



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

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

Plaintiff.)

vs.)

ELEPHANT BUTTE IRRIGATION DISTRICT,)
Pre-1906 Claimants, *et al.*,)

Defendants.)

No. CV-96-888

James J. Wechsler
Presiding Judge

Stream System Issue 104

**PRE-1906 CLAIMANTS' AND BOYD INTEREST'S REPLY IN SUPPORT OF THEIR
MOTION TO STAY PROCEEDINGS IN SSI 104**

Pre-1906 Claimants and Boyd Interest's Reply in support of their Motion to Stay Proceedings in SSI 104 as follows:

The Pre-1906 Claimants and Boyd have alleged in this proceeding that they joined together as parties to organize and finance and build irrigation system works, including Elephant Butte Dam, sufficient to appropriate all of the surface rights to the project, storage and diversion rights in the Lower Rio Grande prior to January 12, 1893, thus making them indispensable parties to any adjudication of the project, diversion and storage rights in the LRG. Exhibit "A" attached hereto was alleged and attempted to be introduced into evidence in support of that claim.

Pursuant to Section 2 of the Act of February 27, 1887 of the Territory of New Mexico, as stated on page 22 of Exhibit "A", "a copy of such sworn statement . . . shall be admitted as *prima facie* evidence of such appropriation of water in all the courts of this territory; . . ."

JK
3/28/14

This Court even acknowledged that RGD&IC completed Leasburg Diversion Dam and built the Leasburg Canal in its Order of February 24, 2012.

But instead of admitting and considering the January 12, 1893 Notice of Appropriation of the storage, diversion and project rights associated with the Rio Grande Dam and irrigation Co contained in Exhibit "A" as prima facie evidence of their appropriation of water ("rights"), this Court has dismissed the claims of the Boyd Interests and the Motion filed by the Pre- 1906 Claimants to have their historic claims to the project, storage and diversion rights treated as a global issue entitled to be treated as prima facie evidence.

For example, in Section (1) of the Court' Order of February 17, 2014 ("Order") the Court found that "There is no genuine issue of material fact and the moving parties are entitled to judgment as a matter of law, concerning the amount of water available in Project storage" and granted the U.S., the State of New Mexico and the City of Las Cruces motions for summary judgment "regarding the U.S.' storage rights in Elephant Butte Reservoir and all other reservoirs below Elephant Butte ("EB") and above the first diversion to lands of the Project to a maximum storage capacity of 2,638,860 acre-feet with the right to continuously fill and refill and granted the motion finding the U.S. held that right.

In section (2) of its Order the Court found that there was no genuine issue of material fact concerning the U.S' right to release from storage a normal annual release of 790,000 and granted the motion finding the U.S. held that right.

In section (3) of its Order the Court found that there was no genuine issue of material fact concerning the U.S' right "to divert Project water at downstream diversion dams. The Court then granted the motion for summary judgment of the State of New Mexico "concerning the

right of the United States to divert Project water at Percha, Leasburg and Mesilla diversion dams without limitation on the diversion amount”.

Interestingly, the Court in Section (5) of its Order found that “(t)here are genuine issues of material fact in the record before the Court concerning the priority date of the Project” and denied all motions on summary judgment concerning the Project priority date and dates.

The Court then in Section (6) found that the Pre-1906 Claimants raised issues that are not germane to the determination of the Project priority date or dates or the amount of the Project water. The Court further cited to its earlier January 15, 2013 denial of the Pre-1906 Claimants’ claim in a prior Motion for Summary Judgment the Claimants’ claim that they appropriated all of the Project water before the U.S. and that the priority date of the Pre-1906 Claimants must be determined before the Project rights are adjudicated as a basis for denying their Motion for Summary Judgment.

The Court then referenced its Order of February 24, 2012 as the basis for denying the Claimants’ assertion in their Motion for Summary Judgment that the “U.S. illegally seized the irrigation works of the RGD&IC and is effecting a continuing trespass to this day that has divested the Pre-1906 Claimants of water rights and denied the Claimants’ Motion for Summary Judgment. Thus making those issues “not before the Court”

Section 72-4-19 NMSA 1978 requires that every adjudication decree of the rights to the use of waters of a stream system must declare the priority, amount, purpose, periods and place of use.

It now appears that the Court has rejected consideration of the priority, amount, purpose periods and place of use alleged by the Boyd Interests and granted to the U.S. those rights alleged by the Pre-1906 Claimants as either dismissed or not germane and now intends to proceed to determine

the priority date or dates of the U.S. without considering any evidence of prior appropriation by the Boyd Interests and the Claimants, such as Exhibit "A", as it states in its Order.

As referenced by the Court in its Order , the findings by the Court in its Order directly conflict with the allegations and statutes on which the Boyd Interests and the Pre-1906 Claimants rest their claims as stated in Boyd's claim and its Response to the U.S. and others' Motion to Dismiss their claims and the allegations made by the Pre-1906 Claimants in their Motions for Summary Judgment that Section 72-4-17 NMSA 1978 requires the Court to consider the sworn statements contained in Exhibit "A" as prima facie evidence pursuant to Section 2 of the Act of February 27, 1887 of the Territory of New Mexico.

The claims the U.S. raised in its pleadings and evidence and which the Court granted in its Order are identical to or encompassed within those claims raised by the Boyd Interests and the Pre-1906 Claimants in this adjudication.

The Boyd and Pre-1906 Claimants claims that the Court granted to the U.S., which the Court acknowledges, are currently on appeal and thus have not reached a final decision on those issues.

If this Court refuses to consider the claims of Boyd Interests and or the Pre-1906 claimants, including such prima facie evidence as Exhibit "A" in any proceeding to determine the priority date of the U.S., then this proceeding should be stayed until final determination by appeal of the Boyd's Interests and Pre-1906 Claimants' claims to those elements of their and the U.S.' water right, specifically who holds the better right and priority to administer and control all the storage, diversion and project works and water rights in the Lower Rio Grande.

Also, the Claimants also believe that any claims to underground Templeton rights to supplement their surface rights should be stayed until it is determined how wells established by farmers who

claim a priority date of no later than 1893 priority might affect the State and U.S. claims to groundwater in the LRG.

Prayer for Relief

The Boyd Interests and Pre-906 Claimants pray that the Court grant their Motion to Stay the Proceedings related to any further litigation in SSI 104 regarding the priority date of the U.S. until the issue of whether Claimants own water rights to storage, diversion and project rights pre-date any claim by the U.S. or State of New Mexico and have the right to introduce evidence of their 1893 Notice of Priority and appropriation of project rights.

/s/ Robert S. Simon

Robert S. Simon
1415 Park Ave. SW
Albuquerque, New Mexico
505-246-8136 Email: rsimon7@aol.com

CERTIFICATE OF SERVICE

I, Robert Simon, do hereby certify that on this 27th day of March, 2014, I mailed or emailed Pre-1906 and Boyd Interest's Reply in support of their Motion to Stay Proceedings in SSI 104 and their Notice of Completion of Briefing and Request for Setting to the counsel of record and to all participating parties, properly addressed to the parties provided on the Court's website at <https://lrgadjudication.nmcourts.gov/index.php/mailling-lists> for Stream System Issue SS-97-104.

/s/ Robert S. Simon

ROBERT S. SIMON
1415 Park Ave. SW
Albuquerque, N. M. 87104
Tel. (505) 246-8136
Email: rsimon7@aol.com

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

#2

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in my possession.

SIGNATURE <i>Alpha South</i>	
NAME Alpha South	DATE Nov. 22, 2004
TITLE Assistant Branch Chief, NWCTB	
NAME AND ADDRESS OF DEPOSITORY The National Archives Washington, D.C. 20408	

NA FORM 14007A (10-88)

The full names of the persons

Roberts, Edward V. Berrien, John L. Campbell, Peter E. Kern, Phoebus Freudenthal, John H. Riley, Solomon Schulz, Albert M. Loomis and L. Bradford Prince, and the corporate name of such company is "The Rio Grande and Irrigation Company."

SECOND

The purposes which said company is formed are, for the purpose of constructing and maintaining dams, reservoirs and canals, and ditches and pipe lines for the purpose of supplying water for the purpose of irrigation, mining, manufacturing, domestic and other public uses, including supply of water for cities and towns for municipal and commercial purposes and for power and all other useful purposes to which water can be supplied, and for the purpose of colonization and the improvement of lands in connection therewith, and for such other purposes and with such other objects,

h25

Territory of New Mexico)
)
County of Dona Ana)

----:0:----

We, the undersigned, desiring to form a company pursuant to the laws of the territory of New Mexico, and to the provisions of an act of the legislative assembly of said territory, approved February 24, 1887, and to all laws amendatory thereof, do hereby make, sign and acknowledge these articles of incorporation, and do hereby set forth and certify as follows:

FIRST:

The full names of the incorporators are Edwin C. Roberts, Edward V. Berrien, John L. Campbell, Peter E. Kern, Phoebus Freudenthal, John H. Riley, Solomon Schulz, Albert M. Loomis and L. Bradford Prince, and the corporate name of such company is "The Rio Grande Dam and Irrigation Company."

SECOND.

h-25

The purposes for which said company is formed are for the purpose of constructing and maintaining dams, reservoirs and canals, and ditches and pipe lines for the purpose of supplying water for the purpose of irrigation, mining, manufacturing, domestic and other public uses, including supply of water for cities and towns for municipal and commercial purposes and for power and all other useful purposes to which water can be supplied, and for the purpose of colonization and the improvement of lands in connection therewith, and for such other purposes and with such other objects,

powers and privileges as may be permitted or conferred by general or special acts of this territory, or by the act of congress of the United States or the government of Mexico. And it is the purpose of this company to carry on and transact any and all operations pursuant to the purposes and within the powers herein set forth as well in the territory of New Mexico and the state of Texas and the republic of Mexico; and to acquire, mortgage and dispose of property and transact business in any place or jurisdiction or without the United States of America.

And the beginning point and termination of the main line of such canals, ditches and pipe lines shall be to begin at the dam or dams to be built across the Rio Grande at any point or place or various and several places within townships thirteen, (13) and fourteen, (14), and range three (3) and four (4) west in Sierra County, New Mexico, and to terminate at any point or place and various and several places in the territory of New Mexico, state of Texas and republic of Mexico to which it may be practicable to carry the waters so accumulated, and the general courses and directions of such canals, pipe-lines and ditches shall be southerly and southeasterly along the Rio Grande and through the Mesilla valley and the El Paso valley and into the republic of Mexico, and southwesterly and easterly to such places as may be practical to extend said canals, pipe-lines and ditches and carry the water so accumu-

lated, and the length thereof shall be from fifty miles to five thousand miles, it being impossible to state the point of beginning, terminus, course and length of said canals, ditches and pipe-lines more definitely at this time.

THIRD.

The amount of the capital stock shall be five million dollars, to consist of fifty thousand shares of one hundred dollars each.

FOURTH.

The term of existence of said company shall be fifty years.

FIFTH.

The number of directors shall be nine, (9), and the names of those who shall manage the business of the company for the first year are Edwin C. Roberts, Edward V. Berrien, John L. Campbell, Peter E. Kern, Phoebus Freudenthal, John H. Riley, Solomon Shulz, Albert M. Loomis and L. Bradford Prince, stockholders of said company, and a majority of whom are residents of the United States and at least one third of whom are residents of this territory.

SIXTH.

The name of the city and county in which the principal place of business of the company is to be located are the city of Las Cruces, county of Dona Ana within the territory of New Mexico, with offices also in El Paso, Texas, and the city of Juarez, Mexico.

In witness whereof, we have hereunto set our hands:

and seals this twelfth day of January in the years
eighteen hundred and ninety-three.

(Signed):	E. V. Berrien,	(Seal).
	Edwin C. Roberts,	"
	Phoebus Freudenthal,	"
	Jno. H. Riley,	"
	John L. Campbell,	"
	A. M. Loomis,	"

----:O:----

Territory of New Mexico))
) ss.
 County of Dona Ana.)

On this sixth day of September, eighteen hundred and ninety-three, before me personally appeared Edwin C. Roberts, Edward V. Berrien, John L. Campbell, Phoebus Freudenthal, John H. Riley, Albert M. Loomis, and to me personally known to be the persons described in and who executed the foregoing articles of incorporation, and severally acknowledged that they made, signed and executed the same as their free acts and deeds.

In witness whereof I have hereunto set my hand and notarial seal, at my office in Las Cruces, the day and year last above written.

(Signed): Morris Freudenthal,
 (Seal) Notary Public, Dona Ana County, New Mexico.

Endorsed: No. 1627. Cor. Rec'd. Vol. 4, page 462. The Rio Grande Dam & Irrigation Company. Articles of incorporation. Filed in office of Sec'y, territory of N. Mex. Sep't 9, 1893. S. Alexander, Sec'y.

----:O:----

I, Edward V. Berrien, do hereby certify that I am the secretary of the Rio Grande Dam and Irrigation Company, a corporation duly organized and existing under the laws of the territory of New Mexico, and that the foregoing is a true, correct and complete copy of the articles of incorporation of the said Rio Grande Dam and Irrigation Company, the original of which articles were filed in the office of the secretary of the territory of New Mexico at Santa Fe on the ninth day of September, A. D. 1893.

In witness whereof I have hereunto set my hand and the seal of the said company at El Paso, Texas, this 16th day of January, A. D. 1894.

(Seal).

E. V. Berrien,

Secretary, the Rio Grande Dam & Irrigation Company

CHAPTER XII.

An act to authorize the formation of companies for the purpose of constructing irrigating and other canals and the colonization and improvement of lands.

Be it enacted by the legislative assembly of the territory of New Mexico:

Section 1. Any five persons who may desire to form a company for the purpose of constructing and maintaining reservoirs and canals or ditches and pipe lines for the purpose of supplying water for the purpose of irrigation, mining, manufacturing, domestic and other public uses, including cities and towns, and for the purpose of colonization and the improvement of lands in connection therewith, or either or both of said objects, either jointly or separately, shall make and sign articles of incorporation which shall be acknowledged before the secretary of the territory, or some person authorized by law to take the acknowledgment of conveyances of real-estate, and when so acknowledged such articles shall be filed with such secretary.

Section 2. Such articles shall set forth:

1st. The full name of the incorporators, and the corporate name of such company.

2nd. The purpose or purposes for which such company is formed, and if the object be to construct reservoirs and canals or ditches and pipe lines for any of the purposes herein specified the beginning point and terminus of the main line of such canals and

ditches and pipe lines, and the general course, direction and length thereof shall be stated.

3rd. The amount of the capital stock and the number of shares as definitely as practicable.

4th. The term of existence of the company, which shall not exceed fifty years.

5th. The number of directors and the names of those who shall manage the business of the company for the first year.

6th. The name of the city or the town and county in which the principal place of business of the company is to be located.

Section 3. A duly certified copy of such articles executed by the secretary of the territory shall be filed in the office of the probate clerk of each county through or into which any such canal or ditch or pipe line may run or such reservoir may be established or in which any such company may desire to transact business, and duly certified copies of such articles shall be given by said secretary or said probate clerks on the payment of the fees allowed by law, which copies shall be received as evidence in any of the courts of this territory.

Section 4. When articles of incorporation shall have been executed, acknowledged and filed, as herein required, the persons therein named shall, with their associates and successors be deemed a body politic and corporate by the name stated in such articles

for and during the period named therein, and shall have power to sue and be sued in any court; to adopt and use a common seal and alter the same at pleasure; to purchase, acquire, hold, sell, mortgage and convey such real and personal estate as such corporation may require to successfully carry on and transact the objects for which it was formed; to appoint such officers, agents and servants as the business of the corporation may require and exact of them such security as may be thought proper and remove them at will, except, no director shall be removed from office unless by a two-third vote of the whole number of directors, and to adopt by-laws, not inconsistent with the laws of this territory for the organization of the company, the management of its business and property, the regulation of its affairs, the transfer of its stock and for carrying on all kinds of business within the objects and purposes of the corporation.

Section 5. The corporate powers of any corporation formed under this act shall be exercised by a board of not less than three directors, who shall be stockholders of the company and a majority of them citizens of the United States, and at least one-third of whom shall be residents of this territory. Such directors shall be elected annually at the expiration of the term of the directors named in the articles of incorporation, at such time and place and upon such notice and upon such mode as the by-laws of the company may provide; but all such elections shall be by ballot,

and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock, and the persons receiving the greatest number of votes shall be declared elected. When a vacancy occurs in the office of director by death, resignation, or otherwise, such vacancy shall be filled for the remainder of the year in such manner as the by-laws shall prescribe. Should there be no election of directors on the day fixed in the by-laws for such election, such election may be held at such other time as the by-laws may designate and the directors in office may continue to act until their successors are elected.

Section 6. The majority of the whole number of directors shall form a board for the transaction of business and a decision of a majority of the directors assembled as a board shall be valid as a corporate act.

Section 7. The first meeting of the board of directors shall be held at such time and place as may be agreed upon by a majority of the persons named as such in the articles of incorporation and all subsequent meetings shall be at such times and places as the by-laws may designate.

Section 8. The stock of the company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall be so entered on the books of the company as to show the names of the parties, by and to whom transferred, th

number and designation of the shares and the date of transfer.

Section 9. The directors shall have power to call in and demand from the stockholders the sum by them subscribed, at such time and in such payments as they may deem proper; notices of such assessments shall be given to the stockholders personally or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or if none be published there, then by posting such notices for that period in at least six public places in the county in which said principal place of business of the corporation is located. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all shares held by him. The sale of said shares shall be made as described in the by-laws of the company, but all such sales shall be made at public auction to the highest bidder, after notice thereof shall have been given as in this section provided for notice to stockholders of assessments; and the person who shall agree to pay the assessment due, together with the expense of advertising and other cost of such sale for the smallest number of whole shares shall be deemed the highest bidder. A complete record shall be kept of all assessments and sales of stock.

Section 10. Whenever any stock is held by any person as executor, administrator, guardian, trustee, or pledgee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder. Any such person holding stock shall not be liable as a stockholder to any personal liability, but the person who is the real owner of such stock shall be liable as a stockholder, and the funds in the hands of guardians and trustees shall be liable in like manner, and the funds in the hands of executors or administrators shall be ~~be~~ subject to all liabilities to which the decedent was liable at the time of his death.

Section 11. The total amount of debts of the corporation shall not at any time exceed the amount of the capital stock, and in case of an excess the directors causing or authorizing the same shall be jointly or severally liable to the persons holding any such indebtedness or to the corporation for the full amount of such excess. Dividends shall only be declared for the surplus profits arising from the business of the corporation nor shall the capital stock in any way be withdrawn or paid to the stockholders except when the capital stock may be reduced in the manner provided for by law, or in case of a dissolution of the corporation, and after the payment of all debts of the corporation. In case of the violation of the provisions herein relative to the payment of dividends, or reduction of the capital stock, the directors guilty thereof shall be

liable to such corporation, or to the creditors thereof for all damages sustained by reason of the same.

Section 12. The capital stock of any such corporation may be increased or diminished at any meeting of the stockholders, but may only be done by a two-thirds vote of all the shares of stock, but in no case shall the capital stock be reduced below the outstanding indebtedness and liabilities of the corporation.

Section 13. If any corporation formed under this act shall not organize and commence the transaction of its business within one year from the date of the filing of its articles of incorporation, its corporate power shall cease.

Section 14. Any corporation formed under this act may be disincorporated by a two-third vote of all stockholders, and when such vote shall have been taken notice thereof shall be given as required by section 9 of this act in relation to assessments on subscription for stock, which notice shall state when and what place application will be made to the district court, or the judge thereof, to have such corporation judicially dissolved and at such time and place or at such other time and place to which said matter may be adjourned by the court or judge, which court or judge may hear evidence touching the matter, and if satisfied that all debts and liabilities of such corporation have been paid, and that the requisite vote in favor of dissolution has been duly given, such court or judge shall enter an order declaring the corporation dissolved.

Section 15. Upon dissolution of any corporation the directors at the time of dissolution shall be directors and agents of the creditors and stockholders of the corporation dissolved, and shall have full power to sue for and recover the debts and property of the corporation by the name of the directors of such corporation, settle its affairs and divide amongst the stockholders the money and property remaining after the payment of all debts, liabilities and necessary expenses.

Section 16. Corporations formed under this act shall have power to borrow such sums of money as may be necessary for the construction, completion or operation of their reservoirs, canals and ditches or pipelines or the purchase of any lands, water rights or other property necessary in order to carry out the objects for which they were incorporated; and to issue and dispose of their bonds for any amount so borrowed and to mortgage their corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid, provided, that all such bonds shall be payable in twenty years and shall not bear interest at a greater rate than ten per cent per annum.

Section 17. Corporations formed under this act for the purpose of furnishing and supplying water for any of the purposes mentioned in section 1, shall have in addition to the powers heretofore mentioned, rights as follows:

1. To cause such examinations and surveys for

it-
on
es
sor

their proposed reservoirs, canals, pipe-lines and ditches to be made, as may be necessary to the selection of the most eligible locations and advantageous routes and for such purposes, by their officers, agents and servants, to enter upon the land or water of any person or of this territory.

2. To take and hold such voluntary grant of real estate and other property, as shall be made to them in furtherance of the purposes of such corporation.

3. To construct their canals, pipe-lines or ditches upon or along any stream of water.

4. To take and divert from any stream, lake or spring surplus water for the purpose of supplying the same to persons to be used for the objects mentioned in section 1 of this act, but such corporations shall have no right to interfere with the rights of, or appropriate the property of any persons except upon the payment of the assessed value thereof to be ascertained as in this act provided; and provided further, that no water shall be diverted, if it will interfere with the reasonable rights of any person or persons using or acquiring the same when so diverted.

5. To furnish water for the purposes mentioned in section 1, at such rates as the by-laws may prescribe, but equal rates shall be conceded to each class of consumers.

6. To enter upon and condemn and appropriate any land, timber, stone, gravel or other material that

may be necessary for the uses and purposes of said company.

Section 18. Should any such corporation be unable to agree with the owners as to the compensation to be paid for any such land, water, timber, stone, gravel or other material, the amount shall be ascertained and determined by the appraisal of three disinterested commissioners who shall be appointed on application of either party, and upon five days notice to the other party, by the judge of the district court in and for the district in which such land, water, timber, stone, gravel or other material may be situated, and said commissioners in their assessment of compensation shall appraise such premises or property at what would have been the value thereof if such reservoirs, canals, ditches, or pipe-lines for which such premises or property shall be required, had not or was not contemplated of being built or constructed, and upon a return into court of such appraisement, or upon the payment to the clerk thereof or to the parties entitled to such compensation, the amount so assessed by such commissioners, the land, water, timber, stone, gravel, or other materials so appraised shall be deemed to be taken by such corporation, which shall thereby acquire full title to the same, for the uses and purposes aforesaid. Such commissioners, before entering upon the discharge of their duties as such, shall take and subscribe an oath before some officer authorized to administer oaths, that they will honestly and impartially discharge the duties assigned to them, which oath shall

be returned with their appraisalment. Either party feeling aggrieved by the assessment may, within twenty days after the filing of such appraisalment appeal therefrom to the district court of the county in which such premises or property may be situated, and demand a jury of twelve men to estimate the compensation to be paid. Such appeal may be taken by a notice given to the clerk of such court by the party appealing, stating that an appeal has been taken, and thereupon the clerk shall transmit all the papers and reports in such proceedings to such court and docket the same as other cases, and the trial of such matter in such court shall be had upon such papers. Such appeal shall not interfere with the right of such corporation to take possession of such property if it shall have paid into court the compensation assessed, and to proceed with the construction of its reservoirs, canals, ditches or pipe lines. The party appealing shall give bond with sufficient surety, to be approved by the clerk of said court, for the payment of all cost accruing upon such appeal. In case the party appealing does not obtain a favorable verdict, such party shall pay the whole cost incurred by the other party as well as his own upon such appeal, but in case a verdict shall be rendered against appellee he shall pay the costs of both sides. On the payment into the court for the use of the owner or claimant of a sum equal to that finally awarded, it shall be held to vest in such corporation title to land water or other property in question, and the right to

occupy, take and use the same for any of the purposes aforesaid. In case any of the land or other property to be taken, as aforesaid, shall be owned by any person residing without the territory, or whose residence is unknown, or who may be subject to any legal disability, the court may appoint a proper person who shall give bond with sufficient surety to be approved by such court for the faithful execution of his trust, and such person shall represent in court the person absent, under legal disability or whose residence is unknown, when the same proceedings, as aforesaid, shall be had in reference to the appraisal of the lands or other property in question, and with the same effect. The title of such corporation to the lands or other property taken by virtue of this act shall not be affected or impaired by reason of the failure of the person appointed to faithfully discharge his trust. In case it shall be necessary for such corporation to take lands or other property which are unoccupied and of which there is no apparent owner or claimant, it may proceed to take and use the same for any of the purposes aforesaid, and may institute proceedings in the manner above described for the purpose of acquiring title thereto and determining the compensation to be paid therefor; and said court shall prescribe and direct the kind of notice to be given to such owner or owners as to the pendency of such proceedings, and may, in its discretion, appoint an agent or guardian to represent such owner or owners in case of his or their incapacity,

non-appearance, the damages awarded to such owner or owners shall be paid into court for their use and benefit and shall be paid over to such owner or owners, or his or their legal representatives or assigns, on demand. Said court shall always be open for the transaction of the business provided for in this section, and shall transact the same with all reasonable dispatch.

Section 19. Such corporations shall be authorized to construct such branch, lateral or side canal pipe-lines or ditches as may be necessary to successfully accomplish the objects and purposes for which they shall be organized, and shall have the same right and powers as to the taking and appropriating of land and other property to be used therefor, as is given and conferred by the next preceding section or other section of this act.

Section 20. Should it become necessary for any such corporation to acquire the title to any land or other property belonging to any infant, idiot or insane person, or which may belong to the estate of any deceased person the title to any such property may be obtained in such manner as may be provided by law for the conveyance, sale or disposal of the land or other property belonging to infants, idiots, insane persons, or the estate of deceased persons.

Section 21. Corporation formed under this act for the purposes of furnishing or supplying water for

any of the purposes mentioned in section 1 shall have the right and privilege of constructing their reservoirs, canals, pipe-lines or ditches, on or over any lands now belonging to this territory, or which may hereafter become the property of the territory, and the right to use any timber, stone or other material upon such lands and along the line of such canals or ditches, or in the vicinity of such reservoirs as may be necessary for the construction thereof.

Section 22. Whenever it shall become necessary for the appointment of commissioners to appraise any land or other property taken, or about to be appropriated under the provisions of this act, the parties desiring to have commissioners appointed shall present to the judge authorized to make such appointment, a petition setting forth the amount, character and description of the land or other property taken or sought to be appropriated, together with the names of the owners thereof, if known, or if unknown, the fact shall be stated. Such report of such commissioners fixing the amount of such compensation shall set forth and show the amount, kind and character of land or other property taken or about to be taken and appropriated belonging to each owner or claimant, and the compensation fixed therefor, separately. Such commissioners shall have the powers to hear evidence and administer oaths to witnesses. They shall fix the time and place for hearing evidence, which shall be in the vicinity of the property appropriated, and shall notify the parties

interested of the time and place, five days before such hearing. Such hearing may be adjourned from time to time, in order to complete the same. Such commissioners shall be allowed such compensation for their services as the judge of the district court may deem just and proper to be paid by such corporation.

Section 23. Should the ~~xxxxx~~ canals, pipelines or ditches of any corporation organized under this act cross any public highway or street, such corporation shall construct and keep in repair all necessary bridges across and over all such canals or ditches that may be requisite to enable the public to cross said canals and ditches with ease and safety.

Section 24. Corporations formed under this act for the purposes of supplying water to any city, town, or the inhabitants thereof, for any purpose, may lay their mains and pipes in, along and upon any of the public streets or alleys of said city or town, subject to such regulations as may be provided by the corporate authorities of such city or town; and may furnish and supply such city or town or the inhabitants thereof, with water, upon such conditions and terms as may be fixed by such corporations, or as may be agreed to by the consumers and such corporations.

Section 25. That no incorporation of any company or companies to supply water for the purposes of irrigation and other purposes shall have any right to divert the usual and natural flow of water or of any

stream which by the law of 1854 has been declared a public acequia, for any use whatever, between the 15th day of February and the 15th day of October of each year, unless it be with the unanimous consent of all and every person holding agricultural and cultivated land under such stream or public acequia, and to be irrigated by the water furnished by said stream or public acequia, and that no incorporation of any company or companies shall interfere with the water rights of any individual or company, acquired prior to the passage of this act.

Section 26. This act shall take effect and be in force from and after its passage and approval.

Approved February 24, 1887.

CHAPTER LXXI.

An act to provide a method for establishing the rights of appropriation of water for ditches, canals or feeders of reservoirs, and requiring registration all such hereinafter made, changed or enlarged. H.

113. Approved February 26, 1891.

Be it enacted by the legislative assembly of the territory of New Mexico:

Section 1. That every person, association or corporation hereafter constructing or enlarging any ditch, canal or feeder for any reservoir, shall, within ninety days after the commencement of such construction, change or enlargement, file or caused to be recorded in the office of the probate clerk of the county in which said ditch, canal or feeder be situated, a sworn statement in writing, showing the name of such

ditch, canal or of the reservoir supplied by such feeder, a point at which the headgate thereof is situated, the size of the ditch, canal or feeder, both the width and depth, the carrying capacity in inches, the description of the line thereof, the time when the work was commenced, the name or names of the owners thereof, together with a map showing the route thereof, the legal subdivisions of the land if on surveyed land, with proper corners and distances, and in case of an enlargement or change, the depth and width also the carrying capacity of the ditch enlarged, and increased capacity of the same thereby occasioned, and the time when such change or enlargement commenced, and no priority of right for any purpose shall attach to any such construction, change or enlargement, until such record is made.

Section 2. A copy of such sworn statement duly certified by the probate clerk of the county where such record is made shall be admitted as prima facie evidence of such appropriation of water in all the courts of this territory; provided, that the provisions of this act shall not affect any existing vested rights or any public acequia or ditch used for the public, and the canals, ditches or acequias authorized by this act to be constructed shall be completed within five years from the time work shall be commenced on the same.

Section 3. All acts and parts of acts in conflict with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

Territory of New Mexico)
Office of Secretary)

I have compared the preceding copy of chapter 12, laws of 1887, territory of New Mexico, as contained in quotations, beginning with the word "chapter" on page 1 hereof, and ending with the sentence, "approved, February 24, 1887" on page --- hereof, and the original thereof filed in this office, and I hereby certify the same to be a correct transcript therefrom and of the whole thereof.

I have also compared the preceding copy of chapter LXXI, laws of 1891, territory of New Mexico, contained in quotations, beginning with the word "chapter" on page ---- hereof, and ending with the words "from and after its passage" on page ____ hereof, with the original filed in this office, and I hereby certify the same to be a correct transcript therefrom and of the whole thereof.

And I further certify that the law as contained in said acts, is at this day the existing law of the territory of New Mexico, relating to companies organized for the purposes of constructing irrigating and other canals, reservoirs, pipe lines, and the colonization and improvement of lands in connection therewith.

Witness my hand and great seal of the territory, at Santa Fe, the eighteenth day of January, A. D. one thousand eight hundred and ninety-four.

(Signed) Lorion Miller, Secretary.

(Seal).

Territory of New Mexico)
)
Office of the Secretary)

I, Lorion Miller, secretary of the territory of New Mexico, do hereby certify that the records of the office show that the articles of incorporation of the Rio Grande Dam and Irrigation Company were filed for record in this office on the ninth day of September, A. D. 1893, at the hour of ___ m. and the same are now on file in this office, and said articles are recorded in corporation record, volume 4, at page 462, in the files of this office.

In witness whereof, I have hereunto set my hand and affixed my official seal, at Santa Fe, this 18th day of January, A. D. 1894.

(Signed): Lorion Miller, Secretary.

(Seal).

-----:0:-----

Territory of New Mexico)
)
County of Dona Ana,)
)
Office of Probate Court)

I, Horace F. Stephenson, clerk of the probate court and ex-officio recorded in and for the county Dona Ana and territory of New Mexico, do hereby certify that there was filed in this office on September fifteenth, A. D. 1893, at 11 o'clock A. M. a copy of the articles of incorporation of the Rio Grande Dam & Irrigation Company, certified by S. Alexander, secretary of the territory of New Mexico, under seal, and date of September ninth, 1893, and that said article

Mexico, this 22nd day of January, A. D. 1894.

(Signed): Tho. C. Hall,

Clerk of the probate court and ex-officio recorder
of the county of Sierra, territory of New Mexico.

(Seal).

-----:0:-----

Territory of New Mexico)
)
County of Sierra)
)
Office of Probate Clerk)

I, Thomas C. Hall, clerk of the probate court and
ex-officio recorder of the county of Sierra, in the
territory of New Mexico, do hereby certify that there
was filed in this office on January 20, 1894, at 5
o'clock p. m. a statement in writing, sworn to by Edwin
C. Roberts, president of the Rio Grande Dam & Irriga-
tion Company, a corporation existing under the laws of
the territory of New Mexico and doing business in the
county of Sierra, and a certain map accompanying said
statement; that said map and statement are now on file
in this office, and said statement in writing is recor-
ded in Book No. b of miscellaneous records, at pages
270 and 271, records of Sierra County, New Mexico.

And I also certify that there was filed in this
office on January 31, A. D. 1894, at 5 o'clock p. m.
a further statement in writing sworn to by said Edwin
C. Roberts, president of said Rio Grande Dam and Irri-
gation Company, accompanied by a map, which are both
on file in this office and said further statement in
writing is recorded in book No. B of miscellaneous



records at pages 272 and 273 records of Sierra County, New Mexico.

The said statement was filed in compliance with an act of the legislative assembly of the territory of New Mexico, entitled, "an act to provide a method for establishing the rights of appropriation of water for ditches, canals or feeders of reservoirs, and requiring registration of all such hereafter made," approved February 26, 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal at Hillsborough, New Mexico, this first day of February, A. D. 1894.

(Signed): Tho. C. Hall,

Clerk of probate court and ex-officio recorder of the county of sierra, territory of New Mexico.

-----:0:-----

I, Edward V. Berrien, secretary of the Rio Grande Dam and Irrigation Company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with the construction of its reservoirs and canals, according to the existing laws of the territory of New Mexico; that the copy of the articles of incorporation of the company filed in the department of the Interior is a true and correct copy of the same.

In witness whereof, I have hereunto set my name and the corporate seal of the company.

(Signed): E. V. Berrien,

Secretary of the Rio Grande Dam & Irrigation Company.

(Seal)

Edwin C. Roberts, being duly sworn, says that he is the president of the Rio Grande Dam & Irrigation Company and that the following is a true list of the officers of the said company, with full name and official designation of each, to-wit:

Edwin C. Roberts, President.
Albert M. Loomis, Vice-President.
Edward V. Berrien, Secretary.
Peter E. Kern, Treasurer.
John L. Campbell, Chief Engineer.

(Signed) Edwin C. Roberts,
President of the Rio Grande Dam & Irrigation
Company. (Seal).

Sworn and subscribed to before me this the 17th
day of January, A. D. 1894.

(Signed) W. E. Baker,
Notary Public, Dona Ana County, New Mexico.
(Seal).

----:0:----

I, Edwin C. Roberts, do hereby certify that I am president of the Rio Grande Dam & Irrigation Company; that John L. Campbell, who subscribed to the accompanying affidavit is the chief engineer of said company; that the survey of the grounds selected for the main reservoir of said company was made by said John L. Campbell under authority of said company; that the said survey of said reservoir grounds is accurately represented on the accompanying map and field notes; that the said reservoir as represented on said map and in said field notes was adopted by the company by a

resolution of its board of directors on the 26th day of November, 1894, as the definite location of said reservoir, described as follows: Beginning at the initial point of the survey on the north line of the Armendaris Grant, Sierra County, New Mexico, from which said initial point the N. W. corner of section 17, T'sp. 12, S. R. 3 W. bears N. 51° 50' W. 3332 feet, as shown on the accompanying map; thence following the courses and distances along the flowline of said reservoir as given in the accompanying field notes and on said map by station numbers, on the flow line, in a generally northerly direction along said flow line to station 146 thereon; thence in a generally southerly direction along said flow line as represented by station numbers on said map to station 195 thereon, the said station 195 being on the north line of the Armendaris Grant, and constituting the terminal point of the survey on the public domain of the United States; that from said terminal point at station 195, the N. E. cor/ of Sec. 16, T'sp. 12, S. R. 3 W. bears N. 46° 44' E. 3056 feet, as shown on said map. That the flow line of said reservoir as it is herein described, located and shown on said map includes all the land shown within its limits; that the said map accurately represents the surveyed limits and area of the ground selected for the said reservoir and that the area of the ground so selected and surveyed on the public domain is two thousand five hundred (2500) acres, and no more; that the total capacity of said reservoir is ^{253,368}~~253,368~~ acre feet, of which capacity 71,300 acre

feet are on the public domain of the United States. That the survey of said reservoir does not contemplate, and no lake or lake-bed, stream or stream-bed, will be used for said reservoir except as shown on said map; that the company has occupied no other ground for reservoir purposes and that, in my belief, the grounds so selected, surveyed and designated are, to their entire extent, required by the company for the necessary uses contemplated in the act of congress, approved March 3, 1893, entitled, "An Act to repeal timber culture laws and for other purposes," and I further certify that the purpose of said reservoir is to catch and store the surplus annual floods-waters of the Rio Grande and use said waters in the irrigation of the Rio Grande Valley, and for all other uses granted the said company in its charter and articles of incorporation. That the maximum flow of the Rio Grande is 17,000 second feet, and the minimum is 0.0 second feet; that the mean monthly flow is as follows, to-wit: January, 323 second feet; February 545 second feet; March 1145 second feet; April, 3227 second feet; May, 8811 second feet; June, 4586 second feet; July, 546 second feet; August, 367 second feet; September 88 second feet; October, 33 second feet; November, 142 second feet; December, 303 second feet. That the mean annual flow of said river from the above figures is 1677 second feet. That the above flow of the Rio Grande has been deduced by John L. Campbell, chief engineer of said company from ^{gaug} the ~~flow~~ ^{readings} of said river made at El Paso, Texas,

during the years 1889, 1890 and 1891 by Col. Anson Mills, and by the hydrographical branch of the United States Geological Survey under J. W. Powell, director. That there are no other data available bearing on the flow of said river in southern New Mexico. That the Rio Grande is not a navigable stream; that a second foot of water as used herein means 50 miner's inches.

And I hereby further certify that the aforesaid map of the reservoir has been prepared to be filed for the approval of the Secretary of the Interior, in order that the company may obtain the benefits of section 18, to section 21, inclusive, of the said act of congress, approved March 3, 1891, entitled, "An act to repeal timber culture laws and for other purposes." And I hereby further certify that the accompanying copies of the laws of the territory of New Mexico with the attached certificates of the proper officials and forming part of this application, are submitted as the title and right of the Rio Grande Dam & Irrigation Company to appropriate the said surplus flood waters of the Rio Grande and store them in said reservoir as provided by the said laws of said territory. And I further certify that this amended application is filed in lieu of the original application, filed in the U. S. Land Office at Las Cruces, Dona Ana County, New Mexico, on the 3rd day of February, 1894.

Edwin Roberts

President of the Rio Grande Dam & Irrigation Co.

Sworn to and subscribed before me this ^{27th} day of *November*, 1894.

Morris Frederick Hal
Notary Public
County Dona Ana County N. Mex.

John L. Campbell, being duly sworn, says he is the chief engineer of the Rio Grande Dam & Irrigation Company, by whom the survey of the grounds selected by the company for its main reservoir was made under the act of congress approved March 3, 1891, granting right of way through the public lands and reservations of the United States for the use of canals, ditches and reservoirs; that the limits of said grounds are as follows, and comprise all the lands lying within said limits, to-wit: beginning at the initial point of this survey on the north line of the Armendaris Grant, Sierra County, New Mexico, from which said initial point the N. W. corner of section 17, T'sp. 12, S. R. 3 W. is N. 51° 50' W. 3332 feet, as shown on the map; thence in a generally northerly direction along the flow line of said reservoir following the courses and distances as given in the field notes and on the map to station 146; thence in a generally southerly direction along said flow line to station 195, the said station 195 being on the north line of said Armendaris Grant, and constituting the terminal point of this survey; that from said terminal station the N. E. corner of section 16, T'sp. 12, S. R. 3 W. is N. 46 44' E. 3056 feet. That the flow line includes all the grounds shown within its limits; that the said map accurately represents the surveyed limits and area of the grounds selected for the said reservoir, and that the area of the grounds so selected and surveyed on the public domain is 2500 acres and no more; that the area of that portion of the reservoir in the Armendaris Grant is 4216 acres;

that the total capacity of said reservoir is 238,368 acre feet, of which capacity 71,300 acre feet are on the public domain of the United States. That the company has occupied no other grounds for reservoir purposes and that, in his belief, the grounds so selected, surveyed and designated are, to their entire extent, required by the company for the necessary uses contemplated by the said act of congress. That the survey of the reservoir site was begun on the 29th day of October, 1894, and finished on the 10th day of November, 1894, and that the aforesaid flow line as shown on the map accurately represents a level line which is the proposed flow line of the reservoir when full to the level of the spill-way of the dam, and that such survey is accurately represented on the map and in the field notes, and that the company will use no stream or stream bed, lake or lake bed, except as shown on this map.

John L. Campbell

Chief Engineer, Rio Grande Dam & Irrigation Company.

Sworn and subscribed to before me this *2nd* day
of *November* 1894.

Morris Fremont Hal
Notary Public
Dona Ana County
New Mexico.

President Rio Grande Dam & Irrigation Co.

El Paso, Texas.

Dear sir:

In accordance with your request of this date I have to state that I have been a resident of this valley for nearly 18 years, and know that the Rio Grande is not a navigable stream at any season of the year, and never has been at any point above this city or for one hundred miles below.

Yours very truly,

(Signed): S. H. Newman,

General Ag't. Mutual Life Ins. Co. of New York.

-----0:-----

El Paso, Texas, January 3, 1894.

E. C. Roberts, Esq.,

Pres. Rio Grande Dam & Irrigation Co.,

Las Cruces, New Mexico.

Dear sir:

Replying to your favor of the 3rd inst. relative to the utility of the Rio Grande as a navigable stream, will state that I have been a resident of the Rio Grande valley for the last thirty years, and at no time, to my knowledge, has the Rio Grande been navigable. Any work that your company may do to store the flood waters of the river for irrigation purposes will be of immense advantage to the people of the valley, and I sincerely hope that the people of the valley and the government too will give you the encouragement

that the total capacity of said reservoir is 238,368 acre-feet, of which capacity 71,300 acre feet are on the public domain of the United States. That the company has occupied no other grounds for reservoir purposes and that, in his belief, the grounds so selected, surveyed and designated are, to their entire extent, required by the company for the necessary uses contemplated by the said act of congress. That the survey of the reservoir site was begun on the 29th day of October, 1894, and finished on the 10th day of November, 1894, and that the aforesaid flow line as shown on the map accurately represents a level line which is the proposed flow line of the reservoir when full to the level of the spill-way of the dam, and that such survey is accurately represented on the map and in the field notes, and that the company will use no stream or stream bed, lake or lake bed, except as shown on this map.

John L. Campbell

Chief Engineer, Rio Grande Dam & Irrigation Company.

Sworn and subscribed to before me this *2nd* day
of *November* 1894.

Murray Greenbush
Notary Public
Dona Ana County
New Mexico

Dear sir:

In accordance with your request of this date I have to state that I have been a resident of this valley for nearly 18 years, and know that the Rio Grande is not a navigable stream at any season of the year, and never has been at any point above this city or for one hundred miles below.

Yours very truly,

(Signed): S. H. Newman,

General Ag't. Mutual Life Ins. Co. of New York.

-----0:-----

El Paso, Texas, January 3, 1894.

E. C. Roberts, Esq.,

Pres. Rio Grande Dam & Irrigation Co.,

Las Cruces, New Mexico.

Dear sir: Replying to yours of the 1st inst. relative

to the utility of the Rio Grande as a navigable stream will state that I have been a resident of the Rio Grande valley for the last thirty years, and at no time, to my knowledge, has the Rio Grande been navigable. Any work that your company may do to store the flood waters of the river for irrigation purposes will be of immense advantage to the people of the valley, and I sincerely hope that the people of the valley and the government too will give you the encouragement

El Paso, Texas, January 8, 1894.

C. Roberts,

Pres't Rio Grande Dam & Irrigation Co.,

El Paso, Texas.

Dear sir:

In compliance with your request for my v
regarding the Rio Grande river and its navigabilit
I have resided in El Paso for nine years, and do r
consider it a navigable river in any sense. Durir
my residence here the river has been perfectly dr:
two or three seasons.

Very truly yours,

(Signed): H. A. True.

El Paso, Texas, January 3, 1894.

Mr. E. C. Roberts,

Pres. Rio Grande Dam & Irrigation Co.,

Las Cruces, New Mexico.

Dear sir:

Replying to yours of the 3rd inst. in
to the utility of the Rio Grande as a navigable
I will state that I have been a resident of the
Grande valley for the past ten years, and during
period, at no time, to my knowledge, has the Rio
been navigable. Whatever work that may be done
your company to store the flood water of the ri
be of great advantage to the people of this val
I sincerely hope that the people of the valley
government also will give you the encouragemen

for.

Very respectfully,

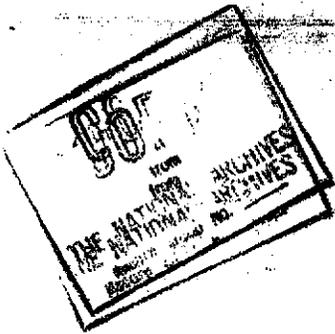
J. M. Dean,

Senator 25th district of Texas.

-----:0:-----

Charles H.

U. S. Land Office
Lee Jones St. M.
Filed in this
Office November
27 1894
John O. Bryan
Register



Third Judicial District Court Water Clerk,
 Please file in Case No. D-307-^{CV-}
 96-888, SSI 104

There is ~~an~~ 37 page Exhibit attached.
 TOTAL OF 40 EXHIBITS & 48 PAGES
 TOTAL

Thanks,
 Bob Simon

FAX 575-528-8290