

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

State of New Mexico *ex rel.*
Office of the State Engineer,

Plaintiff,

v.

No. D-307-CV-96-888
Lower Rio Grande Adjudication
James J. Wechsler
Judge Pro Tempore

Stream System Issue No. 107
D-307-SS-9700107

Elephant Butte Irrigation District, *et al.*

Defendants

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This matter having come before the Court on the motion for summary judgment of Sammie Holguin Singh, Oscar Butler, and Rose Marie Arispe Butler (Movants), and the Court having considered the motion; the responses of Salopek Entities, the State of New Mexico, New Mexico State University, the United States, the New Mexico Pecan Growers and Individual Pecan Growers, and the Elephant Butte Irrigation District; and Movants' reply, finds and concludes the following:

- (1) The issues concerning (a) Movants' seniority and continuous use of water rights; (b) economic coercion; and (c) the enforceability of the contract between the EBWUA and the farmers raise genuine issues of material fact that are not susceptible to resolution by summary judgment.
- (2) The hydrographic survey of the Lower Rio Grande is not defective, and this Court has subject matter jurisdiction of this case. All claimants have been joined in this adjudication and provided an opportunity to participate in this stream system issue proceeding. The issue in this proceeding does not require a prior determination of an individual claimant's water right.
- (3) In Stream System Issue No. 104 (SSI 104), this Court adjudicated the water right of the United States for the Rio Grande Project. The issues raised in the summary judgment motion asserting invalidity of the rights issued by this Court in SSI 104 for failure to

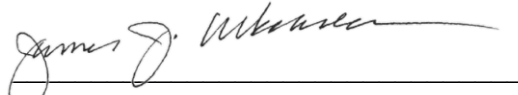
comply with Territorial, state, or federal law or other reason are not before the Court in this proceeding. Moreover, such issues have been decided, expressly or implicitly, in this adjudication and will not be revisited in connection with this summary judgment motion.

(4) The claims in the summary judgment motion based on *United States v. Rio Grande Dam & Irrigation Co.*, 1906-NMSC-013, 13 N.M. 386, 85 P. 393 (forfeiture case) are foreclosed under the doctrine of res judicata. In *Estate of Boyd v. United States*, 2015NMCA-018, ¶ 18, 25-26, 344 P.3d 1013, in an appeal in this adjudication, our Court of Appeals held that the 1903 district court ruling, as affirmed by the Supreme Court in 1906, that the water rights of the Rio Grande Dam & Irrigation Company (the company) were forfeited, barred later claims by the company and its successors to the rights.

In *State ex rel. Office of the State Engineer v. Garcia*, No. A-1-CA-36269 mem. op. ¶ 11-14, (Ct. App. April 25, 2023) (non-precedential), our Court of Appeals affirmed the ruling of this Court in a prior expedited *inter se* proceeding that Movants' claims to water rights derivative of the company were barred by res judicata, including the claim that the court in the forfeiture case lacked jurisdiction. Although Movants claimed a derivative rather than a direct right in *Garcia*, they could have made a direct claim, and, consequently, such a claim is barred by res judicata. "*Res judicata* bars not only claims that were raised in the prior proceeding, but also claims that could have been raised." *Kirby v. Guardian Life Ins. Of America*, 2010-NMSC-014, ¶ 61, 148 N.M. 106, 231 P.3d 87 (internal quotation marks and citation omitted).

The motion for summary judgment is denied.

IT IS SO ORDERED.


James J. Wechsler
Judge Pro Tempore

CERTIFICATE OF SERVICE

I hereby certify that on the above file-stamped date, I have caused to be emailed and/or mailed by First Class US Mail, a true and correct copy of the foregoing instrument to counsel or parties of record located on the SS-97-107 service list on the Lower Rio Grande Adjudication Website.

A handwritten signature in black ink, reading "Javier Cuevas". The signature is fluid and cursive, with the first name "Javier" and last name "Cuevas" clearly distinguishable.

Javier Cuevas
Paralegal