

FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

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

2016 SEP 26 PM 1:17

STATE OF NEW MEXICO, *ex rel*  
State Engineer, and PECOS VALLEY  
CONSERVANCY DISTRICT

Nos. 20294 and 22600  
Consolidated

DISTRICT COURT CLERK

Plaintiffs

Honorable James J. Wechsler  
Presiding Judge

vs.

Cow Creek Section

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

Court No. CV-WS-19000001

Defendants

**NOTICE OF FILING OF SPECIAL MASTER'S REPORT**

ALL PARTIES PLEASE TAKE NOTICE:

The Special Master has filed with the Clerk of this Court a SPECIAL MASTER'S REPORT RECOMMENDING THAT ALL WATER RIGHTS IN THE COW CREEK SECTION BE ADJUDICATED IN EXPEDITED INTER SE PROCEEDINGS. A copy of this report and a proposed order adopting the recommendations of the report are attached to this notice.

Pursuant to Rule 1-053(E)(1) NMRA, all objections to the Report must be served within ten days after service of this notice. If objections are not served within the required time, the Court may enter the proposed order without further notice or hearing.

FIFTH JUDICIAL DISTRICT COURT CLERK

By: \_\_\_\_\_

  
Deputy Clerk

CERTIFICATE OF SERVICE

The undersigned certifies that on September <sup>14<sup>th</sup></sup> 2016 she served the forgoing **NOTICE OF FILING OF SPECIAL MASTER'S REPORT** on the following persons by <sup>email</sup> first class mail, postage prepaid:

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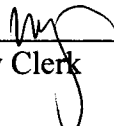
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FIFTH JUDICIAL DISTRICT COURT CLERK

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FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

2016 SEP 26 PM 1:18

STATE OF NEW MEXICO, *ex rel*  
State Engineer, and PECOS VALLEY  
CONSERVANCY DISTRICT

Nos. 20294 and 22600  
Consolidated

KATHI BOYD  
DISTRICT COURT CLERK

Plaintiffs

Honorable James J. Wechsler  
Presiding Judge

**COPY**

vs.

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

Cow Creek Section  
Court No. WS-19000001

Defendants

**SPECIAL MASTER'S REPORT RECOMMENDING THAT ALL WATER  
RIGHTS IN THE COW CREEK SECTION BE ADJUDICATED IN EXPEDITED  
INTER SE PROCEEDINGS**

THE COW CREEK SECTION of the Pecos Water Rights Adjudication is before the Special Master on two related issues: (i) whether all water rights in the Cow Creek Section should be adjudicated in expedited inter se proceedings pursuant to Rule 1-071.2(B) and (ii), if so, what procedures should be used when doing so.

For the reasons stated below, I recommend that all water rights in the Cow Creek Section be adjudicated in expedited inter se proceedings pursuant to Rule 1-071.2(C) in accordance with the procedures set forth in the proposed procedural order (the "Proposed Order") attached as Exhibit A to this report.

A. Introduction

The State of New Mexico, *ex rel* State Engineer, (the "State") published the Hydrographic Survey of the Cow Creek Section on September 11, 2015. Shortly thereafter, I began meeting with interested parties in working sessions to discuss the procedures that should be used when adjudicating water rights in Cow Creek. At those

working sessions, I raised the topic of whether each water right in Cow Creek should be adjudicated in its own expedited inter se proceeding using procedures similar to those now being used in the Animas Underground Basin Adjudication in the Sixth Judicial District.

No concerns were expressed at the working sessions about the possibility that all water rights might be adjudicated in expedited inter se proceedings. Accordingly, at my direction the State filed a motion requesting that the Court enter an order establishing a procedure for giving notice to all Cow Creek claimants of all Court deadlines and hearings, including without limitation, notices of expedited inter se proceedings. *See* State of New Mexico's Motion for Notice of Adjudication of Water Rights in the Cow Creek Section, filed September 14, 2015. No objections were filed to the motion and, after the time for filing objections expired, I filed a special master's report recommending that the Court grant the motion. *See* Special Master's Report Recommending that Notice of this Court's *In Rem* Jurisdiction Be Given to All Known and Unknown Claimants in the Cow Creek Section, filed September 21, 2015.

On October 9, 2015, the Court granted the State's motion and ordered that the State serve a notice on all known and unknown water rights claimants informing them of the steps they should take to obtain notice of all Court deadlines and hearings in the Cow Creek Section. *See* 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 State served the required notice on all known claimants by first class mail and also served the notice by publication on all known claimants whose addresses are

unknown and all unknown claimants. *See* Certificate of Service filed January 5, 2016.

The Notice states, in pertinent part:

**YOU ARE REQUIRED TO SUBSCRIBE TO A MONTHLY ADJUDICATION REPORT IN ORDER TO RECEIVE PRIOR NOTICE OF ALL COURT PROCEEDINGS AND DEADLINES. YOU WILL NOT RECEIVE ANY FURTHER CORRESPONDENCE FROM THE COURT UNLESS YOU TAKE FURTHER ACTION AND SUBSCRIBE TO THE MONTHLY ADJUDICATION REPORT**

Notice of Adjudication of Water Rights in the Cow Creek Section of the Pecos River Stream System, filed October 9, 2015 at p.1. The Notice next informed claimants that, to subscribe to the Monthly Adjudication Report, they need only complete the one page Subscription Form attached to the notice and mail it to the Clerk of the Fifth Judicial District. After informing claimants how to subscribe to the Monthly Adjudication Report, the Notice advised claimants that:

If you claim a water right in the Cow Creek Section:

1. You have the right to participate in all Court proceedings **PROVIDED YOU FILE THE REQUIRED DOCUMENTS WITH THE COURT AND ATTEND ALL MANDATORY COURT HEARINGS**
2. If you fail to respond in writing to certain Court documents or fail to attend a mandatory court hearing, **YOU SHALL BE DEEMED TO HAVE WAIVED YOUR RIGHT TO A HEARING AND TO HAVE CONSENTED TO THE DECISIONS OF THE COURT.**

Except in those circumstances where NMSA § 72-4-17 requires that the Court have personal jurisdiction over a particular water rights claimant, notice of all filing deadlines and Court hearings will be provided **ONLY** by means of the Monthly Report, distributed to all persons who file a Subscription Form with the Clerk of the Court

....

In the Cow Creek Section, the Court will exercise its in rem jurisdiction by entering a procedural order that will govern the adjudication of water rights in Cow Creek ....and by conducting separate expedited inter se proceedings for each water right. More specifically,

....

3. When conducting an expedited inter se proceeding, the Court will resolve a water right claim both as between the State and the water rights claimant and as between the water rights claimant and all other claimants in Cow Creek.

Notice of Adjudication of Water Rights in the Cow Creek Section of the Pecos River Stream System, filed October 9, 2015 at pp. 3-4.

On May 10, 2016, I (a) ordered that the State serve on the parties discussions drafts of the procedural order and other documents that it proposed be used for adjudicating water rights in expedited inter se proceedings and (b) set a hearing on June 23, 2016 to consider the parties comments about the discussion drafts. *See* Special Master's Order Granting State of New Mexico's Motion for Reconsideration and Setting Hearing to Determine Whether All Water Rights in Cow Creek Should Be Adjudicated in Expedited Inter se Proceedings. At that hearing, certain parties expressed concerns about adjudicating water rights in expedited inter se proceedings. Following the hearing I set deadlines for the parties (a) to file objections to the adjudication of water rights in expedited *inter se* proceedings and (b) to submit to me (but not file with the Court) written comments concerning the State's discussion drafts. *See* Special Master's Order Setting Deadlines (A) For State of New Mexico to Submit Revisions to Proposed Procedural Order and (B) for Parties to File Objections to the Adjudication of All Water Rights in Expedited Inter se Proceedings and to Submit Comments Concerning Revised Procedural Order, filed June 24, 2016.

On July 22, 2016 Los Pueblos Altos Corporation filed an objection to the adjudication of water rights in expedited inter se proceedings. On July 25, 2016 Cow Creek Ranch, LLC, Ranch O'Rainbow, LLC, Russell Tucket, Jr. and Penny Tucket filed

a joint objection. For ease of reference, I will refer to Los Pueblos Altos Corporation as “Los Pueblos Altos” and the parties who filed the joint objection as the “Joint Objectors.”

The Joint Objectors argue that the adjudication of all water rights in expedited inter se proceedings will not promote judicial efficiency and the expeditious completion of the adjudication, that they will be prejudiced if they are forced to object to the water rights of other claimants before their own water rights are adjudicated in subfile proceedings with the State and that the method for giving notice of expedited inter se proceeding by means of the Monthly Adjudication Report, as described in the Proposed Order, does not comply with Rule 1-071.C NMRA.

Los Pueblos Altos joins in the forgoing objections and also argues it will be prejudiced if persons who, according to the Hydrographic Survey, have no water rights are permitted to object to its water rights during expedited inter se proceedings.

#### B. The Proposed Order

The procedure I propose be used when adjudicating water rights in expedited inter se proceedings is set forth in the Proposed Order attached as Exhibit A to this report. The Proposed Order substantially conforms to the proposed procedural order the State submitted but includes certain changes requested by the parties or made for clarification.

The Proposed Order provides that the Court will adjudicate each water right in Cow Creek seriatim in an expedited inter se proceeding. The Court will enter a final judgment adjudicating a particular water right, as between the claimant and the State and as among the claimant and all other water rights claimants, promptly after: (a) the State and the claimant have signed a proposed consent judgment adjudicating the claimant’s water right and no objections to the proposed judgment have been filed by other



claimants or (b) the Court has resolved any objections to the State's proposed judgment filed either by the claimant or other claimants.

The procedure for determining whether a claimant objects to the State's proposed subfile judgment adjudicating its water right is similar to the procedure now used in other adjudications in New Mexico. The Procedural Order requires that the State personally serve the water rights claimant with a proposed subfile judgment specifying the elements of the claimant's water right. The claimant must either sign the proposed judgment or file with the Court a document requesting an opportunity to discuss the proposed judgment with the State. If the claimant and the State are unable to agree on the terms of a proposed judgment within the time specified by the procedural order, the order requires that the State serve the claimant with a notice terminating their consultations and that the Court thereafter serve an order mandating that the claimant file a statement of claim specifying the elements of the claimant's purported water right. Sections A-E of Proposed Order.

The expedited inter se provisions of the Proposed Order require that the Clerk (a) publish in the Monthly Adjudication Report a list of all proposed judgments that were signed, rejected or the subject of a motion for default judgment during the previous month and (b) post those judgments on the Court's website. More specifically, if the claimant signs a proposed judgment (either initially or after discussions with the State), the State provides the Clerk with a copy for posting on the Court's website under the heading "Proposed Subfile Judgments Awaiting Inter se Objections and Intent to Participate." Likewise, if a claimant rejects a proposed judgment or if the State files a motion for default judgment pertaining to a proposed judgment, the State provides the

Clerk with a copy for posting under the same heading. At the end of the month, the Clerk prepares for inclusion in the upcoming Monthly Adjudication Report a list of all proposed judgments posted during the previous month. Cow Creek claimants have forty-five days after service of the monthly report to file, using a court-provided form, an inter se objection to a proposed judgment listed in the report or a notice of intent to appear in support of a proposed judgment. If no inter se objections are filed, the Clerk presents the proposed judgments signed by the claimants to the Court. The water rights depicted in any rejected judgments and in any judgments that were the subject of an inter se objection (regardless of whether the judgments were signed, rejected or the subject of a motion for a default judgment) are assigned to the Court's contested case docket. Once a rejected judgment or a judgment that is the subject of an inter se objection is assigned to the Court's contested case docket, the Court conducts a scheduling conference and sets such discovery and other pretrial deadlines as are appropriate for a fair and efficient resolution of the disputed issues. *See* Section F of Proposed Order.

### C. Analysis

Rule 1-071.2 (B) states that a water right may be adjudicated in an expedited inter se proceeding if the Court finds, following a hearing, that such a proceeding will "promote judicial efficiency and expeditious completion of the adjudication". The Rule lists three non-exclusive factors the Court should consider when deciding whether water rights should be adjudicated in expedited proceedings: (i) whether an expedited inter se would injure the party asserting the claim; (ii) whether an expedited inter se would injure those opposing the claim; and (iii) the expense and delay resulting from the failure to proceed with an expedited inter se.

I find, based on the Court's experience in adjudicating water rights in the customary manner in the Carlsbad Irrigation District Section, that the adjudication of water rights in expedited inter se proceedings is inherently a fairer, more efficient and more expeditious method of adjudicating water rights than the customary approach. I also find that the Joint Objectors' and Los Pueblo Altos' claims of prejudice are speculative and, should their speculative concerns materialize, the Court can easily prevent any prejudice that might otherwise result by exercising its broad case management authority.

1. Expedited Inter se Proceedings Protect Claimants Against the Risks of Duplicative Litigation and Inconsistent Rulings That Are Inherent in the Traditional Approach to Adjudicating Water Rights

An expedited inter se proceeding is nothing more than a procedural device for ensuring that all disputes related to the determination of the validity and elements of a water right are resolved in a single proceeding. An expedited inter se protects the claimant whose water right is being adjudicated from the risk that his or her water right might be litigated twice, once in a subfile proceeding between the State and the claimant and once again in an inter se proceeding among claimants. An expedited inter se proceeding also protects the claimant against the risk of inconsistent rulings in the subfile and inter se proceedings. An expedited inter se is inherently more efficient than the conventional approach to adjudicating water rights because it ensures that the same dispute over the validity of the claimant's water right is not litigated twice.

A basic objective of the Rules of Civil Procedure is to enable courts to render complete justice among those who are impacted by a dispute and to avoid a multiplicity of lawsuits over the same dispute. The Rules of Civil Procedure promote these objectives

by providing for the liberal joinder of parties and claims. *See Wright & Miller 6 Fed. Prac. & Proc. Civ.* § 1403 (3d ed.) (“Under Rule 13 the court has broad discretion to allow claims to be joined in order to expedite the resolution of all the controversies between the parties in one suit.... The expectation is that this liberal joinder policy will further the elimination of circuitry of action and multiple litigation.”). The New Mexico Supreme Court validated the policy of liberal joinder of claims when it overruled prior case law imposing limits on the pleading and prosecution of counterclaims. When doing so, the Supreme Court stated:

The overriding emphasis [of Rule 13 ] is on consolidation and the expeditious resolution (where that is fair) of all the claims between the parties in one proceeding... The controlling philosophy is that, so far as fairness and convenience permit, the various parties should be allowed and encouraged to resolve all their pending disputes within the bounds of the one litigation

*Ortega, Snead, Dixon & Hanna v. Gennitti*, 1979-NMSC-056 at ¶ 22, 93 N.M. 135, 140, 597 P.2d 745, 750, quoting *Scott v. United States*, 354 F. 2d 292, 173 Ct. Cl. 650 (1965).

Expedited inter se proceedings, by ensuring that all objections to a water right are asserted in the same proceeding, are in accord with the liberal joinder policy of the Rules of Civil Procedure.

The traditional approach to adjudicating water rights inter se only after all water rights have been adjudicated in subfile proceedings with the State not only puts claimants at risk of duplicative litigation and inconsistent rulings but also is a significant cause of delay in the adjudication of the water rights in a basin. This Court’s experience in the Carlsbad Irrigation District demonstrates why this is so.

Under the conventional approach, inter se cannot be commenced until all water rights have been adjudicated in subfile proceedings between the State and all claimants in

the basin. As a consequence inter se proceedings can be significantly delayed by delays in the resolution of even a few subfiles. The resolution of subfiles can be delayed for many reasons that have nothing to do with the complexity of the dispute or the efficiency of the trial court. For example, a subfile dispute that has been resolved by the trial court may be on appeal. The trial of a disputed subfile may be delayed if the claimant is ill or incapacitated. The adjudication of a subfile may not be possible until the ownership of the purported water right is clarified in a probate proceeding. In the CID, in order to prevent an inordinate delay in inter se proceedings that otherwise would have resulted from the State's inadvertent omission of supplemental groundwater rights from certain subfiles, the Court was forced to conduct two inter se proceedings. The first inter se provided all CID claimants with the opportunity to object to all surface water rights and the supplemental rights that had not been omitted from the hydrographic survey. The second inter se provided all CID claimants with the opportunity to file inter se objections to the omitted supplemental rights that were subsequently identified and adjudicated by the State.

When water rights are adjudicated in the conventional manner, inter se proceedings cannot commence until after the State prepares a disclosure document (commonly referred to as an appendix) that claimants examine to determine how each water right in the basin was adjudicated. This document, because it summarizes each subfile order that was entered during the subfile phase of the adjudication, is a complex and time-consuming document to prepare.

In a conventional inter se, providing claimants with notice of their right to file inter se objections can be problematic. Ownership of water rights frequently changes

after they are adjudicated in subfile proceedings with the State. Experience has shown that the new owners rarely file motions requesting that they be substituted as parties in the adjudication. The question arises as to whether it is sufficient for the State to serve the notice of inter se on the original subfile claimants or whether it must update its mailing list. If it updates its mailing list, is it sufficient that the update is limited to the change of ownership records filed with the State Engineer or must the State also search the records of the County Clerk?

None of the sources of delay in a conventional inter se are present in an expedited inter se. An unavoidable delay in the adjudication of one subfile does not prevent the adjudication of water rights in other subfiles. In an expedited inter se, adjudication of a subfile is not delayed by the need to prepare a disclosure statement. In an expedited inter se, changes in ownership subsequent to the adjudication of a water right do not raise due process concerns because inter se objections are filed before the Court adjudicates the water right.

The conventional approach to adjudicating water rights is not sacrosanct. *State of New Mexico v. Pecos Valley Artesian Conservancy District*, 1983-NMSC-044 at ¶ 9, 663 P. 2d 358 (“The usual procedure followed in [general stream adjudications] is not inviolate”). No statute, court decision or rule of procedure precludes the expedited adjudication of all water rights. Absent some genuine concern about prejudice, the Court should adjudicate all water rights in Cow Creek in expedited inter se proceedings.

2. Los Pueblos Altos' and the Joint Objectors' Concerns About Prejudice Ignore the Court's Power to Prevent Prejudice By Preemptive Exercise of its Broad Case Management Authority

It is always possible, when multiple issues exist in a case, that a trial of all those issues in a single proceeding could cause unnecessary expense, delay or other prejudice. The Rules of Civil Procedure protect against this risk by granting the trial judge broad case management discretion. As one author explained when the Federal Rules of Civil Procedure were advanced:

[N]o inconvenience can result from the joinder of any two or more matters in the pleadings, but only from trying two or more matters together which have little or nothing in common. They [the Federal Civil Rules] therefore permit the joinder of practically anything and the court is allowed in its discretion to make an order for the separate trial of any matters which can be more conveniently tried that way. This, of course, eliminates a great field of discussion and argument over technical points respecting joinder.

Sunderland, *The New Federal Rules*, 45 W. Va. L. Q. 5, 13 (1938), cited in Federal Practice and Procedure 3d § 1581 at n. 12; see *Ortega, Snead, Dixon & Hanna v.*

*Gennitti*, 1979-NMSC-056 at ¶ 25, 93 N.M. 135, 140, 597 P.2d 745, 750

("N.M.R.Civ.P. 20(b) and 42, N.M.S.A.1978, provide adequate safeguards to protect against any inconvenience or undue complication which might arise from joinder of claims under Rule 13.")

If an expedited inter se proceeding involves multiple issues or multiple parties, the Court has broad discretion to prevent wasteful activity by a case management order that appropriately limits and sequences pretrial proceedings and by ordering separate trials of unrelated or dispositive issues. See, e.g. Rule 1-016 and Rule 1-042 NMRA. For example, in its objection to expedited inter se proceedings, Los Pueblos Altos raises the

speculative possibility that it may have to defend its water rights claims against inter se objections filed by multiple claimants who have no standing because they in fact have no water rights. The Court can easily protect against prejudice of this type by deferring the trial of the inter se objections until the objecting claimants water rights are resolved in separate trials. Of course, there will be no need for separate trials if Los Pueblos Altos' speculative concerns do not materialize.

3. Los Pueblos Altos' and the Joint Objectors' Concerns About the Efficacy of Adjudicating all Water Rights in Expedited Inter se Proceedings

Los Pueblos Altos and the Joint Objectors (collectively the "Objectors") argue that, if all water rights are adjudicated in expedited inter se proceedings, many claimants will file preemptive inter se objections to other claimants' rights. Preemptive claims are likely, Objectors argue, because claimants, in deciding whether to object, engage in a sort of calculus whereby they compare their own water right to their neighbors' water rights and file inter se objections if their water rights do not compare favorably with their neighbors. They argue that, until their own water rights are adjudicated, claimants will file preemptive inter se objections to ensure they can maintain their favorable position vis a vis their neighbors' water rights. The Objectors' concerns about preemptive objections are speculative. No inter se objections (preemptive or otherwise) have been filed in the Animas Adjudication. Moreover, the logic on which their argument is based is torturous.

Presumably, a claimant's decision to object to a neighbor's water right is primarily based on the merits of the objection. To the extent a claimant's decision to object is based on a comparison of its own right to its neighbor's right, the claimant has all of the information it needs to decide whether to object. The State's evaluation of the



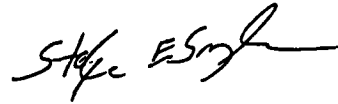
claimant's claim is contained in the hydrographic survey. The claimant knows (or should know) if it agrees with the State's evaluation or, if it does not, what it believes its water rights should be. Whatever uncertainty might exist in the claimant's mind about how its water rights might eventually be adjudicated, that uncertainty is no different than the uncertainty inherent in any decision about whether to participate in any type of litigation.

The Objectors argue that the requirement of the Procedural Order that the Clerk post the proposed subfile judgments on the Court's website imposes unnecessary administrative burdens on the Court. Suffice it to say that the Clerk does not share these concerns.

Objectors argue that providing notice of expedited inter se proceedings in the Monthly Adjudication Report is not adequate notice because Rule 1-071.2(C) requires that notice be by first class mail. Their argument overlooks the fact that all claimants have already been notified by first class mail and by publication that all water rights in Cow Creek will be adjudicated in expedited inter se proceedings. Their argument disregards the fact that, enclosed with this same notice, was a simple one-page form claimants could file to request notice of all court hearings and deadlines. Objectors do not explain why this form of notice was not sufficient or why, if it was not sufficient, they did not object when the State filed its motion requesting that the Court implement the Monthly Adjudication Report procedure.

Recommendation

For the reasons stated in this report, I recommend that the Court order that all water rights in the Cow Creek section be adjudicated in expedited inter se proceedings in accordance with the Proposed Order attached as Exhibit A.



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Stephen E. Snyder  
Special Master

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-19000001

**[SPECIAL MASTER'S PROPOSED] 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 (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. 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.

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;

(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; and

(f) contact information for the State, the Joe M. Stell Water Ombudsman Program at The Utton Center, and the Court.

4. By the 20<sup>th</sup> 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, 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 (b) or 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, whereby the defendant states its 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 its proposed subfile final judgment with representatives of the State. The State or the defendant may seek assistance for this process from the Ombudsman at the Joe M. Stell Water Ombudsman Program at The Utton Center who is a third party neutral advisor. 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:

Paul D. Bossert  
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  
[Paul.bossert@state.nm.us](mailto:Paul.bossert@state.nm.us)  
[Leila.reilly@state.nm.us](mailto: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 a field inspection is necessary or appropriate, a

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[Special Master's Proposed] Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section



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.

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

1. The State shall serve a Notice of Termination of Consultations 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 defendants by first-class mail or hand-delivered and a copy filed with the Court.

2. Promptly after the State files the Termination Notice, the Court (or Special Master) will enter an Order Setting Deadline for Filing Statement of Water Right Claim ("Order to File

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[Special Master's Proposed] Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section

Claim”), in the form of Exhibit G, mandating that the defendant file, by the date specified in the order, a Statement of Water Right Claim identifying the elements of each water right the defendant claims in the Cow Creek Section. The Order to File Claim shall caution the subfile defendant that the Court may impose sanctions against the defendant should it fail to comply with order. *See* Rule 1-016.F.

3. The defendant shall complete and file the Statement of Water Right Claim with the Court clerk within the time specified in the Order to File Claim. The Court 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*.

E. Default Judgment Upon Failure to Respond to Adjudication Packet or Order to File Claim

1. Defendants may be defaulted to the water right described in the proposed subfile final judgment if, without good cause, the defendants either:

- (a) fail 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 or

(b) fail to file a Statement of Water Right Claim by the deadline specified in the Order to File Claim.

2. Promptly following the respective deadlines for responding to the adjudication packet or Order to File Claim, as applicable, 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: (i) 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 or (ii) a certificate of service of the Order to File Claim is on file with the Court, but no Statement of Water Right Claim is on file with the Court.

3. 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 or a Statement of Water Rights Claim has been filed with the Court. 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.

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, 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 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.

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 its 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.**

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Honorable James J. Wechsler

DRAFT

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**[Special Master's Proposed] Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section**

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:

Leila J. Reilly, Lucas Henry and Paul D. Bossert  
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]

## 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](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, you will need to 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, Paul Bossert 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.

There is also a water ombudsman program through the University of New Mexico that is available to help claimants, particularly those without attorneys. Although the staff cannot give legal advice, they can assist you in understanding the adjudication process and what you need to do to complete the various forms you have received.

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

Paul D. Bossert  
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  
[Paul.bossert@state.nm.us](mailto:Paul.bossert@state.nm.us)  
[Leila.reilly@state.nm.us](mailto:Leila.reilly@state.nm.us)

**To contact the Joe M. Stell Water Ombudsman Program, please write, call or email:**

Darcy S. Bushnell  
The Utton Transboundary Resources Center  
UNM School of Law, MSC 11-6070  
1 University of New Mexico  
Albuquerque, NM 87131-0001

(505) 277-0551  
[bushnell@law.unm.edu](mailto:bushnell@law.unm.edu)

DRAFT

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

Paul D. Bossert  
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,

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)]

**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

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. )

**NOTICE OF TERMINATION OF CONSULTATIONS 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:

1. 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 and:

2. Requests that the Court enter an order setting a deadline for the claimant(s) to file a Statement of Water Right Claim identifying the elements of each water right claimed by the claimant(s) in the Cow Creek Section.

---

Paul D. Bossert  
Leila J. 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. [inset #]  
Claimant(s): [inset 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  
\_\_\_\_\_.

After consultations between the State and the water right claimant(s) are terminated, the  
Procedural Order Governing the Adjudication of Water Rights in the Cow Creek Section  
requires that a deadline be set for the claimants to file a Statement of Water Right Claim  
describing the elements of each water right claimed by the claimant(s). Therefore, 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:

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

After the Claimant files the form, the Court will conduct a scheduling conference where it will schedule appropriate proceedings for resolving the claimant(s)' water rights claim.

**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

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James J. Wechsler  
Presiding Judge

FIFTH JUDICIAL DISTRICT  
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STATE OF NEW MEXICO, *ex rel.* )  
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Plaintiffs,

Pecos River Stream System  
Cow Creek Section

v. )

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

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

**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: \_\_\_\_\_

FIFTH JUDICIAL DISTRICT  
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Plaintiffs, )

Pecos River Stream System  
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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 \_\_\_\_\_

\_\_\_\_\_



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\_\_\_\_\_  
**Name of Participant (please print)**

\_\_\_\_\_  
**Signature of Participant**

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\_\_\_\_\_  
**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.