

No. 141, Original
In the Supreme Court of the United States

STATE OF TEXAS, PLAINTIFF,

UNITED STATES OF AMERICA, PLAINTIFF-IN-INTERVENTION,

v.

STATE OF NEW MEXICO

AND

STATE OF COLORADO,
DEFENDANTS.

♦
OFFICE OF THE SPECIAL MASTER
♦

**MEMORANDUM BY *AMICUS* EL PASO COUNTY WATER IMPROVEMENT
DISTRICT NO. 1 IN SUPPORT OF THE UNITED STATES' MOTION TO STRIKE, AND
CONDITIONAL MOTION BY EL PASO COUNTY WATER IMPROVEMENT
DISTRICT NO. 1 TO INTERVENE AS A PARTY TO PROTECT ITS OWN
CONFIDENTIALITY RIGHTS**

November 26, 2022

The El Paso County Water Improvement District No. 1 (EPCWID, or the District) files this memorandum and motion for two purposes, both arising from a common nucleus: the filing on November 14, 2022, of the Joint Motion of the State of Texas, State of New Mexico, and State of Colorado to Enter Consent Decree Supporting the Rio Grande Compact (Doc. 719), accompanied by a settlement decree proposed by the three states (Doc. 720, Exh. 1).¹ On November 23, 2022, the United States filed Notice of the filing under seal of a Motion to Strike (Doc. 729). Because the core concerns of the United States and EPCWID on the issues addressed here are effectively identical, EPCWID files this pleading as a single memorandum, rather than two separate ones, in support of the United States' Motion to Strike *and* in support of EPCWID's own confidentiality rights.

The States' Proposed Decree and Technical Appendix (and other supporting appendices) should not be unsealed and made public because doing so would:

- breach written contractual promises the States made to the United States and EPCWID to keep confidential matters contained in the States' Proposed Decree and the Technical Appendix unless and until *all* participants in the mediation either reached a comprehensive proposed settlement or, short of that, agreed in writing to release their rights of confidentiality;
- violate Rule 408(a) of the Federal Rules of Evidence; and
- violate the Special Master Orders of March 8, 2022, and August 26, 2022 (Docs. 700 and 706, respectively) (collectively, Special Master Confidentiality Orders).

I. EPCWID'S PARTICIPATION AND ROLE IN THE MEDIATION

As context, we summarize familiar but basic facts about EPCWID that are especially salient

¹ The states' motion will be referred to as the State's Settlement Motion; the text of the proposed decree, as the States' Proposed Decree; and its Appendix 1, as the Technical Appendix. The last two documents were filed, and remain, under seal. The same is true for the United States' motion. EPCWID has been given access to the sealed documents, including the States' Proposed Decree and the Technical Appendix, but not to the United States' Motion to Strike. This submission by EPCWID is not being filed under seal, and, for that reason, EPCWID has been careful in the discussion of documents relevant to this filing, including the discussion in Dr. Blair's declaration, to speak generically, rather than in specifics, about details of the sealed documents.

to the disputed confidentiality issues.

A. EPCWID Generally

EPCWID is a political subdivision of Texas, organized under Article XVI, § 59, of the Texas Constitution and Chapters 49 and 55 of the Texas Water Code. Along with the United States and the Elephant Butte Irrigation District (EBID), it is part of the federal Rio Grande Project, authorized in 1905. *See* Rio Grande Reclamation Project Act of February 25, 1905, 33 State. 814.

In a 2007 Certificate of Adjudication 23-5940 in the Texas Rio Grande Adjudication, the State of Texas assigned to EPCWID (jointly with the United States) *all* water rights to Rio Grande Project water delivered to Texas. The Certificate of Adjudication is of record in this original action. No other Texas entity, including the state itself, has been adjudicated these Rio Grande rights.

In 2008, in order to resolve since-dismissed federal litigation,² the District, EBID, and the United States reached an agreement (the 2008 Operating Agreement), that has governed operations of the Rio Grande Project ever since. New Mexico filed suit challenging the 2008 Operating Agreement's legality. The United States, EPCWID, and EBID are defendants. *New Mexico v. United States*, No. 1:11cv691. That lawsuit has been stayed, pending disposition of this litigation.

EPCWID has been an active participant in this case since its inception, first as a would-be intervenor, then as an *amicus curiae*.³ When, after conclusion of the first phase of trial, formal

² *See* *EBID v. U.S. Dep't of Interior*, No. 2:00cv1309 (D. N.M.), and *EPCWID No. 1 v. EBID*, No. 3:07cv0027 (W.D. Tex.).

³ The states and New Mexico *amici* seek to diminish EPCWID's substantial interests in this case by noting that EPCWID's initial motion to intervene was denied. What the states and New Mexico *amici* fail to also note is that EPCWID's initial motion to intervene was filed and denied well before New Mexico's assertion of counterclaims directly challenging the 2008 Operating Agreement and dragging claims asserted against EPCWID in federal district court in New Mexico into this action. Indeed, counsel for New Mexico has indicated that the states' proposed decree will resolve the Operating Agreement litigation, despite the fact that the three defendants in that litigation—the United States, EPCWID, and EBID—are not signatories to the proposed decree.

mediation commenced, the District became intimately involved in efforts to resolve this case—and as it turns out, others—through settlement.⁴ Its counsel were in frequent, regular communication with counsel for the United States and to a lesser extent Texas, and attended or were present for nearly every in-person mediation session. And, as detailed in Part I.B.1 *infra*, EPCWID’s District Engineer, Dr. Al Blair, was made an integral part of the mediation process. *See generally* Declaration of Allie W. Blair, Ph.D. (Blair Decl., attached as Exhibit 1).

During this mediation, EPCWID’s attorneys and Dr. Blair have been bound, like all formally admitted parties, by the confidentiality requirements imposed by Federal Rule of Evidence 408 and the Special Master Confidentiality Orders. But these EPCWID agents also have been bound (along with the parties) by a formal confidentiality agreement. *See* Confidentiality Agreement and Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence, and Confidentiality (Maria O’Brien and Renea Hicks) (attached as Exhibit 2) and Confidentiality Agreement (Dr. Blair) (attached as Exhibit 3).⁵

B. Dr. Blair’s Integral Role

1. Publicly Disclosable Matters

Dr. Blair, who already has testified as a witness for Texas and is anticipated to also testify as a witness for the United States, Blair Decl. ¶ 4, was made a full-fledged member of the Mediation Technical Committee (Technical Committee) by Judge Boylan at its inception in December 2021, and served on it through October 11, 2022, *id.* ¶ 5. He devoted extensive time and commitment to the assigned task, spending nearly 2,000 work hours on it. *Id.* ¶ 6.

⁴ The Special Master authorized Judge Boylan to allow EPCWID’s participation as judged appropriate. *See* Special Master Order of March 8, 2022 (Doc. 700) at 2 (“[p]articipation by amici is at the discretion of the Mediator”).

⁵ Both of these confidentiality agreements incorporate the more comprehensive Confidentiality and Exclusion of Evidence Agreement jointly entered into by the United States and the States of Texas, New Mexico, and Colorado. The latter confidentiality agreement is not made part of the attached exhibits, but is of record as Exhibit 1 to Doc. 716.

Performing the task required not only complex technical work, but also consultation with counsel because of the unavoidable linkage of legal issues concerning settlement with the technical task itself. *Id.* ¶¶ 6, 7.

Dr. Blair worked especially closely with the other experts on data, analysis, and methodologies, including the integrally related issues of Rio Grande Project operations which were part and parcel of the Technical Committee’s analytical work during the ten months of his work. *Id.* ¶ 8. While it was a collaborative effort. *Id.*, he was the author of “the form of the technical solution that is central to” the States’ Proposed Decree and authored a technical memorandum that provided part of the data necessary for the technical solution. *Id.* ¶ 9.

Dr. Blair has reviewed the States’ Proposed Decree and its Appendix 1, as well as the declarations accompanying them. *Id.* ¶ 11. From that review, he unequivocally determined that the decree, its appendix, and the declarations “contain confidential information that is *comprised in whole or in part of [his] individual work product, ideas, and analysis*” as a member of the Technical Committee in furtherance of the attempted settlement of this and related cases. *Id.* (emphasis added).

2. EPCWID’s Interest In Providing More Specifics On The Expropriation And Use Of Its Mediation Work

In contrast to the filings by the three states and the United States, the instant filing by EPCWID is not under seal. Consequently, in order to honor the governing confidentiality agreements, Rule 408, and the Special Master Confidentiality Orders, Dr. Blair has as yet been unable to provide more granular identification of how his work, ideas, and analysis have been embedded in, and are part of, the proposed decree, its appendix, and the accompanying declarations.

Given the opportunity and a procedural path for doing so, EPCWID stands ready to provide the Special Master greater detail on how EPCWID's settlement work in the course of the mediation has ended up in the sealed documents filed by the states. EPCWID would welcome such opportunity and urge the Special Master to approve a way to make it possible.

II. BREACH OF CONFIDENTIALITY REQUIREMENTS AND EPCWID SUPPORT FOR U.S. MOTION TO STRIKE

A. The Motion To Strike Is Justified

As already explained, EPCWID is thus far unable to review the actual filings in the United States' Motion to Strike. It is familiar, however, with the concerns the United States has expressed about how the States' Proposed Decree, the Technical Appendix, and the accompanying declarations transgress the confidentiality rules that have governed the mediation and settlement process—and still do. EPCWID wholeheartedly shares those concerns. Its own agreed-upon confidentiality rights also would be implicated—and compromised—by the states' effort to convert a thus-far unsuccessful mediation effort among the parties and affected *amici*⁶ into a published document that shows where the negotiations have reached *thus far*. These documents not only reveal the technical issues that comprise work product of the United States and EPCWID, but reveal legal strategy and offers in compromise for the purpose of reaching a comprehensive settlement. These offers in compromise were not for the purpose of effectuating a truncated “states only” settlement. For these reasons, *amicus* EPCWID supports the United States' Motion to Strike and urges the Special Master to grant it.

The states' motion, proposed decree, and related filings are not the culmination of the mediation and settlement process that began in earnest nearly a year ago. They are merely a part

⁶ *Amici* would be directly affected by the states' proposal. *See, e.g.*, discussion *supra* concerning the Operating Agreement litigation.

of it and come in the midst of it, not at its end. In fact, the effort to make the states' sealed submissions public now may fairly and objectively be viewed as itself a negotiating maneuver. Rebuffing the attempt to make public what had been agreed and understood to be confidential discussions is fully warranted, but it does not end negotiations. It would be better seen as in furtherance of the mediation and settlement process itself.

B. The Confidentiality Rules For This Case Plainly Bar The States' Ploy

The confidentiality rules governing the mediation process, including the states' circumvention effort, speak plainly.

1. Rule 408(a)

Rule 408(a) speaks to the inadmissibility of (among other things) evidence of “statement[s] made during compromise negotiations.” The states seek to resolve their dispute (that cannot be divorced from the claims of the United States and counterclaims regarding Project operations) by relying on offers in compromise contained in the proposed decree by a party they are “carving out” from the decree and to put in evidence precisely such statements by the United States and EPCWID and their agents. *See* Expedited Motion of the Compacting States to Clarify Procedures for the Hearing on the Consent Decree (Doc. 722) at 1 (seeking “an evidentiary hearing to present” States’ Proposed Decree). Ultimately, of course, the Special Master cannot recommend any proposed decree to the Supreme Court for adoption without an evidentiary hearing. Consequently, it is not only the proposed evidentiary hearing, but also the first step in the process of getting to one—that is, unsealing the proposal itself—that would run afoul of Rule 408.

The “legal conclusions, factual statements, internal memoranda, and the work of non-lawyers and lawyers alike” that were intended to be, and were, part of “negotiations toward

compromise” are confidential under Rule 408. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294 (5th Cir. 2010). Even standing alone, Rule 408 is a barrier to the states’ effort.

2. Special Master Confidentiality Orders

The Special Master Confidentiality Orders also speak directly to the matter under consideration:

All statements and communications by and among the Parties and amici in connection with the mediation, including communications by and among consultants and experts, remain confidential and may not be disclosed absent the consent of the Parties and the Mediator.

Order of March 8, 2022 (with inapplicable exceptions, maintained “in full force and effect” in the Order of August 26, 2022). As Dr. Blair’s declaration makes clear (as, no doubt, do similar submissions by the United States), the states’ sealed proposal includes statements by parties and *amici* in the course of the mediation. And the United States, a party to this case, has not consented to their disclosure.⁷ Hence, they must remain confidential.

3. Confidentiality Agreement’s Still Broader Protections

The parties, and later EPCWID, too, through its written joinder, sought to protect “past and future” offers of compromise, communications, and related records” through the Confidentiality Agreement. The parties were clear: the Confidentiality Agreement provides “broader protection” for the confidential settlement information than Rule 408. Confid. Agrmt. at 2 (“whereas” para.).

Key to the agreement is the definition of “confidential settlement information,” which encompasses (among other things) “any . . . statement of position, mental impression or other information, including offers of compromise, in whatever form.” Confid. Agrmt. at 2 ¶ 2. The only exclusions from the broad scope of this definition of what is protected are in the

⁷ To EPCWID’s knowledge, the mediator has not spoken to this point; however, even his consent would not be sufficient to support disclosure.

agreement's ¶ 8, which (again, among other things) specifically restricts its third listed exclusion to information available to the parties "independently of" the settlement discussions.

No party was allowed to disclose the confidential settlement information in this case "for any purpose" unless the law otherwise required it or the other parties (and by extension, amici such as EPCWID) give "prior written consent." Confid. Agrmt. at 3 ¶ 4.⁸ Especially significant in light of the states' sealed filing here is the provision that no part to the agreement could assert waiver of the work product doctrine "due to the *sharing of information*" during settlement discussions. Confid. Agrmt. at 4 ¶ 5 (emphasis added). "[S]haring" confidential information is not a waiver. *Id.* at 5 ¶ 9.

From this survey of what the three states had agreed to with (among others) the United States and EPCWID, it is patently obvious that the States' Proposed Settlement and the Technical Appendix include confidential settlement information,⁹ that were the states' proposal allowed it would be shared outside the group of those bound by the Confidentiality Agreement, and that the required prior written consent by the United States and EPCWID has not been given. In short, allowing the states' proposed course of action to proceed any further would be in conflict with the Confidentiality Agreement they agreed to abide by. The United States' Motion to Strike should be granted.

III. EPCWID'S OWN CONFIDENTIALITY RIGHTS WOULD BE VIOLATED, AND IT SHOULD BE ALLOWED LIMITED PURPOSE INTERVENTION TO PROTECT THOSE RIGHTS

⁸ The New Mexico federal lawsuit about the Operating Agreement was also covered by this confidentiality requirement. Confid. Agrmt. at 3 ¶ 4.

⁹ This includes not only Dr. Blair's technical work, but also EPCWID's attorneys' work product. *See, e.g.*, Blair Decl. ¶ 7. Because the proposed disclosure of work product would violate express provisions of the Confidentiality Agreement, to the extent they otherwise are operative and applicable, cases such as *In re Chrysler Motors Corp. Overnight Evaluation Program Litigation*, 860 F.2d 844 (8th Cir. 1988), dealing with work product in the settlement context, are inapposite. Besides, work product, such as Dr. Blair's technical work which included EPCWID's attorneys' work product, even if revealed during the course of settlement negotiations, remains confidential. *See, e.g., Akamai Technologies, Inc. v. Digital Island, Inc.*, 2002 WL 1285126 (N.D. Calif. May 30, 2002).

The breaches of confidentiality discussed *supra* in Part II.B, besides being breaches of the United States’ confidentiality rights, also breach EPCWID’s confidentiality rights—and for the same reasons discussed above. EPCWID’s significant interests in this and related cases (such as the one over the Operating Agreement) stem from: its being the only Texas entity with rights to the Rio Grande water at issue in this case; a legal and contractual beneficiary of the Rio Grande Project, the rights in which give rise to, define and limit the rights of the compacting states; ; and a small “p” party formally involved in, and covered by pertinent agreements in, the nearly year-long mediation.

EPCWID’s legal rights would be directly infringed upon were the Special Master to allow the states to make public the documents now under seal. In order to protect those interests and ensure it will have legal standing of its own to further contest any ruling allowing publication of what the states seek to have released from the confidentiality rules, orders, and agreements, EPCWID conditionally seeks the Special Master’s leave to intervene and participate as a party for the limited purpose of protecting its confidentiality rights. Federal judicial forums have jurisdiction to consider and allow such interventions. *Cf. Cameron v. EMW Women’s Surgical Ctr.*, P.S.C. 142 S.Ct. 1002, 1009-10 (2022) (recognizing jurisdiction to entertain motion to intervene by third-parties who would be bound by judgment). EPCWID would be bound, and its interests harmed, by a ruling in favor of the states in this situation. A simple third-party motion such as this one to maintain confidentiality of the relevant materials, whether fashioned as a limited-purpose intervention motion or instead a request to initiate a separate ancillary proceeding, is procedurally appropriate and within the Special Master’s purview. *See, e.g., In re Sealed Case*, 237 F.3d 657, 664 (D.C. Cir. 2001) (discussing *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980)).

EPCWID should be allowed to participate as a party on the confidentiality matter now before the Special Master.

CONCLUSION

The United States' Motion to Strike should be granted. Further, EPCWID should be treated as a party and allowed to participate as necessary such for purposes of consideration of confidentiality issues relating to the States' Settlement Motion.

Dated November 26, 2022

Respectfully submitted,

/s/ Maria O'Brien

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OFFICE OF THE SPECIAL MASTER

**EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1'S
CERTIFICATE OF SERVICE**

This is to certify that on the 26th day of November, 2022, I caused a true and correct copy of the **Memorandum by Amicus El Paso County Water Improvement District No. 1 in Support of the United States' Motion to Strike, and Conditional Motion by El Paso Water Improvement District No. 1 to Intervene as a Party to Protect its own Confidentiality Rights**, to be served by e-mail upon all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 26th day of November, 2022.

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No. 141, Original
In the Supreme Court of the United States

STATE OF TEXAS, PLAINTIFF,

UNITED STATES OF AMERICA, PLAINTIFF-IN-INTERVENTION,

V.

STATE OF NEW MEXICO

AND

STATE OF COLORADO,
DEFENDANTS.

OFFICE OF THE SPECIAL MASTER

DECLARATION OF ALLIE W. BLAIR, PH.D.

November 26, 2022


I, Allie W. Blair, declare as follows:

1. My name is Allie (Al) W. Blair. I am over the age of 18 and have personal knowledge of the facts stated herein.
2. I received a Bachelor of Science in Agricultural Engineering from the University of Arizona, Tucson, a Master of Science in Agricultural Engineering from Texas A&M University, College Station, and a Doctorate of Philosophy in Civil Engineering from the University of Texas, Austin. I am a licensed engineer in the State of Texas and the State of New Mexico.
3. Since 1991, I have served as a consulting engineer, and since 2004, as the District Engineer for El Paso County Water Improvement District No. 1 (EPCWID).
4. I have been actively involved in *State of Texas and the United States v. New Mexico*, Original 141, since the State of Texas filed its complaint in 2013. In the litigation, I have served as a witness for the State of Texas and for the United States and have consistently advised EPCWID and worked with counsel for EPCWID regarding all technical aspects of the litigation.
5. In the mediation in this Original Action, I was placed on the Mediation Technical Committee (Technical Committee) by the mediator, Judge Boylan, as EPCWID's representative. Judge Boylan instructed me that my participation in the Technical Committee was as an equal to all other member of the Committee. My tenure on the Technical Committee dated from the inception of the Committee in December, 2021 through October 11, 2022.
6. Between December 2020 and October 2022, I attended all but one Technical Committee meetings; spent approximately 1,600 hours on individual data development and analysis; and devoted approximately 200 additional hours coordinating with various experts for the United States and the individual States to develop the analytical methods and equations proposed to be included in the settlement agreement among the United States and the States. All of this work was as part of the mediation process.
7. During my tenure on the Technical Committee, I also continued to work with counsel for EPCWID, legal counsel for the United States, and technical experts for the United States on technical issues involved in a negotiated resolution of the Original Action arising from the Complaint of the State of Texas, the Complaint in Intervention of the United States, and asserted counterclaims by the State of New Mexico regarding the 2008 Operating Agreement.
8. As a member of the Technical Committee, I worked with technical experts for the United States and Elephant Butte Irrigation District, and the States of Texas, New Mexico, and Colorado to develop data, analysis, and methodology the negotiating entities (which was more than just the formal. named parties to the lawsuit) required in the negotiations to resolve the Original Action as among the United States and the three States. Rio Grande Project operations issues were integrally related to the negotiations for the lawsuit's negotiated resolution among the United States and the States and were a part of those negotiations from the beginning of the mediation until it ended in October 2022. My work on the Technical Committee, and with its other members, involved my individual work relating to the development of data sets, analysis, and methodology, as well as collaborative

work with other Technical Committee members and review of individual work provided by them. Because of the inter-relationships between the proposed settlement and the water supply of the Rio Grande Project to which EPCWID is legally entitled, I frequently consulted counsel for EPCWID for legal advice concerning work being done and proposals being discussed by the Technical Committee, and those consultations informed the input I provided to the Technical Committee.

9. My work on the Technical Committee involved providing, developing, and analyzing data, and developing methodology and analysis necessary to negotiate and arrive at a settlement to resolve all claims in the litigation, including the claims of the United States and claims relating to Project supply to which EPCWID is entitled. I proposed the form of the technical solution that is central to the decree proposed by Texas, New Mexico, and Colorado, and I was the author of a technical memorandum that provided part of the historical data used by the Technical Committee in the technical solution.
10. I was aware of the basic requirements of Federal Rule of Evidence 408 and of the confidentiality agreements to which EPCWID was bound during the entire mediation process, and I understood that all my communications, technical work, and information shared in furtherance of efforts to reach a comprehensive agreement among the States and the United States were confidential and were not supposed to be disclosed by any party if a comprehensive settlement were not reached. I received and reviewed the Confidentiality Agreement and Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence, and Confidentiality (Confidentiality Addendum), which included the Agreement Concerning Compromise Discussions, Exclusion of Evidence, and Confidentiality, to which the United States, Elephant Butte Irrigation District, Texas, New Mexico, and Colorado were signatories (Confidentiality Agreement). Counsel for EPCWID had signed the Confidentiality Addendum, and I signed a Confidentiality Agreement, agreeing to be bound by both the Confidentiality Agreement and Confidentiality Addendum. I shared my work with the Technical Committee which included members for Texas, New Mexico, and Colorado. All of my work was done in the context of settlement negotiations to resolve all claims in the litigation, including claims regarding Project operations and controversies surrounding the 2008 Operating Agreement.
11. I have reviewed the proposed consent decree provided by the State of Texas, New Mexico, and Colorado and declarations provided in support of the consent decree proposed by the States. Both the proposed consent decree and the declarations contain confidential information that is comprised in whole or in part of my individual work product, ideas, and analysis in the context of the Technical Committee or otherwise provided to the United States in efforts to further settlement.
12. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of November, 2022 at Austin, Texas



Allie W. Blair, Ph.D., P.E.

**CONFIDENTIALITY AGREEMENT AND ADDENDUM TO AGREEMENT
CONCERNING COMPROMISE DISCUSSIONS, EXCLUSION OF EVIDENCE, AND
CONFIDENTIALITY**

In February 2016, the United States and the States of Texas, New Mexico, and Colorado entered into a Confidentiality and Exclusion of Evidence Agreement with regard to discussions which could lead to a potential settlement of *Texas v. New Mexico and Colorado*, No. 141 Original and other actions, a copy of which is attached hereto. In March 2022, the Special Master further ordered that settlement communications among the parties and amici be kept confidential. *See* Joint Mediation and Scheduling Order, Special Master Docket No. 700 (Mar. 8, 2022).

The parties to the Confidentiality and Exclusion of Evidence Agreement (hereinafter the Parties) have determined that it would be appropriate for counsel of record for the *Amicus Curiae*, specifically the El Paso County Water Improvement District No. 1, the Elephant Butte Irrigation District, New Mexico Pecan Growers, the Southern Rio Grande Diversified Crop Farmers Association, New Mexico State University, the City of Las Cruces, the City of El Paso, Albuquerque Bernalillo County Water Utility Authority, and Hudspeth County Conservation and Reclamation District (collectively, the "*Texas v. New Mexico amici*"), which entities are not parties to No. 141 Original or to the attached Confidentiality and Exclusion of Evidence Agreement, to review certain draft settlement documentation to be provided during the period August 26, 2022 to September 23, 2022, provided that such disclosure be limited to the undersigned amici counsel *only*, and the *Texas v. New Mexico amici* agree to be bound by Paragraphs 2 through 13 and 15 through 21 of the attached Confidentiality and Exclusion of Evidence Agreement. The *Texas v. New Mexico amici* are likewise bound by the Special Master's Order of August 26, 2022.

By signing this Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence, and Confidentiality, the signatories below each represent and warrant that they have reviewed the attached Confidentiality and Exclusion of Evidence Agreement and agree to be bound by paragraphs 2 through 13 and 15 through 21 therein, and further agrees that the settlement documents will not be disclosed to persons other than the undersigned *Texas v. New Mexico amici* counsel.

Dated: August 30, 2022

EL PASO COUNTY WATER IMPROVEMENT
DISTRICT NO.1

By: M. Anita

By: Denea Hicks

Dated: _____

ELEPHANT BUTTE IRRIGATION DISTRICT

By: _____

77No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

CONFIDENTIALITY AGREEMENT

I hereby certify that I am familiar with the terms and conditions of the March 8, 2022 Order, the August 26, 2022 Order, the Confidentiality and Exclusion of Evidence Agreement, and the Addendum to Agreement Concerning Compromise Discussions, Exclusion of Evidence and Confidentiality in the above-captioned case and agree to be bound by the terms and conditions thereof. I also consent to the jurisdiction of the United States Supreme Court and the Special Master for the resolution of disputes regarding alleged violations of confidentiality.

Allie W Blair
Name (print or type)

Engineer
Title

EPLWID
Representing

PO 749
Clint, TX 79836
Business Address

9/14/22
Date

[Signature]
Signature