

**No. 141, Original**

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

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**STATE OF TEXAS,**

**Plaintiff,**

**v.**

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

**Defendants.**

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**OFFICE OF THE SPECIAL MASTER**

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**Response of the State of Texas in Opposition to Request to  
Participate in Oral Argument by Amicus Curiae  
El Paso County Water Improvement District No. 1**

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April 30, 2015

The State of Texas submits the following Response in Opposition to Request to Participate in Oral Argument by Amicus Curiae El Paso County Water Improvement District No. 1. In short, El Paso County Water Improvement District No. 1's (EPCWID) amicus interests are adequately represented by the State of Texas, and EPCWID has not shown the requisite circumstances to meet the Supreme Court's high burden for participation of an amicus at oral argument. Furthermore, the State of Texas opposes EPCWID's request that "all of the amici curiae . . . participate fully and equally . . . [on] any . . . issues which come[] before the Special Master" because, in effect, the request seeks to allow any non-party to permissively join this case. The Supreme Court's original jurisdiction does not allow for permissive joinder by non-state non-parties.

## ARGUMENT

EPCWID 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.)

EPCWID's Request to Participate in Oral Argument should be denied for at least the following reasons: (1) the arguments EPCWID proposes to make are otherwise available to the Special Master through the State of Texas; (2) the extraordinary circumstances required by Supreme Court Rule 28.7 are not present in this case; and (3) EPCWID's request that all amici participate "fully and equally" on all future issues before the Special Master is not permitted by Rule 28 or any other Supreme Court rule.

### **A. El Paso County Water Improvement District No. 1 Is Properly Represented by the State of Texas**

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 between or among states and not individual users within a state. In entering the Rio Grande Compact, Texas sought to protect its share of the waters for use by its citizens, including EPCWID. Any interest that EPCWID has in the waters apportioned to Texas under the Compact is derivative to that of the State of Texas. Therefore, the interests of EPCWID in this matter are necessarily represented in this forum by the State of Texas.

EPCWID offers no substantive arguments not already presented by Texas. As a result, it has not met 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).

**B. EPCWID Has Not Shown the Extraordinary Circumstances Required for Amicus Participation in Oral Argument**

To succeed on its Request to Participate in Oral Argument, EPCWID must show that the “most extraordinary circumstances” are present. Sup. Ct. Rule 28.7. In support of its request, EPCWID only generally states that “all of the amici curiae” might allow “the Special Master to acquire a complete understanding of the legal and factual issues in this extraordinarily complex case.” EPCWID Request, ¶ 7. In no way does such a statement rise to the level of the “most extraordinary circumstances” needed to justify participation at oral argument. EPCWID’s interests will be adequately represented by the State of Texas. Moreover, the EPCWID’s amicus curiae brief is of record on the motion to dismiss should the Special Master desire EPCWID’s input.

**C. EPCWID’s Request That All Amici Curiae Participate “Fully and Equally” on “Any Other Issue” Before the Special Master Is Inappropriate**

Beyond the request on New Mexico’s motion to dismiss, EPCWID asks that all amici curiae be allowed to “participate fully and equally in oral argument . . . [on] any other issue which comes before the Special Master.” EPCWID Request, ¶ 7. This request ignores the Supreme Court’s rules and, in effect, seeks to include all amici as parties to this litigation. Granting EPCWID’s request would set aside settled Supreme Court precedent relating to intervention in original jurisdiction actions. Intervention in original actions has only been allowed in “compelling circumstances.” *New Jersey v. New York*, 345 U.S. 369, 373 (1953). EPCWID filed a motion to intervene on April 22, 2015. Only the resolution of that motion will determine whether EPCWID can participate “fully and equally” as a party to this litigation. The resolution of that motion, even if granted, will not inure to the benefit of any other amicus that would allow that amicus to participate in oral argument. Only by a specific showing as required under Supreme Court Rule 28.7 can an amicus participate in oral argument. EPCWID has not made such a showing for itself by its motion and certainly has not made a showing for any other amicus.

The EPCWID’s request should be denied.

Dated: April 30, 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 Special Master and the Parties' Counsel of Record, as noted by the asterisk, by electronic mail and first class mail, unless otherwise specified, on the 30<sup>th</sup> day of April 2015.

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