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DISTRICT COURT  
DONA ANA COUNTY, NM

1 STATE OF NEW MEXICO  
2 COUNTY OF DONA ANA  
3 THIRD JUDICIAL DISTRICT COURT

4 State of New Mexico *ex rel.* )  
5 Office of the State Engineer, )  
6 Plaintiff, )  
7 )  
8 v. )  
9 )  
10 Elephant Butte Irrigation District, *et al.* )  
11 )  
12 )  
13 )  
14 )  
15 Defendant. )

No. CV 96-888  
Lower Rio Grande Adjudication  
James J. Wechsler, Presiding Judge  
SS 97-104  
United States' Interests

16  
17 **ORDER REGARDING MOTION OF EPCWID NO. 1**  
18 **TO MAKE FILING IN STREAM SYSTEM ISSUE 104**

19 This matter having come before the Court upon the motion of El Paso County Water  
20 Irrigation District No. 1 (EPCWID No.1) to make filings in Stream System Issue No. 104, and the  
21 Court having reviewed the issues and held argument on March 7, 2012, finds and concludes as  
22 follows.

23 (1) By order entered March 11, 1997, the Court ordered that EPCWID No.1 may participate  
24 as an amicus curiae in this adjudication.

25 (2) On April 27, 2011, the Court entered its order confirming the participation of EPCWID  
26 No. 1 as an amicus curiae in all stream system issues and expedited inter se proceedings. The order  
27 established the procedure for EPCWID No. 1 to file a brief as follows: EPCWID No. 1 must file a  
28 motion, identifying its interest and the party it supports and stating the reasons the brief is desirable;  
29 it may conditionally file the brief with the motion, and the brief will be filed if there is no opposition  
30 within ten days; the Court will designate a time for opposing parties to file a response brief; and no  
31 reply brief may be filed without permission of the Court.

32 (3) The procedure adopted in the April 27, 2011 order was largely that provided in Rule 12-  
33 215(A),(C) NMRA for amicus curiae briefs in appellate cases.

34 (4) Although Rule 12-215 provides guidance to the Court as to EPCWID No. 1's status as  
35 an amicus curiae in this proceeding with respect to Stream System Issue No. 104, Rule 12-215 is not  
36 directly applicable because it is designed for cases on appeal. There is no rule in the Rules of Civil  
37 Procedure for the District Courts pertaining to amicus curiae status in district court.

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1 (5) Stream System Issues No. 104 has now progressed to the stage at which the Court will  
2 address the substantive issues. In contrast to a case on appeal in which there is typically only a brief  
3 in chief, an answer brief, and a reply, see Rule 12-213 NMRA, there will be several issues in Stream  
4 System Issue No. 104 that will require briefing. Also in contrast to a case on appeal, in which those  
5 seeking status as amicus curiae must state their interest initially because the appellate court is not  
6 otherwise informed of the interest, EPCWID No. 1 has repeatedly informed the Court of its interest  
7 in this proceeding.

8 (6) The Court believes that now that Stream System Issue No. 104 has progressed, and the  
9 Court is sufficiently knowledgeable of EPCWID No. 1's interest, the amicus curiae procedure for  
10 EPCWID No. 1 can be more efficiently handled by allowing EPCWID No. 1 to file its brief on an  
11 issue subject to objection by any party within ten days of filing. In its brief, EPCWID No. 1 shall  
12 state the party whose position it supports and the reason its brief will assist the Court. If argument  
13 is made by an opposing party to an amicus curiae brief of EPCWID No. 1, EPCWID No. 1 may file  
14 a reply, if one is otherwise permitted, to the argument.

15 (7) EPCWID No. 1 may participate in oral argument on issues it has properly filed a brief as  
16 an amicus curiae as permitted by the Court at a hearing on the issues.

17 (8) As set forth in the Court's April 27, 2010 order, EPCWID No. 1 is not a party to Stream  
18 System Issue No. 104 and may not perform the functions of a party. Specifically, it may only address  
19 the issues raised by the parties, may not file motions, may not present evidence or cross-examine  
20 witnesses, may not participate in pre-trial conferences, and may not act as a party.

21  
22 It is therefore ordered that:

23 (a) The Court modifies its April 27, 2010 order and procedure for participation of EPCWID  
24 No. 1 as an amicus curiae in Stream System No. 104 such that:

25 (1) EPCWID No. 1 may file a brief as amicus curiae on an issue, identifying the party  
26 whose position it supports and the reason its brief will assist the Court;

27 (2) any party may file an objection to the brief within ten days of its filing;

28 (3) unless the Court sustains an objection, EPCWID No. 1 may file a reply brief, if  
29 the party whose position it supports is entitled to file a reply brief and if an opposing  
30 party has made an argument addressing the argument of EPCWID No. 1 in its  
31 original brief;

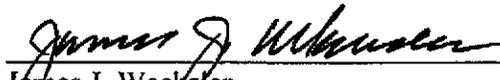
32 (4) EPCWID No. 1 may participate in oral argument on issues it has filed an amicus  
33 curiae brief as permitted by the Court at the hearing on the issues;

34 (5) as amicus curiae, EPWCID No. 1 may only address the issues raised by the  
35 parties and may not file motions, present evidence or cross-examine witnesses,

1 participate in pre-trial conferences, or perform the functions of, or act as, a party.  
2

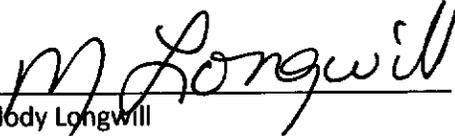
3 (b) The response of EPCWID No. 1 to the United States' response to the State's offer of  
4 judgment filed on January 20, 2012 is permitted.

5 **IT IS SO ORDERED.**

6  
7   
8 \_\_\_\_\_  
9 James J. Weckler  
Presiding Judge

## CERTIFICATE OF MAILING

I, Melody Longwill, hereby certify that I have mailed a true and correct copy of the foregoing on April 13, 2012, to the following:

  
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