

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-MV/LFG

RIO CHAMA STREAM SYSTEM

Section 3, Rio Nutrias

PARTIAL FINAL JUDGMENT AND DECREE
ON SURFACE WATER IRRIGATION RIGHTS
IN THE RIO NUTRIAS SUBSECTION OF SECTION 3
OF THE RIO CHAMA STREAM SYSTEM

THIS MATTER comes before the Court upon its own motion for the entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System (“Decree”). The Court, having considered the pleadings and orders previously filed or entered and being fully advised in the premises, FINDS:

1. The Court has jurisdiction over the subject matter and parties.
2. This case is a general adjudication of all rights to divert or impound and beneficially use the public surface and underground waters of the Rio Chama Stream System, a tributary of the Rio Grande.
3. This Decree is entered for the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System (“Rio Nutrias Subsection”) in accordance with NMSA 1978, § 72-4-19 (1907). The Rio Nutrias Subsection includes the watershed of the Rio Nutrias, a tributary of the Rio Chama. All

rights to divert and use surface water for irrigation purposes in the Rio Nutrias Subsection are decreed herein. This Decree does not determine, affect or adjudicate claims to groundwater or stock watering uses in the Rio Nutrias Subsection.

4. Orders adjudicating the water rights of defendants in the Rio Nutrias Subsection for surface water irrigation use, as against the State of New Mexico, have previously been entered for all subfiles within this section of the stream system. These subfile orders are expressly approved and confirmed as valid as of the date of the entry of the individual subfile order.

5. The Addendum attached to this Decree summarizes the water rights adjudicated and decreed herein. The substantive elements of the water rights are those described and adjudicated by the individual subfile orders and subsequent orders of the Court, unless clearly noted otherwise in the Addendum.

6. All claims to the diversion and use of public surface water in the Rio Nutrias Subsection for irrigation purposes have been determined and adjudicated by this Court.

7. Beneficial use is the basis, the measure, and the limit of all of the water rights decreed herein.

8. On July 1, 2011, the Court filed its *Order Granting Motion to Establish Procedures for Entry of Partial Final Judgment and Decree on Surface Water Irrigation Rights in Rio Nutrias Subsection, Section 3, Rio Chama Stream System* (Docket No. 10177) to control the course of *inter se* proceedings in the Rio Nutrias Subsection leading to the entry of this Decree. Notice of the deadline for filing *inter se* objections to any water rights previously adjudicated in a subfile order and described in this Decree was served on all claimants, known and unknown, to the use of water in the Rio Nutrias Subsection. On December 12, 2011, Filiberto Ulibarri and Domitilia L. Ulibarri filed

objections to the proposed decree of water right of Lucia A. Montoya and Robert J. Montoya in Subfile CHCNU-002-0014 (Doc. No. 10664). No other *inter se* objections were filed with the Court. On April 29, 2013, Filiberto Ulibarri and Domitilia L. Ulibarri gave notice that they had entered into a Settlement Agreement with the Montoyas, and they withdrew their *inter se* objections (Doc. No. 10904).

9. Throughout the course of these proceedings, all claimants to the use of water in the Rio Nutrias Subsection were provided with adequate legal notice of all proceedings to adjudicate their water rights claims and adequate legal notice of all *inter se* proceedings. All *inter se* objections that were timely filed with the Court have been finally resolved.

10. This Decree is a final adjudication of all surface water rights for irrigation purposes in the Rio Nutrias Subsection and is binding between and among the plaintiff and all persons claiming water rights of any type in the Rio Nutrias Subsection.

11. The right of parties to the Rio Chama adjudication suit who are not included within the Rio Nutrias Subsection to contest any individual water right adjudicated within this subsection of the stream system, is expressly reserved until this Court orders further *inter se* proceedings for the Rio Chama Stream System.

12. The water rights adjudicated herein may in the future be subject to general *inter se* proceedings that involve all adjudicated water rights of the Rio Grande Stream System and its tributaries.

13. There is no just reason for delay, and this Decree is a final judgment in accordance with Fed. R. Civ. P. 54(b).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. All water rights for surface water irrigation uses within the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System, as set forth in previously filed orders and summarized in the Addendum attached hereto, are finally adjudicated by this Decree.

2. The defendants whose water rights are adjudicated herein, their successors, representatives and assigns, are hereby enjoined from diverting or using the public waters of the Rio Chama Stream System except in strict accordance with this Decree and such other orders of the Court that may be entered in this cause.

3. There is no just reason for delay, and the Court hereby expressly directs entry of this Decree pursuant to Fed. R. Civ. P. 54(b).

4. The attached Addendum is incorporated by reference as though fully set forth herein. In the event there is a discrepancy between a description of water rights set forth in the Addendum and the specific order or document that determines that right, the specific order or document is controlling unless expressly stated otherwise in the Addendum.

5. Jurisdiction is reserved to determine and adjudicate claims, disputes or contests *inter se* between defendants in the Rio Nutrias Subsection and defendants in other sections or subsections of the Rio Chama Stream System.

6. Jurisdiction is reserved until further order for the purpose of enforcing the provisions of this Decree and entering such supplementary orders as may be necessary for the enforcement, modification and correction of this Decree and other orders heretofore entered.

DATED this _____ day of _____, 2013.

MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE

Approved:

LORENZO F. GARCIA
UNITED STATES MAGISTRATE JUDGE