# Appendix 11 - Legal Issues

The following information relates to a variety of topics that arose during the planning process, and is being included for reference. The information comes from various web sites as noted and its accuracy has not been verified. Also, inclusion of the information does not imply agreement or disagreement with the information.

# New Mexico Office of the State Engineer and the Interstate Stream Commission

# FACT SHEET
# What is adjudication?

Adjudication is the judicial determination of existing rights to place the water of a stream system to a beneficial purpose of use. This requires the joining of all water owners sharing the same source of water. *Source: New Mexico Statute 72- 4-17, Suits for determination of water rights; parties; hydrographic survey' jurisdiction; unknown claimants.*

Adjudications are currently underway in both federal and state courts in New Mexico. State attorneys through the State Engineer have the responsibility for conducting them on behalf of the State of New Mexico. The entire Pecos Stream System is a comprehensive adjudication, including those of the Mescalero Apache, which was filed in 1956.

Adjudications of several tributaries to the Upper Rio Grande were started between 1966 and 1983 and involve the rights of 13 New Mexico Indian Pueblos and the Jicarilla Apache Tribe, the federal government, municipalities, community ditches and thousands of individual defendants. The adjudication of the lower portion of the Rio Grande began in 1985 and involves an irrigation district, a major federal reclamation project, municipal and county water rights, a state university, the City of El Paso and thousands of individual groundwater claims within Doña Ana County.

Law mandates the State Engineer, NMSA 1978 Section 72-4-13 (1982), to perform hydrographic surveys and investigations of each stream system and source of water supply in the State, beginning with those used primarily for irrigation. Upon completion of the survey, the State Engineer, the state's attorneys, commissioned special assistant attorneys general, institutes an adjudication to obtain a judicial determination and definition of water rights within each stream system and underground basin as required by law, NMSA

The San Juan adjudication is also being undertaken which involves the rights of the Navajo Nation and the Jicarilla Apache.

1978 Section 72-4-15 (1929). This is required so that he may effectively perform water rights administration, as well as meet New Mexico's interstate stream obligations. The legal bases and characteristics of each and every water right claim within an adjudication must be identified and surveyed, reduced to a written offer, conveyed to the water rights owner who may accept or reject. If rejected, it may then be litigated between the state and the claimant through evidentiary hearings before the adjudication judge. After individual water rights claims have been adjudicated between the state and individual claimants, an individual defendant or group of defendants may challenge the water rights of others during the inter se (among themselves) phase

of the adjudication. After hearings on any challenges are held, the Court issues a final decree that defines the rights of each and every claimant on the stream system.

*New Mexico Office of the State Engineer And the Interstate Stream Commission P.O. Box 25102 Santa Fe, New Mexico 87504-5102 Phone: (505)827-6160 Email: nmwaterplan@ose.state.nm.us;* http://www.ose.state.nm.us

[By the Louisiana Purchase, Texas had become a part of the United States; but in 1819 it had been ceded to Spain in the negotiations for Florida. Two years later Mexico, including Texas, had become independent, and the United States made two unsuccessful attempts to purchase Texas from Mexico. The settlement of Texas by immigrants from the United States finally led to the secession of Texas and its annexation by the United States, with the result that the Mexican War broke out in May, 1846. The Treaty of Guadalupe Hidalgo, ending the Mexican War, was signed on February 2, 1848, by Nicholas P. Trist for the United States and by a special commission representing the collapsed government of Mexico. Trist disregarded a recall to Washington, and negotiated the treaty in violation of most of his instructions. The U.S. Senate reluctantly approved the treaty. Under the treaty, Mexico ceded to the United States Upper California and New Mexico (including Arizona) and recognized U.S. claims over Texas, with the Rio Grande as its southern boundary. The United States in turn paid Mexico $15,000,000, assumed the claims of American citizens against Mexico, recognized prior land grants in the Southwest, and offered citizenship to any Mexicans residing in the area.] Sources: Griswold del Castillo, Richard, The Treaty of Guadalupe Hidalgo: A Legacy of Conflict. University of Oklahoma Press, Norman, 1990. Grolier's New Electronic Encyclopedia, 1991.

**http://www.southwestbooks.org/treaty.htm**

- **The Treaty of Guadalupe Hidalgo**

## TREATY WITH MEXICO (February 2, 1848)

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES CONCLUDED AT GUADALUPE HIDALGO, FEBRUARY 2, 1848; RATIFICATION ADVISED BY SENATE, WITH AMENDMENTS, MARCH 10, 1848; RATIFIED BY PRESIDENT, MARCH 16, 1848; RATIFICATIONS EXCHANGED AT QUERéTARO, MAY 30, 1848; PROCLAIMED, JULY 4, 1848.

IN THE NAME OF ALMIGHTY GOD The United States of America and the United Mexican States animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics and to establish Upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two people should live, as good neighbors have for that purpose appointed their respective plenipotentiaries, that is to say: The President of the United States has appointed Nicholas P Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic; Who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following:

Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

ARTICLE I
There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II

Immediately upon the signature of this treaty, a convention shall be entered into between a commissioner or commissioners appointed ~y the General-in-chief of the forces of the United States, and such as may be appointed by the Mexican Government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III

Immediately upon the ratification of the present treaty by the Government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the Government of the Mexican Republic, and the ratification's exchanged) immediately to desist from blockading any Mexican ports and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United State then in the interior of the Mexican Republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay; the Mexican Government hereby binding itself to afford every facility in their power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be dispatched to the persons in charge of the custom houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican Government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of ratification of this treaty by the Government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican Government, at the city of Mexico, within three months after the exchange of ratification's.

The evacuation of the capital of the Mexican Republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV

Immediately after the exchange of ratification's of the present treaty all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican Republic, as about to be established by the following article, shall be definitely restored to the said Republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the Government of the Mexican Republic. To this end, immediately upon the signature of this treaty, orders shall be dispatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line

of entrenchment's surrounding the said city, is comprehended in the above stipulation, as regards the restoration of artillery, apparatus of war, & c.

The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months -from the said exchange of ratification's, or sooner if possible; the Mexican Government hereby engaging, as in the foregoing article to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be entered into between the General-in-Chief of the said troops and the Mexican Government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return 1i of the healthy season. And the space of time here referred to as, comprehending the sickly season shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratification's of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the Government of the said United States will exact the release of such captives and cause them to be restored to their country.

ARTICLE V

The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or Opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in the article, are those laid down in the map entitled "Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell," of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned Plenipotentiaries,. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila,

where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners Sutil and Mexicana; of which plan a copy is hereunto added, signed and sealed by the respective Plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two Governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratification's of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution.

ARTICLE VI

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the river Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the Governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in

such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII
Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratification's of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX
The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States. and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X
[*This article was stricken out by the United States Congress - see Protocol of Querétaro* (includes affirmation of the provisions of Article X) ]

Article XI
Considering that a great part of the territories, which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States wheresoever this may be necessary; and that when they cannot be prevented, they

shall be punished by the said Government, and satisfaction for the same shall be exacted all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics; nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the united States, the Government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country. or deliver them to the agent or representative of the Mexican Government. The Mexican authorities will, as far as practicable, give to the Government of the United States notice of such captures; and its agents shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the mean time, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the Government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And, finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen millions of dollars.

Immediately after the treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual installments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by--the Mexican Government, and the first of the

installments shall be paid-at the expiration of one year from the same day. Together with each annual installment, as it falls due, the whole interest accruing on such installment from the beginning shall also be paid.

ARTICLE XIII

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican Republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars. To ascertain the validity and amount of those claims, a . board of commissioners shall be established by the Government of the United States, whose awards shall be final and conclusive; provided that, in deciding upon the validity of each claim, the boa shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners or of the claimants, any books, records, or documents, in the possession or power of the Government of the Mexican Republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister of Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents so specified, which shall be in their possession or power (or authenticated copies or extracts of the same), to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners; provided that no such application shall be made by or at the instance of any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify for its security.

ARTICLE XVII

The treaty of amity, commerce, and navigation, concluded at the city of Mexico, on the fifth day of April, A. D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratification's of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration o~ the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the Government of the United States hereby engaging and pledging its faith to establish and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation, which they may know of, or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, They shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico, whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

(1) All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

(2) The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

(3) All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or imposts of every kind, under whatsoever title or denomination. Nor shall they be there subject to any charge whatsoever upon the sale thereof. (4) All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior, whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

(5) But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.

(6) The owners of all merchandise, effects, or property, described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom houses, conformably with the stipulation in the third article, in such case all merchandise, effects and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI

If unhappily any disagreement should hereafter arise between the Governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they

should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII

If (which is not to be expected, and which God forbid) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible: (1) The merchants of either republic then residing in the other shall be allowed to remain twelve months (for those dwelling in the interior), and six months (for those dwelling at the seaports) to collect their debts and settle their affairs; during which periods they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hindrance, conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

(2) . -In order that the fate of prisoners of war may be alleviated all such practices as those of sending them into distant, inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison ships, or prisons; nor be put in irons, or bound or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be dispose( in cantonments, open and extensive enough for air and exercise and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any office shall break his parole by leaving the district so assigned him, o any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole or any common soldier so escaping

from the limits assigned him, shall afterwards be found in arms previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished, by the party in whose power they are, with as many rations, and of the same articles, as are allowed either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service; the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them withheld, as a compensation or reprisal for any cause whatever, real or pretended Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often a he pleases; shall be allowed to receive, exempt from all duties a taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and, during which, its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Mexican Republic, with the previous approbation of its general Congress; and the ratification's shall be exchanged in the City of Washington, or at the seat of Government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof we, the respective Plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement, and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST

LUIS P. CUEVAS

BERNARDO COUTO

MIGL. ATRISTAIN

ADDENDUM:

The text of Article IX was modified by the U.S. Senate, and Article X was deleted in its entirety. The treaty, as it was ratified, is presented above. The original text of Articles IX and Article X appear below. The Protocol of Queretaro, also included below, clarified what was meant by the U.S. Senate modifications of the original treaty.

ARTICLE IX
The Mexicans, who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding Article, shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens of the United States. In the mean time, they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws. With respect to political rights, their condition shall be on an equality with that of the inhabitants of the other territories of the United States; and at least equally good as that of the inhabitants of Louisiana and the Floridas, when these provinces, by transfer from the French Republic and the Crown of Spain, became territories of the United States.

The same most ample guaranty shall be enjoyed by all ecclesiastics and religions corporations or communities, as well in the discharge of the offices of their ministry, as in the enjoyment of their property of every kind, whether individual or corporate. This guaranty shall embrace all temples, houses and edifices dedicated to the Roman Catholic worship; as well as all property destined to it's [sic] support, or to that of schools, hospitals and other foundations for charitable or beneficent purposes. No property of this nature shall be considered as having become the property of the American Government, or as subject to be, by it, disposed of or diverted to other uses.

Finally, the relations and communication between the Catholics living in the territories aforesaid, and their respective ecclesiastical authorities, shall be open, free and exempt from all hindrance whatever, even although such authorities should reside within the limits of the Mexican Republic, as defined by this treaty; and this freedom shall continue, so long as a new demarcation of ecclesiastical districts shall not have been made, conformably with the laws of the Roman Catholic Church.

ARTICLE X
All grants of land made by the Mexican Government or by the component authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid, if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill said conditions within the periods limited in the same respectively; such periods to be now counted from the date of exchange of ratifications of this treaty: in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this Article.

The foregoing stipulation in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than Texas, put in possession under such grants; and, in default of the fulfillment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void.

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## THE PROTOCOL OF QUERÉTARO

In the city of Querétaro on the twenty sixth of the month of May eighteen hundred and forty-eight at a conference between Their Excellencies Nathan Clifford and Ambrose H. Sevier Commissioners of the United States of America, with full powers from their Government to make to the Mexican Republic suitable explanations in regard to the amendments which the Senate and Government of the said United States have made in the treaty of peace, friendship, limits and definitive settlement between the two Republics, signed in Guadalupe Hidalgo, on the second day of February of the present year, and His Excellency Don Luis de la Rosa, Minister of Foreign Affairs of the Republic of Mexico, it was agreed, after adequate conversation respecting the changes alluded to, to record in the present protocol the following explanations which Their

aforesaid Excellencies the Commissioners gave in the name of their Government and in fulfillment of the Commission conferred upon them near the Mexican Republic.

First.
The American Government by suppressing the IXth article of the Treaty of Guadalupe and substituting the III article of the Treaty of Louisiana did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding that all of that agreement is contained in the IIId article of the Treaty of Louisiana. In consequence, all the privileges and guarantees, civil, political and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the Treaty had been retained, will be enjoyed by them without any difference under the article which has been substituted.

Second.
The American Government, by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.

Conformably to the law of the United States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1846, and in Texas up to the 2d March 1836.

Third.
The Government of the United States by suppressing the concluding paragraph of article XIIth of the Treaty, did not intend to deprive the Mexican Republic of the free and unrestrained faculty of ceding, conveying or transferring at any time (as it may judge best) the sum of the twelve [sic] millions of dollars which the same Government of the United States is to deliver in the places designated by the amended article.

And these explanations having been accepted by the Minister of Foreign Affairs of the Mexican Republic, he declared in name of his Government that with the understanding conveyed by them, the same Government would proceed to ratify the Treaty of Guadalupe as modified by the Senate and Government of the United States. In testimony of which their Excellencies the aforesaid Commissioners and the Minister have signed and sealed in quintuplicate the present protocol.

[Seal] A. H. Sevier

[Seal] Nathan Clifford

[Seal] Luis de la Rosa

**What is the Rio Grande Compact?**

*Framework For Public Input To A State Water Plan*

Colorado, New Mexico and Texas signed the Rio Grande Compact in 1938 to apportion between them the Rio Grande waters above Fort Quitman, Texas, based on 1929 water uses and an extensive water resources investigation conducted in the 1930s by the United States. The Compact requires that Colorado deliver a specified percentage of Rio Grande annual flows to the New Mexico state line. The percentage that Colorado must deliver to New Mexico is based on the amount of annual runoff in the headwaters of the Rio Grande in the Conejos, Los Pinos and San Antonio Rivers and in the Rio Grande at Del Norte. Colorado must deliver about one-third of the Rio Grande flow to New Mexico in an average year, about one-fourth of the flow in dry years, and about two-thirds in wet years.

New Mexico's water supply from the Rio Grande is guaranteed and constrained by the Rio Grande Compact. The compact provides three sets of geographically based water supply entitlements and the corresponding obligations. These three sets apply to the Rio Grande between:

- The Colorado border and the Otowi stream gage, located just south of Espanola and north of White Rock Canyon and Cochiti Reservoir;
- Otowi gage and Elephant Butte Dam; and
- Between Elephant Butte Dam and the Texas border.

In each case, New Mexico is entitled to a defined amount of water.

Upstream of the Otowi gage, New Mexico is entitled to continue to deplete as much water as it was depleting in 1929. The Rio Grande Compact does not quantify this entitlement. The remaining annual flow must pass the Otowi gage. Between the Otowi gage and Elephant Butte Dam, New Mexico is entitled to deplete a specific amount of water annually. The annual amount, which varies depending on the annual flow of the Rio Grande at the Otowi gage, is specified in the compact. Most of the water passing the Otowi gage must be delivered by New Mexico to below Elephant Butte Dam. At high annual flows, all of the extra water above an annual volume of about 1.1 million ac-ft must be delivered to below Elephant Butte Dam. Downstream from Elephant Butte Dam, New Mexico is entitled to deplete a pro rata share of the available water supply based on the ratio of acreage irrigated by the Rio Grande Project. That amount is not quantified by the Compact but is quantified by agreements that were contemporaneous to the Compact. New Mexico's percentage of the irrigated acreage and the water supply is 57 percent.

In effect, the Rio Grande Compact apportions the water of the Rio Grande, not only between the states of Colorado, New Mexico, and Texas, but also between these three reaches of the river within New Mexico. In each geographic reach, New Mexico is obligated to see that its depletions of water do not exceed its entitlements to deplete water.

*More information -*

# ENDANGERED SPECIES ACT – DECEMBER 28, 1973

## From the FWS Web Page

**Endangered Species Act of 1973** (16 U.S.C. 1531-1544, 87 Stat. 884), as amended -- Public Law 93-205, approved December 28, 1973, repealed the Endangered Species Conservation Act of December 5, 1969 (P.L. 91-135, 83 Stat. 275). The 1969 act had amended the Endangered Species Preservation Act of October 15, 1966 (P.L. 89-669, 80 Stat. 926).

The 1973 act implemented the Convention on International Trade in Endangered Species of Wild Fauna and Flora (T.I.A.S. 8249), signed by the United States on March 3, 1973, and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (50 Stat. 1354), signed by the United States on October 12, 1940.

The 1973 Endangered Species Act provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through Federal action and by encouraging the establishment of State programs. The Act:

- authorizes the determination and listing of species as endangered and threatened;
- prohibits unauthorized taking, possession, sale, and transport of endangered species;
- provides authority to acquire land for the conservation of listed species, using land and water conservation funds;
- authorizes establishment of cooperative agreements and grants-in-aid to States that establish and maintain active and adequate programs for endangered and threatened wildlife and plants;
- authorizes the assessment of civil and criminal penalties for violating the Act or regulations; and
- authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.

Section 7 of the Endangered Species Act requires Federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

Public Law 94-325, approved June 30, 1976, (90 Stat. 724) extended and increased the authorization of appropriations in section 15 of the 1973 Act.

Public Law 94-359, approved July 12, 1976, (90 Stat. 911), exempted from the prohibitions in the Act and under certain conditions, whale parts and products lawfully held prior to December 28, 1973. It also provided other amendments to facilitate administrative processes in emergency situations, clarified enforcement procedures, allowed disposal of forfeited and abandoned property, and clarified the definition of "commercial activity."

The authorization of appropriations for Federal grants-in-aid to States was extended by P.L. 95-212, December 19, 1977 (91 Stat. 1493).

Public Law 95-632, signed by the President on November 10, 1978, (92 Stat. 375) extended through March 31, 1980, the appropriations authority under section 15 and made extensive revisions to the 1973 law. A Cabinet-level Endangered Species Committee was established as part of a two-tiered process whereby Federal agencies may obtain exemptions from the requirements of section 7. The Tellico Dam project in Tennessee and the Grayrocks project in Wyoming were to receive expedited consideration by the Committee.

The Secretary of Defense is authorized to specify exemptions from the Act for reasons of national security. The consultation process under section 7 was formalized and strengthened, and now includes the requirement that Federal agencies prepare biological assessments in cases where the Secretary of the Interior has advised that a listed species may be present.

The 1978 amendments also oblige the Secretary to consider the economic impact of designating critical habitat, and to review the list of endangered and threatened species every five years. Public notification and hearing requirements, prior to the listing of a species or its habitat, are specified.

Other changes made by the 1978 statute include: a provision for cooperative agreements with States for the conservation of endangered and threatened species of plants, exemptions from the Act's requirements for the progeny of legally held captive raptors and antique articles made before 1830, revision of the penalty provisions of the Act, and a change in the definition of "species" to limit the application of the term "population" to include vertebrates only.

Public Law 96-69 (40 U.S.C. 174(b)-l and 43 U.S.C. 377a), the Energy and Water Development Appropriations Act for fiscal year 1980, approved September 25, 1979, (93 Stat. 437) exempted Tellico Dam in Tennessee from the Endangered Species Act and authorized completion of the project despite the threat to the endangered snail darter. Additional amendments were enacted in P.L. 96-246, May 23, 1980 (94 Stat. 348) and P.L. 97-79, November 16, 1981 (96 Stat. 1079).

Public Law 96-159 (16 U.S.C. 1533, 93 Stat. 1255-1230), approved December 28, 1979, extended and increased the authorization of appropriations through September 30, 1982. It designated the Secretary of the Interior, acting through the Fish and Wildlife Service, as the Endangered Scientific Authority for implementation of CITES. It also created an International Convention Advisory Commission, and extended the scrimshaw amendments for three years.

Public Law 97-304, approved October 13, 1982, (96 Stat. 1411-1417, 1421, 1422, 1425) extended the annual authorizations under the Act through FY 1985 at the following levels: section 15 (general) -- $27 million; section 6 (grants-in-aid) -- $6 million; section 7 (Exemption Committee) -- $600,000. It also extended the Secretary's authority and overturned the "bobcat" decision of the U.S. Court of Appeals for the District of Columbia.

Public Law 98-327, approved June 25, 1984, (98 Stat. 270) authorizes the Secretary to use money from fines and forfeitures collected under the Lacey Act and the Endangered Species Act to pay for the temporary care of animals and plants seized by our law enforcement agents.

Public Law 98-364, July 17, 1984, (98 Stat. 442), as amended, clarified provisions concerning marine mammals (see Marine Mammal Protection Act of 1972) and provided for the translocation of California sea otters.

Public Law 99-625, approved November 7, 1986, (100 Stat. 3502) authorized the Secretary of the Interior to develop and implement a sea otter translocation plan, to be administered by the Fish and Wildlife Service, specifying statistics of sea otters to be translocated, manner of capture, relocation zone, and measures to contain the population. The 1986 amendments declared that a member of an experimental population shall be treated as "threatened" and provided that section 7 of the Endangered Species Act applies. The amendments also provided for non-defense agency actions in the translocation zone, and for incidental take in the management zone. (See Wetlands Loan Act.)

Although the funding authority for the Act lapsed for Fiscal Years 1986 through 1988, the Senate Appropriations Committee reports (S. Rept. 99-397 and S. Rept. 100-165) included language indicating that funding was to be provided and the provisions of the Act were to continue to be carried out.

Public Law 100-478, enacted October 7, 1988, (102 Stat 2306) included the following provisions:

- Redefines the definition of "person" to clarify law applies to municipal corporations.
- Provides equal authority to Departments of Interior and Agriculture for enforcing restrictions on import/export of listed plants.
- Requires the Secretary of the Interior to monitor all petitioned species that are candidates for listing and specifies emergency listing authority.
- Directs the Secretary of Interior to develop and review recovery plans for listed species without showing preference for any taxonomic group.
- Establishes recovery plan criteria for listed species.
- Requires a status report to Congress on recovery plans, every two years.
- Provides for public review of new or revised recovery plans prior to final approval.
- Requires five-year monitoring for species that have recovered and been delisted.
- Clarifies the use of funds allocated to the States and establishes criteria for allocations.

- Directs that deposits from the General Fund amounting to 5 percent of Pittman-Robertson/Wallop-Breaux Federal Aid accounts be made each year into a special cooperative Endangered Species Conservation Fund.
- Prohibits damage or destruction of endangered plants on Federal lands and on private lands when knowingly in violation of State law.
- Increased by a factor of two-and-one-half the civil and criminal penalties provided under section 11.
- Required the Secretary of Commerce to contract for a National Academy of Sciences study for conservation and status of sea turtles to be completed and reported to Congress by April 1, 1989; and delayed implementation of Turtle Excluder Device regulations until May 1, 1990, inshore and May 1, 1989, offshore. Provided for establishment of a Sea Turtle Coordinator. Authorized $1.5 million through FY89 to carry out the sea turtle provisions.
- Requires Administrator of the Environmental Protection Agency in cooperation with Secretaries of Interior and Agriculture, to conduct a study for identifying reasonable and prudent means to implement endangered species pesticide labeling program, and to report to Congress one year after enactment of this Act.
- Allows further renewal up to five years for certificates of exemption of pre-Act scrimshaw.
- Requires annual accounting to Congress, starting January 15, 1990, of reasonably identifiable expenditures, species-by-species, made for conserving Endangered or Threatened species; and also requests an accounting by those States receiving section 6 grants.
- Reauthorizes appropriations for Fiscal Years 1988 through 1992, as follows:

In addition to amending the Endangered Species Act, P.L. 100-478 also included the African Elephant Conservation Act.

Public Law 102-251, Title III, 305, March 9, 1992 (106 Stat. 66) as amended by Public Law 104-208, div. A, Title I, 101 (a), September 30, 1996 (110 Stat. 3009) provided that "the special areas defined in 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802 (24) shall be considered places that are subject to the jurisdiction of the United States for the purposes of the Endangered Species Act of 1973." There is also a provision that requires all Federal agencies to minimize conflicts with recreational fisheries and listed species.

Public Law 105-18, Title II, 3003, June 12, 1997 (111 Stat. 176) provides guidance for consultation under Section 7 for emergency situations.

# PUBLIC RIGHTS OF WAY OVER FEDERALLY MANAGED LANDS

**from the siskiyou county comprehensive land and resource management plan**

(This section authored by M.H. Armstrong - SCFB)

APPENDIX 10 Customs and Culture - TRANSPORTATION AND RIGHTS-OF-WAY

**BACKGROUND:**

In the debate over mineral legislation that occurred in Session I of the 39th Congress of 1866, Congressman George Julian of Indiana, then Chair of the Public Lands Committee of the House, favored subdivision and sale of mineral lands at auction to pay the war debt, with some vague restrictions to prevent monopoly and ensure ordinary claimants some opportunity to purchase the land.

Senator William Stewart of Nevada, however, favored a ratification of the status quo, with additional inducement of giving the successful miner fee-simple title at a nominal price. He introduced a bill on the floor of the Senate stating; "All there is in this bill is a simple confirmation of the existing conditions of things in the mining regions, leaving everything where it was, endorsing the mining rules. It simply adopts and perfects the existing system allowing these people to enjoy their property without being subject to the fluctuation created now by agitations in Congress."

The Senate passed the bill, but Congressman Julian buried it in his House committee. Stewart countered by amending the contents of a House passed bill on rights-of-way across public lands with his mining bill and pushed it through the Senate. It was returned to the House Committee on Mines and Mining instead of the Public Lands Committee and passed the House as the Act of July 26, 1866 (U.S. Statutes at Large, XIV, pgs. 251-253. or **"An Act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes.")**

The integration of Stewart's two original pieces of legislation on rights-of-way and mining into the Act of July 26, 1866, (also known as the **"Lode Act"**,) provided a broad contextual basis for the Congressional recognition of the vesting of various possessory rights on public lands as had been obtained under local customs and laws.

**The Act of July 26, 1866, included provisions that "The right-of-way for the construction of highways over public lands, not reserved for public purposes, is hereby granted." (These provisions were later separated from the mineral and water use provisions as R.S. 2477.)**

In 1870, under the **"Placer Act"** or U.S. Mining Law amended July 9, 1870, (vol. 16 Statutes at Large p. 217; U.S.C. vol 30, section 35,) **Congress also clarified that it was its intent that the water rights and rights-of-way to which the 1866 legislation related were effective not only against the United States but also against its grantees; that anyone who took title to public lands took such title burdened with any easement for water rights or rights of way that had been previously acquired against such lands while they were in public ownership.**

**In 1873, the portion of the body of federal Mining Law applicable to rights-of-way for the construction of highways over public lands was separated from the historic context of the original Acts and reenacted as Revised Statute (R.S.) 2477. In 1938, it was recodified as 43 U.S.C. Section 932).**

The Mining Law of 1866 applied the free-access principle to "all mineral lands of the public domain." The 1872 Mining Law changed this to "all valuable mineral deposits in lands belonging to the United States." In numerous cases decided both before and after the period 1866-1872, **the courts had held that the "public domain" embraced only lands available for disposal under the various disposal laws - that is, those areas not withdrawn from disposal and reserved by the federal government for other uses.**

**When National Forests** were created **the "creation" dates would correspond to the dates in which these lands were withdrawn or reserved from the public domain and the dates that the free access offer of the Mining Law of 1866 or R.S. 2477 ceased to apply. However, public rights-of-way that had been established prior to withdrawal or reservation became grandfathered as vested rights**.

(NOTE: Activities that do not ordinarily cause any appreciable disturbance or damage to public lands, resources or improvements have been generally designated as "casual use" by federal agencies and have not normally required a right-of-way grant or temporary-use permit. Traditionally, this has included foot traffic and use of pack animals or horses. Off-highway vehicle use may also be included - generally as posted. However, current management trends appear to be moving toward more restrictive control and permitting requirements.)

**There is an implied right of reasonable access for those engaged in valid uses of public lands and for "in-holders" of private lands.** This includes patented and unpatented mining claims, grazing allotments or other permitted use. Court decisions have upheld agency requirements for helicopter access to Wilderness mining claims, and there are many local incidences of helicopter logging. So, mode of access may be specified for access. Route of access may also be specified for resource concerns. Season of access may also be specified, as has been done to protect spotted owl nesting habitat.

Grazers currently require a trailing permit to move cattle overland to allotments and **Rangeland Reform** proposes to charge them a fee for forage consumed along the way.)

There is some unresolved question as to whether the **Taylor Grazing Act of 1934** withdrew lands from public domain into grazing districts. It appears not, as the Act states; "...in order to promote the highest use of public lands pending its final disposal ....) **The 1866 Mining Act and R.S.2477 were repealed with the Federal Land Policy and Management Act (FLPMA) on October 21 1976, but under 43 U.S.C. s 1769, all rights of way that existed on the date of repeal were expressly preserved.**

**DEFINITION OF A "HIGHWAY":**

The dictionary defines a "highway" as a road or route to some end destination. The criteria for the conditions that constitute the establishment of a "highway" necessarily vary from era to era. Certainly, pre-European Native Americans traveled by foot or by boat. Centuries of use of deer traces/ foot trails established seasonal migratory paths and trade routes between tribes across prairies, along rivers/streams, through the forest and across mountains, which are evidenced by remnant artifacts constructed of materials not native to an area.

Many of these same historic trails were later used by Russian, Hudson Bay Co. and Rocky Mountain Fur Co. trapping parties in the early nineteenth century. As the original Indian and trapping trails were used and re-used, by foot, mule, horse and cattle, they compacted and became broader. As wagons passed over sod, the way became compacted in defined ruts. In many cases, very little preparation of the trail was preformed. The public simply established permanent passage as a highway and widened it through repeated use. It was really not until the era of established communities that clearing and preparation of the path was required in order to accommodate the easy passage of freight wagons and stagecoaches to central points of commerce.

These conditions continued as the general status quo well into the 20th century in many parts of the West. Most motor vehicle roads were not even started in the county until the late 1920s and many overlay earlier routes. Transportation via horseback is still a common practice among ranchers and recreationalists. These are the realities of our "highways" in the context of our culture. They include main equestrian routes and footpaths to some end destination such as a pasture, mountain cabin, lake or fire lookout; foot paths used by hikers along old Indian and mining trails that branch off the main Pacific Crest trail or end at lakes or mountain summits; dirt roads to access timber stands for harvest; or 4-wheel drive ruts over former foot or horse paths to hunting grounds or mining claims.

**ABANDONMENT & STATUTE OF LIMITATIONS - FEDERAL PERSPECTIVE**:

(From pg. 15 of the Draft R.S.2477 Report of March 1993)

"Current policy and case law do not recognize any form of Federal provision for abandonment of R.S. 2477 rights of way. In the absence of a waiver of sovereign immunity, no one, including State and local governments, may challenge the title of the United States to Federal property. **In recognition of this, Congress passed a quiet-title statute that now appears at 43 U.S.C. Section 2409a. It allows those who have been put on notice that the United States has a claim adverse to their property interest to file a law suit to quiet-title. However, the statute also provides that quiet-title action must be filed within 12 years of the date the affected party discovers the Federal claim.** R.S. 2477 rights-of-way are easements and, therefore, interests in land subject to the quiet title statute. If they are not acted upon within 12 years of the date the Federal Government takes action that is consistent with their existence, then arguably, they are gone whether they existed in the first place or not. This would be true where Congress established a wilderness area, where BLM designated an area as a Wilderness Study Area, or where the U.S. Forest Service blocked off a former right-of-way and no one had acted on it for over 12 years."

## A BRIEF EXPLANATION OF RS 2477
## from the rs 2477 rights-of-way web page

RS 2477 rights-of-way are property rights originally granted by the federal government to establish the transportation network essential to settlement of the western frontier. Generally, these rights-of-way grants were made to local governments and are held in trust by them for the public. Today, they continue to provide virtually all the public access to and across the hundreds of millions of acres of public lands in the West and Alaska.

In recent years these rights-of-way and the public's continued access to these public lands has been increasingly threatened by a small group of special interests and some federal bureaucrats.

RS 2477 is a statute adopted in 1866 to facilitate the settlement of the West by encouraging the development of a system of roads and trails. The name "RS 2477" is an abbreviation of "Revised Statute 2477." That name, in turn, comes from the placement of the original law in a reorganized version of the U.S. Code.

RS 2477 is a very short law, consisting of only one sentence. It states, in its entirety, that " the right of way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted." That right-of-way is a legitimate property right, and, consequently, carries with it a bundle of associated rights, including the right to maintain the roads and upgrade them under certain circumstances.

Once the grant was made, the federal government's interest in the land actually containing the right of way became that of the servient estate. That means that its rights as owner of the underlying land are still protected against undue or unnecessary damage, but it cannot interfere with the owner of the right-of-way exercising its bundle of rights.

These property rights are held on behalf of the public, usually by the counties. In accepting the property right-of-way, the local governmental unit also accepted a legal obligation (and the consequent legal liability) to maintain those rights-of-way to ensure safe passage by the public.

RS 2477 was a self-executing law, meaning that when the requirements of the law were met, the property right was automatically conveyed from the federal government to the county. Indeed, there was never even a requirement that the county inform the federal government when it accepted the grant of a particular right-of-way. The specific actions which local governments took in accepting the grant vary from state to state and have been determined by each state's law.

State law can also determine such things as the width of the right of way.

RS 2477 was repealed in 1976 by a law establishing a more comprehensive resource management framework for the Bureau of Land Management, the Federal Land Management and Policy Act, commonly referred to as "FLPMA." However, FLPMA specifically and clearly stated that all existing 2477 rights of way were not affected by the repeal of RS 2477 and remained valid. It contained in its Title V a new mechanism for granting rights-of-way from 1976 to the present.

**S**o, while no new grants were made after 1976, all of those made prior to that time were still valid property rights of the counties. The federal land management agency cannot determine whether the claim is valid or not except for its administrative purposes. Under our Constitution, only the courts can do that. Much of the recent controversy surrounding the 2477 issue has been sparked by draft regulations issued by the U.S. Department of Interior which local governments and others claim try to exceed the authority of the Executive Branch under the Constitution as well as suffering from a number of other serious shortcomings as well.

If, based on the documentation the county provides, a federal agency recognizes the validity of a 2477 right of way claim, then it is bound by the right of the local governmental unit to exercise its bundle of rights. If it does not recognize the validity, then the right-of-way holder can still exercise its right. Where a dispute cannot be resolved, the issue goes to federal court for a decision.

Counties can abandon 2477 rights-of-way, but usually must go through formal procedures specified in state law to do so. The lack of maintenance of the road over a right-of-way has no bearing on the continuing validity of the right-of-way. One of the bundle of rights of the local governmental unit is to maintain a safe right-of-way and even to upgrade it within limits.

## CHRONOLOGY OF NATIONAL FOREST MANAGEMENT ACT PLANNING REGULATIONS

•1976 - National Forest Management Act (NFMA) •1979 - First planning regulations for NFMA

•1982 - Existing NFMA planning regulation was developed. During the 23 years since enactment of NFMA, uses of public lands have increased and much has been learned about the planning and management of National Forest System lands. At the outset, NFMA raised many varied and notable expectations. Land and resource management planning produced striking accomplishments in promoting public participation and improving land and resource management. Yet, many controversial issues regarding the appropriate short- and long-term use of national forests and grasslands linger. Difficult issues remain among competing interests, often without universally accepted resolutions. In such settings, land and resource management planning cannot be expected to resolve all problems; however, improved planning procedures can refine the focus of many issues, expand available choices, and enhance public service.

•1989 - Forest Service initiated a comprehensive review of its land management planning process. Results were published in May 1990, in a summary report, ``Synthesis of the Critique of Land Management Planning' (Vol. 1) accompanied by ten other, more detailed reports. The 1990 Critique documented lessons learned since passage of NFMA and described recommendations to address the planning and management challenges of the future.

•1991 - (February 15) Forest Service published an Advanced Notice of Proposed Rulemaking (56 FR 6508) with a public comment period concluding May 16, 1991. The Advanced Notice included preliminary regulatory text revising the existing, 1982 rule. Four public informational meetings were held to stimulate public interest and comment regarding the proposal in the Advanced Notice. Over 600 groups and individuals submitted written comments. These comments were used in the development of a proposed rule.

•1995 - Forest Service published the proposed rule on April 13, (60 FR 18886).

•1997 - (December) Secretary of Agriculture convened a 13 member Committee of Scientists to review the Forest Service planning process and offer recommendations for improvements.

•1998 - (July) Forest Service Rule Writing Team established

•1999 - (March) The Committee of Scientists release their report.

# IN STREAM FLOW

**From American Rivers Web Site**

Water is a river's most essential element. "Instream flow" refers to the water in a river's channel. In a healthy river, water levels fluctuate naturally. The flow of a river is cyclical, varying greatly on a time scale of hours, days, years, decades, and longer. For example, snowmelt makes many rivers flow deeper and faster in the spring; in hotter summer weather, flows tend to decrease. Flow varies from place to place, depending on regional differences in climate, geology, and vegetation. Every river is different with its own seasonal pulse.

*Natural flow creates diverse and complex habitats*

Like a sculptor, flow shapes the river. Flow defines the size of the river and its location and course. Flow controls where the river meanders and it establishes the pools, riffles, side channels, and backwaters. Flow's influence stretches from the immediate streambed far into the hyporrheic zone, riparian area, and floodplain. Flow determines the amount and type of habitat that exists in and around the river-important for food sources, spawning and rearing grounds, and migration routes for wildlife, fish, and other aquatic species. Native streamside vegetation in the riparian zone must have natural flow in order to survive and reproduce. The plants, fish, and wildlife in any given river have evolved to adapt to that river's unique rhythms. Altering natural flow can harm these species.

*Natural flow replenishes the ecosystem*

Natural floods are key to maintaining the ecological integrity of river ecosystems. Most of the plants and animals that live in and around the river have evolved to benefit from, or are actually dependent upon, the annual advance and retreat of floodwaters. During periods of high water, fish and wildlife migrate out of the channel and onto the floodplain to use newly available habitat and resources. For many species, the annual flood also acts as a reproductive cue. As floodwaters recede, nutrients and organic matter from the floodplain are transported into the river, providing food for fish and other aquatic organisms. Periodic floods, such as spring runoff, help plants in the riparian zone grow. High flows scour portions of the floodplain and re-deposit sediments, allowing tree seedlings to germinate and grow on bare sandbars without competition from established plants. Many native riparian plant species disperse seeds as annual high flows subside.

*Natural flow is in trouble*

Too many rivers today are being deprived of water because of excessive diversions to serve the demands of agriculture, hydropower, and growing cities. In the West especially, the natural timing and quantity of river flows have been dramatically altered and fish and wildlife are suffering.

*Human activities have adversely affected natural river flows*

Dams and associated diversions can reduce or destroy aquatic habitat by blocking stream flows, creating artificial flow regimes, changing flow temperatures, changing the timing of flows, and completely bypassing some stream channels. Diversions for irrigated agriculture remove water from the river to the farm fields. If the water eventually returns to the riverbed, it can be contaminated with sediment, pesticides, and herbicides. Growing cities are taking more water from rivers to quench the thirsts of homes and businesses. As towns grow, more and more of the watershed becomes "impervious." This means the ground, covered with buildings and paved roads and parking lots, can't absorb rainwater. Instead of gradually seeping into the ground, the water rushes over the surface and floods the nearest stream. This runaway runoff increases stream velocity and causes erosion. In many cases, this huge influx of water is laden with oil and other contaminants. Excessive logging also causes water to reach streams more rapidly. A forested hillside is like a giant sponge-remove the trees and rainwater, along with a good deal of mud, will rip down the hillside and flood a nearby stream. Add roads to the mix and you'll get even bigger landslides. Channelizing a river to facilitate navigation or to provide flood control destroys a river's natural meanders. This process of straightening and deepening the river increases the velocity of flows. It also makes it harder for the river and its wetlands to absorb floodwaters.

*What can we do?*

Preserve or restore your river's natural flow, or match the naturally functioning aquatic and riparian ecosystems as closely as possible. This could be as basic as restoring water to a dry streambed. Or it may be more complex, involving the adjustment of natural seasonal flow variations in a river altered by dams and reservoirs. Abandon the protection and restoration of "minimum" flows in favor of maintaining "optimum" flows. Identify an optimum flow

regime considering channel formation, pool and riffle formation, growth of riparian vegetation, and floodplain integration. Optimum flow should not be determined without first identifying the full range of ecological needs and human demands.

Hold flows to a less than natural standard only when technical, political, or legal factors prevent preservation or restoration. At the very least, ensure that flows are sufficient to sustain essential ecological functions, provide adequate aquatic and riparian habitat, and meet the needs of human health and recreation use.

Long-term needs of the river and long-term demands of humans are best served by a continual supply of healthy, clean water. Allowing rivers their natural flow regimes is the best way to provide and maintain a consistent, healthy supply of water.

**High Country News: October 11, 1999**

- **Submitted and included in Cuba News: Sept. 19, 2003**

# Acequia culture feels under the gun

*by Greg Hanscom And Bruce Selcraig*

Nicasio Romero lives in the village of El Ancon, Spanish for the elbow, or riverbend, about 30 miles from the Pecos River, between Santa Fe and Las Vegas. In 1986, he helped found the New Mexico Acequia Association. An artist and scholar, he has traveled the world looking at water-efficient desert irrigation systems. Romero has been an advocate of instream-flow rights in a culture that rejects the idea as an attempt by environmentalists to steal its historic water rights.

Nicasio Romero: "It's no accident that the acequia system has been operating continuously and effectively for 300-400 hundred years. It is a political and cultural system. It's the thread that holds the community together.

"Every year at the annual meeting, we set dates for the irrigation season, when ditches will be clean and functioning. The annual meeting is the one time when people are allowed to say anything they want about the acequia. They can be really energetic. It forces people to come together.

"Every two years, the mayordomo and commissioners are elected by majority vote. It's a democratic system - one person, one vote. It allows the guy with one acre to be just as important as the guy with 30 acres.

"The commissioners set policy and the mayordomo carries it out day to day. If there's a bad storm and a ditch breaks, the mayordomo calls people together to fix it. During a drought, he can tell people to stop watering. Gardens get first priority, then orchards and planted fields.

"The acequias have senior water rights. Seventy to 80 percent of the surface water in New Mexico is controlled by acequias. But I see a day when the acequias' water rights are challenged. We're in competition with recreation, municipalities, high tech.

"We're trying to find solutions without getting into the courts. We're trying to come up with water banking and leasing arrangements, so that people who want to produce (farm) but don't have the water can get matched up with people who have the water but don't have the time or the health to produce. There's no reason acequias couldn't lease water in the short term to growing areas or cities.

"Instream flow is the most sensitive issue right now. New Mexico is the only state without instream flow legislation. The reason is the acequias. I used to be one of those guys who said, "No way, man, I'm against instream flow, period." If we don't address this issue, we're just burying our heads in the sand. We don't have the luxury anymore to sit back and say, "I have the water right and I can do anything with it." The Endangered Species Act can kick in and take that power away from you.

"We're trying to teach young people to protect the water, to have reverence and respect for the water, but they're removed spiritually from it, lost in a throwaway culture. Kids are exposed to mass dominant culture and they think that is what they should aspire to. It's literally tearing families apart. Most people would rather stay in the country, but when they're confronted with the enormous pressure to conform to the dominant culture's idea of the good life, they move to the cities.

"We know we're racing against time. Change is inevitable, but I can't do anything about the forests in Brazil. I can do smething about the acequias."

Incldued in this section are relevant orders taken from the State Engineers' web site on the *Abousleman* case:

**INDICES AND GENERAL ORDERS**

**For**

**ldendum To Partial Final Judgment and Decree On Non-Pueblo, Non-Federal Proprietary Rights**
UNITED STATES DISTRICT COURT
UNITED STATES, et al v. ABOUSLEMAN, et al
JEMEZ RIVER ADJUDICATION
CIV. NO. 83-1041 JC

*September 15, 2000*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| THE UNITED STATES OF AMERICA,<br>On its own behalf and on behalf of the<br>Pueblos of JEMEZ, SANTA ANA, AND ZIA;<br>the Pueblos as Intervenors, on their own,<br>behalf; and THE STATE OF NEW MEXICO<br>ex rel. State Engineer,<br><br>Plaintiffs,<br><br>v.<br><br>TOM ABOUSLEMAN, et al.,<br><br>Defendants. | ) | 83cv0I0-JC<br><br>JEMEZ RIVER ADJUDICATION |

ORDER ON FORM OF PARTIAL FINAL DECREE

THIS MATTER is before the Special Master on her own motion, and is entered pursuant to Fed. R. Civ. P. 53 to control the proceedings regarding the entry of the partial final judgment and decree on non-Pueblo, non-federal proprietary rights ("decree').

The Order on *Inter Se* Proceedings entered March 2l, 2000 (Docket No. 3908) provides that the Court will enter the decree December 1, 2000. No later than October 16, therefore, counsel for the State of New Mexico, ex rel. State Engineer, shall circulate a proposed form of decree to counsel for the United States, the Special Master, and any interested counsel of record for review. Conments shall be submitted to the Special Master no later than October 30.

IT IS SO ORDERED.

SPECIAL MASTER VICKIE L. GABIN

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

*December 1, 2000*

| | | |
|---|---|---|
| THE UNITED STATES OF AMERICA, On its own behalf and on behalf of the . Pueblos of JEMEZ, SANTA ANA, AND ZIA; the Pueblos as Intervenors, on their own, behalf; and THE STATE OF NEW MEXICO ex rel. State Engineer, | ) | |
| Plaintiffs, | ) | 83cv01041- JEC-ACE |
| v. TOM ABOUSLEMAN, et al., | ) | JEMEZ RIVER STREAM SYSTEM |
| Defendants. | ) | |

PARTIAL FINAL JUDGMENT AND DECREE
ON NON-PUEBLO. NON-FEDERAL PROPRIETARY WATER RIGHTS

THIS MATTER comes before the Court upon its own motion for the entry of a Partial Final Judgment and Decree on Non-Pueblo, Non-federal Proprietary Water Rights in the Jemez River Stream System ("Decree"). This Decree is entered in accordance with NMSA 1978, § 72-4-19 (1907) and is a final judgment in accordance with Fed. R. Civ. P. 54(b). The Court, having considered the pleadings and orders previously filed or entered and being fully advised in the premises, FINDS:

1. The Court has jurisdiction of the subject matter and the parties herein.

2. This cause of action is a general adjudication of all rights to divert or impound and beneficially use the public surface and underground waters whose source is within the Jemez River Stream System.

3. The United States' Wild and Scenic River claim for the East Fork of the Jemez River, the water rights that the United States holds in trust for the Pueblos of Jemez, Santa Ana and Zia, and the water rights of those Pueblos, are not included in this Decree. These rights are being adjudicated in separate proceedings.

4. The proprietary water rights of the United States of America are not included herein. Except as provided in Paragraph 3, above, they were adjudicated in the Partial Final Judgment and Decree on the Proprietary Water Rights of the United States on lands Administered by the Forest Service, Bureau of Land Management, and Department of Energy, filed November 29, 1999 (Docket No. 3868).

5. Water rights for certain domestic uses in *de minmus* amounts, as described in the Court's Order of June 22, l987 (Docket No. 1691) arc excluded from this adjudication.

6. Water rights claims arising after April, 1987 were excluded from this adjudication by Order filed March 18, 1987 (No. 1599).

7. Throughout the course of this adjudication, water rights claimants were provided with adequate legal notice of all proceedings to adjudicate their water rights claims and all *inter se* proceedings.

8. Initial *inter se* proceedings were conducted in March and April. 1989 (No. 2019). The Order on *Inter Se* Proceedings filed March 21, 2000 (No. 3908) and subsequent orders were entered to control the course of the final *inter se* proceedings and the production of this Decree. Throughout the course of this adjudication, all parties received notice and had the opportunity to object to others' water rights in the stream system and to review the Addendum to this Decree. No objections were filed during the final *inter se* proceedings.

9. For the convenience of the parties, the Addendum attached to this Decree

sunmarizes the water rights adjudicated and decreed herein. Copies of the Addendum may be obtained from the Court or the State Engineer. The substantive elements of the water rights are those adjudicated by the subfile documentation and subsequent orders of the Court, unless clearly noted otherwise in the Addendum.

10. The water rights adjudicated herein may in the future be subject to general *inter se* proceedings involving all adjudicated water rights of the Rio Grande Stream System and its tributaries.

ITS THEREFORE ORDERED ADJUDGED, AND DECREED:

1. All water rights within the Jemez River Stream System, as set forth in previously filed orders, are finally adjudicated by this Decree, with the exception of the rights described in Paragraphs 3, 4, 5 and 6, above.

2. The parties whose water rights axe adjudicated herein, their successors, assigns, and lessees, are permanently enjoined from any diversion, impoundment or use of the public waters of the Jemez River Stream System except as adjudicated herein.

3. The attached Addendum is incorporated by reference as though fully set forth herein. In the event there is a discrepancy between a water right description set forth in the Addendum and the specific subfile order or document related to that right, the specific subfile order or document is controlling, unless expressly stated otherwise in the Addendum.

4. There is no just reason for delay, and the Court hereby expressly directs entry of this Decree pursuant to Fed. R Civ. P. 54(b).

/s/ John Edwards Conway
UNITED STATES DISTRICT JUDGE

Reconendcd for approval:
Vickie L. Gabin
SPECIAL MASTER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO



UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS OF JEMEZ, SANTA ANA and ZIA, and the STATE OF NEW MEXICO, ex rel., S.E., REYNOLDS, and the PUEBLOS OF JEMEZ, SANTA ANA and ZIA as Intervenors,

Plaintiffs,

v.

TOM ABOUSLEMAN, et al.,

Defendants.

No. CIV 83-1041 SC

**AMENDED ORDER ADJUDICATING IRRIGATION WATER REQUIREMENTS** 3607

THIS MATTER having come before the Court on the Pueblo of Jemez's Motion to Amend the Order Adjudicating Irrigation Water Requirements, there being no opposition to the Motion, and the Court being otherwise fully advised in the premises, the Court finds the Motion should be, and hereby is, GRANTED.

IT IS HEREBY ORDERED that:

1. Irrigation water requirements for one calendar year are defined as follows:

a. **Consumptive Irrigation Requirement (CIR)**, which is the quantity of water, exclusive of effective precipitation, that is consumptively used by plants or is evaporated from the soil surface. CIR is the measure of the depletion or beneficial consumptive use right:

b. **Farm Delivery Requirement (FDR)**, which is the quantity of water, exclusive of effective precipitation, that is delivered to the farm headgate or is diverted from a source of water which originates on the farm itself (such as a well or spring); and

c. **Project Delivery Requirements (PDR)** or Off-Farm Diversion Requirement, which is the quantity of water, exclusive of precipitation, diverted from an off-farm source to satisfy the FDR. The PDR consists of the FDR plus any off-farm conveyance losses between the source of supply and the farm headgate.

2. Irrigation water requirements in the Jemez River Basin are based on the growing season, effective precipitation, cropping pattern and other factors for the following geographic areas:

a. **Lower Jemez** - the area between the north boundary of the Jemez Pueblo Grant and the confluence of the Jemez River with the Rio Grande, including the ditches of Nestro R. Padilla Irrigation System, San Ysidro, Jemez Pueblo ditches which include the Pueblo Ditch, Pecos Pueblo ditch, West Main Ditch, West Upper ditch and ditches of the Pueblos of Zia and Santa Ana.

b. **Upper Jemez** - the area between the north boundary of the Jemez Pueblo Grant and the La Cueva Ditch area, including the following ditches: Cañon Community, the Pueblo and West Main Ditch from the north boundary of the Jemez Pueblo grant to the Jemez Diversion Dam, Ponderosa Community, Upper West, Upper East, East Lateral, West Lateral, West Side, Jemez Springs, South Upper West and Jemez Rio, A/K/A, Hummingbird;

c. **La Cueva** - the La Cueva ditch area including the La Cueva, George E. Fenton, and Fenton ditches; and

d. **Nacimiento** - the Nacimiento Community Ditch area, including the Domingo Vigil, Nerio Montoya, Francisco Chavez # 6, Gabriel Montoya # 7, Nacimiento, Ballejos # 4, Copper City, and Madrlena Atencio # 2.

3. The irrigation water requirements for each area are:

| | | CIR | FDR | PDR |
|---|---|---|---|---|
| a. | **Lower Jemez** | 1.73 | 3.46 | 4.94 |
| b. | **Upper Jemez** | 1.41 | 2.82 | 4.03 |
| c. | **La Cueva** | 0.83 | 1.66 | 2.37 |
| d. | **Nacimiento** | 1.14 | 2.28 | 3.26 |

4. Irrigation water requirements in the Jemez River Basin are adjudicated as follows:

a. **Lower Jemez**

i. For all water rights involving surface water delivered from a ditch, the amount of water shall not exceed 4.94 acre-feet per acre per year diverted by the ditch from the surface source or 3.46 acre-feet per acre per year delivered at the farm headgate, or a beneficial consumptive use of 1.73 acre-feet per acre per year, whichever amount is less.

ii. For all water rights diverting both surface and underground water from both a ditch and an irrigation well or wells, the amount of water shall not exceed 4.94 acre-feet per acre per year diverted by the ditch from the surface source of water, or 3.46 acre-feet per acre per year from combined sources delivered at the farm headgate or diverted from a well or wells, or a beneficial consumptive use of 1.73 acre-feet per acre per year, whichever amount is less.

b. **Upper Jemez**

i. For all water rights involving surface water delivered from a ditch, the amount of water shall not exceed 4.03 acre-feet per acre per year diverted by the ditch from the surface source of water, or 2.82 acre-feet per acre per year delivered at the farm headgate, or a beneficial consumptive use of 1.41 acre-feet per acre per year, whichever amount is less.

ii. For all water rights diverting both surface and underground water from both a ditch and an irrigation well or wells, the amount of water shall not exceed 4.03 acre-feet per acre per year diverted by the ditch from the surface source of water, or 2.82 acre-feet per acre per year from combined sources delivered at the farm headgate or diverted from a well or wells, or a beneficial consumptive use of 1.41 acre-feet per acre per year, whichever is less.

c. **La Cueva**

i. For all water rights involving surface water delivered from a ditch, the amount of water shall not exceed 2.37 acre-feet per acre per year diverted by the ditch from the surface source of water, or 1.66 acre-feet per acre per year delivered at the farm headgate, or a beneficial consumptive use of 0.83 acre-feet per acre per year, whichever amount is less.

ii. For all water rights diverting both surface and underground water from both a ditch and an irrigation well or wells, the amount of water shall not exceed 2.37 acre-feet per acre per year diverted by the ditch from the surface source of water, or 1.66 acre-feet per acre per year from combined sources delivered at the farm headgate or diverted from a well or wells, or a beneficial consumptive use of 0.83 acre-feet per acre per year, whichever is less.

d. **Nacimiento**

i. For all water rights involving surface water delivered from a ditch, the

amount of water shall not exceed 3.26 acre-feet per acre per year diverted by the ditch from the surface source of water, or 2.28 acre-feet per acre per year delivered at the farm headgate, or a beneficial consumptive use of 1.14 acre-feet per acre per year, whichever amount is less.

ii. For all water rights diverting both surface and underground water from both a ditch and an irrigation well or wells, the amount of water shall not exceed 3.26 acre-feet per acre per year diverted by the ditch from the surface source of water,[1] or 2.28 acre-feet per acre per year from combined sources delivered at the farm headgate or diverted from a well or wells,[2] or a beneficial consumptive use of 1.14 acre-feet per acre per year, whichever is less.

5. Any diversion, impoundment or use of waters of the Jemez River stream system by any defendant except in accordance with the irrigation water requirements as described in this Order is prohibited.

UNITED STATES DISTRICT JUDGE

Approved: Vickie L. Gabin
SPECIAL MASTER

[1]The Nacimiento Community Ditch Association takes water from two basins, the Nacimiento Creek drainage basin, which is within the Rio Puerco drainage basin, and the Jemez River drainage basin. An agreement between the Pueblos of Jemez, Zia and Santa Ana and the Nacimiento Community Ditch Association regarding the use of the Jemez River basin waters within the Rio Puerco drainage basin was filed in this case on June 14, 1990. (Docket No. 2240).

[2] Such supplemental irrigation wells which may exist and which may be used as points of diversion for this irrigation right were not catalogued or adjudicated in this adjudication.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

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CLERK-LAS CRUCES

THE UNITED STATES OF AMERICA, On its own behalf and on behalf of the Pueblos of JEMEZ, SANTA ANA, AND ZIA; the Pueblos as Intervenors, on their own behalf; and THE STATE OF NEW MEXICO, ex rel. State Engineer,

Plaintiffs,

v.

TOM ABOUSELMAN, et al.,

Defendants.

No. CV 83-1041 SC

JEMEZ RIVER ADJUDICATION

SPECIAL MASTER'S REPORT
ON ESTABLISHING PRIORITY DATES

This Report addresses the State of New Mexico's Motion for Order Establishing Priority Dates and recommends that the Court grant the Motion

THIS MATTER is before the Special Master on New Mexico's Motion for Order Establishing Priority Dates, filed January 15, 1997 (# 3544). The Motion was served on all defendant water rights claimants in the Jemez River Stream System; a Preliminary Response to New Mexico's Motion was filed by the Jemez River Basin Water Users' Coalition (Coalition), February 18, 1997 (# 3545). Larry C. White, Esq., attorney for the Coalition, does not represent individual water users. The State's Reply was filed March 21, 1997 (# 3550).

**I. Priority Date Descriptions**

The State requests the Court to enter an order which would establish the protocol for completing certain priority dates

already agreed to by the defendant and the State in filed offers of judgment. Some offers include a description of the water rights priority by year only, some by month and year, and some by month, day and year. The State's suggested protocol would result in the following changes to water rights priorities as described in filed offers of judgment:

1. where the priority is described by month and year, the last date of the stated month would be added ("August, 1910" would become "August 31, 1910");

2. where the priority is described by year, the last date of the stated year would be added ("1910" would become "December 31, 1910"); and

3. where the priority is described as being "prior to" a stated date, the priority would become the date immediately preceding the stated date ("prior to September 7, 1910" would become "September 6, 1910").

As grounds therefor, the State references the Court's August 8, 1996 Administrative Memorandum which sets out general standards for preparing partial final decrees (# 3475). Paragraph 4, at page 4, requires that priority dates "include all information available, that is, month/day/year, including four digits for the year (1874, rather than '74)." The State asserts that having complete priority dates would assist in the general administration of water rights by the State Engineer Office as well as administration of priorities.

**II. Re-Opening Proceedings**

The Coalition does not oppose the State's proposed change

described above in (3), but argues that because the proceedings with respect to determinations of non-Pueblo water rights have been finalized in large part for almost eight years, the other changes requested by the State "may undermine these prior proceedings and give rise to another *interse* phase...." Response at 2.

The Coalition understands that the State's requested protocol, while maintaining relative priorities of surface water rights, would change the priority ranking of 576 of the 693 non-ditch irrigated rights (presumably domestic and stock wells, stock ponds, and springs). Response at 4. See, Coalition's Exhibit B, letter from Judy K. Stoft to Larry White. Because previous inter se objections were based on a proposed partial final decree prepared in 1989 (but not entered by the Court), and because there exists the potential that State's protocol could make a difference in the administration of rights, the Coalition believes that due process would require the filing of another proposed partial final decree with the changed priority dates and a second round of inter se proceedings. The Coalition sets out an array of potential problems and questions which could arise in the context of a second proceeding. Response at 5-6.

**III. Rationale for Priority Dates**

The Coalition argues that the State's proposed method for completing priority dates is arbitrary and without rational foundation, and as one example points out the unlikelihood that surface water rights would have been initiated in the middle of winter. Response at 6-7. The State replies that a desire for

consistency and fairness, rather than logic, underlies its proposal. Reply at 7.

**IV. Discussion and Recommendation**

The Coalition's central objection, which I understand is the prospect of its member water users being subjected to another inter se proceeding, is a valid one. In this case, however, there will be no need for another inter se proceeding (at least one which deals with priorities). In 1989, each claimant had the opportunity to review the State's proposed partial final decree and object to every element of the rights of other water users, including priorities. For the current motion proceeding, the State served its Motion on these same individuals, or their successors in interest. Such service alerted them to potential adjustments in their rights. Significantly, no individual water rights claimant has objected to the Motion; and the Coalition has failed to show how its membership as a whole will be harmed by the State's proposal.

One aspect of the State's position deserves comment here. Throughout its Reply, the State minimizes the effect of completing priority date descriptions by describing the process as one which will resolve "ambiguities" in the partial final decree. I find that this characterization, in some instances, understates the fact that priority date changes may cause differences in the way priorities are ranked and administered. In fact, there exists a number of uncertainties regarding both potential consequences of this Motion, and future administrative procedures. For example, as

the State points out, Ms. Stoft's conclusions regarding changes in priority date ranking is based on one type of mathematical ordering. Reply at 5. The State could choose a different method of ranking priorities in the future, and potentially affect a different set of water rights claimants.

Another uncertainty stems from not knowing how the State would administer priorities under various factual circumstances. Assume, as Ms. Stoft suggests, that a change in rank order of priorities would not result in any priority being shifted from one year into a different year. In that case, water users whose priorities change by operation of the State's proposal would not be adversely affected by a future administrative decision to call priorities against water users grouped by one-year or five-year increments. On the other hand, certain water users would be adversely affected if priorities were administered on month-by-month basis.

Yet another open question is whether non-ditch irrigation rights - domestic wells, stock wells, and stock ponds - would be included in priority administration.

Notwithstanding the above discussion, I find that the State's proposal is acceptable and recommend that the Court grant its Motion. That there exist uncertainties surrounding the future of water rights administration is insufficient reason to deny the State's Motion.

Respectfully submitted,

Dated: May 22, 1997

Vicki L. Gabin
SPECIAL MASTER

FILED
UNITED STATES DISTRICT COURT

97 JUN -3 PM 3:09

CLERK-LAS CRUCES

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

THE UNITED STATES OF AMERICA, On its own behalf and on behalf of the Pueblos of JEMEZ, SANTA ANA, AND ZIA; the Pueblos as Intervenors, on their own behalf; and THE STATE OF NEW MEXICO, ex rel. State Engineer,

Plaintiffs,

v.

TOM ABOUSELMAN, et al.,

Defendants.

No. CV 83-1041 SC

JEMEZ RIVER ADJUDICATION

ORDER ESTABLISHING NET EVAPORATIVE LOSS ZONES

THIS MATTER is before the Court on New Mexico's Motion for Order Establishing Net Evaporative Loss Zones for Water Right Impoundments filed January 15, 1997. There being no opposition to the Motion, and the Court being otherwise fully advised in the premises, the Court finds the Motion should be, and hereby is, GRANTED.

IT IS HEREBY ORDERED that for water rights administration and priority administration, net evaporative losses pertaining to water rights impoundments shall be calculated by reference to the map entitled "Net Small Lake Evaporation Zones in the Jemez Watershed," attached to the State's Motion as Exhibit A and appended hereto.

UNITED STATES DISTRICT JUDGE

Approved: Vickie L. Gabin
SPECIAL MASTER

Date: May 22, 1997

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO



UNITED STATES OF AMERICA, for itself and for the PUEBLOS of JEMEZ, SANTA ANA and ZIA; the STATE OF NEW MEXICO, ex rel. S.E. Reynolds; and the Pueblos, for themselves as Intervenors,

Plaintiffs,

vs.

TOM ABOUSLEMAN, et al

Defendants.

PROPOSED ORDER
Exhibit 1
to Special Master's Report

Civil No 83-1041 C
(Jemez River)



ORDER

AMENDING THE PRETRIAL ORDER

The plaintiffs, by motion, asked the Court to amend its pretrial order in certain respects. The Special Master has held a hearing upon the motion and reported his findings and recommendations to the Court, which are accepted and adopted.

IT IS ORDERED, that the "Pretrial Order", filed July 24, 1985, is amended to add a new paragraph, numbered, (8) with the existing paragraph numbered (8) renumbered (9).

The new paragraph (8) is as follows:

" 8. Exemption of Minimal Water Rights.

The orderly administration of this case during adjudication and afterward in enforcement of the Court's decree, and the ability of the Court to afford complete relief to the parties, within the purposes of Fed. R. Civ. P. 19, will be enhanced, by exempting certain minimal water rights, and

omitting as parties to this action , the owners of such minimal water rights

The owners of minimal water rights, need not be joined as parties to this adjudication, and they shall be exempt from any priority calls of other parties in the administration of the decrees entered hereafter in this cause.

Minimal water rights are defined as:

(a) Domestic well uses, with purposes limited to indoor household uses, drinking water or sanitary uses, which have a closed conduit system for conveying the water from the well to the place of use and returning the effluent underground;

(b) The use of groundwater for irrigation of not more than 1300 square-feet of land;

(c) The use of groundwater for livestock watering by means of a metal storage tank of a volume not exceeding one-quarter acre foot, (0.25AF), or

(d) Any combination of these uses. "

Dated: June 22, 1987.

UNITED STATES DISTRICT JUDGE

Approved:

Special Master

U.S.A.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS of JEMEZ, SANTA ANA and ZIA; | ) | |
| and | ) | |
| STATE OF NEW MEXICO ex rel. State Engineer, | ) | |
| Plaintiffs, | ) | |
| PUEBLOS OF JEMEZ, SANTA ANA and ZIA, | ) | |
| Plaintiffs-in-intervention, | ) | 83cv01041-JC |
| v. | ) | JEMEZ RIVER SYSTEM<br>Cañon Community Ditch Association |
| TOM ABOUSLEMAN, et al., | ) | |
| Defendants. | ) | |

ORDER ADOPTING DITCH AGREEMENT

THIS MATTER comes before the Court upon its Order to Show Cause issued to Cañon Community Ditch Association filed March 8, 2000 (Docket No. 3899). The Court, having considered the record in this cause and otherwise being fully advised in the matter FINDS:

1. The Court has jurisdiction of the defendant and the subject matter herein.

2. The defendant was properly served in this matter with an Order to Show Cause why the Ditch Agreement for Canon Community Ditch Association attached hereto, should not be entered as an Order of the Court.

3. The defendant has neither signed and filed the Ditch Agreement nor filed a response

showing cause why the Ditch Agreement should not be entered as an Order of the Court.

4. Therefore, pursuant to the Court's Order to Show Cause, the attached Ditch Agreement should be adopted by the Court for the purpose of administration of the water rights associated with the Cañon Community Ditch.

IT IS THEREFORE ORDERED that the Ditch Agreement for Cañon Community Ditch Association, which is attached hereto is hereby adopted by the Court for administration purposes.

/electronic signature/
CHIEF UNITED STATES DISTRICT JUDGE

Approved:

/electronic signature/
Special Master Vickie L. Gabin

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS of JEMEZ, SANTA ANA and ZIA, | ) | |
| and | ) | |
| STATE OF NEW MEXICO ex rel State Engineer, | ) | |
| Plaintiffs, | ) | |
| PUEBLOS OF JEMEZ, SANTA ANA and ZIA, | ) | |
| Plaintiffs-in-intervention, | ) | No. CIV 83-1041 JC |
| v. | ) | RIO JEMEZ STREAM SYSTEM |
| TOM ABOUSLEMAN, et al., | ) | |
| Defendants. | ) | |

DITCH AGREEMENT

The Co-plaintiffs, UNITED STATES OF AMERICA and STATE OF NEW MEXICO, and the defendant, CAÑON COMMUNITY DITCH, agree that the defendant is a community ditch association duly organized under the laws of the State of New Mexico and that it has the right to divert public waters from the Rio Jemez Stream System for storage and delivery to the headgates or turnouts of the acreages which have been adjudicated irrigation water rights, which are more specifically identified hereafter.

Name of Ditch: CAÑON COMMUNITY DITCH
State Engineer File No.: 03094
Priority: 1798-12-31
Point of Diversion: Cañon Community Ditch diverts from the Rio Guadalupe, a tributary of the

Jemez River, within the NE¼ NE¼ SW¼, Section 17, T.17N., R.2E., N.M.P.M., as projected within the Cañon de San Diego Grant. The point of diversion is located by the state plane coordinate system, central zone X= 350,640 Y= 1,711,485.

CAÑON COMMUNITY DITCH

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 11 | 7 | 0011.0007.000 | 1.300 | VELMA M. CHAVEZ |
| 11 | 7A | 0011.007A.000 | 0.180 | HELEN & TERRY W. CAPPS |
| 11 | 8 | 0011.0008.000 | 0.780 | MARGARET CHAVEZ |
| 11 | 8A | 0011.008A.000 | 0.710 | REINA & JOE VELASQUEZ |
| 11 | 9 | 0011.0009.000 | 1.290 | EUGENE CHAVEZ |
| 11 | 10 | 0011.0010.000 | 4.710 | RICARDO CHAVEZ |
| 11 | 10A | 0011.010A.000 | 0.800 | DOLORES CHAVEZ MOORE |
| 13 | 1 | 0013.0001.000 | 4.580 | MANUEL & RAMONA MONTOYA |
| 13 | 1A | 0013.001A.000 | 0.270 | RICARDO CHAVEZ |
| 13 | 2 | 0013.0002.000 | 8.230 | ANTONIO & JOSEPHINE LUCERO |
| 13 | 3 | 0013.0003.000 | 0.870 | LULA HEATH |
| 13 | 4 | 0013.0004.000 | 1.880 | KENNETH WINTERMUTE |
| 13 | 5 | 0013.0005.000 | 2.050 | PHYLLIS J. & DALE E. BOBB |
| 13 | 6 | 0013.0006.000 | 1.520 | TOMMY GOODMAN |
| 13 | 7 | 0013.0007.000 | 6.450 | EPIFANIO GARCIA NEYDA MAESTAS |
| 13 | 8 | 0013.0008.000 | 4.120 | ELISEO JARAMILLO |
| 13 | 9 | 0013.0009.000 | 11.020 | ALFRED R. BARBER |
| 13 | 10 | 0013.0010.000 | 3.700 | JOSE A. JARAMILLO PEDRO E. JARAMILLO |
| 13 | 11 | 0013.0011.000 | 1.150 | JAMES E. & GLENDA TREHERN |
| 13 | 12 | 0013.0012.000 | 5.000 | GUADALUPE & THERESA TRUJILLO |
| 13 | 13 | 0013.0013.000 | 1.160 | RAYMUNDO & AURORA MARTINEZ |
| 13 | 13A | 0013.013A.000 | 1.160 | SENAIDA G. & ANTONIO MONTOYA |
| 13 | 14 | 0013.0014.000 | 1.520 | JUANITA GARCIA |
| 13 | 14A | 0013.014A.000 | 1.520 | LUCINDA JARAMILLO PEDRO E. JARAMILLO |
| 13 | 15 | 0013.0015.000 | 9.500 | LUCIA GARCIA |
| 16 | 1 | 0016.0001.000 | 4.580 | LUCIA GARCIA |
| 16 | 1A | 0016.001A.000 | 2.170 | LUCIA GARCIA |
| 16 | 2 | 0016.0002.000 | 5.390 | EPIFANIO GARCIA |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 16 | 3 | 0016.0003.000 | 1.960 | RAYMUNDO & AURORA MARTINEZ |
| 16 | 4 | 0016.0004.000 | 2.250 | MARIANO B. & PABLITA LUCERO |
| 16 | 5 | 0016.0005.000 | 7.550 | FRANK & ESTHER MARTINEZ |
| 16 | 6 | 0016.0006.000 | 0.910 | JOE D. ROMERO |
| 16 | 7 | 0016.0007.000 | 0.660 | HENRY S. & EMMA M. SALAZAR |
| 16 | 8 | 0016.0008.000 | 1.000 | GLORIA GARCIA |
| 16 | 9 | 0016.0009.000 | 1.000 | HERMAN P. & FITA D. HERRERA |
| 16 | 10 | 0016.0010.000 | 1.000 | RUDY K. SANDOVAL<br>SIXTO R. SANDOVAL |
| 16 | 10A | 0016.010A.000 | 1.020 | JOE D. ROMERO |
| 16 | 10B | 0016.010B.000 | 1.000 | CIPRIANO BACA |
| 16 | 11 | 0016.0011.000 | 2.510 | MANUEL G. & DELCIDA MONTOYA |
| 16 | 12 | 0016.0012.000 | 4.050 | JUANITA GARCIA |
| 16 | 13 | 0016.0013.000 | 10.700 | ESQUIPULA & CARMELITA GARCIA |
| 16 | 14 | 0016.0014.000 | 0.830 | SEFERINA & BONIFACIO GONZALES |
| 16 | 15 | 0016.0015.000 | 1.290 | ESQUIPULA & CARMELITA GARCIA |
| 16 | 16 | 0016.0016.000 | 1.460 | JOSE A. & LUCIANITA GARCIA |
| 16 | 17 | 0016.0017.000 | 3.990 | ESQUIPULA & CARMELITA GARCIA |
| 16 | 18 | 0016.0018.000 | 0.430 | SALVADOR & TOMASITA R. MARTINEZ |
| 16 | 19 | 0016.0019.000 | 5.800 | GLADYS JARAMILLO |
| 16 | 19A | 0016.019A.000 | 2.650 | REGINA MONTOYA |
| 16 | 20 | 0016.0020.000 | 0.530 | BEN GARCIA JR.<br>BEN GARCIA SR. |
| 16 | 20A | 0016.020A.000 | 0.500 | ARLENE R. GARCIA |
| 16 | 21 | 0016.0021.000 | 6.080 | RICHARD NARANJO |
| 16 | 21A | 0016.021A.000 | 2.360 | GILBERT NARANJO |
| 16 | 22 | 0016.0022.000 | 9.670 | WALTER C. & JENNELL R. STEPHENSON |
| 16 | 23 | 0016.0023.000 | 1.480 | THOMAS H. & JANE Z. SKINNER |
| 16 | 24 | 0016.0024.000 | 0.440 | DONALD R. WOOD |
| 16 | 25 | 0016.0025.000 | 0.390 | DONALD R. WOOD |
| 16 | 26 | 0016.0026.000 | 2.570 | JACKIE L. MCNABB |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 16 | 27 | 0016.0027.000 | 1.620 | MARIANQ B. & PABLITA LUCERO |
| 18 | 1 | 0018.0001.000 | 7.610 | MARIANO B. & PABLITA LUCERO |
| 18 | 2 | 0018.0002.000 | 10.810 | WILLIAM R. & CHARLENE FLETCHER |
| 18 | 3 | 0018.0003.000 | 17.750 | ANTONIO & JOSEPHINE LUCERO |
| Total: | | | 201.480 | |

Amount of Water: Not to exceed the amounts set forth below from the Rio Jemez Stream System.

## IRRIGATION WATER REQUIREMENTS

The consumptive irrigation requirement (CIR) for each acre irrigated from this ditch is 1.41 acre-feet per irrigated acre per year.

The farm delivery requirement (FDR), which is also referred to as duty, for acreage irrigated from this ditch is 2.82 acre-feet per irrigated acre per year delivered at the farm headgate.

The project delivery requirement (PDR), which is also referred to as off-farm conveyance efficiency, for each acre irrigated from this ditch is 4.03 acre-feet per irrigated acre per year; for a total annual maximum diversion of 811.96 acre-feet per year.

The water rights adjudicated to any individual defendant listed in this agreement are as adjudicated in his or her subfile and nothing in this ditch agreement alters or amends or is intended to alter or amend a defendant's water rights.

This agreement defines the maximum amount of the right of the forenamed defendant ditch association to divert water for the benefit of its members based on the rights adjudicated to its members as set forth above. The amount that the ditch association may divert may change as the adjudicated water rights are altered or amended by other orders of this Court or as permitted by the New Mexico State Engineer. The forenamed defendant ditch association agrees that the

court may enter an order enjoining defendant Cañon Community Ditch Association's diversion or use of the waters of the Rio Jemez Stream System except in accordance with this agreement, other orders of this Court or as permitted by the New Mexico State Engineer.

ACCEPTED BY THE CAÑON COMMUNITY DITCH ASSOCIATION:

_____ DATED:_____, 1999
Herman P. Herrerra, President
697 Highway 485
Jemez Pueblo, NM 87024

_____
Printed Name of Secretary/Treasurer

_____ DATED:_____, 1999
Signature of Secretary/Treasurer

_____ DATED:_____, 1999
DL Sanders, Esq./Leticia Sheridan, Esq.
Special Assistant Attorney General
State of New Mexico
State Engineer Office
P.O. Box 25102
Santa Fe, NM 87504-5102

_____ DATED:_____, 1999
David W. Harder, Esq./Lynn A. Johnson, Esq.
U.S. Department of Justice
United States of America
999 18th Street, Suite 945
Denver, CO 80202

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS of JEMEZ, SANTA ANA and ZIA, | ) | |
| and | ) | |
| STATE OF NEW MEXICO ex rel. State Engineer, | ) | |
| Plaintiffs, | ) | |
| PUEBLOS OF JEMEZ, SANTA ANA and ZIA, | ) | |
| Plaintiffs-in-intervention, | ) | 83cv01041-JC |
| v. | ) | JEMEZ RIVER SYSTEM<br>Jemez Springs |
| TOM ABOUSLEMAN, et al., | ) | Community Ditch Association |
| Defendants. | ) | |

ORDER ADOPTING DITCH AGREEMENT

THIS MATTER comes before the Court upon its Order to Show Cause issued to Jemez Springs Community Ditch Association filed March 8, 2000 (Docket No. 3900). The Court, having considered the record in this cause and otherwise being fully advised in the matter FINDS:

1. The Court has jurisdiction of the defendant and the subject matter herein.

2. The defendant was properly served in this matter with an Order to Show Cause why the Ditch Agreement for Jemez Springs Community Ditch Association, attached hereto, should not be entered as an Order of the Court.

3. The defendant has neither signed and filed the Ditch Agreement nor filed a response

showing cause why the Ditch Agreement should not be entered as an Order of the Court.

4. Therefore, pursuant to the Court's Order to Show Cause, the attached Ditch Agreement should be adopted by the Court for the purpose of administration of the water rights associated with the Jemez Springs Community Ditch.

IT IS THEREFORE ORDERED that the Ditch Agreement for Jemez Springs Community Ditch Association, which is attached hereto, is hereby adopted by the Court for administration purposes.

/electronic signature/
CHIEF UNITED STATES DISTRICT JUDGE

Approved:

/electronic signature/
Special Master Vickie L. Gabin

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS of JEMEZ, SANTA ANA and ZIA, | ) | |
| and | ) | |
| STATE OF NEW MEXICO ex rel. State Engineer, | ) | |
| Plaintiffs, | ) | |
| PUEBLOS OF JEMEZ, SANTA ANA and ZIA, | ) | |
| Plaintiffs-in-intervention, | ) | No. CIV 83-1041 JC |
| v. | ) | RIO JEMEZ STREAM SYSTEM |
| TOM ABOUSLEMAN, et al., | ) | |
| Defendants. | ) | |

## DITCH AGREEMENT

The Co-plaintiffs, UNITED STATES OF AMERICA and STATE OF NEW MEXICO, and the defendant, JEMEZ SPRINGS COMMUNITY DITCH, agree that the defendant is a community ditch association duly organized under the laws of the State of New Mexico and that it has the right to divert public waters from the Rio Jemez Stream System for storage and delivery to the headgates or turnouts of the acreages which have been adjudicated irrigation water rights, which are more specifically identified hereafter.

Name of Ditch: JEMEZ SPRINGS COMMUNITY DITCH
State Engineer File No.: None.
Priority: 1865-12-31

Point of Diversion: Jemez Springs Community Ditch diverts from the Jemez River within the SW¼ SE¼ NE¼, Section 23, T.18N., R.2E, N.M.P.M., as projected within the Cañon de San Diego Grant. The point of diversion is located by the state plane coordinate system, central zone X= 369,780, Y= 1,737,640.

JEMEZ SPRINGS COMMUNITY DITCH

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 5 | 5 | 0005.0005.000 | 0.850 | JEMEZ BODHI MANDALA |
| 5 | 6 | 0005.0006.000 | 0.930 | VILLAGE OF JEMEZ SPRINGS |
| 5 | 7 | 0005.0007.000 | 0.510 | JAMES E. & GLENDA TREHERN |
| 5 | 9 | 0005.0009.000 | 0.920 | BARBARA ABOUSLEMAN<br>FRED ABOUSLEMAN<br>TOM ABOUSLEMAN<br>JOSEPHINE A. SHEPARD<br>SARAH NASSOUR<br>LILLIAN SOTEL |
| 5 | 9A | 0005.009A.000 | 0.350 | WILLIAM E. & LEIGH GUSE |
| 5 | 9B | 0005.009B.000 | 0.300 | ROGER SWEET<br>LINDA VOZAR |
| 5 | 19 | 0005.0019.000 | 2.410 | EMMETT H. CART<br>KATHERINE E. CART |
| 5 | 19A | 0005.019A.000 | 0.380 | CARMEN T. & PEGGY LEWIS |
| 5 | 21 | 0005.0021.000 | 0.000 | SERVANTS OF THE PARACLETE |
| 5 | 22 | 0005.0022.000 | 0.000 | ARCHDIOCESE OF SANTA FE,<br>ROMAN CATHOLIC CHURCH |
| 6 | 1 | 0006.0001.000 | 0.140 | ANN R. RUSTEBAKKE |
| 6 | 1A | 0006.001A.000 | 1.800 | EMMETT H. CART<br>KATHERINE E. CART |
| 6 | 2 | 0006.0002.000 | 4.400 | FRANK A. ROWE (EST.) |
| 6 | 3 | 0006.0003.000 | 0.350 | MARCELLO & IOLI GIOMI |
| 6 | 4 | 0006.0004.000 | 0.340 | MARIA M. ZANDSTRA |
| 6 | 5 | 0006.0005.000 | 0.480 | PERCILLA GARCIA |
| 6 | 6 | 0006.0006.000 | 0.270 | LOUIS GARCIA |
| 6 | 7 | 0006.0007.000 | 0.320 | JOSEPHINE MONTOYA |
| 6 | 8 | 0006.0008.000 | 0.290 | CHARLIE G. MONTOYA |
| 6 | 9 | 0006.0009.000 | 0.210 | ELISEO SANDOVAL |
| 6 | 10 | 0006.0010.000 | 0.110 | ELIZABETH DICKEY |
| 6 | 11 | 0006.0011.000 | 3.100 | DOROTHY ACOSTA<br>P.L. LEYBA |
| 6 | 11A | 0006.011A.000 | 1.000 | JEMEZ VALLEY CREDIT UNION |
| 6 | 11B | 0006.011B.000 | 1.350 | TERRELL H. & JENNIFER A. JOHNSON |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 6 | 12 | 0006.0012.000 | 0.500 | MAX FRANK & DOLORES L. DURACHTA |
| 6 | 12A | 0006.012A.000 | 0.250 | EPIFANIO & DARLENE ABEYTA |
| 6 | 12B | 0006.012B.000 | 0.420 | CLIFFORD W. & LILLIAN B. CURTIS |
| 6 | 12C | 0006.012C.000 | 0.420 | JACK & LOU STEINMASEL |
| 6 | 13 | 0006.0013.000 | 1.860 | TERRY C. & ALBERT E. ARMENTA |
| 6 | 14 | 0006.0014.000 | 4.560 | LARRY R. LIPPENCOTT |
| 6 | 14A | 0006.014A.000 | 3.940 | MARSHALL G. & HELEN SMITH |
| 6 | 14B | 0006.014B.000 | 0.450 | ROBERT C. & TWILA CART |
| 6 | 15 | 0006.0015.000 | 0.880 | WILLIAM & ANNA UTZAT |
| 6 | 16 | 0006.0016.000 | 0.550 | DAVID PRITCHARD<br>RUTH PRITCHARD<br>WALLACE PRITCHARD |
| 6 | 17 | 0006.0017.000 | 0.190 | MARY V. RUSSELL |
| 6 | 18 | 0006.0018.000 | 0.140 | CHARLES & SUSAN G. PATE |
| 6 | 19 | 0006.0019.000 | 0.230 | WALTER GAYLE BACON |
| 6 | 20 | 0006.0020.000 | 0.520 | ERNEST M. & CRUCITA T. LOVATO |
| 6 | 21 | 0006.0021.000 | 5.250 | BARBARA ABOUSLEMAN<br>FRED ABOUSLEMAN<br>TOM ABOUSLEMAN<br>JOSEPHINE A. SHEPARD<br>SARAH NASSOUR<br>LILLIAN SOTEL |
| 6 | 23 | 0006.0023.000 | 3.060 | HAROLD BRACKEEN |
| 6 | 25 | 0006.0025.000 | 0.700 | WINIFRED A. RAHBERGER |
| 6 | 26 | 0006.0026.000 | 0.760 | JON C. & GLENDA G. CLARKE |
| Total: | | | 45.89 | |

Amount of Water: Not to exceed the amounts set forth below from the Rio Jemez Stream System.

## IRRIGATION WATER REQUIREMENTS

The consumptive irrigation requirement (CIR) for each acre irrigated from this ditch is 1.41 acre-feet per irrigated acre per year.

The farm delivery requirement (FDR), which is also referred to as duty, for acreage irrigated from this ditch is 2.82 acre-feet per irrigated acre per year delivered at the farm headgate.

The project delivery requirement (PDR), which is also referred to as off-farm conveyance efficiency, for each acre irrigated from this ditch is 4.03 acre-feet per irrigated acre per year; for a total annual maximum diversion of 184.94 acre-feet per year.

The water rights adjudicated to any individual defendant listed in this agreement are as adjudicated in his or her subfile and nothing in this ditch agreement alters or amends or is intended to alter or amend a defendant's water rights.

This agreement defines the maximum amount of the right of the forenamed defendant ditch association to divert water for the benefit of its members based on the rights adjudicated to its members as set forth above. The amount that the ditch association may divert may change as the adjudicated water rights are altered or amended by other orders of this Court or as permitted by the New Mexico State Engineer. The forenamed defendant ditch association agrees that the court may enter an order enjoining defendant Jemez Springs Community Ditch Association's diversion or use of the waters of the Rio Jemez Stream System except in accordance with this agreement, other orders of this Court or as permitted by the New Mexico State Engineer.

ACCEPTED BY THE JEMEZ SPRINGS COMMUNITY DITCH ASSOCIATION

_____ DATED:_____, 1999
Emmett Cart, President
P.O. Box 3
Jemez Springs, NM 87025-0003

_____
Printed Name of Secretary/Treasurer

_____ DATED:_____, 1999
Signature of Secretary/Treasurer

DATED:_____, 1999

DL Sanders, Esq./Leticia Sheridan, Esq.
Special Assistant Attorneys General
State of New Mexico
State Engineer Office
P.O. Box 25102
Santa Fe, NM 87504-5102

DATED:_____, 1999

David W. Harder, Esq./Lynn A. Johnson, Esq.
U.S. Department of Justice
United States of America
999 18th Street, Suite 945
Denver, CO 80202

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS of JEMEZ, SANTA ANA and ZIA, | ) | |
| and | ) | |
| STATE OF NEW MEXICO ex rel. State Engineer, | ) | |
| Plaintiffs, | ) | |
| PUEBLOS OF JEMEZ, SANTA ANA and ZIA, | ) | |
| Plaintiffs-in-intervention, | ) | No. CIV 83-1041 JC |
| v. | ) | RIO JEMEZ STREAM SYSTEM |
| TOM ABOUSLEMAN, et al., | ) | |
| Defendants. | ) | |

DITCH AGREEMENT

The Co-plaintiffs, UNITED STATES OF AMERICA and STATE OF NEW MEXICO, and the defendant, SAN YSIDRO DITCH, agree that the defendant is a community ditch association duly organized under the laws of the State of New Mexico and that it has the right to divert public waters from the Rio Jemez Stream System for storage and delivery to the headgates or turnouts of the acreages which have been adjudicated irrigation water rights, which are more specifically identified hereafter.

**SAN YSIDRO DITCH and NESTOR R. PADILLA IRRIGATION SYSTEM LATERAL**

Point of Diversion: San Ysidro Ditch diverts from the Jemez River, within the NW¼ NW¼ NE¼, Section 29, T.16N., R.2E., N.M.P.M., within the Jemez Indian Reservation. The point of diversion is located by the state plane coordinate system, central zone X= 351,295 Y= 1,672,050.

SAN YSIDRO DITCH

State Engineer File No.: 0646
Priority: 1786-12-31

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 29 | 9 | 0029.0009.000 | 99.930 | MAX LEE KIEHNE<br>CODA C. ROBERSON |
| 29 | 11 | 0029.0011.000 | 1.590 | FLORENCIO G. SANDOVAL |
| 29 | 12 | 0029.0012.000 | 0.000 | RAMON & LORRAINE GONZALES |
| 29 | 13 | 0029.0013.000 | 2.750 | PHILLIP G. & JEAN M. RAMSEY |
| 29 | 14 | 0029.0014.000 | 3.160 | N.M. DISTRICT COUNCIL ASSEMBLIES OF GOD, INC. |
| 29 | 15 | 0029.0015.000 | 9.340 | MACARIO MAESTAS |
| 29 | 16 | 0029.0016.000 | 5.680 | ROBERT N. MARTINEZ |
| 29 | 17 | 0029.0017.000 | 0.450 | MARTIN & ANN CLARK |
| 29 | 18 | 0029.0018.000 | 37.420 | DAVID E. & VIRGINIA LUCERO |
| 29 | 19 | 0029.0019.000 | 16.500 | DOUGLAS REID |
| 29 | 19A | 0029.019A.000 | 1.550 | MOST HOLY ORDER OF THE MYSTIC ROSE OF ST.DOMINIC |
| 29 | 20 | 0029.0020.000 | 16.600 | CLEMENTE RIVERA SR. |
| 29 | 21 | 0029.0021.000 | 20.330 | EPIFANIO & LENORE G. MONTOYA |
| 29 | 22 | 0029.0022.000 | 3.580 | BENITO MAESTAS |
| 29 | 23 | 0029.0023.000 | 0.210 | EPIFANIO & LENORE G. MONTOYA |
| 29 | 24 | 0029.0024.000 | 24.420 | SIMON & BENITA GARCIA |
| 29 | 25 | 0029.0025.000 | 10.560 | DAVID E. & VIRGINIA LUCERO |
| 29 | 26 | 0029.0026.000 | 0.060 | BENEDICTO & ELENA LOPEZ |
| 29 | 27 | 0029.0027.000 | 0.120 | JOSE RAFAEL & LUCINDA S. VALVERDE |
| 29 | 28 | 0029.0028.000 | 0.000 | BENIGNO JARAMILLO |
| 29 | 29 | 0029.0029.000 | 4.850 | PHILIP C. DE BACA<br>NEVAREZ C. DE BACA |
| 29 | 30 | 0029.0030.000 | 18.220 | RICHARD & PRECILIANA CHRISTILAW |
| 29 | 31 | 0029.0031.000 | 14.230 | ESTRELLA GARCIA |
| 29 | 32 | 0029.0032.000 | 0.060 | FIDEL & ISABEL PEREA |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 29 | 33 | 0029.0033.000 | 15.330 | ALICE GARCIA |
| 29 | 34 | 0029.0034.000 | 11.490 | RICHARD & PRECILIANA CHRISTILAW |
| 29 | 35 | 0029.0035.000 | 0.210 | FERMIN MARQUEZ |
| 29 | 35A | 0029.035A.000 | 5.260 | JERRY MARQUEZ |
| 29 | 35B | 0029.035B.000 | 5.260 | FERMIN MARQUEZ |
| 29 | 36 | 0029.0036.000 | 6.320 | FERNANDO MONTANO (EST.) |
| 29 | 36A | 0029.036A.000 | 5.600 | SEVERO MONTANO |
| 29 | 37 | 0029.0037.000 | 16.750 | SALLY G. MIERA |
| 29 | 38 | 0029.0038.000 | 3.200 | CANDELARIO LUNA |
| 31 | 1 | 0031.0001.000 | 17.350 | FRANCES E. POWELL HUENERGARDT |
| 31 | 1A | 0031.001A.000 | 9.450 | CANDELARIO LUNA |
| 31 | 1B | 0031.001B.000 | 8.420 | SALLY G. MIERA |
| 31 | 1C | 0031.001C.000 | 8.450 | RICHARD & PRECILIANA CHRISTILAW |
| 31 | 1D | 0031.001D.000 | 2.050 | JOSE DOMINGO & DARLENE VASQUEZ |
| 31 | 1E | 0031.001E.000 | 1.500 | CHARLIE & M. ELOISA LOPEZ |
| 31 | 1F | 0031.001F.000 | 0.230 | FRANCES E. POWELL HUENERGARDT |
| 31 | 2 | 0031.0002.000 | 0.000 | EDWIN J. TUCKER |
| 31 | 3 | 0031.0003.000 | 0.000 | FRANCES E. POWELL HUENERGARDT |
| 31 | 4 | 0031.0004.000 | 14.700 | RAYMOND TRUJILLO |
| 31 | 5 | 0031.0005.000 | 22.130 | MICHAEL & MARGIE GARCIA |
| 31 | 6 | 0031.0006.000 | 30.090 | MANUELITA M. GARCIA |
| 31 | 7 | 0031.0007.000 | 2.620 | MARCELLA BROWNSON |
| 31 | 8 | 0031.0008.000 | 4.250 | BERNABE TRUJILLO JR. |
| 31 | 9 | 0031.0009.000 | 4.190 | HENRY C. & PATRICIA M. PEREA |
| 31 | 10 | 0031.0010.000 | 10.130 | HENRY C. & PATRICIA M. PEREA |
| 31 | 12 | 0031.0012.000 | 0.000 | MARCELLA BROWNSON |
| 31 | 13 | 0031.0013.000 | 0.460 | VILLAGE OF SAN YSIDRO |
| 32 | 2 | 0032.0002.000 | 3.370 | JOHN R. & BETTY GWIN LANSDOWNE |
| 32 | 3A | 0032.003A.000 | 0.650 | FERNANDO MONTANO (EST.) |
| 32 | 3B | 0032.003B.000 | 1.680 | SEVERO MONTANO |
| 32 | 4 | 0032.0004.000 | 4.200 | SALLY G. MIERA |
| 32 | 5 | 0032.0005.000 | 0.160 | CANDELARIO LUNA |
| 32 | 5A | 0032.005A.000 | 0.450 | VILLAGE OF SAN YSIDRO |
| 32 | 5B | 0032.005B.000 | 0.280 | FRANCES E. POWELL HUENERGARDT |
| Total: | | | 507.84 | |

NESTOR R. PADILLA IRRIGATION SYSTEM LATERAL

State Engineer File No.: 2652
Priority: 1948-08-12

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 31 | 11 | 0031.0011.000 | 0.970 | Robert & Viola Garcia |
| 31 | 16 | 0031.0016.000 | 0.500 | Abenicio Maestas |
| 31 | 17 | 0031.0017.000 | 0.310 | Libby Maestas Griffin |
| 31 | 18 | 0031.0018.000 | 5.91 | Pueblo of Zia |
| 31 | 19 | 0031.0019.000 | 3.52 | Nettie Mae Clement |
| Total: | | | 11.21 | |

Amount of Water: Not to exceed the amounts set forth below from the Rio Jemez Stream System.

**IRRIGATION WATER REQUIREMENTS**

The consumptive irrigation requirement (CIR) for each acre irrigated from this ditch is 1.73 acre-feet per irrigated acre per year.

The farm delivery requirement (FDR), which is also referred to as duty, for acreage irrigated from this ditch is 3.46 acre-feet per irrigated acre per year delivered at the farm headgate.

The project delivery requirement (PDR), which is also referred to as off-farm conveyance efficiency, for each acre irrigated from this ditch is 4.94 acre-feet per year irrigated acre; for a total annual maximum diversion of 2,564.11 acre-feet per year.

The water rights adjudicated to any individual defendant listed in this agreement are as adjudicated in his or her subfile and nothing in this ditch agreement alters or amends or is intended to alter or amend a defendant's water rights.

This agreement defines the maximum amount of the right of the forenamed defendant ditch association to divert water for the benefit of its members based on the rights adjudicated to its members as set forth above. The amount that the ditch association may divert may change as the adjudicated water rights are altered or amended by other orders of this Court or as permitted by the New Mexico State Engineer. The forenamed defendant ditch association agrees that the

court may enter an order enjoining defendant San Ysidro Ditch Association's diversion or use of the waters of the Rio Jemez Stream System except in accordance with this agreement, other orders of this Court or as permitted by the New Mexico State Engineer.

ACCEPTED BY THE SAN YSIDRO DITCH ASSOCIATION

Michael R Garcia — DATED: May 15, 2000

Michael Garcia, President
P.O. Box 128
San Ysidro, NM 87053

Henry Perea
Printed Name of Secretary/Treasurer

Henry C. Perea — DATED: May 15, 2000

Signature of Secretary/Treasurer

Leticia Sheridan — DATED: 5-15, 2000

DL Sanders, Esq./Leticia Sheridan, Esq.
Special Assistant Attorneys General
State of New Mexico
State Engineer Office
P.O. Box 25102
Santa Fe, NM 87504-5102

Approved Via Facsimile — DATED: May 12, 2000

David W. Harder, Esq./Lynn A. Johnson, Esq.
U.S. Department of Justice
United States of America
999 18th Street, Suite 945
Denver, CO 80202

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA, on its
own behalf and on behalf of the
PUEBLOS OF JEMEZ, SANTA ANA, and ZIA,

and

STATE OF NEW MEXICO, *ex rel.*
State Engineer,
Plaintiffs,

83cv01041 JC
RIO JEMEZ ADJUDICATION

and

THE PUEBLOS OF JEMEZ, SANTA ANA, and ZIA,
Plaintiffs-in-Intervention,

San Ysidro Ditch Association

v.

TOM ABOUSLEMAN, *et al.*,
Defendants.

**ORDER**

THIS MATTER is before the Court *sua sponte*. On May 15, 2000, the United States of America, the State of New Mexico and the San Ysidro Ditch Association filed a Ditch Agreement (3921) setting forth the Association's rights in the waters of the Rio Jemez stream system.

IT IS HEREBY ADOPTED by the Court.

/ electronic signature/
CHIEF UNITED STATES DISTRICT JUDGE

Approved:
/ electronic signature/
SPECIAL MASTER VICKIE L GABIN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS of JEMEZ, SANTA ANA and ZIA, | ) | |
| and | ) | |
| STATE OF NEW MEXICO ex rel. State Engineer, | ) | |
| Plaintiffs, | ) | |
| PUEBLOS OF JEMEZ, SANTA ANA and ZIA, | ) | |
| Plaintiffs-in-intervention, | ) | No. CIV 83-1041 JC |
| v. | ) | JEMEZ RIVER SYSTEM |
| TOM ABOUSLEMAN, et al., | ) | |
| Defendants. | ) | |

DITCH AGREEMENT

The Co-plaintiffs, UNITED STATES OF AMERICA and STATE OF NEW MEXICO, and the defendant, PONDEROSA COMMUNITY DITCH, agree that the defendant is a community ditch association duly organized under the laws of the State of New Mexico and that it has the right to divert public waters from the Rio Jemez Stream System for storage and delivery to the headgates or turnouts of the acreages which have been adjudicated irrigation water rights, which are more specifically identified hereafter.

Name of Ditch: PONDEROSA COMMUNITY DITCH
State Engineer File No.: 0973
Priority: 1768-12-31, 1815-12-31 and 1947-02-26 as indicated below.
Source of Water: Vallecitos Creek, a tributary of the Jemez River.
Point of Diversion: Ponderosa Community Ditch diverts from Vallecitos Creek, a tributary of the

Jemez River, within the NW¼ SW¼ SW¼, Section 20, T. 17N., R. 3E N.M.P.M., as projected within the Ojo de San Jose Grant. The point of diversion is located by the state plane coordinate system, central zone X= 379,875, Y= 1,704,640.

PONDEROSA COMMUNITY DITCH

| Map | Tract | Subfile | Acreage | Priority | Adjudicated Owner |
|---|---|---|---|---|---|
| 15 | 1 | 0015.0001.000 | 2.750 | 1768-12-31 | LEW JR. & MARY F. CALDWELL |
| 15 | 2 | 0015.0002.000 | 0.000 | 1768-12-31 | GILBERT F. GALLEGOS<br>MICHAEL T. GALLEGOS |
| 15 | 3 | 0015.0003.000 | 0.460 | 1768-12-31 | LUCAS GALLEGOS (EST.) |
| 15 | 4 | 0015.0004.000 | 0.200 | 1768-12-31 | PEDRO TRUJILLO SR. |
| 15 | 5 | 0015.0005.000 | 0.880 | 1768-12-31 | LEW JR. & MARY F. CALDWELL |
| 17 | 1 | 0017.0001.000 | 3.100 | 1768-12-31 | LEW JR. & MARY F. CALDWELL |
| 17 | 1A | 0017.001A.000 | 0.520 | 1768-12-31 | JIM D. & DIANA J. CLARK |
| 17 | 2 | 0017.0002.000 | 2.370 | 1768-12-31 | PEDRO TRUJILLO SR. |
| 17 | 3 | 0017.0003.000 | 5.960 | 1768-12-31 | REYNEL JR. & CORA M. TRUJILLO |
| 17 | 4 | 0017.0004.000 | 0.720 | 1768-12-31 | CARLOS SANDOVAL |
| 17 | 5 | 0017.0005.000 | 1.940 | 1768-12-31 | SIMON P. & RAMONA SANDOVAL |
| 17 | 6 | 0017.0006.000 | 3.040 | 1768-12-31 | LINDA R. RIVERA |
| 17 | 7 | 0017.0007.000 | 0.530 | 1768-12-31 | JAMES C. & JILL G. THOMSON |
| 17 | 8 | 0017.0008.000 | 2.560 | 1768-12-31 | SOTERO LUCERO (EST.) |
| 17 | 9 | 0017.0009.000 | 3.880 | 1768-12-31 | KENT E. & MARTHA L. LAUSER |
| 17 | 10 | 0017.0010.000 | 3.130 | 1768-12-31 | MARY ELLEN MESKIMEN |
| 17 | 11 | 0017.0011.000 | 1.180 | 1768-12-31 | BOYCE CLARK |
| 17 | 12 | 0017.0012.000 | 0.080 | 1768-12-31 | ROBERT R. LAMBERT |
| 17 | 13 | 0017.0013.000 | 1.480 | 1768-12-31 | JAMES & ANNA P. TRUJILLO |
| 17 | 14 | 0017.0014.000 | 1.710 | 1768-12-31 | ROBERT & BOBBY SUE<br>MESKIMEN |
| 17 | 15 | 0017.0015.000 | 1.900 | 1768-12-31 | FRANK GARCIA |
| 17 | 16 | 0017.0016.000 | 4.720 | 1768-12-31 | ROBERT & JOVITA HOOLIHAN |
| 17 | 16A | 0017.016A.000 | 0.770 | 1768-12-31 | RUDOLFO J. & SOPHIA MARTINEZ |
| 17 | 17 | 0017.0017.000 | 3.530 | 1768-12-31 | MONTE C. ROWDEN JR. |
| 17 | 18 | 0017.0018.000 | 3.960 | 1815-12-31 | TELESFOR GONZALES |
| 17 | 18B | 0017.018B.000 | 0.000 | 1815-12-31 | WILLIAM M. & MARY LOUISE<br>WORTHEN |
| 17 | 19 | 0017.0019.000 | 1.170 | 1815-12-31 | LEW JR. & MARY F. CALDWELL |
| 19 | 1 | 0019.0001.000 | 0.040 | 1815-12-31 | ARNOLD & LILA GARCIA |
| 19 | 1A | 0019.001A.000 | 2.180 | 1815-12-31 | TELESFOR GONZALES |
| 19 | 2 | 0019.0002.000 | 2.080 | 1815-12-31 | TELESFOR GONZALES |
| 19 | 2A | 0019.002A.000 | 1.400 | 1815-12-31 | CRISTOBAL GONZALES |
| 19 | 3 | 0019.0003.000 | 4.100 | 1815-12-31 | FRANK GARCIA |
| 19 | 4 | 0019.0004.000 | 3.310 | 1815-12-31 | SUE ELLEN & SCOTT NILES |
| 19 | 5 | 0019.0005.000 | 4.420 | 1815-12-31 | ROBERT & BOBBY SUE<br>MESKIMEN |
| 19 | 6 | 0019.0006.000 | 6.530 | 1815-12-31 | FRANK & AURORA GONZALES |
| 19 | 7 | 0019.0007.000 | 2.260 | 1815-12-31 | JUSTO & LUCY A. LOPEZ |

| Map | Tract | Subfile | Acreage | Priority | Adjudicated Owner |
|---|---|---|---|---|---|
| 19 | 8 | 0019.0008.000 | 0.750 | 1815-12-31 | KENNETH F. MCDONALD |
| 19 | 9 | 0019.0009.000 | 3.140 | 1815-12-31 | MOISES S. & MARY ROMERO |
| 19 | 10 | 0019.0010.000 | 0.520 | 1815-12-31 | MOISES H. ROMERO |
| 19 | 11 | 0019.0011.000 | 0.540 | 1815-12-31 | DOROTHY DOW |
| 19 | 12 | 0019.0012.000 | 1.810 | 1815-12-31 | RONNIE F. & VIRGINIA A. HERRERA |
| 19 | 13 | 0019.0013.000 | 7.820 | 1815-12-31 | JOSE RAFAEL ARMENTA |
| 19 | 14 | 0019.0014.000 | 0.720 | 1815-12-31 | LUCINDA G. GONZALES |
| 19 | 14A | 0019.014A.000 | 2.150 | 1815-12-31 | JOSEPH D. & SANDRA L. JOHNSON |
| 19 | 15 | 0019.0015.000 | 0.780 | 1815-12-31 | JOSEPH C. FERNANDEZ |
| 19 | 16 | 0019.0016.000 | 0.750 | 1815-12-31 | DANIEL PEREZ |
| 19 | 17 | 0019.0017.000 | 0.810 | 1815-12-31 | GREGORIO G. PEREZ |
| 19 | 18 | 0019.0018.000 | 0.850 | 1815-12-31 | DAVID A. CROW |
| 19 | 19 | 0019.0019.000 | 1.200 | 1815-12-31 | DOLORES & EDWARD AGUILAR |
| 19 | 20 | 0019.0020.000 | 1.070 | 1815-12-31 | ARNOLD & LILA GARCIA |
| 19 | 21 | 0019.0021.000 | 1.550 | 1815-12-31 | MARY JANE GONZALES SCOFIELD |
| 19 | 22 | 0019.0022.000 | 1.650 | 1815-12-31 | RICHARD T. & IRMA G. SALAZAR |
| 19 | 23 | 0019.0023.000 | 1.370 | 1815-12-31 | JUAN & DELUVINA GARCIA |
| 19 | 24 | 0019.0024.000 | 1.520 | 1815-12-31 | TINO & TINA GARCIA |
| 19 | 25 | 0019.0025.000 | 0.890 | 1815-12-31 | ANDREW SCHUPPERT |
| 19 | 26 | 0019.0026.000 | 2.240 | 1815-12-31 | THELDON & AVERYE PARRETT |
| 19 | 26A | 0019.026A.000 | 0.250 | 1815-12-31 | MICHAEL & GLORIA MARTINEZ |
| 19 | 27 | 0019.0027.000 | 4.420 | 1815-12-31 | CANDIDO & AURORA TRUJILLO |
| 19 | 27A | 0019.027A.000 | 0.120 | 1815-12-31 | ADELAIDO MARTINEZ |
| 19 | 28 | 0019.0028.000 | 1.180 | 1815-12-31 | RAMONT. & ETTA JEAN TRUJILLO |
| 19 | 28A | 0019.028A.000 | 0.370 | 1815-12-31 | PONDEROSA COMMUNITY DEVELOPMENT CENTER |
| 19 | 29 | 0019.0029.000 | 6.130 | 1815-12-31 | CANDIDO & AURORA TRUJILLO |
| 19 | 30 | 0019.0030.000 | 0.210 | 1815-12-31 | BOB VANLANDINGHAM |
| 19 | 31 | 0019.0031.000 | 0.080 | 1815-12-31 | THOMAS SHINE |
| 19 | 32 | 0019.0032.000 | 0.600 | 1815-12-31 | MERRIAM TUFTS |
| 19 | 33 | 0019.0033.000 | 1.050 | 1815-12-31 | JOSE S. & LUCY MEJIA |
| 19 | 34 | 0019.0034.000 | 1.360 | 1815-12-31 | LUPITA S. TRUJILLO |
| 19 | 35 | 0019.0035.000 | 0.780 | 1815-12-31 | FRITZ VALDEZ |
| 19 | 36 | 0019.0036.000 | 1.940 | 1815-12-31 | ANTHONY J. & BERNICE R. SEDILLO |
| 19 | 37 | 0019.0037.000 | 1.130 | 1815-12-31 | RICHARD R. RAMSEY |
| 19 | 37A | 0019.037A.000 | 0.260 | 1815-12-31 | ANTHONY DURAN |
| 19 | 38 | 0019.0038.000 | 2.020 | 1815-12-31 | PETER A. LUPSHA |
| 19 | 39 | 0019.0039.000 | 0.620 | 1815-12-31 | RAYMOND T. & LORRAINE JOHNSON |
| 19 | 39A | 0019.039A.000 | 0.520 | 1815-12-31 | LOUIS & FRANCES TRUJILLO |
| 19 | 40 | 0019.0040.000 | 1.940 | 1815-12-31 | ROBERT & BOBBY SUE MESKIMEN |
| 19 | 40A | 0019.040A.000 | 1.710 | 1815-12-31 | JAMES F. WISEMAN |
| 19 | 41 | 0019.0041.000 | 0.820 | 1815-12-31 | RALPH JR. & JUDY M. ASBURY |

| Map | Tract | Subfile | Acreage | Priority | Adjudicated Owner |
|---|---|---|---|---|---|
| 19 | 41A | 0019.041A.000 | 0.530 | 1815-12-31 | JAMES & ANNA P. TRUJILLO |
| 19 | 42 | 0019.0042.000 | 1.000 | 1815-12-31 | LEROY TRUJILLO |
| 19 | 42A | 0019.042A.000 | 11.650 | 1815-12-31 | LEROY TRUJILLO |
| 19 | 43 | 0019.0043.000 | 2.750 | 1815-12-31 | ROBERT & LAURA TRUJILLO |
| 19 | 44 | 0019.0044.000 | 1.650 | 1815-12-31 | CIPRIANO & EVA TRUJILLO |
| 19 | 45 | 0019.0045.000 | 1.920 | 1815-12-31 | JACOBO GONZALES |
| 19 | 46 | 0019.0046.000 | 6.240 | 1815-12-31 | JOSE M. & ADELINA GARCIA |
| 19 | 47 | 0019.0047.000 | 0.400 | 1815-12-31 | CHARLES J. MULLER |
| 19 | 47A | 0019.047A.000 | 0.000 | 1815-12-31 | LORENZO RAMIREZ |
| 19 | 48 | 0019.0048.000 | 9.390 | 1815-12-31 | JOSE TRUJILLO SR. |
| 19 | 49 | 0019.0049.000 | 8.080 | 1815-12-31 | FRANCISCO J. VALVERDE |
| 19 | 49A | 0019.049A.000 | 2.600 | 1815-12-31 | NEIL NIEBES |
| 19 | 50 | 0019.0050.000 | 0.550 | 1815-12-31 | REYNEL TRUJILLO SR. |
| 19 | 50A | 0019.050A.000 | 0.770 | 1815-12-31 | JAMES & FRANCES JOHNSON |
| 19 | 50B | 0019.050B.000 | 6.220 | 1815-12-31 | MANUEL E. & NANCY J. TRUJILLO |
| 20 | 1A | 0020.001A.000 | 2.160 | 1815-12-31 | TELESFOR GONZALES |
| 20 | 4A | 0020.004A.000 | 0.520 | 1815-12-31 | SUE ELLEN & SCOTT NILES |
| 22 | 1 | 0022.0001.000 | 1.000 | 1815-12-31 | TOM & MARY F. LOPEZ |
| 22 | 2 | 0022.0002.000 | 4.030 | 1815-12-31 | JOSE M. & ADELINA GARCIA |
| 22 | 3 | 0022.0003.000 | 9.620 | 1815-12-31 | NEIL NIEBES |
| 22 | 3A | 0022.003A.000 | 25.980 | 1815-12-31 | FRANCISCO J. VALVERDE |
| 22 | 4 | 0022.0004.000 | 10.380 | 1815-12-31 | ROBERT & SOPHIE ARCHIBEQUE |
| 22 | 5 | 0022.0005.000 | 0.000 | 1815-12-31 | LUCAS GALLEGOS (EST.) |
| 22 | 6 | 0022.0006.000 | 0.000 | 1815-12-31 | REYNEL JR. & CORA M. TRUJILLO |
| 22 | 7 | 0022.0007.000 | 10.850 | 1815-12-31 | RICHARD A. & LINDA F. SALAZAR |
| 22 | 8 | 0022.0008.000 | 4.360 | 1815-12-31 | RICHARD T. & IRMA G. SALAZAR |
| 22 | 9 | 0022.0009.000 | 0.000 | 1815-12-31 | FRANCISCO J. VALVERDE |
| 22 | 10 | 0022.0010.000 | 1.240 | 1815-12-31 | JUAN C.T. OLGUIN |
| 22 | 13 | 0022.0013.000 | 0.850 | 1815-12-31 | PLEMON D. & BEVERLY R. JOHNSON |
| 22 | 13A | 0022.013A.000 | 0.850 | 1815-12-31 | ROBERT & ALISIA CHRISTENSEN |
| 22 | 13B | 0022.013B.000 | 2.380 | 1815-12-31 | MARY AGUILAR LEE |
| 22 | 14 | 0022.0014.000 | 2.580 | 1815-12-31 | HENRY K. & MARY STREET |
| 22 | 14A | 0022.014A.000 | 0.450 | 1815-12-31 | HARRY GORDON |
| 22 | 15 | 0022.0015.000 | 12.350 | 1815-12-31 | JUAN C.T. OLGUIN |
| 22 | 16 | 0022.0016.000 | 9.540 | 1815-12-31 | JAMES E. & GLENDA TREHERN |
| 22 | 17 | 0022.0017.000 | 2.240 | 1815-12-31 | ELUL & ROSE VANLANDINGHAM SAM & RITA VANLANDINGHAM |
| 22 | 18 | 0022.0018.000 | 2.850 | 1815-12-31 | HENRY K. & MARY STREET |
| 22 | 19 | 0022.0019.000 | 3.110 | 1815-12-31 | DONALD & HENRIETTA JARAMILLO |
| Total: | | | 299.59 | | |

Amount of Water: Not to exceed the amounts set forth below from the Jemez River System.

## STORAGE

The Association has the right to divert sufficient amounts of water to maintain the storage reservoirs for irrigation purposes in the amounts and locations listed below:

**Subfile No. 0015.001A.000**

a) **Purpose:** Storage for Irrigation Purposes

b) **Priority:** February 26, 1947

c) **Point of Diversion:** Vallecitos Creek, a tributary of the Jemez River.

d) **Location of Storage and Use:** Lower Vallecitos Community Storage Works is located in the W½ W½ SW¼ Sec. 20, T.17N., R.3E., N.M.P.M., as projected into the Ojo de San Jose Grant, whence the Angle Point No. 2 of Private Claim No. 37 bears N. 19° 03' E., 721 feet distant, as shown on Hydrographic Survey Map Sheet No. 15, Tract 1A.

e) **Amount of Water:** Storage not to exceed 58 acre-feet in reservoir with a surface area of 6 acres within Lower Vallecitos Community Storage Works for irrigation purposes as set out in State Engineer Office File 0973.

**Subfile No. 0017.018A.00**

a) **Purpose:** Storage for Irrigation Purposes

b) **Priority:** December 31, 1815

c) **Source of Water:** Vallecitos Creek, a tributary of the Jemez River.

d) **Point of Diversion:** Ponderosa Community Ditch, NW¼ SW¼ SW¼ Sec. 20, T.17N, R.3E, projected within the Ojo De San Jose Grant, located by New Mexico State Plane Coordinate System, Central Zone, X=379, 875 Y=1, 704, 640.

e) **Location of Storage:** Storage Reservoir is located in the W½ NE¼ SE¼ Sec. 30, T.17N, R.3E, N.M.P.M, as projected within the Ojo De San Jose Grant, as shown on Hydrographic Survey Map Sheet No. 17, Tract 18A.

**Amount of Water:** Storage not to exceed 15 acre-feet in reservoir with a surface area of 1.90 acres for irrigation purposes as set out in State Engineer Office file 0973.

## CONSUMPTIVE USE FROM STORAGE

The consumptive use of water from storage in reservoirs shall be 16.00 acre feet per year for subfile 0015.001A.000[2] and 5.07 acre feet per year for subfile 0017.018A.00[3].

## IRRIGATION WATER REQUIREMENTS

The consumptive irrigation requirement (CIR) for each acre irrigated from this ditch is 1.41 acre-feet per irrigated acre per year.

The farm delivery requirement (FDR), which is also referred to as duty, for acreage irrigated from this ditch is 2.82 acre-feet per irrigated acre per year delivered at the farm headgate.

The project delivery requirement (PDR), which is also referred to as off-farm conveyance efficiency, for each acre irrigated from this ditch is 4.03 acre-feet per irrigated acre per year; for a total annual maximum diversion of 1,207.35 acre-feet per year based on the rights adjudicated in the subfiles as set forth above; plus 16.00 acre feet per year for subfile 0015.001A.000 and 5.07 acre feet per year for subfile 0017.018A.00 to replace the amount lost annually to evaporation.

The water rights adjudicated to any individual defendant listed in this agreement are as adjudicated in his or her subfile and nothing in this ditch agreement alters or amends or is intended to alter or amend a defendant's water rights.

This agreement defines the maximum amount of the right of the forenamed defendant ditch association to divert water for the benefit of its members based on the rights adjudicated to its members as set forth above. The amount that the ditch association may divert may change as

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[1]The consumptive use from storage equals the net evaporation from the reservoir. The net evaporation (NE) is calculated by multiplying the net evaporation rate (NER) from man-made reservoirs, expressed in feet, by the surface area acreage (SAA). This figure yields the annual consumptive use due to evaporation.

[2]The net evaporation rate for this reservoir is 32" per year, based on the Court's June 3, 1997 order (No. 3559) adopting the *Small Lake Net Evaporation Zones in the Jemez Watershed* and the map thereof. Therefore, the net evaporation equals:
32" (NER in inches) ÷ 12" = 2.667' (NER in feet) x 6 acres (SAA) = 16.00 acre feet (NE) = consumptive use from storage.

[3]The net evaporation rate for this reservoir is 32" per year, based on the Court's June 3, 1997 order (No. 3559) adopting the *Small Lake Net Evaporation Zones in the Jemez Watershed* and the map thereof. Therefore, the net evaporation equals:
32" (NER in inches) ÷ 12" = 2.667' (NER in feet) x 1.9 acres (SAA) = 5.07 acre feet (NE) = consumptive use from storage.

the adjudicated water rights are altered or amended by other orders of this Court or as permitted by the New Mexico State Engineer. The forenamed defendant ditch association agrees that the court may enter an order enjoining defendant Ponderosa Community Ditch Association's diversion or use of the waters of the Rio Jemez Stream System except in accordance with this agreement, other orders of this Court or as permitted by the New Mexico State Engineer.

ACCEPTED BY THE PONDEROSA COMMUNITY DITCH ASSOCIATION

Mary F Caldwell
Mary F. Caldwell
President of the Commission
P.O. Box 108
Ponderosa, NM 87044

DATED: 12-16-99, 1999

Ruby Hoolihan
Ruby Hoolihan, Commissioner

DATED: 12-16-99, 1999

Leroy Trujillo
Leroy Trujillo, Commissioner

DATED: _____, 1999

Leticia Sheridan
DL Sanders, Esq./Leticia Sheridan, Esq.
Special Assistant Attorneys General
State of New Mexico
State Engineer Office
P.O. Box 25102
Santa Fe, NM 87504-5102

DATED: 12-28, 1999

Telephonically Approved
David W. Harder, Esq./Lynn A. Johnson, Esq.
U.S. Department of Justice
United States of America
999 18th Street, Suite 945
Denver, CO 80202

DATED: Nov. 23, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, on its
own behalf and on behalf of the
PUEBLOS OF JEMEZ, SANTA ANA, and ZIA,

and

STATE OF NEW MEXICO, *ex rel.*
State Engineer,
Plaintiffs,

83cv01041 JC
RIO JEMEZ ADJUDICATION

and

THE PUEBLOS OF JEMEZ, SANTA ANA, and ZIA,
Plaintiffs-in-Intervention,

Ponderosa Community Ditch Association

v.

TOM ABOUSLEMAN, *et al.*,
Defendants.

**ORDER**

THIS MATTER is before the Court *sua sponte*. On January 10, 2000, the United States of America, the State of New Mexico and the Ponderosa Community Ditch Association filed a Ditch Agreement (3885) setting forth the Association's rights in the waters of the Rio Jemez stream system.

IT IS HEREBY ADOPTED by the Court.

/ electronic signature/
CHIEF UNITED STATES DISTRICT JUDGE

Approved:
/ electronic signature/
SPECIAL MASTER VICKIE L GABIN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

00 MAY -4 PM 2:59

CLERK-ALBUQUERQUE

| | |
|---|---|
| UNITED STATES OF AMERICA, on its own behalf and on behalf of the PUEBLOS OF JEMEZ, SANTA ANA and ZIA, the Pueblos as Intervenors, in their own behalf, and THE STATE OF NEW MEXICO, ex rel. State Engineer, Plaintiffs, v. TOM ABOUSLEMAN, et al., Defendants. | No. Civ. 83-1041 JC<br>Subfile No.<br>001T.001B.000 |

CONSENT ORDER

This case concerns the adjudication of water rights for the Nacimiento Community Ditch Association, Subfile No. 0001T.001B.000. For reasons of efficient case management and conservation of judicial and attorney resources, this action is both a subfile and a limited inter se proceeding.

The parties are Plaintiffs, State of New Mexico ("State") and the United States of America ("United States"); Plaintiffs-in-Intervention, Pueblos of Zia, Jemez and Santa Ana ("Pueblos"); and Defendant Nacimiento Community Ditch Association ("NCDA"). The primary issues in this subfile have been the amount of water that NCDA can divert from the

Jemez River Basin and export to the Rio Puerco Basin and the operation of NCDA's San Gregorio Reservoir.

This matter comes before the Court after a two day settlement conference before Magistrate Leslie Smith on January 10 and 11, 2000. At the conclusion of that conference, the parties reached an Agreement in Principle. This Consent Order incorporates all of the concepts of the Agreement in Principle.

The parties submitted a Joint Motion in Support of the Consent Order. After reviewing the Joint Motion, the proposed Order, and for good cause shown, the Court finds that the Joint Motion should be granted

Pursuant to Federal Rule of Civil Procedure 54(b), IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

This Court has jurisdiction over the parties and this matter and venue is proper in the District of New Mexico.

A. The defendant **NACIMIENTO COMMUNITY DITCH ASSOCIATION** has a right to divert and impound the public waters of the Jemez River stream system as described below:

1. **Purpose:** Irrigation

a. **State Engineer File No.:** 0538

b. **Priority:** December 31, 1882[1/]

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[1/] The Court reserves jurisdiction over this matter for the limited purpose of allowing the defendant to present evidence in support of an earlier priority for NCDA should any Jemez

**c. Sources of water:** (1) Clear Creek, a tributary of the Rio de las Vacas and (2) Rio de las Vacas, a tributary of the Rio Guadalupe, which is a tributary of the Jemez River (Clear Creek and the Rio de las Vacas are the sources for the transbasin diversion).

**d. Points of diversion:** State Engineer File No. 0580.[2/] A ditch that diverts surface water from Clear Creek in the SW1/4 NW1/4 SW1/4 of projected Section 21, T. 21 N., R. 1E., and located by the New Mexico Plane Coordinate System, Central Zone, X=323,700 feet and Y=1,831,710 feet and a ditch that diverts surface water from the Rio de las Vacas in the SE1/4 NE1/4 NE1/4 of projected Section 22, T. 21 N., R.1E., and located by the New Mexico Plane Coordinate System, Central Zone, X=333,085 feet and Y=1,834,090 feet.

**e. Amount of water:**[3/] As described more fully in paragraphs 5 and 6 of section B herein, the Jemez Basin diversion amount from Clear Creek shall not exceed a six-year rolling

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River stream system water right claim be asserted after October 1, 1998, wherein a priority date of December 31, 1882, or earlier, is asserted before a court having jurisdiction to adjudicate or otherwise decide such a claim. Acceptance by the Pueblos or the United States of the NCDA's conditional priority date stated herein does not constitute a waiver of any right that the Pueblos or the United States may have to participate in any future proceeding regarding any potential amendments to the NCDA's priority date.

2/ All ditches listed on page 4 of this Consent Order divert from Nacimiento Creek, which is tributary to the Rio Puerco, originating in the NE1/4 NW1/4 SE1/4 of projected Section 31, T. 21N., R. 1W. and located by the New Mexico Plane Coordinate System, Central Zone, X= 284,300 feet and Y= 1,821,500 feet as projected into the San Pedro Park Wilderness. Nacimiento Creek is a source of water for the ditches listed in this offer.

3/ An agreement between the Pueblos of Jemez, Zia and Santa Ana and the Nacimiento Community Ditch Association, regarding the use of the Jemez River drainage basin waters in the Rio Puerco drainage basin, was filed in this case on June 14, 1990 (# 2240). That agreement is superseded by this Consent Order.

average of 1335 acre-feet per annum, with a maximum diversion of 2332.92 acre-feet per annum. The point of measurement of the diversion amount from Clear Creek is at the point on the Nacimien ditch, indicated on the attached map, near where this ditch crosses the Clear Creek (Jemez River)/Nacimiento Creek (Rio Puerco) drainage divide, and where the presently-existing BIA parshall flume gage is located. Water delivered to the point of measurement from the Rio de las Vacas, or as delivery from storage in San Gregorio Reservoir, is counted as part of the diversion amount, as described more fully in paragraphs 5 and 6 of section B herein. This amount is for the irrigation of 715.62 acres (which are identified on the attached addendum) with an annual project delivery requirement of 3.26 acre-feet per acre[9], provided that the rate of diversion from Clear Creek shall not exceed an average of 14.0 cubic feet per second in any given month as measured at the point of measurement set forth above.

**f. Ditches**. The ditches within the Nacimiento Community Ditch system that are entitled to divert water delivered into Nacimiento Creek are listed below:

| Ditch | Acreage |
|---|---|
| *Nacimiento* | *247.19* |
| *Domingo Vigil* | *46.61* |
| *Nerio Montoya* | *14.68* |
| *Francisco Chavez No. 6* | *195.58* |
| *Gabriel Montoya No. 7* | *47.97* |
| *Ballejos No. 1* | *9.86* |
| *Copper City No. 1* | *130.72* |
| *Madalena Atencio No. 2* | *23.01* |
| *TOTAL:* | *715.62* |

[9] Diversion limitations are governed by the Amended Order Adjudicating Irrigation Water Requirements filed on October 21, 1997 (# 3609).

2. **Purpose:** Conservation storage for irrigation use.

**a. State Engineer File No.:** 0580

**b. Priority:** October 10, 1947.

**c. Source of water:** Clear Creek, a tributary of the Rio de las Vacas, which is a tributary of the Rio Guadalupe, which is a tributary of the Jemez River.

**d. Point of Diversion:** State Engineer File No. 0580. The point of diversion from Clear Creek is the location of the San Gregorio Reservoir, which is located in the E1/2 NE1/4 of projected Section 20, and W1/2 NW1/4 of projected Section 21, T. 21N., R. 1E., NMPM, with the outlet works located at a point in the SW1/4 NW1/4 of projected Section 20, T. 21N., R. 1E., NMPM, as projected whence the Nacimiento Peak Triangulation Station bears S. 32.02'04" W., 2114.1 feet distance, within the San Pedro Park Wilderness area of the Santa Fe National Forest, as shown on Hydrographic Survey map sheet 1-T, Nacimiento Peak.

**e. Location of storage:** State Engineer File No. 0580. San Gregorio Reservoir located in the E1/2 NE1/4 of projected Section 20, and W1/2 NW1/4 of projected Section 21, T. 21N., R. 1E., NMPM, with the outlet works located at a point in the SW1/4 NW1/4 of projected Section 20, T. 21N., R. 1E., NMPM, as projected whence the Nacimiento Peak Triangulation Station bears S. 32.02'04" W., 2114.1 feet distance, within the San Pedro Park Wilderness area of the Santa Fe National Forest, as shown on Hydrographic Survey map sheet 1-T, Nacimiento Peak.

**f. Amount of water:**

**STORAGE**

NCDA has the right to maintain a conservation storage pool within San Gregorio

Reservoir for irrigation purposes not to exceed the impoundment of 154 acre-feet, in addition to the right of the New Mexico Department of Game and Fish to maintain a minimum pool of 100 acre-feet in the reservoir, less accumulated silt, for fish and wildlife purposes, within San Gregorio Reservoir for irrigation purposes and described further as follows:

Spillway crest elevation: 9,408.0 feet

Maximum reservoir surface area: 35 acres

Annual net evaporation[5] at spillway crest: 35.35 acre-feet

**DELIVERY AND DIVERSION**

Maximum delivery[6] amount from storage is 308 acre-feet per annum as measured at the reservoir outlet works and as defined in paragraph B.3 herein, for use by the owners of water rights associated with the Nacimiento Community Ditch Association on the acreage set forth on page 4 of this Consent Order and more fully identified on the attached addendum. The mayordomo of the Association, or a person similarly authorized by the commission of the Association, will determine the ditch or ditches entitled to receive water at the time of delivery.[7] The Association may divert water for storage within the limitations for storage and delivery from storage set forth herein, provided, however, that water passing

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[5] The net evaporation is the consumptive use from storage which is defined as the net evaporation rate, expressed in feet, from man-made reservoirs multiplied by the surface area acreage.

[6] "Delivery" is defined as release of water from storage.

[7] If no such determination is made at the time of delivery, all ditches shall be entitled to receive water in an amount proportional to the acreage served under them.

through the spillway when the reservoir is at full capacity shall be considered as Clear Creek stream flows and not as water diverted, stored, or delivered from storage.

## IRRIGATION WATER REQUIREMENTS

Consumptive Irrigation Requirement (CIR), Farm Delivery Requirement (FDR), and Project Delivery Requirement (FDR) are defined in the court's amended order adjudicating irrigation water requirements (# 3609), which sets forth the requirements as follows:

**CIR:** 1.14 acre-feet per irrigated acre

**FDR:** 2.28 acre-feet per irrigated acre delivered at the farm headgate.

**PDR:** 3.26 acre-feet per irrigated acre as measured at the point of diversion for each ditch.

**B. NCDA's Obligation to Build a Diversion Structure and Headgate and Definition of Jemez Basin water right.**

1. No later than two years from March 15, 2000, NCDA shall construct and commence the continuing operation of a diversion structure with a headgate or similar type device ("headgate") at its point of diversion in the Jemez Basin in accordance with this Consent Order.

a. The diversion structure shall be designed and constructed to turn water from Clear Creek into the Nacimiento Ditch and be easily able to apportion the flow in Clear Creek between Clear Creek in the Jemez Basin and Nacimiento Ditch, which leads from Clear Creek to Nacimiento Creek in the Puerco Basin. See attached map. The headgate portion of the diversion structure shall be capable of being easily closed and opened. The diversion structure and headgate may be designed by a state or federal agency, or private entity, so long as it meets the above criteria.

NCDA shall present the proposed design of the diversion structure to all other parties for their review by providing their counsel with a copy of the proposed design. The parties have thirty (30) days from their receipt of the proposed design to provide comments on whether the proposed design meets the above criteria to NCDA's counsel. NCDA and the other parties shall attempt to negotiate a resolution of any dispute over the design of the diversion structure and headgate within thirty (30) days of their receipt of any comments on the design of the diversion structure or headgate, or such longer period as agreed to by the parties. If any design dispute cannot be resolved, any party has an additional thirty (30) days to file a Motion with the Court, the grounds for the Motion being limited to any failure of NCDA's proposed design to meet the above criteria. The provision of any design by or through any governmental entity and the provision of comments on the design by any party shall not obligate any party to fund any portion of the cost of the diversion structure and headgate or in any way release NCDA from its obligations under this Consent Order. If the cost of constructing the diversion structure and headgate exceeds $10,000, NCDA is not excused from the requirement of constructing the diversion structure and headgate as required in this paragraph. The additional costs and NCDA's timely efforts to obtain monies for the construction of the diversion structure and the headgate may be considered by this Court in any request for an extension of time to complete the project under paragraph 1.b of this section.

b. The NCDA may request that the Court grant one, 120-day extension of the March 15, 2002, deadline to complete construction of the diversion structure and headgate, only upon a showing of good cause, due diligence and good faith in securing the necessary permit(s) and constructing the diversion structure and headgate on Clear Creek. Due diligence and good faith

factors which the Court will consider are: 1) the timeliness with which NCDA filed the necessary permit applications with the U.S. Forest Service or other relevant governmental entity (hereinafter "agency"); 2) the timeliness of NCDA's efforts to respond to any inquiries from any such agency during the permitting process; 3) the timeliness with which NCDA secured a design and bids from prospective contractor(s) for the construction of the diversion structure and headgate; 4) the time NCDA used in reviewing bids from prospective contractor(s) and selecting a contractor(s) to complete the construction of the diversion structure and headgate; 5) any delays caused by NCDA members not supplying required labor to assist in construction of the diversion structure and headgate; 6) the number and types of sources of funding that NCDA sought for construction of the diversion structure and headgate; 7) the time elapsed between the parties' approval of the agreement in principle (February 15, 2000) and NCDA's application to sources of funding for construction of the diversion structure and headgate; 8) the timeliness of NCDA's efforts to respond to any inquiries from the potential funding source for construction of the diversion structure and headgate; and 9) the total cost of the diversion structure and headgate.

c. If the diversion structure and headgate are not built and fully operable on March 15, 2002, or at such later date allowed by the Court under paragraph B.1.b. ("the deadline"), NCDA shall be penalized at the deadline in the amount of thirty percent of 1335 acre-feet (i.e.. 400.5 acre-feet). The penalty shall be assessed by adding 400.5 acre-feet to the NCDA's annual measured diversion amount from the Jemez Basin for that year, and is referred to hereafter as the "penalty amount." If the diversion structure and headgate are not completed by the third or succeeding calender years after March 15, 2000, the same penalty amount shall continue to accrue each year

when the diversion structure and headgate are not completed, i.e., 400.5 acre-feet shall be added for each successive year when the diversion structure and headgate are not completed to NCDA's annual measured diversion from the Jemez Basin, pursuant to paragraph five of this section.

2. NCDA's maximum diversion flow rate in the Nacimiento Ditch at the BIA gage in the Jemez Basin shall be no more than a monthly average of 14.0 cfs in any given month, as determined by the BIA or its designee.

3. NCDA may release from San Gregorio Reservoir no more than 308 acre-feet per annum (the equivalent of two releases of 154 acre-feet). San Gregorio releases do not add to NCDA's water right in the Jemez Basin expressed in paragraph five of this section. When NCDA's maximum release of 308 acre-feet is reached, NCDA shall close the outlet works. The BIA is authorized to install a gage on San Gregorio Reservoir near the outlet pipe to monitor NCDA's releases from San Gregorio Reservoir. NCDA shall notify the BIA or any entity that BIA designates at least two business days before NCDA intends to release water from San Gregorio Reservoir for the first time each irrigation season. NCDA shall notify the BIA or any entity that the BIA designates within one day of NCDA concluding its release of water from San Gregorio at the end of each irrigation season or when NCDA has reached the maximum annual release of 308 acre-feet before the end of each irrigation season, whichever occurs first. The BIA or its designee shall transmit monthly totals of the San Gregorio Reservoir releases to all other parties to this Consent Order that have requested such information. The BIA or its designee and NCDA shall transmit the information required by this paragraph in a reasonable manner mutually agreeable to the parties.

4. NCDA may utilize the Cuba/Vacas Ditch to provide water from the Rio de las Vacas watershed to its point of diversion on Clear Creek.

5. NCDA's Jemez Basin water right shall be no more than 1335 acre-feet per annum, as computed on a six calender year rolling average of NCDA's annual Jemez Basin diversion amount. There are two components to NCDA's annual Jemez Basin diversion amount. The first component shall be the amount of water diverted by NCDA from the Jemez Basin per annum, as measured by the BIA, or its designee, at the point of the existing BIA gage, on Nacimiento Ditch, just above NCDA's Jemez River Basin to Rio Puerco Basin drop structure ("measured diversion amount"). See attached map. The measured diversion amount includes water from any source or combination of sources reaching the gaging point, including but not limited to the maximum of 308 acre-feet of water released from San Gregorio Reservoir and water diverted from the Rio de las Vacas. NCDA may divert from the Jemez Basin no more than 2332.9 acre-feet per annum, as measured at the BIA gage, so long as that amount does not violate the 1335 acre-feet six year rolling average. The BIA or its designee shall transmit monthly totals of the measured diversion amount of Jemez Basin water to all other parties to this Consent Order that have requested such information. The method of the transmissions and to whom they are directed shall be determined in a reasonable manner mutually acceptable to the BIA and the requesting party(s). The second part of NCDA's annual Jemez Basin diversion amount shall include any penalty amount of water NCDA may accrue under paragraph B.1.a. of this Consent Order per annum. The combination of the measured diversion amount at the BIA gage and the penalty amount shall constitute NCDA's annual Jemez Basin diversion amount. NCDA may not relitigate the amount of its Jemez Basin water right, if and

when its water rights in the Puerco Basin are adjudicated at some later date. NCDA's water right shall only be used for the agricultural purposes of its membership.

6. The determination of the six calender year rolling average of NCDA's annual Jemez Basin diversion amount commences with calender year 2000 and is computed as follows. The six year rolling average of 1335 acre-feet totals 8010 acre-feet over six years from either measured diversion amounts or penalty amounts. With 2332.92 acre-feet as a maximum annual measured diversion amount, NCDA may take any combination of penalty amounts and measured diversion amounts per annum to yield its annual Jemez Basin diversion amount. The aggregate of the annual Jemez Basin diversion amount for the instant calender year and the five preceding calender years may not exceed 8010 acre-feet. For example in calender year 2007, the six years aggregated would be 2002 through 2007. Prior to entering the sixth calender year under this Consent Order, i.e., until the start of calender year 2005, the six calender year rolling average or 8010 acre-feet cap on NCDA's annual Jemez Basin diversion amount shall be in effect. For example, if NCDA had annual measured diversions of 2000 acre-feet per year for the first four calender years covered by this Order (calender years 2000 through 2003), and no penalty amounts in any of those four calender years, NCDA could divert 10 acre-feet over the next two calender years.

7. At any time in the calender year when NCDA breaches either the six year rolling average of 1335 acre-feet per annum, or NCDA's maximum diversion in the Jemez Basin of 2332.9 acre-feet in any one calender year, NCDA shall immediately stop releasing any water from San Gregorio Reservoir or diverting any water from Clear Creek.

8. No later than thirty (30) days after the conclusion of each calender year (October

31 of the next calender year), the BIA shall serve on each party to this Consent Order an Annual Report of the total amounts of water measured under paragraph B.2 (monthly average diversion rates in cfs), paragraph B.3 (San Gregorio Reservoir releases) and paragraph B.5 (Jemez Basin measured diversion amounts), and any penalty amounts accrued to NCDA under paragraphs B.1.c. Any party to this Consent Order has ninety (90) days from the date of service of the BIA's Annual Report to file with this Court and serve on all other parties to this Consent Order any Objection to the BIA's Annual Report. Any Response to the Objection must be filed within fourteen (14) calender days of service of the Objection. Any Reply must be filed within fourteen (14) calender days of service of the Response. Any party filing an Objection is strongly encouraged to try and resolve the substance of the Objection informally before and after filing an Objection. If any party does not object to any provision of an Annual Report within the ninety (90) day period for a given year, a rebuttable presumption is created that such provision of the Annual Report is valid and accurate. In rebutting such a presumption, the burden of proof is on the party challenging the Annual Report provisions to show that a given provision of an Annual Report is not valid or accurate. The Annual Report and any Motion objecting to the Annual Report shall be served on the parties to this Consent Order at the following addresses:

a. United States:

Regional Rights Protection Officer
U.S. Bureau of Indian Affairs
P.O. Box 26567
Albuquerque, NM 87125-6567

Assistant Section Chief
U.S. Department of Justice
999 18th Street, Ste. 945
Denver, CO 80202

b. State of New Mexico:

District Supervisor, District No. 1
Office of the State Engineer
121 Tijeras NE, Suite 2000
Albuquerque, NM 87102

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|---|---|---|
| C. NCDA: | Gilbert Dominguez, President<br>Nacimiento Community Ditch Association<br>P.O. Box 1026<br>Cuba, NM 87013 | |
| D. Pueblo of Zia: | Governor's Office<br>Attn: Peter Pino<br>135 Capital Square Dr.<br>Zia Pueblo, NM 87053-6013 | David C. Mielke, Esq.<br>Ussery & Parrish, P.A.<br>P.O. Box 487<br>Albuquerque, NM 87103-0487 |
| E. Pueblo of Jemez: | Governor's Office<br>P.O. Box 100<br>Jemez Pueblo, NM 87204 | David Yepa<br>Roth, Van Amberg, Rogers, Ortiz,<br>Fairbanks & Yepa, LLP<br>317 Commercial, NE Suite 102<br>Albuquerque, NM 87102 |
| F. Pueblo of Santa Ana: | Governor's Office<br>2 Dove Road<br>Bernalillo, NM 87004<br><br>Lester K. Taylor<br>Nordhaus Law Firm<br>500 Marquette Street NW<br>Suite 1050<br>Albuquerque, NM 87102 | Tribal Administrator<br>2 Dove Road<br>Bernalillo NM 87004 |

Any party may change who is to receive notice under this paragraph by serving a letter upon all other parties listed in this paragraph that describes the change of address for that party.

9. The provisions of paragraph 8 and 10 of this section shall apply to the State or to an appointed water master to the extent that either entity conducts some or all of the measurements described in paragraph 8 of this section. Also, any appointed water master shall be given notice in all instances in this Consent Order in which the BIA is required to give or receive notice.

10. Under this Consent Order, the BIA or its designee is authorized to operate several gages to measure NCDA's Jemez Basin diversion amounts. NCDA shall not interfere with the agents, servants, employees, and attorneys of the BIA or its designee or any other lawfully authorized entity in making routine and reasonable installation of necessary equipment to make the measurements authorized by this Consent Order, inspection and maintenance of such equipment, data transfers from such equipment, and all other necessary and prudent inspections of NCDA's diversion structures on Clear Creek and the Rio de las Vacas and conveyance systems in the Jemez Basin.

11. Any and all trespass charges of the United States in this case from the date of the complaint until the date of this Order against NCDA are hereby dismissed.

**C. GENERAL PROVISIONS**

1. This Consent Order shall be binding on all of the parties, their officers, agents, servants, employees, members, and attorneys, their successors and assigns.

2. NCDA shall not raise as a defense under provisions of this Consent Order the failure of its officers, agents, servants, employees, members, and attorneys to take actions necessary to comply with any relevant provision of this Consent Order.

3. Compliance with this Consent Order shall in no way affect or limit the obligation of NCDA to comply with all current and future federal, state and local laws, regulations, ordinances, and permit conditions, and any order of any court.

4. This Consent Order does not release, waive, limit, or impair in any manner the claims, rights, remedies or defenses of the United States or the State or the Pueblos against any person or entity that is not a party to this Consent Order.

5. Each party shall bear its own costs and attorney's fees in this action.

6. The parties intend that the provisions of this Consent Order shall be severable. If any provision is found unenforceable, the remaining clauses shall remain in full force and effect.

7. The Court shall retain jurisdiction after entry of this Consent Order to modify or enforce its terms or to take any action necessary or appropriate for its construction or execution.

8. Any modification of this Consent Order must be in writing, signed by all of the parties, and approved by this Court before it becomes effective.

9. The undersigned representatives of the parties each certifies that he is fully authorized to enter into the terms and conditions of this Consent Order, to execute it and bind the party each person represents to this document.

10. This Consent Order may be approved by the Parties in counterpart.

Dated: May 3, 2000

JOHN EDWARDS CONWAY, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Recommend for Entry:

Vickie I Gabin
Special Master

APPROVED AS SUBMITTED:

4/27/00

*Attorney for the United States*

*Governor, Pueblo of Jemez*

*Governor, Pueblo of Zia*

*Governor, Pueblo of Santa Ana*

*State of New Mexico*

*President, Nacimiento Community Ditch Association*

APPROVED AS SUBMITTED:

*Attorney for the United States*

*Governor, Pueblo of Jemez*

*Governor, Pueblo of Zia*

*Governor, Pueblo of Santa Ana*

*State of New Mexico*

*President, Nacimiento Community Ditch Association*

**Addendum to the Offer of Judgment for Subfile 001T.001B.000**
**Nacimiento Community Ditch Association**

This addendum provides a listing of the individual rights served by the ditches of the Nacimiento Community Ditch Association.

Nacimiento Ditch

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 2N | 1 | 002N.0001.000 | 12.450 | SISTO SANDOVAL |
| 2N | 2 | 002N.0002.000 | 16.340 | CASIMIRO & IGNACITA DOMINGUEZ |
| 2N | 11 | 002N.0011.000 | 4.450 | PROCOPIO RAMIREZ |
| 3N | 4 | 003N.0004.000 | 0.200 | MANUEL CRESPIN |
| 3N | 4A | 003N.004A.000 | 5.120 | LOIS M. BROWN |
| 3N | 5 | 003N.0005.000 | 11.750 | DANIEL H. MONTOYA |
| 3N | 5B | 003N.005B.000 | 6.100 | ALBINO CASAUS |
| 3N | 6 | 003N.0006.000 | 15.160 | ALFREDO MONTOYA |
| 3N | 7 | 003N.0007.000 | 18.980 | ANTONIO DOMINGUEZ (EST.) |
| 3N | 7A | 003N.007A.000 | 0.000 | SANDRA & LEANDRO CANDELARIA |
| 3N | 8 | 003N.0008.000 | 4.300 | GILBERT DOMINGUEZ |
| 3N | 9 | 003N.0009.000 | 6.960 | GEORGE JARAMILLO |
| 3N | 10 | 003N.0010.000 | 11.240 | SISTO SANDOVAL |
| 3N | 10A | 003N.010A.000 | 3.860 | SOPHIE & AMADEO G. SALAZ |
| 3N | 11 | 003N.0011.000 | 0.710 | PROCOPIO RAMIREZ |
| 3N | 12 | 003N.0012.000 | 42.100 | MAX & ROSELITA A. CARABAJAL |
| 3N | 12A | 003N.012A.000 | 10.080 | HERMAN CASAUS |
| 3N | 13 | 003N.0013.000 | 13.870 | CLOVIS MARTINEZ |
| 3N | 14 | 003N.0014.000 | 15.100 | BENITO CASAUS |
| 3N | 14A | 003N.014A.000 | 4.080 | RAFAELITA CARABAJAL |
| 3N | 15 | 003N.0015.000 | 23.410 | SISTO SANDOVAL |
| 3N | 16 | 003N.0016.000 | 9.100 | SOPHIE & AMADEO G. SALAZ |
| 5N | 14 | 005N.0014.000 | 0.650 | MANUEL CRESPIN |
| 5N | 14A | 005N.014A.000 | 0.200 | LOIS M. BROWN |
| 5N | 15 | 005N.0015.000 | 10.300 | ALFREDO MONTOYA |
| 5N | 16 | 005N.0016.000 | 0.680 | ANTONIO DOMINGUEZ (EST.) |
| Total: | | | 247.19 | |

Domingo Vigil Ditch

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 1N | 1 | 001N.0001.000 | 10.220 | CELEDONIO ARAGON |
| 1N | 2 | 001N.0002.000 | 9.840 | ERISTEO ARAGON |
| 1N | 3 | 001N.0003.000 | 13.680 | RAMON & IRENE SANDOVAL |
| 1N | 4 | 001N.0004.000 | 12.870 | CRISOSTOMO VIGIL |
| Total: | | | 46.61 | |

Nerio Montoya Ditch

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 2N | 16 | 002N.0016.000 | 5.280 | HAZEL MONTOYA HERRERA<br>JOSEPHA SANDOVAL<br>MONTOYA |
| 2N | 17 | 002N.0017.000 | 1.850 | NESTOR C. CHAVEZ |
| 2N | 18 | 002N.0018.000 | 7.550 | CLOROVEO LUCERO |
| Total: | | | 14.68 | |

Francisco Chavez Ditch #6

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 2N | 3 | 002N.0003.000 | 12.000 | MAX R. LUCERO |
| 2N | 4 | 002N.0004.000 | 28.180 | ROSEANNE LEMKE |
| 2N | 4A | 002N.004A.000 | 5.000 | ABEL SALAZ |
| 2N | 5 | 002N.0005.000 | 4.900 | CLOROVEO LUCERO |
| 2N | 5A | 002N.005A.000 | 1.120 | ALICIA V. LUCERO |
| 2N | 5B | 002N.005B.000 | 1.450 | FERNANDO PADILLA |
| 2N | 6 | 002N.0006.000 | 33.270 | ROBERTO A. MARTINEZ |
| 2N | 6A | 002N.006A.000 | 9.600 | BRUNO HERRERA |
| 2N | 7 | 002N.0007.000 | 15.700 | HAZEL MONTOYA HERRERA<br>JOSEPHA SANDOVAL<br>MONTOYA |
| 2N | 8 | 002N.0008.000 | 4.250 | NESTOR C. CHAVEZ |
| 2N | 9 | 002N.0009.000 | 6.080 | CLOROVEO LUCERO |
| 2N | 10 | 002N.0010.000 | 24.030 | COOK BROTHERS & COMPANY |
| 2N | 10A | 002N.010A.000 | 0.000 | VILLAGE OF CUBA |
| 2N | 12 | 002N.0012.000 | 36.450 | MAX R. LUCERO |
| 2N | 12A | 002N.012A.000 | 0.000 | SOPHIE SALAZ |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 2N | 12B | 002N.012B.000 | 0.440 | CASIMIRO & IGNACITA DOMINGUEZ |
| 2N | 13 | 002N.0013.000 | 1.740 | LOUIS M. & MARGARET C. MONTOYA |
| 2N | 14 | 002N.0014.000 | 2.100 | EUGENE VIGIL |
| 2N | 14A | 002N.014A.000 | 3.910 | SOTERO CASAUS |
| 2N | 15 | 002N.0015.000 | 5.360 | APARCIO C. HERRERA |
| Total: | | | 195.58 | |

Gabriel Montoya Ditch #7

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 2N | 19 | 002N.0019.000 | 46.380 | ADAM MONTOYA<br>ELI MONTOYA<br>GABRIEL MONTOYA |
| 2N | 20 | 002N.0020.000 | 1.590 | MANUEL CRESPIN |
| Total: | | | 47.97 | |

Ballejos Ditch #1

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 5N | 11 | 005N.0011.000 | 0.520 | EPPIE ATENCIO |
| 5N | 11A | 005N.011A.000 | 0.270 | JERRY ATENCIO |
| 5N | 11B | 005N.011B.000 | 8.220 | DANIEL H. MONTOYA |
| 5N | 11C | 005N.011C.000 | 0.850 | CARLOS ATENCIO |
| Total: | | | 9.86 | |

Copper City Ditch No. 1

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 4N | 1 | 004N.0001.000 | 2.980 | JOSE & CECILIA ORTIZ |
| 4N | 2 | 004N.0002.000 | 0.720 | GILBERT P. & ANNA H. JARAMILLO |
| 4N | 3 | 004N.0003.000 | 1.500 | EPPIE ATENCIO |
| 5N | 1 | 005N.0001.000 | 4.080 | JOSE & CECILIA ORTIZ |
| 5N | 1A | 005N.001A.000 | 1.680 | THERESA G. VELARDE |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 5N | 2 | 005N.0002.000 | 11.340 | GILBERT P. & ANNA H. JARAMILLO |
| 5N | 3 | 005N.0003.000 | 2.600 | EPPIE ATENCIO |
| 5N | 4 | 005N.0004.000 | 1.870 | ANNA H. JARAMILLO |
| 5N | 4A | 005N.004A.000 | 6.780 | ALVIN V. STEED |
| 5N | 4B | 005N.004B.000 | 3.040 | EMMA MARIE SIGMON |
| 5N | 5 | 005N.0005.000 | 11.890 | ELODIA VALDEZ |
| 5N | 5A | 005N.005A.000 | 4.300 | KATIE H. RIVERA |
| 5N | 5B | 005N.005B.000 | 0.850 | REYES GURULE (EST.) |
| 5N | 6 | 005N.0006.000 | 3.670 | LARRY GURULE |
| 5N | 7 | 005N.0007.000 | 7.320 | EULALIO DE HERRERA |
| 5N | 8 | 005N.0008.000 | 1.750 | FELIMON DE HERRERA |
| 5N | 8A | 005N.008A.000 | 2.100 | ELDEN DE HERRERA |
| 5N | 8B | 005N.008B.000 | 1.200 | EULALIO DE HERRERA |
| 5N | 8C | 005N.008C.000 | 3.600 | JACOBO DE HERRERA JR. |
| 5N | 8D | 005N.008D.000 | 1.300 | WILLIAM DE HERRERA |
| 5N | 9 | 005N.0009.000 | 0.250 | RONALD J. CARSON |
| 5N | 9A | 005N.009A.000 | 5.150 | EMMETT H. & ROSEMARY CART |
| 5N | 10 | 005N.0010.000 | 10.320 | LEO JACQUEZ |
| 5N | 10A | 005N.010A.000 | 3.550 | CRISTOBAL GURULE |
| 5N | 10B | 005N.010B.000 | 0.800 | DEBRA GURULE<br>FAYE GURULE |
| 5N | 10C | 005N.010C.000 | 0.370 | FLOYD FLORENCIO & ERCIE M VALDEZ |
| 6N | 1 | 006N.0001.000 | 14.310 | PROCOPIO RAMIREZ |
| 6N | 1A | 006N.001A.000 | 12.380 | FEDERICO RAMIREZ |
| 6N | 1B | 006N.001B.000 | 9.020 | DELFIN SANCHEZ |
| Total: | | | 130.72 | |

Madriena Atencio Ditch #2

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 3N | 1 | 003N.0001.000 | 1.900 | RICHARD & AMELIA ATENCIO |
| 3N | 1A | 003N.001A.000 | 1.520 | PAT & CRISTINE GALLEGOS |
| 3N | 1B | 003N.001B.000 | 1.150 | TONY ATENCIO |
| 3N | 1C | 003N.001C.000 | 1.500 | CARLOS ATENCIO |
| 3N | 1D | 003N.001D.000 | 1.000 | JOSE & CECILIA ORTIZ |
| 3N | 2 | 003N.0002.000 | 4.400 | JESSE S. MONTOYA |
| 3N | 3 | 003N.0003.000 | 7.550 | MANUEL CRESPIN |

| Map | Tract | Subfile | Acreage | Adjudicated Owner |
|---|---|---|---|---|
| 5N | 12 | 005N.0012.000 | 1.640 | FELIX ATENCIO JR. |
| 5N | 12A | 005N.012A.000 | 0.940 | TOMMY ATENCIO |
| 5N | 12B | 005N.012B.000 | 0.810 | JOSE & CECILIA ORTIZ |
| 5N | 13 | 005N.0013.000 | 0.600 | MANUEL CRESPIN |
| Total: | | | 23.01 | |