

No. 141, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF TEXAS,

Plaintiff,

v.

**STATE OF NEW MEXICO and
STATE OF COLORADO,**

Defendants.

OFFICE OF THE SPECIAL MASTER

**Response in Opposition to Request to Participate in Oral Argument by
Amicus Curiae City of Las Cruces**

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April 24, 2015

The State of Texas respectfully submits the following Response in Opposition to Request to Participate in Oral Argument by *Amicus Curiae* City of Las Cruces. In short, the City of Las Cruces' (City) *amicus* interests are more than adequately represented by the State of New Mexico, and the City has not shown the requisite circumstances to meet the Supreme Court's high burden for participation of an *amicus* at oral argument.

ARGUMENT

The City is not a party, but rather is an *amicus curiae*, and therefore it may participate in oral argument only with special permission from the Supreme Court or the Special Master. Supreme Court Rule 28.7 provides:

In the absence of consent, counsel for *amicus curiae* may seek leave of the Court to argue orally or by a motion setting out specifically and concisely why oral argument would provide assistance to the Court *not otherwise available*. *Such a motion will be granted only in the most extraordinary circumstances*. (Emphasis added).

The City's Request to Participate in Oral Argument should be denied for at least the following reasons: (1) the arguments the City proposes to make are otherwise available to the Special Master through the State of New Mexico; and (2) the extraordinary circumstances required by Supreme Court Rule 28 are not present in this case.

A. The City of Las Cruces is Properly Represented by the State of New Mexico

The State of Texas was granted leave to file its Complaint in order to obtain a determination and enforcement of its rights, as against the State of New Mexico, to the waters of the Rio Grande pursuant to the Rio Grande Compact. Interstate compacts are negotiated to provide for an equitable division and apportionment of the compacted waters of an interstate stream. In entering the Rio Grande Compact, New Mexico sought to protect its share of the waters for use by its citizens, including the City of Las Cruces. The interests of the City in this matter are represented in this forum by the State of New Mexico. The City's water rights are subject to New Mexico state law, and only New Mexico has standing to assert those rights in this action. *See Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938).

The City offers no substantive arguments not already presented by New Mexico. As a result, it has not, and cannot meet its burden under Rule 28.7 of "setting out specifically and concisely why oral argument would provide assistance to the [Special Master] *not otherwise available*." Sup. Ct. Rule 28.7 (emphasis added). The Request to Participate in Oral Argument should be denied.

B. The City Has Not Shown the Extraordinary Circumstances Required for Amicus Participation in Oral Argument

To succeed on its Request to Participate in Oral Argument, the City must show that the “most extraordinary circumstances” are present. Sup. Ct. Rule 28.7. In support of its request, the City claims that it “will assist the Special Master in deciding New Mexico’s motion to dismiss in two respects” including assistance regarding municipal water supply issues in New Mexico and the general stream adjudication in New Mexico. City’s Request, ¶ 9. Notwithstanding its claims, the City has no interest different than any other case in which an interested entity files an *amicus curiae* brief. See Sup. Ct. Rule 37. The City’s interests will be more than adequately represented by the State of New Mexico. Moreover, the City’s *amicus curiae* brief is “of record” on the motion to dismiss should the Special Master desire the City’s input. City’s Request, ¶ 2.

The City’s request further proposes that statements made by counsel for El Paso County Water Improvement District No. 1 (EPCWID) “ignore[] the City of Las Cruces’ municipal water supply” and issues raised in the City’s *amicus curiae* brief on the motion to dismiss. City’s Request, ¶ 7. The City’s observation is irrelevant to the motion to dismiss. EPCWID is neither a party nor an *amicus* on New Mexico’s motion to dismiss. Counsel for EPCWID’s comments do not, in any way, affect the capacity of the State of New Mexico to represent its citizens, which includes the City, on its motion.

To succeed on its request, the City must show extraordinary circumstances that go beyond a direct interest in the matter. Because it has failed to do so, the City’s request should be denied.

Dated: April 24, 2015

Respectfully submitted,

s/ Stuart L. Somach

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon counsel by electronic mail and first class mail, unless otherwise specified, on the 24th day of April 2015.

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