

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

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

Plaintiff,
v.

Elephant Butte Irrigation
District, et al.,

Defendants.

No. D-307-CV-96-888
Lower Rio Grande Adjudication

James J. Wechsler
Judge Pro Tempore

Stream System Issue No. 107
Pre-Project Interests
D-307-SS-9700107

**PRE-1906 CLAIMANTS' REPLY IN SUPPORT OF ITS MOTION TO RECONSIDER
THE ORDER DENYING ITS 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 1903 Proceedings to which the Court has given preclusive effect in error.

The DC's Judgment in SSI-104 cannot preclude SSI-107 merely because it is a final judgment; the Court must still establish identity of parties/privity, subject matter/cause of action, and actual opportunity for adjudication.

New Mexico requires more than just a prior judgment. *Potter v. Pierce*, 2015-NMSC-002, {10}, states that claim preclusion requires a final judgment, on the merits, the same parties,

and the same cause of action. Similarly, *Myers v. Olson*, 1984-NMSC-015, {19} also emphasizes the requirement of a full and fair opportunity to litigate the claim.

The District Court should not use SSI-104 to conclusively determine in SSI-107 the very substantive questions presently under appellate review, particularly where those SSI-107 rights were excluded from SSI-104 as matters for separate adjudication or denied introduction into evidence by Motion in Limine to attack the U.S. interests.

Claimants respectfully request that the Court determine the threshold jurisdictional question that necessarily precedes application of those decisions in SSI-107: whether the pre-federal independent territorial property interests asserted in SSI-107 were ever within the subject-matter jurisdiction and adjudicative scope of the 1903 forfeiture 1903 Proceeding, *U.S. v. RGD&IC*, 1906-NMSC-013, 13 N.M. 386 (“1903 1903 Proceeding”) and whether the farmers have had a full and fair opportunity to protect and litigate their property rights.

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 1903 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 (“Boyd Estate”), and *State ex rel. Office of the State Engineer v. Garcia*, No. A-1-CA-36269 (N.M. Ct. App. Apr. 25, 2023) (“*Garcia*”), the Court concluded that claims derivative of the Rio Grande Dam & Irrigation

Company ("Company" or "RGD&IC"), including jurisdictional challenges to the 1903 Proceeding and judgment, *U.S. v. RGD&IC*, 1906-NMSC-013, 13 N.M. 386, are barred.

Claimants respectfully submit that the Court's preclusion analysis should be reconsidered because it rests upon a chain of reasoning beginning with the 1903 Proceeding, continuing through the Boyd Interest, SSI-104, and culminating in the present Order denying Claimants 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 holding a trial to allow Claimants to produce evidence that their water rights were independently established territorial property interests, some of which predate the Company's formation, *Keeney v Carillo*, 1883-NMSC-005.

Before giving the 1903 Proceeding's judgment, SSI-104, *Estate of Boyd*, or *Garcia* preclusive effect, the Court should determine the statutory and jurisdictional scope of the 1903 Proceeding, identify the property interests actually before that 1903 Proceeding, and determine whether the independent territorial rights asserted in SSI-107 were ever within that 1903 Proceeding's jurisdictional reach.

Claimants respectfully submit that this threshold determination has never been made and, instead, the Court assumed that the Claimants' 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, states, "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.”, citing *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} holds “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, citations omitted”.

Until the Court determines whether the 1903 Proceeding met these jurisdictional requirements, it should refrain from determining the proper preclusive effect, if any, of the 1903 judgment.

HISTORY

The 1903 Proceeding arose under the Act of March 3, 1891, Mar. 3, 1891, ch. 561, § 18, 26 Stat. 1101 (the “Act”), which granted qualifying irrigation companies federal statutory interests relating to reservoirs, canals, ditches, and rights-of-way across public lands, subject to conditions imposed by Congress. Separately, New Mexico territorial law governed irrigation corporations, completed diversion works, and beneficial-use appropriations.

Garcia recognized that the Company completed two diversion dams and one canal while failing to complete its proposed Elephant Butte storage project. *Garcia* also 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. The threshold question in SSI-107 is therefore whether the Act created jurisdiction in the 1903 territorial district court to adjudicate or forfeit those independently vested territorial diversion works, beneficial-use rights, and associated property interests.

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 1903 Proceeding arose under the Act. That Act granted qualifying irrigation companies' federal statutory easements for reservoirs, canals, ditches, and rights-of-way across public lands, subject to the conditions imposed by the Act. It did not extend its statutory scheme to irrigation facilities located on private lands in the Territory.

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.

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 created and governed use of federal reservoir and public-land right-of-way easements.

The threshold question, therefore, is whether a forfeiture 1903 Proceeding brought under the Act's statutory scheme could lawfully extend beyond those federally conveyed statutory easements 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 outside federal easements. The Court did not answer that question before applying *res judicata*.

The New Mexico Territorial Irrigation Acts of February 24, 1887 ("1887 Territory Act"), (Laws of 1887, Chapt. 12 and February 26, 1891 ("1891 Territory Act") (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.

Section 17 of the 1887 Territorial Act (Section 484 of the 1891 Compiled Territorial Laws) specifically provided that, “...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...No water shall be diverted, if it will interfere with the reasonable requirements with any person or persons or requiring the same, when so diverted.

Section 26 of the 1887 Territorial Act (Section 493 of the 1891 Compiled Territorial Laws) provided that every corporation constructing irrigation works must file a “sworn statement” containing name, location and date of commencement of construction with the County Probate Clerk in the county of such construction, providing further that, “no priority of right for any purpose shall attach to any such construction, change or enlargement, until such record is filed.”

Finally, Section 1 of the February 26, 1891, Territory Acts (Section 494 of the Compiled Territorial Laws of 1891) provided, “A copy of such sworn statement duly certified by the probate clerk shall be admitted as *prima facie* evidence of such appropriation of water in all courts of this territory. *Provided*, that the provisions of this act shall not affect any existing vested rights, or any public acequia or ditch....”

These territorial statutes distinguished ownership of irrigation facilities from existing vested rights to the use of water, including rights associated with community acequias and ditches.

Candelaria v. Vallejos, 1905-NMSC-019, confirmed the legal status of existing acequias and ditches and held that their ownership was held by their users as tenants in common. Likewise, *Snow v. Abalos*, 1914-NMSC-022, {29} held that individual farmers owned the beneficial-use rights appurtenant to their lands.

NMSA 1978 §72-1-2 (1907) defines priority dates of ownership of beneficial use rights; as follows:

“All waters appropriated for irrigation purposes, except as otherwise provided by written contract between the owner of the land and the owner of any ditch, reservoir or other works for the storage or conveyance of water, shall be appurtenant to specified lands owned by the person, firm or corporation having the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land in the manner hereinafter provided in this article. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to March 19, 1907, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use.”

These authorities establish the distinction critical to SSI-107: that ownership, financing, construction, and operation of irrigation infrastructure did not make the carrier the owner of the beneficial-use rights for the water farmers applied to their lands. The Company’s completed works provided the means through which additional appropriations were perfected but did not give the Company beneficial use property right in the water it delivered to the farmers. The beneficial-use rights associated with the water “derived from” the Company remained solely the farmers’ for purposes of res judicata, *Snow v. Abalos*, 1914-NMSC-022, {29}.

Furthermore, the farmers’ legally distinct interests cannot be precluded as derivative of the Company without first determining whether they were within the subject-matter jurisdiction and adjudicative scope of the 1903 Proceeding and if the 1903 Proceeding included the requisite

elements necessary for preclusion. “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}).

Accordingly, before giving the 1903 judgment preclusive effect, the Court must determine whether the federal 1891 Act granted the 1903 court jurisdiction to adjudicate property interests arising independently under territorial law. *In re Bradfield*, 1982-NMCA-047. The Order does not answer that question; it assumes the proposition requiring determination.

Claimants therefore move the Court to reconsider whether the 1903 Proceeding had jurisdiction over Claimants and their vested pre-federal rights.

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

The Court's Order relies upon its February 24, 2012, *Estate of Boyd* ruling for the proposition that the 1903 Proceeding extinguished the Company's federal statutory interests and therefore precludes claims derived from those interests. Claimants contend that the Order mistakenly extends preclusion to the farmers' beneficial use rights, in which the Company never owned an interest because the Farmers' rights were independently derived pursuant to Territorial law, not the Company.

New Mexico law distinguishes ownership of irrigation infrastructure from beneficial-use rights, which arise through diversion and application of water to beneficial use by the appropriator. NMSA 1978 § 72-1-2; *Candelaria v. Vallejos*, 1905-NMSC-019; *Snow v. Abalos*, *supra* at {29}. The Company's completed dams and canals provided infrastructure through

which farmers received additional water; but the appropriation of beneficial-use property rights associated with that water vested in the farmer appropriators, not the Company.

Garcia expressly distinguished claims derivative of the Company from claims asserted independently by pre-1893 farmers and declined to decide the latter because they were not before it. *Garcia* therefore cannot be afforded preclusive effect over claims it expressly declined to adjudicate, *Rio Puerco Irrig. Co. v. Jastro*, 1914-NMSC-041, *Potter v. Pierce*, *supra*, at {17}.

Claimants contend that Dr. Boyd did not own the farmers' beneficial use rights. Instead, Claimants contend that Dr. Boyd held separate property interests in the completed irrigation infrastructure arising from his financing and in his role as receiver upon the liquidation of the Company's assets in 1901. Those infrastructure interests, including the Boyd Estate's receivership lien interests, were legally distinct from the farmers' independently vested beneficial-use rights, which require an independent jurisdictional analysis before being treated as barred by the 1903 Proceeding. *Deflon v. Sawyers*, 2006-NMSC-025, ¶ 3.

Thus, the Court's prior holding that Boyd possessed no beneficial-use rights does not resolve whether the independently appropriated territorial rights or whether the farmers' beneficial use and diversion rights were within the subject-matter jurisdiction and adjudicative scope of the 1903 Proceeding.

III. COMPLETION OF TERRITORIAL DIVERSION WORKS AND APPROPRIATION OF BENEFICIAL-USE WATER RIGHTS ARE THRESHOLD JURISDICTIONAL ISSUES.

Garcia states 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.

Garcia distinguishes the Company's completed territorial irrigation facilities from its proposed

Elephant Butte storage project and bears directly upon the jurisdictional scope of the 1903 Proceeding.

Before determining whether the farmers' independently vested territorial rights were extinguished, the Court must determine whether those rights were within the subject-matter jurisdiction of, and adjudicated in, the 1903 Proceeding.

Claimants allege that actions by the United States and other participants deprived Claimants' predecessors of notice of the United States' filing and the 1903 Proceeding, and that they were not joined or given an opportunity to defend their rights. The 1903 Decree cannot be given preclusive effect against those interests without determining whether the affected parties received notice and an opportunity to be heard. *Restatement (Second) of Judgments* § 2 (1982); *Rio Puerco Irrig. Co. v. Jastro*, 1914-NMSC-041. Summary dismissal without a full and fair opportunity to litigate does not satisfy the requirements for preclusion, *Potter v. Pierce*, ¶ 15; *Restatement (Second) of Judgments* § 27 (1982).

Mullane v. Central Hanover Bank and Trust, 339 U.S. 306, 314 (1950), states:

“An elementary and fundamental requirement of due process in any proceeding, which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457 (1940); *Grannis v. Ordean*, 234 U.S. 385 (1914); *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604 (1914); *Roller v. Holly*, 176 U.S. 398 (1900).”

The failure of the 1903 Proceeding to provide the Farmers due process, including a notice reasonably calculated, under all the circumstances, to apprise

them of the pendency of the action and trial that afforded them an opportunity to present their objections, without any other issue should deprive the 1903 default judgment from forming the basis of res judicata.

The court's due-process inquiry necessarily should accompany a jurisdictional inquiry into whether the 1903 Proceeding had jurisdiction of the farmers' and Boyd's persons and property interests separate from the Court's jurisdiction granted by the federal Act of 1891 to determine the Company's federal statutory rights.

The unresolved issue is therefore whether the 1903 Proceeding, applying the federal 1891 Act, had jurisdiction to forfeit completed diversion works and independently vested beneficial pre-federal rights asserted in SSI-107.

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

Joinder of all claims to the use of water defines the statutory scope of a comprehensive adjudication of water rights. NMSA 1978 § 72-4-17 (1907). New Mexico law distinguishes judicial adjudication of water rights from administrative management of water; the courts, rather than the State Engineer, possess authority to adjudicate water rights. *Tri-State Generation & Transmission Ass'n v. D'Antonio*, 2012-NMSC-039. That distinction reinforces the need for the DC to determine what rights and parties were actually within the jurisdiction and adjudicative scope of the 1903 Proceeding before giving it preclusive effect.

The DC's Order rests upon a chain of preclusion conclusions beginning with the 1903 Proceeding, continuing through the Boyd Estate 2011-2012 Proceedings and SSI-104 in 2015, and culminating in the denial of Claimants' Motion for Summary Judgment in SSI-107 inv2026.

Paragraphs (3) and (4) of the Order treat Claimants' territorial, state, and federal challenges as already decided, "expressly or implicitly," and rely upon Estate of Boyd and *Garcia* to bar claims arising from the 1903 Proceeding. Claimants submit that preclusion cannot be applied without first satisfying the four elements identified in *Deflon v. Sawyers*, 2006-NMSC-025, {3}, including the required identity of parties or privies and a full and fair opportunity to protect their property rights, *Mullane v. Central Hanover Bank and Trust*, 339 U.S. 306, 314 (1950).

Instead, the DC mistakenly treats the farmers' independent territorial rights asserted in SSI-107 as derived from the Company and then relies upon its conclusion in Boyd Estate that neither the Company nor Boyd owned beneficial-use water rights. But Boyd never claimed ownership of the farmers' beneficial-use rights. That characterization was introduced into the adjudication by the Court itself.

The absence of an ownership of beneficial-use rights by Boyd or the Company cannot establish whether the farmers appropriated their own independently vested beneficial-use rights. Nor can it establish whether those farmers' rights were derived from the Company and consequently extinguished by the 1903 Proceeding. The DC thus uses the absence of a water right that Boyd never claimed as the basis for applying res judicata to legally distinct water rights appropriated independently by the farmers and legally never derived from the Company.

Snow v. Abalos, supra at {29}, further demonstrates neither the changes in ownership or possession of Mesilla Valley irrigation infrastructure did not alter the farmers' prior appropriated water rights appurtenant to their lands.

Neither a default judgment nor a later application of res judicata may enlarge the jurisdiction of the original 1903 Proceeding to include property interests of persons who were

never joined or in privity with parties in the proceedings before the rendering court, *Rio Puerco Irrig. Co. v. Jastro*, 1914-NMSC-041, as held in *Garcia*, which expressly declined to adjudicate the independently asserted farmers' claims.

The same jurisdictional questions affect the Court's judgment in SSI-104, which remains pending before the New Mexico Court of Appeals in Case No. A-1-CA-36269. Until the jurisdictional scope of the underlying 1903 Proceeding is resolved, the Court should not preclude the adjudication of the Claimants' independent territorial property interests.

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' senior priority, 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.

However, paragraphs (3) and (4) of the Order preclude further consideration of the jurisdictional issues concerning the 1903 Proceeding, the Company's completed irrigation facilities, diversion works vested prior to 1903, and the farmers' 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 first determining what rights the farmers possessed when the U.S. seized control of private irrigation in the LRG in 1903, before the alleged coercion and subsequent contractual arrangements occurred in 1905.

If the farmers' rights were extinguished in 1903, it is difficult to reconcile that conclusion with their being the subject of EBWUA contractual arrangements in 1905 or with the holding in *Snow v. Abalos*, *supra* ¶ 29, recognizing the farmers' ownership of their water rights in 1914.

The proper sequence is therefore to determine first the nature and source of the farmers' pre-Project rights, the jurisdictional scope of the 1903 Proceeding, and whether the farmers' rights were lawfully extinguished. Only then can the Court meaningfully determine the legal effect of later contractual arrangements and alleged economic coercion. Reconsideration is necessary to facilitate that adjudication pursuant to NMSA 1978 § 72-4-17.

VI. THE COURT SHOULD NOT CHARACTERIZE CLAIMANTS' ALLEGATIONS AS INTRINSIC FRAUD WITHOUT FIRST DETERMINING WHETHER THE ALLEGED CONDUCT WAS WITHIN OR OUTSIDE THE 1903 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 submit that that characterization cannot be made without determining whether the alleged conduct occurred within or outside the adversarial 1903 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, *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 within an adversarial proceeding in which the affected parties had a meaningful opportunity to 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 that conduct outside the 1903 Proceeding prevented the real parties in interest (the farmers and Nathan Boyd) from appearing, presenting evidence, and protecting their property interests. The alleged conduct includes refusal to allow the Territory to intervene to protect farmers' vested rights; failure to provide notice to and join Nathan Boyd despite his ownership interests in completed irrigation facilities was known to the U.S.; and prosecution against liquidated corporate defendants lacking assets, authority, and capacity to represent Boyd and the farmers' property interests. Claimants contend that the 1903 default was procured by the U.S. by a conspiracy to prevent the farmers and Boyd from receiving notice of the U.S.' SC so they would not appear to defend their property rights in the 1903 Proceeding. All of the conspirators' conduct was outside the 1903 Proceeding rather than misconduct within the 1903 Proceeding to procure a sham default so the U.S. could justify seizing the irrigation system in the LRG without due process or just compensation, *Cook v. Cook*, 342 U.S. 126 (1951), Section 17 of the 1887 Territorial Act (Section 484 of the 1891 Compiled Territorial Laws) and Sections 7 and 8 of the Reclamation Act of 1902.

The Court should reconsider whether it can rely upon the absence of jurisdictional findings concerning joining the farmers and jurisdiction over their independently vested rights in the 1903 Proceeding, while simultaneously holding that those very matters were adjudicated and are now precluded. The Court should further consider whether the U.S.' actions and procedures surrounding the 1903 Proceeding were outside the Proceeding and intended to prevent the farmers, their property interests, and the jurisdictional issues concerning those interests from ever being presented to the court.

Claimants contend that subsequent appellate decisions have not resolved these threshold issues because those decisions treated the 1903 default judgment as preclusive without first

determining whether the farmers and their independently vested Territorial rights were within the jurisdiction and adjudicative scope of the 1903 Proceeding.

The relevant inquiry is whether any prior proceeding determined, upon an evidentiary record and after a full and fair opportunity to litigate, whether the alleged extrinsic conduct of participants in the 1903 Proceeding prevented the real parties in interest who owned the rights the U.S. sought to be forfeited were prevented from appearing, presenting their jurisdictional objections, and protecting their independently vested property interests. Claimants respectfully submit that no such evidentiary inquiry or 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 their allegations and facts as evidence of intrinsic fraud and concludes the 1903 default judgment precludes Claimants' right to a due process trial to show their pre-project rights asserted in SSI-107 survive to the present.

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.A, NMRA 2026.

The Claimants' Motion presents controlling legal questions on which substantial grounds exist for a difference of opinion, and immediate appellate review would materially advance the adjudication by resolving threshold jurisdictional issues before further 1903 Proceedings concerning coercion, contractual enforceability, priority, and seniority.

The controlling questions include:

1. Whether the federal Act of March 3, 1891, granted the 1903 territorial court jurisdiction to adjudicate or extinguish completed territorial diversion works,

independently vested beneficial-use rights, and associated property interests arising under New Mexico territorial law.

2. Whether the 1903 default judgment, SSI-104, or other decisions finding Claimants' rights were Company-derived interests and thus may be given preclusive effect rather than legally distinct territorial property interests without first determining that those interests and their owners were within the prior 1903 Proceeding's jurisdiction and adjudicative scope and Claimants' predecessors were afforded a full and fair opportunity to be heard in the 1903 Proceeding.

3. Whether *Garcia*, which expressly distinguished claims derived from the Company from claims asserted independently by pre-1893 farmers and declined to adjudicate those independent claims, may nevertheless be afforded preclusive effect against Claimants' alleged independently asserted pre-federal rights in SSI-107.

These questions are controlling because the Order assigns preclusive effect to the 1903 Proceeding, *Garcia*, and SSI-104 while barring further consideration of the underlying jurisdictional issues in SSI-107.

Immediate appellate review, with consolidation with the SSI-104 appeal, if appropriate, would materially advance this adjudication by resolving the common threshold jurisdictional questions before additional proceedings occur under a legal framework that may later be modified or reversed.

CONCLUSION AND PRAYER FOR RELIEF

The Court's determination that neither RGD&IC nor Dr. Boyd owned the farmers' beneficial-use rights does not resolve SSI-107. To the contrary, that distinction demonstrates why the farmers' independently vested territorial rights cannot be treated as "derived from" the Company's federal statutory interests without determining whether the farmers' separate rights were within the jurisdiction and adjudicative scope of the 1903 Proceeding.

Claimants respectfully submit that the DC's finding that the 1903 Proceeding default Decree extinguished the farmers' completed territorial diversion interests and independently vested beneficial-use rights when controverted by the contrary holdings in *Candelaria v. Vallejos*, 1905-NMSC-019, that confirmed the legal status of existing acequias and ditches and held that their ownership was held by their users as tenants in common and *Snow v. Abalos*, 1914-NMSC-022, {29} that held that individual farmers owned the beneficial-use rights appurtenant to their lands 11 years after the 1903 default Decree.

Accordingly, the Court should reconsider its June 22, 2026 Order and determine the jurisdictional and preclusion issues identified above before proceeding to litigate the remaining issues, or alternatively certify the controlling questions for interlocutory appellate review.

WHEREFORE, Claimants respectfully request that the Court:

1. Reconsider and vacate its June 22, 2026, Order denying Claimants' Motion for Summary Judgment;
2. Reconsider whether the 1903 Proceeding satisfied the elements required by *Deflon*, before granting it preclusive effect against the rights asserted in SSI-107;
3. Reconsider whether the Claimants' predecessors independently vested territorial rights and associated property interests were within the subject-matter jurisdiction of the 1903 Proceeding;
4. Permit reasonable discovery and, if necessary, an evidentiary hearing concerning procurement of the 1903 default judgment, including whether the alleged conduct preventing joinder of indispensable parties and adjudication of their affected property interests occurred outside the 1903 judicial Proceeding and, thus, constituted extrinsic fraud;
5. Decline to afford the 1903 default decree and the SSI-104 Judgment preclusive effect in SSI-107 beyond the federally conveyed dam site easement property interests, issues actually within the jurisdiction and adjudicative scope of the federal Act of 1891, and actually litigated therein.

6. Thereafter, determine the remaining issues concerning priority, seniority, continuous use, economic coercion, and contractual enforceability after discovery and an evidentiary trial affording Claimants an opportunity to establish and protect their asserted 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.A. NMRA 2026.

Respectfully submitted,

s/s/ Robert Simon
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Certificate of Mailing

I HEREBY CERTIFY that on August 21, 2026, I served the foregoing Reply in Support of Pre-1906 Claimants' Motion to Reconsider the Order Denying their 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