

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 MICHAEL A. HAMMAN, P.E.

**IN SUPPORT OF JOINT MOTION OF THE STATE OF TEXAS,
STATE OF NEW MEXICO, AND STATE OF COLORADO FOR ENTRY
OF CONSENT DECREE SUPPORTING THE RIO GRANDE COMPACT**

November 14, 2022

I, Michael A. Hamman, P.E., pursuant to 28 U.S. C. § 1746, hereby declare as follows:

- 1) I am over 18 years of age and have personal knowledge of the facts stated herein. I am competent to testify to the matters herein. If called to testify, I can and will testify in accordance with the following.
- 2) I am currently the State Engineer for the State of New Mexico, officing in Santa Fe and Albuquerque. In this position I head the Office of the State Engineer (“OSE”) and hold a cabinet position appointed by and reporting to the Governor of the State of New Mexico and confirmed by the state Senate. I have held this position since February 7, 2022.
- 3) I am a licensed professional engineer with over 40 years of experience, primarily in the management of water resources in New Mexico and other southwest states. Prior to serving as state engineer, I worked as Senior Water Advisor to the Governor of New Mexico. Prior to that, I was Chief Executive Officer and Chief Engineer of the Middle Rio Grande Conservancy District (“MRGCD”). Prior to working at the MRGCD, I served for 17 years at the U.S. Bureau of Reclamation. My service at Reclamation culminated in my serving as Area Manager overseeing over 10 federal water projects from the San Luis Valley in Colorado to Fort Quitman, Texas, including the Rio Grande Project. I oversaw a staff of 200 employees in six field offices that perform operations and maintenance of well fields, diversion dams, large dams and reservoirs (including Elephant Butte and Caballo Dams), river channel maintenance on the Rio Grande and Pecos River basins, water modeling and accounting for project water, and implementation of endangered species programs. I have also served as a regional water planner for the New Mexico Interstate Stream Commission, as the Water Utility Director for the City of Santa Fe, and as head of the Utility Authority for the Jicarilla Apache Nation.

Role of the State Engineer and the Interstate Stream Commission

- 4) The OSE is the executive agency charged with the management and administration of all waters in the state, with a current staff of 312 authorized personnel including water resource managers, professional engineers, licensed attorneys, hearing officers, legal assistants, water rights professionals/abstractors, hydrologists, water masters, financial/budget analysts, IT professionals, tribal liaison, clerical and other support staff. The OSE consists of four (4) budgeted programs, seven (7) District Offices throughout New Mexico and 20 administrative, technical and legal bureaus that report to the four (4) budgeted programs.
- 5) As the State Engineer, I am statutorily charged with supervising the state’s water resources through the measurement, appropriation, and distribution of all ground and surface water in New Mexico, including streams and rivers that cross state boundaries. State Engineer

permission is necessary to make a new appropriation, drill a well, divert surface water and groundwater, or change the place or purpose of use of an existing water right. The Office of the State Engineer acts on water rights applications, evaluates existing water rights, measures and tracks water use and resources, promotes conservation, and performs the scientific, historical, and legal research needed to support all its activities. Additional duties include reviewing subdivision water supply plans submitted by counties, licensing water-well drillers, inspecting non-federal dams, and rehabilitating diversion dams and irrigation ditches. 72-2-1 *et seq.* NMSA 1978.

- 6) The New Mexico legislature created the Interstate Stream Commission (“ISC”) in 1935 and gave it broad powers to investigate, protect, conserve, and develop the state’s water supplies. Its separate duties include protecting New Mexico’s right to water under eight (8) interstate stream compacts and ensuring the state complies with each of those compacts, as well as developing and promoting regional and statewide water planning. In my role as the State Engineer, I serve as the Secretary of the ISC. I also stand, *ex officio*, as New Mexico Commissioner on the Rio Grande Compact Commission and the Costilla Creek Compact Commission. Further, the Governor appointed me as an alternate Commissioner for the Colorado River Compact and Upper Colorado River Basin Compact. In addition to those compacts, I am responsible for New Mexico water administration assuring compliance with the other five compacts to which New Mexico is a signatory: Pecos River Compact, Colorado River Compact, Canadian River Compact, Animas-La Plata Project Compact, and the Las Plata River Compact. To assure compact compliance, the ISC, whose staff are organized as an OSE Program, has an authorized staff of forty-eight (48) water professionals who analyze streamflow, reservoir, and other data on New Mexico’s interstate stream systems, conduct accounting and projects.

New Mexico’s Water Administration System

- 7) Under the New Mexico Constitution and statutory law, water in New Mexico belongs to the public. The New Mexico Constitution provides that beneficial use is the basis, the measure, and the limit of a water right, and that priority shall be given the better right. N.M. Const. Art. XVI, §§ 2-3. These key provisions were statutorily implemented through the 1907 Water Code, NMSA 1978 Chapter 72. New Mexico groundwater laws were codified in 1931. NMSA 1978 §72-12-1, *et seq.*
- 8) In 2003, the New Mexico legislature enacted the Active Water Resource Management statute (“AWRM Statute”), NMSA 1978, §72-2-9.1. The AWRM Statute enabled the State Engineer to promulgate regulations governing priority administration of water rights

regardless of the status of a water rights adjudication¹ in a given area. Accordingly, the State Engineer created and promulgated the Active Water Resources Management regulations (“AWRM Framework Rules”) in 2004. 19.25.13 NMAC. The AWRM Framework Rules provide rules of statewide applicability and allow for the adoption of specific rules that could be promulgated separately for individual Water Master Districts. A central provision of the AWRM Framework Rules defines types of priority administration to be used as circumstances dictate, including alternative administration based on water sharing agreements among affected water rights, if those agreements are acceptable to the State Engineer. 19.25.13.7(C)(1)-(4) NMAC. The State Engineer has the authority to impose priority administration whether or not district-specific rules have been adopted and despite any disputes about the relative priority of various groundwater rights.

The Proposed Settlement Agreement and Decree


- 9) The proposed Settlement Agreement and Consent Decree (collectively, “Consent Decree”) provide significant benefits to the State of New Mexico, including ensuring that New Mexico receives its full Rio Grande Compact (“Compact”) apportionment in the Lower Rio Grande (from Elephant Butte Reservoir to the New Mexico-Texas state-line), and also providing certainty to New Mexico regarding the amount of groundwater withdrawals New Mexico may take in the Rincon and Mesilla valleys while maintaining compliance with the Compact.
- 10) The Consent Decree is premised on New Mexico fulfilling certain obligations.
- 11) To provide clarity as to what comprises Compact compliance for New Mexico (in the Lower Rio Grande) and Texas, and to assure compliance with the Consent Decree, the Effective El Paso Index (“EEPI”) was developed. The EEPI is based on the hydrologic conditions and water use occurring during the D2 period (1951-1978). The EEPI will require adjustments to Rio Grande Project operations and accounting and is explained in the November 2022 declaration of Dr. Margaret Barroll.
- 12) In order for New Mexico to receive its full Compact apportionment of surface water through Rio Grande Project allocation, and meet the EEPI, New Mexico may be required to take actions to reduce depletions from aquifers connected to the Lower Rio Grande. New Mexico will also pursue other options to increase the supply of water available for its citizens and for satisfying the Consent Decree below Caballo Dam.

¹ There are eleven active stream system adjudications in New Mexico. Most involve complex legal, historical, and factual situations taking time and expertise to resolve. *State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation District et al.*, No. D-307-CV-96-888 (the “LRG Adjudication”) is ongoing and involves the determination the water rights of agricultural, domestic, and municipal & industrial users, as well as the United States’ Project rights.

- 13) New Mexico will administer water rights in the Lower Rio Grande to ensure compliance with the Rio Grande Compact and the Consent Decree, including annual and accrued Positive and Negative Departures and Triggers.
- 14) New Mexico has administrative tools and options to meet its obligations under the Consent Decree and is committed to using those tools and options to ensure it remains in compliance with the Consent Decree:
- a. Because New Mexico is a prior appropriation state, one administrative option is to curtail groundwater pumping by priority to ensure that the terms of the Consent Decree are met. However, there are additional tools that can achieve targeted reductions to ensure Consent Decree compliance as I describe below.
 - b. One of the tools New Mexico may implement is the acquisition of water rights and their permanent retirement in order to reduce depletions. This has been successfully implemented in New Mexico under settlement provisions on the Pecos River (on which New Mexico has an interstate compact with Texas and a Supreme Court decree requiring state line index deliveries). New Mexico has successfully retired over 20,000 acres of previously irrigated farmland on the Pecos River. That effort resulted in New Mexico accruing a Pecos River Compact credit of over 150,000 acre-feet.
 - c. New Mexico may employ temporary fallowing and conservation measures to meet shorter-term needs to reduce groundwater withdrawals. The ISC has demonstrated the feasibility of doing so through its Lower Rio Grande Groundwater Conservation Pilot Program with over 2,000 acres of irrigable land currently enrolled and fallowed. Further, because the OSE District 4 Office meters groundwater withdrawals and monitors the amount of irrigated acreage, it has the ability to monitor depletion levels and respond accordingly.
 - d. New Mexico has worked with, and will continue to work with, municipal water suppliers and users in the Lower Rio Grande to implement conservation measures, to maximize the benefits of regionalization, and to optimize the use of return flows and offsets to assure compliance with the Consent Decree for current and future conditions.
 - e. New Mexico has worked with, and will continue to work with, agricultural water users in the Lower Rio Grande to maximize the conservation of water and protect the health of the Mesilla and Rincon aquifers.

- f. New Mexico may import water to the Lower Rio Grande. The Interstate Stream Commission is currently reviewing potential water importation proposals.
 - g. Finally, as mentioned above, when voluntary and/or compensated measures are unavailable or insufficient, the State Engineer has the authority to curtail depletions through one or more of the forms of priority administration specified in the AWRM regulations. As set forth above in ¶¶ 8 and 14(a), New Mexico laws and regulations define how priority administration would be implemented.
- 15) While not all disputes among those with interests in Rio Grande water in New Mexico below Elephant Butte, including those with the United States, are resolved through the Consent Decree, the remaining disputes are intrastate in nature and are in the process of being resolved or can be resolved within New Mexico through the various administrative and legal forums that are available for that purpose, including issues being addressed in the LRG Adjudication. Moreover, as New Mexico has represented to the Special Master and the United States, it remains willing to reach solutions to the intrastate disputes between the United States and New Mexico through continued discussions and negotiations.
- 16) In addition to resolving long-standing conflict between New Mexico and Texas regarding the Rio Grande, entry of the Consent Decree and implementation of its provisions will facilitate interstate relations between Colorado, New Mexico, and Texas by providing a clear and comprehensive scheme for Compact compliance. I anticipate the Consent Decree will help the States to avoid future conflicts and will enable effective Compact compliance into the future.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of November 2022, at Albuquerque, New Mexico.


Michael A. Hamman, P.E.

