

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Dr. Nathan E. Boyd Estate, by James
Scott Boyd, Personal Representative,
and James Scott Boyd, Individually

Plaintiff – Appellant,

vs.

United States, Elephant Butte
Irrigation District and City of
Las Cruces

Defendant - Appellee.

2012 NOV -7 AM 10:19

DISTRICT COURT
DOÑA ANA COUNTY, NM

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

NOV 05 2012

Wendy James

No. 32119
Doña Ana County
CV-1996-00888

RN- 9702413
LPB- 280991001

THIRD MOTION TO AMEND RECORD PROPER

Appeal from the Third Judicial District Court
CV-1996-888
The Hon. James Wechsler, Presiding Judge

Robert S. Simon, Esq.
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Albuquerque, NM 87104
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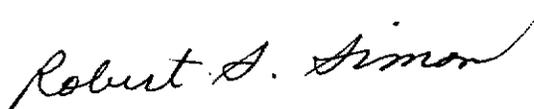
JK
11/15/12
11-7-12
VC

COME NOW Appellants through their counsel, Robert Simon and move this Court to Amend the Record Proper to include a copy of Exhibit 24-1 and 24-2 intended to be attached to Appellant's Response to the Movants' Motion to Dismiss, because the Exhibit was omitted from the Record Proper. Its originally intended location was between R.P. 349 and 350 and it was identified on the Index of Exhibits found at R.P. 291 as Exhibit Number 24.

A copy of Exhibit 24 is attached hereto.

WHEREFORE, in order to complete the Record Proper, Appellant respectfully requests that the Court order that the third Judicial District Clerk supplement the record proper to include Exhibit 24.

Respectfully submitted,



Robert Simon
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Proof of Service

I, Robert Simon, certify that I served a copy of the above Third Motion to Supplement the Record Proper by delivering an original to the Court of Appeals and by serving a copy of the Motion on the counsel of record for the three movants and the Clerk of the Third Judicial District Court as follows:

U.S. Department of Justice
R. Lee Lieninger
999 18th St. S. Terrace, Ste. 370
Denver, CO 80202

Elephant Butte Irrigation District
The Law Office of Steven L. Hernandez, P.C.
P. O. Box 13108
Las Cruces, N.M. 88103

CITY OF LAS CRUCES
Stein and Brockmann, PA
Jay F. Stein, Esq.
P. O. Box 2067
Santa Fe, N.M. 87504

Clerk of the Third Judicial District
201 W. Picacho Ave.
Las Cruces, N.M. 88005

by fax, mail or by electronic service on this 5th day of November, 2012.

Robert Simon

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file

WASHINGTON

May 20, 1925.

✓
Rio Grande embargo.

8-3
Rio Grande
Antiquities
Monument

The Commissioner
of the General Land Office.

My dear Mr. Commissioner:

The original withdrawal was made December 5, 1896, pending consideration of treaty with Mexico as to claimed water rights of that country. The subsequent withdrawal of ^{April 25} ~~May 18~~, 1907, was made to prevent the building of dam, canals, etc., on the Upper Rio Grande in Colorado and New Mexico, pending construction of the Government Rio Grande reclamation project and the effect of storage and diversion of water upon that project.

The treaty with Mexico has been concluded, and Mexican rights defined and protected.

The Rio Grande project has been completed, water has been stored and is available for all the lands in the project. The Rio Grande in New Mexico and Colorado is not a navigable stream.

The approval of rights of way over public lands for dams and canals is pursuant to the act of Congress of March 3, 1897, which the Secretary of the Interior has no legal right to suspend or defeat. Grants under that act are not grants of water, but simply rights of way to use and occupy public lands. Water must be appropriated under State laws, and under those laws priority in appropriation and use controls.

Present water users, including Mexico, the Government reclamation project, and others can not have their rights destroyed or defeated.

EXH 24-1

the granting of water rights on any public lands or by the attempted subsequent appropriation of water and use of water by others.

The purpose of the withdrawal having been accomplished, there being no power in the Secretary to suspend laws of Congress, and the granting of water rights being vested in the States, the withdrawals or embargoes are hereby lifted, effective this date.

Very truly yours,

(Sgd) Hubert work

EXH 24-2