

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

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FIFTH JUDICIAL DISTRICT
CHAVES COUNTY NM
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BEC J. CLEM
DISTRICT COURT CLERK

STATE OF NEW MEXICO, ex rel.)
State Engineer)
and PECOS VALLEY ARTESIAN)
CONSERVANCY DISTRICT,)

Nos. 20294 and 22600
Consolidated

Plaintiffs,)

vs.)

Hon. Harl D. Byrd
District Judge *Pro Tempore*

L.T. LEWIS, et al.,)
UNITED STATES OF AMERICA,)

Carlsbad Basin Section
Carlsbad Irrigation District

Defendants,)

and)

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

Plaintiffs,)

vs.)

HAGERMAN CANAL CO., et al.,)

Defendants.)

**DECISION AND ORDER RE THE PECOS VALLEY ARTESIAN
CONSERVANCY DISTRICT'S MARCH 14, 2002 MOTION FOR
CLARIFICATION OR RECONSIDERATION**

THIS MATTER comes on for consideration by the Court in connection with the Pecos
Valley Artesian Conservancy District's MOTION FOR CLARIFICATION OR

RECONSIDERATION (PVACD's Motion) filed on March 14, 2002. The motion requests the Court clarify or reconsider its SECOND SUPPLEMENTAL DECISION AND ORDER filed on March 4, 2002 (March 2002 Decision). The motion was supplemented by a CERTIFICATE PURSUANT TO RULE 1-007.1 (B) served on March 22, 2002 and the PVACD'S REQUEST FOR ORAL ARGUMENT served on March 22, 2002.

In connection with PVACD's Motion, the Court has reviewed the following:

1. The Court's March 2002 Decision
2. PVACD's Motion
3. The aforesaid certificate.
4. The aforesaid request for oral argument.
5. The portion of THE UNITED STATES MOTION FOR CLARIFICATION AND RESPONSE TO PVACD'S MOTION FOR CLARIFICATION OR RECONSIDERATION (United States's Motion and Response) served on March 22, 2002 pertaining to PVACD's Motion.
6. The STATE'S COMBINED RESPONSE TO PVACD'S MARCH 14, 2002 MOTION FOR CLARIFICATION OR RECONSIDERATION AND MARCH 22, 2002 REQUEST FOR ORAL ARGUMENT, AND THE UNITED STATES'S MARCH 22, 2002 MOTION FOR RECONSIDERATION (State's Combined Responses) served on April 2, 2002 insofar as it pertains to PVACD's Motion.
7. DEFENDANT CARLSBAD IRRIGATION DISTRICT'S CONCURRENCE AND JOINDER IN RESPONSES OF THE UNITED STATES AND THE STATE OF NEW MEXICO/STATE ENGINEER OPPOSING PVACD'S MOTION FOR CLARIFICATION OR RECONSIDERATION (CID's Concurrence and Joinder) served on April 10, 2002.
8. PVACD's REPLY TO THE UNITED STATES' RESPONSE TO PVACD'S MOTION FOR CLARIFICATION OR RECONSIDERATION (PVACD's Reply) filed on April 10, 2002.
9. PVACD'S REPLY TO THE STATE'S RESPONSE TO PVACD'S MOTION FOR CLARIFICATION OR RECONSIDERATION filed on April 15, 2002.
10. LETTER FROM COUNSEL FOR PVACD TO THE COURT (PVACD letter)

dated April 22, 2002 stating that they did not believe that "...a conference call, an in-person conference, or oral argument are necessary." and withdrew their request for oral argument.

The last full paragraph of PVACD's Motion states:

WHEREFORE, the Pecos Valley Artesian Conservancy District moves that the Court clarify its SECOND SUPPLEMENTAL DECISION AND ORDER of March 4, 2002, by stating that the DECISION AND ORDER was not meant to foreclose the introduction of evidence regarding the historical application of water to beneficial use within the Carlsbad Irrigation Project. If the Court's DECISION AND ORDER cannot be so clarified, the Pecos Valley Artesian Conservancy District moves that the Court reconsider its decision on an expedited briefing schedule to be set in due course. At p. 6.

In PVACD's Reply, counsel states:

The object of PVACD's motion for clarification or reconsideration is to make it clear, as a matter of record, that evidence of individual or group priorities within the Project will be adduced in the Project phase of the case. Without such evidence, the Court will have no basis upon which to know when the Project rights were initiated or whether the doctrine of relation back applies to the entire Project, to graduated stages of Project development, or at all. At p. 4.

Because of certain phrasing in the Court's Second Supplemental Decision and Order, however, PVACD would like the Court to clarify that the water users who filed *inter se* objections to the priorities in the Stipulated Offer of Judgment are not foreclosed from, but rather are entitled to present evidence of the historical development of individual or group priorities within the Project in the Project Phase of this case. We are further entitled to a complete adjudication of all of the interrelated rights to the use of the waters of the Pecos River stream system before any administration that comports with due process can be undertaken. At pp. 11-12.

The Court, having considered the submissions of the parties, having prepared and served

a letter decision and order dated April 17, 2002, and being otherwise sufficiently advised in the premises, determines that oral argument is not necessary, and clarifies its March 2002 Decision as follows:

The notices¹ given to all claimants of water rights in the Pecos River Stream System pertaining to proceedings to determine whether the Stipulated Offer of Judgment filed on June 22, 1994 should be approved or disapproved were given in order to inform them of their right to contest all or any part of the water rights claims set forth in the Stipulated Offer of Judgment and the manner in which they could preserve their rights in connection therewith. Thus, they were afforded procedural due process.

The Court's March 2002 Decision, should not be construed as addressing or determining that objections to priority dates concerning the Carlsbad Project as set forth in the Stipulated Offer of Judgment are foreclosed or that objectors are prohibited from presenting relevant admissible evidence as to whether the Court should approve or disapprove the offer. PVACD's requests that evidence be received "regarding the historical application of water to beneficial use within the Carlsbad Irrigation Project." are, however, overly broad. See PVACD's Motion at p. 6. While relevant, admissible evidence will be considered in order to determine whether the proposed Stipulated Offer of Judgment should be approved, the Court did not determine and it

¹ See Court's letter opinion dated July 17, 1996 re Procedural Issue No. 3, which is phrased as:

Whether The Decree Adjudicating The Project Water Rights Will Be Binding
On All Water Right Claimants In The Pecos River Stream System Or Only On
Those Claimants Made Defendants Through Personal Service Of Summons and
Complaint.

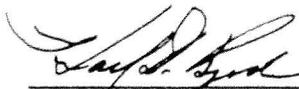
An ORDER RELATING TO PROCEDURAL ISSUES implementing the letter opinion was filed on August 16, 1996.

was not intended that a general adjudication and determination of all water rights of claimants on the Pecos River, including their respective priorities, would be adjudicated in the Project (Offer) Phase of these proceedings. Issues concerning "...a complete adjudication of all of the interrelated rights to the use of waters of the Pecos River Stream System before any administration that comports with due process..." (PVACD's Reply at p. 12) will not be considered in the Project (Offer) Phase of these proceedings but will be considered in connection with subsequent *inter se* phases of these proceedings.

It is impossible to further rule at this time concerning the admissibility of evidence which may be proffered by PVACD or any other party concerning "the historical application of water to beneficial use within the Carlsbad Irrigation Project." (PVACD'S Motion at p. 6) in the absence of a proper tender of proof. Further problems, if any, concerning PVACD's request to introduce evidence in connection with the historical development of individual or group priorities or other evidentiary matters pertaining to the Project (Offer) Phase of these proceedings will be addressed in the process of developing and entering an appropriate prehearing order and implementing the terms and provisions thereof.

Except as specifically determined and set forth in this Decision and Order, nothing contained herein shall be deemed or construed as a determination of any matter argued or otherwise set forth in the submissions of counsel in connection with PVACD's Motion.

IT IS SO ORDERED.



HARL D. BYRD
DISTRICT JUDGE *PRO TEMPORE*