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March 16, 2021

**Via Electronic and U.S. Mail**

Honorable Michael J. Melloy  
United States Courthouse  
111 Seventh Avenue SE, Box 22  
Cedar Rapids, Iowa 52401

***Re: Joint Status Conference Statement in Texas v. New Mexico & Colorado,  
Original No. 141***

Dear Special Master Melloy:

The New Mexico *amici*<sup>1</sup> feel compelled, again, to respond to El Paso County Water Improvement District No. 1's ("EP#1") letter to Your Honor yesterday objecting to the Joint Status Conference Statement agreed on by New Mexico, Texas, Colorado, and the United States, and requesting participation by it and Elephant Butte Irrigation District ("EBID") in pre-trial and trial proceedings in this matter.

The Court granted Texas' Motion for Leave to File Complaint in an original action – a dispute between States. New Mexico's Counterclaims were allowed on the same basis. If the Court had not viewed this as litigation between the States, *viz.*, interpretation and enforcement of an interstate water Compact, it would not have exercised its original jurisdiction and the matter would have been litigated in federal district court.

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<sup>1</sup> New Mexico *amici* include the City of Las Cruces ("Las Cruces" or the "City"), the New Mexico Pecan Growers ("Pecan Growers"), the Southern Rio Grande Diversified Crop Farmers Association ("Row Croppers"), New Mexico State University ("NMSU"), and the Albuquerque Bernalillo County Water Utility Authority ("Water Authority").

Because this is an original action between States and the States represent their water users *parens partiae*, EP#1's and EBID's motions to intervene were opposed by the parties and were denied, without qualification or exception. As Special Master Grimsal noted when EBID's motion was pending before him: "Quite possibly, EBID actually has less of an interest in this case, if any interest at all, than any other affected Rio Grande water user or claimant in New Mexico." *See* First Interim Report of the Special Master, dated February 9, 2017, at 254 (Docket No. 54). He continued, "EBID holds no beneficial-use interests; as EBID acknowledges in its papers, the individual entrymen who purchased the land under the Reclamation Act and repaid the United States for the construction and maintenance costs of the irrigation works and the right to use water hold the beneficial-use water rights." *Id.* The same is true of EP#1.

New Mexico *amici* are the real parties-in-interest in this litigation. If Texas were to prevail and impose a 1938 condition on New Mexico thereby reducing groundwater diversions in New Mexico below Elephant Butte Reservoir by 60%, it will be farmers represented by the Pecan Growers and Row Croppers that go out of business. Municipal water providers such as Las Cruces, and educational institutions such as NMSU, would be forced to buy and retire irrigation water rights to meet this new paradigm. Similarly, if the United States were to prevail in its attempt to return to a 1938 condition, usurp the New Mexico State Engineer's jurisdiction, and require federal contracts to use groundwater, the effects would be devastating to New Mexico farmers and municipal water providers.<sup>2</sup> Moreover, agricultural production in the Lower Rio Grande would be severely constrained if the United States prevailed on its position that limits farmers' water use to 3.024 acre-feet per year for surface and groundwater combined. All state-based water rights in this area will become meaningless if groundwater becomes federalized as the United States proposes, throwing away decades of planning and investment under New Mexico law. And if Texas and the United States were to prevail on their theories, the precedent could negatively affect water users above Elephant Butte in New Mexico and Colorado, including the Water Authority.

EBID, the entity, was not affected when it gave up as much as 30% of Project surface water to EP#1. Its operations continued as normal. Rather, it was the Pecan Growers and Row Croppers who have paid the increased price for the loss of surface water with a mandate to use groundwater instead, and that forced increase in groundwater pumping potentially threatens the groundwater supply upon which they and others, including *amici* Las Cruces and NMSU, rely. Similarly, EP#1's operations will continue without effect regardless of the outcome of this litigation.

The New Mexico *amici* support the parties' Joint Status Conference Statement, without revision. EP#1 and EBID are not parties to the litigation and are represented *parens partiae*. If the Special Master is going to consider participation from *amici* in pre-trial and trial proceedings, either now or in the future, the New Mexico *amici*, the owners of the water rights and the real parties-in-interest, must have equal participation with the irrigation districts.

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<sup>2</sup> It is not clear that the United States can pursue ¶¶ 12 and 13 of its Complaint-in-Intervention as these go well beyond the contours of Texas' Complaint and the Court's opinion allowing the United States intervention based on the same or similar claims. Moreover, users in Texas do not have federal contracts for the use of groundwater – only surface water.

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Respectfully Submitted,

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cc: All counsel of Record