

STATE OF NEW MEXICO'S RULE 71.3 REPORT – FY 2015
LOWER RIO GRANDE ADJUDICATION BUREAU

July 24, 2015

Matters to Be Completed Prior to Preparation of Final Decree

(Highlighting indicates the State's priorities for fiscal year 2015)

Total Bureau Staff FTE and Contractor Resources: FY 2010 16.75
FY 2011 13.85
FY 2012 13.95
FY 2013 15.05
FY 2014 14.55
FY 2015 14.45

I. LOWER RIO GRANDE ADJUDICATION

(Total Staff & Contract Resources: 14.90 12.20 12.00 13.05 13.05 14.30)

A. General (Staff & Contract Resources: 2.45 2.85 2.40 2.60 5.15 4.15)

1. Litigation of proposed or designated stream system/expedited *inter se* issues

- a. ~~Stream System Issue No. 101 (irrigation water requirements for pecans and basin-wide for all other crops; Final Judgment entered August 22, 2011)~~
Completed FY 2012
- b. ~~Stream System Issue No. 102 (EBID separate groundwater claim)~~
Completed FY 2011
- c. ~~New Mexico Pecan Growers (joint motion to designate pecan irrigation water requirements as a stream system issue)~~ Pecan Agreement subsumed by Final Judgment in SSI No. 101; Completed FY 2012
- d. ~~EBID Threshold Motion No. 1 (division of authority between Office of the State Engineer and EBID)~~ Withdrawn FY 2010
- e. Stream System Issue No. 103 (domestic wells – manner of determining priority date and amount of water put to beneficial use; schedule deferred)
- f. **Stream System Issue No. 104 (United States' interests in the Rio Grande Project);** by sub-issue:
 - i. ~~sub-issue 1: Project source of water; Order granting State's motion to dismiss U.S. claims to groundwater entered August 16, 2012~~
Completed FY 2013
 - ii. sub-issue 2: Project amount(s) and priority date(s); Order granting State's motion for summary judgment on amount of water entered February 17, 2014, [Project amount completed FY 2014](#); trial on priority date set for August-September 2015.**
- g. Stream System Issue/Expedited *Inter Se* No. 105 (claims of the Estate of Nathan Boyd regarding legality of U.S. rights in the Rio Grande Project; Order granting motions to dismiss filed February 24, 2012; appeal certified to N.M. Supreme Court December 30, 2013, briefed and awaiting decision.)
- h. Proposed Steam System Issue (rights of pre-1906 claimants; Order denying the proposed stream system issue entered April 25, 2013; Ct. App. Memorandum Opinion dismissing appeal filed May 29, 2014.)
- i. **Potential Steam System Issue/Expedited *Inter Se* (rights of select pre-1906**

- claimants, including claims to project diversion works; Order requesting list of representative subfiles entered June 18, 2014.)
- j. Proposed Stream System Issue/Expedited *Inter Se* (claims of New Mexico Copper Corp., et al., motion to designate set for hearing August 21, 2015.)
 - k. Additional issues to be raised during course of adjudication
2. Negotiations with major parties
- a. ~~United States (Rio Grande Project storage, release, and diversion rights)~~ Negotiations terminated FY 2012; issues being litigated in SSI No. 104
 - b. ~~Southern Rio Grande Diversified Crop Association (irrigation water requirements)~~ Negotiations terminated FY 2011; issues resolved under Final Judgment in SSI No. 101; Completed FY 2012
 - c. City of Las Cruces (majority of rights adjudicated; Jornada wells and assorted other rights remaining)
 - d. NMSU (majority of rights adjudicated; livestock rights on university ranch and irrigation rights on university farms remaining)
 - e. City of El Paso (irrigation rights)
3. **Litigation of other substantive issues**
- a. ~~New Mexico Groundwater Association (motion to intervene)~~ Completed FY 2011
 - b. ~~Lion's Gate (motion to intervene; Court of Appeals upheld Order denying motion to intervene)~~ Completed FY 2010
 - c. ~~Gonzales (Rincon subfile litigation; State prevailed on basis of forfeiture and abandonment; Court of Appeals affirmed April 28, 2013; Petition for writ of certiorari denied August 6, 2012)~~ Completed FY 2013
 - d. ~~Good Spring LLC (Outlying Area subfile litigation over extent of forage-irrigation and existence of surface water right used to create a wetland habitat; settled after referral to special master for trial)~~ Completed FY 2013
 - e. Numerous parties (motions to vacate subfile orders for surface water-only rights to add claimed groundwater rights)
 - f. Baca (Rincon subfile litigation; claimant-appellant prevailed in Court of Appeals October 24, 2012, on basis of sufficiency of evidence of historical beneficial use; cause remanded to adjudication court for further proceedings on question of abandonment; Motion to reconsider Order rejecting abandonment denied March 4, 2014; Subfile Order pending.)
 - g. Sunnyside Properties (Southern Mesilla subfile litigation; trial March 25, 2013, before special master found commercial and irrigation water rights abandoned; hearing before adjudication court June 24, 2014, on claimant's objections to special master's report; awaiting decision.)
 - h. Romero (Outlying Area subfile litigation; dispute as to whether groundwater used for steam railroads was abandoned; discovery among original parties is complete; third party railroad, developer of water right and predecessor in interest to claimant, has been joined; claimant has been ordered to report to the special master re status of negotiations with railroad by July 10, 2014)

- i. ~~Faykus and Rio Vista (Outlying Area subfile litigation; dispute over right to pump river water; State’s Motion for Partial Summary Judgment has been withdrawn in the interest of an expedited trial schedule for fall, 2014, before special master)~~
 - j. ~~Cruces Equity (Southern Mesilla subfile litigation; settlement reached in mediation June 3, 2014; Offer of Judgment and Stipulated Subfile Order to be sent after completion of water rights transactions.)~~
 - k. ~~Lion’s Gate (motion to lift stay and permit amicus curiae status to address SSI No. 104; taken under advisement by the Court)~~
 - l. Additional issues to be litigated during course of adjudication
4. ~~EBID delivery and groundwater rights Offer of Judgment withdrawn FY 2010 to allow litigation of certain of EBID’s claims as stream system issues~~
 5. ~~Implementation of agreement with EBID regarding adjudication of water rights on assessed lands Completed FY 2010~~
 6. ~~Creation and population of a database for processing claims to an FDR higher than 4.5 afay, as provided for under the Final Judgment in SSI No. 101- Completed FY 2014~~
 7. ~~Development of definition for mature pecan orchards under agreement with New Mexico Pecan Growers Definition completed FY 2011; Issues resolved under Final Judgment in SSI No. 101; Completed FY 2012~~
 8. ~~Development of basin wide irrigation water requirements for crops other than pecans Completed FY 2010~~
 9. ~~Determination of proper party to be served for water rights on leased government lands Completed FY 2013~~
 10. Development of policies and procedures for evaluating evidence submitted by 600 water right owners to prove an FDR higher than 4.5 afay under the Final Judgment in SSI No. 101
 11. Coordination with the Water Rights Allocation Program on implementation of the Settlement and Final Judgment in SSI No. 101
 12. Incorporation into the adjudication of water rights established through permits issued subsequent to the hydrographic survey
 13. Coordination with the Court re adjudication procedures/status
 14. Coordination with the Utton Center
 15. Litigation of non-subfile motions (i.e., procedural and scheduling issues)
 16. Stream system *inter se*
 17. Final decree

B. Nutt Hockett (Staff Resources: 0.00 0.00 0.00 0.00 0.00 0.00)
43 subfiles—98% adjudicated

1. Review of adjudicated subfiles on leased government lands
2. Reconciliation of maps and orders for *inter se*
3. Section *Inter se*
4. Partial final decree

C. Rincon (Staff & Contract Resources: 3.20 1.55 1.65 1.25 0.65 0.90)

1232 subfiles—96% served, 85% adjudicated

1. Primary subfile work
2. River pumper claims
3. Federal proprietary claims
4. State proprietary claims
5. Mediation of disputed subfiles
6. Litigation of unresolved subfiles
7. Reconciliation of previously adjudicated subfiles with EBID assessed acreage
8. Reconciliation of maps and orders for *inter se*
9. Section *inter se*
10. Partial final decree

D. Northern Mesilla (Staff & Contract Resources: ~~5.0~~ 1.55 1.70 5.75 3.95 4.05)
5954 subfiles—52% served, 29% adjudicated

1. Primary subfile work, including analysis of FDR evidence
2. Revocation and revision of unaccepted offers of judgment sent prior to cessation of adjudication activity in the Northern Mesilla
3. River pumper claims
4. Federal proprietary claims
5. State proprietary claims
6. Mediation of disputed subfiles
7. Litigation of unresolved subfiles
8. Reconciliation of previously adjudicated subfiles with EBID assessed acreage
9. Reconciliation of maps and orders for *inter se*
10. Section *inter se*
11. Partial final decree

E. Southern Mesilla (Staff & Contract Resources: ~~7.50~~ 4.70 4.30 1.30 0.65 4.05)
5400 subfiles—56% served, 40% adjudicated

1. Primary subfile work, including analysis of FDR evidence
2. Federal proprietary claims
3. State proprietary claims
4. Mediation of disputed subfiles
5. Litigation of unresolved subfiles
6. Reconciliation of previously adjudicated subfiles with EBID assessed acreage
7. Reconciliation of maps and orders for *inter se*
8. Section *inter se*
9. Partial final decree

F. Outlying Areas (Staff & Contract Resources: ~~1.25~~ 1.55 1.95 2.15 2.65 1.05)
1318 subfiles—83% served, 63% adjudicated

1. Primary subfile work
2. River pumper claims
3. Federal proprietary claims
4. State proprietary claims
5. Mediation of disputed subfiles
6. Litigation of unresolved subfiles
7. Reconciliation of previously adjudicated subfiles with EBID assessed acreage
8. Reconciliation of maps and orders for *inter se*
9. Section *inter se*
10. Partial final decree

II. ANIMAS UNDERGROUND WATER BASIN ADJUDICATION

(Total Staff & Contract Resources: 1.85 1.65 1.95 2.00 1.50 0.25)
 140 subfiles—5% served, 0% adjudicated

A. **General** (Staff & Contract Resources: 0.10 0.10 0.10 0.15 0.20 0.01)

1. ~~Litigation of basin-wide issue determining irrigation water requirements~~
 Completed July 2013
2. ~~Status reporting to Court regarding hydrographic survey progress~~
[Completed FY 2014](#)
3. ~~Coordination with Court regarding adjudication procedures~~
[Completed FY 2014](#)
4. Establishment of procedures for identifying and adjudicating stock and domestic wells
5. ~~Non-subfile general motion litigation (i.e., procedural and scheduling issues)~~
[Completed FY 2014](#)
6. Final decree

B. **Section 1 (Northern Area)** (Staff & Contract Resources: 0.00 0.00 0.70 0.70 0.35 0.02)

1. ~~Hydrographic Survey~~ Completed FY 2013
2. Primary subfile work
3. Expedited *inter se* and litigation of individual subfiles

C. **Section 2 (Cotton City)** (Staff & Contract Resources: 0.00 0.00 0.00 0.00 0.35 0.10)

1. ~~Hydrographic Survey~~ [Completed FY 2014](#)
2. Primary subfile work
3. Expedited *inter se* and litigation of individual subfiles

D. **Section 3 (Village of Animas)** (Staff & Contract Resources: 1.75 1.55 0.70 0.70 0.45 0.10)

1. ~~Hydrographic Survey~~ Completed FY 2013
2. Primary subfile work

3. Expedited *inter se* and litigation of individual subfiles

E. **Section 4 (Southern Area)** (Staff & Contract Resources: 0.00 0.00 0.45 0.45 0.15 0.02)

1. Hydrographic Survey Completed FY 2013
2. Primary subfile work
3. Expedited *inter se* and litigation of individual subfiles

Lower Rio Grande Adjudication Bureau -- Adjudication Sections and Resources Allocated							
<i>Adjudication Section</i>	<i>Staff Atty</i>	<i>Contract Atty</i>	<i>Staff Para-legal</i>	<i>Contract Para-legal</i>	<i>Tech & Field Staff</i>	<i>Data Staff</i>	<i>Section Totals</i>
<i>Lower Rio Grande</i>							
<i>1. General</i>	2.50		0.20	0.30	0.85	0.30	4.25
<i>2. Rincon</i>	0.15		0.15	0.05	0.55		0.90
<i>3. Northern Mesilla</i>	0.70		0.70	0.20	2.45		4.15
<i>4. Southern Mesilla</i>	0.70		0.70	0.15	2.50		4.05
<i>5. Outlying Areas</i>	0.25		0.15	0.05	0.60		1.05
<i>Animas Underground Water Basin</i>		0.15			0.10		0.25
Category Totals - All Sections	4.30	0.15	1.90	0.75	7.05	0.30	14.45