

**STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER**

IN THE MATTER OF THE LICENSURE OF)
STOCKWATERING USES WITHIN THE GILA)
RIVER DRAINAGE AND THE SAN)
FRANCISCO RIVER DRAINAGE WITHIN)
THE GILA NATIONAL FOREST)

ORDER

WHEREAS, the Office of the State Engineer ("OSE") has received declarations of water rights regarding stockwatering purposes of use within the Gila River Drainage and the San Francisco River Drainage within the Gila National Forest; and

WHEREAS, these declared stockwater rights, although existing at the time of the adjudication, were omitted from the August 23, 1967 Final Judgment and Decree entered in the suit to adjudicate all water rights in the Gila River stream system, *State of New Mexico ex rel. Reynolds v. Anderson, et al.*, Grant County Cause No. 16290; and

WHEREAS, these declared stockwater rights, although they existing at the time of the adjudication, were omitted from the May 9, 1968 Final Judgment and Decree entered in the suit to adjudicate all water rights in the San Francisco River stream system, *State of New Mexico ex rel. Reynolds v. Acosta, et al.*, Grant County Cause No. 16610; and

WHEREAS, pursuant to the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006) ("Consolidated Decree"), the State of New Mexico annually reports on irrigated acreage, diversion, and consumptive use of water in New Mexico from the Gila River, San Francisco River, and San Simon Creek, and their tributaries and all hydrologically connected underground water sources; and

WHEREAS, New Mexico's October, 2010 annual report made pursuant to the Consolidated Decree demonstrates that the total of all consumptive use related to stockwatering and all consumptive use related to irrigation is within the total consumptive use allotted to New Mexico by the Consolidated Decree; and

WHEREAS, the consumptive uses for "stock tank evaporation" and for "livestock" reported in New Mexico's October, 2010 annual report made pursuant to the Consolidated Decree include all consumptive use from stockwatering related to 1,076 points of diversion within the Gila National Forest; and

WHEREAS, because of these circumstances, issuing licenses to appropriate water pursuant to NMSA 1978, § 72-5-13 to recognize the valid application of water to stockwatering uses located within the Gila National Forest are accounted for in the total consumptive uses limits set by the Consolidated Decree for the Gila River drainage and the San Francisco River drainage, *provided that* the total consumptive use licensed does not exceed the total consumptive use from stockwatering related to the 1,076 points of diversion reported in New Mexico's October, 2010 annual report made pursuant to the Consolidated Decree; and

WHEREAS, to ensure that the exercise of water rights for licensed stockwatering uses cannot cause New Mexico to exceed the total consumptive use allowed to New Mexico by the Consolidated Decree, the priority dates of all water rights licensed for stockwatering uses within the Gila National Forest will be legally subordinate to the priority dates for those irrigation uses identified in the proceedings of the United States Supreme Court relating to the Consolidated Decree; and

WHEREAS, the OSE has inspected and considered the priorities claimed for all of the declared stockwatering uses in the Gila National Forest licensed as of the date of this Order, in some cases before the formal filing of a declaration, *see* Affidavit of Charles Jackson, attached; and

WHEREAS, consistent with the historical practice of the OSE with regard to the description of the location of wells, the locations of the licensed stock tanks are described by quarter section, quarter/quarter section, or quarter/quarter/quarter section; and

WHEREAS by a condition imposed by this Order, the licensed stockwatering uses must remain *in situ*, with no change in place and purpose of use, ensuring that their continuing exercise will not result in impairment to valid, existing water rights; and

WHEREAS, the OSE has verified that the owners of the stockwatering rights licensed as of the date of this Order are the current holders of the United States Forest Service grazing permits for the allotments on which these uses are located, *see* Affidavit of Charles Jackson, attached; and

WHEREAS, issuing a license to appropriate water pursuant to NMSA 1978, § 72-5-13 to recognize the valid application of water to beneficial use of the declared wells and tanks located within the Gila National Forest will not cause impairment to valid, existing uses, *provided that* the stockwatering uses so licensed remain *in situ*, with no change in point of diversion or place and purpose of use; and

WHEREAS, the OSE has determined that further information is required and that site inspections must be performed regarding other declared stockwatering uses in the Gila National


Forest before they can be licensed, in order to ensure that the same bases exist for the issuance of licenses as existed for the licenses issued as of the date of this Order; and

WHEREAS issuing a license to appropriate water pursuant to NMSA 1978, § 72-5-13 to recognize the valid application of water to beneficial use of the declared stockwatering uses located within the Gila National Forest will provide certainty and bring the rights within the administrative authority of the State Engineer for purposes of State Engineer supervision of the apportionment and distribution of water, including priority administration, in accordance with the New Mexico Water Code, regulations promulgated thereunder, and applicable court orders:

NOW, THEREFORE, IT IS HEREBY ORDERED that all licenses issued by the State Engineer on or after October 17, 2011 for stockwatering uses within the Gila National Forest are subject to the following conditions, in addition to any specific conditions noted on the face of the individual licenses:


1. The licensed well or tank must remain *in situ*; and
2. The place and purpose of use of the licensed right may not be changed by State Engineer permit; and
3. Any change in point of diversion for the licensed right will require a permit from the State Engineer; and
4. For purposes of compliance with the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006), the priority date for the licensed right is legally subordinate to the priority dates for all irrigation uses identified in the proceedings of the United States Supreme Court relating to the Consolidated Decree.

Witness my hand and official seal of my office, this 4th day of November, 2011.


John R. D'Antonio, Jr., P.E.
State Engineer



Reviewed:


Gregory C. Ridgley
Special Assistant Attorney General

BEFORE THE NEW MEXICO STATE ENGINEER

IN THE MATTER OF THE LICENSURE OF)
STOCKWATERING USES WITHIN THE GILA)
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AFFIDAVIT OF CHARLES JACKSON

I, Charles "Tink" Jackson, an employee of the New Mexico Office of the State Engineer ("OSE"), make this affirmation based upon personal knowledge and belief.

I am the District Supervisor for the Deming Office of the OSE ("District 3 Office"). I make these statements relating to the issuance of licenses based on declarations of stockwatering uses in the Gila National Forest to attach to and support a State Engineer Order dated November 4, 2011;

That under my direction and supervision, each declared stock tank and stock well to be licensed as of the November 4, 2011 Order has been inspected by a member of the staff of the OSE District 3 Office or staff members have verified the existence of each utilizing GIS technology;

That the staff of the OSE District 3 Office has used every resource available including information from the United States Forest Service to verify that the stock tanks and stock wells to be licensed as of the November 4, 2011 Order were issued to the current holder of the United States Forest Service grazing permit for the allotment upon which the uses were declared;

That further information is required and additional site inspections must be performed to verify other declared stockwatering uses in the Gila National Forest before they can be licensed, including a verification that those declared stockwatering uses are included in the 1,076 stockwatering uses reported in October, 2010 to the United States Supreme Court by the New Mexico Interstate Stream Commission pursuant to the Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006) ("Consolidated Decree");

With respect to the declarations filed in October, 2011 by Tim Haas and Jerold and Hila Collings, that these declarants did come to the OSE District 3 Office on or before January 1, 2005 and attempt to file declarations on the stock tanks and stock wells on their allotments, and this office has been aware of their intent to file said declarations for many years. I directed them not to file said declarations at that time due to the fact that these

Attachment to State Engineer Order Issued November 4, 2011

types of declarations were not being acted on by the office. However, based on the knowledge that these declarations would likely be filed at a later date I personally inspected each stock well and stock tank on the allotment owned by Mr. Haas and on both allotments owned by the Collings;

That the declared stockwatering uses to be licensed as of the November 4, 2011 Order will not result in an increase in the total consumptive uses allowed to New Mexico under the Consolidated Decree; and

That the total consumptive use from the declared stockwatering uses to be licensed is less than the total amount of consumptive use from stockwatering within the Gila National Forest reported in New Mexico's October, 2010 annual report made pursuant to the Consolidated Decree.

These statements are true to the best of my knowledge and belief.

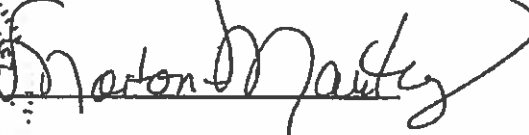
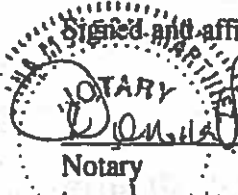
Dated the 4 day of November, 2011.



Charles "Tink" Jackson
District 3 Supervisor
New Mexico Office of the State Engineer

State of New Mexico
County of Luna

Signed and affirmed before me on November 4th, 2011 by Charles "Tink" Jackson.



My commission expires: 9-10-2013