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DISTRICT COURT
DOÑA ANA COUNTY, NM
NORMAN OSBORNE, CLERK

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

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

Plaintiff,

v.

ELEPHANT BUTTE IRRIGATION
DISTRICT, *et al.*,

Defendants.

No. CV-96-888

Hon. James J. Weschler

SS 97-104: United States' Interests

VERDE'S COMMENTS ON PROPOSED ORDER (1) GRANTING SUMMARY JUDGMENT REGARDING THE AMOUNTS OF WATER; (2) DENYING SUMMARY JUDGMENT REGARDING PRIORITY DATE; (3) DENYING SUMMARY JUDGMENT TO THE PRE-1906 CLAIMANTS; AND (4) SETTING A SCHEDULING CONFERENCE

In accordance with the Court's letter of December 11, 2013, Verde Santa Teresa LLC, Verde Realty Operating Partnership, L.P.,¹ Verde Railroad Land LLC, Verde Intermodal Industrial Park LLC and Verde Border Industrial Park LLC (collectively, "Verde"), by and through their undersigned attorneys, hereby respectfully submit the following Comments on the Proposed Order (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference (hereafter, the "Proposed Order").

Verde fully understands the import of this Court's recognition of its previous ruling as expressed in footnote 2 on page 4 of the Proposed Order reflecting that inquiries concerning the identity of Project water are condition-specific, technical, and best raised in administrative proceedings before the State Engineer. However, because of the complexity of this issue, and to

¹ Verde Realty Master LP was joined to the adjudication suit. On July 1, 2006, that entity changed its name to Verde Realty Operating Partnership, L.P.

fully address the issues raised by that footnote, Verde suggests adding additional language to footnote 2 on page 4. The revised footnote would read in its entirety as follows:

²The Court notes that, in their responses to the motions for summary judgment, the City of Las Cruces, the Verde interests, and El Paso Natural Gas maintain that the United States is not entitled to a right either to divert a specific amount of water at downstream dams, or to compel delivery of municipal wastewater for downstream Project diversion. Were the Court to compel delivery of municipal wastewater pumped from wells for the purpose of enhancing downstream diversions, this would require that the Court, as a part of the adjudication, determine the identity of the groundwater being pumped from the aquifer and the amount that should be placed into the river by wastewater treatment plants. This Court has already ruled that “. . . groundwater cannot be adjudicated as a source of water for the Project’s surface points of diversion.” Order Granting State’s Motion to Dismiss the United States’ Claims to Groundwater and Denying the United States’ Motion for Summary Judgment (August 16, 2012) at 2. This Court also ruled that “whether Project water retains its identity as project water is a condition-specific and technical inquiry.” Order at 7. For this reason, the Court has ruled that it “leaves the determination of whether Project water retains its identification to administrative proceedings conducted before the State Engineer.” *Id.* Accordingly, this adjudication does not intend to determine the effects on Project surface water from a diversion of groundwater, nor does it intend to make a hydrologic evaluation of the source of municipal effluent with the goal of possibly compelling its release into the Rio Grande. *Id.* Not only has this Court decided that the Project right does not extend to groundwater, but the possibility of inconsistent judgments as to the identity of wastewater as between the adjudication Court and the State Engineer likewise weighs against such a result.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES, P.C.
A Professional Corporation

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2014, a true and correct copy of the foregoing was served by first-class mail to counsel of record and participating parties pursuant to the Service List for Stream System Issue SS-104 (United States' Interests) (updated November 4, 2013) provided by the Court's website and available at https://lrgadjudication.nmcourts.gov/index.php/overview/doc_download/673-ss-97-104.pdf.


Catherine R. Robinson