

**Monthly Stream System Issue and Expedited *Inter Se* Report
October 15, 2007**

**Lower Rio Grande Basin Adjudication
State of New Mexico ex rel. Office of the State Engineer
vs.
Elephant Butte Irrigation District, et al., No. CV - 96 - 888
Third Judicial District**

Case Management Orders currently in effect:

1. Case Management Order Authorizing Notice by a Monthly Report, filed Mar. 19, 2007.
2. Fourth Amended Order Regarding Stream Adjudication Procedures, Revised Oct. 16, 2007. (This Order has just been revised. See below for explanation of the revisions).

Pending Status Conferences:

December 19, 2007, 1:30 pm, Doña Ana County Courthouse, Las Cruces, NM

Agenda:

- A. The Office of the State Engineer will:
 1. Report the status of sub-files entered.
 2. Report regarding the joinder of water claimants.
 3. Report on issues discussed at the Joint Meeting of the Water and Natural Resources Committee and the Courts and Correction Committee and subsequent activity.
- B. The Court will report on the additional budget requested as a result of the Joint Legislative Meeting.
- C. The Court will hear Lion's Gate Water, Limited Liability Company's Motion and Notice to Intervene.

Status Conferences for 2008

Wednesday, February 13, 2008 at 1:30 pm
Wednesday, May 21, 2008 at 1:30 pm
Wednesday, September 24, 2008 at 1:30 pm
Thursday, December 10, 2008 at 1:30 pm

Matters of Interest:

- A. Court Rules require all Claimant Parties including those not represented by attorneys you keep the Court informed of any changes of address or ownership once you have been joined as a party to the adjudication.
- B. Pursuant to the Fourth Amended Order Regarding Stream Adjudication Procedures, Revised March 19, 2007, (Newly revised October 16, 2007) the Office of the State Engineer has commenced joinder of all who claim the right to use waters of the Lower Rio Grande who have not yet been joined. Approximately three fourths of water right claimants who had not been previously joined before the filing of the Fourth Amended Order are now parties.
- C. Inaccuracies in the Court's data base have been discovered. and the Court is continuing working to correct them.
- D. The Joe M. Stell Water Ombudsman Program being developed by the Utton Transboundary Resources Center is continuing to develop the Program. The Utton Center invites suggestions to improve the program.

Claimants may contact the Ombudsman program for information and assistance in responding to the summons and general adjudication complaint at 1-877-277-8740

- E. There is scheduled a Meeting of the Water and Natural Resources Committee at 8:00 am Monday, October 29, 2007 and Tuesday, October 30, 2007 at Room 322, State Capitol Building in Santa Fe, New Mexico.
- F. The October 16, 2007 revision of the Fourth Amended Case Management Order corrected errors in the Table of Contents, divided the last lettered paragraph into two separate paragraphs, and made the following substantive changes:
 - “G. **Schedule for Completion of Service of Offers of Judgment.** One fourth of claimants who file A Form A, Answer who have not yet been served offers of judgment shall be served by June 30, 2008; another one fourth shall be served by Sept. 30, 2008, another one fourth shall be served by Dec. 31, 2008 and the remaining claimants shall be served by Mar. 31, 2009.
 - “H. **Limitation for Legal Entities to Participate Without Counsel.** All legal entities such as trusts, partnerships, and corporations who otherwise could not represent themselves without an attorney, may answer, file pleadings and other papers without an attorney. However, in any hearing where relief or action of the Court is requested, such entities shall not be permitted to participate without an attorney.”

Documents:

- A. Summary of New Mexico Water Codes
- B. Lion's Gate Water: (Documents were Posted on the September 15, 2007 Monthly Report)
 - 1. Lion's Gate Water, a Limited Liability Company's Motion and Notice to Intervene.
 - 2. Lion's Gate Water's Supplemental Motion and Notice to Intervene.
 - 3. Lion's Gate Water's Memorandum Brief in Support of the Supplemental Motion.
 - 4. State of New Mexico's Response to Lion's Gate Water's Motion and Notice to Intervene.
 - 5. Lion's Gate Water's Reply to State of New Mexico's Response to Lion's Gate Water's Motion and Notice to Intervene.
- C. Tentative Agenda of the Water and Natural Resources Committee Meeting of October 29-30, 2007

SUMMARY OF NEW MEXICO WATER CODES

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1. What Is a Water Right?

The unappropriated water of every natural stream within the state of New Mexico, is declared to belong to the public and to be subject to appropriation for beneficial use. Priority of appropriation gives the better right. Art. XVI, Sec. 2, New Mexico Constitution. All natural waters flowing in streams and watercourses within New Mexico, belong to the public and are subject to appropriation for beneficial use NMSA 1978 Comp. 72-1-1. The water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, are declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use. NMSA 1978 Comp. 72-12-1.

The state controls the use of water because it does not part with ownership; it only allows a usufructuary right to water. Jicarilla Apache Tribe v. United States, 657 F. 2d 1126 (10th Cir. 1981). In law, a "usufruct" is the right of enjoying a thing which belongs to another and of deriving from it all the profit or benefit it may produce, provided it be without altering or damaging the substance of the thing. Webster's New Twentieth Century Dictionary, Unabridged, 2nd Ed.

Beneficial use is the basis, the measure and the limit of the right to the use of water. Art. XVI, Sec. 3, New Mexico Constitution. Although the term "beneficial use" is not defined either in the New Mexico Constitution or Statutes, there are certain very important requisites of beneficial use which have been established by the New Mexico courts. The first of these is maximum utilization. Maximum utilization then is a fundamental requirement which prevents waste of water." Jicarillo Apache Tribe v. United States, 6457 F. 2d 1126 (1981). No matter how early a person's priority of appropriation may be, he is not entitled to receive more water than is necessary for his actual use. An excessive diversion of water, through waste, cannot be regarded as a diversion to beneficial use. State ex rel. Erickson v.

McLean, 62 N.M. 264, 308 P. 2d 983 (1957).

The measure of right to appropriate water is actual beneficial use, that is, amount of water necessary for effective use for purpose to which it is put under particular circumstances of soil conditions, method of conveyance, topography and climate. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (1974).

The decree adjudicating the right adjudged to each party to use the waters of a stream system declares the priority, amount, purpose, periods and place of use, and as to water used for irrigation the specific tracts of land to which it shall be appurtenant. NMSA 1978 Comp. 72-4-19.

In all cases of claims to the use of water initiated prior to March 19, 1907, the right relates back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use.

All claims to the use of water initiated thereafter relate back to the date of the receipt of an application in the office of the territorial or state engineer. NMSA 1978 Comp. 72-1-2.

2. Statutorily Defined Duty and Authority of the State Engineer:

There is a "state engineer" who has general supervision of waters of the state and of the measurement, appropriation, distribution and such other duties as required. NMSA 1978 Comp. 72-2-1.

The state engineer may adopt regulations and codes to implement and enforce any provision of any law administered by him and may issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. NMSA 1978 Comp. 72-2-8.

The state engineer has the supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts. NMSA 1978 Comp. 72-2-9.

NMSA 1978 Comp. 72-2-9.1 provides:

A. The legislature recognizes that the adjudication process is slow, the need for water administration is urgent, compliance with interstate compacts is imperative and the state engineer has authority to administer water allocations in accordance with the water right priorities recorded with or declared or otherwise available to the state engineer.

B. The state engineer shall adopt rules for priority administration to ensure that authority is exercised:

- (1) so as not to interfere with a future or pending adjudication;
- (2) so as to create no impairment of water rights, other than what is required to enforce priorities; and
- (3) so as to create no increased depletions.

The state engineer has the authority to provide for the appointment of examiners to conduct hearings and to make reports and recommendations. NMSA 1978 Comp. 72-2-12. The state engineer may order that a hearing be held before he enters a decision. Any person aggrieved by the decision is entitled to a hearing. Request for hearing must be made in writing within thirty days of notice of the decision. No appeal can be taken to the district court until the state engineer has held a hearing and entered his decision in the hearing. NMSA 1978 Comp. 72-2-16.

When a majority of the water right owners of a district make written request, the state engineer must appoint a water master for such district. The water master has immediate charge of the apportionment of waters in the water master's district. NMSA 1978 Comp. 72-3-2.

3. The Permitting and Licensing Process:

Note: The New Mexico Surface Water Code was first adopted in 1907; the Underground Water Code in 1931. Before the 1907 Water Code, persons could acquire a surface water right by

diverting a stream and applying the water to beneficial use. No permit was required. After the Underground Water Code of 1931 and before the State Engineer declared an underground basin to have ascertainable boundaries, persons could drill wells and acquire a water right by applying the water to beneficial use. No permit was required until the basin was declared to have reasonably ascertainable boundaries.

A. Permits:

After the Water Code of 1907 was adopted, any person intending to acquire the right to the beneficial use of any surface waters, must, before commencing any construction for such purposes, make an application to the state engineer for a permit to appropriate.

The applicant must state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method of practicability of the construction and the ability of the applicant to complete the same. NMSA 1978 Comp. 72-5-1. The date of receipt of application in the state engineer's office has priority as of date of its original filing. NMSA 1978 Comp. 72-5-3.

Both before and after the groundwater Code of 1931, no permit and license to appropriate underground waters were required until the basins were declared by the state engineer to have reasonably ascertainable boundaries. NMSA 1978 Comp. 72-12-20.

For appropriation of underground water after a basin has been declared to have ascertainable boundaries, **NMSA 1978 Comp. 72-12-3** provides:

A. Any person desiring to appropriate for beneficial use any of the state's underground waters shall apply to the state engineer. The applicant shall designate:

- (1) the particular underground stream from which water will be appropriated;
- (2) the beneficial use to which the water will be applied;
- (3) the location of the proposed well;
- (4) the name of the owner of the land on which the well will be located;
- (5) the amount of water applied for;
- (6) the place of the use for which the water is desired; and
- (7) if the use is for irrigation, the description of the land to be irrigated and the name of the owner of the land.

Upon the filing of an application, the applicant must publish notice in some newspaper that is distributed in each county affected by the diversion and in each county where the water will be or has been put to beneficial use. The notice must give all essential facts as to the proposed appropriation; among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time when the application shall be taken up by the state engineer for consideration. NMSA 1978 Comp. 72-5-4.

Any person who objects that the granting of the application will be detrimental to the objector's water right has standing to file objections or protests. Any person objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application has standing to file objections.

The State of New Mexico and all political subdivisions of the state have standing to file objections or protests. NMSA 1978 Comp. 72-5-5.

The state engineer must determine, from the evidence, from surveys of the water supply as may be available and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, and if the proposed appropriation is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state, the state engineer will endorse his approval on the application, which shall become a permit to appropriate water, and shall state the time within

which the construction must be completed and the time within which water shall be applied to a beneficial use.

The time allowed by the state engineer for completion of works or application of water to beneficial use will be governed by the size and complexity of the project, but cannot exceed five years from the date of approval within which to complete construction, and four years in addition within which to apply water to a beneficial use. However, the state engineer has the power to grant extensions of time for completion of works or application of water to beneficial use. NMSA 1978 Comp. 72-5-6.

If there is no unappropriated water available, the state engineer will reject the application. He may also refuse any application if approval would be contrary to the conservation of water within the state or detrimental to the public welfare of the state. NMSA 1978 Comp. 72-5-7.

B. Construction of Diversion Works (Dams, canals and ditches for surface water and wells for underground water):

For the supervision of the construction of works for the storage, diversion or carriage of water a registered professional engineer must be in charge. This engineer has full authority to carry out inspections and instructions that are deemed necessary by the state engineer. On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state engineer shall inspect the diversion works. Such inspection must determine the actual capacity of the works, their safety and efficiency. NMSA 1978 Comp. 72-5-9.

When the works are found in satisfactory condition, after inspection, the state engineer will issue his certificate of construction, setting forth the actual capacity of the works and such limitations on the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit. NMSA 1978 Comp. 72-5-10.

A well driller must apply to the state engineer for a driller's license. NMSA 1978 Comp. 72-12-13. It is unlawful for any person to drill a well for water from an underground stream the boundaries of which have been determined and proclaimed by the state engineer to be reasonably ascertainable, without a valid, existing drilling license. NMSA 1978 Comp. 72-12-12.

C. Licenses:

Note: A license establishes that a permittee has completed the diversion works necessary for the use permitted and the permittee is capable of beneficially using the water. Thereafter, the owner's beneficial use of the water will establish his or her water right in the same manner as pre 1907 water rights were acquired. Although the statutes indicate that licenses were to be issued after a permittee constructed the necessary diversion works, in practice, the State Engineer has frequently not issued licenses. A license is not an adjudicated water right. Only the courts can adjudicate. (See NMSA 1978 Comp. 72-4-17).

On or before the date set for the application of the water to a beneficial use, the state engineer is required to inspect the diversion works, after due notice to the owner of the permit. Upon the completion of such inspection, the state engineer will issue a license to appropriate water to the extent and under the condition of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit. NMSA 1978 Comp. 72-5-13.

4. Changes in Water Rights Requiring Administrative Action:

An appropriator of water may, with the approval of the state engineer, use the water for purposes other than the use for which it was appropriated or may change the place of diversion, storage or use by the same process as an original application pursuant to NMSA 1978 Comp.72-5-3 (application for permit) and NMSA 1978 Comp.72-5-23 (irrigation right change in place of use or to other beneficial

uses). NMSA 1978 Comp. 72-5-24.

Change from irrigation use to other beneficial uses requires publication of notice of application, opportunity for the filing of objections or protests. A hearing on the application must be provided. NMSA 1978 Comp. 72-5-23.

NMSA 1978 Comp. 72-12-7 provides:

- A. The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that the change will not impair existing rights and will not be contrary to the conservation of water within the state and will not be detrimental to the public welfare of the state. The application may be granted only after such advertisement and hearing as are prescribed in the case of original applications.
- B. . . . [T]he state engineer shall make an investigation and, if the change does not permanently impair any vested rights of others, he shall enter an order authorizing the change. If he finds that the change sought might impair vested rights, he shall order advertisement and hearing as in other cases.
- C. If objections or protests have been filed . . . or if the state engineer is of the opinion that the permit should not be issued, the state engineer may deny the application or, before he acts on the application, may order that a hearing be held. . . .

NMSA 1978 Comp. 72-12-22 provides:

- A. The owner of a water right may drill and use a replacement well drilled within one hundred feet of the original well, prior to application to the state engineer, and the publication and hearing (with express conditions including):
 - (4) . . . [That he] notifies the state engineer office . . . prior to drilling . . . [and] file[s] application for a permit within thirty days after drilling begins.
- B. The owners of other water rights who claim to be injured by the drilling of a replacement well under these circumstances, may not enjoin the drilling of such a well or the use of the water from the well, but are limited to an action at law to recover damages, and to their right to protest the granting of a permit.

NMSA 1978 Comp. 72-12-23 provides:

- A. The owner of a water right may drill and use a replacement well drilled over one hundred feet from his original well upon making application but without waiting for the completion of the publication and hearing . . . if:
 - (1) the well is drilled into the same . . . underground stream, channel, artesian basin, reservoir or lake as the original well; and
 - (2) the appropriation is of the same amount of water allowed by his water right in the original well; and
 - (3) an emergency situation exists in which the delay caused by publication and hearing would result in crop loss or other serious economic loss; and
 - (4) the state engineer, after a preliminary investigation, finds the change does not impair existing water rights, and grants him a permit authorizing the drilling and use of the replacement well prior to the publication and hearing.
- B. When the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a replacement well may impair existing rights, then no permit shall be issued until after publication and hearing.

NMSA 1978 Comp. 72-12-24 provides:

- A. The owner of a water right may drill and use a supplemental well upon making

application but prior to the publication and hearing . . . if:

- (1) the supplemental well is drilled into the same . . . underground stream, channel, artesian basin, reservoir or lake as the well being supplemented; and
- (2) the supplemental well does not increase the appropriation of water to an amount above the existing water rights; and
- (3) an emergency situation exists in which the delay caused by publication and hearing would result in crop loss or other serious economic loss; and
- (4) the state engineer, after a preliminary investigation, finds that the supplemental well does not impair existing water rights, and grants him a permit authorizing the drilling and use of the supplemental well prior to publication and hearing.

B. If the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a supplemental well may impair existing rights, then no permit shall be issued until after publication and hearing.

5. Irrigation Water Rights:

All waters appropriated for irrigation purposes must be appurtenant to specified lands owned by the person having the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land. NMSA 1978 Comp. 72-1-2.

In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for that purpose, the amount allowed shall be based upon beneficial use and in accordance with good agricultural practices and the amount allowed shall not exceed such amount. The state engineer shall permit the amount allowed to be diverted at a rate consistent with good agricultural practices and that will result in the most effective use of available water in order to prevent waste. Improved irrigation methods resulting in the conservation of water shall not affect an owner's water rights. NMSA 1978 Comp. 72-5-18.

Calculating duty. Calculus of duty, that is, amount of water necessary for successful cultivation of land, includes these essential factors: (1) amount of water diverted; (2) place of diversion as related to use; (3) amount necessary for particular crop or land; (4) season of the year; and (5) general irrigation or water-using practices followed in area. State ex rel. Reynolds v. Mears, 86 N.M. 510, 525 P.2d 870 (date)

6. Changing appurtenant lands for irrigation; changing irrigation use to other beneficial uses.

All water used in this state for irrigation purposes must be appurtenant to the land upon which it is used, and the right to use it upon the land cannot be severed from the land without the consent of the owner of the land. But, by and with the consent of the owner of the land, all or any part of the right may be severed from the land, simultaneously transferred and become appurtenant to other land, or may be transferred for other purposes, without losing priority of right previously established, if such changes can be made without detriment to existing water rights and are not contrary to conservation of water within the state and not detrimental to the public welfare of the state. NMSA 1978 Comp. 72-5-23.

7. Forfeiture.

When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested for the purpose for which it was appropriated or adjudicated, (except the waters for storage reservoirs) for a period of four years, such unused water will, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, revert to the public and will be regarded as unappropriated public water. (There are specified exceptions). NMSA 1978 Comp. 72-5-28. For groundwater see NMSA 1978 Comp. 72-12-8). There are specific exemptions to the four year limit for groundwater. Additionally, the State Engineer may grant extensions not to exceed three year for each extension.

8. Recordation and Update Records of Water Rights:

All permits, decrees and documents granting, defining or limiting water rights and rights of owners of canals, reservoirs and works for conducting, storing or appropriating water in this state must be recorded in the office of the county clerk of the county in which the property, canal, reservoir or work is situated. NMSA 1978 Comp. 72-5-21.

The records of the office of the state engineer are public records, must remain on file in his office and are open to the inspection of the public at all times during business hours. Such records must show all applications filed, with date of filing, and must show in full all permits, certificates of completion of construction and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. NMSA 1978 Comp. 72-2-7.

In the event of any changes of ownership of a water right, whether by sale, gift or any other type of conveyance, affecting the title to a water right that has been permitted or licensed by the state engineer that has been declared with the state engineer or has been adjudicated and is evidenced by a sub-file order, partial final decree, final decree or any other court order, the new owner of the water right must file a change of ownership form with the state engineer.

The form must include all information conforming with water rights of record filed with the state engineer and must be accompanied by a copy of a warranty deed or other instrument of conveyance. The new owner must record a copy of the change of ownership form filed with the state engineer with the clerk of the county in which the water right will be located. The filing will be public notice of the existence and contents of the instruments so recorded from the time of recording with the county clerk. NMSA 1978 Comp. 72-1-2.1.

Any permit or license to appropriate water may be assigned, but no such assignment will be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. No right to appropriate water, except water for storage reservoirs, for irrigation purposes will be assigned, or the ownership transformed, apart from the land to which it is appurtenant, except in the manner specially provided by law. NMSA 1978 Comp. 72-5-22.

The transfer of title of land in any manner carries with it all rights to the use of water appurtenant thereto for irrigation purposes, unless previously alienated. NMSA 1978 Comp. 72-5-22.

9. Declarations of Water Rights That Were Applied to Beneficial Use ie. Perfected During Periods When Permits Were Not Required.

NMSA 1978 Comp. 72-1-3. Declaration of water rights vested prior to 1907 provides:

Any person . . . claiming to be an owner of a water right which was vested [before the 1907 Water Code], from any surface water source by the applications of water . . . to beneficial use, may make and file in the office of the state engineer a declaration . . . setting forth the beneficial use to which said water has been applied, the date of first application to beneficial use, the continuity thereof, the location of the source of said water and if such water has been used for irrigation purposes, the description of the land upon which such water has been so used and the name of the owner. . . .

Such declaration shall be verified but if the declarant cannot verify the same of his own personal knowledge he may do so on information and belief. Such declarations . . . shall be recorded . . . in the office of the state engineer and may also be recorded in the office of the county clerk of the county wherein the diversion works therein described are located. Such records or copies thereof officially certified shall be prima facie evidence of the truth of their content.

NMSA 1978 Comp. 72-12-5. Declaration of beneficial use. (Relating to underground water rights applied to beneficial use after the 1931 Water Code and before the date the state engineer declared the basin to have ascertainable boundaries) provides:

Any person . . . claiming to be the owner of a vested water right from any of the

underground sources . . . by application of waters . . . to beneficial use, may . . . file in the office of the state engineer a declaration . . . setting forth the beneficial use to which said water has been applied, the date of first application to beneficial use, the continuity thereof, the location of the well and if such water has been used for irrigation purposes, the description of the land upon which such water has been so used and the name of the owner. . . . Such declarations . . . shall be recorded . . . in the office of the state engineer and may also be recorded in the office of the county clerk of the county wherein the well . . . is located. . . .

10. Court's Adjudication of Water Rights

The state engineer must make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and obtaining and recording all available data for the determination, development and adjudication of water supply of the state. NMSA 1978 Comp. 72-4-13.

Upon the completion of the hydrographic survey of any stream system, the state engineer must deliver a copy of so much thereof as may be necessary for the determination of all rights to the use of the waters of such system to the Attorney General (who in practice appoints OSE legal staff as deputy attorneys general) who must at the request of the state engineer, enter suit on behalf of the state for the determination of all rights to the use of such water, in order that the amount of unappropriated water subject to disposition by the state may become known. The state engineer must diligently prosecute the suit to a final adjudication. NMSA 1978 Comp. 72-4-15.

All reports of hydrographic surveys of the waters of any stream system are received and considered in evidence in the trial of all causes involving the data shown in such survey, the same as though testified to by the person making the same. NMSA 1978 Comp. 72-4-16.

In any suit for the determination of a right to use the waters of any stream system, all claimants are made parties. When any such suit has been filed the court must direct the state engineer to make or furnish a complete hydrographic survey of such stream system to obtain all data necessary to the determination of the rights involved. Money the state engineer spends on hydrographic surveys cannot be assessed against the water users.

The court where the adjudication is filed has exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved. NMSA 1978 Comp. 72-4-17.

Any applicant or other party dissatisfied with any decision, act or refusal to act of the state engineer may appeal to the district court of the county in which the work or point of desired appropriation is situated. The decision of the state engineer is final unless appeal is taken to the district court within thirty days after his decision.

The proceeding upon appeal is de novo. Evidence taken in a hearing before the state engineer may be considered as original evidence subject to legal objection, the same as if the evidence was originally offered in the district court. The court allows amendments which may be necessary in furtherance of justice. NMSA 1978 Comp. 72-7-1.

The decision of the district court is binding on the state engineer who must thereafter act in accordance with such decision unless within sixty days after the entry of such decision or judgment of the district court, the decision of the said district court is appealed. NMSA 1978 Comp. 72-7-3.

Document C:
TENTATIVE AGENDA for the
WATER AND NATURAL RESOURCES COMMITTEE
October 29, 30, 2007

Room 322
State Capitol

Monday, October 29

- 8:00 a.m. Water Adjudications Subcommittee
Lower Rio Grande Water Users Association Concerns
–Karl Wood, Director, Water Resources Research Institute NMSU
–Gary Esslinger, General Manager, Elephant Butte Irrigation District
–J. Phil King, Consultant, Elephant Butte Irrigation District
- 9:00 a.m. Call to Order (Full Committee)
–Senator Phil Griego, Chair
Gila River Issues
–Henry Torres, Grant County Commissioner
–Adrian Oglesby, The Nature Conservancy
- 10:30 a.m. Forfeiture Exemption for Forty- or One-Hundred-Year Planning Period?
–John D'Antonio, State Engineer
- 12:00 noon Lunch
- 1:30 p.m. Interstate Compacts–Status Report
–Estevan Lopez, Director, Interstate Stream Commission
–Tanya Trujillo, General Counsel, Interstate Stream Commission
- 3:00 p.m. Well Drillers–Domestic Well Pump Installer Certification
–John Mahoney, President, New Mexico Ground Water Association
- 4:00 p.m. Santa Fe Community College Water Conservation Strategies
–TBA
- 5:00 p.m. Recess

Tuesday, October 30

- 8:30 a.m. Water Project Financing/Water Trust Board Procedures and Policies
–Katherine Miller, Secretary of Finance and Administration
–Ron Curry, Secretary of Environment (invited)
–Bill Sisneros, Director, New Mexico Finance Authority
–John D'Antonio, State Engineer and Water Trust Board Chair
–Marquita Russell, New Mexico Finance Authority
- 12:00 noon Phreatophytes–Santa Domingo Pueblo Treatment Area Tour and Discussion
(Working Lunch)
–Governor Nelson Pacheco, Santa Domingo Pueblo
–Ernie Lovato, Acting Governor, Santa Domingo Pueblo
–Gabriel Cosyleon, Santa Domingo Pueblo
- 3:00 p.m. Adjourn