

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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**CITY OF LAS CRUCES' *AMICUS CURIAE* BRIEF IN OPPOSITION TO THE UNITED STATES' AND STATE OF TEXAS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND IN SUPPORT OF THE STATE OF NEW MEXICO'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COMPACT APPORTIONMENT**

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**TABLE OF CONTENTS**

	<b>Page(s)</b>
TABLE OF AUTHORITIES .....	iii, iv, v, vi
INTRODUCTION .....	1
The US Motion .....	1
The State of Texas’s Motion.....	2
The State of New Mexico’s Motion.....	3
INTEREST OF <i>AMICUS CURIAE</i> .....	3
SUMMARY OF ARGUMENT .....	5
DISPUTED MATERIAL FACTS RELATED TO LAS CRUCES WATER RIGHTS FROM THE UNITED STATES MOTION .....	6
DISPUTED MATERIAL FACTS RELATED TO THE CITY OF LAS CRUCES’ WATER USE FROM THE TEXAS MOTION .....	8
ARGUMENT.....	9
POINT I: THE UNITED STATES AND TEXAS HAVE FAILED TO SATISFY THEIR BURDEN FOR SUMMARY JUDGMENT.....	9
POINT II: THE STATE OF NEW MEXICO’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COMPACT APPORTIONMENT SHOULD BE GRANTED .....	12
POINT III: THE UNITED STATES HAS NOT SUPPORTED ITS CONTENTIONS OF DEPLETIONS TO RIO GRANDE SURFACE FLOWS WITH UNDISPUTED FACTS REGARDING WATER USE BY LAS CRUCES .....	17
POINT IV: THE STATE OF NEW MEXICO’S ADMINISTRATION OF LAS CRUCES’ WATER RIGHTS HAS AUGMENTED WATER SUPPLY IN THE RIO GRANDE.....	19
CONCLUSION.....	23

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Alabama v. North Carolina</i> , 560 U.S. 330 (2016).....	12
<i>Anderson v. Liberty Lobby</i> , 477 U.S. 242 (1986).....	9, 10, 12, 21
<i>California v. United States</i> , 438 U.S. 645 (1978).....	20
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	8, 10, 11, 12, 13
<i>Connecticut v. Massachusetts</i> , 282 U.S. 660 (1931).....	9, 10, 21
<i>EEOC v. Union Independiente de la Autoridad De Acueductos y Alcan Tonillados de Puerto Rico</i> , 279 F.3rd 49 (1st Cir. 2002).....	10
<i>Elephant Butte Irrigation Dist. v. Regents of New Mexico State University</i> , 1993-NMCA-009, 115 N.M. 229, 849 P.2d 372 .....	20
<i>Hinderlider v. La Plata River &amp; Cherry Creek Ditch Co.</i> , 304 U.S. 92 (1938).....	22
<i>Kansas v. Colorado</i> , 514 U.S. 673 (1995).....	13
<i>Nebraska v. Wyoming</i> , 325 U.S. 589 (1945).....	16
<i>Nebraska v. Wyoming</i> , 507 U.S. 584 (1993).....	10, 12, 16, 17
<i>New Mexico Dept. of Game &amp; Fish v. U.S. Dept. of Interior</i> , 854 F. 3d 1236 (10 <sup>th</sup> Cir. 2017) .....	10
<i>Ohio v. Kentucky</i> , 410 U.S. 641 (1973).....	17

<i>Oregon v. Beaver Portland Cement Co.</i> , 295 U.S. 142 (1935).....	20
<i>Smith v. Ozmint</i> , 578 F. 3d 264 (4 <sup>th</sup> Cir. 2009) .....	10
<i>State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., et al.</i> , No. CV-96-888 (3d Jud. Dist. filed Sept. 24,1996) .....	<i>passim</i>
<i>Tarrant Regional Water District v. Herrmann et al.</i> 569 US 614 (2013).....	15
<i>Texas v. New Mexico</i> , 462 U.S. 554 (1983).....	13, 14, 22
<i>Texas v. New Mexico &amp; Colorado</i> , 482 U.S. 184 (1987).....	14
<i>Texas v. New Mexico</i> , 138 S. Ct. 954 (2018).....	<i>passim</i>
<i>Texas v. New Mexico</i> , 141 S. Ct. 509 (2020).....	14
<i>Tri-State Generation &amp; Transmission Ass’n, Inc. v. D’Antonio</i> , 2012-NMSC-039, 289 P.3d 1232 .....	22
<i>United States v. New Mexico</i> , 438 U.S. 696 (1978).....	20
<i>Vanderwork v. Hewes</i> , 1910-NMSC-031, 15 N.M. 439, 110 P. 567.....	20
<i>Wyoming v. Colorado</i> , 259 U.S. 419 (1922).....	20
<b>Constitution</b>	
N.M CONST. art. XVI §2.....	18
<b>Statutes</b>	
43 U.S.C. § 666 (1952).....	21

NMSA 1978, § 72-1-1 (1907).....	20
NMSA 1978, § 72-1-9 (1985) .....	4
NMSA 1978, § 72-2-1 (1907).....	19
NMSA 1978, § 72-2-9.1 (2003).....	22
NMSA 1978, § 72-5-3 (1907).....	19
NMSA 1978, § 72-12-3 (1931).....	19
NMSA 1978, § 72-15-19 (1949).....	13
Desert Land Act of 1877, 19 Stat. 377 (1877).....	19, 20
Pecos River Compact, Act of June 9, 1949 63 Stat. 159 (1949).....	13
Public Lands Act of 1866, 14 Stat. 153 (1866).....	19
Public Lands Act of 1870 16 Stat. 218 (1870).....	19
Reclamation Act of 1902, Ch. 1093, 32 Stat. 388 .....	4, 11
Rio Grande Compact, Act of May 31, 1939, ch. 155, 53 Stat. 785; NMSA 1978, § 72-15-23 (1939).....	<i>passim</i>

**Court Rules**

FED. R. CIV. P 56 .....	<i>passim</i>
Sup. Ct. R. 17 .....	9
Sup. Ct. R. 37.....	1

**Other Authorities**

J.W. Moore et al., MOORE’S FEDERAL PRACTICE §56.40 [1][c] (3rd ed. 2020).....	10
<i>Regional Planning Part VI – The Rio Grande Joint Investigation in the Upper Rio Grande Basin in Colorado, New Mexico, and Texas, (1938) .....</i>	3
Laws of the Territory of New Mexico 1905, ch. 102, § 22 and Laws of the Territory of New Mexico 1907, ch. 49, § 40.....	5

## INTRODUCTION

The City of Las Cruces (“City” or “Las Cruces”) submits this *amicus curiae* brief in opposition to the United States’ Motion for Partial Summary Judgment (“U.S. Motion”), and the State of Texas’ Motion for Partial Summary Judgment; Federal Rule of Civil Procedure 56 (“Texas Motion”) pursuant to ¶ 3.3 of the Case Management Plan and Sup. Ct. R. 37.4. The City responds in support of the State of New Mexico’s Motion for Partial Summary Judgment on Compact Apportionment (“New Mexico Apportionment Motion”). This Response brings to the Special Master’s attention issues affecting the City of Las Cruces.<sup>1</sup>

### *The US Motion*

The United States seeks a declaratory judgment under FED. R. CIV. P. 56 that “the State of New Mexico has an obligation not to intercept or interfere with deliveries of water by the federal Rio Grande Project that effectuate the Compact apportionment to Texas....” U.S. Motion at 2. Second, the United States seeks summary judgment that “New Mexico may not allow water users other than those within the Elephant Butte Irrigation District (“EBID”) to deplete the surface water supply of the Project,” and that not to exceed “water supply in excess of the amount allocated to EBID....” *Id.* Third, the United States seeks summary judgment that “New Mexico must affirmatively act to prohibit and prevent such depletions by ... accounting and providing offsets to the Project water supply....” *Id.* Injunctive relief is sought because “New Mexico has not fulfilled its obligations....” *Id.*

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<sup>1</sup> Las Cruces supports New Mexico’s Motion for Partial Summary Judgment on Compact Apportionment and Brief in Support (Nov. 5, 2020); State of New Mexico’s Motion for Partial Summary Judgment to Exclude Texas’s Claim for Damages in Certain Years (Nov. 5, 2020); and State of New Mexico’s Motion for Partial Summary Judgment to Exclude Claims for Damages in Years that Texas Failed to Provide Notice to New Mexico of its Alleged Shortages (Nov. 5, 2020).

The “Statement of Material Facts” (USMF”) claims three “facts” relating to the City of Las Cruces which are disputed, *i.e.*, Nos. 56-58. *Id.* at 12-13. These assertions are disputed as inaccurate and incomplete. The United States claims other “facts” in which the City’s water use is implicated and which are disputed as to the City, *i.e.*, Nos. 6-8, 61-63, 66-67, and 73. *Id.* at 4, 13, 14, 15-16. The City adopts the State of New Mexico’s Response to the United States of America’s Motion for Partial Summary Judgment (“New Mexico Response to U.S. Motion”) (Dec. 22, 2020) on these disputed facts and its “Consolidated Statement of Material Facts,” and supplements these pleadings in this *amicus* brief.

The United States does not establish by undisputed facts that there have been depletions to any apportionment caused by groundwater pumping in New Mexico, and specifically, by Las Cruces, whose water rights it has misunderstood and confused. Moreover, Las Cruces’ water use is strictly administered. The United States fails to establish by clear and convincing evidence the need for injunctive relief over State administration. The United States fails because there are no facts to support its contentions.

The United States fails to satisfy its burden for obtaining summary judgment under FED. R. CIV. P. 56. The United States Motion should be denied in its entirety.

***The State of Texas’ Motion***

The State of Texas seeks summary judgment on legal issues at pp. 3-6 of its Motion. These include the proposition that “[t]he 1938 Compact is unambiguous” and did not apportion New Mexico any water below Elephant Butte Dam. Las Cruces shall address this issue in Point III, *supra*, and shall dispute the contention that there is a “1938 Condition” to supplement the State of New Mexico’s Response, (Dec. 22, 2020), which it adopts.

Las Cruces adopts the “State of New Mexico’s Consolidated Statement of Material Facts” (Dec. 22, 2020).

The State of Texas has failed to satisfy its burden for obtaining summary judgment under FED. R. CIV. P. 56. The State of Texas’s Motion for Partial Summary Judgment should be denied in its entirety.

***The State of New Mexico’s Motion***

The State of New Mexico’s Motion for Partial Summary Judgment on Compact Apportionment has established the two-fold principles that New Mexico received an apportionment of water below Elephant Butte Reservoir under the Rio Grande Compact and that there was no “1938 Condition” expressed or implied in the apportionment in the Compact, or in subsequent acts of the parties interpreting and implementing the Compact.

New Mexico’s Motion should be granted under FED. R. CIV. P. 56.

**INTEREST OF AMICUS CURIAE**

Las Cruces is the second largest city in New Mexico and is located south of Elephant Butte Reservoir. The City was founded in the mid-1800s; the first settlers having arrived in 1839, led by Don Jose Costales. *See Regional Planning Part VI – The Rio Grande Joint Investigation in the Upper Rio Grande Basin in Colorado, New Mexico, and Texas, 1936-37* at 72 (1938). The emerging community received its first water supply from the Acequia Madre de Las Cruces around 1849. Groundwater use to serve the community began in the 1870s with domestic wells drilled to depths of up to 50 feet.

Today the City is responsible for providing a potable water supply to more than 100,000 people. Las Cruces is one of the fastest growing municipalities in the western United States and its population is expected to exceed 150,000 by 2050. The City’s water supply comes solely from

groundwater wells located in the Lower Rio Grande Underground Water Basin. Pursuant to state law, Las Cruces is required to have a forty-year water supply. *See* NMSA 1978, § 72-1-9 (1985).

The City of Las Cruces owns vested, licensed, pre-compact and pre-basin water rights of 21, 869 AFY under Declaration No. LRG-430 *et al.* These rights were adjudicated in *State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., et al.*, No. CV-96-888 (3rd Jud. Dist. filed Sept. 24, 1996) (“LRG Adjudication”). The City owns permitted water rights of 10,200 AFY under its East Mesa Permit Nos. LRG-3283 through LRG-3285 and LRG-3288 through LRG-3296 in the Jornada del Muerto sub-basin, on the East Mesa. Four LRG-430 wells were sited in the East Mesa. LRG-430-S-29 and LRG-430-S-30 remain on the East Mesa. These rights are hydrologically disconnected from the Rio Grande and the City’s use of its Jornada wells have no effect on the Project. More than 20% of the City’s water use is derived from East Mesa water. Most treated wastewater from East Mesa wells is discharged into the Rio Grande under NPDES Permit No. NM0023311 and is additive to the Rio Grande flows as imported water which benefits the Rio Grande Project. The City owns 8,000 AFY of permitted rights under Permit Nos. LRG-3275-POD1-LRG-3275-POD-7 on the West Mesa. The West Mesa rights are in hydrologic communication with the Rio Grande and river depletions caused by those rights will require 1-to-1 offsets when they come on line in the 2030s.

The City acquired water rights from the Jornada Water Co. under LRG-47 *et al.*, LRG-48 *et al.*, LRG-50 *et al.*, LRG-1882 *et al.*, and LRG-4278 in the amount of 5,961 acre-feet per year. The LRG-47 *et al.* rights of 887 AFY are sited on the East Mesa and no longer require offsets. The remainder are Valley wells whose effects are subject to offset requirements. The City purchased the Mesa Development Co. rights under LRG-5039 *et al.* for 107 AFY. They are presently inactive. *See* Table No. 3 “Existing and planned City of Las Cruces wells and

associated NMOSE file numbers” from the *Las Cruces 40-Year Water Development Plan* (2017), attached as Exhibit “B.”

Pursuant to the Reclamation Act, the United States initiated the acquisition of a surface water right for the Rio Grande Project by filing Notices of Intent to Appropriate with the New Mexico Territorial Engineer in 1906 and 1908. *See* Reclamation Act of 1902, §§ 2 and 8, 32 Stat. 388; *see also* Laws of the Territory of New Mexico 1905, ch. 102, § 22 and Laws of the Territory of New Mexico 1907, ch. 49, § 40.

Las Cruces presently owns 1,354.98 acres of water righted land in EBID, corresponding to a depletion right of 3,522.95 acre-feet per year.

### **SUMMARY OF ARGUMENT**

There are three issues of concern to Las Cruces. First, the Special Master must determine that the apportionment that made by the Rio Grande Compact below Elephant Butte Reservoir includes New Mexico, and affirm the absence of a “1938 Condition.” Second, the Special Master should recognize the City’s augmentation of releases from Elephant Butte Reservoir. *See* Declaration of Lee Wilson, Ph.D., NM EX-013, ¶¶ 5, 6, “Exhibit A.” Third, the Special Master should affirm New Mexico’s administrative jurisdiction over surface water releases from Elephant Butte Reservoir and groundwater in the Lower Rio Grande and the inapplicability of injunctive relief over New Mexico administration.

Las Cruces submits that New Mexico’s apportionment is best described in New Mexico’s Motion for Partial Summary Judgment on Compact Apportionment. It consists of a 57% - 43% division of native Rio Grande water released into the Reservoir, including return flows. There is no “1938 Condition” affecting surface flow or limiting groundwater use to 1938 levels. The

Compact contains no reference to a “1938 Condition,” groundwater, or any limitation on groundwater use. New Mexico’s Motion for Partial Summary Judgment should be granted.

**DISPUTED MATERIAL FACTS RELATED TO LAS CRUCES  
WATER RIGHTS FROM THE U.S. MOTION**

U.S. MF No. 6. **Disputed.** “Groundwater pumping in New Mexico below Elephant Butte interferes with Project deliveries because it depletes the surface water flows in the river, canals, and drains, and the Project must release additional water from the reservoir to compensate for the depletions instead of storing that water for use in future years.”

Disputed as concerns the City’s pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 7. **Disputed.** “In years when surface water supply is low, pumping in New Mexico below Elephant Butte reduces the amount of water the Project can deliver to Texas.”

Disputed as concerns the City’s pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 56: **Disputed.** “The City of Las Cruces (“the City” or “Las Cruces”), which is located partly within the EBID boundary, had two wells in use prior to 1937, five wells in use as of 1947, and 45 wells in use as of 2017, many of them drilled after 1980.”

The source for this assertion (Conover) is incomplete and is disputed. NM EX-013, Wilson Decl. ¶ 4. The source for the assertion that there are “45 wells in use as of 2017, many of them drilled after 1980,” is Exhibit No. 7 to the deposition of Lee Wilson, Ph. D. That exhibit is the *City of Las Cruces 40-Year-Water-Development Plan (2017)*. Table No. 3 “Existing and planned City of Las Cruces wells and associated NMOSE file numbers,” identifies the 45 wells in service.

U.S. MF No. 56 aggregates LRG-430 “Valley” wells with East Mesa wells.

The City presently has 39 wells in service, ten of which are on the East Mesa. Three LRG-430 wells are sited on the West Mesa.

U.S. MF No. 57: **Disputed.** “While the City’s permitted (i.e., post-1980) wells are subject to volume limitations and some offset requirements to account for estimated surface water depletions attributable to the pumping, the City is authorized to pump up to 21,869 acre-feet

annually under its pre-1980 groundwater right (“LRG-430”), subject only to a condition that the City forgo consumption of municipal effluent in cases of drought (defined as years when the Project’s surface water allocation is equivalent to 2.0 af/ac).”

Disputed as concerns the City’s pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6. LRG-430-S-29 and LRG-430-S-30 are East Mesa wells.

U.S. MF No. 58: **Disputed.** “Since 1980, groundwater pumping for non-irrigation uses (including municipal use) below Elephant Butte has nearly doubled, from about 20,000 acre-feet per year to about 37,000 acre-feet per year, driven by an increase in pumping by entities other than the City of Las Cruces whose groundwater use began after the Compact.

NM EX-013, Wilson Decl. ¶ 7.

U.S. MF No. 61. **Disputed** “Groundwater pumping in New Mexico impacts the surface water supply for the Project because it depletes the flow of the Rio Grande, and reduces the amount of water flowing in Project drains and canals.”

Disputed as concerns the City’s pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 62. **Disputed.** “Groundwater pumping in New Mexico in years of lower surface water supply can reduce the volume of water available for Project allocation and delivery to the Districts, and thus reduce the apportionment to Texas.”

Disputed as concerns the City’s pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 63. **Disputed.** “On average, groundwater pumping in New Mexico reduced Project diversions by over 60,000 acre-feet annually between 1951 and 2017.”

Disputed as concerns the City’s pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 66. **Disputed.** “Had all groundwater pumping in New Mexico below Elephant Butte been “turned off” between 2003 and 2005, EBID and EPCWID could have received a full allocation from the Project.”

Disputed as concerns the City's pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 67. **Disputed.** "Groundwater pumping in New Mexico, even in years of higher surface water supply, reduces the amount of water retained in Project reservoir storage, which can affect the amount of water available for the Compact apportionment in the following year."

Disputed as concerns the City's pumping and effects on the Rio Grande. NM EX-013, Wilson Decl. ¶¶ 5, 6.

U.S. MF No. 73. **Disputed.** With few exceptions, all of the groundwater pumping in New Mexico below Elephant Butte is junior in priority to the Project.

There is no final determination of priorities *inter se*. Project priority was tried in September of 2015 in Stream System Issue No. 104 in *State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist.*, No. 96-CV-888 (N.M. 3rd Jud. Dist.). Entry of a final order has been stayed since then for settlement negotiations.

**DISPUTED MATERIAL FACTS RELATED TO THE  
CITY OF LAS CRUCES' WATER USE FROM THE TEXAS MOTION**

Texas has failed to comply with the requirement of FED.R.CV.P. 56 (a) by specifically showing that "there is no genuine dispute as to any material fact," Nor has Texas "point[ed] out to the district court that there is an absence of evidence to support the nonmoving party's case." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Instead, Texas provides argument and contentions of counsel, interspersed with incomplete and immaterial facts. The City nevertheless refers to the State of New Mexico's Response to references to Las Cruces from the Texas Memorandum.

## ARGUMENT

### POINT I

#### **THE UNITED STATES AND TEXAS HAVE FAILED TO SATISFY THEIR BURDEN FOR SUMMARY JUDGMENT**

The United States seeks partial summary judgment declaring that New Mexico “has an obligation not to intercept or interfere with deliveries of water by the Rio Grande Project (“Project”) that effectuate the Compact to Texas and the part of New Mexico below Elephant Butte Reservoir, such that:

- (a) New Mexico may not allow water users other than those within [EBID] to deplete the surface water supply of the Project;
- (b) New Mexico may not allow water users within EBID to deplete the surface water supply in excess of the amount allocated to EBID....

The United States seeks injunctive relief claiming that New Mexico “has not fulfilled its obligations and thereby violated the Compact...” Motion at 1.

The United States has failed to satisfy its burden for obtaining summary judgment under FED. R. CIV. P 56 (a) in three respects. It has failed to assert undisputed facts establishing the apportionment. In attempting to show the effects of groundwater pumping on the Rio Grande, it has misunderstood both Las Cruces’ water rights and the water balance as it applies to Las Cruces. It has failed to sustain its burden for injunctive relief over New Mexico’s administration by “clear and convincing” evidence. *See Anderson v. Liberty Lobby*, 477 U.S. 292 (1986); *Connecticut v. Massachusetts*, 282 U.S. 660 (1931).

The Federal Rules of Civil Procedure are generally applicable to cases in the Court’s original jurisdiction. *See* S. Ct. Rule 17.2. FED. R. CIV. P. 56 has been so construed. *See*

*Nebraska v. Wyoming*, 507 U.S. 584, 590 (1993). To obtain summary judgment under FED. R. CIV. P. 56 (a), the United States must demonstrate “that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” As the movant who will bear the burden of persuasion at trial, the United States “must produce evidence that would conclusively support its right to judgment after trial should the nonmovant fail to rebut evidence. In other words, the evidence in the movant’s favor must be so powerful that no reasonable jury would be free to disbelieve it. Anything less should result in denial of summary judgment.” See 11 J.W. Moore *et al.*, MOORE’S FEDERAL PRACTICE §56.40 [1][c](3<sup>rd</sup> ed. 2020); *Celotex v. Catrett*, 477 U.S. 317, 325 (1986); see, e.g., *EEOC v. Union Independiente de la Autoridad De Acueductos y Alcan Tonillados de Puerto Rico*, 279 F.3<sup>rd</sup> 49, 55 (1<sup>st</sup> Cir. 2002); *Smith v. Ozmint*, 578 F. 3d 246, 250-254 (4<sup>th</sup> Cir. 2009).

In *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), the Court affirmed that the burden of proof under Fed. R. CIV. P. 56 is measured by the burden of proof at trial. The standard for injunctive relief is “clear and convincing” evidence. See *Connecticut v. Massachusetts, supra*, *New Mexico Dept. of Game & Fish v. U.S. Dept. of Interior*, 854 F. 3d 1236 (10<sup>th</sup> Cir. 2017). The Court held that “we conclude that the determination of whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case.” 477 U.S. at 255.

The Supreme Court held:

Our holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions does not denigrate the role of the jury. It by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the

nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Adickes*, 398 U.S., at 158 -159. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial. *Kennedy v. Silas Mason Co.*, 334 U.S. 249 (1948).

The Declaration of Lee Wilson, Ph.D., attached to the State of New Mexico's Response as NM-EX013 and incorporated here by reference as Exhibit "A," demonstrates the existence of genuine issues of fact regarding the City's effects on the Rio Grande, acquiescence and laches by the United States and Texas to Las Cruces' water use, including adoption of the "D-2" curve used to provide Project supply in consideration of New Mexico's groundwater use. In Las Cruces' case, administration is conducted through Permit Conditions of Approval, for Permits LRG-3283 through LRG-3285 and LRG-3288 through LRG-3296 and LRG-3275-POD-1-LRG-3275-POD-7, and the constraints in the Consent Order for LRG-430 *et al.* in *State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., et al.*, No. CV-96-888 (3rd Jud. Dist. filed Sept. 24, 1996). See Exhibits "C," "D," and "E."

The United States has failed to prove any elements for relief.

Texas has failed to present a prima facie case for summary judgment under FED. R. CIV. P. 56 with respect to its claim on the apportionment and on its assertion that there is a "1938 Condition." Texas has not identified undisputed facts. It has not "pointed to" an absence of evidence by New Mexico. *See Celotex*, 477 U.S. at 325.

## POINT II

### **THE STATE OF NEW MEXICO'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COMPACT APPORTIONMENT SHOULD BE GRANTED**

The threshold issue is the apportionment made by the Rio Grande Compact. Las Cruces concurs in the State of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment (Nov. 5, 2020) ("New Mexico Apportionment Motion"). New Mexico's requested relief, *i.e.*, "partial summary judgment declaring that the Compact apportions water to both New Mexico and Texas below Elephant Butte Reservoir -57% of the Rio Grande Project supply to New Mexico and 43% of the Rio Grande Project supply to Texas" should be granted. New Mexico Apportionment Motion at 3.

New Mexico's Apportionment Motion is based on three principles. First, the "plain text of the Compact equitably apportions the water of the Rio Grande from Elephant Butte Reservoir to Fort Quitman, Texas...." New Mexico Apportionment Motion at 2. Second, the holding of the Supreme Court in *Texas v. New Mexico & Colorado*, 138 S. Ct. 954, 959 (2018), confirms the apportionment to New Mexico by holding that the Compact is "inextricably intertwined" with the Rio Grande Project providing the apportionment formula in the Lower Rio Grande. *Id.* Third, New Mexico presents 114 undisputed facts within its "Statement of Undisputed Material Facts." New Mexico Apportionment Brief at 1-24. These undisputed facts cover all aspects of the Rio Grande Compact.

The Court has employed Fed. R. CIV. P. 56 in previous original actions. *See Nebraska v. Wyoming*, 507 U.S. 584, 590 (1983); *Alabama v. North Carolina*, 560 U.S. 330, 344 (2016). Las Cruces also directs the Special Master to the Supreme Court's refinement of the burden on moving and defending parties in the line of cases emerging from *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986).

New Mexico’s “Statement of Undisputed Material Facts” satisfies its burden of establishing undisputed facts under FED. R. CIV. P. 56 (a) and “pointing out” the absence of evidence in the non-movant’s cases. *See Celotex*, 477 U.S. at 325. The responsive pleading from Texas has not raised genuine issues of material fact sufficient to preclude summary judgment.

New Mexico has demonstrated that under the “plain language” rule, “if the text of the Compact is unambiguous it is conclusive,” citing *Kansas v. Colorado*, 514 U.S. 673, 690 (1995); *Texas v. New Mexico*, 462 U.S. 554, 563 (1983). *See* New Mexico Apportionment Brief at 28-26. The preamble to the Compact expressly provides for an apportionment from the headwaters in the San Luis Valley in Colorado to Fort Quitman, Texas:

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes....

Rio Grande Compact, Act of May 31, 1939, ch. 155, 53 Stat. 785; NMSA 1978 § 72-15-23 (1939); New Mexico Apportionment Brief at 32-33.

Contrary to Texas’s contention, there is no “1938 Condition” in the Rio Grande Compact. *See* Texas Motion for Partial Summary Judgment (Nov. 5, 2020). The notion of a “1938 Condition” is a concept that Texas borrowed from the Pecos River Compact, Act of June 9, 1949, 63 Stat. 159, NMSA 1978, § 72-15-19 (1949), where the “1947 Condition” constitutes New Mexico’s delivery obligation to Texas.<sup>2</sup> The effort to understand, administer, and implement an interstate Compact based on the extrapolation of contemporary river flows to what they might have

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<sup>2</sup> Art. III of the Pecos River Compact states: “(a) Except as stated in paragraph (f) of this Article, New Mexico shall not deplete by man’s activities the flow of the Pecos River at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition.”

been in 1947 has consumed the efforts of an army of lawyers, administrators, and hydrologists for half a century and should not be repeated here. *See, e.g., Texas v. New Mexico*, 462 U.S. 554 (1983); *Texas v. New Mexico*, 482 U.S. 184 (1987); *Texas v. New Mexico*, 141 S. Ct. 509 (2020). There is no mention of a “1938 Condition” in the Rio Grande Compact. Under the “plain language” rule, the Special Master cannot read a “1938 Condition” into the Rio Grande Compact. *See Texas v. New Mexico*, 462 U.S. 554, 564 (1983). Las Cruces adopts New Mexico’s Response to Texas’s contention, in its Response to the State of Texas’s Motion for Partial Summary Judgment (Dec. 22, 2020). *See* New Mexico Response at 40-64 and related Undisputed Facts.

The apportionment provisions of the Rio Grande Compact are set out in Art. III and IV. Under the Rio Grande Compact Colorado is obligated to deliver a percentage of the gauged inflow at Labatos to the New Mexico-Colorado state line under Article III. This delivery obligation is measured by a gauging station at Lobatos, Colorado. Article IV of the Rio Grande Compact, as amended, specifies New Mexico’s delivery obligation as being into Elephant Butte Reservoir and is determined as a percentage of the inflow recorded at a gauging station at Otowi, New Mexico.

Art. IV is flexible. It provides a delivery obligation into Elephant Butte Reservoir based on gauged flows at Ottowi, between Santa Fe and Taos, not a fixed delivery obligation. An effort to impose an inflexible “1938 Condition” on releases from the Reservoir is at odds with Art. IV. Moreover, it would impose limits on New Mexico’s use of groundwater, municipal growth, and economic development that were not contemplated in 1938 and which would have devastating impacts on southern New Mexico. Undisputed Facts addressed by New Mexico demonstrate...

Similarly, New Mexico demonstrates that in its 2018 decision in *Texas v. New Mexico & Colorado*, the Court’s opinion recognized an apportionment to New Mexico. The Court held:

First, the Compact is inextricably intertwined with the Rio Grande Project and the Downstream Contracts. The Compact indicates that its purpose is to "effec [t] an equitable apportionment" of "the waters of the Rio Grande" between the affected States. 53 Stat. 785. Yet it can achieve that purpose only because, by the time the Compact was executed and enacted, the United States had negotiated and approved the Downstream Contracts, in which it assumed a legal responsibility to deliver a certain amount of water to Texas. In this way, the United States might be said to serve, through the Downstream Contracts, as a sort of " 'agent' of the Compact, charged with assuring that the Compact's equitable apportionment" to Texas and part of New Mexico "is, in fact, made."

138 S. Ct. at 959; New Mexico Apportionment Brief at 26-28.

As a New Mexico water user, Las Cruces submits that the best test to determine the apportionment is determining how the parties have interpreted and implemented it in practice. This principle appears in several cases containing interstate disputes. In *Tarrant Reg'l Water Dist. v. Herrmann*, 569, U.S. 614 (2013), the Court construed that Red River Compact between Oklahoma and Texas's efforts to obtain water from the Red River in Oklahoma, the Court determined that it was appropriate to look to the parties' course of conduct to determine whether it was appropriate under the Compact for the water district to export water into Texas. In deciding that the Water District's course of conduct undermined its position, the Court held:

The parties' conduct under the Compact also undermines Tarrant's position. A "part[y]'s course of performance under the Compact is highly significant" evidence of its understanding of the compact's terms. *Alabama v. North Carolina*, 560 U.S., at 346. Since the Compact was approved by Congress in 1980, no signatory State had pressed for a cross-border diversion under the Compact until Tarrant filed its suit in 2007.

569 U.S. at 636.

Administrative practice by New Mexico, the United States, and Texas displays two things pertaining to groundwater use and Project supply. The parties have interpreted Project supply to assume or "grandfather" groundwater use to New Mexico over the 1951-1978 period under the D-

2 curve. The Las Cruces Component was 3,000 AFY. *See* NM EX-013, ¶ 6(f). Second, groundwater in deep storage, disconnected from the Rio Grande is unapportioned, and used by New Mexico entities like Las Cruces. Las Cruces consumes 545.0 AFY delivered from deep storage. *See* NM EX-013, ¶ 6(g).

A similar issue was raised in *Nebraska v. Wyoming*, 507 U.S. 584 (1993). That case was an original action brought by the State of Nebraska to enforce the 1945 North Platte Decree issued in *Nebraska v. Wyoming*, 325 U.S. 665 (1945). An issue in the case concerned the Inland Lakes which consist of four-off channel reservoirs served by the Interstate Canal, which diverts from the North Platte River at Whelan, Wyoming. Both the Inland Lakes and the Interstate Canal are part of the North Platte Project, a series of reservoirs and canals operated by the Bureau of Reclamation and spanning two states, *i.e.*, Wyoming and Nebraska, even as the Rio Grande Project spans the states of New Mexico and Texas. It was undisputed that since 1913 the Bureau of Reclamation had diverted water through the Interstate Canal for storage in the Inland Lakes during non irrigation months for release to Nebraska water uses during the irrigation season. The Inland Lakes had always been operated with a December 6, 1904, priority date that Wyoming recognized for other components of the North Platte Project. However, an issue arose because the Bureau of Reclamation had never obtained separate Wyoming storage permits for the Inland Lakes.

In that original action, Nebraska and the United States moved for summary judgment “seeking determinations that the decree entitles the Bureau to continue its longstanding diversion and storage practices and that the Inland Lakes have a priority date of December 6, 1904.” *See Nebraska v. Wyoming*, 507 U.S. 589, 594 (1993). The Special Master recommended granting the motions for summary judgment of Nebraska and the United States ruling “[t]hat the Bureau

lacks a separate Wyoming permit for the Inland Lakes . . . is immaterial because the question of the Inland Lakes’ priority was determined in the original proceedings.” *Id.* at 594. The Court also reasoned that “even if the issue was not previously determined, we would agree with the Special Master that Wyoming’s arguments are foreclosed by its post decree acquiescence.” *Cf. Ohio v. Kentucky*, 410 U.S. 641, 648 (1973) (“[P]roceedings under this Court’s original jurisdiction are basically equitable in nature, and a claim not technically precluded nonetheless may be foreclosed by acquiescence”) (citations omitted)) 507 U.S. at 595.

In this case, the *Nebraska v. Wyoming* criteria of acquiescence has been satisfied.

### **POINT III**

#### **THE UNITED STATES HAS NOT SUPPORTED ITS CONTENTIONS OF DEPLETIONS TO RIO GRANDE SURFACE FLOWS WITH UNDISPUTED FACTS REGARDING WATER USE BY LAS CRUCES**

In its “Statement of Material Facts,” the United States addressed three “facts” pertaining to Las Cruces: U.S. MF Nos. 56, 57, and 58. The implication that the United States seeks is that there is a direct correlation between the number of wells and the depletive effects that they allege from groundwater pumping on releases of surface water from Elephant Butte Reservoir.

The “facts” are so scrambled and replete with error that they should be disregarded. U.S. MF No. 56 states that there are “45 [Las Cruces] wells in use as of 2017, many of them drilled after year 1980.” The apparent source is Table 3 “Existing and Planned City of Las Cruces Wells and Associated New Mexico File Numbers” in the *City of Las Cruces 40-Year Water Development Plan* (2017). Table No. 3 identifies 45 City wells “in service” as of 2017. However, 10 of these wells are sited in the Jornada del Muerto subbasin (“East Mesa”), which is disconnected from the Rio Grande, so that effluent derived from these wells is added to the Rio Grande as imported water. Instead of having a depletive effect on releases from Elephant Butte Reservoir, East Mesa

diversions – and effluent discharge from the Jacob Hands Treatment Plant under NPDES Permit No. NM0023311 - has the opposite effect. They augment and supplement the Reservoir releases by increasing the volume of water available for Compact deliveries below the Jacob Hands Treatment Plant.<sup>3</sup> See NM EX-013 ¶¶ 5, 6; Exhibit “A.”

U.S. MF 57 asserts that “the City is authorized to pump up to 21, 869 acre-feet annually under its pre-1980 groundwater right (“LRG-430”), subject only to a condition that the City forgo consumption of municipal effluent in cases of drought (defined as years when the Project’s surface water allocation is equivalent to 2.0 af/ac). As set forth above, LRG-430-S-29 and LRG-430-S-30 are not sited in the Rio Grande connected Valley. They are sited in the disconnected East Mesa, making their treated effluent a contribution to the Rio Grande, which augments the water supply. The Consent Order referenced in U.S. MF 57 which is characterized as “subject only to a municipal effluent in cases of drought...” It is essentially a permanent condition and adds some 7,000 acre-feet of effluent discharge annually to the Rio Grande.

U.S. MF 58 is unclear. It addresses groundwater pumping for non-irrigation users from “entities other than the City of Las Cruces,” but seems to implicate the City by asserting that it applies to “entities other than the City of Las Cruces whose [?] groundwater use began after the Compact.” If meant to assert that the City’s groundwater use began after 1938, it is wrong by decades and is disputed. See NM EX-013 ¶¶ 5, 6; Attachment “A.”

The Declaration of Lee Wilson summarizes the water balance as it applies to Las Cruces:

In summary, the effect of the City on the Rio Grande in 2016-2019 is not the 15,260.5 acrefeet per year withdrawn by its Mesilla Bolson LRG-430 wells but rather the information now available indicates that the City effectively surpluses the river. The basis for this fact conclusion is outlined below.

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<sup>3</sup> The East Mesa wells are: LRG-430-S-29 and LRG-430-S-30; LRG-3283 through LRG-3285, LRG-3288 through LRG-3296 (East Mesa Permits); and LRG-47 *et al.* (Jornada Water Co. purchase).

- 15,260.5 AFY withdrawal from Mesilla Bolson under LRG-430
- At least 545 AFY of withdrawal comes from storage
- Therefore 14,700 AFY is the approximate value for stream-connected withdrawal
- About 12,700 AFY wet water benefit from wastewater (rounded value 9,200 AFY and recharge (3,500 AFY)
- At least 6,500 AFY entitlement from grandfathered rights (at least 3,000 AFY) and EBID rights (rounded 3,500 AFY)
- 4,500 AFY surplus based on 19,200 AFY benefit against 14,700 AFY maximum impact

The surplus is a large number compared to possible rounding and approximation errors in the individual numbers and should be relied upon beyond the information in USMF 57.

*See* NM EX-013 ¶ 7; Exhibit “A.”

Las Cruces’ water use is implicated in U.S. MF 6, 7, 61-63, 66-67, and 73, which are the United States’ characterization of groundwater effects on Project releases. They have been disputed to the extent that the City’s water use is implicated. *See* NM EX-013 ¶¶ 5, 6; Exhibit “A.”

#### **POINT IV**

#### **THE STATE OF NEW MEXICO’S ADMINISTRATION OF LAS CRUCES’ WATER RIGHTS HAS AUGMENTED WATER SUPPLY THE RIO GRANDE**

The United States fails to establish a prima facie case for injunctive relief over New Mexico administration. As set forth in Point III, and in Lee Wilson’s Declaration at ¶¶ 6, 7, Las Cruces augments the surface supply. This has been facilitated by the State Engineer’s administration of City permits and water rights acquisitions on the East Mesa, and the limits on its adjudication Order for the LRG-430 *et al.* rights. *See* Exhibits “C,” “D,” and “E.” These disputed issues of material fact rebut the United States’ claim that New Mexico has acquiesced in depletions of releases from Elephant Butte Reservoir and preclude summary judgment.

Initially, New Mexico owns the water in the public domain in trust for its citizens. *See, e.g.,* NMSA 1978, §§ 72-2-1(1907); 72-5-3(1907); 72-12-3 (1931). Prior to 1866, rights to the use of water on the public domain were retained by the United States. In enacting the Public Land

Acts of 1866, 14 Stat. 153 (1866) and 1870, 16 Stat. 218 (1870), and the Desert Land Act of 1877, 19 Stat. 377 (1877), Congress severed ownership of the United States in all non-navigable waters from the public domain, extinguished federal ownership, and explicitly recognized in Desert Land Act of 1877 that state law controlled the use of those waters. See *Oregon v. Beaver Portland Cement Co.*, 295 U.S. 142, 163-64 (1935); *California v. United States*, 436 U.S. 645 (1978); *United States v. New Mexico*, 438 U.S. 696 (1978). In *Oregon v. Beaver Portland Cement Co.*, *supra*, the United States Supreme Court held:

What we hold is that following the act of 1877, if not before, all non-navigable waters then a part of the public domain became *publici juris*, subject to the plenary control of the designated states, including those since created out of the territories named, with the right in each to determine for itself to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. For since “Congress cannot enforce either rule upon any state,” *Kansas v. Colorado*, 206 U.S. 46, 94, the full power of choice must remain with the state. The Desert Land Act does not bind or purport to bind the states to any policy. It simply recognizes and gives sanction, in so far as the United States and its future grantees are concerned, to the state and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation. See *Wyoming v. Colorado*, 259 U.S. 46, 465. (emphasis added).

295 U.S. at 163-64.

This was succinctly expressed in *Vanderwork v. Hewes*, 1910-NMSC-031, ¶ 5, 15 N.M. 439, 110 P. 567. That case concerned an early construction of the scope of the surface water code of 1907. The Court recited NMSA 1978, § 72-1-1 (1907): “[a]ll natural waters flowing in streams and water courses, whether such be perennial or torrential, within the limits of the territory of New Mexico, belong to the public, and are subject to appropriation for beneficial use.” *Id.* at ¶ 4. This applies to surface water flowing in the streams and rivers of the State already the State’s share of water appropriated to it and to underground water in aquifers.

State administration of Las Cruces' water rights has approved the siting of City wells on the East Mesa through Permit Nos. LRG-3283 through LRG-3285, LRG-3288 through LRG-3296 *et al.*, additional points of diversion through the acquisition of the Jornada Water Co. in Permit LRG-47 *et al.*, and limitations on City re-use of return flow in its Court Order in *State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., et al.*, No. CV-96-888 (3rd Jud. Dist. filed Sept. 24, 1996). These material facts preclude the United States from proving the need for injunctive relief by "clear and convincing" evidence over New Mexico administration as far as Las Cruces is concerned. *See Anderson v. Liberty Lobby, supra; Connecticut v. Massachusetts, supra.*

Las Cruces is a party to a general stream system adjudication of all interrelated surface water and groundwater rights in the Lower Rio Grande.<sup>4</sup> *See State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., et al.*, No. CV-96-888 (3rd Jud. Dist. filed Sept. 24, 1996) ("LRG Adjudication"). The LRG Adjudication is defining, quantifying, and prioritizing all water rights in the Lower Rio Grande, including those of Las Cruces and the United States. The United States' Rio Grande Project water right has been determined in the LRG Adjudication.

The United States was joined to the LRG Adjudication pursuant to the McCarran Amendment, 43 U.S.C. § 666 (1952), for the determination of its Rio Grande Project water right. *See Elephant Butte Irrigation Dist. v. Regents of New Mexico State University*, 849 P.2d 372, 115 N.M. 229 (Ct. App. 1993). A judicial determination of the United States' Rio Grande Project water right is nearly complete. The LRG Adjudication Court has held that groundwater is not part of the Rio Grande Project water right. It has also quantified the United States' Rio Grande Project right

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<sup>4</sup> "Lower Rio Grande" as used in this brief refers to the Rio Grande Basin in New Mexico between Elephant Butte Reservoir and the New Mexico-Texas state line.

to store, release, and divert surface water at specified downstream points of diversion.<sup>5</sup> The City of El Paso, which takes a portion of EP No. 1’s water for municipal use, is a party to the LRG Adjudication and EP No. 1 has been an active *amicus curiae*, filing briefs and presenting oral arguments in that case.

The purpose of an adjudication is to provide a decree containing a full description of the water rights adjudged to each party.<sup>6</sup> Following the entry of an adjudication decree, administration is then undertaken by the state court or the State Engineer. The Supreme Court has declined to undertake decree administration of the kind that Texas and the United States seek. As the Court stated in *Texas v. New Mexico*:

We have expressly refused to make indefinite appointments of quasi-administrative officials to control the division of interstate waters on a day-to-day basis, even with the consent of the States involved. *E.g.*, *Vermont v. New York*, 417 U.S. 270 (1974); *Wisconsin v. Illinois*, 289 U.S. 710, 711 (1933) (citation omitted). Continuing supervision by this Court of water decrees would test the limits of proper judicial functions, and we have thought it wise not to undertake such a project. *Vermont v. New York*, *supra*, 417 U.S., at 277 (citation omitted).

462 U.S. at 566. A final adjudication decree in the Lower Rio Grande should be administered by New Mexico, according to principles of New Mexico law. The Supreme Court contemplates that

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<sup>5</sup> The LRG Adjudication Court held that “New Mexico law. . . controls the determination of the source or sources of water for the Project.” See Order Granting the State’s Motion to Dismiss the United States’ Claims to Groundwater and Denying the United States’ Motion for Summary Judgment, *State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist., et al.*, No. CV-96-888 (3rd Jud. Dist. filed Aug. 16, 2012) at 4. It found that the “points of diversion constructed by the United States and utilized for the Project, coupled with the notices describing the water to be appropriated as water from the Rio Grande and its tributaries, indicate that the United States has established a right to *surface water* under New Mexico law. . . .” *Id.* at 6 (emphasis added).

<sup>6</sup> While a final adjudication decree will ultimately be utilized for administration of all interrelated surface water and groundwater rights in the Lower Rio Grande, the New Mexico Supreme Court has upheld the statutory authority of the State Engineer to administer water rights prior to a final adjudication decree pursuant to Active Water Resource Management Regulations. See *Tri-State Generation & Transmission Ass’n, Inc. v. D’Antonio*, 239 P.3d 1232, 2012-NMSC039; N.M. Stat. § 72-2-9.1 (2003).

administration occurring pursuant to state law. *See Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938).

## CONCLUSION

For the foregoing reasons, the United States' Motion for Partial Summary Judgment should be denied. The State of Texas's Motion for Partial Summary Judgment; FED. R. CIV. P. 56 should be denied.

The State of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment should be granted.

Respectfully submitted this 6th day  
of January, 2021.

/s/ Jay F. Stein  
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No. 141, Original

IN THE  
SUPREME COURT OF THE UNITED STATES

—◆—  
STATE OF TEXAS,

*Plaintiff*

STATE OF NEW MEXICO and  
STATE OF COLORADO,

*Defendants*

—◆—  
**OFFICE OF THE SPECIAL MASTER**  
—◆—

**DECLARATION OF LEE WILSON, PH.D.**  
—◆—

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TX v. NM # 141  
New Mexico Exhibit  
**NM\_EX-013**

**EXHIBIT**  
tabbles  
A

## DECLARATION OF LEE WILSON, PH.D.

I, Lee Wilson, pursuant to 28 U.S.C. § 1746, state as follows upon my personal knowledge and experience.

1. On June 15, 2020, I was disclosed by the State of New Mexico as a non-retained rebuttal expert witness in the matter of *State of Texas v. State of New Mexico and State of Colorado* (USSC No. 141, Original). I have no changes to the content of that disclosure, which included my opinions in rebuttal to U.S. Expert J. Phillip King, and my curriculum vitae. In addition, on July 23, 2020, I was deposed on my expert opinions.

2. A short summary of my professional experience is set forth in “Resume of Lee Wilson” which is provided in NM-EX 604. I am a graduate of Yale (B.A.) and Columbia (Ph.D.) Universities where I trained in geology, hydrology and environmental science. I am a Certified Professional Hydrogeologist (American Institute of Hydrology, #220). I have nearly 50 years of experience on the Rio Grande and have been a consultant to the City of Las Cruces (“City”) for 40 years. I am familiar with surface and groundwater hydrology, water rights, and water use in the Lower Rio Grande Basin and with the Rio Grande Project in both New Mexico and Texas.

3. A summary of my experience as an expert witness is provided in “Expert Testimony of Dr. Lee Wilson” which is provided in NM-EX 605. This document identifies more than 100 proceedings in which I have been designated as an expert witness, including prior cases of Original Jurisdiction.

### **I. Facts alleged by the United States**

4. In its Motion for Summary Judgment submitted on November 5, 2020, the United States alleges “Facts [which] are not disputed or cannot genuinely be disputed.” Citing in part a 1954 report by C. S. Conover of the United States Geological Survey, USMF 56 states:

[t]he City of Las Cruces (the City or Las Cruces), which is located partly within the EBID boundary, had two wells in use prior to 1937, five wells in use as of 1947, and 45 wells in use as of 2017, many of them drilled after 1980.

Dr. Douglas R. Littlefield, a professional historian who has long conducted research regarding the City’s water supply, has documented that use of surface water to supply the city’s businesses and homes dates back to 1849, more than a century before Conover’s report. He has further documented how groundwater contributed to the City’s supply in the 1870s, and that by 1937 this supply came from many wells other than the two recognized by Conover. This establishes that Conover’s report is incomplete as to the City’s water supply in 1937. USMF 56 is therefore disputed.

5. USMF 57 states as follows:

While the City’s permitted (*i.e.*, post-1980) wells are subject to volume limitations and some offset requirements to account for estimated surface water depletions attributable to

the pumping, the City is authorized to pump up to 21,869 acre-feet annually under its pre-1980 groundwater right (“LRG-430”), subject only to a condition that the City forgo consumption of municipal effluent in cases of drought (defined as years when the Project’s surface water allocation is equivalent to 2.0 af/ac).

6. USMF 57 is incomplete and therefore misleading. Here I respond to USMF 57 by presenting facts about the City’s actual use of water under LRG-430 et al. I focus on the years 2016-2019 to ensure the facts are representative of current conditions. Unless otherwise noted, I rely on data from records which the State Engineer requires the City to compile and submit, and which were provided to me by City consultant John Shomaker and Associates.

- a. USMF 57 addresses only the City’s LRG-430 *et al.* water rights which comprise a portion of the City’s portfolio and which consist of 21,869 AFY adjudicated with a priority of 1905. Pumping of the LRG-430 wells that lie in the Jornada Basin had no effect on the Rio Grande in 2016-2019. The effluent generated from use of that :RG-430 water is treated and discharged to the Rio Grande and can be considered an imported supply, i.e., a water supply sourced from outside the Mesilla Basin.
- b. The primary water source for the City other than LRG-430 is its East Mesa Well Field under Permit Nos. LRG-3283 through 3285 and LRG-3288 through 3296 for 10,200 AFY. In 2016-2019 about one-quarter of the City’s diversions of approximately 21,000 acre-feet per year came from this well field, which is located in the Jornada Bolson and is hydrologically isolated from the Rio Grande. It is established that pumping in the Jornada in 2016-2019 had no significant effect on Rio Grande streamflows except that, as noted below, wastewater arising from such withdrawals contributed to the City’s effluent discharge to the Rio Grande and were additive to flows of the Rio Grande. This wastewater can be considered an imported supply to benefit the river.
- c. **15,260.5** acre-feet per year was the average quantity of the City’s LRG-430 diversions within the Mesilla Bolson in 2016-2019. The next three paragraphs quantify physical offsets to these diversions. The two paragraphs that then follow quantify other factors for consideration in determining the City’s impacts on the river.
- d. **9,181.5** acre-feet per year was the City’s average wastewater from all sources that was discharged directly to the Rio Grande in 2016-2019. Subtracting that value from the Mesilla diversions, the maximum net river effect of those diversions cannot much exceed 6,000 acre-feet per year. However, the actual impact of the City’s LRG pumping is much less as quantified below.
- e. **3,500** acre-feet per year of urban recharge occurs within Las Cruces each year, which replenishes the aquifer and offsets the City’s withdrawals. This quantification reflects the opinion of New Mexico expert Gilbert R. Barth, most recently set forth in his September 15, 2020 rebuttal report. On page 5-9 of that report, Dr. Barth discussed how his model simulates urban deep percolation, which is groundwater recharge from

outdoor use (e.g., lawn irrigation) and conveyance losses (pipeline leaks). In his Appendix I, he reports that as an input to his model he utilized estimates of urban deep percolation for Las Cruces (and seven other urban areas). At my request, Dr. Barth has provided me with these estimates – specifically a monthly quantification of Las Cruces urban recharge for 1940-2017. For at least the period 1985 through 2017 the annual recharge value has been on the order of 3,500 acre-feet per year, a value I consider appropriate through 2019.

- f. Based on the September 15 expert report of Dr. Gilbert Barth, my conservative estimate is that 3.5 percent (**545** acre-feet per year) of the City’s groundwater is derived from storage rather than depletions of the Rio Grande.
- g. At least **3,000** acre-feet per year of the City’s pumping was grandfathered in when the D-2 curve was adopted in 1980 as the baseline for allocation of Project supplies to New Mexico and to Texas (D-1 dealt with Mexico). The D-2 curve relates Project releases from Elephant Butte Reservoir to the amount of water available for Project diversions as observed during the period 1951-1978, the first time when shortages of supply were common. My quantification of the grandfather benefit is based on p. 3-31 of New Mexico’s expert rebuttal report by hydrologists Gilbert R. Barth and Steven P. Larson, dated September 15, 2020, and I believe that to be a minimum. Note further that at page 1 of the text of her report of June 15, 2020, Dr. Margaret Barroll states “... it is important to note that the US rebuttal experts concede that the D-2 Curve ‘grandfathered-in’ the groundwater pumping occurring from 1951-78”.
- h. **3,522.95** acre-feet per year is the quantity of stream depletions to which the City is entitled through its ownership of water righted land in EBID. My quantification is based on the product of the City’s EBID water righted acreage (1354.98 acres) times the water right (consumptive irrigation requirement) adjudicated by the State of New Mexico to such acreage (2.6 acre-feet per acre per year). These water rights are included in the City’s water rights portfolio set out in its formal “Forty Year Plan” filed with the Office of the Stat Engineer, but are not now used as offsets to support the City’s water supply. The entirety of the City’s supply is derived from groundwater.

In summary, the effect of the City on the Rio Grande in 2016-2019 is not the 15,260.5 acre-feet per year withdrawn by its Mesilla Bolson LRG-430 wells but rather the information now available indicates that ***the City effectively surpluses the river***. The basis for this fact conclusion is outlined below.

- 15,260.5 AFY withdrawal from Mesilla Bolson under LRG-430
- At least 545 AFY of withdrawal comes from storage
- Therefore 14,700 AFY is the approximate value for stream-connected withdrawal
- About 12,700 AFY wet water benefit from wastewater (rounded value 9,200 AFY) and recharge (3,500 AFY)

- At least 6,500 AFY entitlement from grandfathered rights (at least 3,000 AFY) and EBID rights (rounded 3,500 AFY)
- 4,500 AFY surplus based on 19,200 AFY benefit against 14,700 AFY maximum impact

The surplus is a large number compared to possible rounding and approximation errors in the individual numbers and should be relied upon beyond the information in USMF 57.

7. USMF 58 addresses groundwater pumping for non-irrigation uses (including municipal use) below Elephant Butte. The claim is that such use has increased to about 37,000 acre-feet per year, driven by an increase in pumping by “entities other than the City of Las Cruces whose groundwater use began after the Compact”. If this is meant to assert that the City of Las Cruces groundwater use only began after the Compact, it is wrong (late) by many decades and is therefore disputed.

## **II. Facts alleged by the State of Texas**

8. Referring to the City of Las Cruces, at p. 22-23 the Texas Motion for Summary Judgment acknowledges a fact set forth in my June 15, 2020 disclosure, that the City of Las Cruces owns EBID acres. I understand this to be a recognition that the City has a right to use water released from Elephant Butte Reservoir.

9. The Texas claim that non-Project water uses were frozen by adoption of the 1938 Rio Grande Compact is not consistent with the U.S. rebuttal report by their expert J. Phillip King who stated as fact that adoption of the D-2 curve established 1951-1978 as the baseline for allocation of water to Texas. To this day D-2 remains the basis for calculating the amount of water delivered to Texas, whereas deliveries in New Mexico are governed by the new D-3 curve. I consider Dr. King’s report to correctly dispute the Texas claim.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 2020



---

Lee Wilson, Ph.D.

# CITY OF LAS CRUCES 40-YEAR WATER DEVELOPMENT PLAN



by

Annie M. McCoy, CPG

John W. Shomaker, PhD, CPG

JOHN SHOMAKER & ASSOCIATES, INC.  
Water-Resource and Environmental Consultants

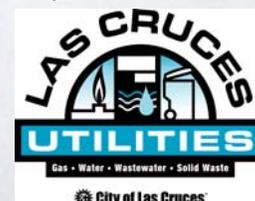
2611 Broadbent Parkway NE  
Albuquerque, New Mexico 87107

[www.shomaker.com](http://www.shomaker.com)

505-345-3407

prepared for

Las Cruces Utilities  
City of Las Cruces



April 2017



---

# **CITY OF LAS CRUCES 40-YEAR WATER DEVELOPMENT PLAN**

by

Annie M. McCoy, CPG

John W. Shomaker, PhD, CPG

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prepared for

Las Cruces Utilities  
City of Las Cruces



April 2017



**Table 3. Existing and planned City of Las Cruces wells and associated NMOSE file numbers**

NMOSE Well No.	City Well No.	well field	status
LRG-430	10	Valley	not currently in service <sup>b</sup>
LRG-430-S	44	Valley	not currently in service <sup>b</sup>
LRG-430-S-2	45 (11)	Valley	not currently in service
LRG-430-S-3	58 (12, 34)	Valley	in service
LRG-430-S-4	38 (17)	Valley	not currently in service <sup>b</sup>
LRG-430-S-5	18	Valley	in service <sup>a</sup>
LRG-430-S-6	19	Valley	not currently in service <sup>b</sup>
LRG-430-S-7	20	Valley	not currently in service <sup>b</sup>
LRG-430-S-8	21	Valley	not currently in service <sup>b</sup>
LRG-430-S-9	62 (22)	Valley	in service
LRG-430-S-11	24	Valley	not currently in service <sup>b</sup>
LRG-430-S-12	26	Valley	in service
LRG-430-S-13	25	Valley	in service
LRG-430-S-14	27	Valley	in service <sup>a</sup>
LRG-430-S-15	28	Valley	in service
LRG-430-POD57	29B	Valley	in service
LRG-430-S-17	65	Valley	in service
LRG-430-POD58	31B	Valley	in service
LRG-430-POD59	32B	Valley	in service
LRG-430-S-20	33	Valley	in service
LRG-430-S-21	35	Valley	in service
LRG-430-S-22	36	West Mesa	not currently in service
LRG-430-S-23	37	West Mesa	not currently in service
LRG-430-S-25	54	Valley	not currently in service
LRG-430-S-27	39	Valley	in service
LRG-430-S-29	42	East Mesa	in service
LRG-430-S-30	43	East Mesa	in service
LRG-430-S-31	57	Valley	not currently in service
LRG-430-POD56	59B	Valley	in service
LRG-430-S-33	Driving Range	Valley	not currently in service
LRG-430-S-34	Paz Park	Valley	in service
LRG-430-S-35	60	Valley	not currently in service

<sup>a</sup> operating as plume capture well for Griggs and Walnut tetrachloroethylene (PCE) plume

<sup>b</sup> elevated uranium concentrations

<sup>c</sup> casing collapsed

NMOSE - New Mexico Office of the State Engineer

**Table 3. Existing and planned City of Las Cruces wells and associated NMOSE file numbers (continued)**

<b>NMOSE Well No.</b>	<b>City Well No.</b>	<b>well field</b>	<b>status</b>
LRG-430-S-36	46	West Mesa	in service
LRG-430-S-37	61	Valley	in service
LRG-430-S-38	63	West Mesa	in service
LRG-430-S-39	64	West Mesa	not currently in service
LRG-430-S-40	48	West Mesa	not yet drilled
LRG-430-S-41	49	West Mesa	not yet drilled
LRG-430-S-42	67	Valley	in service
LRG-430-S-43	70	Valley	in service
LRG-430-S-44	71	Valley	in service
LRG-3283	No. not assigned	East Mesa	not yet drilled
LRG-3284	No. not assigned	East Mesa	not yet drilled
LRG-3285	No. not assigned	East Mesa	not yet drilled
LRG-3288	40	East Mesa	in service
LRG-3289	41	East Mesa	in service
LRG-3290	68	East Mesa	in service
LRG-3291	69	East Mesa	in service
LRG-3292	72	East Mesa	not currently in service
LRG-3293	No. not assigned	East Mesa	not yet drilled
LRG-3294	No. not assigned	East Mesa	not yet drilled
LRG-3295	No. not assigned	East Mesa	not yet drilled
LRG-3296	No. not assigned	East Mesa	not yet drilled
LRG-399	No. not assigned	Valley	not yet drilled
LRG-5818-S-7	66	Valley	not currently in service
LRG-5818-S-8	S-8	Valley	not yet drilled
LRG-5818-S-9	S-9	Valley	not yet drilled
LRG-5818-S-10	S-10	Valley	not yet drilled
LRG-5039	-	East Mesa	in service
LRG-5039-S	-	East Mesa	in service
LRG-5039-S-2	-	East Mesa	in service
LRG-47	-	East Mesa	in service
LRG-47-S	-	East Mesa	not currently in service
LRG-47-S-2	-	East Mesa	in service

<sup>a</sup> operating as plume capture well for Griggs and Walnut tetrachloroethylene (PCE) plume

<sup>b</sup> elevated uranium concentrations

<sup>c</sup> casing collapsed

NMOSE - New Mexico Office of the State Engineer

**Table 3. Existing and planned City of Las Cruces wells and associated NMOSE file numbers (concluded)**

NMOSE Well No.	City Well No.	well field	status
LRG-47-S-3	-	East Mesa	in service
LRG-47-S-5	-	East Mesa	in service
LRG-47-S-6	-	East Mesa	in service
LRG-48	-	Valley	in service
LRG-48-S	-	Valley	not currently in service
LRG-48-S-2	-	Valley	in service
LRG-50	-	Valley	in service
LRG-50-S	-	Valley	not currently in service
LRG-50-S-2	-	Valley	not currently in service
LRG-50-S-3	-	Valley	not currently in service
LRG-50-S-4	-	Valley	in service
LRG-50-S-5	-	Valley	not currently in service
LRG-50-S-6	-	Valley	not currently in service
LRG-50-S-7	-	Valley	not currently in service
LRG-50-S-8		Valley	not yet drilled
LRG-50-S-9		Valley	not yet drilled
LRG-50-S-11	-	Valley	in service
LRG-50-S-12	-	Valley	in service
LRG-50-S-13	-	Valley	in service
LRG-1882	-	Valley	not currently in service
LRG-1882-S	-	Valley	in service
LRG-1882-POD4	-	Valley	in service
LRG-4278	-	East Mesa	not currently in service

<sup>a</sup> operating as plume capture well for Griggs and Walnut tetrachloroethylene (PCE) plume

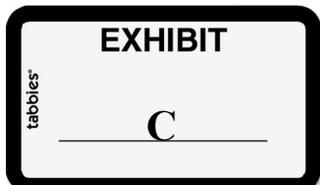
<sup>b</sup> elevated uranium concentrations

<sup>c</sup> casing collapsed

NMOSE - New Mexico Office of the State Engineer

**Appendix B.**

**LRG-3283 through LRG-3285 and LRG-3288 through  
LRG-3296 East Mesa Permits**





STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER  
SANTA FE

THOMAS C. TURNEY  
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 101  
POST OFFICE BOX 25102  
SANTA FE, NEW MEXICO 87504-5102  
(505) 827-6175  
FAX: (505) 827-6188

February 4, 2002

Mayor Ruben Smith  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, New Mexico 88004

HAND DELIVERED

Re: Applications No. LRG-3283 thru LRG-3296

Dear Mayor Smith:

Enclosed are your originals of the above numbered applications, seven of which have been approved in full, five of which have been partially approved, and two of which have been denied. I am requiring as a condition on these permits that a water conservation report be submitted to my office for review each year. My water conservation officer will review the report for effective conservation practices and the enforcement and effectiveness of those measures. Within 3 years of approval of these permits, the city is required to reduce residential per capita use to the amount equal to the southwestern states average.

If you are aggrieved by any of these decisions and wish an opportunity to present evidence in support of any application, you should so advise this office in writing before the expiration of thirty days after receipt of this letter and request that the previous action of the State Engineer be set aside and that a date for a hearing be set. In the event a hearing is requested, a reasonable time will be allowed for you to prepare for your case.

If a hearing is necessary on this matter, you will be required to submit a hearing fee that will be required when the hearing is announced.

Sincerely,

A handwritten signature in cursive script that reads "Thomas C. Turney".

Thomas C. Turney  
State Engineer

cc: Water Rights

**Attachment  
Conditions of Approval  
for**

**APPLICATIONS LRG-3283 THROUGH LRG-3296 FOR PERMIT TO  
APPROPRIATE THE UNDERGROUND WATERS OF THE SOUTHERN  
JORNADA DEL MUERTO SUB-BASIN OF THE LOWER RIO GRANDE  
UNDERGROUND WATER BASIN**

---

Applications LRG-3286 and LRG-3287 for Permit to Appropriate are denied for the reason that no pumping at the proposed locations is possible without causing incremental water-level declines greater than 0.1 ft/yr in the critical cell in which these wells are to be located.

Applications LRG-3283, LRG-3284, LRG-3285, LRG-3288, LRG-3289, LRG-3290, LRG-3291, LRG-3292, LRG-3293, LRG-3294, LRG-3295 and LRG-3296 for Permit to Appropriate are approved or partially approved, subject to the following conditions:

- 1) These applications are approved as follows:

**Permit Numbers:**

LRG-3283, LRG-3284, LRG-3285, LRG-3288, LRG-3289, LRG-3290, LRG-3291, LRG-3292, LRG-3293, LRG-3294, LRG-3295 and LRG-3296

**Priority:** November 24, 1981

**Source:** Shallow underground waters of the Southern Jornada del Muerto sub-basin of the Lower Rio Grande basin

**Points of diversion:**

<u>Well No.</u>	<u>Sub.</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
LRG-3283	NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	30	21 South	3 East
LRG-3284	NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$	30	21 South	3 East
LRG-3285	NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	29	21 South	3 East
LRG-3288	SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$	6	22 South	3 East
LRG-3289	SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	6	22 South	3 East
LRG-3290	NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	2	22 South	2 East
LRG-3291	NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$	2	22 South	2 East
LRG-3292	NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	35	21 South	2 East
LRG-3293	NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$	35	21 South	2 East
LRG-3294	SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$	36	21 South	2 East
LRG-3295	SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	26	21 South	2 East
LRG-3296	SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$	26	21 South	2 East

**Purpose of Use:** Municipal

**Place of Use:** Within the service area of the City of Las Cruces

**Amount of Water:** The maximum diversion from each individual well under these permits shall not exceed the following amounts for a total combined diversion and consumptive use of 10,200 acre-feet per annum (subject to Condition 4):

<u>Well No.</u>	<u>Amount (acre-feet per annum)</u>
LRG-3283	700
LRG-3284	450
LRG-3285	450
LRG-3288	800
LRG-3289	800
LRG-3290	1,000
LRG-3291	1,000
LRG-3292	1,000
LRG-3293	1,000
LRG-3294	1,000
LRG-3295	1,000
LRG-3296	1,000

- a. No water shall be diverted under these permits until existing permits LRG-430-S-26 and LRG-430-S-28, totaling 3,096 acre-feet per annum, are withdrawn.
  - b. These permits shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.
- 2) Prior to the drilling of wells under these permits, the permittee shall submit to the District IV Office of the State Engineer in Las Cruces an acknowledged statement executed by the owner of the land upon which the wells are to be drilled that the permittee has permission to occupy such portion of the owner's land as is necessary to drill and operate the wells.
  - 3) Any wells encountering Total Dissolved Solids (TDS) of 1,000 milligrams per liter or greater during drilling shall be plugged back to at least half the thickness of the freshwater zone to protect water quality.
  - 4) Diversions under these permits will require that depletions to the surface flow of the Rio Grande be offset in the amount of 644 acre-feet per annum reflecting the calculated maximum 100-year effect to the Rio Grande. The 644 acre-feet per annum represents the calculated maximum 100-year effect of ultimately pumping 10,200 acre-feet per annum. Because not all of the depletions occur simultaneously with the diversions, depletion offsets from either the acquisition

and transfer of existing valid water rights or treated effluent (pursuant to a state engineer approved return flow plan) into the Rio Grande must be in accordance with the following schedule:

<u>Time after start of pumping (years)</u>	<u>Required Depletion Offsets (acre-feet per annum)</u>
1	0.0
5	0.3
10	2.8
20	18
30	50
40	100
100	644

These permits expire on February 28, 2102; unless prior to the expiration date of these permits, the permittee has made request to the state engineer to renew one or more of the permits, published notice of such request, and has received an approval from the state engineer for its or their renewal. No return flow credits for the purpose of increasing diversions under these permits will be granted.

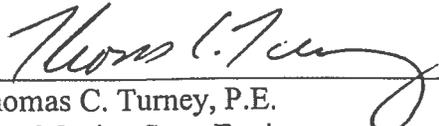
- 5) The State Engineer retains jurisdiction over these permits to oversee the provisions of nos. 1 and 4 above, and may reevaluate the amount of water approved under these permits in no. 1 above in the event that background stresses currently assumed are later found to be less, subject to administrative criteria or additional considerations that may exist at such time.
- 6) The permittee shall utilize the highest and best technology available and economically feasible for the intended use to ensure conservation of water to the maximum extent practical.
- 7) The permittee shall submit on or before January 1 of each year, a written report acceptable to the State Engineer on water conservation efforts, overall per capita use and residential per capita use calculations and any changes to the water conservation plan all of which illustrate the effectiveness of the water conservation efforts of the permittee. Within 3 years of approval of these permits, the permittee shall reduce residential per capita use to the amount equal to the southwestern states average.
- 8) Prior to diversion of water under these permits, the permittee shall install a well monitoring system in the Southern Jornada del Muerto sub-basin, of a type and location(s) acceptable to the State Engineer. Monitored water level measurements shall be taken and reported at a frequency acceptable to the State Engineer.

- 9) Wells numbered LRG-3283, LRG-3284, LRG-3285, LRG-3288, LRG-3289, LRG-3290, LRG-3291, LRG-3292, LRG-3293, LRG-3294, LRG-3295 and LRG-3296 shall each be equipped with totalizing meters installed before the first branch of the discharge line from each well. The discharge of treated sewage effluent into the Rio Grande generated by diversions from these wells shall also be metered. The type of meters, manner of installation and meter locations must be acceptable to the State Engineer. The permittee shall provide the State Engineer in writing with the make, model, serial number, date of installation and initial meter readings prior to the appropriation of water.
- 10) Written records of the amount of water diverted from wells numbered LRG-3283, LRG-3284, LRG-3285, LRG-3288, LRG-3289, LRG-3290, LRG-3291, LRG-3292, LRG-3293, LRG-3294, LRG-3295 and LRG-3296 and subsequent discharge of treated sewage effluent into the Rio Grande generated by diversions from these wells shall be submitted to the District IV Office of the State Engineer in Las Cruces on or before the 10<sup>th</sup> day of each month for the preceding calendar month.
- 11) A Well Record shall be submitted to the District IV Office of the State Engineer in Las Cruces within ten (10) days following the drilling of wells numbered LRG-3283, LRG-3284, LRG-3285, LRG-3289 (existing well, previously numbered LRG-430-S-26), LRG-3290, LRG-3291, LRG-3292, LRG-3293, LRG-3294, LRG-3295 and LRG-3296 under these permits.

A Well Record for existing well LRG-3288 (previously numbered LRG-430-S-28) has been filed. A Well Record has not been filed and is required prior to any diversions from existing well LRG-3289 (previously numbered LRG-430-S-26).

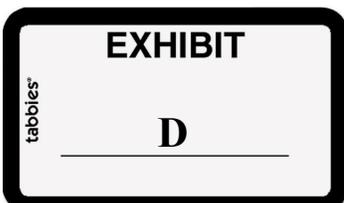
- 12) Proof of Completion of Well for wells numbered LRG-3283, LRG-3284, LRG-3285, LRG-3288, LRG-3289, LRG-3290, LRG-3291, LRG-3292, LRG-3293, LRG-3294, LRG-3295 and LRG-3296 shall be filed with the District IV Office of the State Engineer in Las Cruces on or before February 28, 2004.
- 13) Proof of Application of Water to Beneficial Use shall be filed with the District IV Office of the State Engineer in Las Cruces on or before February 28, 2006.

Date: February 4, 2002

  
Thomas C. Turney, P.E.  
New Mexico State Engineer

**Appendix C.**

**LRG-3275 et al. West Mesa Permit**





Number of this permit \_\_\_\_\_

**ACTION OF STATE ENGINEER**

After notice pursuant to statute and by authority vested in me, this application is approved provided it is not exercised to the detriment of any others having existing rights; further provided that all rules and regulations of the State Engineer pertaining to the drilling of \_\_\_\_\_ wells be complied with; and further subject to the following conditions: \_\_\_\_\_

\_\_\_\_\_  
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*As per attached conditions.*

Proof of completion of well shall be filed on or before March 31, ~~2012~~

Proof of application of water to beneficial use shall be filed on or before March 31, ~~2014~~

Witness my hand and seal this 9<sup>th</sup> day of March, A.D., ~~2010~~

JOHN R.D'ANTONIO, JR., STATE ENGINEER

BY [Signature]  
J.R. Hennessey, Water Resource Specialist

**INSTRUCTIONS**

This form shall be executed, preferably typewritten, in triplicate and shall be accompanied by a filing fee of \$5.00. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4—Fill out all blanks fully and accurately.

Sec. 5—Irrigation use shall be stated in acre feet of water per acre per annum to be applied on the land. If for municipal or other purposes, state total quantity in acre feet to be used annually.

Sec. 6—Describe only the lands to be irrigated or where water will be used. If on unsurveyed lands describe by legal subdivision "as projected" from the nearest government survey corners, or describe by metes and bounds and tie survey to some permanent, easily located natural object.

Sec. 7—If lands are irrigated from any other source, explain in this section. Give any other data necessary to fully describe water right sought.

**Attachment  
Conditions of Approval**

**Application Nos. LRG-3275-POD 1 through LRG-3275-POD 7 for Permits to  
Appropriate Underground Water**

1) These applications are approved as follows:

- Permit Numbers: LRG-3275-POD 1 through LRG-3275-POD 7 (formerly numbered LRG-3275 through LRG-3281)
- Priority: November 24, 1981
- Source: Shallow underground water of the Lower Rio Grande Underground Water Basin.
- Points of Diversion: Well LRG-3275-POD 1 located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 29, T23S, R01E, NMPM at approximately X=1,451,076 Y=465,526 ft. (NMSP, Central Zone, NAD83)
- Well LRG-3275-POD 2 located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 31, T23S, R01E, NMPM at approximately X=1,446,042 Y=460,523 ft. (NMSP, Central Zone, NAD83)
- Well LRG-3275-POD 3 located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T23S, R01E, NMPM at approximately X=1,448,363 Y=459,868 ft. (NMSP, Central Zone, NAD83)
- Well LRG-3275-POD 4 located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T23S, R01E, NMPM at approximately X=1,451,298 Y=460,486 ft. (NMSP, Central Zone, NAD83)
- Well LRG-3275-POD 5 located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 6, T24S, R01E, NMPM at approximately X=1,445,899 Y=455,197 ft. (NMSP, Central Zone, NAD83)
- Well LRG-3275-POD 6 located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 6, T24S, R01E, NMPM at approximately X=1,448,308 Y=454,878 ft. (NMSP, Central Zone, NAD83)

Well LRG-3275-POD 7 located within the SW¼ SW¼ NE¼ of Section 5, T24S, R01E, NMPM at approximately X=1,451,278 Y=455,225 ft. (NMSP, Central Zone, NAD 83)

Purpose of Use: Municipal

Place of Use: The municipal water utility service area of the City of Las Cruces, as on-file with the State Engineer.

Amount of Water: 8,000 acre-feet per annum total diversion from all wells combined. The maximum diversion for each individual well under these permits is limited to 2,500 acre-feet per annum.

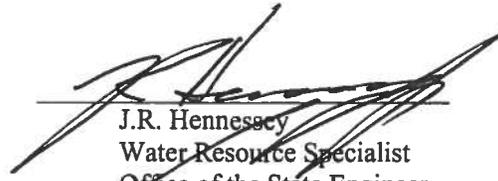
- 2) Prior to the drilling of any well under these permits, the permittee shall submit an acknowledged statement executed by the owner of the land upon which the wells are to be drilled that the permittee has permission to occupy such portion of the owner's land necessary to drill and operate the wells.
- 3) Diversions under these permits require that depletions to the surface flow of the Rio Grande be offset in that amount diverted in any given year, up to 8,000 acre-feet per annum. Surface water depletions may be offset by the acquisition, transfer, and retirement of valid existing water rights or through the use of treated wastewater effluent discharged directly to the Rio Grande pursuant to the City of Las Cruces Return Flow Plan on-file with the State Engineer. The amount of water diverted under these permits is limited to the amount of surface water depletion offsets credited to these permits in a given calendar year. The amount of water that may be diverted under these permits will be reevaluated and determined by the State Engineer on or before March 31<sup>st</sup>, subject to any offset debt from the previous calendar year(s) and anticipated availability of offsets in the current calendar year. No return flow credits for the purpose of increasing diversions under these permits will be granted.
- 4) The State Engineer retains jurisdiction over these permits to oversee and administer Condition 3 listed above.
- 5) Within 2-years of the approval date of this permit, the permittee shall submit a stand-alone Water Conservation Plan acceptable to the State Engineer that outlines a plan to achieve a system gpcpd goal of 180 within 20-years and which shows how the City intends to maintain that level of effort to achieve a more aggressive gpcpd goal within 40-years. This Water Conservation Plan must be updated every 10 years and shall also include provisions for reducing water use during periods of extended drought consistent with appropriate drought management plans. The conservation plan must be submitted to:

Water Use & Conservation Bureau  
Office of the State Engineer  
PO Box 25102  
Santa Fe, NM 87504-5102

- 6) The permittee shall submit, on or before March 1 of each year, a written report acceptable to the Water Use and Conservation Bureau, Office of the State Engineer on water conservation efforts, overall per capita use and residential per capita use calculations using the NMOSE GPCD methodology, and annual AWWA system water audit.
- 7) The permittee shall submit periodic progress reports on the implementation of its 40-year plan to the State Engineer at a minimum rate of once every 10 years. These updates shall contain a comparison of the observed population changes versus the 2005 projected population estimates as well as revised population projections.
- 8) A Well Record for wells LRG-3275-POD 1 through LRG-3275-POD 7 shall be submitted to the Office of the State Engineer in Las Cruces within 20-days of the drilling of the wells.
- 9) Wells LRG-3275-POD 1 through LRG-3275-POD 7 shall be equipped with a totalizing meter of a type and at a location approved by, and installed in a manner acceptable to the State Engineer. The permittee shall provide in writing, the make, model, serial number, date of installation, initial reading, units, and dates of recalibration of the meters, and any replacement meter used to measure the diversion of water. No water shall be diverted from the wells unless equipped with a functional totalizing meter. Any and all wells not in service for which pump equipment has been removed or has not been installed shall be properly capped or otherwise sealed at the top of the casing to prevent groundwater contamination and other safety hazards.
- 10) Written records of totalizing meter reading from wells LRG-3275-POD 1 through LRG-3275-POD 7 shall be submitted in writing to the Office of the State Engineer in Las Cruces on or before the tenth day of each month for the preceding calendar month.
- 11) Proof of Completion of wells LRG-3275-POD 1 through LRG-3275-POD 7 shall be submitted to the Office of the State Engineer in Las Cruces on or before March 31, 2012.
- 12) Proof of Application of Water to Beneficial under these Permits shall be submitted to the Office of the State Engineer in Las Cruces on or before March 31, 2014.
- 13) This permit shall not be exercised to the detriment of valid existing water rights, shall not be contrary to conservation of water within the state, and shall not be detrimental to the public welfare of the state of New Mexico.

14) The permittee shall utilize the highest and best technology available and economically feasible for the intended use to ensure conservation of water to the maximum practical extent.

Date: March 9, 2010

  
\_\_\_\_\_  
J.R. Hennessey  
Water Resource Specialist  
Office of the State Engineer  
District IV; Las Cruces

John R. D Antonio, Jr., P.E.  
State Engineer



Las Cruces Office  
1680 HICKORY LOOP, SUITE J  
LAS CRUCES, NM 88005

STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER  
District 4 Office

Trn Nbr: 152474  
File Nbr: LRG 03275

Mar. 09, 2010

JORGE GARCIA  
CITY OF LAS CRUCES  
P.O. BOX 20000  
LAS CRUCES, NM 88004

Greetings:

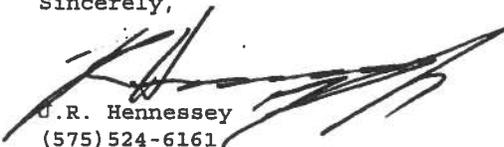
Enclosed is your copy of the above numbered permit which has been approved subject to the conditions set forth on the approval page thereof.

Proof of Application of Water to Beneficial Use will be due in this office on 03/31/2014. This proof must be signed by an engineer or land surveyor who is registered in the State of New Mexico, and who must be designated and paid by you. As soon as you are ready to have final inspection made, you should send this office the name of the engineer or land surveyor you wish to employ so that we may send him the necessary instructions.

Proof of Completion of Well(s) will be filed in this office after completion and installation of equipment, but in no event later than 03/31/2012. Proof of Completion of Well forms shall be mailed upon request.

Your rights under this permit will expire on 03/31/2014, unless Proofs of Completion of Well(s) and Proof of Application of Water to Beneficial Use are filed or an Application for Extension of Time is received in this office on or before that date.

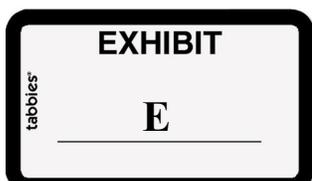
Sincerely,

  
J.R. Hennessey  
(575) 524-6161

Enclosure

nonpbupcw

**Appendix A.**  
**LRG-430 Subfile Order**





Underground Water Basin

- (3) Purpose of Use: Municipal water supply and related as allowed under New Mexico law.
- (4) Points of Diversion for this right:

Well No.: <u>LRG-430 (Well 10)</u>	Location: X= <u>1,478,453</u> Y= <u>480,788</u> Map: <u>LRN-10</u>
Well No.: <u>LRG-430 -S (Well 44)</u>	Location: X= <u>1,486,797</u> Y= <u>472,115</u> Map: <u>LRN-14</u>
Well No.: <u>LRG-430-S-2 (Well 45)</u>	Location: X= <u>1,482,670</u> Y= <u>488,434</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-3 (Well 58)</u>	Location: X= <u>1,476,541</u> Y= <u>467,513</u> Map: <u>LRN-14</u>
Well No.: <u>LRG-430-S-4 (Well 38)</u>	Location: X= <u>1,488,633</u> Y= <u>475,124</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-6 (Well 19)</u>	Location: X= <u>1,486,244</u> Y= <u>479,464</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-7 (Well 20)</u>	Location: X= <u>1,486,695</u> Y= <u>477,573</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-8 (Well 21)</u>	Location: X= <u>1,485,249</u> Y= <u>481,160</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-9 (Well 62)</u>	Location: X= <u>1,481,087</u> Y= <u>488,247</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-10 (Well 23)</u>	Location: X= <u>1,479,845</u> Y= <u>489,942</u> Map: <u>LRN-11</u>
<u>Just off the top right corner</u>	
Well No.: <u>LRG-430-S-11 (Well 24)</u>	Location: X= <u>1,486,443</u> Y= <u>475,136</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-12 (Well 26)</u>	Location: X= <u>1,484,298</u> Y= <u>476,633</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-13 (Well 25)</u>	Location: X= <u>1,482,036</u> Y= <u>486,677</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-14 (Well 27)</u>	Location: X= <u>1,484,263</u> Y= <u>478,885</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-15 (Well 28)</u>	Location: X= <u>1,482,913</u> Y= <u>485,134</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-16 (Well 29)</u>	Location: X= <u>1,472,362</u> Y= <u>476,170</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-17 (Well 65)</u>	Location: X= <u>1,471,818</u> Y= <u>470,210</u> Map: <u>LRN-14</u>
Well No.: <u>LRG-430-S-18 (Well 31)</u>	Location: X= <u>1,468,103</u> Y= <u>483,005</u> Map: <u>LRN-10</u>
Well No.: <u>LRG-430-S-19 (Well 32)</u>	Location: X= <u>1,479,323</u> Y= <u>473,763</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-20 (Well 33)</u>	Location: X= <u>1,473,082</u> Y= <u>486,300</u> Map: <u>LRN-10</u>
Well No.: <u>LRG-430-S-21 (Well 35)</u>	Location: X= <u>1,482,053</u> Y= <u>470,361</u> Map: <u>LRN-14</u>
Well No.: <u>LRG-430-S-22 (Well 36)</u>	Location: X= <u>1,448,315</u> Y= <u>465,378</u> Map: <u>LRN-15</u>
Well No.: <u>LRG-430-S-23 (Well 37)</u>	Location: X= <u>1,445,733</u> Y= <u>465,407</u> Map: <u>LRN-15</u>
Well No.: <u>LRG-430-S-25 (Well 54)</u>	Location: X= <u>1,485,224</u> Y= <u>484,062</u> Map: <u>LRN-11</u>
Well No.: <u>LRG-430-S-26 (Well 40)</u>	Location: X= <u>1,509,596</u> Y= <u>515,825</u> Map: <u>LRN-15<sup>1</sup></u>
Well No.: <u>LRG-430-S-27 (Well 39)</u>	Location: X= <u>1,477,149</u> Y= <u>487,939</u> Map: <u>LRN-10</u>
Well No.: <u>LRG-430-S-28 (Well 41)</u>	Location: X= <u>1,509,550</u> Y= <u>518,473</u> Map: <u>LRN-15<sup>2</sup></u>

<sup>1</sup> Changes from LRG-430-S-26 to LRG-3289 upon completion of infrastructure and notice to the State Engineer, after which it will no longer serve as a supplemental point of diversion for this right, pursuant to the conditions of the permit as detailed in the Conditions of Approval for Applications LRG-3283 through LRG-3296, attached to the State of New Mexico's Offer of Judgment as Attachment A.

<sup>2</sup> Changes from LRG-430-S-28 to LRG-3288 upon completion of infrastructure and notice to the State Engineer, after which it will no longer serve as a supplemental point of diversion for this right, pursuant to the conditions of the permit as detailed in the Conditions of Approval for Applications LRG-3283 through LRG-3296, attached to the State of New Mexico's Offer of Judgment as Attachment A.

Well No.: LRG-430-S-29 (Well 42) Location: X= 1,513,830 Y= 521,312 Map: LRN-15<sup>3</sup>  
 Well No.: LRG-430-S-30 (Well 43) Location: X= 1,515,477 Y= 521,302 Map: LRN-15<sup>4</sup>  
 Well No.: LRG-430-S-31 (Well 57) Location: X= 1,488,480 Y= 478,928 Map: LRN-11  
 Well No.: LRG-430-S-32 (Well 59) Location: X= 1,466,828 Y= 473,808 Map: LRN-9  
 Well No.: LRG-430-S-33 (Driving Range) Location: X= 1,482,119 Y= 491,743  
 Map: LRN-11, Just off the top right corner  
 Well No.: LRG-430-S-34 (Paz Park) Location: X= 1,482,790 Y= 480,912 Map: LRN-11  
 Well No.: LRG-430-S-35 (Well 60) Location: X= 1,480,633 Y= 475,342 Map: LRN-11  
 Well No.: LRG-430-S-36 (Well 46) Location: X= 1,450,354 Y= 465,486 Map: LRN-15  
 Well No.: LRG-430-S-37 (Well 61) Location: X= 1,486,357 Y= 476,054 Map: LRN-11  
 Well No.: LRG-430-S-38 (Well 63) Location: X= 1,448,428 Y= 463,098 Map: LRN-15  
 Well No.: LRG-430-S-39 (Well 64) Location: X= 1,448,327 Y= 457,796 Map: LRN-15  
 Well No.: LRG-430-S-42 (Well 67) Location: X= 1,474,347 Y= 474,111 Map: LRN-15

on the New Mexico State Plane Coordinate System, Central Zone, 1983 N.A.D.

Not foreclosing additional supplemental points of diversion for this right as may be approved in the future by the Office of the State Engineer pursuant to statute, the points of diversion listed above represent all existing LRG-430 series supplemental wells from which the Defendant may divert. In addition to the points of diversion listed above, Office of the State Engineer permits have been approved, and have not been withdrawn, for three (3) additional supplemental LRG-430 series wells under Office of the State Engineer file numbers LRG-430-S-40, LRG-430-S-41, and LRG-430-S-43 (Well 68) but these wells have not yet been drilled. Additionally, an emergency permit has been approved by the Office of the State Engineer under file number LRG-430-S-44 (Well 71), pursuant to NMSA 1978 Section 72-12-24 (A), authorizing the drilling and use by the Defendant of a supplemental LRG-430 series well prior to publication and a hearing. This well also has not yet been drilled and a permit for this well has not been approved, pursuant to NMSA 1978, Section 72-12-3, by the Office of the State Engineer.

- (5) Amount of Water: Diversion from the LRG-430 wells not to exceed 21,869 acre-feet per annum from all points of diversion combined. Further provided that during periods of drought which, for purposes of this

---

<sup>3</sup> Adjudicated an LRG-430 right under this subfile pending adjudication as a supplemental point of diversion under City East Mesa Permit Nos. LRG-3283-3285 and 3288-3296, upon which event it will cease to be a supplemental point of diversion for this right.

<sup>4</sup> Adjudicated an LRG-430 right under this subfile pending adjudication as a supplemental point of diversion under City East Mesa Permit Nos. LRG-3283-3285 and 3288-3296, upon which event it will cease to be a supplemental point of diversion for this right.

Offer of Judgment, are defined as years when the annual *pro rata* share of Rio Grande Project water available to acreage supplied with such water within Elephant Butte Irrigation District falls below two (2.0) acre-feet per acre, the Defendant shall not consumptively use the treated effluent derived from the LRG-430 wells listed in paragraph A (4), but shall return the effluent derived from these wells to the stream system. If the preceding year ended with an annual *pro rata* share of less than two (2.0) acre-feet per acre, the system remains in drought until the annual *pro rata* share is greater or equal to two (2.0) acre-feet per acre.

- (6) Place of Use: The municipal water utility service area of the City of Las Cruces in Dona Ana County, generally west of the Organ Mountains, as may be extended from time to time in the future pursuant to state statute and upon notice to the State Engineer. The current boundaries of the City of Las Cruces municipal water utility service area are shown on the Hydrographic Survey Map for Subfile No. LRN-28-011-0078-A attached to the State of New Mexico's Offer of Judgment.
3. By signing the State of New Mexico's Offer of Judgment, the Defendant accepted all of the terms and conditions set forth or incorporated in the Offer of Judgment.
4. All terms or conditions set forth or incorporated in the State of New Mexico's Offer of Judgment are incorporated into this Order.
5. The Court enters this Order as a final judgment based on the acceptance by the Defendant of the State of New Mexico's Offer of Judgment, and therefore, pursuant to the Court's procedural orders addressing finality, this Order is final and not subject to appeal.
6. There is no just reason for delay of the entry of a final judgment as to the elements of the claims of the Defendant adjudicated by this Order.

IT IS THEREFORE ORDERED that the rights of the Defendant are as set forth above.

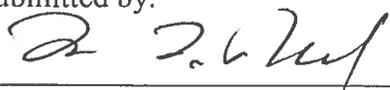
IT IS THEREFORE ORDERED that the Defendant and all those in privity with the Defendant are enjoined from any diversion or use of the public surface and underground waters of the Lower Rio Grande stream system and the Lower Rio Grande Underground Water Basin, under the Office of the State Engineer files identified above, except in strict accordance with the rights set forth hereinabove or in other Orders of the Court.

**Jerald A. Valentine**

---

Jerald A. Valentine  
DISTRICT JUDGE

Submitted by:



---

Francis L. Reckard  
Special Assistant Attorney General  
Post Office Box 25102  
Santa Fe, NM 87504-5102  
(505) 827-6150  
Counsel for Plaintiff State of New Mexico  
*ex rel.* Office of the State Engineer

Approved as to form:



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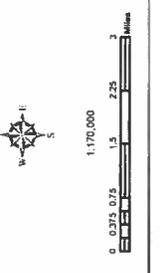
Jay F. Stein  
Stein & Brockmann, P.A.  
460 St. Michael's Drive  
Suite 603  
Santa Fe, New Mexico 87505  
(505) 983-3880  
Counsel for Defendant City of Las Cruces

Office of the State Engineer and City of Las Cruces  
Well Number Cross-Reference

Office of the State Engineer Well Number	City of Las Cruces Well Number	Office of the State Engineer Well Number	City of Las Cruces Well Number
LRG-00430-S-10	10	LRG-00430-S-21	35
LRG-00430-S	44	LRG-00430-S-22	36
LRG-00430-S-2	45	LRG-00430-S-23	37
LRG-00430-S-3	58	LRG-00430-S-25	54
LRG-00430-S-4	38	LRG-00430-S-26	40
LRG-00430-S-6	19	LRG-00430-S-27	39
LRG-00430-S-7	20	LRG-00430-S-28	41
LRG-00430-S-8	21	LRG-00430-S-29	42
LRG-00430-S-9	62	LRG-00430-S-30	43
LRG-00430-S-10	23	LRG-00430-S-31	57
LRG-00430-S-11	24	LRG-00430-S-32	59
LRG-00430-S-12	26	LRG-00430-S-33	Driving Range
LRG-00430-S-13	25	LRG-00430-S-34	Paz Park
LRG-00430-S-14	27	LRG-00430-S-35	60
LRG-00430-S-15	28	LRG-00430-S-36	46
LRG-00430-S-16	29	LRG-00430-S-37	61
LRG-00430-S-17	65	LRG-00430-S-38	63
LRG-00430-S-18	31	LRG-00430-S-39	64
LRG-00430-S-19	32	LRG-00430-S-42	67
LRG-00430-S-20	33		



STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER  
JOHN R. DANTONIO P.E., STATE ENGINEER  
LITIGATION AND ADJUDICATION PROGRAM  
LOWER RIO GRANDE BASIN HYDROGRAPHIC SURVEY  
NORTHERN MESILLA VALLEY SECTION  
PART 1  
AUGUST 19, 2005  
Subfile Map for the City of Las Cruces  
LRN-28-011-0078-A



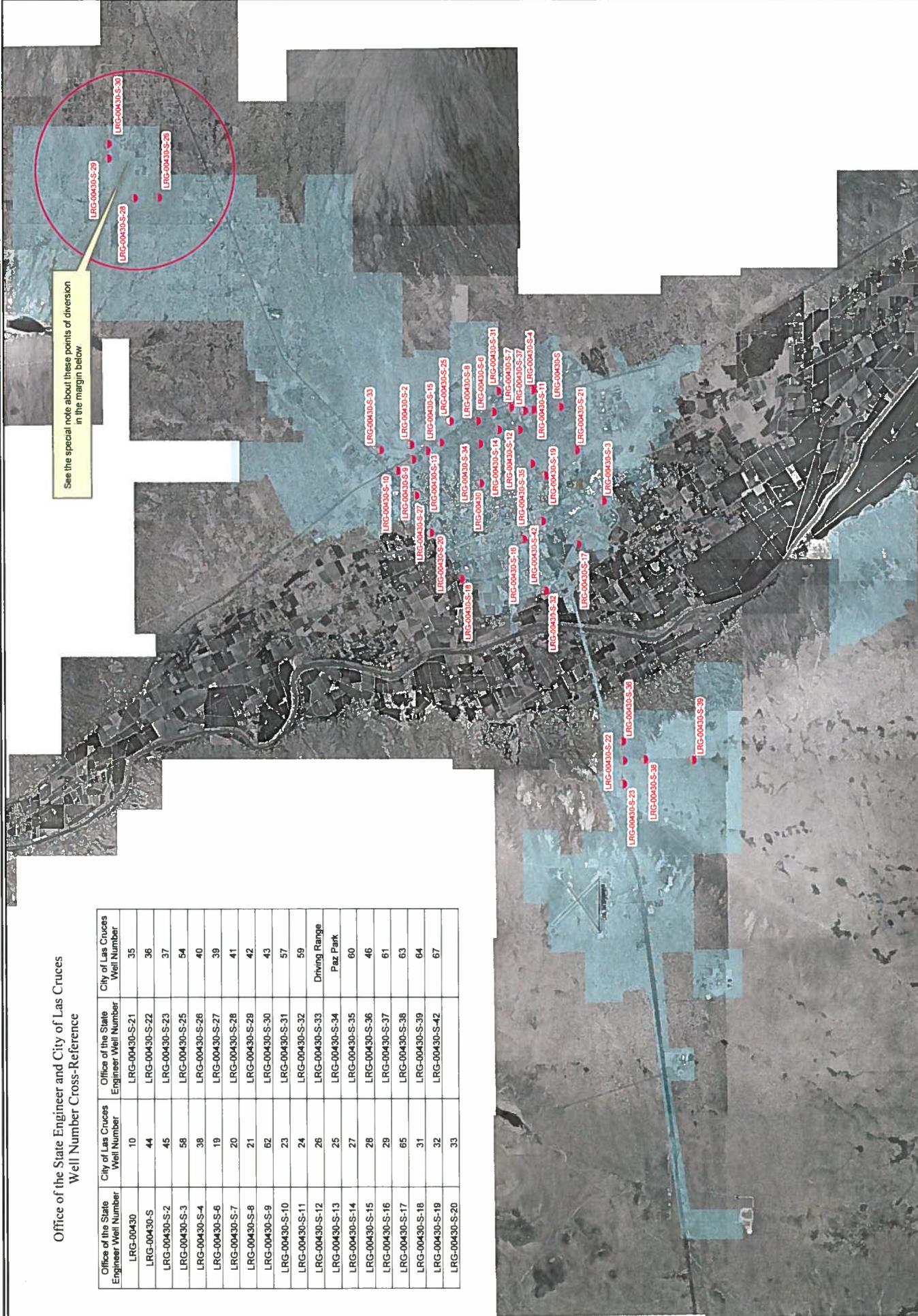
Large scale hydrographic survey maps for this subfile are attached to copies of the Offer of Judgment on file with the Court, New Mexico Office of the State Engineer, and the City of Las Cruces.

**Special Note**  
LRG-00430-S-26, S-28, S-29 and S-30 are adjudicated as points of diversion for subfile LRN-28-011-0078-A pending satisfaction of conditions stipulated to by the State of New Mexico and the City of Las Cruces as described in the Offer of Judgment. Upon satisfaction of these conditions, they will no longer serve as points of diversion for this subfile.

**Legend**  
Wells  
Las Cruces Service Area  
as of June 2005

Office of the State Engineer and City of Las Cruces  
Well Number Cross-Reference

Office of the State Engineer Well Number	City of Las Cruces Well Number	Office of the State Engineer Well Number	City of Las Cruces Well Number
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LRG-00430-S-5	38	LRG-00430-S-26	40
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**Legend**  
 • Wells  
 Las Cruces Service Area as of June 2005

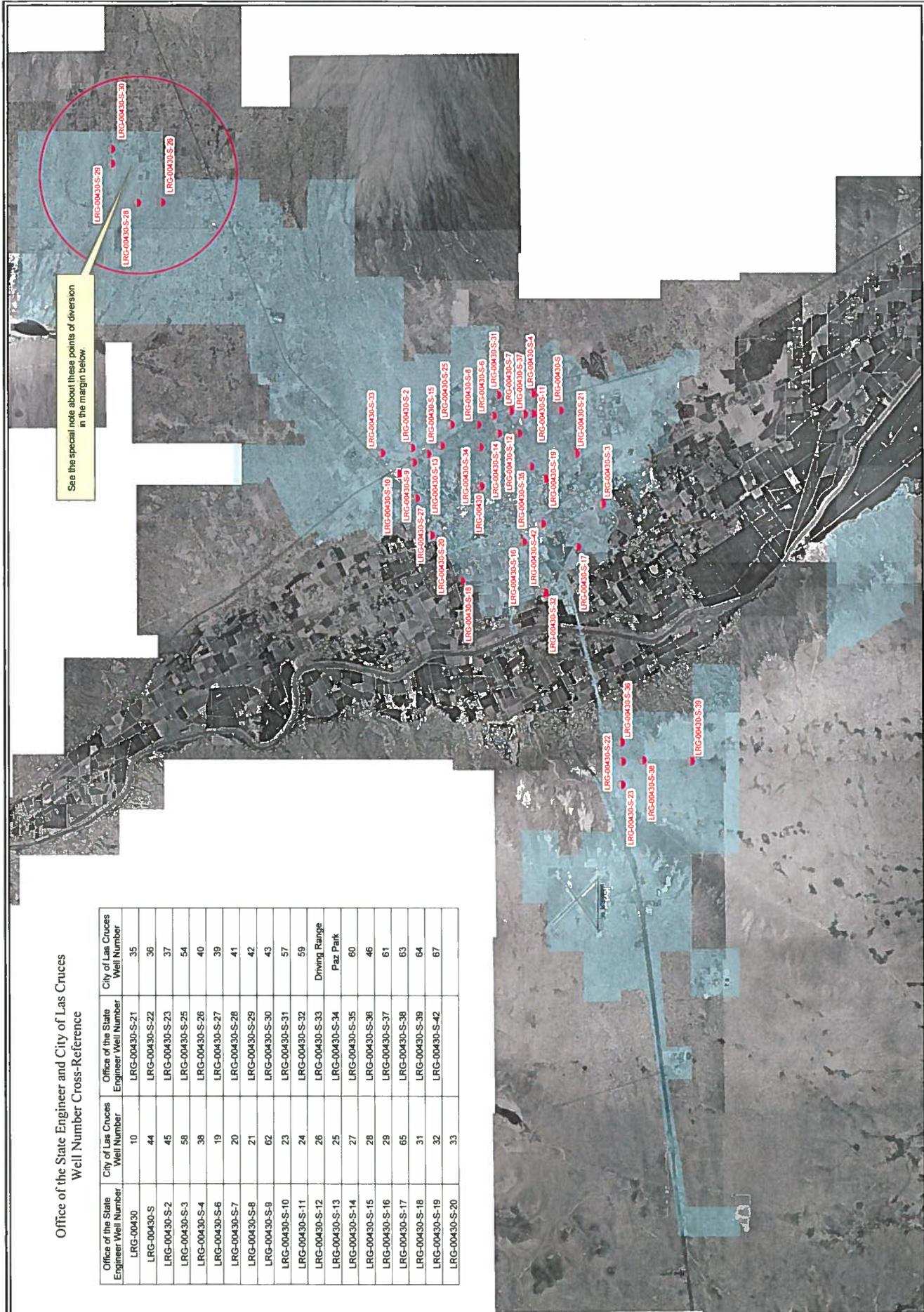
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Large scale hydrographic survey maps for this subtitle are attached to copies of the Offer of Judgment on file with the Court, New Mexico Office of the State Engineer, and the City of Las Cruces.

STATE OF NEW MEXICO  
 OFFICE OF THE STATE ENGINEER  
 JOHN R. DAVENPORT, STATE ENGINEER  
 LITIGATION AND ADJUDICATION PROGRAM  
 LOWER RIO GRANDE BASIN HYDROGRAPHIC SURVEY  
 NORTHERN PLAINS SUBSECTION  
 Prepared by James E. Harp  
 AUGUST 19, 2005

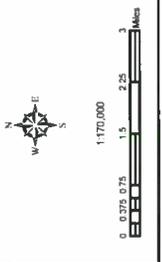
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Well Number Cross-Reference

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LRG-00430-S-18	31	LRG-00430-S-39	64
LRG-00430-S-19	32	LRG-00430-S-42	67
LRG-00430-S-20	33		



See the special note about these points of diversion in the margin below.

STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER  
JOHN R. DANTINGO P.E. STATE ENGINEER  
DL SANDERS CHIEF COUNSEL  
LITIGATION AND ADJUDICATION PROGRAM  
NORTHERN MESQUITA VALLEY SECTION  
Presented by James E. Hagan  
AUGUST 19, 2005  
Subtle Map for the City of Las Cruces  
LRN-28-011-0078-A



Large scale hydrographic survey maps for this subtitle are attached to copies of the Offer of Judgment on file with the Court, New Mexico Office of the State Engineer, and the City of Las Cruces.

**Special Note**  
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**Legend**  
- Wells  
Las Cruces Service Area as of June 2005

No. 141, Original

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**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**

---

***AMICUS CURIAE* CITY OF LAS CRUCES  
CERTIFICATE OF SERVICE**

---

This is to certify that on the 6th day of January, 2021, I caused a true and correct copy of the *City of Las Cruces' Amicus Curiae Brief in Opposition to the United States' and State of Texas' Motions for Partial Summary Judgment and in Support of The State of New Mexico's Motion for Partial Summary Judgment on Compact Apportionment* to be served by e-mail upon all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 6th day  
of January, 2021.

/s/ Jay F. Stein  
JAY F. STEIN, ESQ. \*  
JAMES C. BROCKMANN, ESQ.  
STEIN & BROCKMANN, P.A.  
P.O. Box 2067  
Santa Fe, NM 87504-2067  
(505) 983-3880  
jfstein@newmexicowaterlaw.com  
*\*Counsel of Record*

Jennifer Vega-Brown, Esq.  
CITY OF LAS CRUCES  
P.O. Box 20000  
Las Cruces, NM 88004  
jvega -brown@las-cruces.org

**SERVICE LIST FOR ALL PARTIES**

**In The Supreme Court of the United States, Original No. 141  
STATE OF TEXAS v. STATE OF NEW MEXICO and STATE OF COLORADO**

**PARTIES<sup>1</sup>**

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## MEDIATOR

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## SPECIAL MASTER

<b>Special Master</b>	<b>Honorable Michael J. Melloy</b> <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E., Box 22 Cedar Rapids, IA 52401  Michael E. Gans, Clerk of Court United States Court of Appeals – Eighth Circuit Thomas F. Eagleton United States Courthouse 111 South 10th Street, Suite 24.329 St. Louis, MO 63102	(319) 432-6080 <a href="mailto:TXvNM141@ca8.uscourts.gov">TXvNM141@ca8.uscourts.gov</a>  (314)244-2400 <a href="mailto:TxvNM141@ca8.uscourts.gov">TxvNM141@ca8.uscourts.gov</a>
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**\*\*Updated 4/16/2018**

Corrected the spelling of Pricilla M. Hubenak to Priscilla M. Hubenak and added her e-mail address [Priscilla.Hubenak@oag.texas.gov](mailto:Priscilla.Hubenak@oag.texas.gov) to the Service list.

**\*\*Updated 4/18/2018**

Added Toby Crouse ([toby.crouse@ag.ks.gov](mailto:toby.crouse@ag.ks.gov)) as the Solicitor General for the State of Kansas and removed Stephen R. McAllister.

**\*\*Updated 4/24/2018**

Added Clerk of Court information and updated Special Master e-mail address.

**\*\*Updated 11/16/18**

Added Bryan Clark's e-mail address ([bryan.clark@ag.ks.gov](mailto:bryan.clark@ag.ks.gov)) for the State of Kansas

**\*\*Updated 3/14/19**

Updated Attorney General of Colorado to Philip J. Weiser  
 Added Solicitor General Eric R. Olson ([eric.olson@coag.gov](mailto:eric.olson@coag.gov)) for the State of Colorado

**\*\*Update 3/19/19**

Added legal assistants Shannon Gifford ([shannong@modrall.com](mailto:shannong@modrall.com)) and Leanne Martony ([leannem@modrall.com](mailto:leannem@modrall.com)) for El Paso County Water District No. 1  
 Added James M. Speer, Jr., information for El Paso County Water District No. 1

**\*\*Update 5/6/19**

Added Sarah A. Klahn ([sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)), Richard S. Deitchman ([rdeitchman@somachlaw.com](mailto:rdeitchman@somachlaw.com)), Rena Wade ([rwade@somachlaw.com](mailto:rwade@somachlaw.com)) and Corene Rodder ([crodder@somachlaw.com](mailto:crodder@somachlaw.com)) for State of Texas. Removed Rhonda Stephenson.

- \*\*Update 11/6/19**  
Added Lamai Howard ([lamaih@modrall.com](mailto:lamaih@modrall.com)) for El Paso County Water District No. 1.  
Removed Leanne Martony.
- \*\*Update 11/21/19**  
Added Jo Harden ([jo@tessadavidson.com](mailto:jo@tessadavidson.com)) for New Mexico Pecan Growers. Removed Patricia McCann.
- \*\*Update 11/22/19**  
Removed Lizbeth Ellis and Clayton Bradley and added General Counsel ([gencounsel@nmsu.edu](mailto:gencounsel@nmsu.edu)) email for New Mexico State University.
- \*\*Update 1/7/20**  
Added David W. Gehlert ([david.gehlert@usdoj.gov](mailto:david.gehlert@usdoj.gov)) for the United States. Updated Solicitor General information. Also added John P. Tustin ([john.tustin@usdoj.gov](mailto:john.tustin@usdoj.gov)) for the United States.
- \*\*Update 2/19/20**  
Added Renea Hicks for El Paso County Water Improvement District No. 1. Removed James M. Speer and Lamai Howard.
- \*\*Update 2/26/20**  
Added Darren L. McCarty for State of Texas. Removed Brantley Starr and James Davis. Also added Crystal Rivera and removed Rena Wade.
- \*\*Update 5/1/20**  
Added Cholla Khoury, Luis Robles, Jeffrey Wechsler and John Draper for the State of New Mexico. Removed David A. Roman. Also added Bonnie DeWitt, Pauline Wayland, Diana Luna and Donna Ormerod.  
  
Added Preston Hartman for the State of Colorado. Removed Karen Kwon.
- \*\*Update 7/7/20**  
Added mediator information - Hon. Oliver W. Wanger.
- \*\*Update 10/1/20**  
Added Susan Barela ([susan@roblesrael.com](mailto:susan@roblesrael.com)) for State of New Mexico.
- \*\*Update 10/2/20**  
Added Jennifer A. Najjar and removed Stephen M. MacFarlane, Thomas Snodgrass and David W. Gehlert for the United States.
- \*\*Update 12/14/20**  
Added Zachary E. Ogaz ([zogaz@nmag.gov](mailto:zogaz@nmag.gov)) for State of New Mexico.