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November 21, 2022

**Via Electronic Mail:**

**[Judge Michael Melloy@ca8.uscourts.gov](mailto:Judge Michael Melloy@ca8.uscourts.gov)**

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Honorable Michael J. Melloy  
United States Courthouse  
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Cedar Rapids, Iowa 52401

***Re: Clarification regarding Documents filed under Seal in Texas v. New Mexico  
and Colorado, Original No. 141***

Dear Special Master Melloy:

The New Mexico *amici*<sup>1</sup> respectfully request clarification regarding the distribution and review of documents filed under seal pursuant to Your Honor's Orders dated October 26, 2022, and November 9, 2022.

Pursuant to Paragraph 1 of the Order dated August 26, 2022, the *amici* in this case were granted access to settlement documents with several conditions. First, the *amici* were required to sign a Confidentiality Agreement. Next, the confidential settlement documents could be reviewed by the counsel for the *amici*, but counsel were directed to not make the documents available to any other person or entity, including their clients and technical advisors. *Amici* counsel were only allowed to *discuss* the contents of the settlement drafts with their clients and technical advisors. The Special Master emphasized that all statements and communications by and among the parties and *amici* in connection with the mediation must remain confidential. *See* Order dated August 26, 2022, Docket No. 706.

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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").

On September 14, 2022, the Order dated August 26, 2022, was amended to allow each *amicus* to designate one client representative and one technical advisor to review settlement documents, in addition to *amicus* counsel. The New Mexico *amici* believed it was essential to have a client representative and a technical representative work with *amici* counsel to review and analyze documents to fully participate in the settlement process. Such review was conditioned upon each designee signing a Confidentiality Agreement and agreeing to be bound to previous Orders and Confidentiality Agreements. *See* Order dated September 14, 2022, Docket No. 709.

After New Mexico, Texas, and Colorado announced that they had reached a settlement in principle of all interstate issues related to the Rio Grande Compact, and intended to file a joint motion to adopt their proposed settlement decree, the United States raised concerns about confidentiality. In response, Your Honor entered an Order indicating that the proposed decree and appendices should be filed under seal. *See* Order dated October 26, 2022, Docket No. 715. That Order stated: “The sealed decree and appendices shall be available to recognized *Amici* in compliance with the conditions of my August 26, 2022 order, Doc. No. 706.” *Id.* at ¶ 2. At the request of the United States, your Order dated November 9, 2022, expanded the documents that should be filed under seal. *See* Order dated November 9, 2022, Docket No. 717.

Nothing in the Orders dated October 26, 2022, and November 9, 2022, restricted *amici* access to sealed documents that were filed on November 14, 2022. To the contrary, the Order dated October 26, 2022, expressly allowed it, subject to the conditions of the previous Orders. *See* Order dated October 26, 2022, at ¶ 2, Docket No. 715.

Despite what appeared to be express authorization from the Special Master for *amici* counsel to obtain documents filed under seal directly from the States and to distribute them for review and analysis to one client representative and one technical representative, the three-states’ Joint Motion caused some confusion with the following statement: “Pursuant to the 10/26/22 Order, as amended by the 11/9/22 Order, *amici* that have complied with the confidentiality procedures ordered by the Special Master may contact the Special Master’s Chambers to obtain copies of the materials filed under seal.” *See* Notice of Joint Motion and Joint Motion of the State of Texas, State of New Mexico, and State of Colorado to Enter Consent Decree Supporting the Rio Grande Compact at 6, November 14, 2022, Docket No. 719 (“Joint Motion”).

Nothing in the Special Master’s earlier Orders indicated that *amici* should contact the Special Master’s Office to obtain copies of documents filed under seal. Rather, based upon previous Orders, the New Mexico *amici* expected to, and did in fact, receive the documents filed under seal directly from counsel for New Mexico. Nonetheless, until they have certainty from Your Honor, some counsel have not distributed the documents filed under seal to their client and technical representatives through an abundance of caution.

To ensure compliance with the Special Master’s Orders, the New Mexico *amici* are requesting clarification regarding distribution and review of the documents filed under seal with the Joint Motion.<sup>2</sup>

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<sup>2</sup> New Mexico *amici* anticipate that the Special Master will decide in the coming weeks whether to unseal the documents filed under seal with the Joint Motion and make them available to the public. New Mexico *amici* support making the settlement documents public. The documents are of great public interest and

In addition to this letter, the New Mexico *amici* are filing a Response to the United States' Motion for Leave to File Under Seal. *See* United States of America's Motion for Leave to File Under Seal dated November 18, 2022, Docket No. \_\_\_\_\_. That Response also addresses the topic of documents filed under seal, including *amici* access to additional documents that the United States wants to file under seal. Because it may take several weeks for the Special Master to resolve the United States' Motion for Leave to File Under Seal and what is expected to be another United States' motion regarding its objection to the three-states' settlement based upon the alleged disclosure of confidential United States' settlement documents and positions (due by November 23, 2022), the New Mexico *amici* are requesting clarification on the issues raised in this letter on an expedited basis so we can continue to prepare our response briefs to the Joint Motion which are due on January 6, 2023.

Respectfully Submitted,

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cc: All Counsel of Record

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importance. Resolution of this original action involving an interstate water compact will affect millions of people who rely on a municipal water supply in New Mexico and Texas and an agricultural economy in southern New Mexico and west Texas worth hundreds of millions of dollars. Nothing in those sealed documents filed with the Joint Motion discloses the United States' settlement positions, nor are the Compacting States purporting that they do.

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