

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

**STATE OF NEW MEXICO, ex rel.
NEW MEXICO STATE ENGINEER,
Plaintiff-Appellee,**

v.

ROSETTE, INC., et al.,

Defendants,

and

**J & C VICTOR 2006 TRUST,
Defendant-Appellant.**

No. A-1-CA-38093

Hidalgo County

D-623-CV-2005-00054

D-623-AUB-011-0001A

D-623-AUB-011-0001B

D-623-AUB-011-0001C

D-623-AUB-011-0001D

D-623-AUB-011-0004B

D-623-AUB-012-0004

D-623-AUB-012-0014

D-623-AUB-013-0003A

**DEFENDANT-APPELLANT J & C VICTOR 2006 TRUST'S
MEMORANDUM IN OPPOSITION TO SUMMARY AFFIRMANCE**

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Defendant-Appellant J&C Victor Trust 2006 (“JCV”), by and through its attorneys of record, Law & Resource Planning Associates, P.C., hereby respectfully responds in opposition to this Court’s Notice – Proposed Summary Disposition filed on March 31, 2020 (“Proposed Disposition” or “PD”).

INTRODUCTION

In the Proposed Disposition, the Court of Appeals (“COA”) observes that JCV has not provided any reason “for this Court to believe that the order denying [JCV’s] motion to set aside summary judgment finally resolves all issues of law and fact between the State Engineer and JVC, individually, or JVC and any other claimants or between the State Engineer and all the claimants in the larger Animas Underground Water Basin Adjudication.” **[PD 3]** The COA points out that while subfile orders in water rights adjudications have been held to be final judgments by the New Mexico Supreme Court, subfile orders are only final if the District Court’s order specifically indicates the subfile order is final and that, in accordance with amended Rule 1-054(B)(2) NMRA, the order states the “the court expressly determines there is no just reason for delay[.]” **[PD 4]** The COA further states that if the 2013 Final Order were final, “then the judgment would have ended the adjudication as to JCV, and this case would not have been ongoing since 2013.” *Id.* at ¶ 5.

The COA then notes that under the amended Rule 1-054(B)(2), the District

Court did not make the appropriate certification that there is no just reason for delay of entry of judgment. *Id.* at ¶ 6. The Court requests JCV to demonstrate that the order that is being appealed is final and immediately appealable under Rule 1-054, or the Court intends to dismiss the appeal for lack of jurisdiction. *Id.* at ¶ 7. As will be developed, JCV appeals from the District Court’s denial of its motion to set aside a default judgment entered against JCV in 2013 pursuant to Rule 1-055(b) and/or Rule 1-060(b)(6) NMRA. *See J & C Victor 2006 Trust’s Motion to Set Aside Default Judgment Pursuant to Rule 55 and Rule 60(B)(6) NMRA and Statement of Claims* (September 14, 2018). The District Court’s denial of that motion, under either Rule 1-055 or Rule 1-060(b)(6) NMRA, is a final appealable order and this Court is vested with jurisdiction to hear this appeal. This Court’s proposal to summarily affirm the District Court’s decision is therefore unwarranted.

First, the 2013 Order Making Final Determination of Basin-Wide Irrigation Water Requirements (“2013 Final Order”) is a final order that explicitly states that “[t]here is no just reason for delay for the entry of a final judgment as to irrigation water requirements for irrigation in the Animas Basin, and the Court enters this Order as a final judgment as to the irrigation water requirements of the water rights for all irrigation subfiles as described herein.” 2013 Final Order at ¶ 8. The 2013 Final Order conforms with the amended requirements of Rule 1-054(B)(2) NMRA, and could not have made it more clear that the Order is final and appealable, even

though the judgment is being entered without resolving all issues concerning all parties. Thus, the 2013 Final Order conclusively established basin-wide crop irrigation requirements and was subject to challenge by JCV under both Rule 1-055(C) and Rule 1-060(B)(6) NMRA. The denial of that challenge to the 2013 Final Order is appropriately before this Court on appeal.

Second, the 2013 Final Order is not a subfile order occurring in a traditional adjudication, and therefore, *State ex rel. State Eng' r v. Parker Townsend Ranch Co.*, 1994-NMSC-125, 118 N.M. 780 is not applicable to this case. As will be explained below, this adjudication is proceeding as an expedited *inter se*, and the 2013 Final Order is a basin-wide stream system decision that is final as to all water users in the Animas Basin (“Basin”). That the basin-wide water requirements set forth in the 2013 Final Order were intended to be incorporated into individual subfiles does not change the character of the 2013 Final Order. The order is a final determination of the crop irrigation requirements in the Animas Basin that JCV appropriately challenged under Rule 1-055(C) and/or Rule 1-060(B)(6) NMRA. A brief discussion regarding the distinction between a traditional adjudication and an adjudication proceeding in an expedited *inter se* is set forth below, followed by a discussion regarding the finality of the 2013 Final Order as to all water users in the Basin.

I. THE STREAM SYSTEM ADJUDICATION PROCESS.

The central purpose of a water rights adjudication suit is to resolve all issues related to the use of water in any particular basin, including identifying all existing licensed, permitted, and declared water users in the basin, so the water rights in the basin can be administered in priority and so the New Mexico State Engineer (“OSE”) can evaluate new appropriations or transfers of water for impairment to existing uses.¹ The court is charged with adjudicating water rights in New Mexico. NMSA 1978, § 72-4-17 (1965). Adjudications are essentially massive quiet title actions filed by the State.

New Mexico law states that “[i]n any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with

¹ See *Snow v. Abalos*, 1914-NMSC-022, ¶ 24, 18 N.M. 681 (“It was the evident design of the Legislature, by chapter 49, S. L. 1907, to have adjudicated and settled by judicial decree all water rights in the state, to have determined the amount of water to which each water user was entitled, so that the distribution of water could be facilitated, and the unappropriated water to be determined, in order that it might be utilized.”); *El Paso & R.I. Ry. Co. v. District Court of Fifth Judicial District*, 1931-NMSC-055 ¶ 24, 36 N.M. 94 (“All rights in the stream system are to be adjudicated.”); *State v. Sharp*, 1959-NMSC-080, ¶ 4, 66 N.M. 192; (“We have previously held that the procedure for adjudication of water rights is all-embracing, and that it includes all claimed rights of appropriators from artesian basins within a stream system.” (citing *El Paso & R.I. Ry. Co.*, 1931-NMSC-055; *State of New Mexico v. Aamodt*, 537 F.2d 1102, 1107 (10th Cir. 1976) (“The presence of all claimants is necessary for a decree to be of any value.”))); see Robert E. Beck & Amy K. Kelly, *Waters and Water Rights* §§ 16.01-16.03 (Robert E. Beck ed., repl. vol. 2007).

reasonable diligence, shall be made parties.” NMSA 1978, § 72-4-17 (1965). This system of general stream adjudications is designed to avoid piecemeal litigation. *See Elephant Butte Irrigation Dist. v. Regents of N.M. State Univ.*, 1993-NMCA-009, ¶¶ 14-20, 115 N.M. 229, 233-34. “A comprehensive adjudication of water rights is highly important. . . . Waters cannot be apportioned according to conflicting decrees or decrees covering less than all claims.” *El Paso & R.I. Ry. Co. v. Dist. Ct. of Fifth Judicial Dist.*, 1931-NMSC-055, ¶ 15, 36 N.M. 94, 100. In such an adjudication, the State Engineer furnishes the court with “a complete hydrographic survey of such stream system . . . in order to obtain all data necessary to the determination of the rights involved.” NMSA 1978, § 72-4-17 (1965). In a standard adjudication proceeding, there are two steps: the sub-file phase and then the *inter se* phase.

A. Sub-file Phase.

In the sub-file phase, the State is required to conduct a hydrographic survey and provide the water right claimant with an offer of judgment, also referred to as a proposed consent decree. The proposed consent decree provides what the State believes is an accurate description of the water right, which includes the amount, location, priority date, type of use, place of use, and the point of diversion. The claimant is given the opportunity to challenge the terms of the OSE’s proposed judgment, and if the claimant agrees with the terms of the proposed consent decree,

the agreement is signed by the water user and the State, filed with the Court, and an order is issued adjudicating the water right according to the consent decree. NMSA 1978, §§ 72-4-17, 72-4-19. If the claimant disagrees with the State's description of the water right, then the user can negotiate the terms with the State and can file a subfile answer with the Court explaining the reasons for disagreement with the specific subfile at issue and provide a statement that there has been a good faith effort to consult with and resolve the disagreement with the State. *See* Procedural Order Governing Expedited *Inter Se* Adjudication of State Law Water Rights, *State of New Mexico v. Rosette*, No. D-623-CV-2005-00054 (April 22, 2014)². If there continues to be a disagreement between the claimant and the State regarding the elements of the water right, the matter will be resolved by a Special Master or after a trial before the Court where the claimant and the State can present facts and legal argument. Following a hearing the court will issue an order settling the dispute between the parties and determining the proper description of the water right.

The sub-file phase is completed when all water claimants have resolved any disputes with the State over their respective consent decrees and have been issued a partial final decree from the court. Following the sub-file phase, each water claimant is given the opportunity to challenge the water rights of other claimants in the *inter*

² As discussed herein in subsequent sections below, this case is also referred to as the "Animas Underground Basin Adjudication" and is the main case from with the Defendant-Appellant's claims stem.

se phase.

B. *Inter Se* Phase.

In a normal adjudication proceeding, a water right claimant must resolve any disputes it has with the State in the subfile phase, and subsequently, with each individual water claimant in what is called the *inter se* phase.³ *Inter se* proceedings provide the opportunity for parties to dispute the determination of their water rights *vis-à-vis* each other, but cannot revisit individual claims resolved with the State Engineer. *State ex rel. Reynolds v. Pecos Valley Artesian Conservancy Dist.*, 1983-NMSC-044, ¶ 5, 99 N.M. 699, 701; *see also* Rule 1-071.2 NMRA (defining *inter se* procedures for the adjudication of stream system priorities); *Tri-State Generation & Transmission Ass’n, Inc. v. D’Antonio*, 2012-NMSC-039, 289 P.3d 1232, 1236 n.1.

Both phases can take years to complete. *See, e.g.*, NMSA 1978, § 72-2-9.1 (2003) (“The legislature recognizes that the adjudication process is slow...”). For example, the adjudication of the Tesuque, Nambe, and Pojoaque Rivers in *State of New Mexico, ex rel. State Eng’r v. Aamodt*, No. 6:66-cv-6639-WJ-WPL (D.N.M.), took over 50 years to complete. A speedy resolution to a full stream adjudication cannot be anticipated.

³ *Inter se* is defined as “between or among themselves.” Bryan A. Garner, *A Dictionary of Modern Legal Usage* 463 (2d ed. 1995).

C. Final Decree.

Once all water right claimants in the Animas Basin have gone through the subfile phase and the *inter se* phase, a final decree “shall be prepared and filed in the office of the state engineer by the clerk of the court. . . . Such decree shall in every case declare, as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use, and as to water used for irrigation, except as otherwise provided in this article, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.” NMSA 1978, § 72-4-19 (1907). This final decree officially ends all claims pertaining to water right ownership in the basin and marks the completion of the adjudication.

D. Rule 1-071.2 and the Expedited *Inter Se* Process.

Due to the inherent slowness of a traditional adjudication, the Supreme Court in 2011 established procedures to speed the process up. These additional procedures govern: 1) determination of stream system issues that are basin-wide issues prior to adjudicating individual water rights; and/or 2) designation of an expedited *inter se* proceeding; 3) the provision of notice of such proceedings; and 4) the effect of determinations in such proceedings. Rule 1-071.2 NMRA. These new rules created the opportunity for Courts to use creative solutions for speeding up the adjudication process.

The first of the procedures included in Rule 1-071.2 provides that any party may file a motion requesting the court designate a matter as a stream system issue and the court may, *sua sponte*, consider designating a stream system issue. Rule 1-071.2(A)(2) NMRA. Then the “court shall conduct a hearing to determine whether to designate an issue as a stream system issue.” Rule 1-071.2(A)(3) NMRA. After the hearing, “[i]f the court designates an issue as a stream system issue, it shall enter an order defining the scope, timing and procedures to be following in the stream system proceeding.” *Id.* Thus, large basin-wide issues can be adjudicated, and the results incorporated into all subfiles or a group of subfiles, before individual water rights are adjudicated during the subfile phase.

The second of these procedures provides that an adjudication may proceed as an expedited *inter se*. Rule 1-071.2(B) NMRA. This procedure also allows for a water claimant to have that claimant’s water rights adjudicated as against the state and every other water claimant in a single phase, combining the subfile and *inter se* phases. This procedure is designed to conserve judicial resources and make the process more efficient. Rule 1-071.2(B) NMRA states: “(1) An expedited *inter se* proceeding is a proceeding in which a water rights claim is resolved in a stream system adjudication suit conducted pursuant to Section 72-4-17 NMSA 1978 both as between the plaintiff and the defendant and as among the defendant and other water rights claimants.”

In addition, “[a]n order resolving a stream system issue proceeding or an expedited *inter se* proceeding binds all water rights claimants regardless of whether they were served and joined as defendants, participated in, or received actual notice of the proceeding, provided notice was given in accordance with Paragraph C of this rule.” Rule 1-071.2(D) NMRA.

II. THE ANIMAS UNDERGROUND BASIN ADJUDICATION.

A. Procedural Background of the Animas Underground Basin Adjudication.

In the Animas Basin, the State filed a complaint for a water rights adjudication in the 6th Judicial District Court of New Mexico on October 21, 2005 for the purpose of determining the priority, amount of water, and other elements of each water right in the Basin in accordance with NMSA, 1978, §§ 72-4-13 through 72-4-19. *See* Complaint for the Adjudication of All Water Rights in the Animas Valley Underground Water Basin, *State of New Mexico v. Rosette*, No. D-623-CV-2005-00054 (Oct. 21, 2005).

From its inception in 2005, the Basin Adjudication progressed very slowly, until 2012 when Special Master Steve Snyder recommended “an innovative procedural approach” whereby all water users would be adjudicated through an expedited *inter se*. *See* Special Master’s Report Recommending that Court Enter Case Management Order Mandating Basin-Wide Issue Proceeding and Expedited *Inter Se* Proceedings, *State of New Mexico v. Rosette*, No. D-623-CV-2005-00054

(July 19, 2012) [hereinafter Special Master’s July 19, 2012 Report].

The District Court adopted the Special Master’s July 19, 2012 Report recommending an “innovative procedural approach” and ordered that: 1) the CIR⁴ and other common elements will be resolved in basin-wide proceedings prior to adjudicating individual water rights claims; 2) then each water right claim will be adjudicated in an expedited *inter se* proceeding; and 3) water rights claimants shall be provided with notice of all proceedings in accordance with Paragraph C of Rule 1-071.2 NMRA. *See* Case Management Order Mandating Basin-Wide Issue Proceeding and Expedited *Inter Se* Proceedings and Prescribing Procedure for Giving Notice of All Such Proceedings, *State of New Mexico v. Rosette*, No. D-623-CV-2005-00054 (Aug. 9, 2012); Order Granting Motion to Amend Exhibits A and B to Case Management Order, *State of New Mexico v. Rosette*, No. D-623-CV-2005-00054 (Aug. 30, 2012); Order Granting Motion to Amend Notice and Subscription Form, CV 2005-0054 (Aug. 30, 2012) [hereinafter collectively referred to as “Case Management Order”]; *see also* Procedural Order Governing Expedited *Inter Se* Adjudication of State Law Water Rights, *State of New Mexico v. Rosette*, No. D-

⁴ “CIR” is “the quantity of irrigation water, exclusive of precipitation, stored soil moisture, or ground water that is required consumptively for crop production.” *See* N.M. Office of the State Eng’r, *Glossary of Terms*, <https://www.ose.state.nm.us/WR/glossary.php#C> (last visited Apr. 17, 2020). It is more commonly referred to as the “duty” of water required for crop production. *See State ex rel. Reynolds v. Mears*, 1974-NMSC-070, ¶ 26, 86 N.M. 510, 516.

623-CV-2005-00054 (April 22, 2014).

The District Court reasoned that, to conserve judicial resources, it could adjudicate both basin-wide issues and individual water rights claims in an expedited *inter se* proceeding because of the commonalities of the water rights in the Basin. *See* Case Management Order.

The “innovative” expedited *inter se* approach is founded on two principles: (i) common elements of water rights in the Animas Underground Water Basin can be resolved in one or more basin-wide proceedings before commencing the adjudication of individual water right claims; and (ii) each individual water right claim can be adjudicated in an expedited *inter se* proceeding where the subfile phase and *inter se* phase proceed simultaneously. Special Master’s July 19, 2012 Report.

Under the expedited *inter se* approach, notice of the stream system “proceeding pursuant to Paragraph C of this rule shall be given to all claimants, regardless of whether they have been served and joined as defendants.” Rule 1-071.2(C) NMRA. The notice under Paragraph C of Rule 71.2 is required to be “reasonably calculated under the circumstances to apprise claimants of the proceeding.” *Id.* Paragraph D provides that when notice has been provided in accordance with Paragraph C, “[a]n order resolving a stream system issue . . . or an expedited *inter se* proceeding binds all water rights claimants regardless of whether they were served and joined as defendants, participate in, or received actual notice

of the proceeding.” Rule 1-071.2(D) NMRA.

In the Case Management Order, the Court detailed the specifics of how the parties and the Court would provide notice to claimants that had not been joined in the suit. Importantly, the Court ordered that the Monthly Adjudication Report for providing claimants notice of hearings, motions, orders, and upcoming deadlines, would include, *inter alia*, a brief description of the relief sought in all motions listed in the report. Case Management Order, ¶ B(1)(a) at 5. In order to “enable the Clerk to include in the Monthly Adjudication Report a summary of the relief requested in a motion” the Court ordered that “all motions must contain a short summary of the relief requested in the motion.” *Id.*, ¶ B(1)(f) at 6-7. The Court ordered that the summary not exceed 50 words. *Id.*

In addition, the Case Management Order stated that all motions requesting the Court to resolve a basin-wide issue should be filed by November 28, 2012. *See* Case Management Order at (C). Notice of the motions was to be provided in the Notice of Adjudication and in the Monthly Adjudication Report. *Id.* However, no motions for additional basin-wide issues were filed, and the only basin-wide issue that was determined was the consumptive irrigation requirements set forth in the 2013 Final Order on July 24, 2013. *See* 2013 Final Order; *see also* Minute Order, No. D-623-CV-2005-00054 (Dec. 17, 2012).

B. JCV's Consent Order.

The 2013 Final Order was decided prior to the determination of individual subfiles, yet the basin-wide consumptive irrigation requirements set out in the 2013 Final Order were incorporated into each of the individual subfiles involving irrigation rights. JCV received a proposed Consent Order that included the CIR decided by the 2013 Final Order. *See* JCV's Proposed Subfile Orders; JCV's Response and Request for Consultation; and, JCV's Rejection of Subfile Judgment. During JCV's consultation with the State, the State informed JCV that the Order setting irrigation requirements was a final determination of CIR for the Basin and would not be changed for any water claimant. Therefore, JCV rejected its proposed subfile order, requested the District Court to apply a modified irrigation requirement specific to pecan trees in the Basin, and moved the Court to set aside the 2013 Final Order pursuant to either Rule 1-055 or Rule 1-060(B)(6) NMRA. *See* JCV's Rejection of Subfile Judgment and J & C Victor 2006 Trust's Motion to Set Aside Default Judgment Pursuant to Rule 55 and Rule 60(B)(6) NMRA and Statement of Claims (Sept. 14, 2018).

JCV's argued in its Motion that its constitutional rights had been impaired by the State's failure to provide adequate notice of the filing of the Summary Judgment motion seeking to set a basin-wide CIR for agricultural rights. *See* Docketing Statement (April 19, 2019) (setting forth the constitutional basis upon which JCV

relied in seeking to have the 2013 Final Order set aside). Upon the Court's denial of JCV's Motion challenging the 2013 Final Order under Rules 1-055(C) and 1-060(B)(6), this appeal ensued.

III. FINALITY OF THE ORDER DENYING JCV'S MOTION TO SET ASIDE DEFAULT JUDGMENT PURSUANT TO RULE 55 AND RULE 60(B)(6).

The COA has asked JCV to demonstrate that the "subfile" order that is being appealed is final and immediately appealable under Rule 1-054 NMRA, how the Supreme Court's holding in *State ex rel. State Eng'r v. Parker Townsend Ranch*, 1994-NMSC-125, 118 N.M. 780 applies to JCV's appeal, and whether recent amendments to Rule 1-054(B) alter *Parker Townsend Ranch's* applicability to this appeal. Without further explanation, the COA intends to dismiss the appeal for lack of jurisdiction.

In its analysis, the COA is conflating a "subfile" order that fully adjudicates a water right as between JCV and the State, and JCV and other defendants holding water rights in the Animas Basin, with an earlier order in this adjudication that finally determined the CIR for crops grown in the Animas Basin. Eventual entry of a subfile order will constitute a full and final determination of all aspects of JCV's water rights as against the world, but no subfile order has been entered adjudicating JCV's water rights. Therefore, JCV is not appealing from any subfile order. Rather, JCV is appealing from the Court's denial of its motion seeking to set aside a previous final

order entered by the Court that adjudicates, on a basin-wide basis, the CIR for all water rights in the Animas Basin.

As noted above, an adjudication suit is essentially a massive quiet title action. In any quiet title action, as an example, if a probate court previously entered a judgment finding that real property passed to one heir versus another, denial of a motion to set aside that previous judgment under the appropriate rules of civil procedure would not be a decision on who is the true owner of the property in the quiet title action. While the denial of such a motion might influence the ultimate determination of the owner of the property in the quiet title matter, it is not a decision on who that owner is. And, the denial of a motion to set aside the probate court's earlier judgment would be appealable in its own right without regard to the status of the quiet title action.

This is analogous to what has transpired in this case. As will be shown, a final order was entered in the adjudication that determines the CIR of irrigated lands in the Animas Basin as a stream system issue. That order was appealable at the time it was entered in 2013. JCV has moved the Court under two different Rules of Civil Procedure to set aside that final order, but the Court refused. This refusal is the Order from which JCV appeals – *not* a subfile order adjudicating its own water

rights.⁵

“In general, the right to appeal is restricted to final judgments and decisions.” *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1994-NMCA-139, ¶ 14, 119 N.M. 29, 33 (“A final order is commonly defined as an order that decides all issues of fact and law necessary to be determined or which completely disposes of the case to the extent the court had the power to dispose of it.”); *State v. Begay*, 2010-NMCA-089, ¶ 11, 148 N.M. 685; *In re Adoption of Homer F.*, 2009-NMCA-082, ¶ 20, 146 N.M. 845, 851 (“We answer the finality question by evaluating whether the substance of the order declares the rights and responsibilities of the parties to the controversy and not by examining the parties’ expectations.”). Finality is a prerequisite to appellate court jurisdiction. *See Children, Youth & Families Dep’t. v. Frank G.*, 2005-NMCA-026, ¶ 39, 137 N.M. 137 (explaining that “this Court

⁵ This appeal involves the constitutional question of whether a summary judgment entered by a District Court without adequate notice to a party should be set aside as a violation of due process. *See, e.g., City of Albuquerque v. Reynolds*, 1962-NMSC-173, ¶ 17, 71 N.M. 428 (“It is fundamental to say that due process requires notice and hearing so that those who are to be bound or affected by a judgment may have their day in court.”); *T.H. McElvain Oil & Gas Ltd. P’ship v. Group I: Benson-Montin-Greer Drilling Corp., Inc.*, 2017-NMSC-004, ¶ 25, 388 P.3d 240, 248 (“The right to be heard in a court of law in response to proceedings seeking to deprive one of one’s own property is a fundamental requirement of due process.”). These constitutional issues are squarely before this Court to determine the sufficiency of the notice provided to JCV on a matter that will ultimately inform the full extent of JCV’s property rights. However, water rights matters are only tangentially before the COA at this time because no sub-file order has been entered.

would not have jurisdiction to hear an appeal from a non-final order”), *aff’d sub nom. In re Pamela A.G.*, 2006-NMSC-019, 139 N.M. 459; *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786 (observing that jurisdictional questions present issues of law).

Rule 1-054(B) NMRA states as follows:

Judgment upon multiple claims or involving multiple parties. When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, *but* fewer than all, claims or parties *only if the court expressly determines that there is no just reason for delay*. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

(emphasis added). Put simply, Rule 1-054(B) provides the District Court the authority to enter final judgments setting basin-wide irrigation requirements and resolving disputes with individual subfile claimants even though unresolved issues remain with additional water claimants. The District Court entered its final order on the CIR, expressly holding that there was no just reason to delay entry of the order even though myriad subfiles remained for adjudication. 2013 Final Order at Finding of Fact No. 2. In addition, the 2013 Final Order states “[t]his final judgment precludes all persons, known and unknown, who claim a right to use the underground waters of the Animas Basin from making any and all objections to the

irrigation water requirements established herein during subfile and inter se proceedings.” *Id.* Because it is a final order, entered in 2013, the only way to challenge it is through a motion brought under Rule 1-055(C) and/or Rule 1-060(B)(6) NMRA.⁶ *See James v. Brumlop*, 1980-NMCA-043, ¶¶ 6-9, 94 N.M. 291, 293-94 (holding that the failure to timely appeal the granting of a motion for summary judgment deprived the appellate court of jurisdiction to review the summary judgment order).

Denials of motions brought under Rule 1-060(B) are final orders that are immediately appealable. *Id.* (“[T]he decision of the trial court not to reopen the judgment is a final and appeal [sic] judgment in its own right.”) (internal citations omitted); *Wooley v. Wicker*, 1965-NMSC-065, ¶ 5, 75 N.M. 241, 244 (“We also note that the federal courts have been uniform in holding orders overruling motions under Federal Rules of Civil Procedure 60(b), which is for all practical purposes identical with our rule 60(b) (§ 21-1-1(60)(b), N.M.S.A. 1953), to be final orders and

⁶Indeed, both the District Court and the State Engineer acknowledged that the 2013 Final Order was the final determination of the CIR to be applied in the Animas Basin and was not subject to change. In paragraph 25 of the District Court’s February 28, 2019 Order Denying JCV’s Motion to Set Aside, the District Court states: “The Court’s [2013 Final] Order is a final judgment binding on JCV.” Even the State’s October 26, 2018 Response to JCV’s Motion to Set Aside concedes: “the Court followed the proper procedures under New Mexico law in issuing its Final Order pursuant to New Mexico’s specific rules governing water right adjudications, binding JCV and all other water right claimants in the Animas Basin.” *Id.* at ¶ 3.

appealable.”); *U.S. Bank Nat. Ass’n v. Martinez*, 2013 WL 6662884, at *1 (N.M. Ct. App. Nov. 4, 2013) (non-precedential) (citing *Wooley v. Wicker* with approval).

Similarly, the denial of a request to set aside a default judgment under Rule 1-055(C) is immediately appealable when there are no damages still to be determined or the damages have already been determined. *See Gallegos v. Franklin*, 1976-NMCA-019, ¶ 25, 89 N.M. 118, 122 (“The order denying defendants’ motion to vacate the default judgment was a final order which affected substantial rights. Both the default judgment and the final order were appealable.”); *compare Cole v. McNeill*, 1984-NMCA-126, ¶ 5, 102 N.M. 146, 148 (“Our decisions which have recognized the appealability of such denial orders have involved default judgments which awarded damages.”), *with DeFillippo v. Neil*, 2002-NMCA-085, ¶ 20, 132 N.M. 529, 534 (“New Mexico decisions have also recognized that a default judgment or order which reserves the issue of damages for future determination is not a final judgment for purposes of appeal.”). Of course, there are no damages to be determined after JCV’s default in responding to the Motion for Summary Judgment that led to the Court’s determination of the basin-wide CIR for the Animas Basin. Thus, the refusal of the District Court to set aside the 2013 Final Order was immediately appealable.

Because the COA has misinterpreted the nature of JCV’s appeal, the Supreme Court’s decision in *Parker Townsend Ranch* is irrelevant to this appeal. In that case,

the Supreme Court looked specifically at whether a “subfile order” adjudicating the water rights of the predecessors-in-interest of Parker Townsend Ranch was an interlocutory order, or whether the subfile order was final and relief from it could only be sought under Rule 1-060 NMRA. *State ex rel. State Eng’r v. Parker Townsend Ranch*, 1994-NMSC-125, ¶ 1, 118 N.M. 780. In holding that the subfile order was a final order, the Supreme Court stated “[t]here are practical, if not technical, reasons for viewing subfile orders final as between the state and the applicant whose water-rights adjudication is litigated apart from the interests of other parties, and without their participation. Such adjudication is joined with the inter se proceedings only for purposes of judicial economy and case management.” *Id.* at ¶ 4. The Supreme Court also stated “we believe that because a subfile order is *an adjudication of water rights as between the state and the applicant only*, it satisfies the policies of certainty in dispute resolution, alienability of property, facilitation of meaningful appellate review, and achievement of judicial efficiency to hold that such subfile orders are final insofar as they resolve all claims for relief between the state and the applicant.” *Id.* at ¶ 5.

As noted above, no subfile order adjudicating JCV’s water rights has been entered in this case so there is no need to apply the reasoning or the holding of *Parker Townsend Ranch* to this appeal pending before the COA. Furthermore, the COA does not need to determine whether the 2016 amendments to Rule 1-054(B) NMRA

change the Supreme Court's analysis in *Parker Townsend Ranch* concerning the need to make a specific finding that there is no reason to delay the entry of a final order. As discussed above, JCV has challenged a previously entered final order in the adjudication through a motion to set that order aside. And, as previously noted, the District Court in 2013 included the requisite language making the order final. While the CIR set forth in that order will be relevant to a final sub-file adjudication order because it will be used in the equation to compute the quantity of JCV's final water right, no subfile order has yet been entered and no appeal of a subfile order has been sought. Neither the holding in *Parker Townsend Ranch* nor the amendments to Rule 1-054(B) are apposite to this appeal.

Although additional issues remain for determination for many individual subfiles, the 2013 Final Order became final and appealable under Rule 1-054(B), as amended, in 2013. Because no appeal was taken from that Order, the only way to challenge it at this juncture is through a motion brought under Rules 1-055(C) and/or Rule 1-060(B), which was done by JCV. That motion was denied and JCV appropriately appealed the District Court's denial to this Court.

CONCLUSION

The District Court has already issued final judgments on basin-wide issues, which have been incorporated into each individual irrigation subfile orders. The 2013 Final Order explicitly states “[t]here is no just reason for delay for the entry of

a final judgment as to irrigation water requirements for irrigation in the Animas Basin, and the Court enters this Order as a final judgment as to the irrigation water requirements of the water rights for all irrigation subfiles as described herein.” 2013 Final Order at ¶ 8. The District Court’s basin-wide irrigation orders became final and appealable in 2013 under Rule 1-054(B) NMRA. Because the time to appeal the Order has long passed, JCV has correctly tried to reopen the 2013 Final Order under Rules 1-055(C) and 1-060(B) NMRA. The District Court’s denial of the JCV’s motion is a final order and immediately appealable. Therefore, this Court has jurisdiction over this appeal and should not summarily affirm the District Court on the basis of the appellate court’s lack of jurisdiction.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By:  _____

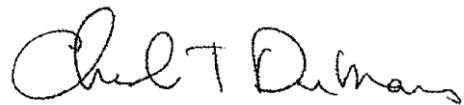
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic mail or first-class mail on this 20th day of April, 2020, as follows:

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