

FIFTH JUDICIAL DISTRICT OF
COUNTY OF CHAVES
STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.)	
OFFICE OF THE STATE ENGINEER,)	
and PECOS VALLEY ARTESIAN)	Nos. 20294 and 22600
CONSERVANCY DISTRICT,)	Consolidated
Plaintiffs,)	
v.)	
)	Carlsbad Irrigation District Sub-Section
L. T. LEWIS, et al., and)	Carlsbad Basin Section
UNITED STATES OF AMERICA,)	
Defendants.)	PROJECT (OFFER) PHASE

PARTIAL FINAL DECREE

This matter came before the Court on the Joint Motion filed by the United States of America (“United States”), the Carlsbad Irrigation District (“CID”), the State of New Mexico *ex rel.*, State Engineer (“State”), and the Pecos Valley Artesian Conservancy District (“PVACD”), in connection with the claims of the United States and the CID in connection with the Carlsbad Project.

The Parties are represented by their counsel of record.

The Court, having considered the Joint Motion filed herein, the arguments of counsel and being otherwise sufficiently advised in the premises enters its decision consisting of its findings of fact and conclusions of law, judgment and decree determining and adjudicating the United States’ and CID’s maximum allowable annual diversion and storage rights, and the CID’s right to deliver water to the members of the CID.

FINDINGS OF FACT

1. This proceeding is part of the proceedings to determine and adjudicate rights of the United States and others to use surface and ground waters of the Pecos River Stream System,

brought in accordance with the provisions of NMSA 1978, Sections 72-4-15 (1907), 72-4-16 (1919), 72-4-17 (1965), 72-4-18 (1907), and 72-4-19 (1907).¹

2. The CID is an irrigation district organized under the laws of the State of New Mexico, NMSA 1978, Chapter 73, Article 10.

3. On March 25, 2003, the State, the United States, the CID and PVACD filed with this Court a Joint Motion seeking the Court's adoption and entry of a proposed Partial Final Decree that incorporates a Settlement Agreement between the said parties, which Partial Final Decree and Settlement Agreement settle the surface water claims of the CID and the United States. The Settlement Agreement, and the agreement between the Interstate Stream Commission ("ISC") and the Fort Sumner Irrigation District ("FSID") (the "FSID/ISC Agreement") submitted in support of said Joint Motion, include agreements by and among the United States and the governing bodies of the ISC, the CID, the PVACD and the FSID that specify the actions the parties agree will be taken or avoided to ensure that the expenditures by the ISC authorized under § 72-1-2.4 (2002) will be effective toward permanent compliance with New Mexico's obligations under the Pecos River Compact, § 72-15-19 *et. seq.* (1949) (the "Pecos River Compact")², and the Decree of the United States Supreme Court in *Texas v. New Mexico*, 485 U.S. 388 (1988) (the "Pecos River Decree"). The terms and provisions of said Joint Motion are adopted and incorporated herein.

4. Each person executing the Settlement Agreement on behalf of each Party is the duly authorized and appointed representative of that Party and the governing body of each Party, to the extent necessary to bind that Party, have formally authorized the actions of its representatives and attorneys to approve this Partial Final Decree and the Settlement Agreement.

¹ All further cites to specific statutes are to NMSA 1978.

5. The Settlement Agreement and the FSID/ISC Agreement are comprehensive and reasonable for the purposes for which they are intended and should be approved by this Court.

6. The Settlement Agreement and the FSID/ISC Agreement satisfy § 72-1-2.4, which requires that the ISC enter into agreements with PVACD, CID and FSID.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court concludes as matters of law:

1. All of the foregoing findings of fact that may be deemed or construed to be conclusions of law are incorporated herein by this reference.

2. The United States was properly joined in this general adjudication suit under the McCarran Amendment, 43 U.S.C. 666 (a).

3. The Court has jurisdiction over the parties and the subject matter of these proceedings for purposes of determining and adjudicating, between and among the United States, the State, the CID, the PVACD, and all other defendants in this proceeding, the United States' and CID's maximum allowable annual diversion and storage rights, and the CID's right to deliver water for the members of the CID, and the administration of such rights as determined by the Court.

4. This Decree and the Settlement Agreement attached hereto and incorporated herein settle the surface water claims of the CID and the United States as contemplated by and for the purposes of § 72-1-2.4 (D) (1) (c) (2002). As contemplated by and for the purposes of § 72-1-2.4 (C), the Settlement Agreement attached hereto and incorporated herein and the FSID/ISC Agreement, include agreements with the governing bodies of the ISC, the CID, the PVACD and the

2 The United States Congress approved the Pecos River Compact in the Act of June 9, 1949, Ch. 184, 63 Stat. 159. Partial Decree re Carlsbad Project – p. 3

FSID that specify the actions the parties agree will be taken or avoided to ensure that the expenditures by the ISC authorized under § 72-1-2.4 will be effective toward permanent compliance with New Mexico's obligations under the Pecos River Compact and the Pecos River Decree.

5. The Settlement Agreement is an integral part of this Decree and is incorporated herein for all purposes. The Settlement Agreement is part of this Decree and this Decree is part of the Settlement Agreement and neither is to be considered independent of the other.

DECREE

Based on the foregoing findings of fact and conclusions of law, which are incorporated herein by reference,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

This Partial Final Decree (Decree) judicially establishes the maximum allowable annual diversion and storage rights of the United States and the CID, and the CID's right to deliver water for the members of the CID. Each individual CID member's surface water rights, to be further determined in the Membership Phase of the Carlsbad Irrigation District Sub-Section of these proceedings (the "Membership Phase"), shall be limited by the diversion, storage, and delivery rights held by the United States and the CID and shall be subject to applicable state and federal law.

The United States and the CID shall have the right to:

1. Divert public surface waters from the Pecos River stream system as follows:
 - A. Pecos River mainstream
 - i. State Engineer File Number: 6
 - ii. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use.
 - iii. Source: Surface waters of the Pecos River.

- iv. Point of diversion: Avalon Dam gate into the CID Main Canal in the SE^{1/4}NW^{1/4}SW^{1/4}, Section 12, T. 21 S., R. 26 E., N.M.P.M.
- v. Place of use: An irrigable area not exceeding 25,055.00 acres, all within the boundaries of the CID (also known as the Carlsbad Project). The location of said CID is in T. 21 S., R. 26 E., Sections 14, 23, 25, 26, 35, 36; T. 21 S., R. 27 E., Sections 19, 29, 30, 31, 32, 33; T. 22 S., R. 26 E., Sections 1, 12, 13; T. 22 S., R. 27 E., Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36; T. 22 S., R. 28 E., Sections 19, 29, 30, 31, 32, 33; T. 23 S., R. 27 E., Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 24, 25; T. 23 S., R. 28 E., Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36; T. 23 S., R. 29 E., Sections 30, 31; T. 24 S., R. 27 E., Sections 12, 13; T. 24 S., R. 28 E., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24; T. 24 S., R. 29 E., Sections 18, 19; N.M.P.M.; as shown on attached Exhibit A entitled "Plat of the Carlsbad Irrigation District, Eddy County, New Mexico," filed for record April 16, 1993, in the records of Eddy County, New Mexico, and as described in the State Engineer Hydrographic Survey Report of the Pecos River Stream System, CID Section (1987). The boundaries of the CID may be changed pursuant to and as authorized by state law.
- vi. Allowable annual diversion: As specified in Paragraph 1 (C) of this Decree.
- vii. Priorities:
 - a. July 31, 1888, for an amount of water diverted from the Pecos River under Paragraph 1 (C) of this Decree not to exceed an annual amount of 101,283 acre-feet;
 - b. April 10, 1915, for an amount of water diverted from the Pecos River under Paragraph 1 (C) of this Decree not to exceed an annual amount of 22,625 acre-feet;
 - c. June 24, 1919, for an amount of water diverted from the Pecos River under Paragraph 1 (C) of this Decree not to exceed an annual amount of 1,292 acre-feet;
 - d. Each of the above priorities shall be subject to such superior rights of the FSID and the Storrie Project Water Users Association described in and established by the Final Decree in *United States of America v. Hope Community Ditch*, U.S. District Court Cause No. 712 Equity (1933), in addition to being subject to all other water rights having senior priority dates.

B. Black River

- i. State Engineer File Number: 6

- ii. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use.
- iii. Source: Surface waters of the Black River.
- iv. Point of diversion: The junction at which the CID Black River Canal intersects the Black River in the NW¹/₄ SE¹/₄, Section 12, T. 24 S., R. 27 E., N.M.P.M.
- v. Place of Use: An irrigable area located in the north one-half of T. 24 S., R. 28 E., N.M.P.M., within the boundaries of the CID, and all a part of the irrigable area not exceeding 25,055.00 acres described in Paragraph 1 (A) (v) of this Decree.
- vi. Allowable annual diversion: As specified in Paragraph 1 (C) of this Decree.
- vii. Priority: December 31, 1889, for the amount of water diverted from the Black River under Paragraph 1 (C) of this Decree.

C. Allowable annual diversion.

- i. Subject to the conditions which follow in this Paragraph 1 (C), for the irrigable area within the CID described in Paragraph 1 (A) (v) of this Decree, the combined annual diversion of water at the diversion points described in Paragraphs 1 (A) (iv) and 1 (B) (iv) of this Decree shall not exceed (a) 125,200 acre-feet or (b) the quantity of water necessary to supply an annual depletion of 55,572 acre-feet, whichever of (a) or (b) is less.
- ii. The right, allotment or entitlement of use within the CID described in Paragraph 1 (A) of this Decree shall, for each acre irrigated from the Pecos River, incorporate and be based on an amount of water at the point of diversion described in Paragraph 1 (A) (iv) of this Decree that shall not exceed a diversion of 4.997 acre-feet per year, a farm delivery of 3.697 acre-feet per year, and a consumptive irrigation requirement of 2.218 acre-feet per year.
- iii. The right, allotment or entitlement of use within the CID described in Paragraph 1 (B) of this Decree shall, for that acreage within the area described in Paragraph 1 (B) (v) of this Decree that is irrigated from the Black River, incorporate and be based on an amount of water at the point of diversion described in Paragraph 1 (B) (iv) of this Decree that shall not exceed a total maximum diversion of 2,800 acre-feet per year, a farm delivery of 3.697 acre-feet per year, and a consumptive irrigation requirement of 2.218 acre-feet per year; such diversion to be governed by the State Engineer Findings and Order dated June 10, 1964, as the same exists or may be amended in the future.
- iv. The allowable annual diversion of water described in Paragraph 1 (C) (i) of this Decree incorporates an off-farm conveyance efficiency of 74 percent and an on-farm

irrigation efficiency of 60 percent. The off-farm diversion or the farm delivery amounts may be adjusted downward by the Court to compensate for improved efficiencies.

2. Divert, impound, and store public surface waters of the Pecos River stream system, as follows:

A. Lake Avalon

- i. State Engineer File Number: 6
- ii. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use in the irrigable area described in Paragraph 1 (A) (v) of this Decree.
- iii. Source: Surface waters of the Pecos River.
- iv. Place: Lake Avalon on the Pecos River in Eddy County, the headwall at the Avalon Dam outlet gate being at lat. 32° 29' 27", long. 104° 15' 05" in the NW¹/₄SW¹/₄, Section 12, T. 21 S., R. 26 E., N.M.P.M.
- v. Amount of water: In the amount of total reservoir capacity available, but not more than 7,000 acre-feet, with the right to fill and refill as often as waters are available.
- vi. Priority: October 31, 1889.

B. Brantley Lake

- i. State Engineer File Number: 6
- ii. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use in the irrigable area described in Paragraph 1 (A) (v) of this Decree.
- iii. Source: Surface waters of the Pecos River.
- iv. Place: Brantley Lake on the Pecos River in Eddy County, the control tower at Brantley Dam outlet gate being at lat. 32° 32' 48", long. 104° 22' 43" in the NE¹/₄SE¹/₄NE¹/₄, Section 28, T. 20 S., R. 26 E., N.M.P.M.
- v. Amount of water: In an amount not to exceed 40,000 acre-feet, with the right to fill and refill as waters are available, said 40,000 acre-feet to include the quantity of water in bank storage which returns to and is available for release from Brantley Lake, said returned and available bank storage to be determined by the State Engineer based on a joint investigation by the State Engineer, the United States through the Department of Interior, Bureau of Reclamation, the CID, and the

PVACD. The joint investigation shall evaluate the volume of bank storage returned and available for release from Brantley Lake at given water surface elevations based on the records of the CID's Brantley operations. The surface area-capacity curve of Brantley Lake shall be combined with the bank storage elevation-volume relationship for purposes of administration and the combined conservation storage shall be limited to 40,000 acre-feet. The quantity of bank storage shall be jointly investigated periodically by the State Engineer, the United States through the Department of Interior, Bureau of Reclamation, the CID, and the PVACD, and shall be adjusted by the State Engineer based upon said joint investigation.

vi. Priority: October 31, 1893.

C. Lake Sumner (f/k/a Alamogordo Reservoir)

- i. State Engineer File Number: 6
- ii. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use in the irrigable area described in Paragraph 1 (A) (v) of this Decree.
- iii. Source: Surface waters of the Pecos River.
- iv. Place: Lake Sumner on the Pecos River in DeBaca and Guadalupe Counties, the center of Sumner Dam being near lat. 34° 36' 30", long. 104° 23' 04" in the SE¹/₄SW¹/₄, Section 34, T. 5 N., R. 24 E., N.M.P.M.
- v. Amount of water: In the total reservoir capacity in acre-feet available at elevation 4,261 above sea level, provided that the elevation of 4,261 feet above sea level may be exceeded during the period from October 1 of each year to April 30 of the following year so long as the water level is reduced to an elevation not exceeding 4,261 feet above sea level by April 30 of each year and, provided further, that such impoundment and storage rights shall never be less than 20,000 acre-feet so long as the storage capacity at any elevation is 20,000 acre-feet or more.

vi. Priority: February 2, 1906.

D. Santa Rosa Lake (f/k/a Los Esteros Reservoir)

- i. State Engineer File Number: 6
- ii. Purposes: For irrigation and for domestic and livestock watering uses incidental to irrigation use in the irrigable area described in Paragraph 1 (A) (v) of this Decree.
- iii. Source: Surface waters of the Pecos River.
- iv. Place: Santa Rosa Lake on the Pecos River in Guadalupe County, the outlet gates at Santa Rosa Dam being near lat. 35° 01' 47", long. 104° 41' 30" in the Jose Perea

Grant.

- v. Amount of water: In an amount not to exceed 176,500 acre-feet less the total reservoir capacity in acre-feet available for the storage of water for release for use by the CID in Lake Avalon, Brantley Lake, and Lake Sumner (or any replacement or additional lake or reservoir that may be constructed to impound and store water for use by the CID) as determined from current sediment surveys of those lakes, or by determining reservoir capacity by estimating sediment deposition by the use of generally accepted techniques for those years when the actual sediment surveys are not available, and the contract between the United States Department of the Interior, Bureau of Reclamation, and the CID dated September 8, 1971.
 - vi. Priority: February 2, 1906.
- E. With the permission of the State Engineer in each instance, water may be stored in Brantley Lake and Santa Rosa Lake in addition to the amount defined above, provided that such additional water is “unappropriated flood water” as the term is defined in Article II (i) of the Pecos River Compact, § 72-15-19, and provided further that the total combined storage of water for release for use by the CID in all project reservoirs shall not exceed 300,000 acre-feet.
 - F. The diversion, impoundment, and storage right described herein incorporates and is subject to the State Engineer Findings and Order dated September 22, 1972, permit dated January 8, 1982, and order dated August 13, 1986, as the same may have been amended or supplemented or as they may be amended or supplemented consistent with the terms of this Decree.
- 3. Other diversion, impoundment and storage rights: None.
 - 4. This Decree shall be interpreted, and the rights established hereunder shall be administered and enforced, in accordance with the Settlement Agreement attached hereto and incorporated herein by this reference, as the same may be amended, subject to approval of such amendment by this Court.
 - 5. The Offers of Judgment to CID members, decrees, adjudications or orders entered in the Membership Phase of this proceeding shall be subject to and consistent with the terms of this Decree.

6. This Decree shall not be effective until and unless the CID, the United States, the PVACD, the ISC and the State file with this Court a joint declaration that the conditions precedent set forth in the Settlement Agreement attached hereto and incorporated herein by this reference have been satisfied, or that satisfaction of such conditions precedent has been waived by such parties. By joint motion filed with this Court on or before December 31, 2004, the CID, the United States, the PVACD and the State may extend the date by which a joint declaration shall be filed with this Court by such parties. In the event that a joint declaration is not filed with this Court on or before December 31, 2004, or such extended date as may be ordered by this Court, then this Decree shall be void *ab initio*, shall have no further force or effect, and all parties hereto shall be relieved from all claims and defenses with respect thereto.
7. If any provision of this Decree or the Settlement Agreement attached hereto and incorporated herein by this reference, or the application of either thereof is adjudicated to be void, invalid or unenforceable, such action shall not render this entire Decree or said Settlement Agreement void, but rather only that provision shall be deemed void, and all remaining provisions shall remain in full force and effect; provided, however, that this Decree and said Settlement Agreement shall remain valid and enforceable absent the void provision only to the extent that the United States, the CID, the PVACD, the ISC and the State agree that the purpose hereof and of said Settlement Agreement will not be materially frustrated by the elimination or lack of enforceability of the void provision.
8. The Settlement Agreement attached hereto and incorporated herein by this reference may be modified by agreement of the parties thereto in accordance with its terms. Any such

modification shall be filed with this Court, and upon such filing and approval of this Court shall modify the Settlement Agreement attached hereto, and, accordingly, shall be deemed to modify this Decree.

Dated: _____

HARL D. BYRD
District Judge Pro Tempore
Fifth Judicial District Court
County of Chaves

Approved as to form only:

State of New Mexico *ex. rel.* State Engineer:

United States of America:

/S/
DL Sanders, General Counsel
Christopher G. Schatzman
Special Assistant Attorneys General
Office of the State Engineer
PO Box 25102
Santa Fe, NM 87504-5102

/S/
David W. Gehlert, Esq.
U.S. Department of Justice
999 18th St., Suite 945 N
Denver, CO 80202

Carlsbad Irrigation District:

Pecos Valley Artesian Conservancy District:

/S/
Steven L. Hernandez, Esq.
Beverly J. Singleman, Esq.
Hubert & Hernandez, P.A.
P.O. Drawer 2857
Las Cruces, NM 88004-2857

/S/
Stuart D. Shanor, Esq.
Hinkle, Hensley, Shanor & Martin
P.O. Box 10
Roswell, NM 88202

/S/
Fred H. Hennighausen, Esq.
Hennighausen & Olsen
PO Box 1415

Roswell, NM 88202

Richard A. Simms, Esq.
P.O. Box 3329
Hailey, ID 83333-3329