

STATE OF NEW MEXICO
SAN JUAN COUNTY
ELEVENTH JUDICIAL DISTRICT COURT

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2023 MAY 17 AM 9: 52

STATE OF NEW MEXICO,
ex rel. STATE ENGINEER,

Plaintiff,

vs.

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

Defendants,

vs.

THE JICARILLA APACHE TRIBE and
THE NAVAJO NATION,

Defendant-Interveners.

CV-75-184

Hon. James J. Wechsler
Judge Pro Tempore

SAN JUAN RIVER STREAM SYSTEM
ADJUDICATION

LA PLATA RIVER SECTION

E. J. BRACKEEN
T. N. BRACKEEN

Court Case No. AF-01-62

Subfile No: SJLP-002-0003

MOTION TO CORRECT COURT RECORD

Plaintiff, State of New Mexico, *ex rel.* State Engineer (“State”), moves this Court, under Rule 1-060(B)(1), to allow the filing and entry of certain documents that are necessary to complete the Court record in the above-captioned and numbered cause of action, for the reasons set forth below:

1. This Motion was made under the authority of the Court’s Order on the State’s Rule 1-060(B) Procedure Motion, entered February 28, 2023.¹ [Exhibit A]
2. Because of the distinctive facts related to the above-captioned case, the State is filing a single motion to address the errors in this specific subfile.

¹ *Order on State of New Mexico’s Motion for Approval of an Expedited Rule 1-060(B) NMRA Procedure for Globally Correcting Mistakes that are Shared by Multiple Consent Orders in the La Plata Adjudication.*

3. On March 31, 2008, a Consent Order was entered in the above-captioned case. [Exhibit B] [hereinafter First Consent Order].
4. The First Consent Order stated that the Priority of the water right, the Rate of Flow, and the Amount of Water were “Reserved for future determination in section-wide proceeding.” See First Consent Order, Heading A, at 2-3.
5. Prior to entry of the First Consent Order, on July 10, 2007, the Court entered the Order Approving Proposed Section-Wide Subproceeding #1, Denying Gary Horner and Bloomfield Irrigation District’s Proposed Section-Wide Issues, and Requesting Additional Briefing on Notice. [Exhibit C] [hereinafter July Section-Wide Order]. This Order directed “that irrigation water rights within the La Plata Section should be described and adjudicated by the ‘amount of water’ and/or the ‘rate of flow’.” July Section-Wide Order, at 2.
6. On October 22, 2007, the Court entered the Order Regarding Proposed Section-Wide Subproceedings in the La Plata Section [Exhibit D] [hereinafter October Section-Wide Order]. This Order directed that “all adjudicated water rights must specify the amount of water associated with the water right.” This Order also directed that the Priority element should be adjudicated “on a subfile-by-subfile basis.” October Section-Wide Order, at 1-2.
7. On March 10, 2009, the State filed a Stipulated Motion to Vacate Consent Order, expressly requesting the Court to vacate “the Consent Order filed on April 7, 2008.” [Exhibit E] [hereinafter Incorrect Motion].
8. No Consent Order was entered in the above-captioned case on April 7, 2008.
9. On August 5, 2009, an Order to Vacate Consent Order was entered, expressly vacating “the Consent Order filed on April 7, 2008.” [Exhibit F] [hereinafter Incorrect Order].
10. On August 5, 2009, a Consent Order was entered which corrected the missing Priority, Rate of Flow, and Amount of Water elements of the related water right. [Exhibit G]

11. Due to clerical errors the State, in both the Incorrect Motion and the proposed Incorrect Order, attributed the incorrect date of April 7, 2008, to the Consent Order that was entered on March 31, 2008.

12. In order to clarify the sequence of events in the Court record, the State requests that the Incorrect Order be amended to reflect the correct date of the Consent Order being vacated from April 7, 2008, to March 31, 2008.

13. Correcting the Court record will facilitate reconciliation of the La Plata and will more accurately reflect the distribution of water within the La Plata.

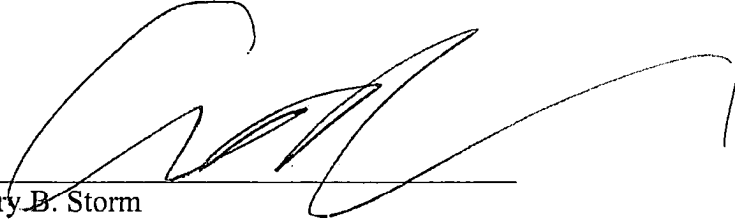
14. Even though some of the above-described documents were filed as many as fifteen years ago, this Motion has been made within a reasonable time because it addresses matters that came to light toward the end of an adjudication process which, of necessity, takes several years, and because it addresses matters, some of which were brought to the State's attention by the Court's Data Base Manager.

15. The original Defendants who signed the Consent Orders, and, where applicable, their current successors in interest, have been provided with an opportunity to respond to this Motion and a Notice of Hearing.

WHEREFORE, the State respectfully requests that the Court:

1. Amend the August 5, 2009, Order to Vacate Consent Order to state that the date of the Order being vacated is March 31, 2008; and
2. Such other relief as the Court deems appropriate.

Respectfully submitted,



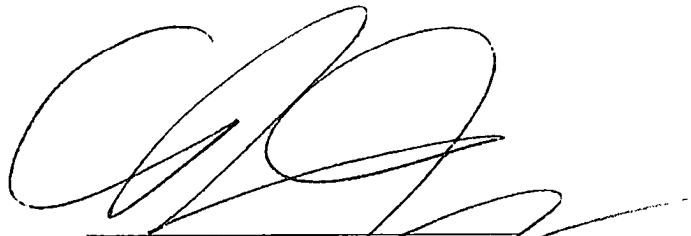
Gary B. Storm
Special Assistant Attorney General
New Mexico Office of the State Engineer
Post Office Box 25102
Santa Fe, New Mexico 87504
(505) 827-6150
Attorney for Plaintiff State of New Mexico
ex rel. State Engineer

CERTIFICATE OF MAILING

I certify that on May 17, 2023, an electronic version of this document was filed by electronic mail to: sjwaterfilings@nmcourts.gov and served by electronic mail to: sanjuanwater-grp@nmcourts.gov, and to the persons listed in the Appendix below.

I certify that on May 17, 2023, I caused a true and correct copy of the foregoing to be mailed by first class mail, postage prepaid to:

E. J. Brackeen
T. N. Brackeen
1006 North Wall Ave.
Farmington, NM 87401



Gary Storm

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2023 FEB 28 PM 4: 01

JB

STATE OF NEW MEXICO,
ex rel. STATE ENGINEER,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants,

vs.

THE JICARILLA APACHE TRIBE and
THE NAVAJO NATION,

Defendant-Intervener.

D-1116-CV-75-184

Honorable James J. Wechsler
Judge Pro Tempore

SAN JUAN RIVER BASIN
ADJUDICATION

La Plata River Section

**ORDER ON STATE OF NEW MEXICO'S MOTION FOR APPROVAL OF AN
EXPEDITED RULE 1-060(B) NMRA PROCEDURE FOR GLOBALLY CORRECTING
MISTAKES THAT ARE SHARED BY MULTIPLE CONSENT ORDERS IN THE LA
PLATA ADJUDICATION**

THIS MATTER having been reviewed by the Court on the Motion for Approval of an Expedited Rule 1-060(B) NMRA Procedure for Globally Correcting Mistakes that are Shared by Multiple Consent Orders in the La Plata Adjudication, filed by the State of New Mexico ex rel. State Engineer [State]; and the Court, being fully advised in the premises, FINDS:

1. The Court's Database Manager has undertaken a "Quality Control" review of all the Consent Orders that were entered by this Court adjudicating the water rights in the La Plata. This review has revealed mistakes in numerous filed Consent Orders.

2. In the course of adjudicating La Plata water rights, the State has identified certain mistakes in filed Consent Orders.

EXHIBIT A

3. This Motion concerns errors that are more appropriately addressed by Rule 1-060(B) because they may concern substantive aspects of a water right and are not necessarily merely clerical in nature.

4. Though numerous filed Consent Orders in the La Plata contain mistakes, there are comparatively few categories of such mistakes among all the Consent Orders. The various categories of these mistakes may include, but are not necessarily limited to:

- a) Discrepancies between maps and the Consent Orders to which they are attached.
- b) Incorrect Acreages for irrigated lands as well as no right lands.
- c) Missing and erroneous Amounts of Water.
- d) Incorrect ditch listed as Point of Diversion.
- e) Incorrect location for Point of Diversion of ditch.
- f) Ponds not included in Subfile Order.
- g) Incorrect or missing Priority Date.
- h) Incorrect or missing Rate of Flow.
- i) Incorrect aliquot part and location.

5. The correction of any of the above-listed errors may affect the substantive rights of the Defendants and may affect the State's administrative responsibilities.

6. Because the correction of these mistakes requires making a change in a Consent Order entered by the Court, Rule 1-060(B) is the most appropriate mechanism for affecting the necessary changes.

7. In the interest of promoting judicial efficiency, conserving the resources of the State, and shortening the time needed for completion of the adjudication of the La Plata, the State

should employ expedited procedures for globally correcting errors that are shared by multiple consent orders in La Plata Consent Orders.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

The State shall implement the following expedited procedures for globally resolving ambiguities and achieving consistency among multiple Consent Orders in the La Plata

Adjudication:

- (a) The State and the Court shall confer regarding the date, time, and place for a hearing on the Global Motion to resolve a particular category of Consent Order ambiguity or inconsistency.
- (b) The Court shall issue a Notice of Hearing setting a hearing date, time, and place on the Global Motion. This Notice of Hearing will not be sent to the Defendants.
- (c) The State shall file a copy of the Global Motion for each subfile listed in that Motion's caption and shall serve on each original Defendant and, if applicable, on each current owner of record:
 - a copy of this Order on double sided paper as an Exhibit to the Global Motion;
 - the Global Motion; and
 - a cover letter and Notice Form, as an Exhibit to the Global Motion, informing the Defendants of the date and time of the hearing, which the Defendants can use to notify the State and the Court of any response to the proposed change and their intent to appear at the hearing. The State shall file with the Court all of the Notice Forms that are returned by Defendants.
- (d) The Global Motion and proposed Global Order shall contain a table [Appendix] specifying the Owner whose name appears in the Consent Order at issue, their address, the

subfile number, the paragraph to be corrected within each Consent Order, the court number, the date the original Consent Order was filed, and any other information that the particular situation requires. The font of the table may be reduced to 11 or 10 points to minimize the number of pages of the Global Motion and Global Order.

(e) The State, if the Court believes it to be necessary, will publish the Global Motion, the proposed Global Order, Order on the Motion for expedited procedure, the Notice of Hearing, and the Form Notice on the Office of the State Engineer website on a page devoted to the La Plata adjudication. The State will provide further notice as the Court directs.

(f) In order to provide notice to all affected parties in accordance with due process requirements, the State shall use due diligence to determine the current owners of the water rights described in the Consent Orders that are the subject of each Global Motion. Such due diligence shall consist of:

- Obtaining available ownership information that has been updated by the Defendant and filed in the records of the Office of the State Engineer in accordance with NMSA 1978, § 72-1-2.1 (1996), and the Consent Order signed by the original Defendant, and
- Obtaining available ownership information from the San Juan County Assessor.

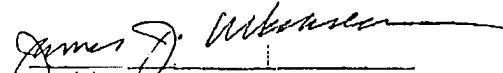
(g) Following the hearing, the Court shall enter a single Global Order correcting all the affected Consent Orders.

(h) The State shall serve the Global Order on each Defendant and on each identified current owner of record whose Consent Order is to be corrected and file a copy of the Global Order for each subfile listed in its caption.

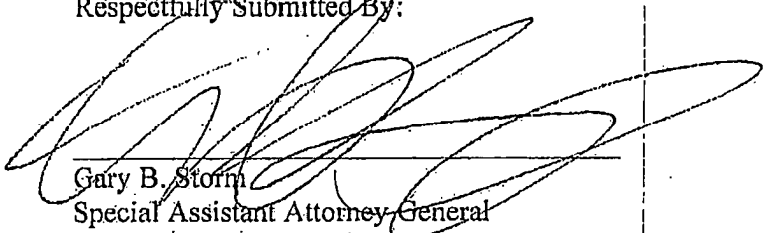
(i) The Global Order shall expressly correct the original Consent Order.

IT IS SO ORDERED.

Date: February 28, 2023


JAMES G. WECHSLER
JUDGE PRO TEMPORE

Respectfully Submitted By:



Gary B. Storm
Special Assistant Attorney General
Office of the State Engineer
P. O. Box 25102
Santa Fe, NM 87504-5102
505/827-6150
505/827-3887 (fax)

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

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

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

E.J. BRACKEEN

T.N. BRACKEEN

Court Case No.: AF-01-62

Subfile No.: SJLP-002-0003

2008 MAR 31 AM 11 03

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.

EXHIBIT B

Dkted

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: HILLSIDE THOMAS DITCH

Location: X= 2,618,387 feet Y= 2,178,091 feet

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

Location and Amount of Irrigated Acreage:

Section 22, Township 32N, Range 13W, N.M.P.M.

Pt. NW $\frac{1}{4}$	2.9 acres
Pt. SW $\frac{1}{4}$	3.2 acres
Total	<u>6.1 acres</u>

As shown on the attached Subfile Map for Tract SJLP-002-0003 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:

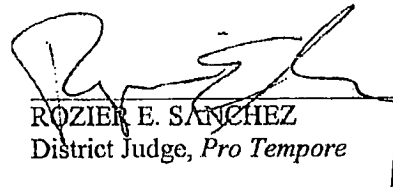
A. All claim(s) of the Defendant to divert and use the public waters of the San Juan River Stream System, La Plata Section, is/are hereby adjudicated, as between the State and Defendant, as set forth herein, except as to those claim(s), and elements thereof, expressly excluded from this Consent Order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

ADDRESS: 1006 N W 11
Phoenix AZ
85027
DATE: 1/9/08

SIGNATURE 
T.N. BRACKEEN

ADDRESS: 1006 N W 11
Phoenix AZ
85027
DATE: 1/9/08


Special Assistant Attorney General
Date: 3/25/08

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2007 JUL 10 AM 11 36

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

Plaintiff,

vs.

D-1116-CV-75-184

ROZIER E. SANCHEZ
District Judge *pro tempore*

UNITED STATES OF AMERICA, *et al.*,

La Plata River Section

Defendants.

And
JICARILLA APACHE TRIBE and the
NAVAJO NATION,

Defendant-Intervenors.

**ORDER APPROVING PROPOSED SECTION-WIDE SUBPROCEEDING #1,
DENYING GARY HORNER AND BLOOMFIELD IRRIGATION DISTRICT'S
PROPOSED SECTION-WIDE ISSUES, AND REQUESTING ADDITIONAL
BRIEFING ON NOTICE**

The Court having considered the State's Notice of Proposed Section-Wide Sub-proceedings, the State's Brief in Support of the Proposed Section-Wide Subproceedings, the Bloomfield Irrigation District's and Gary Horner's Motion for Consideration of Proposed Section-Wide Issues, and all objections and responses filed thereto, and the oral arguments made during the June 19, 2007 hearing on the matter, FINDS AS FOLLOWS:

The measurement of water is an issue universally prescribed in a stream adjudication. The quantity of an irrigation water right may be adjudicated by a total annual amount of water, by a rate of flow, or by both a total amount and a rate of flow. The application of these

EXHIBIT C

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methods of water measurement may vary from section to section within the San Juan River Basin.

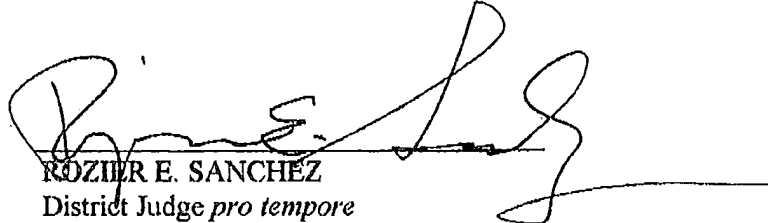
THE COURT THEREFORE approves the State's Proposed Section-Wide Subproceeding #1.

THE COURT FURTHER resolves the State's Proposed Section-Wide Subproceeding #1, determining that irrigation water rights within the La Plata Section should be described and adjudicated by the "amount of water" and/or the "rate of flow."

IT IS FURTHER ORDERED that during adjudication of the La Plata Section the notice of this issue does not have to be given to claimants outside the La Plata Section.

THE COURT further denies the nine issues proposed for Section-Wide Subproceedings by Gary Horner and the Bloomfield Irrigation District.

IT IS FURTHER ORDERED THAT the parties may submit written briefs on the issue of NOTICE outside the La Plata Section on the State's Proposed Section-Wide Subproceedings #2 and #3 filed January 23, 2007. Written briefs shall be filed no later than thirty (30) days from the date of entry of this Order and responses to the briefs shall be filed no later than thirty (30) days thereafter. No further responses are permitted.


ROZIAR E. SANCHEZ
District Judge *pro tempore*

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2007 OCT 22 AM 10 54

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

Plaintiff,

vs.

D-1116-CV-75-184

UNITED STATES OF AMERICA, *et al.*,

Defendants.

And
JICARILLA APACHE TRIBE and the
NAVAJO NATION,

Defendant-Intervenors.

**ORDER REGARDING PROPOSED SECTION-WIDE SUBPROCEEDINGS
IN THE LA PLATA SECTION**

The Court, having considered the briefs submitted by the parties on the notice issue regarding the State's Proposed Section-Wide Subproceedings, and all objections and responses filed thereto, and the oral arguments made during the September 17, 2007 hearing on the matter, **FINDS AS FOLLOWS:**

Pursuant to NMSA 1978, 72-4-19 (1907), all adjudicated water rights must specify the amount of water associated with the water right. The 1948 Echo Ditch Decree is not clear on the total annual amount of water for irrigation water rights in the La Plata Section.

Further, the Court fully resolved Proposed Section-Wide Issue #1 in its July 10, 2007 Order, which directs that "irrigation water rights within the La Plata Section should be described and adjudicated by the 'amount of water' and/or the 'rate of flow'."

EXHIBIT D

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NOW THEREFORE, IT IS ORDERED that the Court hereby **DENIES** Bloomfield Irrigation District's and Gary L. Horner's oral Motion to Reconsider the Court's July 10, 2007 Order made during the September 14, 2007 hearing; however, each individual water right-claimant has the right to object to the State's proposed amount of water and to have that issue resolved by the Court.

IT IS FURTHER ORDERED that the State shall diligently proceed with the adjudication of the amount of water associated with each irrigation water right in the La Plata Section on a subfile-by-subfile basis.

IT IS FURTHER ORDERED that the Court hereby recognizes the State's withdrawal of Proposed Section-Wide Issues #2 and #3, and directs that the State shall also proceed with the adjudication of those issues on a subfile-by-subfile basis. The Court will not consider these issues as Section-Wide Subproceedings, but that does not preclude anyone from filing a motion on either issue in the context of a specific subfile.

IT IS SO ORDERED


Roziel E. Sanchez
District Judge *pro tempore*

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2009 MAR 10 PM 2 09

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

Court Case No.: AF-01-62

Subfile No.: SJLP-002-0003

STIPULATED MOTION TO VACATE CONSENT ORDER

COMES NOW the Plaintiff, State of New Mexico *ex rel.* State Engineer ("State") and pursuant to Rule 1-60(B)(6) NMRA hereby moves the Court to vacate the Consent Order filed on April 07, 2008, in the above-captioned and numbered cause of action, for the reasons set forth below:

- 1. On April 07, 2008, the Court filed a Consent Order signed by claimant(s)

E.J. BRACKEEN
T.N. BRACKEEN

regarding the surface water rights appurtenant to claimant(s)' property.

- 2. Pursuant to Paragraph 5 of that signed Consent Order, three (3) elements of the water rights were reserved for future determination: 1) amount of water, 2) rate of flow and 3) priority date.

- 3. Consistent with Section VIII of the Scheduling Order Governing Adjudication of Irrigation Water Rights in the La Plata River Section, the reserved elements were to be determined in Section-Wide Subproceedings. See State's Notice of Proposed Section-Wide Subproceedings

EXHIBIT E

Dkted

(January 23, 2007); Order Approving Proposed Section-Wide Subproceeding #1 (July 10, 2007)(“July 10, 2007 Order”); and Order Regarding Proposed Section-Wide Subproceedings in the La Plata Section (Oct. 22, 2007)(“October 22, 2007 Order”).

4. The Court subsequently ordered “irrigation water rights within the La Plata Section should be described and adjudicated by the ‘amount of water’ and/or ‘rate of flow.’” See July 10, 2007 Order.

5. The Court also subsequently recognized the State’s withdrawal of the priority date element as a proposed Section-Wide Issue and directed the State to adjudicate that element on a subfile-by-subfile basis. See October 22, 2007 Order.

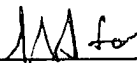
6. The State is now prepared to include the three elements in each claimant’s Consent Order for consideration.

7. In order to have only one Consent Order filed with the Court that adjudicates all elements of the claimant(s) surface water irrigation rights, both Plaintiff and claimant(s) agree to vacate the original Consent Order.

8. In addition, claimant(s) have signed a revised Consent Order, which the State has filed contemporaneously with the instant motion.

WHEREFORE, the parties respectfully request that the Court enter an order vacating the Consent Order filed on April 07, 2008, in the above captioned and numbered cause of action.

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

E.J. Brackeen
E.J. BRACKEEN

T.N. Brackeen
T.N. BRACKEEN

ADDRESS:

ADDRESS:

1006 N. Wall
FARMINGTON NM
87401

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22 day of October, 2008, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid to the following:

E.J. BRACKEEN
T.N. BRACKEEN
1006 N. WALL
FARMINGTON, NM 87401

T.M. Lopez
Todd M. Lopez

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

DISTRICT COURT
SAN JUAN COUNTY NM

FILED *RS*

2009 AUG 5 AM 10 41

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-Interveners.

No. CV 75-184
Honorable Rozier E. Sanchez
District Judge Pro Tempore

SAN JUAN RIVER STREAM
SYSTEM ADJUDICATION

La Plata River Section

Court Case No. AF-01-62

Subfile No. SJLP-002-0003

ORDER TO VACATE CONSENT ORDER

The Court having considered the Plaintiff, State of New Mexico *ex rel.* State Engineer ("State") and the Claimant(s)' Stipulated Motion to Vacate the Consent Order filed on April 7, 2008, in the above captioned and numbered cause of action;

AND THE COURT FINDING that the State and Claimant(s)

E.J. BRACKEEN

T.N. BRACKEEN

have agreed to vacate the Consent Order filed on April 7, 2008,

AND THE COURT FURTHER FINDING that the parties have signed a revised Consent Order, filed with the Stipulated Motion to Vacate;

NOW, THEREFORE, IT IS ORDERED that the Consent Order filed on April 7, 2008, in the above captioned and numbered cause of action is hereby vacated and set aside.


THE HONORABLE ROZIER E. SANCHEZ
District Judge, *Pro Tempore*

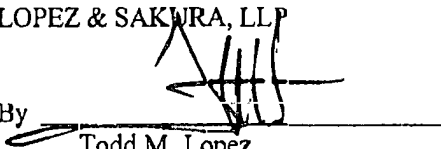
EXHIBIT F

sktd

APPROVED:

LOPEZ & SAKWRA, LLP

By



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Santa Fe, NM 87504-2246
(505) 992-0811

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

DISTRICT COURT
STATE OF NEW MEXICO SAN JUAN COUNTY NM
ELEVENTH JUDICIAL DISTRICT COURT FILED *RS*
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.

2009 AUG 5 AM 10 41

No. CV-75-184

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

SAN JUAN RIVER STREAM
SYSTEM ADJUDICATION

La Plata River Section

E.J. BRACKEEN

T.N. BRACKEEN

Court Case No.: AF-01-62

Subfile No.: SJLP-002-0003

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

EXHIBIT G

DKJ de

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: January 31, 1880 (Priority No. 5 in the Echo Ditch Decree) for 0.0571 cfs
November 30, 1890 (Priority No. 22 in the Echo Ditch Decree) for 0.1568 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: HILLSIDE THOMAS DITCH

Location: X= 2,618,387 feet Y= 2,178,091 feet

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

Location and Amount of Irrigated Acreage:

Section 22, Township 32N, Range 13W, N.M.P.M.

Pt. NW¼ 2.9 acres

Pt. SW¼ 3.2 acres

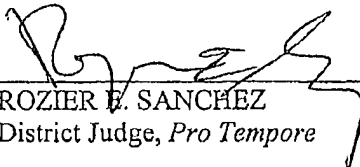
A. All claim(s) of the Defendant to divert and use the public waters of the San Juan River Stream System, La Plata Section, is/are hereby adjudicated, as between the State and Defendant, as set forth herein, except as to those claim(s), and elements thereof, expressly excluded from this Consent Order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

ACCEPTED: E. J. Brackeen
E.J. BRACKEEN

ACCEPTED: T. N. Brackeen
T.N. BRACKEEN

ADDRESS: 1006 N. Wall

ADDRESS: 1006 N. Wall

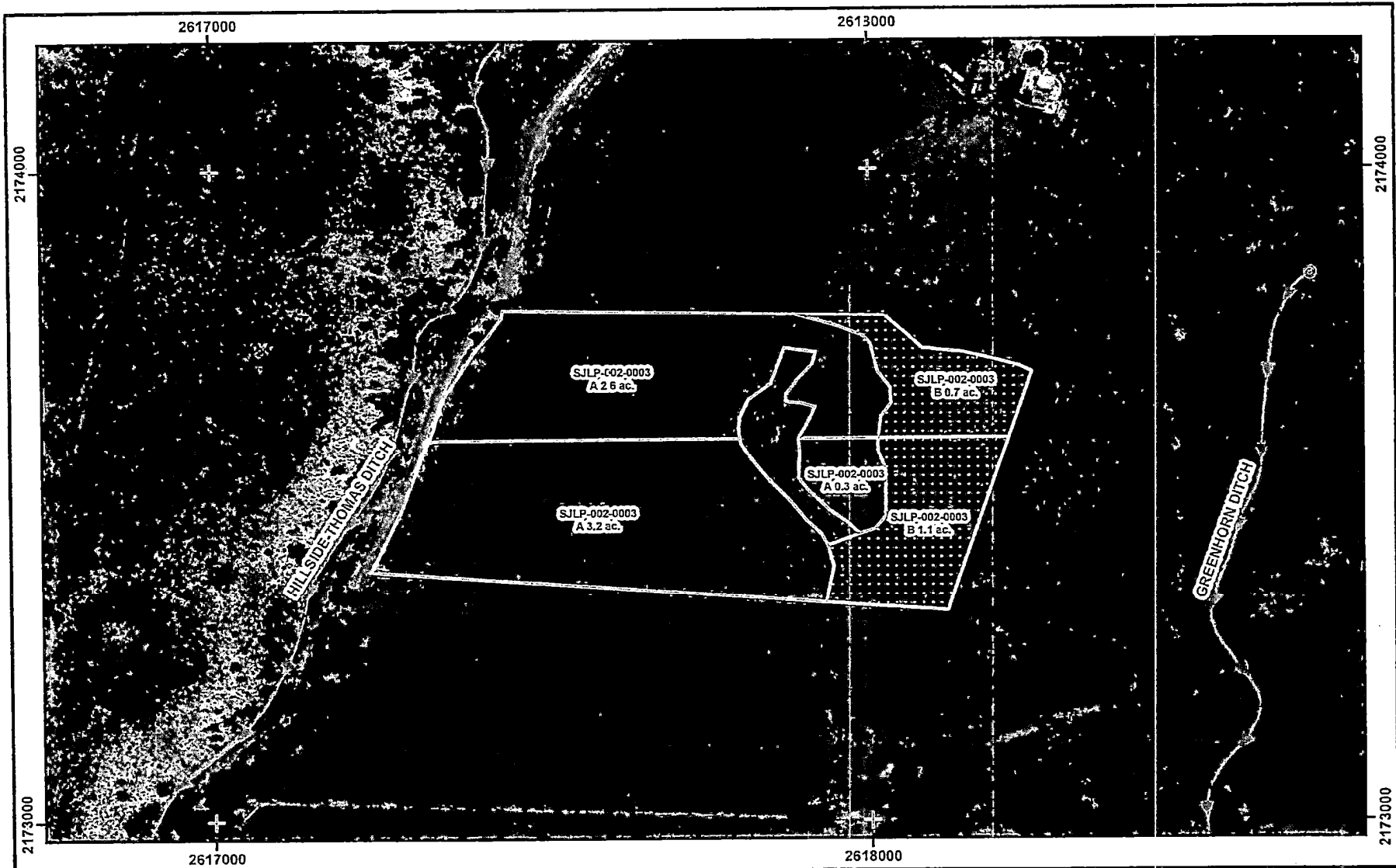
DATE: Forw. to NM 5/17/09

DATE: Forw. to NM 5/17/09



Special Assistant Attorney General

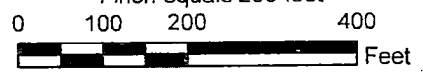
Date: 7/28/2009



- ⊕ Point of Diversion
- Ditch
- ▭ Pond
- ▭ Land with Irrigation Right
- ▭ No Right

Grid Interval = 1000'
 NMSP West NAD83

1:2,400
 1 inch equals 200 feet



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-002-0003
 Hillside Ditch
 July 15, 2008