No. 141, Original

In The
Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

RESPONSE OF THE NEW MEXICO *AMICI* IN SUPPORT OF JOINT MOTION TO ENTER CONSENT DECREE SUPPORTING THE RIO GRANDE COMPACT

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INTRODUCTION

This brief is jointly filed by the City of Las Cruces, the Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), the New Mexico Pecan Growers ("NMPG"), New Mexico State University ("NMSU"), and the Southern Rio Grande Diversified Crop Farmers Association ("SRGDCFA") (collectively "New Mexico *amici*") in support of the settlement of *Texas v. New Mexico & Colorado*, No. 141, Original, and the Consent Decree. The Consent Decree resolves the interstate dispute over New Mexico's delivery obligations to Texas under the Rio Grande Compact, Act of May 31, 1939 (53 Stat. 785) ("Compact"). As described below, the New Mexico *amici* represent a comprehensive cross-section of municipal and agricultural interests who directly own the water rights at issue in this proceeding which are subject to post-Decree intrastate administration to ensure New Mexico complies with the Consent Decree.

The Consent Decree addresses and resolves the dispute over New Mexico's delivery obligations to Texas under the Compact by requiring index flows of Rio Grande water to reach the state line at the El Paso gage in specific amounts. By adopting the D2 Period from 1951-1978 as the baseline for Compact deliveries from New Mexico to Texas, the Consent Decree recognizes historical practices in both States and protects the long-held expectations of groundwater users, including the New Mexico *amici*. The proposed Consent Decree reserves the adjudication and intrastate administration of New Mexico water rights to the discretion of the State in Article II.D.2.a. The agricultural and municipal communities in both the Middle and Lower Rio Grande accordingly receive certainty in their compliance obligations as well as in the exercise of their water rights under applicable principles of state law.

The City of Las Cruces is New Mexico's second largest city, founded in the 1840s, serving 125,000 customers in Dona Ana County. Las Cruces Joint Utilities provides essential water supply from well fields located in the Mesilla Valley (LRG-430 *et al.* with vested rights to 21,869 acre-

feet per year ("AFY")), the Jornada del Muerto or "East Mesa" with permitted rights of 10,200 AFY from a sub-basin disconnected from the Rio Grande, the treated effluent from which supplies imported water into the Rio Grande, and from the "West Mesa" with permitted rights to divert 8,000 AFY which will come on line in the 2030s. Municipal effluent treated under NPDES Permit No. NM0023311 is discharged into the Rio Grande. The City's interest is in continuing these necessary and essential services to the public.

The Water Authority is New Mexico's largest utility with a customer base of 650,000 serving the City of Albuquerque and Bernalillo County.[1] Its water supply is drawn from groundwater in storage in the Albuquerque Aquifer under its RG-960 *et al.* permits and imported San Juan Chama Project ("SJCP") water under Permit No. SP-4830. The importation and consumption of renewable surface water under Permit No. SP-4830 preserves groundwater in storage in the aquifer and arrests the land surface subsidence detected in the perimeter of the City. Permit No. SP-4830 contains specific Conditions of Approval mandating that diversions are suspended if New Mexico's ability to comply with the Rio Grande Compact is implicated, a risk that is reduced by the Consent Decree.[2] The Water Authority's interest is to ensure that resolution of the litigation does not adversely impact use of its water rights as historically administered by the State of New Mexico and pursuant to the Rio Grande Compact.

Amici NMPG and SRGDCFA are New Mexico non-profit entities formed in 2002 and 2009, respectively, to promote and protect the interests of farmers in the Southern Rio Grande Valley of New Mexico. Their several hundred members collectively irrigate approximately 60,000

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[1] The Water Authority is comprised of the City of Albuquerque, an incorporated New Mexico municipality, Bernalillo County, and the Village of Los Ranchos. All are political subdivisions of the State of New Mexico.

[2] Condition of Approval No. 13 requires suspension of Permit No. SP-4830 if "the State Engineer determines that suspension is necessary to meet compact obligations…."

acres of croplands and orchards within the Elephant Butte Irrigation District ("EBID") using surface water released from the storage reservoirs of the Rio Grande Project ("Project"). The farmer-members' interests in this matter are two pronged. First, as irrigators within EBID who have established water rights in surface water delivered from the Project, they have an interest in ensuring that their entitlement to use Project supply to meet their irrigation demands is protected under the Compact. Second, as irrigators who have also established rights to use groundwater, they have an interest in ensuring these rights remain exercisable to meet their irrigation demands in accordance with New Mexico law and within New Mexico's apportionment under the Compact.

Since its founding in 1890, NMSU has served as the State of New Mexico's land grant university. It uses both groundwater from its own wells and surface water supplied by the Project for irrigation of the University's agricultural lands, especially at its experimental and educational facilities. NMSU's main campus is located in Las Cruces and has continuously used groundwater for higher educational purposes for 130 years. NMSU supports the settlement because it embodies historical use of water on which NMSU and other groundwater users have long relied.

In addition to New Mexico *amici*, the Public Service Company of New Mexico ("PNM") and the Camino Real Regional Utility Authority ("CRRUA") participated in settlement mediation and support entry of the Consent Decree because it will provide greater certainty in water supply and water rights administration. PNM is the largest provider of electricity in New Mexico and, in the Lower Rio Grande, owns and operates the Afton Power Plant, which uses groundwater for cooling. CRRUA provides water supply from groundwater to the City of Sunland Park and to the Santa Teresa border area of New Mexico.

The New Mexico *amici* have three vital interests which are secured by the States' settlement. First, they are the owners of water rights placed in issue because of their diversions

from, or impacts on, the Rio Grande. These rights are protected by various measures like the Effective El Paso Index's ("EEPI") incorporation of data and Project operations from the D2 Period which effectively grandfathers groundwater use between 1951-1978 into New Mexico's delivery obligation to Texas. Second, exercise of the New Mexico's *amici's* water rights is facilitated in shortage years by intrastate administration as referenced in the Consent Decree. Third, non-interstate issues raised by the United States are not impacted and remain to be properly resolved in the state adjudication and other federal *fora*. *See New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist.* (No. 96-CV-888, 3rd Dist. 1996), SS-97-104 ("LRG Adjudication"). On these bases, the New Mexico *amici* address the four issues in the Special Master's Order of December 30, 2022, and other matters that affect their interests.

Because the Consent Decree secures New Mexico's compliance with the Rio Grande Compact while preserving the exercise of *amici* water rights within New Mexico's Compact apportionment and New Mexico law, we urge the Special Master to file a report with the Court recommending the adoption of the Consent Decree.

ARGUMENT

POINT I

THE UNITED STATES' OBJECTIONS CANNOT PRECLUDE ENTRY OF THE CONSENT DECREE

The first issue that the parties were invited to address in the Order of December 30, 2022, was "(i) the propriety of entering the Decree over an intervening party's objection…." Order at 4. The United States' objections to the settlement and Consent Decree are negated by two principles: (i) the limits placed upon the United States' intervention into this proceeding; and (ii) the Consent Decree's confirmation of the Rio Grande Compact's apportionment of surface flows of the Rio

Grande between the States of New Mexico and Texas at a 57/43 ratio with mandated index delivery obligations in accordance with the EEPI.

A. The limits on the United States' intervention preclude its ability to raise objections.

The State of Texas filed this suit on December 13, 2013, alleging that New Mexico had "reduced Texas's water supplies and the apportionment of water it is entitled to from the Rio Grande Project and under the Rio Grande Compact," and seeking injunctive relief to enforce its terms. *See* Texas's Complaint at ¶ 18. Following the denial of motions to deny leave to file, the action was docketed by the Court. The United States moved to intervene on February 27, 2014. Its Complaint in Intervention framed its participation in terms of the Compact. Its prayer for relief couched New Mexico's obligations as "a party to the Compact."

The Complaint in Intervention sought relief that was tailored to fit within Texas' cause of action. In granting the motion for leave to intervene, the Court addressed the issue of scope of the United States' intervention. *See Texas v. New Mexico & Colorado*, 583 U.S. ___, 138 S. Ct. 954 (2018). The Court framed the question in this way: "May the United States, as an intervenor, assert essentially the same claims Texas already has?" *Id.* at 956. In answering the question affirmatively, the Court focused on Texas's Complaint "that New Mexico has violated the Compact," and the United States' role in that interstate dispute, observing that it was seeking "substantially the same relief" as Texas. *Id*. at 958, 960. The Court found that the Compact's "purpose is to 'effec[t] an equitable apportionment' of 'the water of the Rio Grande' between the affected States." *Id.* at 959. Because the United States "filed a complaint with allegations that parallel Texas's," the Court allowed the United States "to pursue the Compact claims it has pleaded in this original action." *Id*. at 985, 960. In other words, the United States could pursue those claims which Texas could pursue. Those claims are now resolved by the Consent Decree.

The United States now goes well beyond the relief that Texas seeks or that is necessary to resolve any issues under the Compact. In essence, the United States argues that under the Compact (i) it has a right to require New Mexico to make deliveries to water users within New Mexico and (ii) the United States, in some representative capacity, can assert claims against New Mexico on behalf of water users within New Mexico. The United States has no such authority under the Compact, and lacks standing in this case to do either. The United States cannot expand its claims beyond those pled by Texas or as agreed to by Texas in the Consent Decree. Moreover, the Court rarely exercises its original jurisdiction over intrastate administration. *See generally, Texas v. New Mexico*, 482 U.S. 124 (1987).

The Compact apportions water to New Mexico, not the United States. A compact apportionment action is "one between states, each acting as a *quasi*-sovereign and representative of the interests and rights of her people." *Wyoming v. Colorado*, 286 U.S. 494, 508-509 (1932). Compact apportionment actions involve the "unique interests" belonging to sovereign States, *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984). These include the shared use of an interstate stream, where disputes "would be settled by treaty or by force" if the states were sovereign nations. *Kansas v. Colorado*, 206 U.S. 46, 98 (1907). The balancing of those interests "rises, therefore, above a mere question of local private right." *Id.* at 99. Because compact apportionment actions consider the interests of the states as sovereigns, the result binds not only the states but their water users as well, without the need for the water users to be separately represented. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 106 (1938) ("Whether the apportionment of the water of an interstate stream be made by compact between the upper and lower States with the consent of Congress or by a decree of this Court, the apportionment is binding upon the citizens of each State and all water claimants, even where the State had granted the water rights before it

entered into the compact.”). Under *Hinderlider,* it is incumbent on New Mexico, as the upstream state, to assure that water uses within its jurisdiction are administered to assure compliance with compact obligations, which it has committed to do. *See, e.g.,* Declaration of Mike Hamman at ¶¶ 10-16. This is supported by two principles.

First, the United States holds no Compact right that it can enforce against New Mexico for deliveries of Project water within New Mexico. As set forth below, how New Mexico uses and administers its own compacted water is not an issue before this Court. Indeed, as discussed below, the protection of Project water for use solely within New Mexico is already before the LRG Adjudication court and subject to state law administration.

Second, the United States does not represent water users in New Mexico in the original action. In original actions, each State represents its water users *parens patriae*. *South Carolina v. North Carolina*, 558 U.S. 256, 274 (2010) (“a State’s sovereign interest in ensuring an equitable share of an interstate river’s water is precisely the type of interest that the State, as *parens patriae*, represents on behalf of its citizens”). “The ‘*parens patriae’* doctrine… is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, ‘must be deemed to represent all of its citizens.’” *New Jersey v. New York,* 345 U.S. 369, 373 (1953) (*per curiam*) (citing *Kentucky v. Indiana*, 281 U. S. 163, 173-174 (1930) (“A State suing, or sued, in this Court, by virtue of the original jurisdiction over controversies between States, must be deemed to represent all its citizens.”) *See Alabama v. U.S. Army Corps of Engineers*, 229 F.R.D. 669, 673 (N.D. Ala. 2005) (“Therefore, assuming Alabama has standing to proceed in *parens patriae,* Alabama presumably represents the interests of all its citizens in this matter”). Accordingly, New Mexico, not the United States, is the proper party to represent its water users in this case, including its settlement. Any intrastate claims or rights the United States desires to assert on behalf of Project

beneficiaries in New Mexico must be made in other *fora*, including the LRG Adjudication or through State Engineer administrative procedures.

B. The Consent Decree settles the case by confirming Texas's apportionment.

The Consent Decree confirms the apportionment of flows of the Rio Grande by a ratio of 57% to New Mexico and 43% to Texas. This is the ratio in which usable water in Elephant Butte Reservoir has historically been delivered to the two States, based on the irrigated acreage in the two districts in the Rio Grande Project. The documents incorporated into the Consent Decree honor this principle.

The basis for satisfying New Mexico's delivery obligations is "an index-based methodology termed the Effective El Paso Index ("EEPI") for computing and accounting New Mexico's annual delivery to Texas consistent with the equitable apportionment of water between Texas and New Mexico downstream of Caballo Reservoir under the Rio Grande Compact." *See* Declaration of Gregory K. Sullivan, P.E. at ¶ 11. Mr. Sullivan explains that the EEPI was derived "from historical Project operations during the D2 Period from 1951-1978. This is the same period that was used by Reclamation to derive the D1/D2 methods to determine annual Project Allocations to EBID and EPCWID and the annual obligation to Mexico at the Acequia Madre pursuant to the Convention of 1906." *Id.* at ¶ 14. The D2 Period incorporates the effects of New Mexico and Texas groundwater pumping during 1951-1978. "[T]he hydrologic conditions and the state of water use and groundwater development during the baseline D2 period are incorporated into the Index Obligation." *See* Declaration of Margaret Barroll at ¶ 24. Significantly, this computes to the ratio of 57% to 43% on which the Compact has been managed to supply the apportionment to the two States. *Id.* at ¶ 25.

Texas concurs that the Consent Decree satisfies Texas's entitlement under the Rio Grande Compact. Texas Commissioner Skov states in his Declaration, after a review of the evidence and meeting with relevant personnel in both districts: "I have also advised and recommended to the Governor that the Attorney General and Outside Legal Counsel file on behalf of Texas 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, and formally advocate for its adoption by the Supreme Court." *See* Declaration of Texas Rio Grande Compact Commissioner Robert Scott Skov at ¶ 20.

POINT II

THE SUPREME COURT DOES NOT RETAIN JURISDICTION OVER INTRASTATE ADMINISTRATION OF WATER RIGHTS

The Consent Decree's provision for the Court's retention of jurisdiction, Article VI, applies only to enforcement of the Consent Decree, not to intrastate administration over which New Mexico retains discretion in Article II.D.2.a of the Consent Decree. This is supported by law and historical practice.

As a result of the Public Land Acts of 1866 and 1870, and the Desert Land Act of 1877, ownership of the United States in non-navigable waters was severed from the public domain and vested in the western states and territories. *See United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 702-09 (1899). This principle was confirmed several years later by the Court:

> What we hold is that following the act of 1877, if not before, all non-navigable waters then a part of the public domain became *publici juris, subject to the plenary control of the designated states,* including those since created out of the territories named, with the right in each to determine for itself to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. For since "congress cannot enforce either rule upon any state," *Kansas v. Colorado*, 206 U.S. 46, 94, 27 S. Ct. 655, 666, 51 L.Ed. 956, the full power of choice must remain with the state.

California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 163-64 (1935) (emphasis added). *See also California v. United States*, 438 U.S. 645 (1978) and *United States v.*

New Mexico, 438 U.S. 696 (1978). Accordingly, New Mexico, not the United States, has the "plenary" (complete and absolute) authority to administer surface and groundwater rights in the Lower Rio Grande.

In *California v. United States*, 438 U.S. 645 (1978), the Court reviewed the long history of deference by federal statutes to state control over water resources beginning with the Homestead Act of 1862, the Mining Act of 1866 and the Desert Land Act of 1877. *Id*. at 655-658. The Court analyzed the Reclamation Act of 1902 and the McCarran Amendment of 1952. *Id*. at 663, 674, and 678. The Court summed up the federal-state relationship:

> The history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress.

Id. at 653, s*ee United States v. Rio Grande Dam & Irrig. Co.,* 174 U.S. 690, 702-703 (1899) (territory of New Mexico's authority to adopt a prior appropriation system of water rights for the Rio Grande upheld; the "Court unhesitatingly held that 'as to every stream within its dominion a State may change [the] common law rule and permit the appropriation of the flowing waters for such purposes as it deems wise'" (quoted in *California v. United States*, 438 U.S. at 662)).

New Mexico's constitution and statutes assert control by the State over its waters. N.M. Const. art. XVI, § 3; N.M.S.A. 1978, Chapter 72. *See State ex rel. Erickson v. McLean*, 1957-NMSC-012, 62 N.M. 264, 308 P.2d 983 ("All water within the state, whether above or beneath the surface of the ground belongs to the state, which authorizes its use."). In particular, New Mexico's water code confers supervision of the State's water on the State Engineer, N.M.S.A, 1978, Chapter 72, Article 2, and authorizes and mandates adjudication of state waters under state law, *id*. N.M.S.A. §§ 72-4-14 through -19 (1907). Consistent with the McCarran Amendment, the State's adjudication statutes require a comprehensive and unified proceeding:

> In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties…. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved….

N.M.S.A. § 72-4-17 (1907); *see United States v. Bluewater-Toltec Irrig. Dist*, 580 F.Supp. 1434, 1438 (D.N.M 1984), *affirmed* 806 F.2d 986 (10th Cir. 1986) (suit under New Mexico adjudication statutes satisfied McCarran Amendment's comprehensiveness requirement).

Moreover, unless expressly stated in a compact to the contrary, states enjoy sovereign control over the water within their borders. *See Tarrant Reg. Water Dist. v. Hermann*, 569 U.S. 614, 633 (2013). Here, the Compact does not direct New Mexico to administer its water rights in any fashion. Any such direction would not only be improper but also unnecessary to resolve this original action. The Consent Decree recognizes that New Mexico retains discretion "to determine what water management actions are necessary and appropriate" to comply with the Consent Decree. *See* Article II.D. 2.a.

POINT III

THE UNITED STATES' OBJECTION TO THE PROPOSED CONSENT DECREE IS THE LATEST IN A LONG LINE OF FAILED ATTEMPTS TO AVOID STATE AUTHORITY OVER ITS CLAIMS IN THE LOWER RIO GRANDE OF NEW MEXICO.

The United States objects to the three State settlement because it excludes non-Compact claims the United States seeks to resolve here instead of in proper existing *fora*. The United States' intrastate claims and requests for relief from this Court are a repackaging of claims the United States has made, or is making, or should be making, in those *fora* – in particular in the New Mexico LRG Adjudication.

This is not the first time the United States has sought to circumvent the proper adjudicatory and administrative jurisdiction of the State of New Mexico. The state court and the parties to the adjudication have worked for 30 years to position the LRG Adjudication to determine stream system issues that affect all users in the basin, in particular the United States' interests in the Project in New Mexico. The United States, however, has repeatedly resisted the state court's authority. From the inception of the LRG Adjudication in 1986, the United States fought the jurisdiction of the state court, first by filing a motion to dismiss for lack of jurisdiction under the McCarran Amendment, 43 U.S.C. § 666 (1952), and then later by filing a second motion re-arguing that the Lower Rio Grande in New Mexico does not constitute a "river system," as required by McCarran for a waiver of federal sovereign immunity. The district court denied the motions and the United States appealed. The New Mexico Court of Appeals upheld the district court's decision in *Elephant Butte Irr. Dist. v. Regents of New Mexico State University,* 1993-NMCA-009, 115 N.M. 229, 849 P.2d 372.

Following the *Regents* decision, in 1996 the New Mexico State Engineer undertook a comprehensive hydrographic survey of the basin in order to move forward with adjudication of all water rights claims. In 1997, the United States sued seven parties, including *amici* City of Las Cruces and NMSU, in the U.S. District Court of New Mexico seeking to quiet title in itself to virtually all waters of the Project. *See United States v. Elephant Butte Irrigation District, et al.*, Cause No. 97-0803 JP/RLP (D.N.M.), Complaint filed June 12, 1997. The federal suit resulted in a five-year delay. The City, NMSU and other defendants succeeded in moving the federal district court to abstain from hearing the United States' claims, in deference to the state adjudication proceedings, under the federal abstention doctrine. In applying the factor-test under the abstention doctrine, the federal district judge observed:

> I am concerned that the United States may be using this case for 'procedural fencing.' Since the inception of the state adjudication, the United States has attempted to avoid the jurisdiction of the state court on several occasions . . . I find it significant that the United States filed this federal court action shortly after losing on the issue of jurisdiction the last time in state court.

Memorandum, Opinion and Order, dated August 22, 2000, at 24-25. Upon appeal by the United States to the Tenth Circuit, the City, NMSU and other defendants prevailed in sustaining the federal district court's holding. *City of Las Cruces v. United States,* 289 F.3d 1170 (10th Cir. 2002). The Tenth Circuit firmly rebuffed the United States' attempt to circumvent the authority of the state court, similarly observing:

> The United States has attempted at every juncture in the New Mexico adjudication to resist jurisdiction…. After an extended period of pleadings and dismissal motions in the New Mexico proceedings and after realignment, the New Mexico stream adjudication is progressing rapidly. In the three years since the realignment and the denial of the State Engineer's last motion to dismiss, the parties have been cooperating; none have questioned the state court's jurisdiction. Only the United States and Texas parties still resist the stream adjudication.

Id. at 1189-90.

After rejection by the Tenth Circuit of the federal quiet title suit in 2002, the state adjudication court developed exhaustive case management orders and directed the State to join and serve with offers of judgment more than 16,000 claimants. By Order entered January 8, 2010, the LRG Adjudication court designated the interests of the United States in the Project as Stream System Issue No. 104, to be adjudicated by expedited *inter se* proceeding. After ruling against the United States and holding that the source of supply for the Project does not include groundwater, the court ruled in favor of the United States' claimed priority date of 1903. *See* Order Granting the State's Motion to Dismiss the United States' Claims to Groundwater and Denying the United States' Motion for Summary Judgment (Aug. 16, 2012), and Order (February 17, 2014) and Findings of Fact and Conclusions of Law (April 17, 2017). At the request of the parties, the court

stayed further proceedings and has not yet issued a final judgment, which will then be subject to appeal.

Here, the Court's 2018 opinion granted intervention to the extent the United States' claims are "essentially the same" and seek "substantially the same relief" as Texas. *Texas v. New Mexico*, 138 S. Ct. at 956, 960. The Court listed four factors favoring allowing the US to intervene, all related to Treaty or Compact obligations. *Id*. at 959-60. None of these factors encompass claims against New Mexico water users on behalf of the portion of the Project located in New Mexico. The Court concluded: "Taken together, we are persuaded these factors favor allowing the United States to pursue the *Compact* claims it has pleaded in this original action." *Id*. at 960 (emphasis added).

The United States ignored the Court's 2018 opinion and filed a motion for summary judgment in 2020, persisting in making non-Compact claims in this original action by targeting water uses solely affecting the State of New Mexico. *See* United States of America's Motion for Partial Summary Judgment and Memorandum in Support of Motion for Partial Summary Judgment (Nov. 5, 2020) ("US MSJ"). After repeating Texas's claim that "New Mexico must deliver the water apportioned to Texas…", the United States then demanded that New Mexico must also make delivery to "the Project lands in New Mexico." *Id.* at 21. The United States argued New Mexico has an obligation not only to deliver water to Texas but also "to effectuate the Compact apportionment to … the part of New Mexico below Elephant Butte…." *Id.* at 30.

In ruling on cross-motions for summary judgment filed by the states and the United States, the Special Master granted Texas's motion in part, holding: "The Compact imposes on New Mexico a duty to employ its laws to protect Compact deliveries to Texas and treaty deliveries to Mexico." Special Master's Order (May 19, 2021) at 48 ("MSJ Order"). However, after observing

that the United States' claims go farther than Texas's and seek "more specific limitations on New Mexico's internal affairs as to water capture[,]" *id.* at 9, the Special Master denied in part the United States' motion, concluding: "I am not prepared at this time to issue a ruling as to whether the intrastate impact on New Mexicans of water capture by other New Mexicans violates a Compact duty independent of impacts on another state." *Id*. at 52. The Special Master explained:

> Although a remedy in this case may impose specific requirements on how a state treats its own citizens, a state's citizens do not enjoy the right to assert Compact claims against their own state, and the United States' admission into this action as a party was based, in part, on the United States' pursuit of relief substantially similar to the relief sought by Texas.

Id. Absent a compact dispute among the States, the United States lacks standing to proceed on its own. In view of the three States' settlement, the United States may not object on the grounds that extraneous issues it desired to resolve were excluded. As described below, there are other *fora* where these claims are being or can be heard.

POINT IV

THE UNITED STATES' UNRESOLVED CLAIMS ARE NOT COMPACT CLAIMS AND CAN BE RESOLVED IN OTHER *FORA*

A. United States' Claims Against New Mexico.

In its Complaint in Intervention, the United States seeks declaratory and injunctive relief against New Mexico to prevent interference with the delivery of Project water to Project beneficiaries. The Consent Decree incorporates the 57/43 ratio and requires New Mexico to meet its obligations to Texas under the EEPI. Thus, the only real question that remains is does the United States have any remaining right to seek, in this original action, "more specific limitations on New Mexico's internal affairs as to water capture?" *See* MSJ Order at 9. And, if not, what other *fora* exist for the United States to protect its ability to deliver water pursuant to its Compact responsibilities and duties to Project beneficiaries?

The Court determined that the United States assumed a legal responsibility under the Downstream Contracts[3] to "deliver a certain amount of water to Texas." *See Texas v. New Mexico,* 138 S.Ct. at 959. However, the Downstream Contracts not only provided the basis for quantifying Texas's Compact apportionment – which is now explicitly defined by the EEPI –they also governed the United States' duties to the irrigation districts and their members at the time of the Compact. In fact, they provided that the United States would do nothing to impair the water rights the members established under state law.

For example, the contracts expressly acknowledged that the water rights established through beneficial use of Project water became appurtenant to the land upon which they were used. The Supreme Court confirmed this contractual promise a year before the Compact, finding such appurtenant rights were owned by the landowners. *See Ickes v. Fox*, 300 U.S. 82, 95 (1937) (facts involving a reclamation contract with verbatim terms as the 1906 Contracts here). Moreover, Reclamation promised that such water rights would "be defined, determined and enjoyed" in accordance with the Reclamation Act of 1902 and the laws of New Mexico "if not inconsistent therewith." *See supra* fn 3, 1906 Contracts, at 6 ¶ 10. Finally, Reclamation pledged to *never* construe or interpret the Downstream Contracts "so as to alter, diminish, or impair the right of

[3] At the time of the Compact, these contracts included, at a minimum, the: 1) Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association, June 27, 1906 [State of New Mexico Exhibit Compendium for Dispositive Motion (11/05/20) Vol 3, Special Master ("SM") Doc. 418, NM-EX 308]("1906 Contract"); 2) Contract between the United States and the Elephant Butte Irrigation District Adjusting Construction Charges and for Other Purposes (Nov. 9, 1937) [SM Doc. 418, NM-EX 320], and Contract between the United States and the El Paso County Water Improvement District No. 1 Adjusting Construction Charges and for Other Purposes (Nov. 10, 1937) [SM Doc. 418, NM-EX 321], (together the "1937 Contracts"); and 3) Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938) [SM Doc. 418, NM-EX 324] (the "1938 Contract").

project landowners to such water rights as may be or become appurtenant to their lands." *See supra* fn 3, 1937 Contracts, at 12.

The United States has tried, but failed, to show a conflict in federal and state law that would allow it to avoid the requirements of New Mexico's prior appropriation system governing the administration of all water rights in New Mexico, including those established for the Project and by EBID's members. The United States does not dispute that it appropriated water for use in the Project in accordance with New Mexico law. *See* US MSJ, SOF 13. The Reclamation Act of 1902 required deference to state laws relating to the "control, appropriation, use or distribution of water" within reclamation projects. 43 U.S.C. § 383. It also provided the right to use water from a reclamation project "shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. §§ 372 and 383. The same language is employed in New Mexico's Constitution and its 1907 surface water code. *See*, N.M. Const. art. XVI, § 3; and N.M.S.A. 1978 §§ 75-1-2 (1953) and 72-5-23 (1985).

The doctrine of prior appropriation has always been the law governing the appropriation and use of surface water and groundwater in New Mexico. *See Yeo v. Tweedy*, 1929-NMSC-033, 34 N.M. 611, 286 P. 970. The doctrine generally provides that the state owns water subject to its citizens' use for beneficial purposes and is allocated based upon the fundamental rule that the first person to beneficially use water possesses the right to its future use as against all later users. *See Montana v. Wyoming*, 563 U.S. 368, 375-376 (2011). The maximum amount of water beneficially used establishes the amount of a water right that can be exercised, subject to curtailment in accordance with its relative priority, if necessary, to satisfy the needs of senior users. The priority date for all claims to the use of water in a stream system are adjudicated by a New Mexico court

through the issuance of a decree that also defines the amount, purpose, periods, and place of use for each water right. N.M.S.A. 1978 § 72-4-19 (1953).

At the time of the Compact, New Mexico's water users had been functioning under the State's prior appropriation doctrine for many years. The Downstream Contracts between the United States and EBID expressly recognized vested water rights appurtenant to EBID members' lands, and that EBID members owned these water rights – not the United States or EBID. *See Ickes,* 300 U.S. at 95*; Nebraska v. Wyoming*, 325 U.S. 589, 614 (1945) (government does not own water rights but appropriated water for use of landowners who became the owners of water rights through beneficial use) (quoted citation omitted). If rights to use Project water were being deprived by other users in the Lower Rio Grande, the State had, and still has, a comprehensive water code to enforce priorities to rectify the problem.

B. The United States' claims against New Mexico are alive and pending in State and Federal courts.

As detailed below, protection of Project supplies in New Mexico is a matter of quantifying the amount and priority dates for EBID members' rights to surface water and supplemental groundwater *vis-à-vis* the rights of other claimants in the LRG Adjudication. That effort is well along.

Any claim that the Consent Decree effectively and improperly adjudicates EBID's members' rights to use Project water because it allows New Mexico to transfer water from EBID to EPWICD to meet its obligation to Texas is invalid. The EEPI Index incorporates Project operations and data during the D2 Period – the same period Reclamation used as the basis for Project allocations since approximately 1980. *See* Declaration of Margaret Barroll at ¶ 23. The D2 Period was explicitly adopted as the baseline for Project Allocations in the 2008 Operating Agreement under which the United States and the irrigation districts have already agreed to

operate. *Id*. Allocating water from EBID to make EPCWID whole is exactly how the United States has applied the D2 baseline and operated the Project for over 15 years (and is still operating it today) without any compensation to EBID farmers for the reallocation of their surface water.[4] Thus, it is hard to imagine why the United States, or the districts, would object to a transfer of water being *one of many* methods available to New Mexico to ensure it meets its Compact obligation to Texas.

Moreover, unlike the 2008 Operating Agreement, the Consent Decree does not purport to give New Mexico an unfettered right *vis-à-vis* EBID water users to "take" their surface water without compensation. The methods by which such a proposed transfer could be accomplished is a matter of intrastate administration and, ultimately, must comply with New Mexico's priority system and adjudication decrees. Indeed, New Mexico is required to apply its own laws to protect Texas's Compact apportionment. *See* MSJ Order, at 23. That is exactly what will happen after entry of the Consent Decree.

The following briefly summarize the pending litigation that will inform how the United States can pursue its unresolved claims on behalf of Project beneficiaries and against those it alleges intercept or interfere with its delivery of Project water in New Mexico.

[4] In its Statement of Facts offered in support of its Motion for Summary Judgment against New Mexico, the United States explained, "the effect of the 2008 Operating Agreement is that EBID *voluntarily cedes* some of its surface water allocation to EPCWID to compensate for surface water depletion caused by groundwater pumping in New Mexico, including pumping by water users outside of EBID." *See* US MSJ, SOF 71. *Amici* dispute that EBID has the authority to "voluntarily cede" to EPCWID any water necessary to supply EBID members' senior water rights without their knowledge and without an opportunity to object. *See, e.g.,* N.M.S.A. 1978 § 73-10-16 (preventing EBID from contracting for the use of water with others if it would "interfere with the vested rights of any water user or with the exercise of such rights of any such water user.")

1. *Stream System Issue No. 101 – Quantification of Irrigation Water Rights in the LRG Adjudication.*

In 2011, the LRG Adjudication court entered a final judgment in Stream System Issue No. 101 that establishes the water requirements for all crops grown in New Mexico below Elephant Butte.[5] The United States participated in the proceeding, did not appeal the final judgment and, therefore, is bound by it. *See,* 43 U.S.C. § 666 (the United States shall be subject to the judgments of adjudication suits to which it is a party and "may obtain review thereof, in the same manner and to the same extent as a private individual").

Stream System No. 101 determined for EBID members an amount not to exceed 3.024 AFY of supplemental groundwater use when combined with surface water from the Project. However, it did not determine the priority date of supplemental groundwater rights, which is still subject to determination by the adjudication court.[6] Further, the adjudication court's final judgment explicitly states that it cannot be construed as a cap on the amount of Project supply that can be claimed by the United States.[7] Matters to be finally determined in future proceedings regarding the priority dates for surface water and supplemental groundwater rights for EBID members, which include members of *amici* NMPG and SRGDCFA, and the relative priority dates

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[5] *See New Mexico, ex rel. State Engineer, v. Elephant Butte Irrigation Dist.*, No. 96-CV-888 (1996), SS-97-101, Final Judgment (August 22, 2011), NM-EX 541, SM Doc. 418.

[6] The priority date for EBID farmers' use of surface water is the same date as the United States' appropriation of water for the Project, determined by the LRG Adjudication court as 1903. *See supra, at* 13. The State and other parties to the adjudication have taken the position that the date a groundwater well was drilled establishes the priority date for a farmer's groundwater rights. *Amici* NMPG and SRGDCFA take the position the "relation back" priority doctrine established under *Templeton v. Pecos Val. Artesian Conservancy Dist.*, 332 P.2d 465 (N.M. 1958) provides the basis for a supplemental groundwater priority date of 1903 equal to the historical full allotment of Project water to EBID farmers during the D2 period in the amount of 3.024 AFY.

[7] *See* NM-EX 541, ¶ C at 9, SM Doc. 418.

for other parties, which include *amici* NMSU and the City of Las Cruces, bear directly on the resolution of the United States' claims seeking to protect Project beneficiaries within New Mexico.

2. Stream System Issue No. 104 – the United States' Interests in the LRG Adjudication.

As summarized under Point III, the LRG Adjudication court has entered its findings and conclusions in Stream System Issue No. 104, a proceeding established to determine the United States' interests in the Rio Grande Project. At the request of the parties, the case has been stayed and an appealable final judgment has not yet been entered. This pending matter provides the United States the proper forum to seek a final determination of the sources and priority date for Project water necessary to enforce the administration and protection of its delivery of Project water in New Mexico.

3. 2008 Operating Agreement Litigation in Federal District Court.

After a few years of Project operations under the 2008 Operating Agreement, New Mexico filed suit against the United States in federal district court in New Mexico claiming the agreement harmed the State. *See State of New Mexico v. United States, et al.*, D.N.M. 11-CV-691 (2011).[8] The two irrigation districts, EBID and EPCWID were joined as defendants and raised their own counterclaims. Las Cruces intervened on one count in this matter to challenge the adequacy of the 2007 Environmental Assessment and require an Environmental Impact statement covering fifty years under the National Environmental Policy Act, an issue unrelated to the United States' claims

[8] New Mexico filed its First Amended Complaint on February 14, 2012. *See* Doc. 45. New Mexico alleged that Reclamation was improperly operating the Project in two ways. First, Reclamation reduced and released credit water from the Rio Grande Project in 2011. *Id.* ¶55, at 22, ¶ 64, at 24. Second, Reclamation executed the 2008 Operating Agreement with EBID and EPCWID which significantly changed the Project's historical operation. *Id.* ¶ 40, at 17. New Mexico alleged that Reclamation's actions violated the Compact, the Water Supply Act, 43 U.S.C. §§ 390, the Administrative Procedures Act, 5 U.S.C. §§ 701-706, the National Environmental Policy Act, 42 U.S.C. §§ 4331-4332, and Section 8 of the Reclamation Act of 1902, 43 U.S.C. § 383. Id. ¶¶ 1-8, at 33-34.

here. The case was stayed, *sua sponte*, pending resolution of the claims in this original action. *See* Memorandum Opinion and Order, Doc.193 (03/29/13) (thoroughly considering claims in both matters and finding "the Supreme Court could order relief that would moot some of the issues before this Court.")

Now that the Consent Decree defines New Mexico's delivery obligations to Texas under the Compact and requires that Project operations be modified to the extent necessary to comply with its terms and conditions, the stay may be lifted so that the case may proceed to resolve any remaining claims the parties wish to pursue involving Project operations.

4. Litigation Involving M&I Uses of Project Water in Federal District Court.

In 2000, EBID filed suit against the United States alleging illegal Project operations. *See Elephant Butte Irr. Dist. v. United States,* D.N.M, No. CIV. 00-1309 (2000). Initially dismissed, the case was reinstated when EBID persuaded the City of Las Cruces to intervene on the issue of whether the transfer of agricultural water rights within EBID to municipal and industrial ("Ag/MI") use in the City are required to be undertaken under the 1920 Miscellaneous Purposes Act, 43 U.S.C. § 521 ("MPA"), or could be undertaken under state law. The case remains a proper forum for resolving the United States' claims that only contract users within New Mexico can use water delivered from the Project. *See* US Compl. Int. at 5.

The resolution of Las Cruces' claims could result in Ag/MI transfers requiring an MPA contract. However, if it is finally determined that MPA contracts are not required, other efforts have been underway in New Mexico to provide for Ag/MI transfers in a manner that will protect EBID members. One example is EBID's Depletion Reduction Offset Policy (DROP) program which was developed to address municipal and industrial depletions on Project supply in New Mexico. As described by EBID:

> DROP will attempt to make available to municipalities and water associations a mechanism to offset any depletions their groundwater pumping may have on the surface water of the Project. This is a big step forward in solving one of the region's water supply issues.[9]

New Mexico *amici* remain very motivated to continue engagement with EBID and the United States outside of the courtroom to arrive at effective means by which to protect Project water deliveries within the confines of New Mexico's prior appropriation system. For example, the 2016 Settlement Framework executed by NM *amici*, along with signatories PNM and CRRUA, has the express goal of arriving at "cooperative management that will protect Rio Grande Project supplies, implement adaptive management of groundwater to assure a sustainable and resilient level of use and establish mechanisms for efficient and expedited change of use of water" in New Mexico.[10]

POINT V

THE SETTLEMENT AND CONSENT DECREE MEET THE GOALS OF THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

The Water Authority has participated in this case to ensure a proper articulation of the rights and responsibilities of the three compacting States in relation to the Compact, particularly Compact apportionments above Elephant Butte Reservoir where the Water Authority's water rights are administered. The Water Authority has also participated to ensure a proper articulation of rights and responsibilities of the three compacting States and the United States in relation to the Compact and the Project, as those determinations have the potential to affect reservoir operations, native river flows, and Compact obligations above Elephant Butte.

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[9] https://www.ebid-nm.org/blog-post/record-of-decision-signed-on-rio-grande-project-operating-agreement.

[10] The 2016 Settlement Framework can be found here: https://www.newmexicopecangrowers.com/water-information/settlement-framework.

A particular concern has been the United States' assertion in its Complaint that groundwater underlying EBID was federal water which could only be diverted with a federal contract, *i.e.,* the federalization of groundwater. *See* U.S. Compl. Int. at 5. This is of concern to the Water Authority which borders the Middle Rio Grande Conservancy District (MRGCD"), a Reclamation project that supplies irrigation surface water to approximately 60,000 acres in the Middle Rio Grande.

The Water Authority conjunctively manages its imported surface water from the San Juan Chama Project, a tributary of the Colorado River, with its groundwater, both of which are subject to permits and active administration by the New Mexico State Engineer.[11] The volume and timing of both sources of supply are dependent on native water supplies available to New Mexico under the Compact, particularly Article IV, including river operations for irrigation of lands within the MRGCD. The ability of the Water Authority to provide drinking water under its present water supply portfolio is dependent on Compact administration in the Middle Rio Grande as it has historically been done and subject to the State Engineer's jurisdiction over the water resources in the Middle Rio Grande.

Consistent with the Special Master's holdings in the MSJ Order, the Consent Decree provides the framework for administration of the Compact below Elephant Butte Reservoir,[12] by

[11] The Water Authority also has vested and acquired water rights from the Middle Rio Grande in its portfolio. It also maximizes its water rights through aquifer storage and recovery, through both infiltration and direct injection, and it uses non-potable wastewater for irrigation and industrial use.

[12] The framework set forth in the Consent Decree is based on a direct analogy for the joint administration of an interstate water compact and Bureau contracts. On the Colorado River, New Mexico was apportioned 11.25% of the Colorado River and the SJCP is a portion of that water. The New Mexico Interstate Stream Commission, a sister agency to the New Mexico State Engineer, allocated the water from the SJCP to various contractors and the United States entered into contracts with those entities for delivery of the Compact/SJCP water. In the instant case, the Compact apportioned Project water below Elephant Butte Reservoir between New Mexico and Texas 57% and 43% respectively. With the apportionment, the Bureau's contracts with EBID and EPCWID provide a vehicle for delivery. The Colorado River and Rio

ensuring that New Mexico receives 57% of the Project water below Elephant Butte Reservoir and Texas receives 43% of the Project water. Jurisdiction to administer these waters is vested in New Mexico and Texas, respectively, as the States to which the apportionments are made. As it has done in the past, the United States will ensure deliveries to meet its international treaty obligations to Mexico.

There is no basis under state or federal law for the United States to administer groundwater in New Mexico below Elephant Butte Reservoir under the false premise that it is Project water.[13] Groundwater existed in the Lower Rio Grande before the Project. Accordingly, as set forth in *Hinderlider*, 304 U.S. at 106-107, the State of New Mexico has jurisdiction and the obligation to administer surface water and groundwater appropriators below Elephant Butte Reservoir to ensure Compact deliveries are met.

These concerns are addressed in the settlement and the Consent Decree. The Consent Decree does not disturb the operation of Article IV of the Compact, the provision under which New Mexico satisfies its delivery obligation into Elephant Butte Reservoir.[14] It does not adopt the United States' claims over groundwater underlying EBID, and thus does not provide a basis for a similar effort in the Middle Rio Grande.

Grande are similar examples of New Mexico obtaining a Compact apportionment and the United States executing contracts with entities to deliver the water.

[13] In allowing the United States to intervene as a plaintiff, the Court noted as one of four reasons that the United States was not being allowed to expand the case beyond Texas's complaint. *See Texas v. New Mexico*, 138 S. Ct. at 956, 960. This prevents the United States from pursuing herein its claims involving federal contracts from any appropriator below Elephant Butte Reservoir that diverts groundwater hydrologically connected to the river, as set forth in its complaint-in-intervention. *See* United States' Complaint in Intervention, filed on March 23, 2018, at ¶¶ 12-13.

[14] Nor is Article III of the Compact, under which Colorado satisfies its delivery obligation at the Colorado-New Mexico state line.

Another concern for the Water Authority has been the claim that the hydrologic baseline for Compact administration was a 1938 condition, potentially affecting not just the Lower Rio Grande, but also Compact administration above Elephant Butte Reservoir. The Consent Decree is based on hydrology, reservoir operations, administration, and water use during the D2 period, *viz.*, 1951-1978. Entry of the Consent Decree resolves this issue and provides certainty in New Mexico water rights administration and Compact compliance in this regard.

The Consent Decree provides a solid foundation for providing Texas with the water it claims under the Compact. It also provides certainty to New Mexico water users. The Declaration of Mike Hamman, New Mexico State Engineer, identifies numerous ways in which New Mexico can utilize its "administrative tools and options to meet its obligations under the Consent Decree and is committed to using those tools…." *See* Declaration of Mike Hamman at ¶ 14. They include fallowing, municipal water conservation, acquisition and retirement of water rights, and importation of water. *Id*. at ¶¶ 14 b, c, d, e, and f. The use of these options ensures compliance which relieves the stress on the Water Authority's principal source of water, Permit No. SP-4830, which can be suspended if necessary to meet New Mexico's Compact obligations. The Consent Decree retains State discretion over administration to ensure compliance with the Consent Decree in Article II.D.2.a.

CONCLUSION

The settlement and related Consent Decree resolve interstate Compact issues among the States and represent a fair resolution of the litigation. Texas is satisfied that its Compact apportionment is fairly and properly defined and that New Mexico will administer its water users to ensure that Texas receives its apportionment. New Mexico is satisfied that its apportionment below Elephant Butte Reservoir is fairly and properly defined and has provided assurances that it

can and will administer its water users to meet its Compact obligations. Colorado is satisfied that its Compact rights and obligations remain the same. Accordingly, the Special Master should grant the three compacting States' motion to enter the Consent Decree and recommend that the Court dismiss the original action as all interstate issues among the States have been resolved. Any issues related to intrastate administration of water rights in New Mexico can be resolved in other *fora.*

Respectfully submitted this 20th day of January 2023.

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No. 141, Original

In The
Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

NEW MEXICO *AMICI'S*
CERTIFICATE OF SERVICE

This is to certify that on the 20th day of January 2023, I caused a true and correct copy of the *Response of the New Mexico Amici in Support of Joint Motion to Enter Consent Decree Supporting the Rio Grande Compact* to be served by e-mail upon all counsel of record and interested parties on the Service List, attached hereto.

Respectfully submitted this 20th day of January 2023.

/s/Jay F. Stein
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Southern Rio Grande Diversified Crop Farmers Association	**ARNOLD J. OLSEN*** HENNIGHAUSEN OLSEN & McCREA, L.L.P. P. O. Box 1415 Roswell, NM 88202-1415 **Malina Kauai – Paralegal** **Rochelle Bartlett – Legal Assistant**	(575) 624-2463 ajolsen@h2olawyers.com mkauai@h2olawyers.com rbartlett@h2olawyers.com
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SPECIAL MASTER

Special Master	**Honorable Michael J. Melloy** *Special Master* United States Circuit Judge 111 Seventh Avenue, S.E., Box 22 Cedar Rapids, IA 52401 Michael E. Gans, Clerk of Court United States Court of Appeals – Eighth Circuit Thomas F. Eagleton United States Courthouse 111 South 10th Street, Suite 24.329 St. Louis, MO 63102	(319) 432-6080 TXvNM141@ca8.uscourts.gov (314)244-2400 TxvNM141@ca8.uscourts.gov

**Updated 4/16/2018
Corrected the spelling of Pricilla M. Hubenak to Priscilla M. Hubenak and added her e-mail address Priscilla.Hubenak@oag.texas.gov to the Service list.

**Updated 4/18/2018
Added Toby Crouse (toby.crouse@ag.ks.gov) as the Solicitor General for the State of Kansas and removed Stephen R. McAllister.

**Updated 4/24/2018
Added Clerk of Court information and updated Special Master e-mail address.

**Updated 11/16/18
Added Bryan Clark's e-mail address (bryan.clark@ag.ks.gov) for the State of Kansas

**Updated 3/14/19
Updated Attorney General of Colorado to Philip J. Weiser
Added Solicitor General Eric R. Olson (eric.olson@coag.gov) for the State of Colorado

**Update 3/19/19
Added legal assistants Shannon Gifford (shannong@modrall.com) and Leanne Martony (leannem@modrall.com) for El Paso County Water District No. 1
Added James M. Speer, Jr., information for El Paso County Water District No. 1

**Update 5/6/19
Added Sarah A. Klahn (sklahn@somachlaw.com), Richard S. Deitchman (rdeitchman@somachlaw.com), Rena Wade (rwade@somachlaw.com) and Corene Rodder (crodder@somachlaw.com) for State of Texas. Removed Rhonda Stephenson.

**Update 11/6/19
Added Lamai Howard (lamaih@modrall.com) for El Paso County Water District No. 1. Removed Leanne Martony.

**Update 11/21/19
Added Jo Harden (jo@tessadavidson.com) for New Mexico Pecan Growers. Removed Patricia McCann.

**Update 11/22/19
Removed Lizbeth Ellis and Clayton Bradley and added General Counsel (gencounsel@nmsu.edu) email for New Mexico State University.

**Update 1/7/20
Added David W. Gehlert (david.gehlert@usdoj.gov) for the United States. Updated Solicitor General information. Also added John P. Tustin (john.tustin@usdoj.gov) for the United States.
**Update 2/19/20
Added Renea Hicks for El Paso County Water Improvement District No. 1. Removed James M. Speer and Lamai Howard.
**Update 2/26/20
Added Darren L. McCarty for State of Texas. Removed Brantley Starr and James Davis. Also added Crystal Rivera and removed Rena Wade.
**Update 5/1/20
Added Cholla Khoury, Luis Robles, Jeffrey Wechsler and John Draper for the State of New Mexico. Removed David A. Roman. Also added Bonnie DeWitt, Pauline Wayland, Diana Luna and Donna Ormerod.
Added Preston Hartman for the State of Colorado. Removed Karen Kwon.
**Update 7/7/20
Added mediator information - Hon. Oliver W. Wanger.
**Update 10/1/20
Added Susan Barela (susan@roblesrael.com) for State of New Mexico.
**Update 10/2/20
Added Jennifer A. Najjar and removed Stephen M. MacFarlane, Thomas Snodgrass and David W. Gehlert for the United States.
**Update 12/14/20
Added Zachary E. Ogaz (zogaz@nmag.gov) for State of New Mexico.
**Update 1/26/21
Added Southern Rio Grande Diversified Crop Farmers Association information.
**Update 2/1/21
Added Robert Cabello and removed Marcia Driggers for City of Las Cruces.
**Update 2/23/21
Updated Solicitor General information and removed John P. Tustin for the United States.
**Update 7/1/21
Added Charlie Padilla (CharlieP@modrall.com) and removed Shannon Gifford for EPCWID.
**Update 7/21/21
Updated Attorney General/Solicitor General information and removed Christina Garro for State of Texas.
**Update 8/27/21
Updated Solicitor General information for the United States.
**Update 9/16/21
Updated ABCWUA information, substituting Charles W. Kolberg for Peter Auh.
**Update 9/28/21
Updated New Mexico information, adding Shelly Dalrymple, Kaleb Brooks, Corinne Atton and Jennifer Van Wiel.
**Update 11/2/21
Updated United States information, adding Elizabeth Prelogar and removing Brian Fletcher. Removed Mediator information.
**Update 1/3/22
Updated United States information, adding Jeffrey Candrian and removing James Dubois.

**Update 1/12/22

Updated New Mexico information, adding Nathaniel Chakeres, Richard Allen and Jonas Armstrong; removing Susan Barela and Patricia Salazar.

Updated New Mexico State University information; updating John Utton's address.

**Update 12/16/22

Updated New Mexico information, adding Christopher Shaw and Michele Del Valle; removing Jonas Armstrong and Jennifer Van Wiel.

**Update 1/20/23

Updated City of Las Cruces information, adding Jocelyn Garrison and Brad Douglas; removing Jennifer Vega-Brown and Robert Cabello.