

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

FILED
2016 MAR 28 PM 4:33

**State of New Mexico ex rel.
Office of the State Engineer,**

Plaintiff

No. CV 96-888
Lower Rio Grande Adjudication
James J. Wechsler
Presiding Judge

v.

**Elephant Butte Irrigation District, et al.,
Defendants**

**ELEPHANT BUTTE IRRIGATION DISTRICT'S MOTION FOR DESIGNATION OF
STREAM SYSTEM ISSUE FOR PRE- RIO GRANDE PROJECT WATER RIGHTS**

Pursuant to the Court's Order Granting the State of New Mexico and City of Las Cruces' June 29, 2015 Motion to Exclude Evidence (filed August 18, 2015), the Court's letter of February 22, 2016, and the Court's Second Amended Case Management Order Authorizing Limited Notice by a Quarterly Report and Setting Procedures for Stream System Issue Proceedings (filed August 16, 2010) ("Case Management Order"), Elephant Butte Irrigation District (EBID) hereby moves that the Court designate a stream system issue to address pre-Rio Grande Project (pre-Project) water rights that were merged into the Rio Grande Project (Project). EBID seeks a determination of (1) whether pre-Project rights were extinguished when they were pledged to the Project through stock subscriptions with Elephant Butte Water Users' Association, and (2) if the pre-Project rights were not extinguished, whether their priority dates should be reflected in the priority dates for the Rio Grande Project.

The Case Management Order defines a stream system issue as "an issue, the resolution of which will affect the water right(s) of all or a substantial number of claimants." EBID's

proposed stream system issue will affect the water rights of all its members because pre-Project rights were pledged to the Project and for over a century have been intertwined with and administered on a pro-rata basis as part of Project supply. Determining whether pre-Project rights are a component of the Project priority dates will have a significant impact on the Project's seniority as against non-Project entities. *See* Elephant Butte Irrigation District's Response to State of New Mexico and City of Las Cruces' Joint Motion to Exclude Evidence Unrelated to the United States' Interests in the Rio Grande Project (EBID's Response to Motion to Exclude Evidence) (SS-97-104, filed July 21, 2015).

Designation of EBID's proposed stream system issue on pre-Project rights would promote judicial efficiency and completion of the adjudication because it will affect the ultimate determination of the priority date for the Project. As noted in the EBID's Response to Motion to Exclude Evidence, there has already been ample discovery on this issue, most of which was produced by the expert historian for the City of Las Cruces and State of New Mexico. EBID believes the issue of whether the Pre- Project rights were extinguished is ripe for Summary Judgment and could proceed immediately with dispositive motions, similar to the schedule set by the Court in the Pre-1906 Claimants' expedited *inter se*.

Respectfully submitted on March 28, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion were emailed on March 28, 2016 to the

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Please find the attached motion to be filed in CV-96-888.

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— **2016-03-28 EBID Motion for Designation of SSI for Pre-Project
Rights.pdf**
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