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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 (“Pecan Growers”), New Mexico State University (“NMSU”), and the Albuquerque Bernalillo County Water Utility Authority (“Water Authority”) submit this letter in support of the parties’ joint letter to Your Honor of yesterday’s date regarding the parties’ agreed approach to the apportionment issue. *See* Special Master’s Order dated August 18, 2020, Paragraph D. We agree that the apportionment issue is not severable and that it is not realistic to accelerate the briefing schedule in this regard.

With respect to the severability issue, the apportionment issue is not separate, but rather it is directly related to several other threshold issues. The Special Master should consider all dispositive motions at the same time after briefing and oral argument to determine the most judicious path forward. It may be that the apportionment issue and other threshold issues can be decided on dispositive motions or the Special Master may decide that he wants to hear evidence on the compacting states contemporaneous understanding of the Rio Grande Compact and how the states have interpreted the Compact over the last 80 years. *See, e.g.*, Special Master Order dated April 14, 2020 at 21 (“In any event, there are over eighty years of performance under the Compact to inform the Court as to the parties’ longstanding understanding of the limits of the full extent of play in the system, the limits to which the ratio cited in the Downstream Contracts actually might define a Compact right to Project supply, and the extent to which individual state’s groundwater laws must be deemed subservient to the Compact.”). The New Mexico *amici* are confident that the Special Master will be well positioned to decide whether the appointment issue can be resolved by dispositive motion after reviewing all dispositive motions in relation to each other, or whether development of facts at trial will assist in resolving the issue.

On the second issue of a potentially accelerated briefing schedule, again, we agree with the parties. The New Mexico *amici* have been active through this intense discovery schedule. We understand the significant efforts made by the parties in the discovery process to meet existing deadlines. We also understand the time and effort that will be involved with briefing and arguing dispositive motions, and we assume a significant number of motions will be filed. The New Mexico *amici* may also be submitting briefs related to the dispositive motions. In addition, we anticipate that the mediator will want to initiate the mediation process in some manner after August 31, 2020. Given these tasks and time commitments already in the schedule, we agree with the parties that it will be disruptive to attempt to accelerate the briefing and decision on the apportionment issue.

Finally, we are also cognizant of the Special Master's desire to have a single report to the Court, if possible. The New Mexico *amici* question whether separating the apportionment issue and accelerating its briefing might prompt a losing party to seek review by the Court on exceptions before the remainder of the case is resolved. This could result in as many as three reviews by the Court if parties seek exceptions, *viz.*, once on the apportionment issue, a second time on liability, and a third time on a remedy phase. For judicial efficiency, we believe the Special Master's current schedule provides the best path for an expeditious resolution of the case.

In sum, the New Mexico *amici* support the parties' joint position on the procedures for resolving the apportionment issue. We look forward to participating in tomorrow's status conference.

Respectfully Submitted,

/s/ Jay F. Stein
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cc: All counsel of Record