



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

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

Plaintiff,

vs.

ELEPHANT BUTTE IRRIGATION  
DISTRICT, *et al.*,

Defendants.

)  
) No. CV-96-888  
) Lower Rio Grande Adjudication  
) James J. Wechsler  
) Presiding Judge  
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**RESPONSE OF THE CITY OF LAS CRUCES TO ELEPHANT BUTTE IRRIGATION  
DISTRICT'S MOTION FOR DESIGNATION OF STREAM SYSTEM ISSUE FOR PRE-  
RIO GRANDE PROJECT WATER RIGHTS AND TO PRE-1906 CLAIMANTS'  
MOTIONS TO DESIGNATE STREAM SYSTEM ISSUES AND CONCURRENCE IN  
STATE OF NEW MEXICO'S RESPONSE TO SAME**

COMES NOW, the City of Las Cruces ("Las Cruces") and hereby submits this Response to Elephant Butte Irrigation District's ("EBID") Motion for Designation of Stream System Issue for Pre-Rio Grande Project Water Rights, filed March 28, 2016, and to the six motions to designate stream system issues filed on March 31, 2016, by a group of individuals identified in the motions as defendants and generally described as the Pre-1906 Claimants throughout these proceedings in the Lower Rio Grande.<sup>1</sup> The City Concurs with the State's Responses to these motions. As detailed by the State, the stream system issue proposed by EBID contains facts that are not in the record, does not recognize the existence of all early surface water rights in the

<sup>1</sup> The City of Las Cruces joins the State in its opposition of the six motions to designate stream system issues filed by the Pre-1906 Claimants on March 31, 2016.

Lower Rio Grande, and does not properly frame the stream system issue that should be determined by this Court. The court should adopt the Stream System Issue formulated by the State in its motion dated March 28, 2016.

This stream system issue must be framed broadly so that all parties are able to participate under any of the multiple theories that may be asserted and must result in an order from this Court on how these rights should be adjudicated and administered, if they still exist today. The State proposed that the issue be framed in a way that would address the key issues of surface water rights developed before the Rio Grande Project, as follows:

**ISSUE: Pre-Rio Grande Project Surface Water Rights**

1. Where the owners of surface water rights developed before the Rio Grande Project agreed later to take delivery through the Project, do those pre-Project rights continue to exist today?
2. If the rights still exist, can they be exercised, by whom, and for what purposes?

The State's Response now includes a proposal that its original question No. 2, above, should be amended to add an initial inquiry to that, "[i]f the rights still exist, *who owns them*, can they be exercised, by whom, and for what purposes?". The City agrees with the State's framing of this stream system issue with a further clarification that Question No. 1 above include, not only irrigation surface water rights, but all surface water rights that were developed before the Rio Grande Project. This allows the assertion of claims by the City of Las Cruces because early acequias, such as the Acequia Madre de Las Cruces, provided domestic and sanitary uses of water to communities like Las Cruces.

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By  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the *Response of the City of Las Cruces to Elephant Butte Irrigation District's Motion for Designation of Stream System Issue for Pre-Rio Grande Project Water Rights and to Pre-1906 Claimants' Motions to Designate Stream System Issues and Concurrence in State of New Mexico's Response to Same* was sent this 18<sup>th</sup> day of April, 2016, to the following via electronic mail:

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