

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

STATE OF NEW MEXICO
THE ELEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY

2007 OCT 29 AM 11 09

CV-75-184
ROZIER E. SANCHEZ
District Judge, *pro tempore*

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

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

La Plata River Section

DONNA M. BECENTI
KEVIN R. BECENTI
SHAUNA BECENTI

Court Case No.: AF-01-96
Subfile No.: SJLP-003-0025

MOTION FOR ENTRY OF CONSENT ORDER

COMES NOW the Plaintiff, State of New Mexico *ex rel.* State Engineer ("State") pursuant to Sections V(E)(4) and VI(C) of the Scheduling Order Governing Adjudication of Irrigation Water Rights in the La Plata River Section ("Scheduling Order") and moves this Court to enter the attached proposed Consent Order against the Claimants Donna M. Becenti, Kevin R. Becenti, and Shauna Becenti ("Claimants") for their failure to file a rejection of the State's Consent Order. In support of this request, Plaintiff states as follows:

1. On August 16, 2006, Claimant Kevin R. Becenti received a Service Package by certified mail, restricted delivery and return receipt requested.
2. Claimants Donna M. and Shauna Becenti filed Notices of Claim on September 6, 2006.

DKtd

3. Thereafter, the State mailed Settlement Packages to the Claimants on January 23, 2007, which contained the State's proposed Consent Order of Claimants' surface water rights in the La Plata River Section. The proposed Consent Order is attached hereto as Exhibit A.

4. The State filed proof of service of the Service Packages for the Claimants with the Clerk of the Court on January 24, 2007.

5. Claimants failed to sign the proposed Consent Order and also failed to file a rejection of the State's proposed Consent Order as required by Section V(E) of the Scheduling Order.

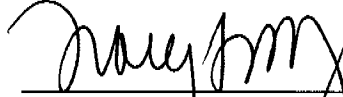
6. The time for filing a rejection has expired. See Affidavit of Counsel, attached hereto as Exhibit B.

7. As a result of Claimants' failure to properly respond to the proposed Consent Order, Claimants are presumed to have accepted the State's proposed Consent Order, which have accepted the State's proposed Consent Order, consistent with the hydrographic survey. See Scheduling Order, Section V(E)(4).

8. According to Sections V(E)(4) and VI (C)(1) of the Scheduling Order, the Court may now enter the Consent Order.

WHEREFORE, Plaintiff State of New Mexico *ex rel.* State Engineer respectfully requests that the Court enter the attached proposed Consent Order against Claimants Donna M. Becenti, Kevin R. Decenti, and Shauna Becenti submitted with this motion.

Respectfully submitted,

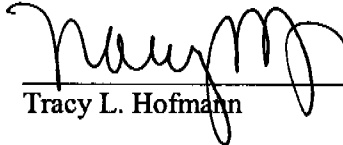


Tracy L. Hofmann
Special Assistant Attorney General
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

Attorney for Plaintiff State of New Mexico
ex rel. State Engineer

CERTIFICATE OF SERVICE

I certify that on Oct 26, 2007, a copy of the foregoing paper was served by first class mail on the persons identified below.


Tracy L. Hofmann

Kevin R. Becenti
Donna M. Becenti
Shauna Becenti
P.O. Box 351
La Plata, NM 87418

EXHIBIT A

STATE OF NEW MEXICO
ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF SAN JUAN

STATE OF NEW MEXICO, ex rel. THE
STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants,

vs.

THE JICARILLA APACHE TRIBE and the
NAVAJO NATION,

Defendant-Intervenors.

No. CV-75-184

Hon. ROZIER E. SANCHEZ
District Judge *Pro Tempore*

SAN JUAN RIVER STREAM
SYSTEM ADJUDICATION

La Plata River Section

DONNA M. BECENTI

KEVIN R. BECENTI

SHAUNA BECENTI

Court Case No.: AF-01-96

Subfile No.: SJLP-003-0025

CONSENT ORDER

The Court, having considered the agreement between Plaintiff, the State of New Mexico, *ex rel.* the State Engineer ("State") and the Defendant(s) named above (hereinafter referred to as "Defendant" for both single and plural Defendants) regarding Defendant's right to divert and use the waters of the San Juan River Stream System, as set forth below, FINDS:

1. The Court has jurisdiction over the State, the Defendant, and the subject matter of this suit.
2. The water right adjudicated pursuant to paragraph 5 of this Consent Order is part of a water right previously adjudicated in *Echo Ditch Company, et al. v. The McDermott Ditch Company, et al.*, San Juan County District Court, Cause No. 01690 (April 8, 1948). Except for the elements listed in paragraph 5 as "reserved for future determination in section-wide proceeding," this Consent Order fully and exclusively adjudicates all the elements of the water right(s) described herein. However, nothing herein shall be construed as an admission by the parties hereto that the elements shown below as "reserved for future determination in section-wide proceeding" are required or necessary to fully describe the previously adjudicated water right(s) described in paragraph 5.

3. The State and Defendant are in agreement regarding the Court's findings and all elements of Defendant's right to divert and use the public waters of the San Juan River Stream System, as set forth in Paragraph 5 of this Consent Order. This Consent Order and the parties' respective signatures below evidence the entire agreement between the State and Defendant regarding the elements of the water rights adjudicated by this Consent Order.

4. Defendant represents that Defendant is the sole current owner of the water rights adjudicated herein, and that Defendant has no other claims to water rights in the La Plata Section except those adjudicated by this Consent Order and the following claims, which are expressly identified herein below and reserved for later adjudication by the Court:

Claims Excluded From This Consent Order:

a. Any claim(s) relating to "the subsisting vested right to demand, divert, and receive and use such amount and amounts of waters, as are from time to time beneficially needed and required, for domestic and stock watering purposes," as described in the *Echo Ditch* Decree.

b. List any other excluded claims:

NONE

5. There is no just reason for delay of final judgment as to the claims adjudicated by this Consent Order. Therefore, except as may be expressly excluded from this Consent Order and reserved for later determination, pursuant to Rule 1-054(B), NMRA (2004), this Consent Order constitutes a final judgment, as between the State and Defendant, of all claims for water rights of the Defendant in the La Plata River Section:

A. IRRIGATED LANDS (Surface Water Only):

Priority: Reserved for future determination in section-wide proceeding

Source of Water: Surface water of the La Plata River, a tributary of the San Juan River.

Purpose of Use: IRRIGATION

Point of Diversion: **Ditch:** LA PLATA INDIAN DITCH

Location: X= 2,618,347 feet Y= 2,172,812 feet

New Mexico State Plane Coordinate System, West Zone, NAD 1983

Location and Amount of Irrigated Acreage:

Section 03, Township 31N, Range 13W, N.M.P.M.

Pt. NE¼

5.9 acres

Total 5.9 acres

As shown on the attached Subfile Map for Tract SJLP-003-0025 of the 2006 La Plata Hydrographic Survey.

Rate of Flow: Reserved for future determination in section-wide proceeding

Amount of Water: Reserved for future determination in section-wide proceeding

6. Defendant and Defendant's successors, representatives, heirs, and assigns should be enjoined from any use of the public waters of the San Juan River System except in strict accordance with this Consent Order and other orders of the Court in this cause.

7. The water right(s) described herein should be adjudicated, as between the State and Defendant, subject to the right of any other water right claimant with standing to object prior to entry of a final decree.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

A. All claim(s) of the Defendant to divert and use the public waters of the San Juan River Stream System, La Plata Section, is/are hereby adjudicated, as between the State and Defendant, as set forth herein, except as to those claim(s), and elements thereof, expressly excluded from this Consent Order or reserved for later determination in section-wide proceedings.

B. The Defendant and Defendant's successors, representatives, heirs, and assigns are hereby enjoined from diverting or using public waters of the San Juan River Stream System except in strict accordance with this Consent Order and other orders of the Court in this cause.

C. There is no just reason for delay of final judgment as to the claims adjudicated by this Consent Order. Except as may be expressly excluded from this Consent Order and reserved for later determination, pursuant to Rule 1-054(B), NMRA (2004), this Consent Order constitutes a final judgment, as between the State and Defendant, of all claims for water rights of the Defendant in the La Plata River Section.

D. In the event the Irrigated Tract(s) described herein is/are sold or the water right(s) otherwise transferred, in whole or in part, Defendant shall provide a copy of this Consent Order to the buyer and the buyer shall promptly complete and file a change of ownership form with the Office of the State Engineer in accordance with law.

IT IS SO ORDERED.

ROZIER E. SANCHEZ
District Judge, *Pro Tempore*

APPROVED AND ACCEPTED BY:

SIGNATURE Consent Implied
SHAUNA BECENTI

ADDRESS: See State's Motion for
Entry of Consent Order
10/26/07

DATE: _____

SIGNATURE Consent Implied
DONNA M. BECENTI

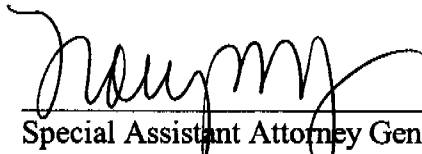
ADDRESS: See State's Motion for
Entry of Consent Order
10/26/07

DATE: _____

SIGNATURE Consent Implied
KEVIN R. BECENTI

ADDRESS: See State's Motion for
Entry of Consent Order
10/26/07

DATE: _____



Special Assistant Attorney General

Date: 10/26/07

2620000

2619500

2619000

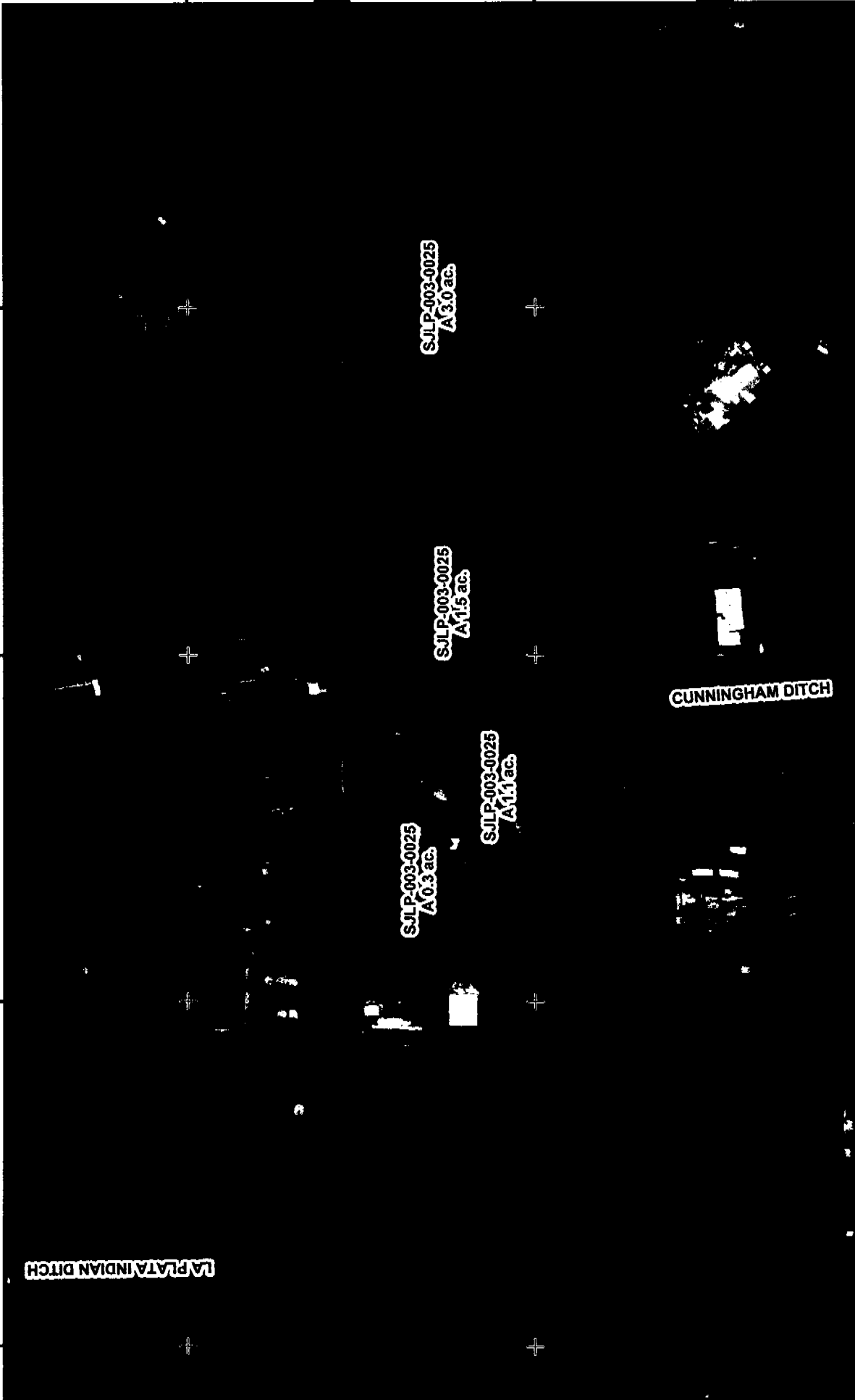
2618500

2160500

000000

2160500

000000



State of New Mexico

Office of the State Engineer
John R. D'Antonio, Jr., P.E., State Engineer

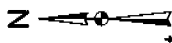
San Juan River Stream System
Hydrographic Survey
La Plata River Section



Tract Number
SJLP-003-0025
La Plata Indian
Ditch
January 11, 2007

Grid Interval = 500'
NMSP West NAD83

1:2,400
1 inch equals 200 feet



- Point of Diversion
- ▲ Ditch
- Land with Irrigation Right

EXHIBIT B

STATE OF NEW MEXICO
THE ELEVENTH JUDICIAL DISTRICT COURT
SAN JUAN COUNTY

CV-75-184
ROZIER E. SANCHEZ
District Judge, *pro tempore*

STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,
Plaintiff,

**SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION
La Plata River Section**

vs.

THE UNITED STATES OF AMERICA, *et al.*,
Defendants,

DONNA M. BECENTI
KEVIN R. BECENTI
SHAUNA BECENTI

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

**Court Case No.: AF-01-96
Subfile No.: SJLP-003-0025**

Defendant-Intervenors.

AFFIDAVIT OF TRACY L. HOFMANN


State of New Mexico)
) ss.
County of Santa Fe)

I, Tracy L. Hofmann, of lawful age and being duly sworn on oath, depose and state that:

1. I am a Special Assistant Attorney General, counsel for the Plaintiff, State of New Mexico *ex rel.* State Engineer in the above-captioned matter.
2. The Claimants listed below failed to file a Rejection in response to the State's proposed Consent Order:

DONNA M. BECENTI	SJLP-003-0025	AF-01-96
KEVIN R. BECENTI	SJLP-003-0025	AF-01-96
SHAUNA. BECENTI	SJLP-003-0025	AF-01-96

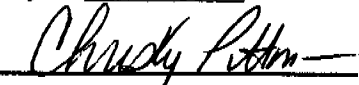
This concludes my sworn testimony.



TRACY L. HOFMANN

SUBSCRIBED AND SWORN to before me this 26 day of October 2007.

My Commission expires: 9/28/08



NOTARY PUBLIC

