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July 22, 2020

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

In your Order of July 20, 2020, you identified “appointment of a mediator” and “current status of discovery” as agenda items for the July 24<sup>th</sup> Status Conference and requested that any suggestions for additional agenda items be submitted by the close of business today. The El Paso County Water Improvement District No. 1 (“EPCWID”) respectfully submits the following two suggestions.

**1. MEDIATION MATTERS: EPCWID AND EBID’S INVOLVEMENT**

The role of EPCWID, as well as the Elephant Butte Irrigation District (“EBID”), in the mediation process and the timing of their involvement appears to be in limbo. EPCWID understood that the Special Master had previously indicated that these matters would be up to the mediator. However, in his July 16<sup>th</sup> letter to the parties, Judge Wanger stated that the extent to which *amici* parties are to be included in the mediation was “unclear” and would be determined by the Special Master and the views of the three parties.

EPCWID requests discussion of this matter be included in the agenda item regarding the appointment of the mediator as identified by your Honor. You already have recognized that, though they are *amici*, EPCWID and EBID have an “enhanced status” in that capacity because of, among other things, their role in operation of the Rio Grande Project. Second Interim Report of the Special Master at 48; *see also* Tr. of Scheduling Conference Aug. 28, 2018, at 82 (EPCWID and EBID are different category of *amici* because they are “actually contract parties which the Supreme Court says have been incorporated into the compact”). This is why EPCWID is seeking early inclusion in the mediation

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process. *See* M. O'Brien Letter of June 11, 2020, to Special Master. We do not believe it would be efficient or prudent to exclude the Districts from mediation efforts even from the outset.

**2. BRIEFING ON THE ISSUE OF MEASURE OF APPORTIONMENT**

Your Honor has raised the concern several times about the need to understand the Compact's measure of apportionment as a legal matter before moving forward to other issues in the case. "[U]ntil we decide that issue, it's hard to decide just about anything else in the case." Tr. of May 29, 2020, Status Conference at 59. As discussed at the last status conference, EPCWID fully endorses this view.

Discovery is currently scheduled to end on August 31<sup>st</sup>, with dispositive motions due by October 15<sup>th</sup>. EPCWID requests inclusion on this Friday's agenda of an item to allow discussion regarding timing of briefing on the issue of the measure of apportionment. As previously urged, EPCWID believes such briefing is needed and that it would be most helpful and expedient to provide for such briefing prior to the filing of dispositive motions.

EPCWID appreciates your Honor's consideration of the suggested additional agenda matters offered herein. We look forward to the discussion at the Status Conference on July 24<sup>th</sup>.

Very truly yours,



Maria O'Brien

Cc: Service List