

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

**DECLARATION OF TEXAS RIO GRANDE COMPACT
COMMISSIONER ROBERT SCOTT SKOV
IN SUPPORT OF JOINT MOTION OF THE STATE OF TEXAS,
STATE OF NEW MEXICO, AND STATE OF COLORADO
TO ENTER CONSENT DECREE SUPPORTING
THE RIO GRANDE COMPACT**

November 14, 2022

I, Robert Scott Skov, declare as follows:

1. My name is Robert Scott Skov; I prefer to be called Bobby. My place of business is 15511 Alameda Avenue, Fabens, Texas 79838 and I receive U.S. mail correspondence at Post Office Box 1378, Fabens, Texas 79838.

2. The following matters are within my personal knowledge and, if called as a witness, I can competently testify thereto.

3. My occupation is a farmer.

4. Texas is a signatory to the 1938 Rio Grande Compact, along with the States of Colorado and New Mexico.

5. Article XII of the 1938 Rio Grande Compact establishes the Rio Grande Compact Commission. The voting members of the commission includes one representative from each state, Colorado, New Mexico, and Texas.

6. The Governor of the State of Texas, with the advice and consent of the Texas Senate, appoints a commissioner to represent the State of Texas on the Rio Grande Compact Commission. Tex. Water Code § 41.003.

7. On April 14, 2021, I was appointed by the Governor of the State of Texas as the Texas Rio Grande Compact Commissioner. I was confirmed in that position by the Texas Senate on June 9, 2021. I assumed the office of Texas Rio Grande Compact Commissioner on that date.

8. As the Texas Rio Grande Compact Commissioner, I am the representative of the State of Texas that has been charged with serving as the client representative to provide client-related input to the Texas Attorney General and to Texas's outside legal counsel in *Texas v. New Mexico, and Colorado*, Original Action No. 141. In that role, I have reviewed the Texas Complaint and most of the relevant pleadings in this case.

9. I have also met with and fully discussed the instant litigation with Mr. Pat Gordon, my predecessor as Texas Rio Grande Commissioner. Mr. Gordon served as the Texas Rio Grande Compact Commissioner from 2006 until my appointment as Rio

Grande Compact Commissioner. Mr. Gordon was the Rio Grande Compact Commissioner in 2013 when the State of Texas petitioned the United States Supreme Court for permission to file its Complaint in this action.

10. In my capacity as the Texas Rio Grande Compact Commissioner, I have attended all Status Conferences and hearings in this matter since June 9, 2021. During this period, I have been involved in every policy decision that has been made in this litigation on behalf of Texas. I have also attended every mediation session in which the State of Texas was in attendance. I have also had informal discussions about the litigation and possible settlement with each of the principals representing each of the parties to this litigation. I am fully informed of and fully understand the provisions of the Consent Decree Supporting the Rio Grande Compact (Decree).

11. In my capacity as the Texas Rio Grande Compact Commissioner, I have met with management and board members of Elephant Butte Irrigation District in New Mexico and El Paso County Water Improvement District No. 1 in Texas, both informally and in formal open and closed sessions. I have attempted to keep them fully informed about the litigation, the progress of the mediation, and the prospects of settlement. To the extent permitted under applicable confidentiality agreements, I have informed the districts of specific terms of the settlement and discussed their concerns with them. In all of these meetings, formal and informal, the two districts have encouraged the State of Texas to settle the litigation, if possible.

12. In my capacity as the Texas Rio Grande Compact Commissioner, I have discussed and informed the chairman of the Texas Commission on Environmental Quality (TCEQ) and the chairwoman and representatives of the Texas Water Development Board (TWDB) about the progress of the litigation, the mediation, and the terms of the Compacting States' Decree. TCEQ and the TWDB are the Texas state agencies that have direct involvement in the instant litigation. I have also discussed the

mediation and the terms of the Decree with the Governor's Office as well as with the Governor himself.

13. On November 10, 2022, I attended a special meeting of the Rio Grande Compact Commission (Commission) to consider the Consent Decree in executive session.

14. In considering the Consent Decree, the Commission concluded, *inter alia*, that the Consent Decree and its appendices:

- a. were consistent with the Compact, and fair to all the Compacting states; and
- b. provides for the collection, correlation, and presentation of factual data necessary for the administration of the Compact's apportionment of water between New Mexico and Texas below Elephant Butte Reservoir.

15. To memorialize our consideration of the Consent Decree at our meeting on November 10, 2022, the Commission considered whether to approve Resolution A and Resolution B, which are attached to this Declaration as Exhibit A and Exhibit B, respectively.

16. Resolution A finds that the Consent Decree is consistent with the Compact and resolves the interstate compact issues.

17. Resolution B confirms the States' Agreement for Administration and Accounting of Compact Credit Water.¹

18. Both Resolution A and Resolution B were approved by the Compact Commission at the November 10, 2022 meeting.

¹ Administration and accounting for credit water under the Compact has long been a source of disagreement amongst the States. The issue was raised in New Mexico's counterclaims as part of the Original Action, but subsequently dismissed by the Special Master as being outside the scope of the litigation. The States entered into negotiations on credit water in parallel to the negotiations on the Consent Decree, and Resolution B reflects the settlement of that issue.

19. The Commission's authority to take action to approve resolutions such as Resolution A and B was specifically bestowed on the Commission by the Compact, Article XII.

20. In my capacity as the Texas Rio Grande Compact Commissioner, 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.

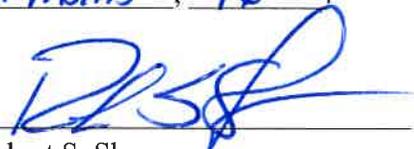
21. Consistent with all of the above and acting in my capacity as the Texas Rio Grande Compact Commissioner, I urge the Special Master in this litigation to recommend to the Court that it enter the Decree.

22. I further respectfully request that the Court enter the Decree, as a full and complete resolution of the issues raised by the State of Texas in its Complaint.

23. In my capacity as the Texas Rio Grande Compact Commissioner, it is my view that the Decree is consistent with the Compact.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of November at FINDERS, TX



Robert S. Skov

EXHIBIT A

**RESOLUTION OF THE RIO GRANDE COMPACT COMMISSION
REGARDING the PROPOSED CONSENT DECREE in ORIGINAL ACTION NO. 141,
TEXAS v. NEW MEXICO AND COLORADO, in the
UNITED STATES SUPREME COURT**

November 10, 2022

WHEREAS, the States of Colorado, New Mexico, and Texas entered into the Rio Grande Compact, signed in 1938, apportioning the waters of the Rio Grande above Fort Quitman, Texas; and

WHEREAS the Rio Grande Compact (Compact) was passed as Public Act No. 96 by the 76th Congress of the United States and approved by the President on May 31, 1939; and

WHEREAS, Texas filed Original Action No. 141 (the Original Complaint), and the Supreme Court exercised original jurisdiction over this controversy involving the States of Colorado, New Mexico, and Texas; and

WHEREAS, the Original Complaint alleges New Mexico violated and continues to violate the Compact, and the New Mexico counterclaims allege Texas violated and continues to violate the Compact; and

WHEREAS, Colorado, an originally named defendant, has a general interest in litigation of the Original Complaint, insofar as Colorado is a signatory to the Compact, and Colorado's own Compact interests based upon water releases and storage duties and rights may be affected by reservoir levels and releases in New Mexico and Texas; and

WHEREAS, the Compacting States have reached a settlement in principle of the Compact issues that have been raised in this Original Action; and, in furtherance of said settlement in principle, the Compacting States have agreed to file a motion requesting that the Special Master recommend that a Consent Decree and its appendices be entered by the Court resolving the Compacting States' dispute; and, the Consent Decree resolves the interstate Compact issues; and

WHEREAS, the Consent Decree does not address intrastate issues within New Mexico associated with the Rio Grande Project; and

WHEREAS, the Rio Grande Compact Commission has considered the Consent Decree in a closed executive session.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Rio Grande Compact Commission hereby finds the Consent Decree and its appendices to be consistent with the Compact, and fair to all the Compacting states; and

BE IT FURTHER RESOLVED, that the Consent Decree provides for the collection, correlation, and presentation of factual data necessary for the administration of the Compact's apportionment of water among New Mexico and Texas below Elephant Butte Reservoir; and

BE IT FURTHER RESOLVED, that the Rio Grande Compact Commission hereby endorses the Consent Decree and its appendices and finds that the Consent Decree and its appendices fully resolve the outstanding Compact claims and counterclaims in the Original Action No. 141; and

BE IT FURTHER RESOLVED, that the Rio Grande Compact Commission does recommend to the Attorneys General of the Compacting States that they approve the Consent Decree for administration of the Compact as a resolution of the current dispute among the States regarding the apportionment of water below Elephant Butte Reservoir; and

BE IT FINALLY RESOLVED, that nothing herein represents a waiver or admission of any legal or factual matter by any Commissioner, Engineer Adviser, Legal Adviser, or the States of Colorado, New Mexico and Texas.



Kevin G. Rein
Commissioner for Colorado



Robert S. Skov
Commissioner for Texas



Michael A. Hamman
Commissioner for New Mexico

EXHIBIT B

**RESOLUTION
OF THE RIO GRANDE COMPACT COMMISSION
REGARDING
ADMINISTRATION AND ACCOUNTING OF COMPACT CREDIT WATER
November 10, 2022**

WHEREAS, the States of Colorado, New Mexico, and Texas, in 1938 signed the Rio Grande Compact apportioning the waters of the Rio Grande above Fort Quitman, Texas; and

WHEREAS, the Rio Grande Compact was passed as Public Act No. 96 by the 76th Congress of the United States and approved by the President on May 31, 1939; and

WHEREAS, the agencies of the United States operate numerous reservoirs and other water-related facilities in the Rio Grande basin, including Elephant Butte and Caballo Reservoirs on the Rio Grande in New Mexico; and

WHEREAS, all such facilities are required to be operated in compliance with the Rio Grande Compact; and

WHEREAS, Credit Water is stored in Elephant Butte Reservoir and Rio Grande Project Usable Water is stored in both Elephant Butte and Caballo Reservoirs; and

WHEREAS, the Compacting States have disagreed about the calculation of Credit Water under the terms of the Compact; and

WHEREAS, such disagreement has prevented the Rio Grande Compact Commission (Commission) from approving the annual Compact accounting for water deliveries since 2011; and

WHEREAS, the Compacting States have now reached an agreement for the administration and accounting of Credit Water to resolve the disagreement among the States; and

WHEREAS, the U.S. Bureau of Reclamation (Reclamation) can provide daily values and estimates for the storage in Elephant Butte and Caballo Reservoirs from January 1 to September 30 of each year to the Commission; and

WHEREAS, the Rio Grande Compact Commission determines the amount of Credit Water in Rio Grande Project Storage in Elephant Butte Reservoir retroactive to January 1 of each year and Reclamation uses this information for its project supply determinations.

NOW, THEREFORE, BE IT RESOLVED, that the Commission hereby favorably advises and consents to and does adopt the agreement between Colorado, New Mexico, and Texas related to the administration and accounting of Credit Water in Elephant Butte Reservoir; and

BE IT FURTHER RESOLVED, that the Commission respectfully requests that Reclamation provide information about water in Elephant Butte Reservoir when and if requested by the Engineer Advisers for the three Compact States; and

BE IT FURTHER RESOLVED, that nothing herein represents a waiver or admission of any legal or factual matter by any Commissioner, Engineer Adviser, Legal Adviser, or the States of Colorado, New Mexico, and Texas; and

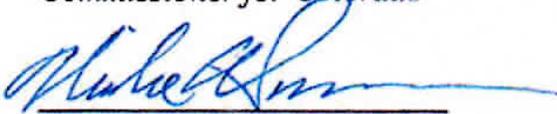
BE IT FINALLY RESOLVED, that the agreement among the States shall be attached to this resolution.



Kevin G. Rein
Commissioner for Colorado



Robert S. Skov
Commissioner for Texas



Michael A. Hamman
Commissioner for New Mexico

**RIO GRANDE COMPACT COMMISSION
CREDIT WATER AGREEMENT FOR
ADMINISTRATION AND ACCOUNTING
AT ELEPHANT BUTTE RESERVOIR**

November 10, 2022

Since 2011, the Engineer Advisers for the Commission have been unable to reach agreement on how the evaporative losses on Credit Water are calculated and tabulated in the accounting for water deliveries. Accordingly, the intent of this agreement is to provide a practical approach to optimize the use of water in Project Storage as it relates to the storage and use of Credit Water in a manner that is agreeable to the Compact States and accommodates each State's understanding of the Rio Grande Compact. Therefore, Rio Grande Compact Credit Water administration and accounting at Elephant Butte Reservoir will be as follows:

A. Definitions:

Definitions of the terms, "Credit Water," "Accrued Credits," "Usable Water," and "Project Storage" that are referenced in this document are consistent with their definitions in the Rio Grande Compact.

"Relinquishment" in this document refers to the process by which Colorado or New Mexico provides some amount of its Credit Water to Usable Water in Project Storage in exchange for receiving a storage benefit of a like amount of water in upstream post-1929 reservoirs when storage restrictions are in effect, as described in Article VII of the Rio Grande Compact.

- B. The Rio Grande Compact identifies Credit Water as the amount of water in Project Storage, which is equal to the accrued credit of Colorado, New Mexico, or both. Credit Water will be held constant as water in Project Storage during the calendar

year for the purposes of Compact accounting and administration at Elephant Butte Reservoir. The amount of Credit Water for the accounting calendar year is the Engineer Advisers' estimated Accrued Credit as of December 31 of the previous year until the accrued credits are finalized by the Commission at the annual Commission meeting.

- C. Once a month, beginning in February, Reclamation will provide to the Engineer Advisers the forecast of maximum Usable Water in Project Storage for the year and the estimate of Usable Water in Elephant Butte through the year.
- D. When Colorado, New Mexico, or both, has Credit Water in storage in Elephant Butte Reservoir:
 - 1. If on May 1 of the current year, Usable Water in Project Storage is less than 400,000 acre-feet; and
 - 2. Based on Reclamation's operation model forecast, the amount of Usable Water in Project Storage is projected to drop to or below 22,000 acre-feet (the current combined minimum pools of Elephant Butte and Caballo Reservoirs) during the release season, the following actions will occur:
 - a. Using data from the Bureau of Reclamation, the Engineer Advisers will estimate evaporative losses to Credit Water expected to occur from January 1 through September 30 of that year from the individual Credit Water accounts of Colorado and New Mexico. If the Bureau of Reclamation determines the estimated evaporative losses described above, the Engineer Advisers will obtain the data from the Bureau for their review, approval, and use;

- b. The Engineer Advisers will advise the Rio Grande Compact Commissioners and inform Reclamation of the approximate date that the Usable Water in Project Storage will drop to 22,000 acre-feet;
- c. Within two weeks prior to the date determined by the Engineer Advisers that the Usable Water in Project Storage will drop to or below 22,000 acre-feet, Colorado and New Mexico will relinquish unconditionally, and Texas will accept unconditionally, the amount of Credit Water equivalent to the estimated Credit Water evaporative losses determined using the method in I.D.2.a above. The relinquishment amounts will be proportional to each state's Credit Water. A like amount of water will be available for storage in upstream post-compact reservoirs on the day that the relinquishment is accepted and into the future when Article VII storage restrictions are in effect;
- d. The relinquished Credit Water will immediately become Usable Water in Elephant Butte Reservoir and will be available to release without additional conditions;
- e. The mandatory relinquishment can only happen once in a given calendar year; and
- f. Should Colorado or New Mexico elect to offer an additional relinquishment above the one-time mandatory relinquishment on the existing Credit Water as detailed above, such relinquishment would be a separate offer of relinquishment subject to Compact Article VII relinquishment provisions.

- E. An end-of-year accounting for Credit Water will occur using the following procedures:
1. If no state makes a mandatory and/or optional relinquishment, Credit Water shall be held constant in both Compact accounting and physically in Elephant Butte Reservoir through the calendar year using the “Constant Credit Water Method” accounting procedure where at the end of the year, all Credit Water for Colorado and New Mexico shall be computed and reduced annually to compensate for evaporative losses in the proportion that the Credit Water bore to the total amount of water in Elephant Butte Reservoir less non-native water. The Compact States agree that the Constant Credit Water Method will be the method of Compact Water accounting for Credit Water starting January 1 of the year following adoption of this agreement.
 2. If either state makes a mandatory and/or optional relinquishment that is accepted by Texas, Credit Water shall be treated as held constant in both Compact accounting and physically in Elephant Butte through the calendar year using the Constant Credit Water Method accounting procedure, with the exception of the instantaneous change to the Credit Water amounts in storage on the date(s) of the relinquishment. At the end of the year, all Credit Water shall be reduced to compensate for evaporative losses in the proportion that Credit Water bore to the total amount of water in Elephant Butte Reservoir, less non-native water for the calendar year, subtracting the amount of the relinquishment. The Compact States agree that this will be the method of Credit Water accounting starting January 1 of the year following adoption of this agreement.

- F. The Rio Grande Compact Commission shall determine evaporative losses of Credit Water and the total amount of water in Project Storage and in storage in Elephant Butte Reservoir in coordination with Reclamation. As a one-time adjustment to implement this agreement, New Mexico and Colorado will be granted delivery credit of 32,500 acre-feet and 300 acre-feet, respectively. These volumes will be applied to each state's accrued Credit or Debit on December 31 of the year of adoption of this agreement.
- G. The Constant Credit Water Method will be used for the Compact accounting years 2011 through the year of adoption of this agreement. The Engineer Advisers will reconcile the accounting and seek Commission approval for each of those years.