

STATE OF NEW MEXICO  
SAN JUAN COUNTY  
ELEVENTH JUDICIAL DISTRICT COURT

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED

2018 APR -2 PH 4:39

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

CV-75-184

Plaintiff,

Hon. James J. Wechsler  
Presiding Judge

v.

SAN JUAN RIVER STREAM SYSTEM  
ADJUDICATION

THE UNITED STATES OF AMERICA

LA PLATA RIVER SECTION

*et al.*,  
Defendants,

vs.

THE JICARILLA APACHE TRIBE and the  
NAVAJO NATION,

Defendant-Intervenors.

**STATE OF NEW MEXICO'S MOTION REGARDING DOMESTIC AND STOCK  
WATERING SURFACE WATER RIGHTS IN THE LA PLATA SECTION**

The State of New Mexico, *ex rel.* State Engineer ("State") pursuant to the March 1, 2018 *Scheduling Order* and the status conference held on February 26, 2018, moves for an order regarding the adjudication of domestic and stock watering surface water rights in the La Plata River Section. The State requests that the determination of the domestic and stock watering surface water rights not be included in the *inter se* proceeding and final partial judgment and decree on surface water irrigation rights in the La Plata Section. Instead, the State proposes to adjudicate the domestic and stock watering rights at the same time as the permitted and pre-basin groundwater rights. The proposed order is attached as Exhibit A.

## I. SURFACE WATER DOMESTIC AND STOCK WATERING CLAIMS

1. The 1948 Echo Ditch Decree adjudicated a right to use surface water for domestic and stock watering purposes as an “Additional Right” to each irrigation ditch in the San Juan River stream system, and to each of the landowners and water users under the ditch:

Additional Rights: In addition to the waters diverted for irrigation of lands, this ditch and the land owners and water users thereunder have the subsisting vested right to demand, divert, 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.

Echo Ditch Decree at p. 90, *The Echo Ditch Company, et al. v. The McDermott Ditch Company, et al.*, 37cv01690 (emphasis added). Although the Echo Ditch Decree recognized these surface water domestic and stock watering rights, it did not quantify them.

2. The Echo Ditch Decree language regarding domestic and stock watering purposes appears in every section of the Echo Ditch Decree, and therefore should be treated consistently throughout every section in the San Juan Adjudication.

3. Because the language adjudicating the use of domestic and stock watering in the Echo Ditch Decree is not unique to the La Plata Section, the State believes that the most efficient procedure for adjudicating the domestic and stock watering claims is to address this issue as a stream system issue, at the same time as the adjudication of groundwater claims.

4. In its August 16, 2017 *Status Report on Completing the San Juan River Stream System Adjudication*, the State proposed to adjudicate groundwater rights and ponds basin wide, after the completion of surface water rights adjudications for all sections. The State now proposes to include surface water domestic and livestock watering as part of that process at that time.

## II. STATUS OF ORDERS ADJUDICATING LA PLATA SECTION SURFACE IRRIGATION RIGHTS

5. The State has entered orders adjudicating irrigation surface water rights in the La Plata River section on over 600 claims filed by known claimants, pursuant to the March 30, 2006 *La Plata Scheduling Order*. See December 22, 2017 *Status Report on the La Plata Section of the San Juan River Stream System Adjudication* (“*Status Report*”) at p. 1 (“Consent orders were entered for the last three contested subfiles on October 17, 2017”).

6. Excluding claims for surface water domestic and stock watering purposes at this time is consistent with the orders that have been entered adjudicating surface water irrigation rights. Those orders contain language specifically excluding claims for domestic and stock watering purposes, as follows:

4. Defendant represents that Defendant is the sole 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*.

7. In February 2018, the State published notice to unknown claimants in the La Plata section, establishing a 60 day deadline for the filing of any claims of unknown claimants (April 24, 2018). See 2018 *State of New Mexico’s Notice of Filing Affidavit of Publication of Notice of Pendency in the Albuquerque Journal*; March 22, 2018 *State of New Mexico’s Notice of Filing Affidavit of Publication of Notice of Pendency in the Farmington Daily Times*; and March 22, 2018 *State of New Mexico’s Notice of Filing Affidavit of Publication of Notice of Pendency in the*

*Aztec Local News (TALON)*. To date, one claimant filed a claim with the Court based on this publication, asking for adjudication of a groundwater right.

8. Allowing the State to proceed to an *inter se* proceeding and entry of a partial final judgment and decree on surface water irrigation rights in the La Plata section would expedite the completion of the adjudication of the La Plata Section, and is consistent with other adjudications, such as the adjudication of the Chama River. In *New Mexico v. Aragon, Case No. 69cv07941-MV/KK* (U.S.D.Ct.), the State has entered six partial final judgment and decrees adjudicating surface water irrigation rights in various subsections of that adjudication.

9. The hearing on the parties' recommendations regarding the Fifth Amended Case Management Order set for May 7, 2018, will address issues regarding scheduling and the scope of the remainder of the San Juan Adjudication.. Because of this uncertainty, the State does not propose a specific timeline for addressing the surface water domestic and stock watering rights.

10. Given the large number of opposing counsel, contacting all of them in advance of filing would not be possible, so opposition has been assumed with regard to this Motion.

WHEREFORE the State of New Mexico requests the Court enter an order allowing the State to conduct an *inter se* proceeding for surface water irrigation rights and entry of a Partial Final Judgment and Decree in the La Plata Section without including a determination of surface water domestic and stock watering rights. Further, that the State be allowed to address the adjudication of domestic and stock watering rights at the same time it does so for groundwater rights.

Respectfully submitted,

\_\_\_\_\_/s/ Kelly Brooks Smith\_\_\_\_\_  
Kelly Brooks Smith  
Edward Charles Bagley  
Special Assistant Attorneys General  
New Mexico Office of the State Engineer  
Post Office Box 25102  
Santa Fe, New Mexico 87504  
(505) 827-6150

*Attorneys for Plaintiff State of New Mexico*

**CERTIFICATE OF SERVICE**

I certify that on April 2, 2018, I caused a copy of the foregoing to be served by e-mail to all Counsel on the Electronic Service List for D-1116-CV-7500184.

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

STATE OF NEW MEXICO *ex rel.*  
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Hon. James J. Wechsler  
Presiding Judge

SAN JUAN RIVER STREAM  
SYSTEM ADJUDICATION

LA PLATA RIVER SECTION

**ORDER REGARDING LA PLATA SECTION DOMESTIC AND STOCK  
WATERING SURFACE WATER RIGHTS**

This matter comes before the Court pursuant to the State of New Mexico's ("State") March 2, 2018 *Motion for Order Regarding the La Plata Section Domestic Stock Watering Surface Water Uses.*

For good cause shown, I hereby GRANT the motion.

IT IS THEREFORE ORDERED THAT

(1) the State shall proceed with an *inter se* proceeding and entry of a final partial judgment and decree on surface water irrigation rights only for the La Plata Section by filing a motion for procedural order once all surface water irrigation rights have been adjudicated as between the State and each defendant;

Ex. A

(2) the State may proceed with adjudicating the claims filed in the La Plata for surface domestic and stock watering rights at the same time as it adjudicates groundwater rights for all sections in the San Juan Adjudication.

**IT IS SO ORDERED.**

**JUDGE JAMES J. WECHSLER**