

**STATE OF NEW MEXICO'S RULE 71.3 REPORT-FY 2025
EXHIBIT A: LOWER RIO GRANDE ADJUDICATION BUREAU**

June 6, 2024

Pursuant to the requirements of NMRA Rule 1-071.3, the State of New Mexico presents its report setting out the State's priorities and available resources for the state stream system adjudications in the Lower Rio Grande Adjudication Bureau for fiscal year 2025 (July 1, 2024 to June 30, 2025), which will be filed in each adjudication. The available resources are based upon full time employee ("FTE") time, including staff and contractors, and are listed in Table 1.

SUMMARY OF AVAILABLE RESOURCES FOR THE LOWER RIO GRANDE ADJUDICATION BUREAU

| | FY2021 FTEs | FY2022 FTEs | FY2023 FTEs | FY2024 FTEs | FY2025 FTEs |
|--|----------------|----------------|----------------|----------------|----------------|
| Total Bureau Staff and Contractor Resources | 12.9 | 11.7 | 9.5 | 10.6 | 14.0 |
| A. Lower Rio Grande Adjudication | 12.5 | 11.1 | 9.0 | 10.0 | 13.5 |
| B. Animas Underground Water Basin Adjudication | 0.4 | 0.6 | 0.5 | 0.6 | 0.5 |

LOWER RIO GRANDE ADJUDICATION PRIORITIES FOR FY 2025

A. General

1. Significant Litigation

- a. Stream System Issue 104 (United States' interest in the Rio Grande Project). This stream system issue continues to be stayed during the pendency of the submission of the proposed settlement and consent decree to the United States Supreme Court. If the Supreme Court rejects the proposed settlement, the controversy will be returned to the Special Master for further proceedings, and it is anticipated that the parties would wish to continue the stay. If the Supreme Court accepts the proposed settlement, the parties will presumably brief the Court as to what (if any) issues remain to be resolved prior to entry of the final judgment in the Stream System Issue.
- b. Stream System Issue 107 (status of pre-Rio Grande Project surface water rights). This stream system issue is currently stayed along with Stream System Issue 104 for the same reason. Unlike Stream System Issue 104, however, this stream system issue got no further than position statements when the pendency of *Texas v. New Mexico* made the stay advisable. If the

settlement is accepted by the Supreme Court, the parties will presumably brief the court on what effect, if any, the Supreme Court decision has on this issue and consider with the Court next steps in resolving the status of pre-Rio Grande Project surface water rights.

- c. Copper Flat Mine expedited *inter se* on remand. Following a partial remand on subfile LRO-28-008-9009, New Mexico Copper Corporation, on the issue of whether the water rights in the Miscellaneous Wells were abandoned or forfeited, the issue was briefed and argued by all the parties. On August 23, 2023, this Court entered its Findings of Fact and Conclusions of Law on Remand. The parties submitted an agreed form of Final Subfile Order and Judgment, which this Court entered on December 12, 2023. No appeal was timely taken, and the matter became final.
- d. Apodaca Cervantes LLC subfile. Trial briefs and proposed findings of fact and conclusions of law were filed by the State on July 24, 2023 and by Apodaca Cervantes on July 31. This Court entered its Findings of Fact and Conclusions of Law on September 15, 2023. Because the parties could not agree on the form of a final subfile order, a status conference was held on January 5, 2024, and a Subfile Order and Final Judgment was entered by this Court on February 20, 2024. Apodaca Cervantes timely filed its notice of appeal on March 19, 2024 and filed its docketing statement on May 13, 2024. The State, therefore, anticipates that the appeal will be fully briefed, and possibly argued, during FY 2025.
- e. Texas v. New Mexico. Though this is not subfile litigation, LRG Adjudication Bureau legal, support, and technical staff may continue to be involved, as in prior years, if the United States Supreme Court rejects the pending settlement agreement. On the other hand, if the settlement agreement is accepted, and the Consent Order is entered by the Supreme Court, LRG hydrographic survey staff in Las Cruces may be called on to support compliance measures and programs even though those will primarily be the responsibility of the Interstate Stream Commission and the Las Cruces District IV office of the State Engineer's Water Resource Allocation Program.

2. Negotiations with major parties.

None are now pending other than the stayed negotiations related to Stream System Issues 104 and 107. As noted above, the United States Supreme Court's decision on the proposed settlement may lead to their resumption in the coming year.

3. Mediation of other substantive issues.

Two Jaralosa subfiles are ripe for mediation, but Jaralosa has asked that mediation be waived so that the matter may be put on a trial track.

4. Other special procedures and procedural motions in the LRG
 - a. There is continuing authentication of claims to historical groundwater use for claimants seeking to add a groundwater component to their adjudicated and unadjudicated surface water rights, in conjunction with permitting applications to the District IV office.
 - b. Stream System Issue 108 (Global Proceeding to Add Assessed Acreage). The Global Order for our third group of fifty subfiles was filed in August 2023 with the Statements of Adjudication being filed with the court in September 2023, thus completing the third group. Two more groups (the fourth and the fifth) of fifty subfiles each have been completed through the process with Filed Proposed lists, Publications, Filed Final lists, Filed Global Orders, and Filed Statements of Adjudications (on January 12 and April 22, 2024). The State has now completed the publication of the sixth group of proposed subfiles and is awaiting conclusion of the time period for filing an objection before filing the Final List for this group; this activity will continue throughout FY 25.
- B. Additional accomplishments over the past year
1. Staffing
 - a. In October 2023, the manager of the Las Cruces Hydrographic Survey Bureau took a position with WRAP's District IV office, leaving the bureau without a manager for the second time since 2021. After a lengthy search, a new manager was hired and began work on April 29, 2024.
 - b. One new hydrosurvey staff member was hired in Las Cruces, and a technical intern may be added to replace last year's intern if a suitable candidate applies.
 - c. Two new staff attorneys were added to the bureau in Santa Fe, though offset by the loss of one staff attorney by transfer to the Administrative Litigation Unit. It is anticipated that a third LRG staff attorney will be hired during the first half of FY 25.
 2. A number of subfiles were successfully resolved in mediation.
- C. Lower Rio Grande Adjudication, Routine Subfile Processing
1. The preparatory work for the creation of new subfile offers continues to be focused on the Northern Mesilla section, though work actively continues in all sections but Nutt-Hockett.
 2. The continuing receipt of Hydrographic Survey Change Requests (HSCR) for all sub-basins prevents the hydrographic survey staff from working in one sub-basin

exclusively. Of the three active sub-basins outside of Northern Mesilla, Southern Mesilla receives the most attention because there the need to analyze a subfile following the receipt of a HSCR will typically require that the close-fitting block of subfiles adjacent to the newly-analyzed one must also be analyzed and, when appropriate, forwarded for new offers.

3. The status of all sections as of May 17, 2024 is:
 - a. Nutt Hockett: 43 subfiles, 100% served, 100% adjudicated
 - b. Rincon: 1238 subfiles, 97%-served, 86% adjudicated
 - c. Northern Mesilla: 5920 subfiles, 63% served, 45% adjudicated
 - d. Southern Mesilla: 5517 subfiles, 63% served, 49% adjudicated
 - e. Outlying Areas: 1370 subfiles, 83% served, 75% adjudicated
4. Routine subfile processing encompasses most of the bureau's everyday work and includes the following: updating the Hydrographic Survey, creating new maps to conform to necessary additions and revisions of point of diversion locations and irrigation and assessment polygons, analyzing claims for a larger Farm Delivery Requirement (NOIs), completing legal review of proposed offers, providing service of offers, revising offers or duplicates, reviewing objections, having discussions with objecting claimants by survey or legal staff, processing default and implied consent requests, correcting entered orders with typographical errors, and re-opening entered orders needing significant correction.
5. The COP building in Santa Fe is still slated for demolition at some future date, and Building Services is at last actively looking into alternative office space for employees currently officed there. Progress toward that event has been slower than expected, but, if it occurs in the coming fiscal year, there will plainly be some disruption when it occurs.
6. District-specific regulations under the active water resource management program continue to be prepared for publication. In conjunction with such publication, the State anticipates publishing a list of administrable water rights pursuant to Section 19.25.13.27 of the New Mexico Administrative Code sometime in FY 25. This may lead to an increase in the submission of Hydrographic Survey Change Requests and a corresponding increase in the workload in the Las Cruces office.

ANIMAS UNDERGROUND WATER BASIN ADJUDCIATION PRIORITIES FOR FY 2025

1. As of May 1, 2024, there are 218 Animas subfiles, of which 84% have been served, and 71% have been adjudicated.

Table 1: Lower Rio Grande Bureau Resources Allocated

| PRIORITY ADJUDICATION SECTION | Staff Atty | Contact Atty | Staff Para-legal | Survey Staff | Data/IT Staff | Section Totals |
|--|------------|--------------|------------------|--------------|---------------|----------------|
| Lower Rio Grande Adjudication | | | | | | |
| <i>A. General</i> | 1.0 | | 0.5 | 2.0 | | 3.5 |
| <i>B. Rincon</i> | 0.5 | | | 1.0 | | 1.5 |
| <i>C. N. Mesilla</i> | 1.0 | | 1.0 | 4.0 | | 6.0 |
| <i>D. S. Mesilla</i> | .5 | | 0.5 | 1.0 | | 2.0 |
| <i>E. Outlying</i> | | | | 0.5 | | 0.5 |
| CATEGORY TOTALS - LRG | 3.0 | | 2.0 | 8.5 | | 13.5 |
| Animas Underground Adjudication | | | | | | |
| <i>Animas</i> | | | | 0.5 | | 0.5 |
| | | | | | | |
| | | | | | | |
| CATEGORY TOTALS - ALL SECTIONS | 3.0 | | 2.0 | 9.0 | | 14.0 |