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3rd JUDICIAL DISTRICT COURT
Dona Ana County
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CLERK OF THE COURT
Wood, Melissa

STATE OF NEW MEXICO)
COUNTY OF DONA ANA)
THIRD JUDICIAL DISTRICT)

State of New Mexico ex rel.) No. D-307-CV-96-888
Office of the State Engineer,) Lower Rio Grande Adjudication

Plaintiff,

James J. Wechsler
) Judge Pro Tempore

) Stream System Issue No. 107
Elephant Butte Irrigation) Pre-Project Interests
District, et al., D-307-SS-9700107

Defendants.

PRE-1906 CLAIMANTS' MOTION TO RECONSIDER ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND, ALTERNATIVELY, FOR CERTIFICATION FOR INTERLOCUTORY APPEAL

The Pre-1906 Claimants ("Claimants") respectfully move the Court to reconsider its June 22, 2026, Order denying Claimants' Motion for Summary Judgment in Stream System Issue No. 107 ("Order") or, alternatively, to certify the controlling questions of law presented herein for interlocutory appeal pursuant to Rule 12-203 NMRA.

Reconsideration is warranted because the Order rests upon a threshold legal issue concerning the subject matter and jurisdictional scope of prior proceedings to which the Court has given preclusive effect.

Claimants do not seek to overturn issues previously decided. Rather the Claimants contend that before any prior decision is afforded preclusive effect, the Court determine that the subject matter and that the independently vested territorial property rights asserted in SSI 107 were actually within the jurisdictional scope of the proceeding upon which preclusion is based.

Claimants submit that before a judgment may be given preclusive effect, the court must determine the subject matter and jurisdictional scope of the proceeding upon which preclusion is based.

In paragraph (3) of its Order, the Court held that issues challenging rights adjudicated in Stream System Issue No. 104 ("SSI-104") based upon alleged failures to comply with territorial, state, or federal law "are not before the Court in this proceeding." The Court further concluded that those issues "have been decided, expressly or implicitly, in this adjudication and will not be revisited in connection with this summary judgment motion."

In paragraph (4), the Court held that claims arising from *United States v. Rio Grande Dam & Irrigation Co.*, 1906-NMSC-013, 13 N.M. 386, 85 P. 393, are foreclosed by res judicata. Relying upon *Estate of Boyd v. United States*, 2015-NMCA-018, and *State ex rel. Office of the State Engineer v. Garcia*, No. A-1-CA-36269 (N.M. Ct. App. Apr. 25, 2023), the Court concluded that claims derivative of the Rio Grande Dam & Irrigation Company ("Company"), including jurisdictional challenges to the 1903 forfeiture proceeding and judgment ("Proceeding"), *U.S. v. RGD&IC,* 1906-NMSC-013, 13 N.M. 386, are barred.

Claimants respectfully submit that the Court's preclusion analysis is not independent. Rather, it rests upon a chain of reasoning beginning with the Proceeding, continues through SSI-104, and culminattes in the present Order denying summary judgment in SSI-107.

The threshold error is that the Order assumes the claims asserted in SSI-107 are derivative of the Company without first determining whether they instead concern independent territorial property interests, some of which predate the Company's formation, *Keeney v Carillo*, 1883-NMSC-005.

Claimants respectfully submit that this threshold determination has never been made. Instead, the Court assumed that the independent territorial rights asserted in SSI-107 were derivative of the Company and therefore barred. That assumption necessarily resolves the jurisdictional issue before deciding it.

Accordingly, reconsideration is warranted because any judgment on which preclusion is based must be supported by jurisdiction, *In re Bradfield*, 1982-NMCA-047,{22}, **"**The trial court, under N.M.R. Civ. P. 60(B), N.M.S.A. 1978 (Repl. 1980), is invested with a reservoir of equitable power to vacate a final order where justice clearly dictates in exceptional circumstances, such as where the court initially lacked jurisdiction."), *Perez v. Perez*, 1966-NMSC-010, *Desjardin v. Albuquerque National Bank*, 1979-NMSC-052, *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, *Heckathorn v. Heckathorn*,1967-NMSC-017, **{10 ("**There are three jurisdictional essentials necessary to the validity of every judgment: jurisdiction of parties, jurisdiction of subject matter and power or authority to decide the particular matter presented. *In re Field's Estate*, 1936-NMSC-060").

Until the Court determines whether the Proceeding met the three jurisdictional elements, it cannot determine the proper preclusive effect, if any, of the 1903 judgment.

HISTORY

The Proceeding arose under the Act of March 3, 1891, (, Mar. 3, 1891, ch. 561, §18, 26 Stat. 1101, 26 Stat. L., 1905) ("Act"), which granted qualifying irrigation companies federal statutory rights relating to reservoirs, storage projects, canals, ditches, and rights-of-way across public lands, subject to conditions imposed by Congress.

Claimants contend the Act proscribed courts' jurisdiction to decide only those statutory interests within the scope of the Act. The Act did not include within its scope of jurisdiction the authority to adjudicate property rights unrelated to the Act, such as independently vested territorial diversion works, beneficial-use rights held by farmers and farming communities under New Mexico territorial law, or Dr. Nathan E. Boyd's separate receivership, debenture, lien, liquidation, and infrastructure interests.

Claimants do not contend that either the Company or Dr. Boyd owned the farmers' beneficial-use rights. Rather, Claimants agree that those rights vested directly in the appropriators under New Mexico territorial law through diversion and beneficial use.
That proposition, however, does not establish that the farmers' rights were derivative of the Company, that they were forfeited by the Proceeding, or that they were ever within the subject-matter jurisdiction of the Proceeding.

The distinction is significant because the approximately 30,000 acres irrigated before construction of the Company's completed diversion works do not represent the full extent of territorial irrigation development existing before federal reclamation.
Construction and operation of the Company's completed diversion dams and canals by 1897 enabled additional Rio Grande water to be diverted, conveyed, and applied to beneficial use by farming communities under territorial law. Claimants contend that, by the time the federal Rio Grande Project was completed in 1915, approximately 90,000 acres were associated with pre-Project irrigation development and appropriative rights senior to the later federal reclamation claim.

Those territorial appropriations did not become federal rights merely because the United States subsequently constructed Elephant Butte Dam or later regulated Rio Grande flows. The farmers' rights arose through diversion and beneficial use under territorial law, while the Company's completed diversion works served as the physical infrastructure through which water was delivered to the appropriators' ditches and lands.

As recognized in *Candelaria v. Vallejos*, 1905-NMSC-019, and reaffirmed in *Snow v. Abalos*, 1914-NMSC-022, beneficial-use rights vested in the appropriators, while ownership of irrigation infrastructure remained legally distinct from ownership of those water rights. Territorial appropriations and diversions therefore are not merely historical facts; they bear directly upon the jurisdictional issue before the Court.

Garcia recognized that the Company completed two diversion dams and one canal while failing to complete the proposed Elephant Butte storage project. More importantly, *Garcia* expressly distinguished claims derivative of the Company from claims asserted independently by pre-1893 farmers and declined to adjudicate those independent claims because they were not before the Court.

Accordingly, *Garcia* cannot be given preclusive effect over the independent territorial rights asserted in SSI-107 because those are the very claims the Court of Appeals expressly recognized but declined to decide.

The question presented here is therefore not whether the Company possessed the farmers' beneficial-use rights. The threshold question is whether the Act authorized the 1903 territorial court to adjudicate or forfeit independently vested territorial diversion works, beneficial-use rights, and associated property interests arising under New Mexico territorial law.

Claimants respectfully submit that it did not.

I. THE FEDERAL STATUTORY INTERESTS CREATED UNDER THE ACT WERE LEGALLY DISTINCT FROM THE TERRITORIAL IRRIGATION RIGHTS AND PROPERTY INTERESTS ASSERTED IN SSI-107.

The Proceeding arose under the Act. That Act granted qualifying irrigation companies federal statutory rights relating to reservoirs, canals, ditches, and rights-of-way across public lands, subject to the conditions imposed by the Act. It did not encompass irrigation facilities located on private lands,

Claimants contend that federal statutory interests created under the Act were legally distinct from independently vested territorial diversion works, beneficial-use rights, and associated property interests arising under New Mexico territorial law.

Federal reclamation, construction, and operation do not create ownership in the United States of preexisting water rights vested in landowners under state law. The property right created by the beneficial use of the water remains legally distinct from ownership of the reservoirs, diversion dams, canals, and other project infrastructure. Where a federal reclamation project requires existing state-law water rights or other vested interests, the United States must lawfully acquire those rights and provide just compensation. It may not treat project operation alone as having extinguished or transferred them. See *Ickes v. Fox*, 300 U.S. 82, 94–96 (1937); *Nebraska v. Wyoming*, 325 U.S. 589, 614–15 (1945); *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739–42 (1950); and *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 291–92 (1958).

The Act states in relevant part of Section 20:

"...if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights therein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture."

26 Stat. 1102, § 20 (codified at 43 U.S.C. § 948)

Under New Mexico irrigation law (NMSA 1978 §72-1-2 [1907], an irrigation company's function was to construct, finance, maintain, and operate the diversion and delivery system; the beneficial-use rights vested in the farmers whose lands were irrigated. Those irrigation rights were appurtenant to the farmers' lands and retained their territorial priority. Accordingly, even if the Company forfeited some federal statutory right-of-way, corporate franchise, or uncompleted project interest, that forfeiture did not reach the farmers' independently vested water rights. Under New Mexico territorial irrigation law, irrigation companies constructed, financed, maintained, and operated diversion works, while beneficial-use rights vested in the individual irrigation appropriators. The Company's forfeiture of a federal statutory right or corporate storage interest therefore did not itself operate as a forfeiture of the farmers' vested territorial rights. Those rights belonged to the appropriators and stood or fell under the law governing the appropriators' own beneficial use. *Snow v. Abalos*, 1914-NMSC-022, {29} held that the farmers still owned their beneficial use water rights in 1914, so they could not have been extinguished in 1903or 1905 by the contracts with EBWUA.

Therefore, the Act did not create the farmers' beneficial-use rights, determine ownership of those rights, or convert completed territorial appropriations into federal storage-project rights. Rather, it governed the Company's federal statutory reservoir and public-land right-of-way interests.

The threshold question, therefore, is whether a forfeiture proceeding brought under the Act's statutory scheme could lawfully extend beyond those federal statutory interests to adjudicate completed territorial diversion works, independently vested beneficial-use rights, and other property interests arising under territorial laws, especially those located on private land. The Court did not address that question before applying res judicata.

The New Mexico Territorial Irrigation Acts of February 24, 1887, and February 27, 1891 (Laws of 1887, Chapt. 12 and Laws of 1891, Chapt. 71) respectively, (1891 Compilation of Territorial Laws, Corporations, Irrigation, Sections 467, et seq.), authorized territorial irrigation corporations to construct, finance, maintain, and operate reservoirs, canals, ditches, pipelines, and related irrigation works for the delivery of water to farming areas.

That statutory framework demonstrates that ownership, financing, construction, and operation of irrigation infrastructure were legally distinct from ownership of the beneficial-use rights acquired by the individual appropriators through diversion and beneficial use.

Likewise, the Act coordinated with the existing territorial framework by granting qualifying Territorial irrigation companies federal public-land rights-of-way and storage easements. It did nothing to extinguish or alter independently vested territorial property rights.

Accordingly, a conclusion that the Proceeding forfeited the defendant corporations' federal statutory reservoir and public-land right-of-way interests, or that neither the Company nor Dr. Boyd owned the farmers' beneficial-use rights, does not resolve the issue presented here. Claimants have never alleged that either the Company or Dr. Boyd owned the farmers' beneficial-use and ditch rights.

Rather, Claimants contend that:

- the farmers acquired beneficial-use rights directly under New Mexico territorial law through diversion and beneficial use;

- the Company's completed diversion works provided the infrastructure through which additional territorial appropriations were perfected; and
- Dr. Nathan E. Boyd asserted separate receivership, debenture, lien, liquidation, and infrastructure interests independent of ownership of the farmers' beneficial-use rights, *Snow v. Abalos*, supra and *Candelaria v. Vallejos*, supra.

Those independent interests cannot be precluded by the Proceeding as derivative of the Company without first determining whether they were ever within the scope and subject-matter jurisdiction of the Proceeding. "Cases are not authority for propositions not considered". *Potter v. Pierce*, 2015-NMSC-002, ¶ 17 (citing *Fernandez v. Farmers Ins. Co. of Ariz.,* 1993–NMSC–035, ¶ 15).

Likewise, before giving the 1903 judgment preclusive effect, the 1903 Court was required to determine whether the federal statutory proceeding authorized by Congress could lawfully adjudicate property interests arising independently under territorial law, *In re Bradfield*,1982-NMCA-047.

The Order does not answer that question. Instead, it substitutes its conclusion to the very question requiring determination.

Claimants respectfully submit that subject-matter jurisdiction cannot be established by assumption or conclusion. Because subject-matter jurisdiction defines the permissible scope of every judgment, the Court must first determine what property interests were actually within the subject-matter jurisdiction and adjudicative scope of the 1903 forfeiture proceeding before concluding that those interests were adjudicated or extinguished.

Claimants move this Court to reconsider whether the Proceeding had jurisdiction of the Claimants and their vested pre-federal Rights and the Boyd's completed irrigation facilities.

II. THE COURT'S CONCLUSION THAT THE COMPANY HAD NO WATER RIGHTS DOES NOT ESTABLISH THAT THE FARMERS' SEPARATE TERRITORIAL RIGHTS WERE FORFEITED.

The Court's Order relies upon *Estate of Boyd* for the proposition that the Proceeding extinguished the Company's federal statutory interests and bars later claims derived from those interests.

Claimants do not dispute that neither the Company nor Dr. Boyd owned the farmers' beneficial-use rights.

The issue, however, is not whether the Company or Dr. Boyd owned those rights. The issue is whether the absence of Company ownership establishes that the farmers' independently vested territorial rights were forfeited.

It does not.

The absence of beneficial-use rights in the Company or Boyd does not establish that the farmers' Rights were extinguished, nor does it establish that those Rights were ever within the subject matter or subject-matter jurisdiction of the Proceeding.

Rather, the Court must determine who held those Rights, under what law they arose, and whether the real parties in interest or their property interests were ever before the 1903 court.

New Mexico law distinguishes ownership of beneficial-use rights from ownership of irrigation infrastructure, NMSA (1978) 72-1-2 (1907).

Beneficial-use rights arise through diversion and application of water to beneficial use by the appropriator. *Candelaria v. Vallejos*, 1905-NMSC-019; *Snow v. Abalos*, 1914-NMSC-022.

The Company's completed diversion dams and canals enabled additional Rio Grande water to be diverted and applied to irrigation of farmers' lands. The beneficial-use rights created through that process vested beneficial-use water rights in the farmer appropriators, not in the Company.

Accordingly, the Court's conclusion that the Company possessed no beneficial-use rights does not establish that the farmers' independently vested rights disappeared. Rather, it confirms the need to determine whether the farmers' Rights were ever adjudicated in the first instance. *Garcia* reinforces that distinction.

The Court of Appeals expressly distinguished claims derivative of the Company from claims asserted independently by pre-1893 farmers and declined to decide the latter because those claims were not before it.

The present proceeding concerns those independent territorial claims that have yet to be adjudicated.

The opinion in *Garcia* reiterates the jurisdiction rule that a court cannot give preclusive effect over claims it declined to adjudicate. *Rio Puerco Irrig. Co. v. Jastro,* 1914-NMSC-041. The same analysis applies to Nathan Boydand his interest in the Company's completed irrigation works, who was not joined in the Proceeding.

Claimants do not contend that Dr. Boyd owned the farmers' beneficial-use rights. Rather, they contend that Boyd asserted separate receivership, debenture, lien, liquidation, and infrastructure interests arising from the financing, receivership, and liquidation of the Company's assets in 1901.

Those interests are legally distinct from ownership of beneficial-use rights and therefore require an independent jurisdictional analysis before they may be treated as barred by the Proceeding.

The Court's reliance upon the undisputed proposition that Boyd possessed no beneficial-use rights therefore does not resolve whether either the farmers' independently vested territorial rights or Boyd's separate property interests were ever within the subject-matter jurisdiction and adjudicative scope of the Proceeding.

III. COMPLETION OF TERRITORIAL DIVERSION WORKS PRESENTS A THRESHOLD JURISDICTIONAL ISSUE.

The approximately 30,000 acres irrigated before construction of the Company's completed diversion works do not represent the full extent of territorial irrigation development existing before federal reclamation.

Construction and operation of the Company's completed diversion dams and canals enabled additional Rio Grande water to be diverted, conveyed, and applied to beneficial use by farming communities under New Mexico territorial law. Claimants contend that, before completion of the federal Rio Grande Project in 1915, approximately 90,000 acres were associated with pre-Project irrigation development and appropriative rights senior to the later federal reclamation claim.

Those additional appropriations did not become federal rights merely because the United States later constructed Elephant Butte Dam or regulated the flow of the Rio Grande. The beneficial-use rights arose under territorial law through diversion and beneficial use, while the completed diversion works served as the physical means through which those appropriations were perfected.

Garcia confirms that the Company "completed a portion of the intended irrigation project by constructing two diversion dams and one canal." *Garcia*, No. A-1-CA-36269, mem. op. ¶ 3. That finding distinguishes the Company's completed territorial diversion system from the proposed Elephant Butte storage project, which the Company did not complete.

More importantly, *Garcia* distinguished claims derivative of the Company from claims asserted independently by the pre-1893 farmers and expressly declined to adjudicate those independent claims because they were not before the Court.

Completion therefore is not merely a historical fact. It bears directly upon the threshold jurisdictional issue before this Court.

Before the Court may determine whether those independently vested territorial rights were extinguished, it must first determine whether those rights were ever within the subject-matter jurisdiction and adjudicative scope of the 1903 forfeiture proceeding.

That same threshold jurisdiction determination necessarily precedes any inquiry into whether the alleged ultra vires governmental actions culminating in the 1903 proceeding prevented adjudication of the farmer and Boyd's property interests.

Without that threshold jurisdiction determination, application of res judicata necessarily assumes the very jurisdictional question upon which preclusion depends without evidence or a due process trial on the merits.

Accordingly, the unresolved issue is not whether the Company failed to complete the proposed storage project. The unresolved issue is whether the Act authorized forfeiture of completed territorial diversion works and independently vested beneficial-use rights arising under New Mexico territorial law.

Claimants respectfully submit that no court has made that determination.

IV. THE COURT APPLIED RES JUDICATA WITHOUT FIRST DETERMINING THE SUBJECT MATTER AND JURISDICTIONAL SCOPE OF THE 1903 PROCEEDING.

Subject-matter jurisdiction defines the permissible scope of every judgment.

The Court's June 22, 2026, Order rests upon a chain of preclusion beginning with the 1903 forfeiture proceeding, continuing through SSI-104, and culminating in the present denial of summary judgment in SSI-107.

In paragraph (3) of the Order, the Court concluded that Claimants' challenges concerning territorial, state, and federal law had already been decided, expressly or implicitly, in the adjudication.

In paragraph (4), the Court relied upon *Estate of Boyd* and *Garcia* to conclude that claims arising from the 1903 forfeiture proceeding are barred by res judicata.

Claimants respectfully submit that those conclusions assume, rather than determine, the threshold jurisdictional issue.

Before determining the preclusive effect of the 1903 judgment, the Court was required to identify the subject matter actually before the 1903 court and determine whether the Act authorized adjudication of completed territorial diversion works, independently vested beneficial-use rights, and Dr. Boyd's separate receivership, debenture, lien, liquidation, and infrastructure interests.

The Order does not undertake that analysis.

Instead, it treats the independent territorial rights asserted in SSI-107 as derivative of the Company and relies upon the undisputed proposition that neither the Company nor Dr. Boyd owned the farmers' beneficial-use rights as its basis for applying res judicata.

That reasoning does not resolve the issue presented.

Neither a default judgment nor a subsequent judgment applying res judicata may enlarge the subject matter or subject-matter jurisdiction of the original proceeding to include property interests that were never before the rendering court, *Rio Puerco Irrig. Co. v. Jastro,* 1914-NMSC-041.

Likewise, *Garcia* cannot be afforded broader preclusive effect than the decision itself. *Garcia* expressly distinguished claims derivative of the Company from claims asserted independently by the pre-1893 farmers and declined to adjudicate those independent claims because they were not before the Court.

The same jurisdictional issues also affect the Court's judgment in SSI-104, which remains pending before the New Mexico Court of Appeals.

Claimants respectfully submit that the Court's conclusion therefore rests upon the same unresolved jurisdictional premise underlying the 1903 judgment, this Court's judgment in SSI-104, and the present Summary Judgment Order.

Until that threshold jurisdictional question is resolved, application of res judicata necessarily assumes the very issue upon which preclusion depends.

Accordingly, reconsideration is warranted so that the Court may determine the jurisdictional scope of the 1903 proceeding before deciding its preclusive effect upon the independent territorial property interests asserted in SSI-107.

V. THE ORDER PERMITS LITIGATION OF ECONOMIC COERCION AND CONTRACTUAL ENFORCEABILITY WHILE PRECLUDING THE THRESHOLD JURISDICTIONAL AND PROPERTY-RIGHT ISSUES THAT CLAIMANTS CONTEND PRODUCED THOSE CONDITIONS.

In paragraph (1) of its Order, the Court concluded that issues concerning Claimants' seniority, continuous use of water rights, economic coercion, and the enforceability of agreements between the Elephant Butte Water Users' Association ("EBWUA") and the farmers remain for future litigation.

At the same time, however, paragraphs (3) and (4) preclude further consideration of the jurisdictional issues concerning the Proceeding, the Company's completed territorial diversion works, and the farmers' independently vested territorial Rights.

Claimants respectfully submit that this places the remaining litigation in the wrong legal sequence.

The issues of economic coercion and contractual enforceability did not arise in isolation. They necessarily depend upon determining what rights the farmers possessed before the alleged coercion occurred.

Furthermore, if the farmers independently vested territorial Rights were extinguished in 1903 how could they be the subject of any contract in 1905.

Accordingly, the threshold issue is not whether economic pressure was later exerted or whether particular contractual provisions are enforceable.

The threshold issue is what rights the farmers possessed when the alleged coercion occurred and whether those rights had ever been lawfully extinguished.

The Order permits litigation concerning the alleged consequences while precluding determination of the jurisdictional and property-right questions that Claimants contend produced those consequences.

Claimants contend that the governmental obstruction of the Company's irrigation system, the procurement of the 1903 default judgment, the exclusion of interested parties from that Proceeding, the seizure of control over all the irrigation facilities in the Lower Rio Grande Valley by the U.S. and subsequent treatment of the farmers' territorial rights as derivative of the Company collectively form the historical and legal circumstances that ultimately led to the later contractual framework.

Those issues are not asserted to explain the historical development of the completed diversion system, the governmental actions affecting that system, and the legal circumstances under which the farmers were later coerced into entering the federal reclamation framework.

By permitting litigation concerning coercion while treating those threshold jurisdictional questions as precluded, the Order places the burden on litigants to determine the alleged consequences before determining the rights from which those consequences necessarily arose. Claimants respectfully submit that the proper sequence is the reverse.

The Court must first determine the nature and source of the farmers' pre-Project rights, the jurisdictional scope of the 1903 forfeiture proceeding, and whether those rights were ever lawfully extinguished in 1903.

Only after those questions are resolved can the Court meaningfully determine whether the later contractual arrangements were voluntary, coercive, enforceable, or otherwise legally effective.

Reconsideration is therefore necessary to restore the proper sequence of adjudication.

VI. THE COURT SHOULD NOT CHARACTERIZE CLAIMANTS' ALLEGATIONS AS INTRINSIC FRAUD WITHOUT FIRST DETERMINING WHETHER THE ALLEGED CONDUCT WAS NOT WITHIN THE PROCEEDING

The Order treats Claimants' allegations concerning procurement of the 1903 default judgment as intrinsic fraud and concludes that those issues have already been resolved. Claimants respectfully submit that the Court cannot characterize those allegations as intrinsic fraud without first determining whether the alleged extrinsic conduct was outside the Proceeding.

New Mexico law recognizes that a prior judgment does not necessarily foreclose inquiry into lack of jurisdiction, denial of due process, or fraud in the procurement of a judgment. See

Conglis v. Radcliffe, 1995-NMSC-036; *Standage Farms, Inc. v. Lusk Onion, Inc.*, 2011-NMCA-057; *Armijo v. Shambaugh*, 1958-NMSC-109.

Intrinsic fraud ordinarily concerns false testimony, fraudulent evidence, concealment, or similar misconduct occurring within an adversarial proceeding in which the affected parties had a meaningful opportunity to appear and litigate.

Extrinsic fraud, by contrast, concerns conduct that prevents interested parties from appearing, presenting evidence, contesting jurisdiction, or protecting their property interests in the first instance.

Claimants allege the actions by the U.S. and its co-conspirators were outside the Proceeding and thus extrinsic fraud.

Although, Claimants do contend that false evidence was presented during litigation, they also allege that the Proceeding was structured so that the persons and property interests later treated as extinguished were never before the Court, were never represented, and never received a trial on the merits concerning jurisdiction or their independently vested territorial Rights were prevented from being within the subject matter of the Proceeding.

The extrinsic actions included the intended refusal to join the farmers whose beneficial-use rights are now treated as extinguished, the non-joinder of Dr. Boyd despite his known receivership, debenture, lien, and infrastructure interests, prosecution of the Proceeding against corporate defendants known to lack authority and capacity to represent those interests, and the absence of any joinder in the Proceeding subject matter of the Company’s completed diversion works, the U.S.’ obstruction of the Company’s storage project, or the jurisdictional limits of the Act.

If those allegations are true, they concern fraud in the procurement of the judgment and fraud on the judicial system, rather than misconduct occurring during an otherwise valid adversarial proceeding.

That distinction is critical.

The Court cannot rely upon the absence of jurisdictional findings concerning the farmers' independently vested rights as proof that those matters were adjudicated, while simultaneously refusing to consider whether the actions and procedures employed prevented those matters from being presented. Subsequent appellate decisions have failed to resolve those issues, by treating the 1903 judgment as barring the Claimants from presenting their pre-federal Rights.

The relevant inquiry is whether any prior proceeding determined, upon an evidentiary record, whether the alleged conduct prevented the affected parties from presenting their jurisdictional objections and protecting their property interests.

Claimants respectfully submit that no such determination has ever been made.

At a minimum, the historical evidence identified by Claimants warrants reasonable discovery and an evidentiary inquiry before the Court characterizes the allegations as intrinsic fraud and accords the 1903 default judgment preclusive of Claimants' right to a due process trial to show pre-project rights asserted in SSI-107 survive to the present day.

VII. ALTERNATIVELY, THE CONTROLLING QUESTIONS OF LAW SHOULD BE CERTIFIED FOR INTERLOCUTORY APPEAL.

If the Court declines to reconsider its June 22, 2026, Order, Claimants respectfully request certification of the controlling questions of law for interlocutory appeal pursuant to Section 39-3-4(A) NMSA 1978 and Rule 12-203 NMRA.

This Motion presents controlling legal questions as to which substantial grounds exist for difference of opinion. Immediate appellate review may materially advance the completion of this adjudication by resolving the threshold jurisdictional issues before the parties undertake further proceedings concerning coercion, contractual enforceability, priority, and seniority.

The controlling questions include:

1. Whether the Act of March 3, 1891, granted the 1903 territorial court authority to adjudicate completed diversion works and independently vested beneficial-use rights arising under New Mexico territorial law.
2. Whether the1903 default judgment forfeiting the Company's federal statutory reservoir and public-land right-of-way interests may be given preclusive effect over legally distinct territorial property interests without first determining that those interests were within the subject matter and jurisdiction of the Proceeding.
3. Whether *Garcia*, which expressly distinguished claims derivative of the Company from claims asserted independently by pre-1893 farmers and declined to adjudicate those independent claims, may nevertheless be afforded preclusive effect against the independent territorial rights asserted in SSI-107.
4. Whether SSI-104 may properly be treated as preclusive in SSI-107 while SSI-104 remains pending before the New Mexico Court of Appeals and SSI 104 is subject to the same jurisdictional issues raised by Claimants herein.
5. Whether allegations that interested parties and independently vested property interests were prevented from appearing, presenting jurisdictional objections, and protecting their rights may be characterized as intrinsic fraud without reasonable discovery or an evidentiary hearing.
6. Whether the Court may proceed to litigate economic coercion and contractual enforceability while treating as precluded the threshold jurisdictional and property-right issues necessary to determine what rights the farmers possessed at the time of the alleged contractual and economic coercion events.

These questions are controlling because the Court's Order depends upon the preclusive effect assigned to the 1903 forfeiture proceeding, *Garcia*, and SSI-104, while simultaneously permitting further litigation concerning coercion, contractual enforceability, priority, and continuous use.

Immediate appellate review would materially advance this litigation by resolving the threshold jurisdictional questions prior to the parties and the Court undertaking additional proceedings under a fatally flawed legal framework that may later be modified or reversed on appeal.

Certification would also permit the Court of Appeals to determine controlling jurisdictional issues common to both SSI-104 and SSI-107.

VIII. CONCLUSION AND PRAYER FOR RELIEF

The Court's conclusion that neither the Company nor Dr. Nathan E. Boyd owned beneficial-use rights does not resolve the claims presented in SSI-107.
Claimants have never alleged that the Company or Dr. Boyd owned those rights.

The threshold issue regarding preclusion is whether the independently vested territorial diversion works, beneficial-use rights, and associated property interests asserted in SSI-107 were ever within the subject matter and subject-matter jurisdiction of the 1903 Proceeding.
The Court did not make that determination before applying res judicata.

Instead, the Order treats the farmers' territorial Rights asserted in SSI-107 as derivative of the Company, relies upon SSI-104 as preclusive while that decision remains pending on appeal, affords *Garcia* preclusive effect over claims that *Garcia* expressly declined to address, and mischaracterizes Claimants' allegations concerning procurement of the 1903 default judgment as intrinsic fraud rather than extrinsic fraud without first determining whether the alleged conduct was intended to prevent adjudication and jurisdiction of the affected property interests, *Potter v. Pierce*, supra, ¶ 17.

The Order further permits litigation concerning economic coercion and contractual enforceability to proceed while precluding adjudication of the property Rights that were the subject of the contracts.

Claimants respectfully submit that preclusion requires prior adjudication of the Rights by a court with jurisdiction of the parties and subject matter in a full trial on the merits and final decision regarding those rights on which preclusion is based, *Bernhard v. Bank of America Nat. Trust & Savings Ass'n*, 19 Cal.2d 807, 810, 122 P.2d 892, 895 (1942); *Blonder-Tongue Labs, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 323-24 (1971); Restatement of Judgments, "Persons not Parties or Privies" § 93 (1942).

Until the Court determines whether the independent territorial rights asserted in SSI-107 were ever within the subject-matter jurisdiction and adjudicative authority of the Proceeding, application of res judicata necessarily assumes the very jurisdictional questions upon which preclusion depends.

WHEREFORE, Claimants respectfully request that the Court:

1. Reconsider and vacate its June 22, 2026, Order denying Claimants' Motion for Summary Judgment;
2. Determine the statutory and jurisdictional scope of the 1903 forfeiture proceeding before assuming that Proceeding's preclusive effect against the Claimants' claim of Rights asserted in SSI-107;
3. Determine whether those independently vested territorial rights and associated property interests were ever within the subject matter and subject-matter jurisdiction of the 1903 proceeding;
4. Permit reasonable discovery and, if necessary, an evidentiary hearing concerning the procurement of the 1903 default judgment, including whether the U.S.' alleged conduct to prevent jurisdiction, joinder of indispensable parties, and their affected property interests

were outside the adversarial proceeding and thus extrinsic fraud that prevented the 1903Court's decree to bind the Claimants' Rights;

5. Recognize that SSI-104 remains pending before the Court of Appeals and should not be accorded preclusive effect in SSI-107 until the jurisdictional issues common to both proceedings are finally resolved..
6. Thereafter, determine the remaining issues concerning priority, seniority, continuous use, economic coercion, and contractual enforceability upon a legally established determination of the nature and continued existence of the farmers' pre-Project territorial rights; or
7. Alternatively, certify the controlling questions of law identified herein for interlocutory appeal pursuant to Section 39-3-4(A) NMSA 1978 and Rule 12-203 NMRA.

Respectfully submitted,

/s/ Robert Simon

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Certificate of Mailing

I HEREBY CERTIFY that on July 17, 2026, I served the foregoing Pre-1906 Claimants' Motion to Reconsider Order Denying Motion for Summary Judgment and, Alternatively, for Certification for Interlocutory Appeal on the Court and all counsel of record in this case by email.

/s/ Robert Simon