

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

STATE OF NEW MEXICO <i>ex rel.</i>)	
State Engineer, <i>et al.</i> ,)	
)	
Plaintiffs,)	69cv07941-BB-ACE
)	
v.)	RIO CHAMA ADJUDICATION
)	
ROMAN ARAGON, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

CONSENT ORDER

This Consent Order concerns the adjudication of the United States of America’s (“United States”) Wild and Scenic Rivers Act (“WSRA” or “Act”) reserved right claim for the Rio Chama (“WSRA Claim”). The United States, the State of New Mexico *ex rel.* State Engineer (“State”), the Rio Chama Acequias Association (“RCAA”) and the Asociacion de Acequias Norteñas de Rio Arriba (“Acequias Norteñas”), by and through their counsel, have reached agreement regarding all elements of the United States’ federal reserved right under the WSRA.

The Court, having considered the agreement between the parties, and being otherwise fully advised in the premises, FINDS:

1. The Court has jurisdiction over the State, the United States, the RCAA, the Acequias Norteñas, and the subject matter of this suit.
2. The United States’ WSRA Claim arises under section 16 U.S.C. § 1274 of the WSRA and Public Law No.100-633, 102 Stat. 3320 (November 7,1988) (designating a stretch of the Rio Chama as a Wild and Scenic River).

3. As evidenced by the parties' signatures below, the State, the United States, the RCAA, and the Acequias Norteñas are in agreement regarding all elements of the United States' reserved right in the Rio Chama set forth in paragraph 6 of this Consent Order, as limited by the Conditions set forth in paragraph 7 of this Consent Order. This Consent Order and the parties' respective signatures below form the entire agreement between the State, the United States, the RCAA, and the Acequias Norteñas as of the date of this Order.

4. The United States' WSRA Claim is fully resolved by entry of this Consent Order.

5. There is no just reason to delay entry of final judgment as between the State, the United States, the RCAA, and the Acequias Norteñas regarding the elements of the claims of the United States adjudicated by this Consent Order.

6. The right of the United States to the use of the surface flow of the Rio Chama in that segment designated under the WSRA, 16 U.S.C. §§1271 et seq., Public Law No.103-633 is as set forth below, *subject to the Conditions set out in paragraph 7 of this*

Consent Order:

State Engineer File No.: None

Priority: November 7, 1988 (the date of the designation of the subject section of the Rio Chama under Public Law No.100-633, 102 Stat. 3320).

Source of Water: Surface waters of the Rio Chama, a tributary of the Rio Grande.

Purpose of Use: Maintenance of all the outstandingly remarkable values that were the basis for the November 7, 1988 designation of the Rio Chama as a Wild and Scenic River pursuant to the WSRA, including but not limited to scenic values, fisheries, riparian and bald eagle habitat, recreational fishing and boating.

Point of Diversion: None. There is no diversion associated with this reserved water right

Place of Use: The segment of the Rio Chama extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 24.6 miles to elevation 6,353 feet above mean sea level.

Amount of Water: The following amounts of water occurring from the natural surface water flow of the Rio Chama, measured in cubic feet per second (“cfs”) at the USGS 08285500 gaging station below El Vado Dam, at latitude 36°34’48”, longitude 106°43’24” NAD27 and the USGS 08286500 gaging station on the Rio Chama above Abiquiu, at latitude 36°19’06”, longitude 106°35’50” NAD1927. As used in this Order, “natural surface water flow” excludes any water imported to the river through the San Juan Chama Project or other out of basin diversion.

<u>Time Period</u>	<u>Flow</u>
October 16 to April 15	100cfs
April 16 to June 15	500 cfs
June 16 to August 31	90 cfs
September 1 to October 15	75 cfs

Peak-Flow: When available from natural surface water flow, between April 16 and June 15, the United States shall have the right to one peak flow of 2500 cfs for a 24-hour period


7. **Conditions:** The United States’ right to the instream use of the flows set forth above in paragraph 6 is subject to the following Conditions:
- A. The right is and shall be non-consumptive.
 - B. The right is limited to the use of the natural surface water flow of the Rio Chama for the purposes of use set forth above in the designated wild and scenic segments of the Rio Chama only, and may not be changed to any other place or purpose of use. This right does not include any right to divert the surface waters of the Rio Chama.

- C. The State makes no admission or finding that any unappropriated surface water existed at the time of the WSRA designation, or that there will be surface water available to satisfy the reserved right adjudicated hereby.
- D. Through this right, the United States is not entitled to assert and shall not assert a priority call to satisfy the flow amounts recognized herein if there are sufficient surface water flows from any source, either natural or imported, to satisfy the natural surface flow amounts for WSRA purposes.
- E. Through this right, the United States does not claim and is not entitled to call for or require any water from any reservoir, or from any transmountain, imported, foreign or nontributary water source, to be used to quantify or satisfy natural surface water flow amounts for WSRA purposes. Nothing herein, however, precludes the United States from the acquisition of surface water rights as provided under state law.
- F. This Consent Order does not create a right to modify storage (or preclude contracting for available storage) or flood control operations at El Vado, Heron or Abiquiu reservoirs.
- G. The United States shall not assert a priority call to increase flows pursuant to this right unless the “Rio Chama below El Vado Dam” gage (U.S.G.S. 08285500) and “Rio Chama above Abiquiu Reservoir” gage (U.S.G.S. 0886500) are maintained and operated in accordance with accepted standards. The gages will demonstrate the United States’ beneficial use of the stream flow for WSRA purposes of use within the segment.
- H. Any priority call pursuant to this right may only be enforced against the

exercise of junior water rights; that is, water rights with priority dates later than November 7, 1988. However, this right shall not be enforced against rights permitted under NMSA 1978, § 72-12-1.1 or its predecessor statutes.

8. The United States has no right for the instream use of the surface water flows of the Rio Chama other than as set forth in this Consent Order or as may be adjudicated by a future order from this adjudication court or as provided in ¶7(E), above.
9. The United States and its successors, representatives, and assigns are enjoined from any instream uses of the flows of the public waters of the Rio Chama stream system except in strict accordance with this Consent Order or as may be adjudicated by a future order from this adjudication court or as provided in ¶7(E), above.
10. The instream use right herein adjudicated, as between the State and the United States and the RCAA and the Acequias Norteñas, is subject to the right of any other water right claimant with standing to object *inter se* prior to entry of a final decree.
11. Because this agreement between the parties regarding the elements of the United States' right is based upon the unique facts present on the Rio Chama, the parties agree that nothing in this Order shall be construed or interpreted to establish any standard or precedent with regard to the determination or quantification of the amounts of the flow for instream use of any other claims, or to limit or affect the authority of the United States or the State provided by statute or regulation.

IT IS THEREFORE ORDERED that the right of the United States to the instream use of the flow of the public waters of the Rio Chama stream system is hereby adjudicated, as between the State and the United States and the RCAA and the Acequias Norteñas, as set forth herein; that the United States and its successors, representatives, and assigns are hereby enjoined from diverting and using public waters of the Rio Chama stream system for the purposes of use adjudicated herein except in strict accordance with this Consent Order and other orders of the Court in this cause; and that the Court enters this Consent Order as a final judgment as to the elements of the United States' reserved right set forth herein, subject to the right of any other water right claimant with standing to object *inter se* prior to the entry of a final decree.

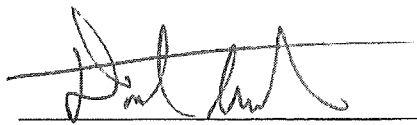

BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

Recommended for approval:


LORENZO F. GARCIA
UNITED STATES MAGISTRATE JUDGE

APPROVED AND ACCEPTED BY:

THE UNITED STATES OF AMERICA:


(Signature)

Date: 3/16/12

Fred J. Waltz, Esq., attorney for the Rio Chama Acequias Association:

Fred J. Waltz
(Signature)

Date: March 16, 2012

John Utton, attorney for Asociacion de Acequias Nortefias de Rio Arriba:

(Signature)

Date: _____

STATE OF NEW MEXICO *ex rel.* STATE ENGINEER:

Special Assistant Attorney General

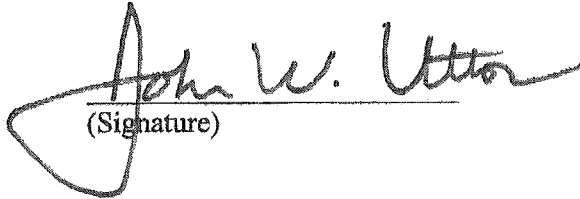
Date: _____

Fred J. Waltz, Esq., attorney for the Rio Chama Acequias Association:

(Signature)

Date: _____

John Utton, attorney for Asociacion de Acequias Nortefias de Rio Arriba:


(Signature)

Date: 3-14-12

STATE OF NEW MEXICO *ex rel.* STATE ENGINEER:

Special Assistant Attorney General

Date: _____

Fred J. Waltz, Esq., attorney for the Rio Chama Acequias Association:

(Signature)

Date: _____

John Utton, attorney for Asociacion de Acequias Norteñas de Rio Arriba:

(Signature)

Date: _____

STATE OF NEW MEXICO *ex rel.* STATE ENGINEER:

Ed Newville
Special Assistant Attorney General

Date: *5-1-2012*