

FILED  
DISTRICT COURT  
SAN JUAN COUNTY NM

2009 FEB 23 AM 10 39

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

vs.

La Plata River Section

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

HOWELL Y. WINTERS

Defendants,

Court Case No.: AF-01-337  
Subfile No.: SJLP-007-0068

THE JICARILLA APACHE TRIBE AND THE  
NAVAJO NATION,

Defendant-Intervenors.

**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 Claimant Howell Y. Winters (“Claimant”) for his failure to file a rejection of the State’s Consent Order. In support of its Motion for Entry of Consent Order, Plaintiff states as follows:

1. On July 27, 2006, Claimant was served with a Service Package by certified mail, return receipt requested, restricted delivery as reflected by that Certificate of Service filed with the Court on April 23, 2007 and titled “Certificate of Service 3” on the Court’s website. See also Claimant’s signature receipt attached hereto as Exhibit A.

*JKtd*

2. The State mailed a Settlement Package to the Claimant on July 18, 2008, which contained the State's proposed Consent Order of Claimant's surface water rights in the La Plata River Section. The proposed Consent Order is attached hereto as Exhibit B.

3. The State filed proof of service of the Settlement Package for the Claimant with the Clerk of the Court on July 18, 2008.

4. Claimant 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.

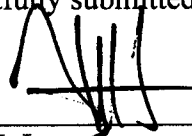
5. The time for filing a rejection has expired. See Affidavit of Counsel, attached hereto as Exhibit C.

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

7. 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 Claimant Howell Y. Winters submitted with this motion.

Respectfully submitted,



\_\_\_\_\_  
Todd M. Lopez  
Special Assistant Attorney General  
New Mexico Office of the State Engineer  
P.O. Box 2246  
Santa Fe, NM 87504-2246  
(505) 992-0811

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

CERTIFICATE OF SERVICE

I certify that on February 19, 2009, a copy of the foregoing paper was served by first class mail on the persons identified below.



\_\_\_\_\_  
Todd M. Lopez

Howell Y. Winters  
858 Hwy 170  
Farmington, NM 87401-7401

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LORENA TEASYATWHO  
P.O. BOX 233  
LA PLATA, NM 87418-0233

*SELL 006-0034*

2. Article Number

(Transfer from service label)

7004 0750 0003 8817 7380

PS Form 3811, February 2004

Domestic Return Receipt

102805-02-M-1040

RECIPIENT, COMPLETE THIS SECTION

A. Signature

*Lorena Teasyatwho*  Agent  Addressee

B. Received by (Printed Name)

LORENA TEASYATWHO

C. Date of Delivery

7/27/06

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**RESTRICTED DELIVERY**

3. Service Type

- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HOWELL Y. WINTERS  
858 HWY 170  
FARMINGTON, NM 87401-7401

*SELL 007-0068*

2. Article Number

(Transfer from service label)

7004 0750 0003 8817 8912

PS Form 3811, February 2004

Domestic Return Receipt

102805-02-M-1040

A. Signature

*Howell Y. Winters*  Agent  Addressee

B. Received by (Printed Name)

Howell Y. Winters

C. Date of Delivery

7-27-06

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**RESTRICTED DELIVERY**

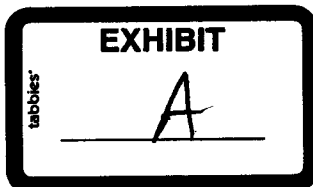


3. Service Type

- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



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

HOWELL Y. WINTERS

Court Case No.: AF-01-337

Subfile No.: SJLP-007-0068

### 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). This Consent Order fully and exclusively adjudicates all the elements of the water right(s) described herein.
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





Total 2.8 acres

As shown on the attached Subfile Map for Tract SJLP-007-0068 of the 2006 La Plata Hydrographic Survey.

**Rate of Flow:**

NONE

**Amount of Water:**

NONE

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.





