

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB-LFG

RIO CHAMA STREAM SYSTEM

Section 7, Rutherford & Plaza Blanca

**SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS
IN THE RUTHERON & PLAZA BLANCA SUBSECTION OF SECTION 7
OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered by the Court pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Rutherford & Plaza Blanca Subsection of Section 7 of the Rio Chama Stream System (“Rutherford & Plaza Blanca Subsection”).

I. DETERMINATION OF PRIORITY DATES.

A. Under the November 19, 2002, procedural order for the adjudication of surface water irrigation rights in Section 7, the adjudication of priority dates and irrigation water requirements will be initiated by the State following the completion of individual subfile activity. The adjudication of the elements of water rights in individual subfiles in the Rutherford & Plaza Blanca Subsection for surface water irrigation use is now complete with the exception of the determination of priority dates and irrigation water requirements.

B. The State of New Mexico proposes the determination of the following ditch-wide priority dates for irrigated lands under pre-1907 ditches located in the Rutherford & Plaza Blanca

Subsection as described below:

DITCH	PRIORITY DATE
Plaza Blanca Ditch	1861
Trujillo Ditch	1877

C: The State of New Mexico proposes the determination of the following priority dates for lands in the Rutherford & Plaza Blanca Subsection that are irrigated under a final license issued by the Office of the State Engineer, or irrigated under an approved permit for the transfer of water rights, as described below:

DITCH	OSE License	PRIORITY DATE
<u>Willow Creek Mesa Ditch</u>	No. 1545 & 1699	December 4, 1922

The above priority of December 4, 1922 will apply to all lands irrigated by the Willow Creek Mesa Ditch under OSE License No. 1545 & 1699 with the exception of the lands in the subdivisions described below.

<u>Willow Creek Mesa Ditch</u>	No. 1545 & 1699	February 2, 1926
<u>Subfile No.</u>	<u>Subdivision¹</u>	<u>Acres</u>
CHRU-002-0001	Sec 34, T2S, R2E	
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	10.20
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	1.05
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	0.67
	Sec 35, T2S, R2E	
	NW $\frac{1}{4}$ NW $\frac{1}{4}$	3.32
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	6.14
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	8.62
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	22.54
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	0.03
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	6.41
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15.73
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	21.26

¹ The subdivision information for tracts under the Willow Creek Mesa Ditch is based upon the maps and plats submitted by the applicants in the administrative proceedings before the State Engineer.

	Sec 2 T3S, R2E NW¼ NW¼	7.49
CHRU-001-0003	Sec 36, T2S, R2E SW¼ NW¼	0.70
CHRU-003-0006	Sec 1, T3S, R2E SE¼ NW¼	13.99
CHRU-004-0042	Sec 11, T3S, R2E SW¼ NE¼	0.86
CHRU-004-0043	Sec 11, T3S, R2E SW¼ NE¼ SE¼NW¼	1.35 1.12

The lands in the subdivisions described above, to which the priority of February 2, 1926 will apply, are shown on the map attached hereto prepared by the Office of the State Engineer dated December 29, 2011.

TRANSFERRED WATER RIGHTS

<u>Move-to Location</u>	OSE Permit	PRIORITY DATE
CHRU-004-0050A (Unser LLC)	No. 1545 & 1699 into 4888 & 4889	December 4, 1922

D. The adjudication of water right priorities on community and private ditches in the Rutherford & Plaza Blanca Subsection shall be completed in a show cause proceeding modeled on the process used in the determination of priority dates in Section 5 (Rio Gallina). *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Rio Gallina Section of the Rio Chama Stream System* filed August 8, 2008 (Doc. No. 8752).

By February 15, 2012, the State of New Mexico ("State") shall file a Motion For Approval of Form of Notice and Order to Show Cause with respect to priority date offers that the State intends to serve on individual subfile defendants in the Rutherford & Plaza Blanca Subsection. With this Court's approval of the proposed form of notice, the Notice and Order to Show Cause will be served

by mail on all individual subfile defendants in the Rutherford & Plaza Blanca Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with either: (1) the priority date proposed by the State for their own water right and ditch, or (2) the priority dates proposed by the State for any other community or private ditch or surface water irrigation water rights in the Rutherford & Plaza Blanca Subsection. In the absence of an objection to the priority dates proposed by the State, the Court will enter a final order with respect to priority dates of all ditches and surface water irrigation rights in the Rutherford & Plaza Blanca Subsection. This determination of priority dates shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants in the Rutherford & Plaza Blanca Subsection will be informed that they will have no other opportunity to protest priority date determinations of the ditches and surface water irrigation rights in the Rutherford & Plaza Blanca Subsection, and that subsequent *inter se* proceedings in the Rutherford & Plaza Blanca Subsection will not include the opportunity to object to those determinations.

In cases where defendants in the Rutherford & Plaza Blanca Subsection have previously agreed with the State on the priority for their water rights, and those priority dates have been incorporated into subfile orders entered by the Court, those priority dates cannot be challenged by those defendants. Other persons with standing may however file objections.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches and surface water irrigation rights in the Rutherford & Plaza Blanca Subsection to be served on the United States and the Commissioners of each community ditch in the Rutherford & Plaza Blanca Subsection that is a party to these proceedings.

The State shall prepare a proposed Notice for publication to inform defendants and all persons

having water rights of any type in the Rutherford & Plaza Blanca Subsection of their right to participate and offer evidence in support of objections to the proposed determination of priority dates for ditches and surface water irrigation rights in the Rutherford & Plaza Blanca Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

II. DETERMINATION OF IRRIGATION WATER REQUIREMENTS.

A. The State proposes the determination of the following irrigation water requirements for irrigated lands under pre-1907 ditches located in the Rutherford & Plaza Blanca Subsection as described below:

- a. The weighted consumptive irrigation requirement (CIR) is 1.08 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 2.70 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 4.50 acre-feet per acre per annum.

The ditches in the Rutherford & Plaza Blanca Subsection to which these amounts would apply are those identified in paragraph I (B) above. The irrigation water requirements in the Rutherford & Plaza Blanca Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

B. The State proposes the determination of the following irrigation water requirements for lands in the Rutherford & Plaza Blanca Subsection that are irrigated under a final license issued by the Office of the State Engineer, or irrigated under an approved permit for the transfer of water rights, as described below:

Willow Creek Mesa Ditch (OSE License No. 1545 & 1699)

- a. The weighted consumptive irrigation requirement (CIR) is 1.08 acre-feet per

acre per annum.

- b. The farm delivery requirement (FDR) is 1.5 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 2.5 acre-feet per acre per annum.

TRANSFERRED WATER RIGHTS

<u>Move-to location</u>	OSE Permit	AMOUNT OF WATER
CHRU-004-0050A	No. 1545 & 1699 into 4888 & 4889	23.67 acre-feet per annum consumptive use 40.35 acre-feet per annum diversion amount

The irrigation water requirements in the Rutherford & Plaza Blanca Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

C. The adjudication of irrigation water requirements in the Rutherford & Plaza Blanca Subsection shall be completed in a show cause proceeding using the procedures described above in connection with the determination of priority dates for ditches in the Rutherford & Plaza Blanca Subsection.

By February 15, 2012, the State shall file a Motion For Approval of Form of Notice and Order to Show Cause in connection with the determination of irrigation water requirements that the State intends to serve on individual subfile defendants in the Rutherford & Plaza Blanca Subsection. With this Court’s approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Rutherford & Plaza Blanca Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with the irrigation water requirements proposed by the State for all surface water irrigation use in the Rutherford & Plaza Blanca Subsection. In the absence of an objection to the irrigation water requirements proposed by the State, the Court will

enter a final order with respect to surface water irrigation requirements in the Rutherford & Plaza Blanca Subsection. This determination of irrigation water requirements shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants will be informed that they will have no other opportunity to protest the determination of irrigation water requirements in the Rutherford & Plaza Blanca Subsection, and that subsequent *inter se* proceedings in the Rutherford & Plaza Blanca Subsection will not include the opportunity to object to this determination.

In cases where defendants in the Rutherford & Plaza Blanca Subsection have previously agreed with the State on the irrigation water requirements for their water rights, and those amounts have been incorporated into subfile orders entered by the Court, those amounts cannot be challenged by those defendants. Other persons with standing may however file objections.

The State shall prepare a proposed Notice and Order to Show Cause in connection with all ditches and surface water irrigation rights in the Rutherford & Plaza Blanca Subsection to be served on the United States and the Commissioners of each community ditch in the Rutherford & Plaza Blanca Subsection that is a party to these proceedings.

The State shall prepare a proposed Notice for publication to inform defendants and all persons having water rights of any type in the Rutherford & Plaza Blanca Subsection of their right to participate and offer evidence in support of objections to the proposed determination of irrigation water requirements in the Rutherford & Plaza Blanca Subsection. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun.

D. The State shall coordinate the mailing and publication of the Notices regarding the determination of priority dates and irrigation water requirements so that these events and the stated deadlines therein occur in a coordinated manner. The two Notices will be combined in a single

mailing.

The Notices shall be mailed to the last known address of individual subfile defendants as they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail notices to persons that are not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

E. After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the State shall submit a proposed scheduling and procedural order to address and resolve any objections that are filed with the Court.

IT IS SO ORDERED.



BRUCE D. BLACK
CHIEF UNITED STATES DISTRICT JUDGE

Approved:



LORENZO F. GARCIA
UNITED STATES MAGISTRATE JUDGE