

**FILED**  
 2016 NOV 18 AM 9:16  
 DISTRICT COURT  
 DONA ANA COUNTY, NM

THIRD JUDICIAL DISTRICT COURT )  
 STATE OF NEW MEXICO )  
 COUNTY OF DOÑA ANA )  
 )  
 STATE OF NEW MEXICO *ex rel.* )  
 Office of the State Engineer, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ELEPHANT BUTTE IRRIGATION )  
 DISTRICT, *et al.*, )  
 )  
 Defendants. )

No. CV 96-888  
 Hon. James J. Wechsler  
 Presiding Judge  
 Stream System Issue  
 SS-97-107  
 Pre-Project Interests

**STATE OF NEW MEXICO'S STATEMENT OF POSITION  
 REGARDING EXTINGUISHMENT OF PRE-PROJECT RIGHTS**

NOW COMES the State of New Mexico ("State") and, in accord with this Court's Order of July 6, 2016, designating Stream System Issue 107 ("whether surface water rights developed before the Rio Grande Project and now served by the Project were extinguished by any means"), files this, its Statement of Position.

Prior to the authorization and construction of the Rio Grande Project ("Project"), part of the land in what is now the Elephant Butte Irrigation District ("EBID") was being irrigated with water from the Rio Grande, and those irrigators, putting that water to beneficial use, thereby established water rights prior to the United States' appropriation of water for the Project.

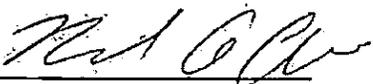
In 1906 the United States filed a notice to appropriate 730,000 acre-feet of surface water per year from the Rio Grande for the Project. In 1908 it filed a second notice to appropriate all the remaining unappropriated surface water in the Rio Grande.

The natural flow of the Rio Grande, by the early years of the twentieth century, had become almost useless as a reliable source of irrigation due to increasingly frequent drought

conditions occasionally punctuated by seriously destructive flooding. W.W. Follet noted in his Report that during six of the eight years between 1888 and 1896 the river at El Paso was dry. Reclamation service Chief Engineer Newell, in a letter to B.M. Hall dated May 20, 1908, stated that “[u]nder the conditions now existing in the Rio Grande Valley the water rights depending upon the normal flow of the river are of comparatively little value.” The building of a dam, reservoir and new system of diversion dams and canals remedied that lack of supply by capturing stream flows that previously could not be used for irrigation.

It is the position of the State of New Mexico that those water rights developed before the Project were forfeited or abandoned by those who elected to take their irrigation surface water through the works created by and under the terms offered by the Rio Grande Project. In light of such extinguishment there is no need for this stream adjudication to address claims of pre-Project rights.

Respectfully submitted,

  
Richard A. Allen  
Laurel A. Knowles  
Special Assistant Attorneys General  
P.O. Box 25102  
Santa Fe, New Mexico 87504  
(505) 827-6150 / 827-3854  
Attorneys for the State of New Mexico

**CERTIFICATE OF SERVICE**

**Stream System Issue/Pre-Project Interests No. 107 (Pre-Project Interests)**

I HEREBY certify that a copy of the *State of New Mexico's Statement of Position Regarding Extinguishment of Pre-Project Rights* was mailed or emailed to the participating parties identified below this 18<sup>th</sup> day of November, 2016.

***Served by first class mail:***

R. Lee Leininger  
U.S. Department of Justice  
Env. and Natural Resources  
South Terrace, Ste. 370  
999 18<sup>th</sup> St.  
Denver, CO 80202  
*United States*

Jay Stein  
Seth Fullerton  
Lorraine Ortiz  
Stein & Brockman, P.A.  
P.O. Box 2067  
Santa Fe, NM 87504-2067  
*City of Las Cruces*

Robert J. Noziska  
Sueann G. Kenney-Noziska  
12305 Montes Road  
La Mesa, NM 88044

Roberto B. Carrasco  
P.O. Box 1  
Chamberino, NM 88027

Ed Page  
4695 Page Farm Circle  
Anthony, NM 88021

Martina H. Singh  
P.O. Box 113  
La Mesa, NM 88044

Gerald A. Want  
2510 W. O'Hara Road  
Anthony, NM 88021

Ignacio L. Bustamante  
2300 W. Union Ave.  
Las Cruces, NM 88005

Armando V. Carrasco  
P.O. Box 11  
Chamberino, NM 88027

George J. Want, Jr.  
1445 Los Pinos Way  
Anthony, NM 88021-8509

Manuelita B. Rosales  
14440 Hwy. 478 – S. Main St.  
Mesilla Park, NM 88047

Dale J. Hopkins  
P.O. Box 247  
Organ, NM 88052

Michael R. Caldarella, Sr.  
3025 W. O'Hara Rd.  
Anthony, NM 88021

MSPM Associates LP  
(MSPM)  
2815 Lafayette Road  
Newport Beach, CA 92663

Wayne L. and Rebecca Miller  
86 Haasville Road  
Anthony, NM 88021

***Served by email***

R. Lee Leininger  
U.S. Department of Justice  
Christopher B. Rich  
Bella Wolitz  
Shelly Randel  
U.S. Department of the Interior  
chris.rich@sol.doi.gov  
bella.wolitz@sol.doi.gov  
shelly.randel@sol.doi.gov  
lee.leininger@usdoj.gov  
*United States*

Steven L. Hernandez  
The Law Firm of Steven L.  
Hernandez, P.C.  
slh@lclaw-nm.com  
*Elephant Butte Irrigation  
District*

Alvin F. Jones  
Arnold J. Olsen  
Hennighausen & Olsen,  
LLP  
ajones@h2olawyers.com  
ajolsen@h2olawyers.com  
*Southern Rio Grande  
Diversified Crop Farmers  
Association*

Jay Stein  
jfstein@newmexicowaterlaw.com  
*City of Las Cruces*

Mark F. Sheridan  
Adam Rankin  
Holland & Hart LLP  
msheridan@hollandhart.com  
agrarkin@hollandhart.com  
*El Paso Natural Gas Co.*

James M. Speer  
jmspeer@htg.net  
*El Paso County Water  
Improvement District No. 1*

John W. Utton  
Utton & Kery, P.A.  
john@uttonkery.com  
*New Mexico State University*

Rebecca A. Dempsey  
Cuddy & McCarthy, LLP  
rdempsey@cuddymccarthy.com  
klepic@cuddymccarthy.com  
*City of El Paso*

Joel T. Newton  
Joel T. Newton, P.A.  
jnewton@zianet.com  
*Stahmanns Inc.*

Tanya Scott  
Charles Dumars  
Catherine Robinson  
Law & Resource Planning  
Associates, P.C.  
tanscott@comcast.net  
ctd@lrpa-usa.com  
cr@lrpa-usa.com  
*Verde Santa Teresa LLC  
Verde Realty Master LP  
Verde Railroad Land LLC  
Verde Intermodal Industrial Park  
LLC  
Verde Border Industrial Park  
LLC*

Tessa Davidson  
Davidson Law Firm, LLC  
ttd@tessadavidson.com  
*New Mexico Pecan Growers  
Association  
Fletcher Farms, Inc.  
Tom Salopek Farms Ltd.  
Salopek 4-MP, LLC  
Thomas R. Salopek and Peggy  
C. Salopek  
David Salopek Farms, Ltd. Co.  
Triple A Farms, LLC  
Tyson Achen*

Clyde A. Pine, Jr.  
pine@mgmsg.com  
*Jack F. & Jean M.  
Darbyshire Trust*

Wayne and Rebecca Miller  
wmillerfarms@hotmail.com  
*Miller Farms Custom  
Pecan Services*

James S. Boyd  
riobutte1@aol.com

Maria O'Brien  
Sarah M. Stevenson  
Modrall, Sperling, Roehl, Harris  
& Sisk, P.A.  
mobrien@modrall.com  
sarah.stevenson@modrall.com  
*El Paso County Water  
Improvement District No. 1*

Robert S. Simon  
rsimon7@aol.com  
*Lions Gate  
Estate of Nathan Boyd  
Pre-1906 Claimants*



---

Richard A. Allen  
Special Assistant Attorney General