

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.)
State Engineer and)
PECOS VALLEY ARTESIAN)
CONSERVANCY DISTRICT,)
)
Plaintiffs,)
)
vs.)
)
L.T. LEWIS, et al.,)
UNITED STATES OF AMERICA,)
)
Defendants.)

Nos. 20294 & 22600
CONSOLIDATED

Carlsbad Basin Section
Carlsbad Irrigation District

OPINION RE THRESHOLD LEGAL ISSUE NO. 1

THIS MATTER comes before the Court in connection for consideration with
Threshold Legal Issue No. 1 which provides:

Whether the utilization of the stream system inter se procedure for the
project adjudication prior to the adjudication of all other stream system
subfiles denies due process to affected parties and is contrary to State v.
Pecos Valley Artesian Conservancy District, 99 N.M. 699, 663 P.2d 358
(1983).

See PRETRIAL ORDER FOR CARLSBAD PROJECT WATER RIGHT CLAIMS (Pretrial
Order) filed on February 26, 1996, pages 5-7.

**I. CLAIMS AND CONTENTION OF PECOS VALLEY ARTESIAN CONSERVANCY
DISTRICT (PVACD)**

In connection with Threshold Legal Issue No. 1, PVACD claims that:

Due process in water right adjudication cases, as it has been defined
by the Supreme Court, requires **at a minimum** that each claimant's water
rights first be determined in a subfile proceeding, either prior to or
simultaneous with expedited show-cause water right proceedings, subject
to later inter se determinations. This due process structure is fundamentally
inconsistent with the procedure intended in this case.

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PVACD'S BRIEF ON THRESHOLD LEGAL ISSUE #1 (PVACD's Brief) at 8.

In support of its position, PVACD relies upon *State ex. rel. Reynolds v. Pecos Valley Artesian Conservancy District*, 99 N.M. 699, 663 P.2d 358 (1983) (*Pecos Valley*); *State ex. rel. Reynolds v. Allman*, 78 NM 1, 427 P.2d 886 (1967) (*Allman*) and *State ex. rel. Reynolds v. Sharp*, 66 NM 192, 344 P.2d 886 (1959) (*Sharp*).

II. SUBMISSIONS REVIEWED BY COURT:

In connection with the Court's consideration of Threshold Legal Issue 1, the Court has reviewed:

1. PVACD's Brief served on October 28, 1996;
2. **NEW MEXICO'S RESPONSE TO PVACD'S BRIEF ON THRESHOLD ISSUE #1** (New Mexico's Response) served on January 24, 1997; and
3. **JOINT RESPONSE OF THE UNITED STATE'S AND THE CARLSBAD IRRIGATION DISTRICT TO PVACD'S BRIEF ON THRESHOLD LEGAL ISSUE #1** (Joint Response) served on January 27, 1997.

By letter dated January 28, 1997 to the Court, counsel for PVACD advised that it did not desire to file a reply brief. No party has requested oral arguments in connection with the submissions pertaining to Threshold Legal Issue No. 1.

The Court determines that oral argument is unnecessary and it will render its opinion re Threshold Legal Issue No. 1 based upon the parties written submissions.

III. COURT'S OPINION RE THRESHOLD LEGAL ISSUE NO. 1

Having considered the submissions of the parties and being otherwise sufficiently advised in the premises, the Court submits its opinion and order in connection with Threshold Legal Issue No. 1 as follows:

1. Preliminary Matters

a. Background - Statement of the Proceedings

The Pretrial Order sets forth the procedure and time schedule (as thereafter extended) for submissions which has been adopted for the determination of threshold legal issues in connection with the adjudication of the water rights claims of the United States of America (United States) and the Carlsbad Irrigation District (CID) in connection with the Carlsbad Project.

2. Claims of PVACD re Threshold Legal Issue No. 1

The matters raised by PVACD have been discussed in some detail in connection with:

- A. The proceedings initiated before the Supreme Court of New Mexico captioned *Storrie Project Water User's Association, et al., v. Hon. Harl D. Byrd and City of Las Vegas, et al.*, N.M. S.Ct. No. 22,964 which involved a petition for writ of superintending control and request for stay filed in connection with the water rights claims of the City of Las Vegas pertaining to the Gallinas River Section, Subfiles Nos. GR 14.1, et al., and the Upper Pecos Groundwater Section Subfile Nos. UP 8.39, et al.

B. This Court's letter opinion dated June 17, 1996 addressed to **ALL COUNSEL OF RECORD AND PARTIES APPEARING PRO SE WHO HAVE ELECTED TO PARTICIPATE IN THE PHASE OF THESE PROCEEDINGS CONCERNING DETERMINATION OF PROCEDURAL ISSUES** dated July 17, 1996 and the **Order Relating to Procedural Issues** filed herein on August 16, 1996. See particularly pages 15-19 of letter opinion.

To reiterate the matters discussed in the superintending control proceedings and the decisions reached by the Court in the letter opinion would only unduly prolong this decision and would serve no useful purpose.

In *Pecos Valley, supra*, the Supreme Court held that "...the usual procedure followed in such adjudications is not inviolate..." and stated:

In *State ex rel. Reynolds v. Allman*, this Court treated the question of whether due process was afforded by the procedure used to adjudicate priorities *inter se*. This Court held that due process entitles 'all who may be bound or affected by a decree ... to notice and hearing, so that they may have their day in court.' *Id.* 78 N.M. at 3, 427 P.2d at 888. The trial court in *Allman* was required to use the same standards in determining the priorities of the two groups of defendants, and the priorities of one group could not be fixed as against the other group until each was afforded an opportunity to contest the priorities of the other.

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Where a procedure that was not required or prohibited by statute was challenged, this Court has previously held that such procedure could be adopted by the state engineer because it was in 'substantial compliance with the requirements of the adjudication statutes, and a reasonable and practical way to accomplish the desired purposes.' *State ex rel. Reynolds v. Sharp*, 66 N.M. 192, 197, 344 P.2d 943, 946 (1959). The procedure adopted by the court in the instant case meets this standard. The usual procedure followed in such adjudications is not inviolate.

This Court concludes that the procedures adopted in connection with the determination of the water rights claims of the United States and CID in connection with the Carlsbad Project meet the requirements set forth in *Pecos Valley*. The water rights claims of objectors or other claimants of water rights need not be first determined in a subfile proceeding, either prior to or simultaneous with, the expedited show cause water right proceedings involved in connection with this phase of these proceedings subject to later *inter se* determinations in order to protect their due process rights.

Allman requires that the same standards and rules be applied to the adjudication of all water rights claims in the adjudication proceedings. The *Allman* standard is being complied with in connection with this phase of these proceedings. *Allman* does not require that each claimant's water rights first be determined before the Court can proceed to adjudicate the water rights claims of CID.

Sharp actually supports the adoption of the procedures in connection with this phase of these proceedings. *Sharp* does not require that each claimant's water rights first be determined before the Court can proceed to adjudicate the water rights claims of CID.

PVACD cites no new authorities or reasons which would require that each claimant's water rights first be determined before the Court can proceed to adjudicate the water rights claims of CID in connection with the Carlsbad Project.

IV. CONCLUSION

Based upon the foregoing authorities, in my opinion, due process does not require that each claimant's water rights first be determined by the Court before it can proceed to a determination and adjudication of the water rights claims of CID in connection with

the Carlsbad Project.

Counsel for PVACD is requested to serve a copy of this opinion upon all counsel of record (other than counsel submitting the responses and briefs referred to in Part II of this opinion) and counsel for the State is requested to serve a copy of this opinion on all parties appearing *pro se* who have elected to participate in this phase of these proceedings.

Dated this 27th day of February 1997.



HARL D. BYRD
District Judge *Pro Tempore*