

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

DISTRICT COURT  
SAN JUAN COUNTY NM

FILED

2008 OCT 16 PM 4:58 No. 98-75-184

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.

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

SAN JUAN RIVER STREAM  
SYSTEM ADJUDICATION

La Plata River Section

CURTIS W. MITCHELL

LORNA MITCHELL

Court Case No.: AF-01-212

Subfile No.: SJLP-005-0037

### 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

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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:

Defendant claims the right to beneficially use water from the San Juan Underground Water Basin through one or more wells.

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:** February 12, 1877 (Priority No. 1 in the Echo Ditch Decree) for 0.1189 cfs  
May 31, 1886 (Priority No. 15 in the Echo Ditch Decree) for 0.0506 cfs

**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:**                      MC DERMOTT DITCH

**Location:** X= 2,620,311 feet Y= 2,159,482 feet

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

**Location and Amount of Irrigated Acreage:**

Section 10, Township 31N, Range 13W, N.M.P.M.

Pt. NE¼

8.1 acres

Total 8.1 acres

As shown on the attached Subfile Map for Tract SJLP-005-0037 of the 2006 La Plata Hydrographic Survey.

**Rate of Flow:**

0.1189 cfs, Priority Date: February 2, 1877 (Priority No. 1 in the Echo Ditch Decree)

0.0506 cfs, Priority Date: May 31, 1886 (Priority No. 15 in the Echo Ditch Decree)

**Amount of Water:** Not to exceed 24.30 acre-feet per annum

**B. NO RIGHT (Surface Water Only):**

**Priority:** NONE

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

**Purpose of Use:** NO RIGHT

**Point of Diversion:** Ditch: MC DERMOTT DITCH

Location: X= 2,620,311 feet Y= 2,159,482 feet

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

**Location and Amount of Acreage**

Section 10, Township 31N, Range 13W, N.M.P.M.

Pt. NE $\frac{1}{4}$

1.4 acres

Total 1.4 acres

As shown on the attached Subfile Map for Tract SJLP-005-0037 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:**

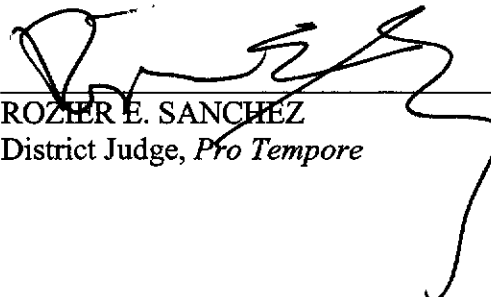
A. All claim(s) of the Defendant to divert and use the public waters of the San Juan River Stream System, La Plata Section, is/are hereby adjudicated, as between the State and Defendant, as set forth herein, except as to those claim(s), and elements thereof, expressly excluded from this Consent Order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

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.**

  
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ROZIER E. SANCHEZ  
District Judge, *Pro Tempore*

APPROVED AND ACCEPTED BY:

SIGNATURE Lorna Mitchell  
LORNA MITCHELL

SIGNATURE Curtis W. Mitchell  
CURTIS W. MITCHELL

ADDRESS: PO Box 523  
La Plata NM  
87418

ADDRESS: Po Box 523  
La Plata NM 87418

DATE: 9-12-08

DATE: 9/12/08

Tracy L. M. J.  
Special Assistant Attorney General

Date: 9/29/08