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April 19, 2018

Via Email: Michael_melloy@ca8.uscourts.gov

Honorable Michael J. Melloy
Special Master
United States Circuit Judge
111 Seventh Avenue, S.E., Box 22
Cedar Rapids, IA 52401

Dear Special Master Melloy:

Amici City of Las Cruces, New Mexico Pecan Growers, New Mexico State University and the Albuquerque Bernalillo County Water Utility Authority are writing with regard to the proposed Case Management Plan ("CMP") submitted for your consideration in No. 141, Orig. All four of these *amici*, along with the City of El Paso, Elephant Butte Irrigation District, El Paso County Water Improvement District No. 1, and the Hudspeth County Reclamation and Improvement District 1, have important and vital interests in the waters of the Rio Grande Basin ("Stakeholder Amici"). They are the real parties in interest that will be directly affected by the outcome of the litigation. Accordingly, we are very concerned with the unnecessarily limited role for *amici* reflected thus far in the CMP.

We are requesting that you incorporate language in the CMP that would provide the Stakeholder Amici sufficient notice and opportunity to ensure that their interests are properly represented by the parties, and to ensure the full exposition of the issues. For example, beyond what is proposed in the draft CMP, and at a minimum, we propose that Stakeholder Amici be entitled to: 1) receive notice of all discovery matters (notices of deposition and certificates of service for written discovery requests and responses); 2) observe depositions of witnesses; and 3) file briefs on matters affecting their interests without having to seek leave to do so. Moreover, Stakeholder Amici should be allowed to participate in hearings to ensure a complete factual and legal record, to the extent allowed by the Special Master. There is precedent for this proposal in *Nebraska v. Wyoming, et al.*, No. 108, Orig., and *Montana v. Wyoming*, No. 137, Orig.

Most of the Stakeholder Amici have been engaged in this case since its inception and have decades of experience in legal and administrative matters along the Lower Rio Grande, including the litigation of issues in the state adjudication styled *State of New Mexico v. Elephant Butte Irrigation Dist., et al.*, No. CV-96-888 (N.M. Third Jud. Dist. Ct. N.M.). Given the use of electronic service, we do not believe providing Stakeholder Amici the opportunity to be kept fully informed as the case progresses will be an undue burden on the parties but, rather, will relieve them from having to respond to separate requests for information on an *ad hoc* basis. To be clear, our proposal would also apply to Texas *amici*.

Accordingly, we respectfully request that you consider incorporating the following language in Section 3 of the parties' proposed CMP:

3. Amici Curiae

The *Amici Curiae* in this case with an interest in the waters of the Rio Grande basin are currently the City of Las Cruces, City of El Paso, Elephant Butte Irrigation District, El Paso County Water Improvement District No. 1, New Mexico Pecan Growers, New Mexico State University, Albuquerque Bernalillo County Water Utility Authority, and the Hudspeth County Reclamation and Improvement District 1. ("Stakeholder Amici"). The State of Kansas has also participated as an *Amicus*. The function of an *Amicus* in this case is solely to bring to the attention of the Special Master relevant matters not already brought to his attention by the Parties. As a friend of the court, an *Amicus* shall exercise its role in a circumspect manner, avoiding the creation of delay, obstacles, paperwork, and duplicative effort in the development of this case. The participation of an *Amicus* shall be limited as set forth below, except as ordered by the Special Master upon motion for good cause shown. *Amici* shall appear through their counsel of record.

3.1 Status Conferences

All Stakeholder Amici shall receive notices of and may attend status conferences of the Parties that the Special Master conducts.

3.2 Discovery

Stakeholder Amici shall be notified and kept informed on the same service schedule as the Parties of all discovery to be conducted. The Parties shall electronically serve on Stakeholder Amici copies of certificates of service of all discovery requests, including interrogatories, requests for admission, requests for production of documents, and notices of depositions, and responses to such requests. Copies of discovery documents will be made available to Stakeholder Amici upon their request and agreement to pay any associated costs. Counsel for Stakeholder Amici and one representative may attend and observe depositions and may obtain copies of deposition transcripts upon request and at their expense.

3.3 Briefs

Stakeholder Amici may file briefs pertaining to any of their factual or legal interests in response to any motion or brief pending before the Special Master or request for briefing by the Special Master.

3.4 Hearings

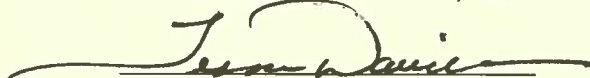
Stakeholder Amici may attend any hearing or part thereof. Stakeholder Amici may participate in oral argument to the extent allowed by the Special Master.

The level of participation we request for Stakeholder Amici is not uncommon in original action interstate water litigation. For example, in *Nebraska v. Wyoming et al.*, No. 108, Orig., Special Master Owen Olpin allowed five *amici* to participate actively as *amici*, including filing briefs and making oral presentations at hearings. Similarly, in *Montana v. Wyoming*, No. 137, Orig., *amici* were allowed to participate in substantially the same manner as we propose here. Further, we have conferred with the State of New Mexico and have been informed that it does not object to the participation by all Stakeholder Amici as proposed herein.

We appreciate your consideration of this very important matter to the City of Las Cruces, New Mexico Pecan Growers, New Mexico State University, and the Albuquerque Bernalillo County Water Utility Authority. Please let us know if we can provide you with anything further.

Sincerely,

DAVIDSON LAW FIRM, LLC



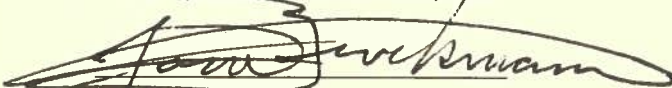
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