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September 4, 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

Re: *Texas v. New Mexico and Colorado*; No. 141 Original

Dear Special Master Melloy:

This letter is submitted in response to Your Honor's request that I summarize the issues raised by the New Mexico *amici curiae*¹ with regards to the Case Management Plan ("CMP") at the status conference on August 28 in Denver.

1. Paragraph 7.2 Requests for Production of Documents/Inspection to Parties and ¶ 7.3 requests for Documents/Inspection to New Parties.

In the second sentence in ¶ 7.3, conform the objection and response dates for document requests to non-parties to forty-five (45) days for objections and ninety (90) days for production as set forth in ¶ 7.2 for parties.

At the conclusion of ¶ 7.3 add the sentence, "The provisions in ¶¶ 7.2.3(a)-(g) relating to privileged and confidential documents and in ¶ 10 relating to 'Privilege Logs' are applicable to this paragraph relating to non-parties."

¹ The City of Las Cruces, the Albuquerque-Bernalillo County Water Utility Authority, the New Mexico Pecan Growers and New Mexico State University.

2. Paragraph 12.2.2 Disputes that Require Immediate Resolution.

This procedure should also apply to non-parties and can be addressed by adding “or non-parties” in ¶ 12.2.2 (mistakenly referred to as ¶ 12.3.2 at hearing).

3. Paragraph 4 in Appendix C.

Issues were raised regarding the scope of non-party participation under ¶ 4 in Appendix C to the CMP. We propose that all *amici* be treated the same and have equal status to participate.

Redline documents with changes in ¶ 7.3 and ¶ 12.2.2 are attached.

Thank you for your consideration of this matter.

Sincerely,



Jay F. Stein
Counsel for *Amicus Curiae* City of
Las Cruces

Cc: Counsel of Record (see attached)

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Party disclosed the information before being notified, it shall take reasonable steps to prevent further use of such information until the claim is resolved.

g If a Party wishes to dispute a claim of privilege asserted under this Order, such Party shall, within fourteen (14) days, move the Court for an order compelling disclosure of the information. The Party shall follow the procedures described in Fed. R. Civ. P. 26(b)(5)(B) and shall not assert, as a ground for compelling disclosure, the fact or circumstances of the disclosure. Pending resolution of the motion, the Parties shall not use the challenged information for any other purpose and shall not disclose it to any person other than those required by law to be served with a copy of the sealed motion.

7.3 Requests for Documents/Inspections to Non-Parties

Consistent with the schedule provided in Appendix B, each Party may serve on non-Parties requests for production of documents/requests for inspection as provided in Fed. R. Civ. P. Rules 34(c) and 45. Non-Parties shall have forty-five (45) ~~thirty (30)~~ days from the date of service to serve objections, and ninety (90) ~~sixty (60)~~ days for production subject to unresolved objections. If either the Party or the non-Party anticipates that full production will require more than sixty (60) days from service, the Party and the non-party shall attempt to agree on mutually acceptable deadline. If they cannot agree, they shall notify the Special Master promptly, and a telephone conference will be convened to discuss the issue. Any subpoena shall so inform the non-Party of these deadlines. The provisions in 7.2.3(a)-(g) relating to privileged and confidential documents and in ¶ 10 relating to 'Privilege Logs' are applicable to this paragraph relating to non-parties.

7.4 Requests to Admit

Consistent with the schedule provided in Appendix B, a Party may serve requests for admission on the other Parties, as provided in Fed. R. Civ. P. 36, except that each Party served with requests for admission shall have sixty (60) days from the date of service to respond. If served the Party anticipates that requests for admission will require more than sixty (60) days from service, the Parties shall attempt to agree on a mutually acceptable

by reason of the respondent's objections or concerning the adequacy of responses to interrogatories, document requests, requests to inspect, or requests to admit, the Parties or non-parties to the dispute shall promptly and in good faith exert every reasonable effort to resolve their differences. Where objections are made, the objecting Party shall provide all other discovery that such Party does not consider to be objectionable. As a last resort, any unresolved dispute shall be submitted to the Special Master as follows:

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