



April 20, 2018

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Via e-mail and U.S. Mail

Honorable Michael J. Melloy
Special Master
United States Circuit Judge
111 Seventh Avenue, S.E., Box 22
Cedar Rapids, IA 52401

Re: *Texas v. New Mexico and Colorado*, No. 141 Original

Dear Judge Melloy:

We write on behalf of our respective clients El Paso County Water Improvement District No. 1 (“EPCWID” - Maria O’Brien, Counsel), and Elephant Butte Irrigation District (“EBID” - Samantha R. Barncastle, Counsel) (collectively “the Districts”) regarding the proposed Case Management Plan submitted by the parties on April 13, 2018. EPCWID and EBID are the beneficiaries in Texas and New Mexico respectively, of the water supply from the Rio Grande Reclamation Project (“the Project” or “Rio Grande Project”). In Texas, EPCWID supplies irrigation water from the Project to approximately 69,000 acres of land and a substantial portion of the water supply to the City of El Paso. In New Mexico, EBID supplies Project irrigation water to approximately 90,640 acres of land.

In granting the United States’ motion to intervene in this case, the Supreme Court held that the Rio Grande Project and Rio Grande Compact are “inextricably intertwined.” *Texas v. New Mexico and Colorado*, No. 141 Orig., 138 S.Ct. 954, 959; Slip Op. at 5 (2018). Because of the interrelated nature of the Project and the Compact, the Court also recognized that the Districts have unique status and interests vis-à-vis the Project and thus the Compact due to their contracts with the United States for water supply and Project operations. 138 S.Ct. 954, 959; Slip Op. at 2-3, 5. (Project effectuates Compact deliveries to Texas through “Downstream Contracts”); *see also* April 13, 2018 Letter from the United States at 1. To date, the Districts’ role in this case has been recognized as *amici curiae*. This may evolve as the case develops based on the Districts’ unique status as the only *amici* to have contractual rights and obligations with regard to Rio Grande Project water supply and operations. The issues to be litigated in this case directly impact the Districts’ interests. *See, e.g.*, April 13, 2018 Letter from the State of New Mexico at 3 (the Operating Agreement for the Rio Grande Project as among the United States and the Districts “will be a significant part of this litigation”). The United States and the Districts are the only parties to the Operating Agreement.

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Both Districts reserve their respective rights to pursue renewed motions to intervene as this case proceeds. However, at this point in time the Districts have been identified as *amici* with unique interests whose participation in the case should be permitted in a manner to efficiently and effectively allow full exposition of the issues.

The April 13, 2018 Case Management Plan submitted by the parties proposes conditions and procedures for participation of *amici curiae* which are unnecessarily restrictive and will likely result in inefficiencies and unnecessary filings. See, e.g., April 13, 2018 Case Management Plan at Section 3 and Appendix C, 4.1 (requiring *amici* to seek permission of the Special Master for any filing; precluding *amici* participation at depositions). In lieu of the approach and procedures proposed in the Case Management Plan with regard to District participation, the Districts propose the following:

1. The Districts should not be required to seek permission from the Special Master prior to making filings in this case.
2. The Districts may attend depositions but such participation shall be limited to the attendance of one counsel for each District, as well as one expert per District at depositions of technical experts.
3. The Districts should be served with all pleadings, notices and discovery requests (but not discovery responses). A process for sharing discovery responses should be established so as to make responses available to *amici curiae*, at the cost of the *amici curiae* requesting them (the undersigned propose a document sharing database).
4. The Districts should be entitled to attend and participate in status conferences and hearings held by the Special Master.

We greatly appreciate the opportunity to provide these comments to your Honor.

Respectfully yours,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.




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-AND-

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