

**STATE OF NEW MEXICO COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

**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 SS-97-107
Pre-Project Interests
D-307-SS-9700107**

**UNITED STATES' RESPONSE IN OPPOSITION TO PRE-1906 CLAIMANTS' MOTION
TO RECONSIDER ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND,
ALTERNATIVELY, FOR CERTIFICATION FOR INTERLOCUTORY APPEAL**

The United States hereby responds in opposition to Pre-1906 Claimants' Motion to Reconsider Order Denying Motion for Summary Judgment and, Alternatively, for Certification of Interlocutory Appeal ("Motion"), filed July 17, 2026. The Motion should be denied for three reasons. First, the Motion merely rehashes arguments presented in support of the Pre-1906 Claimants'¹ denied motion for summary judgment – and previously rejected in numerous proceedings dating back over a century. Motions for reconsideration should be denied where, as here, they merely repeat previously rejected arguments. *Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 77, 400 P.3d 290. Second, the Pre-1906 Claimants have presented no grounds for certifying the denial of their motion for summary judgment for interlocutory appeal, as the Motion does not involve "a controlling question of law as to which

¹ For simplicity, the United States refers to the purported Pre-1906 Claimants as such. However, the United States does not concede that anyone included in this group has valid, pre-1906 water rights.

there is a substantial ground for difference of opinion.” N.M. Stat. Ann. § 39-3-4.A. Quite the contrary, courts have repeatedly rejected these same and related arguments, including most recently in *State ex rel. Off. of State Eng’r v. Garcia*, No. A-1-CA-36269, 2023 WL 3073632 (N.M. Ct. App. Apr. 25, 2023) (“*Garcia*”). Third and finally, the Motion suffers from the same threshold defect as prior filings – the Pre-1906 Claimants’ failure to establish their standing to participate in these proceedings. As before, the Pre-1906 Claimants fail to identify who they purportedly represent or what water rights they claim. This defect is even more pronounced in the present Motion, which has embedded information indicating it was prepared by “Scott Boyd,” whom the Court has barred from participating in SSI-107. For all of these reasons, further articulated below, the Motion should be denied.

ARGUMENT

I. The Motion Merely Rehashes Previously Rejected Arguments.

The Motion is the latest in a long-running series of attempts to relitigate issues that were settled over a century ago. As the United States recounted in its opposition to the Pre-1906 Claimants’ motion for summary judgment, the Pre-1906 Claimants’ arguments – including their challenges to the water rights held by the United States for the Rio Grande Project, as determined in SSI-104, and their efforts to escape the preclusive effect of a default judgment entered against the Rio Grande Dam and Irrigation Company and its successors, as affirmed in 1906 and 1909 by the Supreme Court of the Territory of New Mexico and the United States Supreme Court – are barred by collateral estoppel and res judicata. *See* United States’ Resp. in Opp.to Pre-1906 Claimants’ Mot. for Summ. J. on Pre-Project Priorities (“U.S. Summ. Judg. Opp.”) at 23-30.

The repackaging of these arguments in the present Motion provides no basis for relief. 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 could have been raised

in prior briefing.” *Unified Contractor*, 2017-NMCA-060, ¶ 77, 400 P.3d 290 (quoting *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)); *see also Deaton v. Gutierrez*, 2004-NMCA-043, ¶¶ 9-10, 135 N.M. 423, 89 P.3d 672 (rejecting motion for reconsideration that “was merely a restatement of the arguments [the movants] had already advanced against granting summary judgment.”). The Motion squarely violates this rule by raising a litany of legal issues – ranging from the New Mexico territorial court’s alleged lack of jurisdiction over the Pre-1906 Claimants’ claimed water rights, to their collateral challenges to the interlocutory decree of water rights held by the United States for the Rio Grande Project in SSI 104 – that the Pre-1906 Claimants unsuccessfully raised or could have raised in prior proceedings.

II. The Pre-1906 Claimants do not Satisfy the Standard for Interlocutory Appellate Review.

A district court may certify an interlocutory order for appellate review where the order “involves a controlling question of law as to which there is substantial ground for difference of opinion,” and “an immediate appeal from the order or decision may materially advance the ultimate termination of the litigation.” N.M. Stat. Ann. § 39-3-4.A. None of the arguments cited in the Motion meets this standard.

Far from being issues on which “there is substantial ground for difference of opinion,” *id.*, these same and similar arguments have repeatedly been rejected by the courts in a series of rulings dating back over a century. *See* U.S. Summ. J. Opp. at 27-29 (summarizing prior litigation). Most recently, in 2023, the New Mexico Court of Appeals in *Garcia* rejected an appeal filed by claimants to pre-Project water rights, also represented by counsel Robert Simon, who challenged this Court’s dismissal of certain of their water rights claims in an expedited *inter se* proceeding in this adjudication. *See Garcia*, 2023 WL 3073632, at *1. There, as here, the claimants sought to overturn the default judgment entered against the Rio Grande Dam &

Irrigation Company over a century ago based on a litany of claimed defects, including the territorial court's alleged lack of jurisdiction over the claimed water rights. *See id.* at *3. The Court rejected these arguments, finding that claimants had presented no basis “to overturn critical decisions that have been in place from 1906 until as recently as 2021.” *Id.* This Court should do the same here and deny the Motion – including the request to certify the summary judgment denial for appeal – as yet the latest chapter in the Pre-1906 Claimants' efforts to litigate and relitigate long-settled issues on which there is no “substantial ground for difference of opinion.”

III. The Pre-1906 Claimants Lack Standing to Participate.

A final defect in the Motion and additional basis for its denial is the Pre-1906 Claimants' continuing failure to establish their standing to participate in these proceedings. As recounted in the United States' summary judgment opposition, the Pre-1906 Claimants have failed to identify which claimants are included in their group and what water rights they claim. *See* U.S. Summ. Judg. Opp at 4-6. Though their counsel identified three individuals and associated water right subfiles in the “Pre-1906 Claimants' Amended Statement of Position” in SSI-107, filed June 26, 2025, the Court previously struck as untimely the Form B Notices of Intent to Participate filed by two of those claimants (Oscar Vasquez Butler and Sammy Holguin Singh Jr. aka Sammie H. Singh, aka Sammie Singh, aka Sammie H. Singh, Jr.). *See id.* at 5. The docket in SSI-107 also does not reflect any Form B filing by the third listed claimant, Rose Marie Arispe Butler. *See id.* Thus, none of these individuals appear eligible to participate in these proceedings.

The Motion makes the Pre-1906 Claimants' failure to establish standing even more pronounced. The metadata for the Motion identifies its author as “Scott Boyd.” *See* Exhibit 1 (PDF of screenshot of metadata for the Motion, as listed in Word under the “Info” tab). The

Court has barred Scott Boyd from participating in SSI-107. *See* Participation Order, filed April 8, 2025. He therefore is not properly included in the Pre-1906 Claimants and certainly provides no basis for their standing.

The Pre-1906 Claimants' continuing failure to identify who they represent and the information suggesting that a non-eligible party is involved in their filings supplies an independent basis to deny the Motion. The other adjudication parties should not have to repeatedly litigate the same issues against unidentified parties claiming unidentified water rights, and there should be no ambiguity over who is bound by adverse rulings against these unidentified claimants' interests.

CONCLUSION

For all the foregoing reasons, the Motion should be denied.

Respectfully submitted this 3rd day of August, 2026.

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EXHIBIT 1

Info

Motion to Reconsider final July17 2026 v.3

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CERTIFICATE OF SERVICE

I do hereby certify that on August 3, 2025, I served a true and accurate copy of **UNITED STATES' RESPONSE IN OPPOSITION TO PRE-1906 CLAIMANTS' MOTION TO RECONSIDER ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND, ALTERNATIVELY, FOR CERTIFICATION FOR INTERLOCUTORY APPEAL** via email and/or mailed to the participating parties as provided on the court's website:

<https://lrgadjudication.nmcourts.gov/wp-content/uploads/sites/40/2024/05/Service-list-SS-107-updated-9-16-2025.pdf>

/s/ Abigail M. Frische

ABIGAIL M. FRISCHE