

**No. 141, Original**  
**IN THE SUPREME COURT OF THE**  
**STATE OF CALIFORNIA**

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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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**REPLY OF ELEPHANT BUTTE  
IRRIGATION DISTRICT TO RESPONSE  
OF STATE OF TEXAS TO REQUEST TO  
PARTICIPATE IN ORAL ARGUMENT**

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May 5, 2015

**REPLY OF ELEPHANT BUTTE IRRIGATION DISTRICT TO  
RESPONSE OF STATE OF TEXAS TO REQUEST TO  
PARTICIPATE IN ORAL ARGUMENT**

This is in response to the State of Texas' response of April 30, 2015, objecting to Elephant Butte Irrigation District's ("EBID") request that EBID, if allowed to intervene, should be allowed to participate in oral argument on the State of New Mexico's motion to dismiss. Texas argues that EBID should not be allowed to participate in oral argument because it did not file a timely brief relating to New Mexico's motion to dismiss.

EBID's legal arguments concerning the merits of Texas' complaint are properly before the Special Master, and the merits of Texas' complaint are directly related to the merits of New Mexico's motion to dismiss; therefore, EBID, if granted intervention, should be allowed to participate in oral argument on New Mexico's motion to dismiss. Specifically, EBID argued in its motion to intervene that no party represented EBID's interest—as EBID was required to show in order to be granted intervention, *South Carolina v. North Carolina*, 558 U.S. 256, 266 (2010)—because EBID asserted a different view concerning the merits of Texas' complaint than the other parties. EBID's motion to intervene was timely; EBID filed its motion to intervene on December 3, 2014, shortly after the Supreme Court, on November 3, 2014, appointed Mr. Grimsal to serve as Special Master. None of the parties opposing EBID's intervention—including Texas—argued that EBID's intervention motion was untimely. In short, EBID filed a timely motion to intervene that appropriately raised EBID's legal arguments concerning the merits of Texas' complaint, and the merits of Texas' complaint are directly related to the merits of New Mexico's motion to dismiss. Therefore, EBID, if allowed to intervene, should be allowed to present its arguments during oral argument on New Mexico's motion to dismiss.

More broadly, the Special Master has an interest in reaching the correct decision concerning the merits of Texas' complaint and New Mexico's motion to dismiss—which are directly related—because the Supreme Court will consider these merits in reviewing the Special Master's decision. Since EBID asserts different arguments than the other parties concerning the merits of these issues, the Special Master should hear and consider EBID's arguments, in addition to the arguments of the other parties, if EBID is allowed to intervene. In its motion to intervene, EBID argues that the Rio Grande Compact does not apportion Rio Grande water between New Mexico and Texas, and that the water is instead apportioned by the 1938 contract as modified by the 2008 Operating

Agreement, to both of which EBID was a signatory; therefore, EBID argues, Texas' complaint should be dismissed but Texas should be allowed to amend its complaint to state a valid claim. None of the other parties asserts the same or a similar argument. The Special Master should hear EBID's arguments during oral argument on New Mexico's motion to dismiss to ensure that the Special Master hears all relevant arguments by the parties concerning the merits of New Mexico's motion, because the Supreme Court presumably will consider all relevant arguments in reviewing the Special Master's decision.

Finally, EBID believes that its reply brief only responded to arguments made by parties opposing EBID's motion to intervene and therefore that EBID's reply brief did not raise "new contentions," as Texas asserts in its response. Nonetheless, EBID has no objection if Texas or any other party is allowed to file a sur-reply to EBID's reply brief responding to any such claimed "new contentions."

Dated: May 5, 2015

Respectfully submitted,

By: Roderick E. Walston  
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## CERTIFICATE OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 2001 N. Main Street, Suite 390, Walnut Creek, California 95814. On May 5, 2015, I served the following document(s):

### **REPLY OF ELEPHANT BUTTE IRRIGATION DISTRICT TO RESPONSE OF STATE OF TEXAS TO REQUEST TO PARTICIPATE IN ORAL ARGUMENT**

- By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):
  - Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

- By personal service.** At \_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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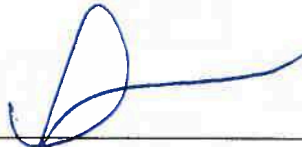
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I declare under penalty of perjury under the laws of the State  
of California that the above is true and correct.

Executed on May 5, 2015, at Walnut Creek, California.



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Irene Islas