

No. 141, Original

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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STATE OF TEXAS,  
*Plaintiff,*  
v.  
STATE OF NEW MEXICO and STATE OF COLORADO,  
*Defendants.*

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Office of the Special Master

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**MOTION BY THE STATE OF COLORADO TO APPROVE NON-WAIVER  
AGREEMENT**

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COMES NOW the State of Colorado, by and through the Attorney General and the undersigned counsel of record, and makes this motion for the Special Master to accept for filing and approve the attached Non-Waiver Agreement. In support thereof, the State of Colorado states as follows:

Colorado has conferred with the parties regarding the substance of this motion and none oppose it. All of the parties to this original action have entered into the Non-Waiver Agreement. The parties agreed to file the agreement with the Special Master and seek to have it entered as an order.

Colorado is named as a defendant party in both the Complaint filed by Texas and the Complaint in Intervention filed by the United States. However, neither pleading asserts a claim for relief against Colorado.

The Federal Rules of Civil Procedure are not mandatory, but guides only, in an original action brought by a State in the United States Supreme Court. Sup. Ct. R. 17.2; see *Arizona v. California*, 460 U.S. 605, 614 (1983). Colorado, therefore, is not bound by the provisions of the Federal Rules of Civil Procedure 12 and 13. The parties have agreed that Colorado is not required to file an answer or to assert claims at this time.

The parties have further agreed that Colorado does not waive its right to assert defenses or claims regarding the Rio Grande Compact at a later time. The other parties likewise do not waive their rights to respond to any such later asserted defenses or claims. The parties have documented their respective reservations of rights in the Non-Waiver Agreement.

By not requiring defensive pleadings and associated claims, the Non-Waiver Agreement allows the litigation to remain focused on the claims brought by plaintiffs or New Mexico. This will conserve the parties', and the Special Master's, resources. It will help to keep this proceeding from venturing into compact interpretations not needed to resolve the original dispute.

WHEREFORE, the State of Colorado requests the Special Master to accept for filing the Non-Waiver Agreement and enter it as an order of the Special Master in these proceedings.

Respectfully submitted this 21<sup>st</sup> day of May 2018,

FOR THE ATTORNEY GENERAL



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Respectfully submitted this 21<sup>st</sup> day of May 2018,



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