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DISTRICT COURT
DONA ANA COUNTY, NM

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

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

Plaintiff,

vs.

ELEPHANT BUTTE IRRIGATION
DISTRICT, *et al.*,

Defendants.

Copper Flat Expedited *Inter Se*

) CV-96-888
) Honorable James J. Wechsler
)
) Lower Rio Grande Adjudication
)
) Outlying Areas Section
)
) 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 J. Frost
) Case No. 307-OA-9702237
) Harris Gray

JOINT MOTION
FOR EXTENSION OF TIME TO FILE
PROPOSED FINDINGS OF FACT AND TRIAL BRIEFS

COMES NOW, Charles P. Barrett, Joyce and Stanley Brodsky, Cynthia and John Cornell, Jim Goton, Arlene Lynch, Agnes and John McGarvie, Melody K. Sears, Robert Shipley, Robin Tuttle, Nolan and R.Wm. Winkler, and Hillsboro Mutual Domestic Water Consumers Association (“Hillsboro Claimants”), by and through their attorneys, New Mexico Environmental Law Center (Jonathan Block) and Turner Ranch Properties, L.P. (“TRP”), by and through its counsel the Davidson Law Firm, LLC (Tessa Davidson), and hereby files this Joint Motion for Extension of Time to File Proposed Findings of Fact and Trial Briefs for the following reasons:

1. The deadline for filing post-trial findings and briefs was by agreement of the parties and the Court after consulting with the court reporter who believed transcripts could be

produced within 60 days of trial—or on September 1, 2016. Based on the court reporter’s estimate, and counsels’ consultation of their calendars, the parties agreed that sixty (60) days from the receipt of transcripts would be a reasonable deadline for proposed findings and post-trial briefs and so informed the Court, who accepted the parties’ recommendation. *See* 6/30/2016 Vol. 11 Tr. 120-22, attached as Exhibit “A.”

2. Sixty (60) days from the estimated date for final transcripts would have provided a deadline of November 1, 2016 for post-trial filings.

3. Final transcripts were mailed on October 24, 2016 which is almost two (2) months later than originally estimated by the court reporter. Sixty days from the date of mailing falls on December 24, 2016 (a Saturday), which would results in a deadline of December 26, 2016 (a Monday), the day after Christmas Day.

4. Sixty (60) days is no longer a reasonable time period for the parties to make post-trial filings because the period now includes two major holidays. Further, counsel for the Hillsboro Claimants and TRP have work and personal commitments that were not taken into consideration, and were not reasonably foreseeable, when the parties conferred on an agreeable deadline.

5. Counsel for the Hillsboro Claimants anticipates he will be conducting several complex expert witness depositions in December for a judicial proceeding that is a de novo review of a decision by the State Engineer. He will also be involved in extensive preparations for an administrative hearing before the Albuquerque Air Quality Board that begins January 9, 2017. This hearing involves the testimony of approximately seven (7) expert witnesses.

6. Counsel for TRP will be traveling out of the country for the holidays through January 10, 2017. *See* Notice of Non-Availability for Tessa Davidson filed on September 23, 2016, attached as Exhibit “B.”

7. TRP and the Hillsboro Claimants have otherwise made every effort to meet the Court’s deadlines to expedite trial in this matter. For example, at the pre-trial conference in January 2016, TRP’s counsel advised the Court that it did not appear that one week would be enough time for trial and offered to discuss options for additional settings. NMCC’s counsel advised that one week would be enough. Then, again, believing that NMCC’s case would take at least the entire week of trial in March, TRP’s counsel offered to make TRP’s witnesses available the following week. NMCC indicated it was not available the following week. *See* 3/15/2016 Vol 2., Tr. 5-7, attached as Exhibit “C.” When later conferring on dates to continue trial, TRP and the Hillsboro claimants offered several weeks in May and early June, which NMCC rejected because they conflicted with the “extended vacation plans” of counsel. *See* 3/16/2016, Vol. 3, Tr. 13, and 3/17/2016 Vol. 4, Tr. 203, attached as Exhibit “D.”

8. Given that two major holidays fall within the current deadline period, and considering counsels’ work and personal commitments, an extension to February 10, 2016 for the deadline for post-trial filings is fair and reasonable.

9. NMCC has had transcripts for its case-in-chief since early June. This has already given NMCC over four (4) months to work on its proposed findings. NMCC will have had several more months than the rest of the parties to prepare its findings. As such, NMCC will not be prejudiced by an extension to February 10, 2016 for post-trial filings.

10. Counsel for the State was contacted for the State’s position on this Motion and he indicated that the State does not oppose the motion, especially in light of the unanticipated delay

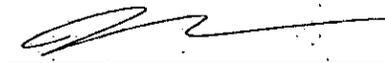
in receiving the transcripts and the fact that said delay puts the deadline right in the middle of the holiday season when many will be away.

11. Counsel for NMCC was contacted for NMCC's position on an extension of the deadline to at least the end of January 2017 and she indicated NMCC opposes such an extension.

WHEREFORE, the Hillsboro Claimants and TRP respectfully request the Court enter an order setting the deadline for the filing of proposed findings and post-trial briefs on Friday, February 10, 2016, and for such further relief as the Court deems necessary.

Respectfully submitted,

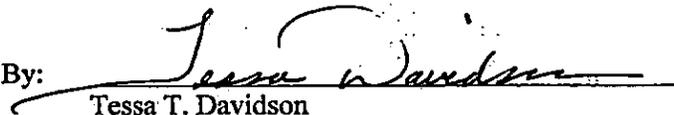
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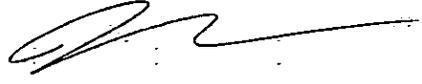
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By:



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I, Jonathan Block, hereby certify that a copy of the foregoing was emailed to the below listed parties on this 25th day of October, 2016.



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1 So let me just get an idea of where we
2 stand, then. Ms. Davidson, how long do you think
3 you have for redirect?

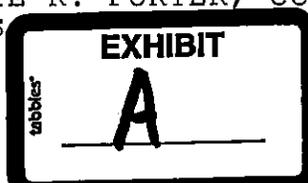
4 MS. DAVIDSON: Your Honor, I'm thinking
5 about an hour.

6 THE COURT: Okay. And what are you
7 thinking about on rebuttal, Ms. Scott?

8 MS. SCOTT: It would be very short, if
9 any, Judge.

10 THE COURT: Okay. All right, so it does
11 appear as if we're going to conclude the testimony
12 this afternoon. Okay, then we'll proceed along
13 those lines. We'll meet again tomorrow after
14 concluding the testimony this afternoon and have a
15 summary type closing. And, of course, it's going to
16 be a little more. When I say "summary" I mean less
17 than what you might consider to be a full closing.
18 But a half hour will give you an opportunity to make
19 your points, and then we'll proceed from there. And
20 you might talk with each other about how long you
21 think you need after you receive the full record to
22 submit your requested findings and briefing and so
23 we'll be able make a determination about that
24 promptly.

25 Okay, we'll be in recess, then, until



1 1:30.

2 (A recess was taken.)

3 THE COURT: Mr. Allen.

4 MR. ALLEN: Just a preliminary matter,
5 your Honor. This morning, I used State's Exhibit
6 119, and afterwards spoke with the court reporter.
7 She didn't find a copy in her records. I do believe
8 it was received when we were together a couple of
9 months ago. But I have given her another copy of
10 it. If she finds from the other court reporter that
11 she has it, that's fine, but I wanted to put on the
12 record that I tendered her another copy of what's
13 been received. I made a copy. It's actually an
14 exhibit from the deposition of William Frost. I've
15 shared a copy with all other counsel. And in the
16 absence of objection, I would ask her to substitute
17 it if the other copy doesn't appear, because it is
18 one of the few paper copies in the case that are not
19 in the electronic record.

20 THE COURT: Any objection?

21 MR. BLOCK: No objection.

22 MS. SCOTT: No objection.

23 THE COURT: Very good.

24 MR. ALLEN: And I also wanted to inform
25 the Court that the parties did briefly confer after

1 the lunch break, and we were going to recommend to
2 the Court that the timing for findings of fact,
3 conclusions of law, proposed findings and posttrial
4 briefs would be 60 days after receipt of the
5 transcripts.

6 THE COURT: Okay. Mr. Block.

7 MR. BLOCK: Yes, briefly. I'm afraid it
8 turned out that the index that I provided to
9 everybody was not properly filed -- it needs a cover
10 sheet -- with the Court. I will remedy that later
11 today when I get back to my office. And I just
12 wanted to inform people so that if somebody needed
13 to refer to it, that it's an unofficial matter at
14 this point.

15 THE COURT: Okay. Thank you.

16 Okay, so I will, by agreement of the
17 parties, then, let's state now that after closing
18 tomorrow, I will expect, then, that the posttrial
19 briefing and requested findings and conclusions will
20 be filed no more than 60 days after receipt of
21 the -- well, after -- let's do it -- receipt, of
22 course, is a hard thing to determine. So after the
23 transcript is mailed to the parties.

24 MR. ALLEN: That would be fine, your
25 Honor.

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

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

Plaintiff,

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ELEPHANT BUTTE IRRIGATION
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Copper Flat Expedited *Inter Se*

DISTRICT COURT
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Honorable James J. Wechsler

Lower Rio Grande Adjudication

Outlying Areas Section

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Case No. 307-OA-9702236

William J. Frost

Case No. 307-OA-9702237

Harris Gray

NOTICE OF NON-AVAILABILITY

COMES NOW Tessa T. Davidson, attorney for Turner Ranch Properties L.P.,
and hereby notifies this Court that she will be unavailable for any and all proceedings on
the following dates:

Tuesday, December 13, 2016 through Friday, December 23, 2016; and

Tuesday, December 27, 2016 through Tuesday, January 10 2017.

Ms. Davidson respectfully requests that all upcoming proceedings be scheduled to
allow her participation.

Respectfully submitted,

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By: 

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Counsel for Turner Ranch Properties, L.P.



I certify that on this 23rd day of September, 2016, a true and correct copy of the foregoing Notice of Non-Availability was served by email to the following:


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Robert Shipley, Jim Gaton, John and Agnes McGarvie,
John and Cindy Cornell, Stanley and Joyce Brodsky,
Arlene Lynch, and the Hillsboro Mutual Domestic
Water Consumers Association*

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TUESDAY, MARCH 15, 2016, 9:03 A.M.

THE COURT: Good morning, everyone. So we're back on the record and let's proceed where we left off yesterday evening.

MS. DAVIDSON: Your Honor, can we address a preliminary matter?

THE COURT: Of course.

MS. DAVIDSON: At the pretrial conference we had indicated that if the trial went over the week that we had scheduled that we would not be able to continue into the next week --

THE COURT: Right.

MS. DAVIDSON: -- because our witnesses weren't available. Well, they have made plans to make themselves available and rearrange their schedule if we needed to go into Tuesday, we could do that if it's necessary, if the other parties are available, and I just wanted to update you on that issue.

THE COURT: When you say "into Tuesday," do you mean Monday and Tuesday?

MS. DAVIDSON: Yes, Monday and Tuesday. In looking at the witnesses and who we have, I don't see how we're even going to get done by Friday.



1 necessary, and certainly Tuesday if that's
2 necessary. Thank you.

3 THE COURT: Ms. Scott.

4 MS. SCOTT: Judge, that's not going to
5 work for us at all. Mr. DuMars is going to be in
6 California for those two days, and he's going to be
7 examining the witnesses at the end of the trial so I
8 don't think that's going to work for us at all.

9 THE COURT: Okay. Then let me ask counsel
10 if they will confer and work out potential dates,
11 then we'll have to see where we go from there. Not
12 only my schedule, and, of course, perhaps even more
13 importantly, the courtroom availability. Of course
14 we don't need to if we're having to continue days.
15 We don't necessarily need to do them in this
16 courthouse, we can do that some place else.

17 We can do it in Las Cruces, we can do
18 it perhaps even in Albuquerque. We're not tied to
19 this courthouse, although it's been very -- I guess
20 it's been very convenient for everyone to be doing
21 it this way.

22 Okay. Please confer and let me know
23 and probably the sooner the better and we'll get our
24 calendars together and try to work it out. So then
25 why don't we proceed.

1 we're looking at the next time in June. Do you have
2 alternative dates?

3 MS. DAVIDSON: Your Honor, we gave them
4 four weeks and that was the only one everybody could
5 do. We haven't gone into July yet, but that was
6 between now and the end of June.

7 THE COURT: Okay. Well, hopefully, we
8 don't need to go into July. If I need to shift
9 around some trials, there's two days of trial and I
10 think that's -- I do believe it's that Thursday and
11 Friday of that week. If it's far enough out that
12 maybe I can move that so we'll see.

13 MS. SCOTT: All right.

14 THE COURT: Okay. Very good. Then let's
15 proceed.

16 Just before we go on with the video,
17 the other aspect is the courtroom. So we need to
18 make sure that maybe there's something that I can
19 check on the next day or two. Okay. Let's proceed.

20 (Playing video.)

21 (End of video at 4:43 p.m.)

22 THE COURT: Ms. Scott, let me return to
23 you the -- or Mr. Allen, I'm sorry, here on the
24 bench. Okay. So we will recess for the evening and
25 we will reconvene tomorrow at nine o'clock and,

1 Monday or Tuesday?

2 MS. SCOTT: Tuesday.

3 THE COURT: Tuesday.

4 MR. ALLEN: But either day is good. For
5 some reason, I was thinking we were getting together
6 on Monday. But it's Tuesday, June 14th.

7 THE COURT: Well, the dates that were
8 presented to the Court for continuation were June 14
9 through the 17th. I didn't hear anything about the
10 13th.

11 MS. SCOTT: That was for my purposes, I
12 think. I'm coming back from an extended vacation on
13 that Sunday.

14 THE COURT: Well, I hope you have a good
15 vacation.

16 MR. ALLEN: I thought that was Judicial
17 Conference Tuesday.

18 THE COURT: No, that starts the 15th.

19 MR. ALLEN: And the 14th is good for the
20 State.

21 THE COURT: Mr. Block?

22 MR. BLOCK: I just want to know whether
23 the Court already knew or not that it had
24 availability at the end of June?

25 THE COURT: I do not know that. I did not