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May 14, 2020

Via Electronic and U.S. Mail

Special Master Michael J. Melloy
United States Courthouse
111 Seventh Avenue, S.E.
P.O. Box 22
Cedar Rapids, IA 52401
Email: TXvNM141@ca8uscourts.gov

Re: Texas v. New Mexico & Colorado, Original No. 141

Dear Special Master Melloy:

The New Mexico *amici*, consisting of the City of Las Cruces, the New Mexico Pecan Growers, New Mexico State University (“NMSU”), and the Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”), submit this letter in support of the State of New Mexico’s letter of today’s date regarding the “supplemental” expert reports filed by the State of Texas and the United States on May 5 and 6, 2020.

The New Mexico *amici* comprise the predominant water using interests in the Lower Rio Grande in New Mexico. They include New Mexico’s second largest city, Las Cruces, irrigators within Elephant Butte Irrigation District, and New Mexico’s principal research university in the field of agriculture. They are joined by the ABCWUA, the economic hub of the State. They are the real parties-in-interest affected by the outcome of this case. All are users of groundwater within the Lower Rio Grande Underground Water Basin, or the Rio Grande Underground Water Basin. Together they form the economy that is reliant on the use of interconnected surface and groundwater on the Rio Grande, and administration under state law.

The Amendment to the Case Management Plan (“CMP”) adopted by the Special Master on January 31, 2019, provided for the plaintiffs’ initial expert disclosures on May 31, 2019; New Mexico’s initial expert disclosures on October 31, 2019; the plaintiffs’ rebuttal expert disclosures on December 30, 2019; and New Mexico’s expert rebuttal disclosures on March 27, 2020. These

disclosures were completed as scheduled, with the exception of New Mexico's rebuttal which is now due June 15, 2020. In addition, these disclosures must conform to the requirement in the CMP that "rebuttal" reports rebut evidence in initial disclosures.

On May 5 and 6, however, New Mexico was served with two reports described as "supplemental" expert reports. The 91-page report by A. Shane Coors served on May 5, analyzed the surface water model disclosed by New Mexico on October 31, 2019, but it did not "supplement" Mr. Coors' December 30, 2019, rebuttal report based on any new evidence disclosed after New Mexico's October 31, 2019, disclosure. Instead, it made entirely new claims, despite the fact that all of the model files were available to Mr. Coors well in advance of Texas' December 30, 2019, rebuttal disclosure deadline.

On May 6, 2020, the United States disclosed a report from Jean Moran that purports to supplement her May 31, 2019, report. Ms. Moran's "supplemental" report assesses groundwater depletions on surface water available to the Rio Grande Project using New Mexico's ground and surface water models disclosed on October 31, 2019. Despite the fact that New Mexico's evidence had been available to Ms. Moran since October 31, 2019, the United States disclosed no rebuttal report from Ms. Moran on December 30, 2019.

These two reports do not "supplement" previous opinions by these witnesses. Instead, they present new opinions, supported by new evidence. Moreover, they were filed without asking leave of the Court in a motion.

These reports prejudice the New Mexico *amici*'s interests identified above by introducing new claims, theories, and evidence after the CMP's deadlines and schedule for completing discovery on existing reports, pre-trial dispositive motions, and trial preparation. Broadly speaking, the Coors and Moran reports seek to impose additional limits on water rights used by New Mexico's irrigators, the City of Las Cruces, and NMSU. The reports should be stricken, or new rebuttal deadlines established for New Mexico.

This case is ultimately about the *amici*'s interests and water usage. While *Colorado v. New Mexico*, 459 U.S. 176 (1982), was a suit for equitable apportionment in the first instance, and while this case purports to enforce the Rio Grande Compact, the *Colorado* Court appropriately acknowledged that "the equities supporting the protection of existing economies will usually be compelling." 459 U.S. at 187. Compare *Washington v. Oregon*, 297 U.S. 517 (1936). Texas and the United States cannot be allowed to untimely and unfairly ambush New Mexico with new expert opinions on matters that negatively impact the economy of the upstream state in this case.

The New Mexico *amici* fully support New Mexico's position on this issue and urge the Special Master to either consider a motion to strike the untimely reports or allow New Mexico additional, adequate time to respond to the late filings.

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Respectfully Submitted,

/s/ Jay F. Stein

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Cc: All counsel of Record