

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

BRIDGITTE GARNER

VERL GARNER

Court Case No.: AF-01-566

Subfile No.: SJLP-005-0014J

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2010 JUN 25 PM 4 33

CONSENT ORDER

The Court, having considered Plaintiff's Motion for Consent Order filed on 11/30/2009 and submitted pursuant to Sections V(E)(4) and VI(C) of the Scheduling Order Governing Adjudication of Irrigation Water Rights in the La Plata Section, regarding the Defendant(s)' named above (hereinafter referred to as "Defendant" for both single and plural Defendants) 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 Defendant has failed to sign or reject the proposed Consent Order after the State mailed a Settlement Package containing the proposed Consent Order to the Defendant. The Defendant's

Dkt

acceptance of the Consent Order is implied due to the Defendant's failure to respond to the State's Proposed Consent Order. The Defendant is now therefore presumed to have accepted the Court's findings and to agree to 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.

4. The State has determined through the hydrographic survey 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

1.0 acres

Total 1.0 acres

As shown on the attached Subfile Map for Tract SJLP-005-0014J 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: Consent Implied
BRIDGITTE GARNER


ADDRESS: See State's Motion
for Entry of Consent
Order dated 11/30/2009

DATE: _____

ACCEPTED: Consent Implied
VERL GARNER

ADDRESS: See State's Motion
for Entry of Consent
Order dated 11/30/2009

DATE: _____



Special Assistant Attorney General

Date: 1/8/2010



● Point of Diversion

→ Ditch

□ Land with Irrigation Right

□ No Right

□ Pond

Grid: NIMSP 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

S.L.P.-005-0014J

Highland Park Ditch
August 24, 2009