about?

The State of New Mexico (State) has filed a lawsuit to adjudicate the rights to use water in the Cow Creek section of the Pecos River Stream System. The Cow Creek section is located within San Miguel County.

The case is in the New Mexico Fifth Judicial District Court and is named the *State of New Mexico, ex rel. State Engineer vs. L.T. Lewis, et al.*, Case No. CV-WS-19000001. The case will define all water rights established and maintained by putting water to beneficial use according to state law and regulations.

This packet concerns the determination of your water right. You also have the opportunity to participate in the determination of other Cow Creek water rights. Likewise, other water right owners may participate in the determination of your water right. The Court will publish proposed determinations of water rights in the Monthly Adjudication Report and on the Cow Creek adjudication website for evaluation by other water right claimants.

2. How was I identified as a water rights claimant?

The OSE's Hydrographic Survey Bureau conducted a hydrographic survey to identify all water uses within the basin. The Bureau relied on aerial photography, OSE records, field checks, and land ownership information obtained from county records. This information was assembled into a hydrographic survey report (Report).

The Report includes the following information for each potential water right:

- owner(s) of the water right
- place of use
- purpose of use
- priority date
- source of water
- point of diversion
- amount of any irrigated acreage
- amount of water

The Report also includes maps showing water usage in the Cow Creek section. A copy of the hydrographic survey is available for inspection at the office of the OSE Litigation and Adjudication Program, 130 South Capitol Street, Concha Ortiz y Pino Building, Santa Fe, New Mexico 87501 and on the OSE website:

(http://www.ose.state.nm.us/HydroSurvey/legal_ose_hydro_cow_creek.php). The State assigned a *subfile number* to each water right identified in the Report. The Court uses the subfile numbers to keep track of the water rights being adjudicated.

3. What has happened so far?

In October, 2015, the State served the Notice of Adjudication of Water Rights in the Cow Creek Section of the Pecos River Stream System on all known and unknown water right claimants, advising them of their responsibility to subscribe to the Monthly Adjudication Report.

The Court issued a Procedural Order, dated _____, that sets out the steps to be taken for determining water rights claims in an expedited inter se proceeding.

4. What will happen next?

The State has described your potential water rights in a document titled *Subfile Final Judgment*. This document is a proposed judgment that describes the proposed water right based upon the information in the OSE's hydrographic survey.

If you **agree** with the State's description of your rights, sign the proposed Subfile Final Judgment and return it to the State at the address below. The proposed Subfile Final Judgment will be subject to evaluation by all other claimants.

If you **do not agree** with the State's description of your rights, fill out the form titled *Response and Request for Consultation* and mail that to the State. The State will meet with you and try to resolve any differences. If you reach an agreement, the State will send you a new or revised proposed subfile final judgment for your signature (again subject to evaluation from other claimants). If an agreement is not reached, the State will file with the Court a Notice of Termination. This notifies the Court that consultations between you and the State have ended. The Court will then transfer your subfile(s) to the court docket and set a scheduling conference to discuss how to move forward in the resolution of your case. At the scheduling conference, the Court may enter an order requiring you to complete and file a Statement of Water Right Claim form by a deadline that will subsequently be set by the Court, and the Court thereafter schedule a process to resolve your case.

5. What do I need to do?

Respond: You must respond to the State on or before the deadline given in the Summons by sending in either the signed Subfile Final Judgment or your completed Response and Request for Consultation form to the State.

Although you are not required to use an attorney, if you are already represented in this case or plan on using an attorney, you should give the attorney these papers and have the attorney respond on your behalf on or before the deadline.

It is important that you keep a copy of the documents that you complete and return to the State.

If you do not respond, the Court will adjudicate your water rights by default. The Court will rely on the State's description in the proposed Subfile Final Judgment, and you will lose your opportunity to object.

Subscribe: If you have not yet done so, you should subscribe to the mailing list to receive the Court's monthly adjudication report and other important information regarding the water rights proceeding, including deadlines that may apply to you. Instructions on how to subscribe and other useful information, documents and links are available on the Court's website at <https://cowcreek.nmcourts.gov>.

6. Once I respond, what happens next?

All of the signed proposed subfile final judgments and other documents will be posted on the Court's website by the Court clerk. The website and the monthly adjudication report will give the deadline to file any responses or other documents.

If no one challenges your proposed Subfile Final Judgment, the Court will enter the Subfile Final Judgment and your water rights adjudication will be complete.

If you wish to support or challenge another claimant's water rights, or if other claimants wish to support or challenge your water rights, a form titled *Inter Se Objection to Proposed Subfile Judgment – Notice of Intent to Appear in Support of Proposed Subfile Judgment* must be filed with the Court by the deadline posted by the Court clerk.

After the deadline for the filing of *Inter Se Objection to Proposed Subfile Judgment – Notice of Intent to Appear in Support of Proposed Subfile Judgment*, if a proposed subfile final judgment is contested by you or another water right claimant, the Court will set a schedule that may include mediation and, if necessary, a trial. The Court will enter a subfile final judgment after the necessary proceedings.

7. What else should I know?

The Court's orders and all the other documents filed in the adjudication can be found on the Court's website at <https://cowcreek.nmcourts.gov>. **You should regularly monitor the website and review the monthly adjudication report to find out what is happening, check for any pleadings or documents that may affect your water rights, and see if there are any deadlines you must meet.** The State will file monthly status reports with the Court, and the Court may from time to time schedule a conference regarding the overall status of the adjudication process.

You can contact the State for more information or if you have questions. You may call the State's attorneys, Kelly Brooks Smith or Leila Reilly, at the telephone number below. Because they represent the State, they cannot act as your attorney. However, they can answer questions about these documents, particularly any questions you may have about the description of your rights.

To contact the State for further information please write, call or email:

Kelly Brooks Smith and Leila J. Reilly
Special Assistant Attorneys General
Litigation and Adjudication Program, Pecos River Adjudication Bureau
P.O. Box 25102
Santa Fe, NM 87504-5102 - (505) 827-6150
Kelly.Smith@state.nm.us
Leila.reilly@state.nm.us

Exhibit C to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,)

Pecos River Stream System
Cow Creek Section

v.)

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

Court No. WS-[insert #]
OSE Subfile No. [insert #]
Claimant(s): [insert name(s)]

Defendants.)

SUBFILE FINAL JUDGMENT

THIS MATTER COMES BEFORE the Court upon the stipulation of the State of New Mexico (State) and the Claimant or Claimants named in the case caption above (the term "Claimant" will be used from this point on to refer to all Claimants identified in the caption and associated with this subfile). The Court, based on an examination of the Court's file and the stipulation of the parties, FINDS AND CONCLUDES:

1. The Court has personal jurisdiction over the State and the Claimant and has in rem jurisdiction over all water rights in the Cow Creek section of the Pecos River Stream System. Notice of this Court's in rem jurisdiction and expedited inter se proceedings was served on all water rights claimants in the Cow Creek section in accordance with Rule 1-071.2(B) and (C) NMRA and the Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section (Procedural Order), filed _____.
2. The State and the Claimant have agreed that the Court should enter this judgment adjudicating all elements of the Claimant's right to divert and place to beneficial use the public waters of the Cow Creek section, as set forth below.

3. Any objections to the State and Claimant's request that the Court enter this judgment have been resolved in court proceedings pursuant to the Procedural Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

4. The water rights of the Claimant are as follows:

A. SURFACE WATER

Office of the State Engineer File No(s): 00

(1) Priority: [date]

(2) Source of Water: Cow Creek section of the Pecos River stream system

(3) Purpose of Use: Irrigation

(4) Point(s) of Diversion:

Ditch: [ditch name]

Location: X= _____ Y= _____

New Mexico State Plane Coordinate System, East Zone, NAD 1927

(5) Location and Amount of Irrigated Acreage:

Water right is appurtenant to _____ acres as shown on (Map Sheet No. _____ of the 2015 Cow Creek Watershed Hydrographic Survey)/(the attached Hydrographic Survey Map for Subfile No. _____)

(6) Amount of water not to exceed:

Farm Delivery Requirement: _____

Consumptive Irrigation Requirement: _____

5. If ownership of all or any part of the water rights described in this judgment is transferred for any reason whatsoever, including by operation of law, the successor in interest shall file a notice of change of ownership with the Office of the State Engineer as required by NMSA 1978,

Section 72-1-2.1 (1996). No successor in interest to the Claimant may participate in any aspect of this adjudication unless it first files a motion for substitution of parties in accordance with Rule 1-025 NMRA and attaches to the motion proof that it has filed the required change of ownership form with the Office of the State Engineer.

6. This judgment adjudicates the water rights described above as between the State, the Claimant and all other claimants in the Cow Creek section. This judgment binds the State, the Claimant and all other water rights claimants in the Cow Creek section regardless of whether all water rights claimants were served and joined as defendants, participated in or received actual notice of this subfile proceeding, or filed inter se objections to the water rights adjudicated by this Subfile Final Judgment.

7. The Claimant and all of the Claimant's successors, representatives, heirs, and assigns are enjoined from any diversion or use of the public waters of the Cow Creek section except in strict accordance with the rights set forth in this Judgment and other orders of the Court.

8. Pursuant to Rule 1-054(B) NMRA, the Court determines there is no just reason for delay of the entry of a final judgment as to the water rights adjudicated in this judgment. The Court enters this judgment as a final judgment as to all issues related to the nature, extent, elements and validity of the water rights adjudicated in this judgment. This judgment may be modified or amended only to the extent permitted by Rule 1-060 NMRA.

IT IS SO ORDERED.

James J. Wechsler
Presiding Judge

Approved by:

Stephen E. Snyder, Special Master

Date

AGREED:

Plaintiff State of New Mexico

Kelly Brooks Smith
Leila J. Reilly
Special Assistant Attorneys General
Litigation and Adjudication Program
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150
Attorneys for Plaintiff State of New Mexico

Date

AGREED:

[Subfile Claimant's Name]

Signature

Mailing address

Email address

Date

Exhibit D to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,)

Pecos River Stream System
Cow Creek Section

v.)

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

Court No. WS-[insert #]
OSE Subfile No. [insert #]
Claimant(s): [insert name(s)]

Defendants.)

RESPONSE AND REQUEST FOR CONSULTATION

I, [insert name], disagree with the proposed Subfile Final Judgment for subfile [insert subfile number] (proposed Judgment) and request consultation with the State of New Mexico regarding the proposed Judgment.

Signature of Claimant

Mailing address

Phone number

Email address

Date

Exhibit E to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,

Pecos River Stream System
Cow Creek Section

v.

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

Court No. WS-19000001

Defendants.

CLAIM TO SURFACE WATER RIGHT

Pursuant to the Procedural Order for Cow Creek, Section B, the claimant(s) listed below submit(s) this Claim to Surface Water Right for a water right that was not depicted or described in the 2015 Cow Creek Watershed Hydrographic Survey.

1. Claimant(s) name(s) and contact information:

Claimant 1

Claimant 2

First and last name

First and last name

Mailing address

Mailing address

Mailing address continued

Mailing address continued

Email address

Email address

Phone number

Phone number

Claimant 3

Claimant 4

First and last name

First and last name

Mailing address

Mailing address

Mailing address continued

Mailing address continued

Email address

Email address

Phone number

Phone number

2. **Priority date:** _____
3. **Source of water:** _____
4. **Amount of water:** _____
5. **Purpose of use:** _____
6. **Period of use:** _____
7. **Place of use (including 2015 Cow Creek Watershed Hydrographic Survey map sheet(s) where claimed water right is located):** _____
8. **Place or point of diversion (ditch):** _____
9. **Number of irrigated acres (if purpose of use is irrigation):** _____

Attach a copy of the deed or other proof of ownership of the land to which the claimed water right is appurtenant.

Claimant 1 Signature

Date

Claimant 2 Signature

Date

Claimant 3 Signature

Date

Claimant 4 Signature

Date

Exhibit F to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Plaintiffs,

v.

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

Defendants.

Hon. James J. Wechsler
Presiding Judge

Pecos River Stream System
Cow Creek Section

Court No. WS-[insert #]
OSE Subfile No. [insert #]
Claimant(s): [insert name(s)]

**NOTICE OF TERMINATION OF CONSULTATION CONCERNING PROPOSED
SUBFILE JUDGMENT**

In accordance with the Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section, the State of New Mexico (State) hereby notifies the above-named claimant(s) that the State has terminated its consultation on the proposed Subfile Final Judgment for the water rights associated with the subfile referenced above.

Kelly Brooks Smith
Leila Reilly
Attorneys for Plaintiff State of New Mexico

Exhibit G to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,)

Pecos River Stream System
Cow Creek Section

v.)

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

Court No. WS-[inset #]
OSE Subfile No. [insert #]
Claimant(s): [insert name(s)]

Defendants.)
_____)

**ORDER SETTING DEADLINE FOR FILING
STATEMENT OF WATER RIGHT CLAIM**

This Subfile is before the Court on the Notice of Termination of Consultations Concerning Proposed Subfile Judgment, filed by the State of New Mexico (the "State") on _____, _____. A scheduling conference in this matter was held on _____, _____ at _____. The Court hereby ORDERS that, **within 30 days after the date this Order is served**, the claimant(s) shall file with the Court a Statement of Water Rights Claim, using the form attached hereto as Exhibit A. The claimant(s) shall mail the completed form to the Clerk, Civil Division, Attention: Pecos Water Rights Adjudication, Fifth Judicial District Court of the State of New Mexico, P.O. Box 1776, Roswell, NM 88202-1776. By the same date, the claimant(s) shall also mail a copy of the completed form to the State at:

Kelly Brooks Smith
Leila J. Reilly
Special Assistant Attorneys General
Litigation and Adjudication Program, Pecos River Adjudication Bureau
P.O. Box 25102
Santa Fe, NM 87504-5102

Compliance with this order is mandatory. The Court may enter sanctions against any claimant who fails to comply. Those sanctions could include the entry a judgment adjudicating the water rights of the claimant(s) by default in the manner described in the State's proposed Subfile Final Judgment.

IT IS SO ORDERED

James J. Wechsler
Presiding Judge

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,)

Pecos River Stream System
Cow Creek Section

v.)

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

Court No. WS-[insert #]
OSE Subfile No. [insert #]
Claimant(s): [insert name(s)]

Defendants.)

CLAIMANTS' STATEMENT OF WATER RIGHTS CLAIM

Please provide the following information about your claimed water right:

Priority (date water was first used): _____

Periods of use (identify each month water is used): _____

Point where water is diverted (e.g. acequia name or location of well):

Purpose of use (e.g. irrigation, domestic): _____

If purpose of use is irrigation:

Amount of irrigated acreage: _____

Location of irrigated acreage (address or section, township and range or grant name):

Duty of water (a/k/a "farm delivery requirement"): _____

If purpose of use is not irrigation:

Place of use (address or section, township and range or grant name):

Annual amount of water diverted: _____

Signatures of Water Right Claimants:

Address: _____

Telephone: _____

Email address: _____

Exhibit H to Procedural Order

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

Nos. 20294 and 22600
Consolidated

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

Hon. James J. Wechsler
Presiding Judge

Plaintiffs,)

Pecos River Stream System
Cow Creek Section

v.)

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

Court No. See paragraph 2
Subfile No. See paragraph 2

Defendants.)

**INTER SE OBJECTION TO PROPOSED SUBFILE JUDGMENT-- NOTICE OF
INTENT TO APPEAR IN SUPPORT OF PROPOSED SUBFILE JUDGMENT**

I, the undersigned, state as follows:

1. I own or have an interest in a water right in the Cow Creek section of the Pecos River stream system.

2. I intend to participate in inter se proceedings regarding the following subfile final judgment awaiting inter se proceedings, as identified in the Court's monthly adjudication report:

Court No.: _____

Subfile No.: _____

Name(s) of Claimant(s): _____

Date of Monthly Adjudication Report: _____

3. My position is (select one):

I support the proposed Subfile Final Judgment.

I object to the proposed Subfile Final Judgment because _____

Name of Participant (please print)

Signature of Participant

Mailing address

Phone number

Email address

Filing Instructions: The Court may enter the proposed Subfile Final Judgment without further notice or hearing unless you file this Inter Se Objection to Proposed Subfile Judgment—Notice of Intent to Appear in Support of Proposed Subfile Judgment with the Office of the Clerk, Civil Division, Attention: Pecos Water Rights Adjudication, Fifth Judicial District Court of the State of New Mexico, P.O. Box 1776, Roswell, NM 88202-1776, on or before the date stated in the monthly adjudication report.