

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT**

FILED

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STATE OF NEW MEXICO *ex rel,*)
OFFICE OF STATE ENGINEER,)
))
Plaintiff,)
))
vs.)
))
ELEPHANT BUTTE IRRIGATION)
DISTRICT, *et al.,*)
))
Defendant.)

COURT OF
DOÑA ANA COUNTY, N.M.
No. D-307-CV-96-888

**MOTION TO LIFT STAY OF CONSIDERATION OF *AMICUS CURIAE* BRIEF AND
FOR PERMISSION TO FILE AMENDED *AMICUS CURIAE* BRIEF TO ADDRESS
NEWLY DESIGNATED STREAM SYSTEM ISSUE SS97-104**

COMES NOW, Lion's Gate Water, by and through its attorney of record, and respectfully requests the Court to lift its stay on Lion's Gate Water's *amicus* brief filed on or about August 14, 2009. Notice of Errata to the original Amicus Brief was filed on or about August 17, 2009. Following receipt of permission and filing of the original Amicus Brief, the State Engineer objected and at hearing on August 26, 2009, after hearing argument, the Court issued its Order Staying Consideration of the Brief on September 14, 2009. Recently, the Court has ordered the State Engineer and the United States to reach an agreement on the matter of the United States interests in water in the Lower Rio Grande by April 8, 2010 now designated as Stream System issue SS97-104. Form B-104 was not included in the January, February, March Monthly Report to enable its attachment to this Motion. Additional evidence has come to light and additional litigation has been initiated that may have a bearing on the United States interests and it is timely to request that the Stay on the original LGW *amicus* brief be lifted and permission be granted to

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provide a corrected and amended *amicus* brief including data obtained since its original *amicus* brief was filed to specifically address Stream System issue SS97-104.

1. The OSE's argument, found in its opposition, that LGW has already been denied permission to participate *amicus curiae* is only partly true. Yes, the Court denied LGW's request, but the Court also ruled at that hearing that if an issue came before the Court that LGW could ask the Court for permission to file a brief.
2. The OSE also incorrectly argues that LGW has not identified its reason for wishing to participate. That is false and LGW's reason's for wishing to participate *amicus* were previously identified in LGW's Motions to Intervene and its Petition to Participate *Amicus Curiae*, LGW is only following up on the directive from the Court that it could later ask for permission to address issues as they came up.
3. The OSE gives no legitimate reason for why LGW should not be allowed to participate. This is not surprising given the fact LGW's briefing on the matters at hand could, as in past briefs, highlight more evidence or discussions of facts that are inconvenient for the OSE to deal with such as the 1903 French Survey identifying thirty thousand plus (30,000+) acres of land in irrigation prior to 1906, which prior to the briefing in LGW's Motion's to Intervene the SE had failed to bring to the Court's attention.¹
4. It is unexplained why the OSE, who is the party charged with bringing evidence to Court in its hydrographic surveys and expert testimony, would attempt to hinder the presentation of relevant evidence so that the Court could have the fullest level of knowledge as it makes its decisions in this adjudication. This opposition by the OSE

¹ After LGW brought that to the Court's attention the OSE put the French Survey on their website so that others

serves to highlight the absurdity of having the OSE acting in both the roles of technical advisor (hydrographic surveys, expert testimony, etc.) and as an adversarial party. This conflict of roles that the OSE suffers from further illuminates the need for allowing parties such as LGW to be allowed at minimum to present their facts and view points to the Court in the form of *amicus* briefs as issues come up. is perhaps the reason the Court ruled that LGW request permission to file and *amicus curiae* brief on new issues.

WHEREFORE, LGW respectfully prays that the Court enter an Order to:

- a) Lift the stay of consideration of the original LGW *amicus curiae*; based on new information and issues,
- b) Grant permission to LGW to file its Corrected and Amended *Amicus Curiae* brief on the Stream System issues previously identified a copy of which is attached hereto.

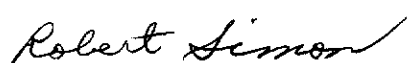
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to all parties identified on the attached service list, this the 22nd day of March, 2010.



Robert S. Simon

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STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT

STATE OF NEW MEXICO *ex rel,*)
OFFICE OF STATE ENGINEER,)
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Plaintiff,)
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DISTRICT, *et al,*)
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No. D-307-CV-96-888

**CORRECTED AND AMENDED *AMICUS CURIAE* BRIEF IN CONNECTION WITH
STREAM SYSTEM ISSUE SS97-104**

**LGW'S *AMICUS* BRIEF IN RESPONSE TO STATEMENT OF DEFENDANT
ELEPHANT BUTTE IRRIGATION DISTRICT REGARDING ITS CLAIMS TO THE
USE OF LOWER RIO GRANDE STREAM SYSTEM AND IN SUPPORT OF THE
BOYD MOTION TO SET STREAM SYSTEM ISSUE CONCERNING THE RIGHTS OF
THE UNITED STATES**

COMES NOW, Lion's Gate Water ("LGW"), by and through its attorneys, who respectfully submits this, its Corrected and Amended *Amicus Curiae* Brief because new factual information has come to light regarding the so-called Application No. 8¹ and because the original *Amicus Curiae* Brief has yet to be accepted by the Court and, therefore, *Amicus* states as follows:

INTRODUCTION

LGW submits to the Court that the most important and fundamental question of this adjudication is now before the Court to be considered as stream system issue by the Boyd Motion to Set Stream System Issue Concerning the Rights of the United States. It is also basis for

¹ References to Exhibits A through K herein are found in the Original *Amicus* Brief. Exhibits L and M are attached to this Corrected and Amended *Amicus* Brief.

Elephant Butte Irrigation District's ("EBID") claims. In addition, the Boyd Motion affects many if not all of the sub-file offers and proceedings pursued by the Office of the State Engineer ("OSE") up to this point. It most certainly affects the validity and the outcome of any of the settlement agreements that have been or may be negotiated by the parties over water rights they may not have the power or authority to negotiate. The Court has ordered the OSE and the United States to determine United States interests, if any, in Lower Rio Grande water by April 8, 2010. This matter has commanding and pervasive implications and is framed by one simple question: ***What water rights did the United States legally appropriate for its Rio Grande Project?***

OVERVIEW

Certainly all of the water rights, diversion rights, and storage rights that existed prior to the Rio Grande Project ("RGP") are of the utmost importance because, where they exist, they are the most certain to be considered pre-1907 water rights protected by NM Const. Art. XVI, Sec. 1 and owned today by the successors in title to those who first placed the water to beneficial use between 1844 and March 19, 1907. Those whose predecessors in title placed water to beneficial use prior to 1907 are entitled to file a Declaration regarding the pre-1907 use as *prima facie* evidence of the existence of a valid vested pre-1907 water right (See Exhibit "A") as a matter of right and by operation of law² notwithstanding State Engineer beliefs to the contrary (See Exhibit "B") and in Letter Exhibit A to Affidavit Exhibit A of Exhibit 1 of William Turner v. Rozella Bransford and John D'Antonio – Complaint for Production of Public Records for Damages and

² July 2008 Memorandum of Third Judicial District Court, Paragraph I.(B)(2): "2. If you claim a surface water right which was obtained before 1907 or groundwater right which was obtained before the groundwater basin was declared (1980/1982) (when there was no requirement to obtain a permit from the State), you may consider filing a Declaration with the Las Cruces Office of the State Engineer. NMSA 1978, §72-1-3 and NMSA 1978, §72-12-5.

This Declaration will be considered as *prima facie* evidence of your right. The declaration could simplify matters for you because evidence of un-permitted water rights may be harder for you to find."

for Declaratory and Injunctive Relief filed Monday, March 22, 2010 in the Third Judicial District Court.

In 1910, Morris Bien, Acting Director for the Bureau of Reclamation, admitted in writing that it had no title to those pre-Rio Grande Project water right. (See Exhibit "C"). But, crucial to all claims to water that are tied to the RGP is the question of what water rights exist for the RGP. It is this question that most assuredly must be answered by this Court in order to legitimately adjudicate the water rights in the RGP. It makes the most sense for the matter to be heard now as a stream-system issue as it is the basis for all of the claims/sub-file proceedings/settlement agreements associated with the RGP. LGW seeks by this *amicus* brief to stress this issue's importance and to assist the Court in framing this question. Appropriation of water under the 1905 and 1907 Water Code required a complete application, approval by the Territorial/State Engineer, the issuance of a permit, diversion of the water, and the beneficial use of the water. In fact, Application Forms were available from the Territorial Engineer following enactment of the 1905 Water Code.

The core issue of what water rights were legally appropriated by the United States for it Rio Grande Project can be broken down into the questions of:

- (1) ***What laws, rules, and regulations governed the actions of the United States Reclamation Service ("US") in the period from 1905 to 1911, in the appropriation of the waters of the State of New Mexico;***
- (2) ***Did the US sufficiently comply with those laws, rules, and regulations in such a manner to effectuate a valid permit to appropriate and beneficially use water for the Rio Grande Project; and***
- (3) ***In the alternative, was the notice of intent to utilize filed by the United States sufficient to effectuate appropriation?***

ARGUMENT

I. *What laws, rules, and regulations governed the actions of the United States Reclamation Service in the period from 1905 to 1911?*

Section 8 of the Reclamation Act of June 17, 1902 (32 Stat. 338), states that the United State is required to follow all of the laws of the Territory or State in which the US wishes to appropriate water for Reclamation Projects authorized under that Act. (See Exhibit "D") This was reaffirmed by United States Supreme Court when it repeated that under the Reclamation Act of 1902 that:

§ 8, it merely **requires** the United States to comply with state law when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein. *Arizona v. California et al.* 373 U.S. 546, 586, 83 S. Ct. 1468 (1963)(*emphasis added*)

This was always the clear intention and understanding of Congress in considering Reclamation legislation as evidence by the Hearing Committee on Irrigation Of Arid Lands in 1921³ in which the following colloquy occurred:

Mr. Nicholas J. Sinnott, Oregon
Gov Mabey, Governor of Utah

Colloquy between Mr. Sinnott of Oregon and Gov. Mabey of Utah.

Mr. Sinnott: "Isn't it also true that the Government can not obtain any water rights without securing those rights under the laws of the particular States?"

Gov. Mabey. "That is my understanding; yes sir.

The 1907 Laws of New Mexico, Chapter 49 (Exhibit "E"), Section 24 states:

³ Hearing Before The Committee on Irrigation Of Arid Lands on H.R. 2913, May 20, 23, 25, and June 2, 1921, p. 14, Washington, Government Printing Office, 1921 <http://www.archive.org/details/toencouragedevel00unitiala>

Any person, association or corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters, **shall before commencing any construction for such purposes, make an application to the territorial engineer for a permit to appropriate**, in the form required by the rules and regulations established by him. (*emphasis added*)

The mandatory appropriation process, then and now, for appropriation of water for beneficial use by any individual, association, or corporation, public or private, requires first the filing of a complete application. The process in place for more than a 100 years is that after acceptance of a **complete** application and approval by the Territorial/State Engineer thereof the OSE grants a permit to the applicant to implement the actions requested in the application. At the time of the Rio Grande Project the United States had to appropriate water for beneficial use for its projects in the same manner as an individual. This is evidenced by the Opinion of the Territorial Attorney General in 1905-1906 to David M. White, Territorial Engineer. New Mexico Territorial Attorney General Opinions 1905-1906, No. 326. (*See Exhibit "F"*) This was also true in 1915 when Frank W. Clancy, Attorney General, wrote in Opinion Letter No. 1506 to James A. French, State Engineer that:

I am unable to see why any distinction should be made between the government reclamation service and other persons in the practice as to passing upon application to appropriate waters. Attorney General Opinion No. 1506, Letter from Frank W. Clancy, New Mexico Attorney General to James A. French, State Engineer dated April 23, 1915, Reports of the Attorney General 1915. (*See Exhibit "E"*)

In addition to the statutory requirements, the US was required to follow the rules and regulations of the Territorial Engineer⁴ which were printed on May 16, 1907. That is evident from the Attorney General Opinion No. 209 of 1952 that states:

[U]nder the power that you have to make rules and regulations necessary to administer the duties devolved upon your office, it is my opinion that you have the power to make rules and regulations which may affect the Bureau of Reclamation, a

⁴ The powers of the State Engineer today to make rules and regulations virtually mirror the powers of the Territorial Engineer in 1907.

department of the United States, when it has reserved unappropriated waters and that you may require it to file proofs of completion of works and meet any other requirements provided by your rules and regulations. *I can see no reason why the Bureau of Reclamation should not be subject to reasonable rules and regulations promulgated by the State Engineer.* Attorney General Opinion No. 209, No. 5559, Letter from Joe L. Martinez, Attorney General to John H. Bliss, State Engineer dated July 2, 1952, Reports of the Attorney General 1951 (*emphasis added*) (See Exhibit "F")

In its letter of April 4, 1908 (See Exhibit "H") the United States admits that it is following the 1907 Water Code. In addition the United States had to follow the Territorial Engineer's Rules and Regulations of 1907 which required that a **complete** application be filed containing an absolute set of criteria that included plans, maps and specifications. (See Exhibit "J") These rules and regulations of the Territorial Engineer were **mandatory** for anybody who wished to divert and appropriate water. (Emphasis added)

LGW submits to the Court that for the United States to have appropriated any water for its Rio Grande Project as a first step and a bare minimum a **complete** application to divert and appropriate the waters of the Rio Grande would have to be submitted and a permit issued approving such an application.

II. *Did the US sufficiently comply with those laws, rules, and regulations in such a manner to effectuate a valid vested water right for the Rio Grande Project?*

The US never filed any application to place waters of the Rio Grande to beneficial use that would fulfill the requirements of Section 24 of Chapter 49, Laws of New Mexico 1907. In fact, as previously recognized by this Court the United States Bureau of Reclamation is not considered a beneficial user of water in projects such as the RGP. The Bureau of Reclamation never filed any Application as required. That which appears as so-called Application No. 8 in the State Engineers' records is incomplete and was not filed by the Reclamation Service and it was never signed by anyone let alone B.M. Hall and it was **never filed**. The permit is mentioned by the

State Engineer in a letter to Richard Cauble dated November 20, 2010. The request for the signed permit by William M. Turner addressed to the Custodian of Records of the OSE failed to produce the claimed Permit. This necessitated a Complaint for the production of the Permit No. 8 pursuant to the Inspection of Public Records Act filed which has been filed in the Third Judicial District Court on March 22, 2010 which is now in progress. Further, handwriting analysis verifies that the writing on what appears as so-called Application No. 8 does not contain any handwriting of B.M. Hall. (Appendix "K") (See Amended Amicus Brief Exhibit "L"). What appears as so-called Application No. 8 was grossly incomplete and never approved, as is evidenced by State Engineer Herbert Yeo letters (*See Exhibits "J"*) and was never taken up for approval. In spite of that fact, it is now evident that OSE acknowledges that an application was needed to appropriate the waters of the Rio Grande by virtue of the fact that it is using the date of January 25, 1906, the date that so-called Application No. 8, was filed, as a priority date for water rights in its hydrographic survey and sub-file proceedings for the adjudication. However, as further incontrovertible evidence that no complete and sufficient application to appropriate was ever filed by the United States for water for the RGP is the fact that **no permit** appears to have ever been issued. That is a bedrock requirement not to be disposed of by a flourish of the pen and clever dissimulation of statutory and regulatory requirements to discount the simple reading and the letter of the law. The courts will always presume that a law is a valid; *US v. Harris* (1883) 106 US 629 at 635; *Fletcher v. Peck* (1810) 10 US (6 Cranch) 87 at 128. A valid complete application and a signed permit are the first two crucial elements of appropriation and is especially important because we know that:

... words "permit" and "license" are clearly used in a restricted technical sense adopted in the statute. The permit contemplated by the statute is defined in section 27 of the same act and consists of **the endorsement of the engineer's approval on an application to appropriate water**; Opinions of Attorney General 1909-1910, Letter from Frank W. Clancy, Attorney General to Vernon L. Sullivan, Territorial Irrigation Engineer, November 17, 1909. (Emphasis added)(See Exhibit "T")

On January 23, 1906 the United State gave written notice under the signature of B.M. Hall of its intent to utilize 730,000 acre feet of water from the Rio Grande pursuant to Section 22 of Chapter 102 of the laws enacted in 1905 by the 36th Legislative Assembly of the Territory of New Mexico. On January 25, 1908, it appears that a secretary in the Office of the Territorial Engineer likely tried to fill out the Application No. 8 Form which was solely for the storage of 2,000,000 miners inches and which attempt stopped when she simply did not have the information to continue. Unless the OSE can produce a signed permit, it is certain that it was never completed or signed by any agent of the United States. On April 4, 1908 the United States gave notice by letter of its intent to utilize all the remaining unappropriated waters of the Rio Grande for its Rio Grande Project without filing an application or receiving a permit. To date neither the United States, EBID, nor any user of Rio Grande Project surface water, nor successor in interest has ever filed an application to appropriate surface water for the Rio Grande Project or received a permit as required by Section 8 of the 1902 Reclamation Act and the 1907 Laws of New Mexico. Further, no notice was ever published in a newspaper of general circulation offering the public the opportunity to protest. Further, the reservation or embargo on the appropriation of water on tributaries of the Rio Grande was lifted in January, 1910 by A.A. Jones. (Amended *Amicus Brief* Exhibit M) This is not to be confused with the embargo placed on appropriations of water issued on December 5, 1896 which blocked the approval of applications for rights-of-way for irrigation purposes over public lands. The Secretary of the Interior at request of Secretary of State issued the order

forbidding the approval or application for rights-of-way for irrigation purposes over public lands of the headwaters of the river⁵

III. *In the alternative, was notice of intent to utilize by the United States sufficient to effectuate appropriation?*

The 1905 Laws of New Mexico, Chapter 102, § 22 and 1907 Laws of New Mexico, Chapter 49, § 40 granted the United States the right to reserve water not previously appropriated and have it withheld from further appropriation; but, there is no mention that the United States thereby actually initiated the appropriation of that water for beneficial use by filing a mandatory application. The fatal flaw to any argument that the notice by the United States constituted actual legal appropriation of water is that pursuant to Section 8 of the Reclamation Act of June 17 (32 Stat. 338), that the United States was and is now required to follow **all** of the laws of the Territory or State in which the U.S. was attempting to appropriate water for its projects. (*See* Reclamation Act of 1902 attached hereto as Exhibit "A") This is fatal to that argument because between the 1905 Laws of New Mexico (attached as Exhibit "J"), and the 1907 Laws of New Mexico (attached as Exhibit "C"), the New Mexico Legislature added Section 24 that states:

Any person, association or corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters, shall before commencing any construction for such purposes, make an application to the territorial engineer for a permit to appropriate, in the form required by the rules and regulations established by him.

Section 24 goes on to discuss what is to be included in those applications and how they shall be treated. The simple fact remains, however, that while the United States could reserve water it intended utilize for its projects under Sec. 40 of the 1907 Water Code that notice of intent did not

⁵. (LGWS42, P. 11, No. 990 Equity, *Bode v. EBID* Defendants Brief)

constitute appropriation (**Application, Publication, Permit, Beneficial Use**). Any person, association, or corporation, public or private could only acquire the right to diversion and the beneficial use of water (appropriation) if it first made a complete application to the Territorial Engineer. The United States never filed a complete application that described all the unappropriated water of the Rio Grande Stream System as was required for anybody seeking to appropriate water. The United States never filed so-called Application No. 8 and it is a nul tiel record, and it was never considered for approval and no permit for diversion and beneficial use was ever granted by the State Engineer. The United States now seeks a judgment upon its own failure to comply and is estopped by the ancient doctrine of *Nul prendra advantage de son tort demesne*. 2 Inst 713, Broom Max. 290. Compounding that fact, is that no plans and specifications were filed within in the requisite three (3) years following the date of reservation. The requisite plans to be filed in that three (3) year period would have most certainly included the filing of an application to divert and beneficially use the waters of the project, but the United States never complied with the 1907 Laws of New Mexico other than the initial filing of the notice of intent to utilize.

Herbert W. Yeo who worked for the Reclamation Service during the Rio Grande Project and later served as New Mexico State Engineer knew this to be true. He stated as much in his letter of March 23, 1927. *See* Exhibit "I". Also following the attempted reservation by the United States in April 1908, the New Mexico Territorial and State Engineers continued to issue numerous permits and licenses for new appropriations on the Rio Grande Stream and its tributaries as evidenced by the 1928 Yeo Tabulation of Appropriations on the Rio Grande attached hereto as Exhibit "L". If the river had been fully appropriated by the United States in 1908 how could there have been other new appropriations permitted and licensed by the

Territorial and State Engineers? For example, under Application No. 1380 a permit was issued, a dam and diversion works completed in 1914, and a license issued in 1921 for the waters of the Arroyo Hondo, a tributary to the Rio Grande directly south of Santa Fe and a part of the Santa Fe River adjudication.

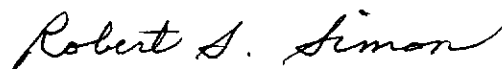
The “notice of intent equals appropriation” argument is a crucial issue before the Court because both the OSE and EBID now base their arguments and claims on those dates January 23, 1906 and April 8, 1908 when the notices of intent were filed as the actions that “appropriated” all the remaining water in the Rio Grande for the Rio Grande Project; but, without any application or permit. However, even today a Notice of Intent to Appropriate does not constitute an Application to Appropriate and only serves as a priority date holder for a period of one year so that a person may file their actual application. It is a basic concept of water law that a notice of intent in 1908 only served to withhold the waters from appropriation for the United States until application was made and the water diverted and beneficially used by the actual users. (*See State of New Mexico ex rel. State Engineer v. Lewis*, Opinion RE Threshold Legal Issue No. 3 filed on November 4, 1997 with the District Court Clerk in Nos. 20294 & 22600 Consolidated) (Water is appropriated by those who put it actual beneficial use, not the Bureau of Reclamation.) No application for appropriation of surface water was ever made for the Rio Grande Project.

CONCLUSION

For more than 100 years there has been no determination of this issue and parties have piled contract upon contract that ignores the very bedrock requirements of appropriation under our New Mexico water law in an attempt to remedy the deficiency through legal fictions. The simple fact remains that if United States never legally followed the mandatory process to obtain water for its Rio Grande Project then neither, the United States, the EBID, nor any other claimant

of RGP water has any right to any surface waters of the Rio Grande. Water rights can simply not be obtained unless the legal process is followed. The State Engineer cannot now offer any water rights to the United States for the Rio Grande Project because: 1) the State Engineer does not own any of the water and has nothing to offer; and, 2) the United States is not a beneficial user of the water and could not and can not be a water rights owner; and 3) neither the EBID nor any user of the flood waters ever filed any applications. Further there is no ability to acquire water rights in New Mexico by adverse possession. *Turner v. Bassett*, 137 N.M. 381, 111 P.3d 701 (2005.) The issue of what water rights the United States and/or the EBID is legally entitled to under New Mexico water law is paramount and is 100-years ripe for determination by this Court. Neither the EBID nor the United States can file Declarations for pre-RGP water rights as those water rights belong to the successors in title to lands, mainly on the valley floor. Any use on upland mesas that are irrigated from the stored floodwaters do not devolve into water rights because no applications were ever made, notices published or permits granted as required by Section 8 of the Reclamation Act. Quite simply, at present, neither the State Engineer nor the United States nor any other party has an standing to wheel and deal Lower Rio Grande water.

Respectfully submitted,



Robert S. Simon
Attorney for Lion's Gate Water
610 Gold Ave. SW, Suite 111
Albuquerque, NM 87102

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed or emailed to all parties identified on the attached service list, this the 22nd day of March, 2010.

Robert Simon

Robert S. Simon
Attorney for Lion's Gate Water
610 Gold Ave SW, Suite 111
Albuquerque, NM 87102

D'Scribe

Institute of Graphology

Dacia Weist

Certified Forensic Handwriting Examiner

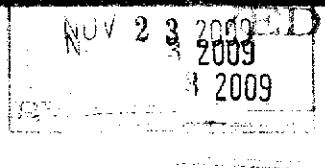
PO BOX 1096

Edgewood NM 87015

Office: **505 553 8177** Fax: 505 214 5335

www.dscribe.net

Dacia@dscribe.net (email)



K-1 is the known signature of BM Hall, the Supervising Engineer that authored the signature on page 2 of 2, titled "Department of the Interior United State Geological Survey" dated January 23rd, 1906.

Q-1 is the incomplete Application for Permit from the Territory of New Mexico dated "About January 25, 1906". Page 1 of 2.

Q-2 is the additional writing on the bottom of page 2 of 2 from the same Application for Permit, it is titled "Approval of Territorial Engineer". This document is also not complete.

I, Dacia Weist, have made a thorough examination and comparison of K-1 to Q-1 and Q-2. In my expert opinion, neither Q1 or Q2 was handwriting of BM Hall. He did not author the application of Q1 nor the notes at the bottom of the application titled "Approval of Territorial Engineer", Q2. In my expert opinion two unknown persons authored these documents.

If anymore original documents become available in this case, I would like to examine them. I will be willing to appear before the court and present my expert opinion and comparisons on K-1 to Q-1 and Q-2 if the need arises.

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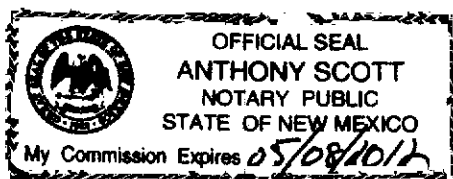


ACKNOWLEDGEMENT

STATE OF *New Mexico* *
COUNTY OF *Bernalillo* *

Dacia West
day of *NOVEMBER*
for the purposes therein expressed.

acknowledged this instrument before me on the *19th*
, *2009*, by *Anthony Scott*



Anthony Scott
Notary Public, State of *New Mexico*
My commission expires: *05/08/2012*

Water Appropriations.
Rio Grande Project.

DEPARTMENT OF THE INTERIOR

UNITED STATES GEOLOGICAL SURVEY

RECLAMATION SERVICE

Carlsbad, New Mexico, Jan. 23, 1906.

Mr. David L. White,
Territorial Irrigation Engineer,
Santa Fe, New Mexico.

Dear Sir:

The United States Reclamation Service, acting under authority of an act of Congress known as the Reclamation Act, approved June 17, 1902 (32 Stat., 388), proposes to construct within the Territory of New Mexico certain irrigation works in connection with the so-called Rio Grande project. The operation of the works in question contemplates the diversion of water from the Rio Grande River.

Section 22 of Chapter 102 of the laws enacted in 1905 by the 36th Legislative Assembly of the Territory of New Mexico - an act entitled, "An Act Creating the Office of Territorial Irrigation

Engineer, to Promote Irrigation Development and Conserve the Waters of the Territory for the Irrigation of Lands and for other Purposes," approved March 15, 1905, reads as follows:

"Whenever the proper officers of the United States authorized by law to construct irrigation works, shall notify the territorial irrigation engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated at the date of such notice, shall not be subject to further appropriations under the laws of New Mexico, and no adverse claims to the use of such waters, initiated subsequent to the date of such notice, shall be recognized under the laws of the territory, except as to such amount of the water described in such notice as may be formally re-released in writing by an officer of the United States thereunto duly authorized."

In pursuance of the above statute of the Territory you are hereby notified that the United States intends to utilize the fol-

lowing described waters, to wit:-

A volume of water equivalent to 730,000 acre-feet per year requiring a maximum diversion or storage of 2,000,000 miner's inches said water to be diverted or stored from the Rio Grande River at a point described as follows:

Storage dam about 9 miles west of Engle, New Mexico, with capacity for 2,000,000 acre-feet, and diversion dams below in Palomas, Rincon, Mesilla and El Paso Valleys in New Mexico and Texas.

It is, therefore, requested that the waters above described be withheld from further appropriation and that the rights and interests of the United States in the premises be otherwise protected as contemplated by the statute above cited.

Very truly yours,

KI → *B.M. Hall*
Supervising Engineer.

"I hereby certify that this instrument is a true and correct copy of the original which is on file in the office of the State Engineer of New Mexico."
Witness my hand and official seal
this 12th day of July
A.D. 19 2005

John R. D'Antonio, Jr., P.E.,
State Engineer

By *[Signature]*
Water Rights Division

D.W.

Territory of New Mexico—Application for Permit

No. 8

PERMITS 800-837-698
CAPITAL
A

Q1 →

1. Date of receipt of application *about January 25, 1906*
2. Name of applicant *M. S. A. By N. W. Hall*
Postoffice address *Carlsbad* County *Eddy* State *New Mexico*

3. If applicant is a corporation, give,
(a) Date and place of organization of c
(b) The amount of capital stock
(c) The amount paid in
(d) The names of the Directors

4. Quantity of water claimed,
(a) By diversion..... sec. ft. (b) Storage of flood waters. *2,000,000* ac ft.
(c)
State how the works for diversion and storage are to be used and what period or periods the applicant intends to store the above water, and if flood waters are)

5. Periods of annual use..... sec. ft. from..... to.....
sec. ft. from..... to.....

6. Source of water supply: (a) Name *Rio Grande* (b) Which is a tributary of

7. Location of point of diversion..... Section.....
Township..... Range.....
(If on unsurveyed land describe fully.)

Q1 →

Storage dam about nine miles west of Eagle, N. Mex. with capacity for 2,000,000 cu. ft. and diversion dams below in Palomas, Pecos, Arroyo, and El Paso valleys in New Mexico and Texas.

8. To be used for:
Irrigation and domestic use:
(a) Number of acres to be irrigated.....
(b) In the following legal sub-divisions.....

(A list of lands to be irrigated may be appended as part of this application.)

Mining and Power purposes:

(a) To be used for..... (b) Amount of power to be generated.....
horse power. (c) At what point..... (d) At what point water will be returned.....

9. Estimated cost of works \$.....
10. Description of works for diversion:
Kind of works (reservoirs, ditch, flume, pipes or otherwise.).....

Dimensions for diversion of works:

(a) Height of dam..... feet; length of dam at top..... ft.; length of dam at bottom..... ft.; material used in construction (wood, earth, stone or concrete)..... (b) Capacity of reservoir..... ac. ft.; (c) Size of head gate width..... ft; height..... ft; (d) Ditch (flume or pipe)..... width at bottom..... ft; width at water line..... ft; depth..... ft. Average grade per mile is..... Length of ditch is..... miles and crosses the following quarter sections:

11. Other reservoirs and canals, name or number, location and size and capacity of each.....

W.

APPROVAL OF TERRITORIAL ENGINEER

... of this permit is.
... of first application. 190
... applicant for correction 190
... application received 190
... notice completed and proof filed 190
... recorded in Book Page
... 190

I hereby certify that I have examined the within application for a permit to appropriate the public waters of the Territory of New Mexico and hereby approve the same.

Amount of water appropriated:
By diversion cubic feet per second; (1) By storage acre feet;
for works
(How are works to be used?)

The construction of the within described works to be commenced not later than

The date of the work above specified to be completed on or before

The whole of said work to be completed on or before

The time for application to beneficial use shall not be later than

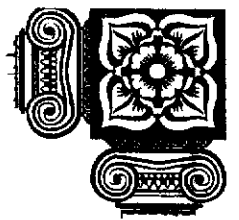
Witness my hand this day of, 190.....

Territorial Engineer.

Q2 ->

*Maps of the Leasing unit, giving plans & specifications, were
sent to the office by the Reclamation Service April 1, 1909.
Above maps returned for revision Nov 1, 1909*

D.W.



**CENTER
FOR APPLIED FORENSIC
AND GRAPHOLOGICAL
STUDIES, INC.**

Be it known that

Dacia Weist

**Has successfully completed the Course
of Study by the Center, and having
completed all other requirements at the
Center, is hereby declared a**

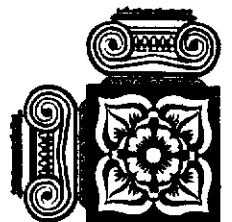
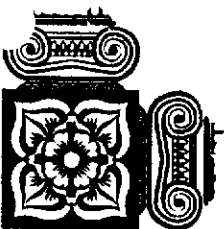
Certified Forensic Handwriting Examiner

**Therein is entitled to all rights
and privileges pertaining to
this Certification, upon
recommendation of the Center**

Day 15 Month 5 Year 18

Certifying Authority:

Karen Weinberg, QDE
Karen Weinberg, QDE



WATER POLICY OF U. S. REVERSED

253 Rio Grande
Water Appropriation

Secretary Jones Permits Additional Diversions
from Upper Rio Grande

115
Off of Chief
Engineer
Gen Correspond.

Box
1133
115-54
A-81

1903-42 Santa Fe, N. M., Jan. 18. - Assistant Secretary of of the Interior, A. A. Jones, has lifted the embargo on the tributaries of the Rio Grande and has set a precedent that ends the fight of a decade of the people of northern New Mexico against the reclamation service and its embargo on the waters of the northern Rio Grande that has prevented extensive irrigation development in Taos, Rio Arriba, Santa Fe, Sandoval and Bernalillo counties.

On the plea that irrigation projects on the upper Rio Grande and its tributaries would endanger the ability of the government to deliver 60,000 acre feet water annually to Mexico under the Elephant Butte project, the reclamation service successfully resisted all new irrigation projects covering more than a thousand acres. It did not matter that northern New Mexico residents proved by stream measurements that the waters of the tributaries in the counties mentioned and most of the flow of the upper Rio Grande never reached the Elephant Butte dam and that Colorado joined in the protest.

But in a decision just received by state engineer James A. French, Assistant Secretary A. A. Jones reverses this policy in the application of James W. Kornet of Santa Fe for 4350 acre feet of the flow of the Santa Fe river with which a tract of 5,000 acres south of Santa Fe is to be reclaimed. The application had been refused in the first instance because of the reclamation service embargo, and the reversal of policy will mean a tremendous development of central and northern New Mexico within the next few years, as quite a number of irrigation projects have been held in abeyance all the way from Albuquerque to the Colorado line.

From El Paso Herald Jan. 18, 1904

