



MODRALL SPERLING
LAWYERS

May 28, 2020

Special Master Michael J. Melloy
United States Courthouse
111 Seventh Avenue SE, Box 22
Cedar Rapids, Iowa 52401
Email: TXvNM141@ca8uscourts.gov

Re: *State of Texas v. State of New Mexico and State of Colorado*
United State Supreme Court, Original No. 141

Dear Special Master Melloy:

El Paso County Water Improvement District No. 1 (“EPCWID”) respectfully submits this letter in response to the agenda items for the May 29, 2020 Status Conference set forth in the Special Master’s May 26, 2020 Order.

1. Continued discussion concerning appointment of a mediator

EPCWID supports appointment of a mediator. However, EPCWID believes that any hope of success through a mediated resolution would require the sincere commitment of all parties and relevant *amici* to such a process. And, as the recipient of Texas’s apportionment under the Rio Grande Compact, EPCWID would need to be involved in all aspects of a mediated resolution.

2. Discovery issues

On discovery issues, EPCWID suggests some discussion be devoted to the scope of discovery going forward in light of the Special Master’s Order of March 31, 2020, dismissing all of New Mexico’s counterclaims except Counterclaims 1 and 4 and its related determination that the validity of the 2008 Operating Agreement is not at issue in this case. The list of scheduled depositions is long. Depositions since the March 31st Order have tended to be extended, sometimes prolonged by questioning delving into topics that the March 31st Order appears to have ruled are no longer part of the case. EPCWID believes it would be helpful for the parties and *amici* to get a sense from the Special Master of whether certain matters (*e.g.*, details about negotiations leading up to the 2008 Operating Agreement) are within the proper scope of deposition topics and, if they are, whether there is any limitation in terms of time or detail that should govern the depositions going forward. Guidance on this topic could provide some improved efficiencies in time and work as the depositions proceed.

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3. Discussion concerning key issues that will need to be addressed at trial

EPCWID offers that the following are the relevant issues for resolution at trial or prior to trial through dispositive motions.

- What is the measure of apportionment and associated delivery obligations under the Compact, and relatedly, what are the respective Compact entitlements of Texas and New Mexico below Elephant Butte Reservoir?
- Does the Rio Grande Project, including federal reclamation law and related contracts, control the measure of entitlements to either State under the Compact?
- Has New Mexico violated its Compact obligations by allowing increased depletions of Rio Grande Project surface water supply in New Mexico through increased consumptive use and diversions of Project water through hydrologically connected groundwater pumping?
- Have groundwater depletions in New Mexico decreased the amount of water Texas and EPCWID are receiving, but are otherwise entitled to under the Compact and through the Rio Grande Project and its associated federal reclamation laws?
- Does the 2008 Operating Agreement provide the appropriate prospective remedy in this original action?

EPCWID appreciates your Honor's consideration of the comments offered herein. We look forward to the discussion at the Status Conference on May 29th.

Very truly yours,



Maria O'Brien

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