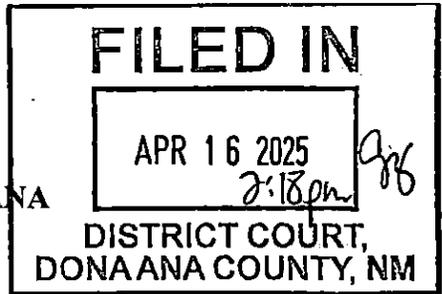


STATE OF NEW MEXICO COUNTY OF DOÑA ANA  
THIRD JUDICIAL DISTRICT COURT



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

Plaintiff,

v.

ELEPHANT BUTTE IRRIGATION  
DISTRICT, *et al.*,  
Defendants.

No. D-307-CV-96-888  
Lower Rio Grande Adjudication  
James J. Wechsler, Presiding  
Judge

Stream System Issue SS-97-104  
United States Interest

**UNITED STATES' MOTION FOR AN EXTENSION TO FILE NOTICE OF APPEAL**

Pursuant to Rule 12-201 NMRA, the United States hereby moves for a 30-day extension of time to file a notice of appeal of the Subfile Order and Final Judgment in SSI 104 ("Final Judgment") and as grounds therefore states as follows:

1. In most cases, under the New Mexico Rules of Appellate Procedure, a party must file a notice of appeal "within thirty (30) days after the judgment or order appealed from is filed in the district court clerk's office." Rule 12-201(A)(1)(b). "A party seeking an extension of time to file a notice of appeal shall file a motion in the district court before or not later than thirty (30) days after the expiration of the time otherwise prescribed by this rule for filing the notice of appeal." Rule 12-201(E)(1). "If the motion is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal, the motion may be granted on a showing of good cause." Rule 12-201(E)(2). "An extension of time granted under this [rule] shall not exceed thirty (30) days after the date that the notice of appeal would have been due if the extension had not been granted." Rule 12-201(E)(5).

2. This extension is necessary to complete the administrative process for determining whether the United States intends to pursue this appeal. *See* 28 C.F.R. § 0.20(b); *see generally* Justice Manual (JM), Title 2: Appeals, <https://www.justice.gov/jm/title-2-appeals> (last accessed April 15, 2025) (setting forth internal procedures concerning appeal). The United States cannot pursue an affirmative appeal without authorized approval by the Solicitor General, JM 2-1.000, a high-level office within the Department of Justice appointed by the President. *See* 28 U.S.C. § 505. In addition to conducting all litigation before the Supreme Court in which the federal government has an interest, the Solicitor General is also responsible for determining whether, and to what extent, the United States will pursue an appeal in every case in which the federal government receives an adverse judgment in federal or state court. *See* 28 C.F.R. §0.20(a)-(b). Before a decision can be made on whether to appeal, interested components within the United States Department of Justice must coordinate, including the Natural Resources Section and Appellate Section within the Environment & Natural Resources Division (Division), both internally and with the Department of the Interior, which has its own conferral process. This coordination includes the drafting of a memorandum to the Solicitor General, which is reviewed within the Division before being reviewed by the Office of the Solicitor General and then the Solicitor General himself. The requested extension is necessary to finish these internal deliberations, and this additional time will ensure thoughtful consideration of whether to appeal, which is desirable as a matter of public policy. *Cf. United States v. Mendoza*, 464 U.S. 154, 161 (1984) (discussing the federal government’s unique considerations taken into account by the Solicitor General in deciding whether to appeal adverse decisions). Additional time to complete these processes is further necessitated by the need to provide new federal leadership with sufficient time to familiarize themselves with these issues in these proceedings and determine

how they wish to proceed.

3. The Federal Rules of Appellate Procedure allow the United States sixty (60) days as a matter of course to file a notice of appeal rather than the thirty (30) days allowed other parties. *Compare* Fed. R. App. P. 4(a)(1)(B) (allowing the United States 60 days to file a notice of appeal) *with* Fed. R. App. P. 4(a)(1)(A) (allowing other parties 30 days to file notice of appeal). This rule reflects that the United States requires additional time to complete the administrative processes necessary to determine whether it intends to pursue an appeal. The New Mexico Rules of Appellate Procedure do not allow the United States the default sixty (60) days to file a notice of appeal that it is allowed under the Federal Rules of Appellate Rules but instead require the United States to move for an extension to request this additional time.

4. The United States did not receive notice of the Final Judgment until it was emailed to the parties on April 14, 2025 – six (6) days after its entry on April 8, 2025. This delay further shortened to approximately twenty-four (24) the United States’ time to determine whether to file a notice of appeal of the Final Judgment.

5. The United States’ current deadline for filing a notice of appeal is May 8, 2025. Therefore, this motion is timely under Rule 12-201(E)(2) NRMA, as it “is filed before the expiration of the time otherwise prescribed by this rule for filing the notice of appeal.”

6. The foregoing circumstances constitute “good cause” under Rule 12-201(E)(2) for granting the requested extension.

WHEREFORE, the United States requests a 30-day extension until June 9, 2025 of its deadline for filing a notice of appeal.

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Respectfully submitted this 16th day of April, 2025.

ADAM R. F. GUSTAFSON  
Acting Assistant Attorney General

/s/ Thomas K. Snodgrass  
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Attorneys for United States of America

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**Stream System Issue SS-97-104  
United States Interest**

**[PROPOSED] ORDER FOR EXTENSION OF TIME**

This matter comes before the Court on the United States' Motion for an Extension of Time to File Notice of Appeal. Pursuant to Rule 12-201 NMRA and for good cause shown, the Court grants the motion and extends the United States' deadline to file a notice of appeal until June 9, 2025.

**IT IS SO ORDERED**

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**James J. Wechsler  
Judge Pro Tempore**

**CERTIFICATE OF SERVICE**

I do hereby certify that on April 16, 2025, I served a true and accurate copy of **UNITED STATES' MOTION FOR AN EXTENSION TO FILE NOTICE OF APPEAL** and **[PROPOSED] ORDER FOR EXTENSION OF TIME** via email and/or mailed to the participating parties as provided on the court's website:

<https://lrgadjudication.nmcourts.gov/wp-content/uploads/sites/40/2024/05/Service-List-SS-104-Updated-1-8-2025.pdf>

/s/ Abigail M. Frische

ABIGAIL M. FRISCHE