

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2014 MAR 21 AM 10:30

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

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

Plaintiff,

vs.

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

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendants-Intervenors.

CV-75-184

Hon. James J. Wechsler
Presiding Judge

SAN JUAN RIVER STREAM
SYSTEM ADJUDICATION

La Plata River Section

Bryan C. Cage

Court Case No.: AF-01-524
Subfile No.: SJLP-007-0035C

MOTION FOR ENTRY OF CONSENT ORDER

Plaintiff, State of New Mexico, *ex rel.* State Engineer (“State”), as authorized by 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”), moves this Court to enter the attached proposed Consent Order against Claimant Bryan C. Cage (“Claimant”) for his failure to timely file a rejection of the State’s Consent Order. In support of this request, the State asserts the following:

1. On October 25, 2010, Claimant was served with a Proof of Publication of the Notice of Pendency of Water Rights Adjudication to Identified Claimants Not Personally Served by Mail [Proof of Publication]. See Proof of Publication attached hereto as Exhibit A.

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2. The State mailed a Settlement Package containing the State's proposed Consent Order of Claimant's surface water rights in the La Plata River Section to the Claimant on October 4, 2013. The proposed Consent Order is attached hereto as Exhibit B.

3. The State filed proof of service of the Settlement Package for Claimant with the Clerk of the Court on October 7, 2013.

4. Claimant failed to sign and return the proposed Consent Order or failed to file a rejection of the State's proposed Consent Order as required by Section V(E) of the Scheduling Order. See Affidavit of Counsel, attached hereto as Exhibit C.

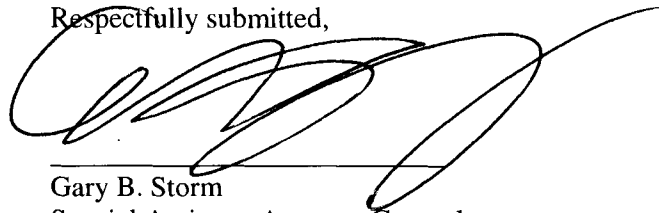
5. The time for filing a rejection has expired.

6. As a result of Claimant's failure to reject the proposed Consent Order, Claimant is presumed to have accepted the State's proposed Consent Order, which is consistent with the hydrographic survey in accordance with Scheduling Order, Section V(E)(4).

7. According to the Scheduling Order, the Court may now enter the Consent Order as provided by Sections V(E)(4) and VI (C)(1).

WHEREFORE, Plaintiff State of New Mexico *ex rel.* State Engineer respectfully requests that the Court enter the attached proposed Consent Order against Claimant Bryan C. Cage submitted with this motion.

Respectfully submitted,



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

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

CERTIFICATE OF SERVICE

I certify that on March 20, 2014, a copy of the foregoing paper was served by first class mail on the persons identified below.


Gary B. Storm

Bryan C. Cage
15 Road 1634
Farmington, New Mexico 87401

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2010 OCT 25 AM 9 25

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

Plaintiff,

vs.

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

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184
JAMES J. WECHSLER
Presiding Judge

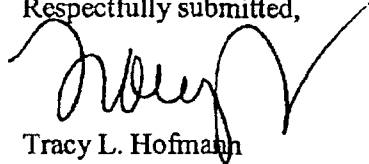
SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

**PROOF OF PUBLICATION OF THE NOTICE OF PENDENCY OF WATER RIGHTS
ADJUDICATION TO IDENTIFIED CLAIMANTS
NOT PERSONALLY SERVED BY MAIL**

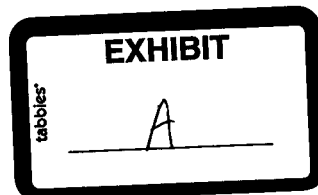
COMES NOW the Plaintiff, State of New Mexico *ex rel.* State Engineer ("State), and hereby files proof of publication of the Notice of Pendency of Water Rights Adjudication to Identified Claimants Not Personally Served by Mail pursuant to Rule 1-004 NMRA, for the purpose of serving by publication those identified water rights claimants not personally served by mail.

Attached as Exhibit A is the Affidavit of Publication, signed by Bill Tafoya, Classified Advertising Manager of The Albuquerque Journal, stating that the Notice was published for 4 consecutive weeks beginning on September 7, 2010 and ending on September 27, 2010.

Respectfully submitted,



Tracy L. Hofmann
Special Assistant Attorney General
New Mexico Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150
Attorney for Plaintiff State of New Mexico
ex rel. State Engineer



DKfd ✓

A

STATE OF NEW MEXICO
County of Bernalillo SS

Bill Tafoya, being duly sworn, declares and says that he is Classified Advertising Manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost, that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for

4 times, the first publication being on the 7 day of September, 2010, and the subsequent consecutive publications on 9/13, 20, 27, 2010

[Handwritten signature]

Sworn and subscribed to before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

12 day of October of 2010

PRICE 593.21

Statement to come at end of month 180994

ACCOUNT NUMBER

CLA-22-A (R-1/93)

OFFICIAL SEAL
Jenny Gomez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 2/18/13

[Handwritten signature]

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
CV-75-184
Hon. James J. Wechsler
Presiding Judge
OF NEW MEXICO, ex rel.
ENGINEER, et al.
UNITED STATES OF AMERICA, et al.,
CARILLA APACHE TRIBE
NATION, et al.
JUAN RIVER GENERAL ADJUDICATION
A RIVER SECTION
OF DEPENDENCY OF WATER RIGHTS ADJUDICATION IDENTIFIED CLAIMANTS PERSONALLY SERVED BY MAIL
Clerk of the New Mexico
Seventh Judicial District Court
LEE ACTON AF-01-578,
004-0029 PO BOX 445
Ala, NM 87418
Y LEE ACTON AF-01-578,
004-0029 PO BOX 445
Ala, NM 87418
JE J. ALLENBAUGH AF-
78; SJLP-008-0039 13 CR
SP2
Farrington, NM 87401
K E ALLENBAUGH AF-
78; SJLP-008-0039 13 CR
SP2
Farrington, NM 87401
STER H BENALLY AF-
34; SJLP-007-0065 50 Road
Farrington, NM 87401
VONNE J. BENALLY AF-
34; SJLP-007-0065 50 Road
Farrington, NM 87401
BERT G. BUTTES AF-01-395;
P-008-0059 Riverstone Trailer
: #26
Farrington, NM 87401
SINIA A. BUTTES AF-01-395;
P-008-0059 Riverstone Trailer
: #26
Farrington, NM 87401
YAN C. CAGE AF-01-524;
P-007-0035C 15 Road 1834
Farrington, NM 87401
ADLEY P. CHESSER AF-
29; SJLP-007-0003B 2 CR
Farrington, NM 87401
TESSA CHESSER AF-01-259;
P-007-0003B 2 CR 2468,
Farrington, NM 87401
RODITA EARLEY AF-01-345;
P-008-0007 726 HWY 170,
Farrington, NM 87401
LIAM EARLEY AF-01-345;
P-008-0007 726 HWY 170,
Farrington, NM 87401
VERY HOGUE AF-01-510;
P-008-0009 722 HWY 170
Farrington, NM 87401
AS L. HOGUE AF-01-510
P-008-0008 722 HWY 170
Farrington, NM 87401
W M. HOGUE AF-01-510;
P-008-0008 722 HWY 170
Farrington, NM 87401
CENT EARL JAMES AF-
31; SJLP-004-0048 315 NW
St.
Ala, WA 98117
ERT JOE, JR. AF-01-236
007-0001 Box 467,
Ala, NM 87418
ARA L. LASSITER AF-
15; SJLP-009-0003 1 CR
Farrington, NM 87401
LAWING AF-01-384, SJLP
146 668 NM 170,
Farrington, NM 87401
ALM LAWING AF-01-384,
X08-0046 668 NM 170,
Farrington, NM 87401
NE J. MARTIN, JR. AF-
SJLP-007-0042 876 HWY
Farrington, NM 87401
JON, NM 87401

BARBARA N. MCSMITH AF-01-275; SJLP-006-0022 704 W. Animas St.,

BARBARA N. MCSMITH AF-01-275; SJLP-006-0022 704 W. Animas St.,
Farrington, NM 87401
JOHN D. TAYLOR AF-01-241
SJLP-005-0034 PO Box 170,
Aristed, NM 88410
LAUREL K TAYLOR AF-01-241,
SJLP-005-0034 PO Box 170,
Aristed, NM 88410

You are hereby notified that the State of New Mexico ("State") has filed a water rights adjudication lawsuit in the Eleventh Judicial District of New Mexico, San Juan County, pursuant to NWSA 187B, §§ 72-4-15 through 72-4-17, under the caption and case number shown above. The purpose of this lawsuit, referred to as the "San Juan Adjudication," is to identify and determine all rights to use the surface and underground waters of the San Juan River Stream System within the State of New Mexico, which includes all tributary rivers of the San Juan River within New Mexico. The Court is proceeding on a river-by-river basis and is currently determining all rights to divert water from the La Plata River, or from a well, to irrigate land within the La Plata Section. The Court is conducting the adjudication in accordance with its April 30, 2006 Scheduling Order Governing Adjudication of Irrigation Water Rights in the La Plata Section ("Scheduling Order"), which imposes deadlines, detailed adjudication procedures, and filing requirements. A copy of the Scheduling Order and other pertinent information may be obtained from the Court's website at http://www.11thjdc.com/modules/trycontent/?id=79 or by contacting the State's attorney identified below. If you have not already been served in this adjudication, you are required to appear before the

any you own or have a water right on the La Plata River. Unless you file a responsive pleading or Notice of Claim ("NOC"), which you may obtain from the Court's website, with the Court within sixty (60) days after the last date this Notice is published, any claim you have to use the water in the La Plata River may be default judgment to the State. Your report must include a claimant has no lands with apparent irrigation water rights within the La Plata Section and/or no right to divert surface water or underground water for irrigation within the La Plata Section.

Witness the hand and seal of the Eleventh Judicial District Court, County of San Juan, State of New Mexico, this 29th day of December, 2009.
s/ Loressa Bachert
District Court Clerk
Journal: September 7, 13, 20 27, 2010

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

BRYAN C. CAGE

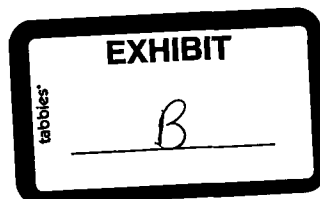
Court Case No.: AF-01-524

Subfile No.: SJLP-007-0035C

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



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: _____
BRYAN C. CAGE

ADDRESS: _____

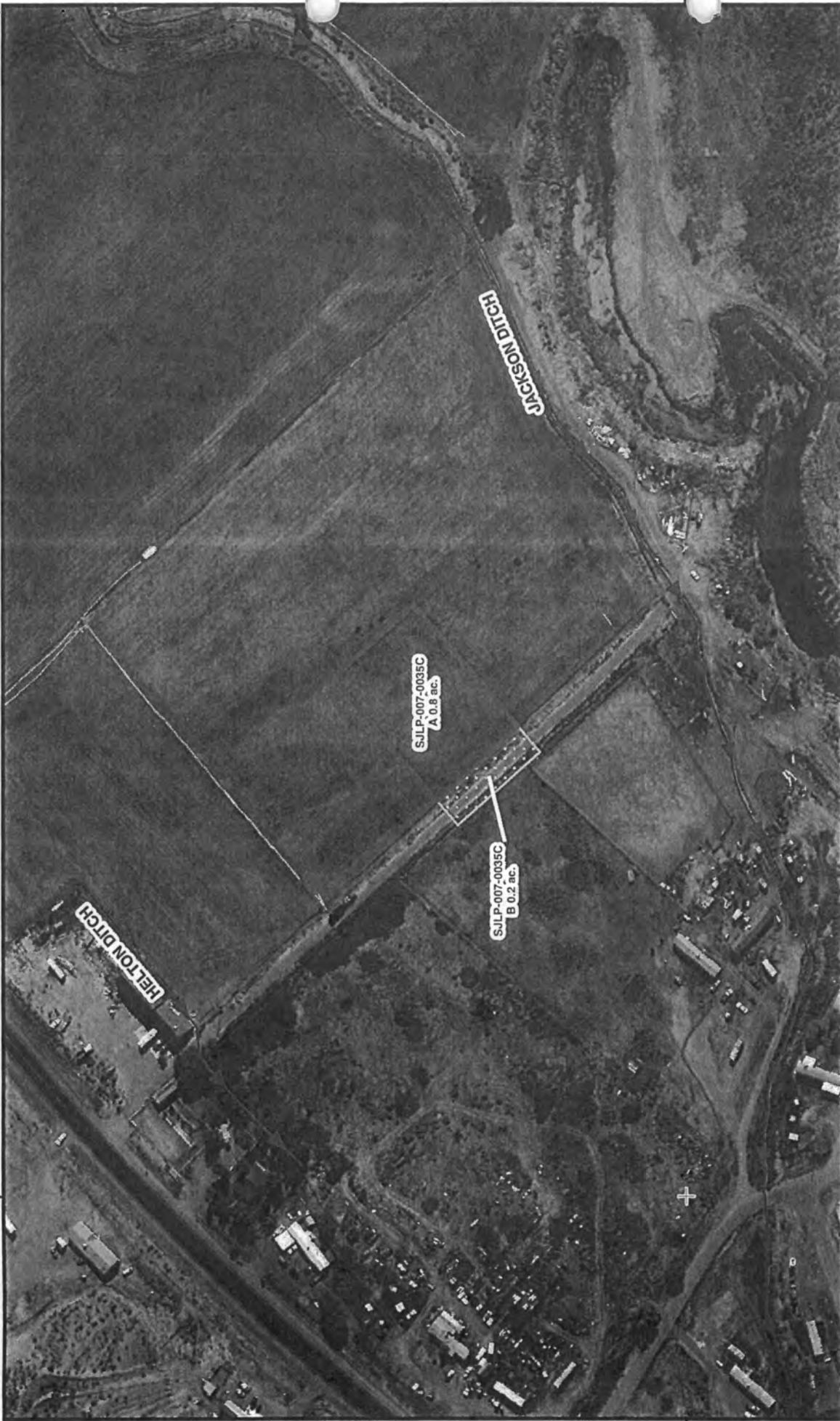
DATE: _____

Special Assistant Attorney General

Date: _____

2612000

2132000



2132000

● Point of Diversion

↑ Ditch

▭ Land with Irrigation Right

▭ No Right

▭ Pond

Grid: NAD83 West NAD83

1:2,400

1 inch = 200 feet



State of New Mexico
 Office of the State Engineer
 Scott A. Verhines, P.E., State Engineer

San Juan River Stream System
 Hydrographic Survey
 La Plata River Section



Tract Number
SJLP-007-0035C
 Helton Ditch
 Jackson Ditch
 October 2, 2013

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

BRYAN C. CAGE

Court Case No.: AF-01-524

Subfile No.: SJLP-007-0035C

CONSENT ORDER

The Court, having considered Plaintiff's Motion for Entry of Consent Order dated 3/20/14 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

Total 0.8 acres

As shown on the attached Subfile Map for Tract SJLP-007-0035C of the 2006 La Plata Hydrographic Survey.

Rate of Flow:

0.0183 cfs, Priority Date: December 21, 1884 (Priority No. 13.5 in the Echo Ditch Decree)

Amount of Water: Not to exceed 2.42 acre-feet per annum

B. NO RIGHT (Surface Water Only):

Priority: NONE

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

Purpose of Use: NO RIGHT

Point of Diversion: **Ditch:** HELTON DITCH

Location: X= 2,621,848 feet Y= 2,151,245 feet

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

Location and Amount of Acreage

Section 33, Township 31N, Range 13W, N.M.P.M.

Pt. NW¼

0.2 acres

Total 0.2 acres

As shown on the attached Subfile Map for Tract SJLP-007-0035C 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.

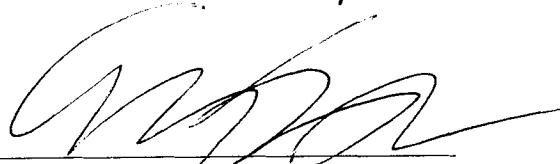
Hon. James J. Wechsler
Presiding Judge

APPROVED AND ACCEPTED BY:

ACCEPTED: _____
BRYAN C. CAGE

ADDRESS: Consent Implied - See
State's Motion for Entry of
Consent Order dated

DATE: 3/20/14



Special Assistant Attorney General

Date: 3/14/2014

2612000

2132000

2132000



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

Grid: NAD83

1:2,400

1 inch = 200 feet



State of New Mexico

Office of the State Engineer
 Scott A. Verhines, P.E., State Engineer

San Juan River Stream System
 Hydrographic Survey
 La Plata River Section



Tract Number
SJLP-007-0035C
 Helton Ditch
 Jackson Ditch
 October 2, 2013