

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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**THE STATE OF TEXAS'S NOTICE OF EXHIBIT  
DISCLOSURES AND OBJECTIONS**

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STUART L. SOMACH, ESQ.\*  
ANDREW M. HITCHINGS, ESQ.  
ROBERT B. HOFFMAN, ESQ.  
FRANCIS M. GOLDSBERRY II, ESQ.  
THERESA C. BARFIELD, ESQ.  
SARAH A. KLAHN, ESQ.  
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\**Counsel of Record*

October 5, 2021

In response to the Special Master's September 16, 2021 Order regarding Remote Trial Proceedings, the State of Texas provides the following exhibit disclosures and objections for Gary Esslinger. As of this filing, the parties anticipate that Mr. Esslinger is expected to testify on October 6, 2021. Accordingly, the State of Texas provides the following:

**Attachment 1:** The Gary Esslinger direct-examination exhibit index, which identifies the State of New Mexico's objections.

**Attachment 2:** The Gary Esslinger cross-examination exhibit index, which identifies the State of Texas's objections.

All exhibits, indexes, and related exhibits have been uploaded to Box.com and are available for the parties to access and download. In an effort to resolve these objections, the parties have met and conferred in good faith. While these objections remain unresolved, the parties believe many of these concerns will be resolved with additional context.

Respectfully submitted,

Dated: October 5, 2021

s/ Stuart L. Somach  
STUART L. SOMACH, ESQ.\*  
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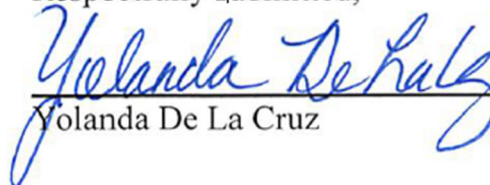
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**CERTIFICATE OF SERVICE**

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This is to certify that on this 5th day of October 2021, I caused a true and correct copy of **THE STATE OF TEXAS'S NOTICE OF EXHIBIT DISCLOSURE AND OBJECTIONS** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

  
Yolanda De La Cruz

Dated: October 5, 2021

**SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE**

**SPECIAL MASTER**

<b>Special Master</b>	<b>Honorable Michael J. Melloy</b> <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E. Box 22 Cedar Rapids, IA 52401  Michael E. Gans, Clerk of Court United States Court of Appeals – Eighth Circuit Thomas F. Eagleton United States Courthouse 111 South 10th Street, Suite 24.329 St. Louis, MO 63102	<a href="mailto:TXvNM141@ca8.uscourts.gov">TXvNM141@ca8.uscourts.gov</a> (319) 432-6080  <a href="mailto:TXvNM141@ca8.uscourts.gov">TXvNM141@ca8.uscourts.gov</a> (314) 244-2400
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 (Service via Electronic Mail)

**PARTIES<sup>1</sup>**

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In the Supreme Court of the United States, Original No. 141  
*State of Texas v. State of New Mexico and State of Colorado*

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In the Supreme Court of the United States, Original No. 141  
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In the Supreme Court of the United States, Original No. 141  
*State of Texas v. State of New Mexico and State of Colorado*

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In the Supreme Court of the United States, Original No. 141  
*State of Texas v. State of New Mexico and State of Colorado*

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**New Mexico's Objections to Gary Esslinger's Direct Testimony Exhibits**

<b>Trial Exhibit</b>	<b>Trial Exhibit No.</b>	<b>ProdBeg</b>	<b>ProdEnd</b>	<b>Date</b>	<b>Subject/Title</b>	<b>Category (A, B, C)</b>	<b>Category B Objections (Cite Fed. R. Evid.)</b>	<b>Category C Objections (Cite Fed. R. Evid.)</b>	<b>Notes</b>
TX	Esslinger, Gary_Demo_01			2021	2021 EBID Org Chart w/ divisions	A			
TX	TX-0540	US0108795	US0108818	3/10/2008	2008 Operating Agreement for the Rio Grande Compact Project, dated March 10, 2008	<i>See note</i>			TX-0540 has been admitted as NM-2373. TX will refer during testimony to NM-2373, the admitted copy of this document.
TX	TX-0139	TX_DEPO-EX_00032925	TX_DEPO-EX_00032930	8/17/2020	Esslinger, Gary Exhibit from Deposition Testimony, Vol. 1 (8/17/2020) EXHIBIT GE-4: Lower Rio Grande Project Operating Agreement: Settlement of Litigation	A			
TX	TX-0242	TX_DEPO-EX_00078403	TX_DEPO-EX_00078426	11/9/1937	Lopez, Estevan Exhibit from Virtual Deposition Testimony, Vol. 2 EL EXHIBIT NO. 9: Contract dated November 9, 1937, between The United States of America and The Elephant Butte Irrigation District	<i>See note</i>			TX-0242 has been admitted as US-0367. TX will refer during testimony to US-0367, the admitted copy of this document.
US	US-0511	US0398706	US0398723	2/15/1979	Contract between the US and EBID for the transfer of the Operation and Maintenance of Project Works dated February 15, 1979	<i>See note</i>			US-0511 was admitted on 10/4/2021.
Joint	JT-0426	NM_00063486	NM_00063487	2/16/1938	1938 Downstream Contract	A			
Joint	JT-0444	NM2_00004445	NM2_00004472	9/1/1947	Conover, Clyde S. Preliminary Memorandum on Ground-Water Supplies for Elephant Butte Irrigation District, September 1947	A			
TX	TX-0698	JRP_00015286	JRP_00015502	1954	C. S. Conover, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, Geological Survey Water-Supply Paper 1230, Prepared in cooperation with the Elephant Butte Irrigation District, Department of the Interior (GPO, 1954)	A			

**State of Texas's Objections to New Mexico's Cross-Examination Exhibits to Gary Esslinger**

<b>Trial Exhibit</b>	<b>Trial Exhibit No.</b>	<b>Prod Beg</b>	<b>Prod End</b>	<b>Date</b>	<b>Subject/Title</b>	<b>Category (A, B, C)</b>	<b>Category B Objections (Cite Fed. R. Evid.)</b>	<b>Category C Objections (Cite Fed. R. Evid.)</b>
Joint	JT-0206	BOR0011030	BOR0011089	12/31/1951	Rio Grande Project History 1951 2 of 6.pdf	C		TX Objects-Foundation. Fed. R. Evid. 602
Joint	JT-0418	EBID_NM_003736-0001	EBID_NM_003736-0010	8/5/2003	Emergency Authorization to Use Existing Wells as Supplemental Wells to EBID in Case No. LRG-1776	B	TX Objects: Relevance; Cumulative. Fed. R. Evid. 401 & 403	
Joint	JT-0444	NM2_00004445	NM2_00004472	9/1/1947	Conover, Clyde S. Preliminary Memorandum on Ground-Water Supplies for Elephant Butte Irrigation District, September 1947	A		
NM	NM-0095	EBID_NM_001584-0001	EBID_NM_001584-0002	3/26/2012	Early Release to Mexico in the Rio Grande Project	B, C	TX Objects: Hearsay; Relevance. Fed. R. Evid. 802, 401 & 403	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-0098	EBID_NM_001631-0001	EBID_NM_001631-0004	5/24/2013	O&M Budget for the Rio Grande Project 2014	B	TX Objects: Relevance; Cumulative. Fed. R. Evid. 401 & 403	
NM	NM-0120	EBID_NM_002699-0001	EBID_NM_002699-0007	4/13/2007	Allocation of Rio Grande Project Water/Carryover Storage	B	TX Objects-Cumulative. Fed. R. Evid. 403	
NM	NM-0175	EBID_NM_009809-0001	EBID_NM_009809-0482	6/27/1933	Minutes of the Regular Meeting of the Board of Directors of IBID Held July 3, 1933	B, C	TX Objects: Hearsay; Relevance. Fed. R. Evid. 802, 401.	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-0176	EBID_NM_009810-0001	EBID_NM_009810-0610	1/3/1950	EBID Board Meeting Minutes 1950 - 1958	B, C	TX Objects: Hearsay; Relevance. Fed. R. Evid. 802, 401.	TX Objects-Foundation. Fed. R. Evid. 602

**State of Texas's Objections to New Mexico's Cross-Examination Exhibits to Gary Esslinger**

<b>Trial Exhibit</b>	<b>Trial Exhibit No.</b>	<b>Prod Beg</b>	<b>Prod End</b>	<b>Date</b>	<b>Subject/Title</b>	<b>Category (A, B, C)</b>	<b>Category B Objections (Cite Fed. R. Evid.)</b>	<b>Category C Objections (Cite Fed. R. Evid.)</b>
NM	NM-0177	EBID_NM_009812-0001	EBID_NM_009812-0505	12/30/1964	Minutes EBID Board Meetings 1965 -1972	B, C	TX Objects: Hearsay; Relevance. Fed. R. Evid. 802, 401.	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-0190	EBID_NM_020413-0001	EBID_NM_020413-0077	10/11/2016	EBID Comments on Channel Maintenance Plan of River Management Plan	B, C	TX Objects: Relevance; Cumulative. Fed. R. Evid. 401 & 403.	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-0258	Esslinger-DepoEX0008_00001	Esslinger-DepoEX0008_00022	8/31/2015	Motion of Elephant Butte Irrigation District for Leave to File Exhibit dated 8/31/2015	B, C	TX Objects: Relevance. Fed. R. Evid. 401.	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-0517	NM_00132970	NM_00132999	6/4/2007	A Coordinated Well Meter Program in the Lower Rio Grande Basin - PPT	B	TX Objects: Hearsay. Fed. R. Evid. 802	
NM	NM-0571	NM_00166841	NM_00167042	7/11/2008	Historical Abstract Regarding Elephant Butte Irrigation District's Conjunctive Management	B, C	TX Objects: Hearsay; Relevance; Cumulative. Fed. R. Evid. 802, 401 & 403	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-0656	NM_00260156	NM_00260162	7/15/2016	IBWC Sediment Study Request July 2016.pdf	B	TX Objects: Relevance; Cumulative. Fed. R. Evid. 401 & 403.	
NM	NM-0683	NM_00293475	NM_00293576	3/8/2004	EBID Emergency Application for the Permit to Use Supplemental Wells to Supplement Ground or Surface Waters	B, C	TX Objects: Relevance; Cumulative. Fed. R. Evid. 401 & 403.	TX Objects-Foundation. Fed. R. Evid. 602

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<b>Trial Exhibit</b>	<b>Trial Exhibit No.</b>	<b>Prod Beg</b>	<b>Prod End</b>	<b>Date</b>	<b>Subject/Title</b>	<b>Category (A, B, C)</b>	<b>Category B Objections (Cite Fed. R. Evid.)</b>	<b>Category C Objections (Cite Fed. R. Evid.)</b>
NM	NM-0700	NM_00299238	NM_00299248	12/13/2007	Rio Grande Project Allocation Issues	B, C	TX Objects- Relevance; Cumulative, Waste of Time. Fed. R. Evid. 401 & 403.	TX Objects- Foundation. Fed. R. Evid. 602
NM	NM-2290	US0168184	US0168187	3/5/2003	Rio Grande Project Accounting and Operating Rules for the 2003 Irrigation Season	A		
NM	NM-2331	US0238553	US0238556	10/18/2007	Congressional Inquiry	B	TX Objects- Relevance; Cumulative, Waste of Time; Hearsay. Fed. R. Evid. 401, 403 & 802	
NM	NM-2373	US0384146	US0384168	3/10/2008	2008 Operating Agreement for the Rio Grande Project	A		
NM	NM-2376	US0387213	US0387216	1/25/2012	Regarding Email About Alleged Illegal Pumping of Water from Rio Grande Canalization Project	B	TX Objects- Relevance; Cumulative, Waste of Time; Hearsay. Fed. R. Evid. 401, 403 & 802	
NM	NM-2418	US0536767	US0536780	7/23/2009	Bureau Functions in RGP	B, C	TX Objects- Relevance; Cumulative, Waste of Time; Hearsay. Fed. R. Evid. 401, 403, & 802	TX Objects- Foundation; Authenticity. Fed. R. Evid. 602 & 901(a)

State of Texas's Objections to New Mexico's Cross-Examination Exhibits to Gary Esslinger

Trial Exhibit	Trial Exhibit No.	Prod Beg	Prod End	Date	Subject/Title	Category (A, B, C)	Category B Objections (Cite Fed. R. Evid.)	Category C Objections (Cite Fed. R. Evid.)
NM	NM-2458	US0590091	US0590092	1/19/2018	Meeting notes: Elephant Butte Irrigation District - 01/09/2018	B, C	TX Objects-Relevance; Cumulative, Waste of Time; Hearsay. Fed. R. Evid. 401, 403, & 802	TX Objects-Foundation. Fed. R. Evid. 602
NM	NM-2475	US0673075	US0673125	6/17/2014	River Sediment Management Alternatives	B	TX Objects-Relevance; Cumulative, Waste of Time; Hearsay. Fed. R. Evid. 401, 403 & 802	
NM	NM-DEMO-003				Comparison of District Allotment Data 2008-2020	A		
NM	NM-DEMO-004			9/29/2021	Allocation and Diversion Charge Data	A		
TX	TX-0139	TX_DEPO-EX_00032925	TX_DEPO-EX_00032930	10/1/2008	Lower Rio Grande Project Operating Agreement: Settlement of Litigation	A		
US	US-0445	US0779176	US0779192	6/16/2014	Letter from EBID re: Collaborative Sediment Control Initiative	B	TX Objects-Relevance; Cumulative, Waste of Time; Hearsay. Fed. R. Evid. 401, 403 & 802	