

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

FILED

2017 DEC 28 PM 4:27

STATE OF NEW MEXICO, *ex rel.*,
OFFICE OF THE STATE ENGINEER
Plaintiff

CV-96-888
James J. Wechsler
Judge Pro Tempore

DISTRICT COURT
DOÑA ANA COUNTY, N.M. *mm*

vs.

Lower Rio Grande
Adjudication

ELEPHANT BUTTE IRRIGATION
DISTRICT, *et al.*,
Defendants.

Outlying Areas Section

Copper Flat Expedited *Inter Se*

Subfile No. LRO-28-008-9009
Case No. 307-OA-9703126
New Mexico Copper Corporation

Subfile No. LRO-28-008-9010
Case No. 307-OA-9702236
William Frost

Case No. 307-OA-9702237
Harris Gray

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

This matter came before the Court pursuant to a joint motion, filed January 14, 2014, requesting that the Court designate a stream system issue and expedited *inter se* proceeding to determine water rights claimed by New Mexico Copper Corporation (NMCC) and William Frost and Harris Gray.¹ After responses and

¹ Joint Motion for Designation of Stream System Issue and Expedited *Inter Se* of Water Rights Claimed by New Mexico Copper Corporation, et al., Under Subfile Numbers LRO-28-008-9010 and LRO-28-008-9009 (filed 1/14/14). Parties filing the joint motion were: Charles Barrett, Melody Sears, R. William and Nolan Winkler, Robin Tuttle, Robert Shipley, Jim Groton, John and Agnes McGarvey,

- d. Water from LRG-4652-S-16 not has been put to beneficial use for mining purposes after December 31, 1975.

The Open Pit and the Dolores Well

186. LRG-4652-S-17, the open pit

- a. LRG-4652-S-17 was declared separately as a point of diversion, not as a well, and with no associated drill rig or well casing. The 1984 declaration estimated that 75 *gpm* could be removed, but no pump was installed. 120 *afy* was declared available for “dust control” and “reclamation,” but no information was included concerning the calculation of this amount. [7 Tr. 26:12-19; NMCC-054]
- b. LRG-4652-S-17 is hydrologically connected to groundwater and evaporates at an amount of 34.45 *afy*. [STATE-001 at 12]

187. LRG-4654, the Dolores well

- a. LRG-4654 was drilled in 1932 for mining purposes and was used in that capacity from 1932 to 1934. The well was used intermittently for mining between 1932 and 1981. [NMCC-055]
- b. No evidence was introduced at trial excusing nonuse of water from LRG-4654 from December 31, 1981 to June 2016, a period of over thirty-four years.

62. The water right to LRG-4652-S-13 for mining use was abandoned.
63. The water right to LRG-4652-S-14 for mining use was abandoned.
64. The water right to LRG-4652-S-15 for mining use was abandoned.
65. The water right to LRG-4652-S-16 for mining use was abandoned.

The Open Pit

66. The amount-of-water element of the water right for the open pit, LRG-4652-17, is 34.45 *afy*.

The Dolores Well

67. As the proponents of abandonment, the State, TRP, and the Hillsboro Claimants have established abandonment in LRG-4654 by clear and convincing evidence.
68. The water right to the Dolores well, LRG-4654, for mining use was abandoned.


James J. Wechsler
Judge Pro Tempore

CERTIFICATE OF MAILING

I hereby certify that I have caused to be mailed and/or emailed a true and correct copy of the foregoing instrument to the following counsel and/or parties of record on the above file stamped date.

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