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Wood, Melissa

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

On June 22, 2026, this Court entered its Order Denying Motion for Summary Judgment (“Order”), holding that the United States’ Rio Grande Project water rights were conclusively adjudicated in Stream System Issue No. 104 (“SSI 104”) and “will not be revisited in connection with this summary judgment motion” (Order ¶ 3) and that all claims derivative of or relating to the

Rio Grande Dam & Irrigation Company (“RGD&IC” or “Company”) and the 1903 default forfeiture order are foreclosed under the doctrine of *res judicata* under binding appellate authority (Order ¶ 4).

Despite the directives in the Order, Movants filed a Motion for Reconsideration on July 31, 2026, attempting once again to overturn precedent, collaterally attack the order in SSI 104, and relitigate theories that have been repeatedly rejected by this Court and higher courts. The Motion for Reconsideration should be denied or stricken for three primary reasons:

First, Movants’ alternative request for interlocutory appeal certification is procedurally barred and untimely under Rule 12-203 NMRA. Additionally, the Motion for Reconsideration rehashes previously rejected arguments in violation of established New Mexico reconsideration standards. Finally, electronic file metadata embedded within the July 31, 2026 Motion for Reconsideration indicates that the document appears to have been created by James Scott Boyd, who has been barred from participating in SSI 107.

II. ARGUMENT

A. MOVANTS’ REQUEST FOR INTERLOCUTORY APPEAL CERTIFICATION IS PROCEDURALLY BARRED, UNTIMELY UNDER RULE 12-203(A) NMRA, AND FAILS SUBSTANTIVELY UNDER NMSA 1978, § 39-3-4(A).

In Section VII of their motion, Movants request that the Court certify six questions for interlocutory appeal pursuant to NMSA 1978, § 39-3-4(A) and Rule 12-203 NMRA. This request is procedurally defective, untimely, and lacks merit.

Under New Mexico law, interlocutory appeals are governed by NMSA 1978, § 39-3-4(A) and Rule 12-203 NMRA. In § 39-3-4(A), state statute provides that if a district judge, in making an order in a civil action not otherwise appealable, is of the opinion that such order involves a

controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. No such statement was made in the Court's Order denying the Motion for Summary Judgment.

Since the Court did not indicate a desire for appellate review in its Order, Rule 12-203(A) NMRA governs the procedure for a party seeking interlocutory review. It mandates that a party must file an application for interlocutory appeal directly with the clerk of the appellate court within fifteen (15) days after the entry of the district court's interlocutory order. Movants have filed a Motion for Reconsideration and, alternatively, a request for the certification of questions for interlocutory appeal. Should the Motion for Reconsideration fail, this Court is unable to certify questions for interlocutory appeal to the New Mexico Court of Appeals in the alternative because the original Order denying the Motion for Summary Judgment will stand. In addition, the time window for the Movants to request independent certification of questions for interlocutory appeal to the appellate court has also lapsed, and the State has not been served with any documents indicating that process was initiated, which would make any independent request untimely.

Even if Movants' request were timely, it fails to satisfy the statutory criteria for interlocutory appeals under NMSA 1978, § 39-3-4(A). Interlocutory certification requires a genuine, unsettled legal question upon which courts disagree. Here, there is no ground for difference of opinion. Rather, the New Mexico Court of Appeals has issued three separate opinions affirming the finality and preclusive effect of the 1903 forfeiture order: *Boyd Estate ex rel. Boyd v. United States*, 2015-NMCA-018, 344 P.3d 1013; *State ex rel. OSE v. Boyd*, No. A-1-CA-36291, 2021 WL 2592372 (N.M. Ct. App. June 24, 2021); and *State ex rel. OSE v. Garcia*, No. A-1-CA-36269, 2023 WL

3073632 (N.M. Ct. App. Apr. 25, 2023). The law regarding *res judicata* and the 1903 forfeiture order is settled.

Furthermore, certifying settled questions of *res judicata* for a fourth appellate review would severely disrupt proceedings in SSI 107. The Court's June 22 Order determined that the legitimate, narrow issue in SSI 107 involves disputed issues of material fact that must be tried. Halting discovery and trial preparation to seek interlocutory review of settled preclusion rules would waste judicial resources.

B. THE MOTION FOR RECONSIDERATION ATTEMPTS TO RELITIGATE SETTLED LAW IN VIOLATION OF RULE 1-054(B) NMRA AND GOVERNING CASE LAW.

Under Rule 1-054(B) NMRA, an order that adjudicates fewer than all claims or rights is interlocutory and remains subject to revision prior to entry of final judgment. However, a district court's discretion to reconsider an interlocutory ruling is circumscribed. As the New Mexico Court of Appeals has affirmed, a motion for reconsideration is not appropriate to revisit issues already addressed or advance arguments that were or could have been raised prior to ruling. *Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 77, 400 P.3d 290 (quoting *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)).

Reconsideration requires a showing of newly discovered evidence, an intervening change in controlling law, or clear manifest error. *Unified Contractor*, 2017-NMCA-060, ¶ 77; Movants offer none of these. Instead, Movants' primary argument is that the 1903 default forfeiture order lacked subject-matter jurisdiction over "independent territorial rights" and that the Court erred in applying *res judicata*. Movants contend that because *State ex rel. OSE v. Garcia*, No. A-1-CA-36269 (N.M. Ct. App. Apr. 25, 2023), addressed "derivative" claims, their current claims to "direct" pre-1893 territorial rights are not subject to *Garcia's* preclusion. This argument was raised

in Movants' summary judgment briefing, and this Court rejected it in Paragraph 4 on page 2 of the June 22, 2026 Order.

In *Garcia*, the Court of Appeals specifically addressed appeal claims brought by parties which included these Movants (Oscar V. Butler, Rose Marie Arispe Butler, and Sammie H. Singh, represented by Mr. Simon). The Court of Appeals determined that the 1903 forfeiture order was a final judgment on the merits, entered by a court with proper jurisdiction, and that *res judicata* barred Movants from collaterally attacking the 1903 order based on alleged fraud or lack of jurisdiction. *Garcia*, 2023 WL 3073632, at *3-4.

When Movants participated in the *Garcia* expedited *inter se* proceeding, they were required to join all legal theories and bases regarding their alleged pre-Project rights. Having failed to assert “direct” instead of “derivative” claims in *Garcia*, they are barred from raising those claims in SSI 107 by *Kirby v. Guardian Life Insurance Co. of America*, 2010-NMSC-014, ¶ 61, 148 N.M. 106, 231 P.3d 87, which held that “*Res judicata* bars not only claims that were raised in the prior proceeding, but also claims that could have been raised”.

C. THE MOTION APPEARS TO BE AUTHORED BY A PARTY WHO HAS BEEN EXPRESSLY PROHIBITED FROM PARTICIPATING IN THIS CASE.

Regarding the filing circumstances of Movants' submission, counsel circulated a Word document on July 17, 2026, which was subsequently file-stamped by the Court on July 31, 2026. The Motion for Reconsideration should be denied or stricken because it appears to have been created by James Scott Boyd. On April 8, 2025, this Court entered its Participation Order in SSI 107, which states “James Scott Boyd is not a participant in SSI-107.” Examination of the electronic file properties and metadata embedded within the Word document version of the Motion for Reconsideration circulated by Mr. Simon indicates that the document creator is Scott Boyd, as

noted by the United States in their Response to the Motion for Reconsideration filed on August 3, 2026.

III. CONCLUSION & PRAYER FOR RELIEF

The Court should deny the Motion because it provides no grounds for reconsideration and presents the same arguments that the Court rejected in its Order denying Movant's motion for summary judgment. Additionally, the Motion is authored by a person whom the Court dismissed and barred from this proceeding because he has no cognizable claims in the adjudication. The Court should deny Movants' alternate request for certification of interlocutory appeal because it is being proposed as an alternative form of relief to the motion for reconsideration, and, should the Motion fail, the certification of questions for interlocutory appeal is beyond the purview of this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patrick Rostock', written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY certify that a copy of *State of New Mexico's Response to Pre-1906 Claimants' Motion to Reconsider Order Denying Motion for Summary Judgment and, Alternatively, for Certification of Interlocutory Appeal* was mailed or emailed to the parties identified below this 17 day of August, 2026

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