

DISTRICT COURT
SAN JUAN COUNTY NM
FILED *JB*

2009 NOV 30 AM 10 22

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

CV-75-184
Hon. James J. Wechsler
Presiding Judge

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.*,

Defendants,

JOHN MARK GAINES
KENDRA LYNN GAINES

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Court Case No.: AF-01-577
Subfile No.: SJLP-005-0014U

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(s) John Mark Gaines and Kendra Lynn Gaines ("Claimants") for 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 September 3, 2009, Claimant John Mark Gaines 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 October 26, 2009 and titled "10-26-09 Certificate of Service of Service Package by OSE" on the Court's website. See also Claimant's signature receipt attached hereto as Exhibit A. On September 5, 2009, Claimant Kendra Lynn Gaines was served with a Service Package by certified mail, return receipt requested, restricted delivery as

JKL

reflected by that Certificate of Service filed with the Court on October 26, 2009 and titled "10-26-09 Certificate of Service of Service Package by OSE" on the Court's website. See also Claimant's signature receipt attached hereto as Exhibit A.

2. The State mailed a Settlement Package to Claimants on September 2, 2009 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 B.

3. The State filed proof of service of the Settlement Package for the Claimants with the Clerk of the Court on November 19, 2009.

4. 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.

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

6. As a result of Claimants' 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 John Mark Gaines and Kendra Lynn Gaines submitted with this motion.

Respectfully submitted,



Todd M. Lopez
Special Assistant Attorney General
New Mexico Office of the State Engineer
PO 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 11/24/09, 2009, a copy of the foregoing paper was served by first class mail on the persons identified below.



Todd M. Lopez

John Mark Gaines
Kendra Lynn Gaines
PO Box 204
La Plata, NM 87418

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:

Frank H. Funk
1049 NM 198
La Plata, NM 87418

2. Article Number

(Transfer from service label)

7008 3230 0000 2320 1812

PS Form 3811, February 2004

Domestic Return Receipt

102886-02-M-1540

A. Signature

[Signature]

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

4. Restricted Delivery? (Extra Fee) Yes

55LP-005-0065

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:

John Mark Gaines
PO Box 204
La Plata, NM 87418

2. Article Number

(Transfer from service label)

7008 3230 0000 2431 7857

PS Form 3811, February 2004

Domestic Return Receipt

102886-02-M-1540

A. Signature

[Signature]

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

4. Restricted Delivery? (Extra Fee) Yes

55LP-005-0014 U

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:

Kendra Lynn Gaines
PO Box 204
La Plata, NM 87418

2. Article Number

(Transfer from service label)

7008 3230 0000 2431 7840

PS Form 3811, February 2004

Domestic Return Receipt

102886-02-M-1540

A. Signature

[Signature]

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

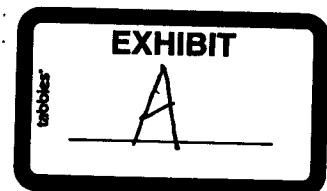
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

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

4. Restricted Delivery? (Extra Fee) Yes

55LP-005-0014 U



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. James J. Wechsler
Presiding Judge

SAN JUAN RIVER STREAM
SYSTEM ADJUDICATION

La Plata River Section

JOHN MARK GAINES

KENDRA LYNN GAINES

Court Case No.: AF-01-577

Subfile No.: SJLP-005-0014U

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



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:

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. 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:** HIGHLAND PARK DITCH

Location: X= 2,618,534 feet Y= 2,171,600 feet

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

Location and Amount of Acreage

Section 15, Township 31N, Range 13W, N.M.P.M.

Pt. NW¼

0.4 acres

Total 0.4 acres

As shown on the attached Subfile Map for Tract SJLP-005-0014U 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.

Hon. James J. Wechsler
Presiding Judge

APPROVED AND ACCEPTED BY:

ACCEPTED: _____
KENDRA LYNN GAINES

ACCEPTED: _____
JOHN MARK GAINES

ADDRESS: _____

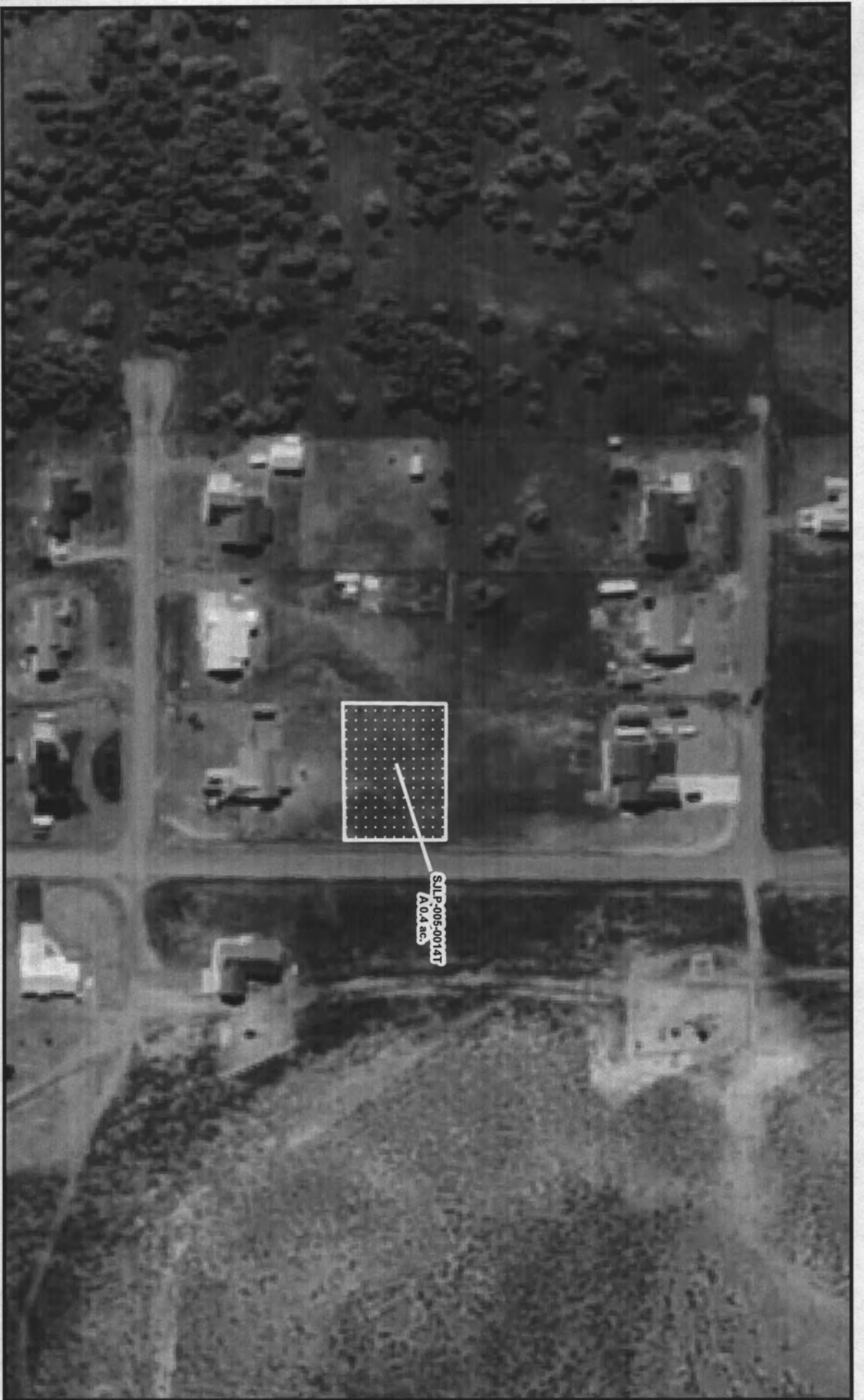
ADDRESS: _____

DATE: _____

DATE: _____

Special Assistant Attorney General

Date: _____



● Point of Diversion

→ Ditch

□ Land with Irrigation Right

□ No Right

□ Pond

Grid: NMSWP West NAD83

1:1,800

1 inch = 150 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

SLP-005-0014U

Highland Park Ditch

August 24, 2009

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

CV-75-184
Hon. James J. Wechsler
Presiding Judge

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

SAN JUAN RIVER
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Plaintiff,

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Court Case No.: AF-01-577
Subfile No.: SJLP-005-0014U

Defendant-Intervenors.

AFFIDAVIT OF JULIE A. SAKURA

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

I, Julie A. Sakura, 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 sign a proposed Consent Order. file a Rejection or otherwise respond to the State's proposed Consent Order:

JOHN MARK GAINES	SJLP-005-0014U	AF-01-577
KENDRA LYNN GAINES	SJLP-005-0014U	AF-01-577

This concludes my sworn testimony.

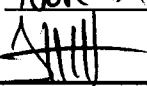


JULIE A. SAKURA

SUBSCRIBED AND SWORN to before me this 19 day of November 2009.

My Commission expires:

01/28/2014



NOTARY PUBLIC

