

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 JOHN LONGWORTH, 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**

February 3, 2023

I, John Longworth, 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 have worked for the New Mexico Office of the State Engineer (“OSE”) and the New Mexico Interstate Stream Commission (“ISC”) in various positions since August of 1998. Initially I conducted hydrologic studies on the Rio Grande and assisted in Rio Grande Compact administration. I then moved to the Pecos Bureau providing technical analysis for the ISC, and was a member of the collaborative federal and state technical teams analyzing Pecos River hydrology and operations to determine compliance with the Pecos River Compact. I was responsible for managing the administration of the Pecos River Compact (and its implementation through a United State Supreme Court Decree), and led the efforts to ensure New Mexico’s compliance with this compact and decree.

3. I thereafter progressed into leadership positions. I have held the positions of Engineer Advisor for the Rio Grande Compact, and Alternate Commissioner for New Mexico on the Upper Colorado River Compact and the Colorado River Compact. I have acted as Director of the ISC, Assistant State Engineer, and advisor to the New Mexico State Engineer. I have also been advisor to the Governors of New Mexico as well as representatives of New Mexico’s eight (8) interstate compacts on matters related to compact administration. Based these positions and through oversight of ISC staff, I have an understanding of how interstate water compacts are administered within New Mexico,

4. Since 2013 I have worked on the *Texas v. New Mexico* litigation as a consultant to the litigation team on historic and technical issues related to the LRG. Since about 2015 I have been involved in settlement negotiation on behalf of the ISC Director and the State Engineer. Over the past several years I have worked closely with the technical teams evaluating the LRG, the issues in this litigation, and potential actions in the LRG to address various concerns. For instance, before the United States withdrew from the settlement discussions, I was the OSE contact working with Reclamation to investigate sources of water to import into the LRG. I testified at the trial of this matter on November 8, 2021.

5. In my current role as Senior Advisor to the ISC Director and the State Engineer I have focused primarily on the Lower Rio Grande. I created the Pilot Program for the lease of groundwater as part of the OSE’s management of groundwater use and depletions in the LRG.

6. I have a Bachelor of Science in Civil Engineering (1992), from the State University of New York at Buffalo, and a Master of Science in Environmental Engineering (1999), from New Mexico State University. I am a registered New Mexico Professional Engineer, License # 17161.

7. Based on my experience with compacts and in compact administration, I have been asked to review and respond to some of the allegations and opinions relating to the specificity in the Consent Decree as expressed by the United States and its declarants in the United States' Memorandum in Opposition to Compacting States' Joint Motion to Enter Consent Decree, Dkt.

754 (“U.S. Memorandum”). For purposes of this Declaration, I have reviewed the declarations of Allie W. Blair, P.E., Ph.D., Michelle Estrada-Lopez, J. Phillip King, P.E., Ph.D., and David Palumbo.

8. In their declarations, the individuals identified in ¶ 7, above, presented their experience as water managers in some position or another. However, the notable area of expertise that is absent from the declarants is any experience in the administration of interstate water compacts. This lack of experience and insight shows in the substance of their opinions.

Administration of Interstate Water Compacts

9. The United States’ declarants complain generally about the “vagueness” or “lack of specificity” of the Consent Decree. In making these complaints, the United States misunderstands the nature of compacts and decrees. Interstate water compacts reflect agreements between States that apportion shared water supplies. A compact or decree therefore needs to contain the instructions and information necessary to divide the water between the compacting states. I have reviewed the Consent Decree presented in this case and it contains sufficient detail to fully understand the apportionment. In fact, it contains more detail and data about the Index than many compacts with which I am familiar.

10. As long as it describes the apportionment, a compact or decree itself does not need to contain all of the details and mechanics of compact administration and accounting to accomplish the agreed-upon apportionment. Instead, the minutiae of compact administration and accounting are frequently developed by individuals from the affected states with technical expertise who work collaboratively to devise specific mechanisms to implement the apportionment provided in the compact or decree. Those details are typically presented to the compact commission for approval. Additionally, individual States may choose to create their own internal administration methods to ensure compliance with compact provisions. I have personally been involved in both of these processes.

11. In my experience, it is not uncommon for States to develop itemized spreadsheets or guidance documents to track compliance, assign responsibilities, or establish the timing of particular compact events. These detailed documents do not change, modify, or conflict with the apportionment set out in the compact or decree. Rather, they provide an efficient way to carry out the specified division of water. Many of the issues raised by the declarants for the United States fall into the category of details that would typically be included in this type of an implementing document.

12. As an example, the Rio Grande Compact Commission (“RGCC”) approved the Rules and Regulations for Administration of the Rio Grande Compact. The Rules and Regulations (“Rules”) comprise a companion document to the Compact and help administer and implement the apportionment. An example of the interplay between the Compact and the Rules can be found in Article II of the Compact which governs Compact gaging. See JT-0409 at JT-0409-0078-79. Section 1 of the Rules, in turn, provides specifics for the implementation of the Article II Compact mandates. See JT-0409 at JT-0404-0089. (Footnotes reflect that this section has been amended twice.) While the Rules do not modify Article II, they provide additional details for how gages should be equipped to carry out the intended apportionment in the Compact.

13. At least initially, the Consent Decree accounting and related obligations will be undertaken by the RGCC Engineer Advisors (“EAs”). The EAs are individuals who have the requisite water administration technical skills to monitor, evaluate, advise, and report on Compact operations. They are in contact throughout the year on Compact issues; they meet in person at least annually to evaluate voluminous compilations of data and reports from various agencies, compile that information, and present reports and advice to the RGCC. Among the many issues they report on is compact accounting. See JT-0409-0006-42. It is anticipated that the EAs will be responsible for compiling data, tracking Compact compliance pursuant to the Consent Decree, and reporting.

The Consent Decree and Its Appendices Provide Sufficient Information to Guide Reclamation in Its Implementation

14. Mr. Palumbo’s concerns that the Consent Decree “does not provide adequate operational guidance for managing a project of this size” (Palumbo Decl. ¶ 18) miscomprehends the role of the Consent Decree. The Consent Decree establishes the methods to measure and ensure Compact compliance. It is not intended to provide detailed Project management instructions to Reclamation.

15. Other complaints about the “vagueness” of the Consent Decree and/or the fact that it does not specifically address certain potential situations (e.g., Estrada-Lopez Decl., ¶¶ 20, 24; Blair Decl., ¶ 18) are difficult to understand given the changing and flexible nature of complex water management schemes. There is a significant amount of guidance in the Consent Decree on the division of water between the Compacting States. The United States and the Districts have experienced water management professionals who have been implementing complex water administration concepts for decades (such as the 2008 Operating Agreement and Operations Manual). Based on the detailed information on the Index, they are capable of evaluating the Index and constructing implementation measures as are necessary to ensure that Project operations and Project accounting are not inconsistent with the apportionment established in the Consent Decree.

16. Further, the United States’ assertions that exhaustive and particularized guidance is lacking disregard the fact that administration of the Project has accommodated many changes since its inception. For example, Project accounting and allocation methods were changed in the 1940s, normal delivery was determined in the 1950s, a new allocation method was published in 1985, and another new allocation method was published in 2008. See NM-EX-100, Barroll Expert Report (10-31-2019) at §§ 6.1, 6.2, 6.3. Those adjustments were based on changed conditions and/or needs, and the solutions were determined based on experience with the Project.

17. The Consent Decree and its associated documents provide a scientifically grounded tool to protect the Compact apportionment as Project operations respond to climate change and predicted water supply shortages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2023 in Santa Fe, New Mexico

John Longworth, P.E.

