

IN THE NEW MEXICO COURT OF APPEALS

STATE OF NEW MEXICO ex rel.
OFFICE OF THE STATE ENGINEER,

Plaintiff,

v.

ELEPHANT BUTTE IRRIGATION DISTRICT, et al.,

Defendants.

No. A-1-CA-43736

Third Judicial District
Court

Doña Ana County

No. D-307-CV-96-888

Stream System Issue

No. 107

D-307-SS-9700107

DOCKETING STATEMENT—STREAM SYSTEM ISSUE NO. 107

Appellants Sammie H. Singh, Jr., Oscar V. Butler, and Rose Marie A. Butler, the Court designated Pre-1906 Claimants, submit this Docketing Statement pursuant to Rule 12-208 NMRA.

I. NATURE OF THE PROCEEDING

Stream System Issue No. 107 (“SSI-107”) was created within the Lower Rio Grande general stream-system adjudication to determine whether asserted pre-1906 surface-water rights now served by the Rio Grande Project were extinguished, forfeited, or abandoned and, if not, their priority, quantity, and continued validity. This appeal concerns the District Court’s Order Denying Motion for Summary Judgment, filed June 22, 2026 (“June 22 Order”).

The Pre-1906 Claimants (“Claimants”) asserted in their Motion for Summary Judgment that individual farmers appropriated beneficial-use rights under territorial law through diversion and application of water to their lands prior to the United States’ claimed priority date of March

1, 1903, that was decided in the Judgement filed April 8, 2025, now on appeal in Case No. A-1-CA-42679. Claimants further asserted that those rights were legally distinct from the federal statutory, corporate, construction, financing, lien, and liquidation interests associated with the Rio Grande Dam & Irrigation Company (“RGD&IC” or “Company”), Dr. Nathan E. Boyd, and the federal Rio Grande Project.

The June 22 Order held that challenges to rights adjudicated in Stream System Issue No. 104, the Interest of the United States (“SSI-104”) were not before the District Court in SSI-107 and would not be revisited. It also held that claims based upon the historical RGD&IC forfeiture litigation were 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, mem. op. (N.M. Ct. App. Apr. 25, 2023) (“Garcia”). The Order did not separately determine whether the farmers’ asserted beneficial-use rights were owned by or derived from RGD&IC, whether the farmers or their privies were parties to the 1903 Proceeding, or whether their claims were actually litigated and necessarily decided by that litigation, *United States v. Rio Grand Dam & Irrigation Co.*, 1906-NMSC-013 (“1903 Proceeding”). The Order left issues of economic coercion and contractual enforceability for later proceedings.

Appellants allege that the District Court’s (“DC”) reliance on prior determinations regarding a legally distinct Company, Boyd, or federal Project interests to preclude the farmers’ direct territorial claims without first establishing the jurisdictional, party-identity, privity, property-identity, and actual elements required to support a finding of preclusion was error.

II. ORDER APPEALED FROM, APPELLATE JURISDICTION, AND TIMELINESS

The Order sought to be reviewed is the DC’s Order Denying Motion for Summary Judgment filed June 22, 2026, in SSI-107. A copy was attached to Appellants’ Notice of Appeal.

On July 17, 2026, within thirty days after entry of the June 22 Order, Appellants filed their Motion to Reconsider Order Denying Motion for Summary Judgment and, Alternatively, for Certification for Interlocutory Appeal (“Motion to Reconsider”). The DC has not entered an order expressly disposing of that motion. A Notice of Completion of Briefing was filed August 24, 2026. Appellants filed a protective Notice of Appeal in the District Court on September 1, 2026.

Appellants allege that the June 22 Order effectively and conclusively precludes adjudication of their asserted pre-1906 rights in SSI-107 and is appealable because it conclusively bars adjudication of their asserted pre-federal rights.

The June 22 Order nevertheless states that the coercion and contractual-enforceability issues remain for later proceedings in SSI 107. Appellants requested, in their Motion to Reconsider as an alternative, certification for interlocutory appeal.

Appellants allege that immediate review is appropriate because the Order conclusively determines the disposition of their independently asserted pre-1906 rights, and postponing review would leave those claims precluded while related proceedings continue. See *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶¶ 21-25 (discussing practical finality). Alternatively, Appellants have requested certification for interlocutory appeal of the issue of res judicata.

The appeal is timely under Rule 12-201 NMRA because the timely Motion to Reconsider remains pending, thus the time for appeal has not begun to run. Under Rule 12-201(D), the protective Notice of Appeal becomes effective upon entry of an order expressly disposing of the Motion to Reconsider. Under Rule 12-208(B), the docketing-statement period runs from the date

the Notice of Appeal becomes effective. This Docketing Statement is submitted protectively to avoid the time to file it running while Claimants' counsel is unavailable until October 4.

III. CONCISE STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

Before development of RGD&IC's proposed project and the later federal Rio Grande Project, farmers diverted Rio Grande water through community acequias and ditches and applied it to beneficial use on their lands. New Mexico law distinguishes ownership of beneficial-use water rights from ownership of the irrigation facilities through which water is diverted and delivered to farmlands, *Candelaria v. Vallejos*, 1905-NMSC-019; *Snow v. Abalos*, 1914-NMSC-022, {29}; NMSA 1978, § 72-1-2 (1907).

In 1893 RGD&IC undertook construction of an irrigation system covering the LRG, Texas and Mexico. *Garcia*, supra recognized that RGD&IC completed two diversion dams and one canal but did not complete its proposed Elephant Butte storage dam. *Garcia*, supra., ¶¶ 3, 15. In 1896 the U.S. conveyed to RGD&IC easements for two dam sites at Elephant Butte under the Act of March 3, 1891, ch. 561, §§ 18-21, 26 Stat. 1095, 1101-02 ("March 3, 1891, Act").

In 1897 the United States sued RGD&IC to enjoin construction of its proposed storage project on the theory that its obstruction would impair navigability downstream. In *United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 709-10 (1899), the Supreme Court held that the Rio Grande was not navigable in New Mexico but remanded the case for inquiry into whether RGD&IC's proposed dam would substantially diminish navigability within the limits of present navigability. After another trial and appeal in 1902, the Supreme Court again remanded the case for further proceedings. *United States v. Rio Grande Dam & Irrigation Co.*, 184 U.S. 416, 424-25 (1902). Due to the protracted litigation on May 1, 1901, RGD&IC and Rio Grande Irrigation and Land Co., LTD were liquidated and their assets were conveyed to

Nathan Boyd as Receiver for the companies' debenture holders, on which dated the two corporate defendants in the case became ceased to exist, as operating companies. The U.S. and all of the companies former attorneys knew of their liquidation, *Rio Grande Irrigation & Land Co., Ltd. v. U.S. (G.B.)*, R.I.A.A., Vol. VI, pp. 131-38, Nov. 28, 1923 (U.N. 2006).

Then in 1903 the U.S. filed a supplemental complaint ("SC") in the case and in a conspiracy with the defunct companies' former attorneys to not file a response to the SC and not notify Nathan Boyd of the SC, the conspirators created a default decree against the two defunct corporate defendants to forfeit the federal easements.

Rio Grande Dam & Irrigation Co. v. United States, 215 U.S. 266 (1909), addressed the SC and forfeiture procedure. Appellants allege that the 1903 Proceeding did not adjudicate the ownership, priority, or extinguishment of the individual farmers' prior appropriated rights and did not establish that the corporate defendants represented or were in privity with the farmers.

Appellants allege the U.S.' conspiracy with the two former company attorneys was conduct outside the 1903 Proceeding to prevent Boyd the real parties in interest from claiming the distinct property interests from receiving notice, appearing, presenting jurisdictional objections, and protecting their property rights.

Appellants do not ask this Court at the docketing stage to decide disputed historical facts; they ask whether preclusion could be imposed without determining jurisdiction, privity, identity of subject matter or an opportunity to establish their rights.

The DC entered a Subfile Order and Final Judgment on April 8, 2025, in SSI-104, the United States' Interests for its Rio Grande Project ("104 Judgment). Appellants' Motion to Reconsider asked the District Court to determine, or certify for appellate review, whether the DC

erred when it granted the 104 Judgment granted the U.S. control of all diversions and water in the LRG, without joinder and a trial regarding the farmers' pre-federal rights.

The U.S., EBID, and the State of New Mexico responded to Appellants' Motion for Summary Judgment and Motion for Reconsideration or Interlocutory Appeal with arguments that concurred with the DC's June 22, 2026, Order, saying that the issues raised by Appellant had already been litigated and decided by prior decisions.

IV. ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred by applying claim or issue preclusion without determining whether the pre-federal appropriated rights asserted in SSI-107 were within the jurisdiction, subject matter, and adjudicative scope of the 1903 Proceeding.
2. Whether the March 3, 1891, Act authorized forfeiture of completed diversion works and beneficial-use rights independently vested in farmers, rather than only the Company's federal reservoir and public-land right-of-way interests subject to that Act.
3. Whether the District Court erred by treating the farmers' direct territorial claims as derivative of RGD&IC when Appellants disclaim Company ownership of the farmers' beneficial-use rights and Garcia distinguished direct pre-1893 farmer claims from claims derivative of the Company.
4. Whether SSI-104 could be used as a preclusive predicate in SSI-107 when SSI-104 adjudicated the United States' Project right, restricted or assigned evidence concerning distinct farmer rights to separate proceedings, and remains subject to appellate review.
5. Whether due process permits jurisdictional and ownership questions to be treated as conclusively resolved when the affected parties allege those questions were never tried

and that the parties asserting the distinct property interests were prevented from appearing and protecting them.

6. Whether the District Court could characterize the alleged procurement conduct as intrinsic fraud and deny discovery or an evidentiary inquiry when the alleged conduct occurred outside the prior proceeding and allegedly prevented notice, appearance, jurisdictional objections, and a real contest on the merits.
7. Whether the remaining litigation was placed in an erroneous sequence by allowing coercion and contractual-enforceability issues to proceed while precluding determination of the nature and ownership of the rights allegedly subjected to those contracts and coercive conditions.

V. ARGUMENT AND SUPPORTING AUTHORITIES

A. Preclusion Requires Identity, Jurisdiction, and an Issue Actually Adjudicated

Claim preclusion requires identity of parties or privies, capacity, subject matter, and cause of action, as well as a final judgment on the merits. *Deflon v. Sawyers*, 2006-NMSC-025, {13}; *Potter v. Pierce*, 2015-NMSC-002, {10}. Issue preclusion requires that the identical issue was actually litigated and necessarily determined and that the party to be bound had a full and fair opportunity to litigate it. *Shovelin v. Central New Mexico Electric Cooperative, Inc.*, 1993-NMSC-015, {10, 15}; *Myers v. Olson*, 1984-NMSC-015, {19}.

A judgment cannot preclude interests beyond the tribunal's jurisdiction or bind persons who were neither parties nor adequately represented. *Hansberry v. Lee*, 311 U.S. 32, 40-43 (1940); *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84-86 (1988). The June 22 Order did not identify an evidentiary adjudication establishing that RGD&IC owned or represented the farmers' beneficial-use rights or that the farmers' direct claims were within the issues litigated in

the 1903 Proceeding. Appellants allege that the Order assumed, rather than established, the identity, privity, jurisdiction, and actual-litigation predicates required for preclusion.

B. The Farmers' Beneficial-Use Rights Were Distinct From Corporate and Infrastructure Interests

Under territorial law, water rights arose through appropriation and beneficial use and became appurtenant to the lands served. Candelaria recognized the users' common ownership interests in community irrigation facilities. Snow distinguished the beneficial-use rights owned by individual farmers from the role and interests of an irrigation facility owner. NMSA 1978, Section 72-1-2 likewise reflects the distinction between an irrigation company's facility or lien interests and the beneficial-use rights of landowners.

Accordingly, a determination that RGD&IC or Boyd possessed no beneficial-use water right does not establish that the farmers possessed none. Nor does forfeiture of an uncompleted federal storage or public-land right-of-way interest establish forfeiture of completed diversion infrastructure or independently perfected beneficial-use rights owned by landowners. Appellants allege that the District Court was required to identify the particular property interest, owner, party, jurisdictional source, and prior adjudication before applying preclusion.

C. The 1891 Act and Navigation Litigation Did Not Automatically Transfer Territorial Rights to the United States

The March 3, 1891, Act granted qualifying entities specified reservoir, canal, ditch, and public-land right-of-way interests, subject to statutory conditions. Appellants allege that it did not authorize extinguishment of distinct beneficial-use rights vested under territorial law without joinder, jurisdiction, adjudication, and due process. Section 8 of the Reclamation Act of 1902, 43 U.S.C. § 383, required federal reclamation activity to proceed in conformity with state and territorial water law and preserved rights acquired under that law.

Federal reclamation construction and administration do not, by themselves, create federal ownership of preexisting state-law water rights. *Ickes v. Fox*, 300 U.S. 82, 94-96 (1937); *Nebraska v. Wyoming*, 325 U.S. 589, 614-15 (1945); *United States v. Gerlach Livestock Co.*, 339 U.S. 725, 739-42 (1950). Appellants therefore allege that the source, acquisition, priority, and extent of the United States' Project rights cannot substitute for adjudication of the separate territorial rights asserted by the farmers.

D. *Garcia* Did Not Adjudicate the Direct Claims It Expressly Distinguished

Appellants do not ask this Court to reconsider *Garcia*'s disposition of claims characterized as derivative of RGD&IC. They ask the Court to apply the distinction *Garcia*, made between the two diversion dams and one canal RGD&C completed and the farmers' beneficial use water rights appropriated before 1893, because they "were not at issue in the underlying inter se proceeding." *Garcia*, No. A-1-CA-36269, mem. op. ¶¶ 3, 15.

An issue raised by this appeal is whether the Court can exclude from SSI-107 adjudication of the farmers' pre-1893 appropriated rights based upon its finding that *Garcia* decided the farmers' rights when *Garcia* did not address the farmers' pre-federal rights. The question is whether the District Court improperly extended *Garcia*'s derivative-right holding to preclude farmers' claims in SSI 107 that *Garcia* expressly chose not to address. A decision is not authority for a proposition it did not consider. *Potter v. Pierce*, 2015-NMSC-002, {17} states,

"*See Fernandez v. Farmers Ins. Co. of Ariz.*, 1993-NMSC-035, {15}, (stating the general rule that "cases are not authority for propositions not considered" (internal quotation marks and citation omitted))."

E. SSI-104 Did Not Supply the Missing Merits Determination

SSI-104 concerned the priority and extent of the United States' asserted Rio Grande Project right. Appellants allege that evidence directed to the farmers' distinct pre-federal rights and the jurisdictional scope of the 1903 Proceeding was denied consideration or assigned to a separate proceeding when the Court granted UNITED STATES' MOTION IN LIMINE TO EXCLUDE TRIAL EVIDENCE AND ARGUMENTS THAT ARE IRRELEVANT AND MORE PROPERLY RELATE TO ISSUES SET FOR HEARING IN SEPARATE PROCEEDINGS filed August 27, 2015.

The DC did not consider the nature, priority, ownership, or validity of Appellants' rights when it granted all diversion and administrative rights to control the waters in the LRG in its Judgment in SSI 104, instead created SSI 107 to consider Appellants pre-federal rights.

If this appeal of the DC's preclusion of Appellants' pre-federal rights in SSI 107 determines that Appellants' pre-federal rights should be adjudicated and they are later determined to still exist, it may lead to the SSI-104 judgment being reversed, narrowed, vacated, or remanded. Therefore, coordination or consolidation of the appeal in SSI 104 (COA Case no. 42679) with this Appeal from SSI 107 may avoid inconsistent treatment of overlapping historical and jurisdictional predicates while preserving the legal distinction between the property interests at issue in the two proceedings.

F. The Allegations Required an Inquiry Into Extrinsic Conduct and Due Process

Extrinsic fraud concerns conduct that prevents a party from having the opportunity to appear and protect its property rights. Intrinsic fraud concerns matters presented or contestable within an adversarial proceeding. *Conglis v. Radcliffe*, 1995-NMSC-036, {15-16}; *Armijo v. Shambaugh*, 1958-NMSC-109, {25-27}. Appellants allege U.S. conduct outside the 1903

Proceeding prevented notice, appearance, joinder, presentation of jurisdictional objections, and protection of their predecessors' property interests.

Due process does not permit exclusion of an issue from adjudication and then allow the resulting absence of adjudication of the issue as proof that the same issue was conclusively resolved. Appellants allege that reasonable discovery and an evidentiary inquiry were required before the U.S.' alleged conduct could be characterized as intrinsic fraud or held precluded as an issue in SSI 107 or SSI 104.

VI. PRESERVATION OF ISSUES

Appellants preserved their issues of pre-federal ownership, preclusion, lack of jurisdiction, failure by the U.S. to meet statutory requirements, lack of due-process and discovery, and the U.S.' extrinsic fraud conduct in their Motion for Summary Judgment, supporting memorandum and exhibits and in their Reply in Support, regarding their asserted territorial rights, the 1903 Proceeding, the Court's Memorandum Opinion in *Garcia, Estate of Boyd*, and the SSI-104 Judgment. The Appellants' Motion for Reconsideration of the DC's June 22 Order expressly challenged the DC's rulings regarding the DC's ruling that issue challenging its SSI 104 Judgment were not before the DC, its application of res judicata to Appellants' claims based upon the 1903 Proceeding's Default Decree, and its improper reliance upon *Garcia* and *Estate of Boyd*.

Appellants also preserved these issues in their July 17, 2026, Motion to Reconsider, specifically in the controlling questions stated at pages 19-20, which requested reconsideration or, alternatively, certification for interlocutory appeal. The issues related to the 1903 Proceeding's lack of jurisdiction may be raised at any time, even on appeal, for which consideration should be made independently of ordinary preservation requirements. Appellants

will provide record-proper citations in their brief and any memorandum required by the Court's calendar assignment.

VII. STANDARD OF REVIEW

The District Court's application of claim and issue preclusion is reviewed de novo. *Anaya v. City of Albuquerque*, 1996-NMCA-092, {5} ("The district court's determination that the prior judgment was res judicata to Plaintiff's claims in this case is a legal question that is reviewable de novo."); *Wolford v. Lasater*, 1999-NMCA-024, {4}. For "A determination of whether summary judgment was proper, our review is de novo.", *Maestas v. Zager*, 2007-NMSC-003, {8}; *Tri-State Generation & Transmission Ass'n v. King*, 2003-NMSC-029, at {4}. States,

"Appeals from a lower court's dismissal for lack of subject matter jurisdiction are reviewed de novo. *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, {6}, ("In reviewing an appeal from an order granting or denying a motion to dismiss for lack of jurisdiction, the determination of whether jurisdiction exists is a question of law which an appellate court reviews de novo.").

Constitutional and due-process questions are likewise reviewed de novo.

Discovery and evidentiary rulings ordinarily are reviewed for abuse of discretion. Any underlying determination that discovery or evidentiary inquiry was categorically foreclosed as a matter of law, however, is reviewed de novo. *Pincheira v. Allstate Insurance Co.*, 2007-NMCA-094, {27}.

VIII. RECORDING OF PROCEEDINGS

The June 22 Order was entered upon written submissions. No transcript is presently necessary to review the legal rulings identified in this Docketing Statement. To the extent any

relevant hearing was audio recorded, Appellants will designate the recording if required in the Court's calendar assignment.

IX. RELATED AND PENDING PROCEEDINGS

The related SSI-104 appeal arises from the Subfile Order and Final Judgment filed April 8, 2025, and is pending in this Court as No. A-1-CA-42679. The SSI-104 judgment adjudicated the United States' asserted Rio Grande Project right. SSI-107 concerns the farmers' asserted pre-1906 rights. The June 22 SSI-107 Order materially relied upon determinations attributed to SSI-104 while the SSI-104 judgment remains subject to appellate review.

Appellants disclose No. A-1-CA-42679 as a related appeal pursuant to Rules 12-202(G) and 12-208 NMRA. Appellants will separately request relief under Rule 12-317 (B) NMRA concerning consolidation or any appropriate disposition of the existing SSI-104 appellate and case No. A-1-CA-42679. This Docketing Statement does not incorporate additional SSI-104 issues into the SSI-107 appeal; it identifies the overlap necessary to explain the preclusion ruling under review.

X. RELIEF REQUESTED

Appellants respectfully request that this Court:

1. Reverse or vacate the June 22 Order insofar as it gives claim or issue-preclusive effect to prior proceedings that failed to determine whether the same parties or their privies, property interests, claims, and issues were within the jurisdiction and adjudicative scope of those proceedings and were actually litigated and necessarily decided;
2. Hold that determinations concerning RGD&IC's federal statutory or corporate interests, Boyd's financing, lien, or property interests, or the United States' later Project interests

do not, without the required jurisdictional and preclusion element findings, adjudicate or extinguish the farmers' independently asserted pre-federal beneficial-use rights;

3. Remand for appropriate discovery and an adjudicative determination of nature, source, ownership, priority, and continued validity of the asserted farmer rights; whether those rights and parties were within the jurisdiction and adjudicative scope of the 1903 Proceeding; and whether alleged extrinsic conduct prevented presentation of their claims and jurisdictional objections;
4. Permit consolidation with No. A-1-CA-42679 upon a separate motion under Rule 12-317 (B) NMRA to the extent the Court determines consolidation is appropriate; and
5. Grant such other relief as the Court deems just and proper.

XI. CONCLUSION

The central question is not whether RGD&IC or Boyd owned the farmers' beneficial-use rights. Appellants agree that they did not. The question is whether rights independently vested in farmers under territorial law were actually adjudicated in the 1903 Proceeding and whether those rights were lawfully extinguished through a proceeding affording notice and due process.

Because the June 22 Order treated that threshold question as precluded without first determining whether jurisdiction of Appellants' and their rights satisfied the elements necessary for a finding of res judicata. Appellants respectfully request reversal or remand and consolidation with SSI-104 appeal if the DC does not reconsider its June 22, 2026, Order in accordance with this Docketing Statement

Respectfully submitted,

/s/ Robert S. Simon

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CERTIFICATE OF SERVICE

I certify that on September 1, 2026, I filed the foregoing Docketing Statement with the New Mexico Court of Appeals and served a true and correct copy upon the District Court clerk, the Honorable James J. Wechsler, the court monitor, and all counsel and parties of record through the Court's electronic filing system or another method authorized by the New Mexico Rules of Appellate Procedure.

/s/ Robert S. Simon
Robert S. Simon