

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

5th DISTRICT COURT CHAVES CO.
FILED '22 JUL 29 PM4:37

STATE OF NEW MEXICO, <i>ex rel.</i>)	Nos. 20297 and 22600
STATE ENGINEER, and PECOS VALLEY)	Consolidated
CONSERVANCY DISTRICT,)	
)	Honorable James J. Wechsler
Plaintiffs,)	Presiding Judge
)	
v.)	Cow Creek Section
)	Upper Pecos Surface Water Section
L.T. LEWIS, <i>et al.</i> , and the UNITED)	
STATES OF AMERICA,)	Court No. CV-WS-19000001
)	
Defendants.)	

**COW CREEK BASIN ACEQUIA ASSOCIATION'S RESPONSE TO
STATE'S MOTION FOR SECOND AMENDED PROCEDURAL ORDER**

The Cow Creek Basin Acequia Association ("CCBAA") by and through its undersigned counsel submits this response to the *State of New Mexico's Motion for Second Amended Procedural Order* (July 15, 2022).

1. In general, CCBAA agrees with the broad changes that are being proposed by the State and the reasons therefor. The State's proposed procedure, broadly speaking, is likely to significantly facilitate a more orderly and productive process of negotiating from the findings of the hydrographic survey to ultimate subfile orders.
2. There continue to be issues, however, related some of the details of notice. CCBAA believes that the process of identifying claims omitted from the hydrographic survey should provide more notice reasonable calculated to inform those omitted claimants of the deadline for submitting those claims. The State's Proposed Procedural Order provides only that the notice of deadline for submitting such claims be posted in the monthly adjudication report. The subscribers to the monthly adjudication report are almost exclusively, if not exclusively, people

whose claims are already found in the hydrographic survey. It is likely that wider notice would be required to those potentially omitted claimants, in order to satisfy the constitutional standard set forth in *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

3. It is also unclear which pleadings, notices, and Court orders counsel of record would receive directly in some manner. CCBAA believes that all counsel of record should directly receive all such documents filed except for those pertaining to the adjudication of a specific subfile, for example, a non-global motion in a subfile proceeding. There are several ways in which counsel of record could directly receive such documents, or some type of direct notice with a link to the document. CCBAA believes that one of these methods should be established and made explicit by the Court and not simply be practiced as a matter of informal courtesy.

Respectfully submitted,

NEW MEXICO LEGAL AID, INC.

/s/ David Benavides

David Benavides

P.O. Box 32197

Santa Fe, NM 87594-2197

Ph: (505) 982-9886

Fax: (505) 551-0335

*Attorney for Cow Creek Basin Acequia
Association, Limited Entry of Appearance*

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2022, I submitted a true and correct copy of the foregoing Response to the clerk of the Court for filing, by facsimile;

And to the following parties by electronic mail:

Maria O'Brien, Esq.
Maria.Obrien@modrall.com
Sarah M. Stevenson
Sarah.Stevenson@modrall.com
Modrall, Sperling, Roehl, Harris & Sisk PA
P.O. Box 2168
Albuquerque, NM 87103-2168

Judge James J. Wechsler
c/o Celina Jones, Esq.
Administrative Office of the Courts
aoccaj@nmcourts.gov

Mr. Ralph Vigil, Jr.
Chair, New Mexico Acequia Commission
molinodelaisla@gmail.com
HC74 Box 842
Pecos, NM 87552

Serafina Lombardi
serafina@lasacequias.org
New Mexico Acequia Association
805 Early Street, Suite 203B
Santa Fe, NM 87501

Tessa Davidson, Esq.
ttd@tessadavidson.com
Davidson Law Firm
PO Box 2240
Corrales, NM 87048-2240

Kyle Harwood
kyle@egolfaw.com
Luke Pierpont
luke@egolfaw.com
123 West San Francisco Street
Santa Fe, New Mexico 87501

David Gehlert
David.gehlert@usdoj.gov
Natural Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202

Seth Fullerton
srf@santafelawgroup.com

Meghan Thomas, Esq., OSE
Meghan.thomas@state.nm.us
Paul Bossert, Esq., OSE
Paul.bossert@state.nm.us

And to the following party by first class mail:

Utton Center Ombudsman Program
University of NM School of Law, MSC 11-6070
Albuquerque, NM 87131-0001

/s/ David Benavides