IN THE
SUPREME COURT OF THE UNITED STATES
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STATE OF TEXAS, Plaintiff,	:	COURT OF APPEALS DOCKET NO. 24-141
v.	:	HEARING DAY 2
STATE OF NEW MEXICO and STATE OF COLORADO, Defendants,	:	
UNITED STATES OF AMERICA, Intervenor.	:	

James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
October 1, 2025
Commencing at 9:00 a.m.

BEFORE THE HONORABLE D. BROOKS SMITH, SPECIAL MASTER

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Proceedings taken stenographically and prepared utilizing computer-aided transcription

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(Call to order of the court.)

THE COURT: Good morning. I hope that everyone had a good evening and that we are prepared to proceed with closing addresses with using a procedure in this that in some ways mimics a trial's procedure.

I elected yesterday, as I thought about it, to probably go in reverse order for the closing addresses, that is reversed from the order in which the openings were provided. But I think you all had planned to the contrary. So I wanted to know if there is any objection to doing that, alters your plans in any way.

So since Texas went first yesterday, I believe they would be known as number four today. And I believe New Mexico went -- was it last yesterday? Is that right?

MR. WECHSLER: Yes, Your Honor.

THE COURT: So that puts you in the first position this morning.

MR. WECHSLER: That's correct, Your Honor. But I understand Mr. Snodgrass has some business that he would like to raise.

THE COURT: Very well. Mr. Snodgrass.

MR. SNODGRASS: Thank you, Your Honor. Tom Snodgrass for the United States.

At the end of the day yesterday appropriations for the Department of Justice lapsed. Absent appropriation, Department

of Justice employees are prohibited from working except in very narrow circumstances, under 31 U.S.C. 1342, as I forecasted yesterday.

The U.S., therefore, moves for a stay of these proceedings until appropriations have been restored to the Department of Justice.

THE COURT: Understood. That stay will be denied. To grant it would be to the great prejudice of many, many people. And these comments are not directed toward you, of course, Mr. Snodgrass, but for the record.

Expenses in this long and important piece of litigation, this original jurisdiction matter under Article III, are, without going through records and calculating, inestimable to me. But anyone familiar with the law would know that they are enormous. And here we are at the end of the trial with not only a government shutdown, but with a decision communicated to you, Mr. Snodgrass, by the Department of Justice to put on the brakes.

These days, in the public's view, we almost seem devoid of politest. Manners are not followed by some of -- by many of our leaders, and so throwing around words that seem cavalier and even unthoughtful is the order of the day. So I'll get in line.

The Department's decision in this regard is just plain stupid. It does not take into account the costs and interests

of three states of this union, of municipal subdivisions, and of the citizens of Texas, New Mexico, and Colorado, not to mention the United States' interest, which is what has led us here this time.

So I'm placing on the record my reaction, which is not one of anger, which was contemplated overnight -- may account for the fact that it wasn't the best night's sleep I've had in a while, in fact -- but that the decision could be made -- I repeat the word -- in such a cavalier fashion is an insult to this Court and to Article III judges, and most importantly, the Supreme Court of the United States, which has original jurisdiction over this matter.

So this places you, I know, in a difficult position, Mr. Snodgrass. And I'm sorry that you are here carrying this weight that has been assigned to you, dictated to you, but we must proceed. And we will proceed with this matter in any way you suggest pursuant to your orders, which means that if you are not working, I can't force you to say anything nor do I care to do so. And for that matter, I can't require you to stay in your seat here.

That said, as far as I know, nothing has occurred out there in either the government or the body politic that has deprived you of your citizenship. So if you wish to remain in the courtroom and be seated, you're free to do so. If you care to remain at counsel table for the government, you are free to

do so, as far as I am concerned. I will leave all of that up to you, fully cognizant of the fact that you are acting pursuant to direction, pursuant to orders.

And I believe I've said about as much as I have to say. But because where we are right now, even though it may lead to silence from the government on this matter, that does impinge on, at least, the procedural rights of the parties that appear here and have worked so hard with you and others over the years. So I should give each of counsel of four of the three states an opportunity to speak as to their response before we move any farther in this matter.

I would say that while reason -- I use that word in singular to reflect the application of principles of rationality -- seem so often to exist places other than Washington, D.C., that there is one option here of hoping that reason prevails, that there are no real advantages to a shutdown and many negatives on the other side that, assuming again that reason prevails and the government is reopened and the Department of Justice is as well, there could, of course, be a submission prior to any final recommendation from the special master to the Court, which is to say that I would keep the record open. I refuse a stay, but I would keep the record open in this matter pending the recent unpleasantness and pending its resolution, and close the record when the government has had an opportunity to provide anything it wishes

to provide.

I hope that sounds reasonable, but under the circumstances it's the only damn thing I can think of to do.

MR. SNODGRASS: Thank you, Your Honor, for your comments. With the motion being denied, I will continue my role as counsel for the United States today.

THE COURT: Thank you very much, sir. I appreciate that.

Mr. Wechsler?

MR. WECHSLER: Thank you, Your Honor.

Good morning, Your Honor.

THE COURT: Good morning.

MR. WECHSLER: As I start, with all due respect, I sincerely hope that this is the very last time that I address the Court in this case. That's because we've reached what we hope is a resolution.

THE COURT: I have that effect on a lot of people. When I was younger, it was usually women. But these days, it's everybody.

MR. WECHSLER: I'll start this morning with addressing the question that you posed at the end of the day yesterday, I'll then return to why we think the Consent Decree is consistent with the Compact, and I'll follow that by looking at each of the agreements briefly to help explain why New Mexico considers the settlement package to be fair and reasonable.

And last I'll explain why we think that is a workable and lasting resolution of the disputes in the Lower Rio Grande.

Before addressing those issues, however, I think it's helpful to think about the Consent Decree in light of the Supreme Court's view of settlements. The Court has explained that interstate water disputes "present complicated and delicate questions that necessitate expert administration, rather than judicial imposition of a hard and fast rule." That's from a 1943 case *Colorado v. Kansas*.

And in the first *Texas v. New Mexico* case on the Pecos River, the Court said that "time and again we have counseled States engaged in litigation with one another before this Court that their dispute is one more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of representatives of the States, which are vitally interested, than by proceedings in any court however constitutional."

With the Consent Decree, the parties have done exactly what the Court has advised. They have worked cooperatively to address a complex problem.

Turning to the question that you posed at the end of the day which we understood to be generally to what extent we think you should include a description of the entire settlement package beyond just --

THE COURT: Let me stop you right there. I'm sorry to

interrupt.

MR. WECHSLER: Please.

THE COURT: But this relates to the initial comments you've made before you just began to transition.

I suppose it is fair to say that while settlement generally as a matter of legal and judicial policy, is, as a matter of principle, looked upon favorably, settlement of interstate disputes of this nature are not ordinary settlements. They would seem to be subject perhaps even to a higher level of scrutiny than we might apply, we being the judge, in my usual capacity rather than as this special master.

Would that be a correct way to characterize the kind of view?

MR. WECHSLER: I view that as correct, Your Honor. I mean, ultimately agreement as to the division of resources is something that comes under our compact clause under the United States Constitution. That's why what we're here today arguing about is the -- you know, the meaning of the compact as opposed to just an agreement.

THE COURT: I might have phrased my question more accurately by saying that most of the time, not all of the time, there are many exceptions, but this is not like the settlement of an action involving private interests on the part of the parties before the Court.

MR. WECHSLER: That's correct.

THE COURT: And that's the difference. But I would even go so far as to say that it's not like the proposed settlement of a matter between a government agency, let's say, a federal government agency and some private entities either.

Would you say that there is some higher level of scrutiny called upon -- that calls upon us, judges, masters, in a dispute of this kind?

MR. WECHSLER: I think it's true that the Court has been careful in evaluating settlements of interstate water disputes. Again, they arise under the Constitution, ultimately.

The Court's guidance comes in two cases that I would point you to. The first is *New Hampshire v. Maine*, which had to do with a border dispute. And there the Court was careful to say that, so long as there is an ambiguity, that is, they must stay true to the underlying document -- in that case a decree, here a compact -- the Court must carefully make sure that it's -- there is ambiguity and that it's consistent with that underlying document. But so long as the parties, the States are filling in that ambiguity, then they are entitled to come up with a reasonable solution, so long as that solution is supported by the underlying evidence and the -- in this case the compact itself.

And we also know -- the other case I would point you to is -- another guidepost would be the *Kansas v. Nebraska*

Enforcement case in 2016. And we know there the Court previously approved of a settlement but it was not a consent decree. It was brought back before them, and the Court evaluated very carefully that settlement and ultimately said that a component of it was not consistent with the terms of the compact, and therefore they struck down that particular provision.

So I think it's accurate to say that the Court does have a responsibility to carefully evaluate the Consent Decree so long as that its filling in an ambiguity that's consistent with the Compact, and the States can make that reasonable determination.

THE COURT: Thank you. I didn't want to interrupt the flow of your presentation. Sorry.

MR. WECHSLER: Please, Your Honor, at any time, if you have any questions, I'd be very happy to answer those. I'd much rather address the things that are on your mind than walk through a prepared statement.

Yesterday you did raise a question of to what extent we think you should include description of the settlement package. And explaining why the Consent Decree is fair and reasonable, we think an important component of that is understanding it in the context of the overall settlement package, and therefore New Mexico supports including a description of the entire settlement package because we think that's important context

for the Court to understand. And we think that it's likely that some of the justices may take an interest to that. I mean, the case has been before them a couple of different times.

We would ask that if you include that description that you emphasize that the agreement -- the description of those agreements are really only intended to inform the Court, but that the only one of the agreements that the Compacting States are actually asking be approved and entered is the Consent Decree. And of course, we trust your judgment in making that clear to the Court.

THE COURT: Yeah. And this is something for a writer, for a judge, for a scrivener to determine. But I mean, I've even thought in sufficient detail about this to the extent that those other agreements are so very important to those parties who have entered into them but that they are not going to be questions presented to the Supreme Court, that maybe they are the subject of reference beneath the line, below the line, as we say, in a footnote, as opposed to being actually in the body of the opinion.

Just to convey to you that I have wanted to be able to describe the agreement in a way that doesn't have distractions in it. And I fear the references to those other agreements, important as they are to the ongoing work of all of you, may be distractions in a sense.

MR. WECHSLER: I appreciate that. And that certainly sounds like the right focus to be able to say the Consent Decree is what I'm providing my report on, but as context, here are these other very important agreements.

I certainly, on New Mexico's behalf, where we are in the center of all of those agreements, and we have expressed to you that we consider all of them to be part of a single settlement package.

I also wanted to address something quickly that you said at the end of the day where you were recognizing that you're relatively new to this case. If you find it helpful, given how old the case is, special masters at other proceedings that I've been involved in, and I point specifically to Special Master Thompson in the *Montana v. Wyoming* case, before he issued reports, would provide a draft to the parties, not to make any comments about substance, but only to ensure that the factual statements --

THE COURT: Accuracy.

MR. WECHSLER: -- were accurate and correct. And I'm sure the parties -- we certainly have been working in partnership for quite some time, and I'm sure that if that were a procedure that would be helpful to you, then we could work together to produce a single set of comments.

THE COURT: I had wondered about that. Thank you.

MR. WECHSLER: So let me change subjects and discuss,

again, briefly why we think that the Consent Decree is consistent with the Compact.

Yesterday I mentioned some reasons in my opening, including the inflow-outflow methodology, which is consistent with Articles III and IV, the adoption of new gages, which is expressly allowed.

In this closing I want to focus on two issues. And the first is, why measuring Texas's apportionment at the state line is consistent with the Compact, at least from New Mexico's perspective.

At the outset of this case, New Mexico filed a motion to dismiss, and our theory was that Texas did not raise a valid compact claim because the Compact only required New Mexico to deliver water at Elephant Butte Reservoir, and from there the Project took care of the delivery. But that motion was denied and we accept that that has legal significance. And that decision was important because it established that Texas is entitled to receive an amount of water at the state line within its borders and that amount is protected by the Compact. The Index is consistent with that finding. It measures Texas's apportionment at the El Paso Gage, thus assuring that Texas citizens realize the benefits of the Compact.

The second issue that I want to emphasize we think is consistent with the Compact is the D2 baseline. And I mentioned yesterday that that baseline is consistent with the

long history of performance, and you can look to the summary judgment order and briefing on that particular issue if you're looking for further discussion. I'll offer a second reason why we think the D2 baseline is consistent with the Compact. And that is all of the parties agree that one purpose of the Compact was to ensure that the farmers in both states received the full benefit of project deliveries.

The States contemplated protecting those Project deliveries while also allowing the development of other resources, but it wasn't known in 1938 what the limits of those resources were because the Project wasn't fully built out. In his summary judgment order, Special Master Melloy indicated that the baseline condition was akin to a 1938 condition in the sense that it was entered into in 1938 and intended to protect the Project in that way. But he rejected the idea that the States intended to lock in depletions as they existed in 1938. Instead, he indicated that the history of groundwater use in both states was relevant to the determination of what that baseline condition was, and that's why we went to trial on that baseline condition, to determine how much groundwater could be used in both states while allowing the Project to still deliver a full supply.

Now, the language of the Compact contemplates releases from Caballo for, quote, irrigation demands. On this question, it's important that, as Mr. Snodgrass pointed out yesterday,

that the Project has determined that a full supply is 3.024 acre-feet per acre. Now, we also know that the Compact contemplates what it calls a "normal release" of 790,000 acre-feet. That's important because the D2 method, as developed by Reclamation, allows the Project to deliver a full supply, that 3.024, to all Project lands with a release of less than what's contemplated by the Compact, the normal release of 790,000, while also allowing that D2 level of pumping. In order words, a D2 baseline is consistent with the Compact because it allows a full supply to be delivered with a normal release of 790 contemplated -- 790,000 acre-feet contemplated by the Compact.

So returning to reasons that the settlement package is fair and reasonable and addresses all of the claims in this case, I'll start with the Consent Decree. It resolves the competing claims regarding the equitable apportionment. It clarifies the ambiguity identified by Special Master Melloy in the Compact of the baseline, and it measures the flows in a way that ensures that Texas receives its share of Rio Grande water. And it does so in a way that New Mexico appreciates because it preserves our discretion to manage our own affairs to comply with our obligations.

Turning to the Groundwater Settlement Agreement, that agreement addresses the United States' claims of Project interference, and it does so in ways that New Mexico very much

supports. The depletion reduction provisions, which you've heard quite a bit about, will align the depletion level with the D2 baseline that's used in the Consent Decree and also used in the Operations Settlement Agreement.

As you heard from Dr. Barroll yesterday, New Mexico welcomes that change because it will help us to meet our obligations under the Consent Decree.

Turning to the enforceable hydrological conditions that are present in that Groundwater Settlement Agreement, those provisions really reflect a shared concern of New Mexico and the United States about the health of the aquifer. One concern that we raised in this case was that by virtue of both drought and the 2008 Operating Agreement, New Mexico farmers were forced to rely more heavily on groundwater, and that caused significant aquifer storage loss, something that New Mexico was monitoring carefully.

The enforceable hydrologic conditions address this issue. They address both the United States' concerns as well as New Mexico's lasting concerns. And as explained yesterday by Director Riseley-White, they strike a reasonable balance between groundwater use and reliance on groundwater during times of drought on the one hand and protecting the aquifer for future use on the other.

On the Operations Settlement Agreement, as you heard from Ms. O'Brien and Mr. Domenici yesterday, the 2008 Operating

Agreement charged EBID and, therefore, New Mexico water users with all departures, negative departures from that D2 level, the D2 curve. That is, it attributed certain depletions to New Mexico regardless of whether the depletions occurred in New Mexico. And it reduced credits from -- it charged New Mexico with credits that were not benefitting EBID.

I say that not to raise old disputes, but to say this is an issue that we think is addressed in the Operations Settlement Agreement. It addresses New Mexico's claims by making changes to Project operations and accounting that New Mexico believes are consistent with the Compact and that address our concerns, whether or not Reclamation and the Districts agree. That's part of the compromise.

The Operations Settlement Agreement also allows for allocation transfers that provide an important tool for New Mexico to comply with its obligations, while also providing guardrails that ensure the division of water below Elephant Butte stays within the accepted 57:43 division.

It also addresses a number of related disputes, including important disputes in the Lower Rio Grande adjudication and in other federal district court cases, and it does so in a way that we think protects the New Mexico farmers and ensures that they can maintain farming, which is, of course, important -- greatly important to the State.

And if I may, I want to offer four reasons why the

settlement package we think will last -- will result in a lasting resolution.

First, the settlement package provides clear guidance. It provides clear and administrable rules that each party understands, so that each party can understand its rights and obligations. Those rules adopted changing circumstances, so they are applicable and workable under a range of hydrologic conditions.

Second, as you heard yesterday, the settlement package harmonizes Compact compliance with Project operations. You heard a number of ways it does so, including utilizing the same D2 Period data in the Consent Decree and the Operations Settlement Agreement, both utilizing the EEPI, albeit in somewhat different ways, and both utilizing charge points near the state line. One reason for disputes in the past was because of some dissonance between those -- the Compact and Project operations, and we think this will help to minimize differences and disputes going forward.

Third, the settlement package requires and encourages transparency. Again, another reason that disputes have arisen in the Lower Rio Grande stems from a lack of understanding. By requiring New Mexico to present its Lower Rio Grande management plan and Reclamation to provide a project annual report, as well as other reporting obligations, mostly from New Mexico, the settlement package will help the parties understand each

other better and hopefully avoid disputes.

And, fourth, the settlement package will strengthen the partnerships in the Lower Rio Grande by requiring the parties to work together through compact accounting or evaluating the condition of the aquifer is but one example. These working relationships will promote interstate harmony between Texas and New Mexico and facilitate cooperation between New Mexico and the United States.

I started my opening statement yesterday with expressing gratitude, and I want to end there as well. I'm grateful to Your Honor for encouraging the parties to continue to pursue the settlement, and to Judge Boylan for his patience and his guidance. I'm grateful to all of the parties and amici for their willingness to compromise on very hard issues, and for their commitment to finding creative and workable solutions. And I'm grateful to each of the individuals involved from all of the teams for their professionalism and friendship.

Special Master Melloy once observed that he could not envision a better solution to the dispute than the previous version of the Consent Decree. I'm happy to report today that I think he was wrong. While I have great respect for Special Master Melloy, the current settlement package that the parties have reached is better because it is more complete. You talked yesterday about Franco Harris. You might think about the settlement package as the Immaculate Reception.

THE COURT: Why didn't I get an opportunity to say that?

MR. WECHSLER: In that, one of the -- you know, the original -- the original attempt came something even better.

So this settlement package resolves the dispute in a way that addresses more issues, provides more certainty, and affords more solutions. And unlike the previous Consent Decree, no party objects to the entry of either the Consent Decree or the Decree of Dismissal.

I'm confident the settlement provides the foundation for a lasting resolution of decades of disputes in the Lower Rio Grande, and we urge you to recommend that the Court enter the two proposed decrees.

Thank you.

THE COURT: Thank you very much.

I believe our order of events then would have Colorado next. Am I correct?

MR. WALLACE: Good morning, Your Honor. Once again, Chad Wallace for the State of Colorado.

I'd like to thank you for allowing us the opportunity to address Your Honor and give our side. This has been a long saga and often folks have wondered, why is the State of Colorado hanging around insisting on speaking?

THE COURT: That's one of the first things I asked when I was given this assignment was, Why?

MR. WALLACE: And yet here we are. And I'll get to that, and I'll try to keep my comments brief and try to avoid repeating the statements that I know my colleagues will eventually address.

So moving to that, why are we here? What is Colorado most interested in? And the primary point, I think, is to acknowledge the hard work of everyone here today. We have all managed to come to an agreement to recommend the entry of the Compact Decree and the Decree of Dismissal, and I think that's a tremendous feat.

I would stress that that is what we're all asking Your Honor to recommend to the Supreme Court, that it enter those two items. Throughout the course of this proceeding, we also have learned about the other negotiated agreements that are very important to parts of the parties, but I would stress that the other two Compacting States are not a party to those other agreements. And that is -- that is very important because that -- that's one of the questions that you asked us to address yesterday. And I think that your recommendation to address that below the line, as it were, provides the right balance.

Colorado would be concerned if somehow the Court felt an invitation to construe those agreements or to weigh in in any way, and that would give us pause. So a way that you can come up with to ensure that that doesn't happen I think helps

preserve the agreement that we've all come to today.

I think to reiterate my colleague Mr. Wechsler's comments, the Compact Decree does provide a reasonable interpretation of the Rio Grande Compact. And there is a higher burden for us to achieve. It has to be consistent with the Compact. It cannot vary what the States have already gotten out of that Compact, which is the equitable apportionment of all the waters, from the headwaters in Colorado to Fort Quitman, Texas. And that's a difficult task because we have to, you know, again, ourselves stay within the lines, and we can't come up with a new distribution of water.

You know, there are various cases that instruct the Court on how to do that on the States' options for dividing natural resources. From *Collier v. Adams* to *Kansas v. Colorado*, we've basically got two choices. We can either enter into an agreement through a compact, which is a constitutionally allowed agreement among the States, or approach the Supreme Court for an equitable apportionment decree.

In this case we already have a compact. That compact remains in place; therefore, our settlement is informing that compact. That's also consistent with the *Kansas v. Nebraska* and *New Hampshire v. Maine* cases where there was already a -- in one case a water apportionment, a division of water in place or a boundary in place.

When we have these ambiguities, as they arise, Special Master Melloy had identified some ambiguities for trial, and this agreement resolves those among all of the Compacting States.

So for the reasons enumerated by Mr. Wechsler, I would just say that Colorado also believes that the Compact Decree is consistent with the compact and it should be recommended to the Court that it enter that.

I mentioned yesterday two important points for Colorado coming up with a resolution, and this agreement keeps those in place. Colorado maintains its ability to administer, that is curtail water rights as necessary both for its priority systems within the state and for making its Compact obligations towards New Mexico and Texas by delivering water to the Colorado-New Mexico state line.

It also allows us to continue using our Compact rules, that's in the declaration of Mr. Cotten, how we have implemented rules which serve actually a very similar purpose to some of these negotiated agreements. We have rules that allow essentially agreements among water users to replace injurious depletions, and we also have rules that require us to maintain the aquifers within Colorado's Rio Grande Valley.

It may not be a coincidence that some of the agreements the other parties have reached are aimed at achieving the same goals. So we have managed without interstate litigation within

Colorado to come up with some of the same mechanisms that the United States and New Mexico have reached related to this case, and I think that's a noble thing.

Also, the Compact Commission is retaining its role in administering the Compact and keeping official records. I think that's another important point through the Compact Decree, through the Effective El Paso Index we will be adding an additional gage. Those numbers along with the associated calculations will be done by the engineer advisors and approved by the Compact Commissioners. And that will allow the States to know that each of them are receiving the water apportioned to them under the Compact and meeting the Compact obligations.

I would also let -- I believe Mr. Snodgrass will be following me, and he'll certainly have more to say about the U.S. and how it's negotiated its Compact claims and resolved those. I think that -- again, Colorado has not weighed in on that, but these other agreements, I think, help explain the motivation for both New Mexico and the United States to enter the -- ask the Court to enter a Decree of Dismissal. And I think that helps move us forward in getting to where those States need to be.

With that and the other questions that you've already asked of Mr. Wechsler I think I have covered what you want to know. If you have any other questions of me, I'd be happy to answer any of them.

THE COURT: I don't think I have any at this stage. Thank you very much.

MR. WALLACE: Thank you.

THE COURT: Mr. Snodgrass.

MR. SNODGRASS: Thank you, Your Honor. Tom Snodgrass again for the United States.

One thing I wanted to start with today was my recital of the many federal attorneys who have been involved in this case over the years. After the hearing, I recognize one very notable omission was Fred Liu, Assistant to the Solicitor General. Fred has been critical to this case. He's argued before the Supreme Court on this case, and I wouldn't be here without him.

So there is no dispute here that the Court can enter the Decree of Dismissal dismissing the United States' Compact claims against New Mexico without reviewing or approving the United States' settlements with New Mexico and the Districts. The United States and New Mexico have agreed in writing to the dismissal and Texas and Colorado do not oppose.

There are also no fees due to the clerk. The basic requirements of Supreme Court Rule 46.1 have therefore been satisfied for entry of the Decree of Dismissal as a matter of course without further inquiry into the underlying basis of those settlement agreements.

The proposed Decree of Dismissal is just that, a decree

dismissing the United States' Compact claims with prejudice, without review or approval of the underlying settlements.

Now, that said, the United States recognizes, nonetheless, their relationship between its settlements and the separate Consent Decree of the Compacting States. Of particular relevance, our settlements provide tools that will help facilitate New Mexico's compliance with the Consent Decree. And they also show some of the practical effects of the Consent Decree, including the minimum acreage of groundwater rights that will need to be retired to meet New Mexico's obligations under that Consent Decree.

An understanding of our agreements is therefore helpful to understanding how New Mexico will meet its Consent Decree obligations even though the Court will not be approving our agreements.

It's also true that the effectiveness of our agreements is contingent upon the approval of the Consent Decree, even though the Court, again, will only be approving one Consent Decree. So again, it makes some sense for me to discuss both sets of agreements.

And finally, we recognize the issues that you directed the parties to discuss in your July 25th order. Part of this is discussing how the United States' concerns with the decree previously proposed in 2022 have been addressed.

So I'll plan to start today by discussing the practical

effects of the United States' agreements and how they are fair and reasonable. Critically, the agreements address the United States' central concern, Project interference from groundwater pumping while allowing continued but reduced pumping and compensation for retired rights.

I'll then discuss how the agreements are consistent with the Compact and other relevant federal law, including how nothing in the Compact prohibits the agreements and how the agreements are specifically made to conform to federal reclamation law.

And, finally, I'll conclude by discussing the States' Consent Decree and the reasons the United States no longer objects. Of particular importance, the States have now addressed all the concerns that the United States previously raised through the 2022 proposed decree.

So starting with the practical effects of the United States' agreements with New Mexico and the Districts and how those agreements are fair and reasonable, the agreements will do numerous things. As you've heard throughout these proceedings, a central requirement of the groundwater settlement is that New Mexico must reduce depletions by 18,200 acre-feet per year by purchasing groundwater rights from willing sellers and subsequently retiring those rights.

As Dr. Ferguson testified, the 18,200 acre-feet in depletion reduction is equivalent to the approximate increase

in depletions that have occurred since the D2 Period from 1951 to 1978. If New Mexico were to meet its depletion reduction obligations solely by retiring groundwater on lands with both surface and groundwater rights, it would permanently retire groundwater on approximately 9,240 acres.

By comparison, there are approximately 88,000 acres of irrigable lands within EBID. So that's a little bit over 10 percent of those lands. Critically, farmers will be fully and fairly compensated for the purchase and retirement of those groundwater rights. This is something that would not occur if New Mexico were simply to reduce depletions by strict priority administration in a fair and reasonable means of addressing interference from groundwater pumping on Project deliveries.

And conversely, the agreement also allows continued groundwater use on the remaining lands with groundwater rights in New Mexico that New Mexico does not purchase subject to certain safety safeguards. This allowance for continued groundwater use is critically important to EBID and the continuation of irrigated agriculture in New Mexico, including to supplement Project deliveries during multiyear droughts.

But this allowance is subject to limits, particularly the UVDR3 and CAB3 metrics that you've heard about, to protect Project deliveries and achieve stable or gaining aquifer levels. Again, this is a fair and reasonable resolution of United States' Compact claims allowing continued groundwater

use but with guardrails to protect long-term Project viability and aquifer health.

The agreements further protect the Project through New Mexico's commitments regarding Project water rights. New Mexico agrees to support a 1903 priority for the Project water right, which is a senior priority in the Lower Rio Grande. New Mexico also agrees to support the right of EBID members with combined and surface and groundwater rights to divert and pump up to 3.024 acre-feet per acre under that senior priority.

Again, as you've heard, this total -- combined total matches the amount that Reclamation first determined in 1951 constitutes a full project allocation. The difference now is that diversions under the Project's senior priority are not limited to surface deliveries in recognition of the increased reliance of EBID farmers on groundwater use during the D2 Period supplement Project deliveries.

Given the undisputed hydrological connection between surface and groundwater in the Rio Grande, this agreement is fair and reasonable. It protects the ability of the Project to use and reuse return flows by adding groundwater pumping as a mechanism to recapture these return flows under the senior priority.

Finally, the operation settlement seeks to ensure that water is measured, allocated, and used in a manner that is fair, accurate, and lawful. The agreed-upon operational

changes will improve the measurement and accounting for EP1's diversions in the El Paso Valley to ensure that each District gets its fair share of water, improve the accuracy of the D2 equation and Project allocations by shifting to a multilinear D2 equation, which was something that was important to New Mexico, ensure that EP1 will continue to benefit from its investment in the American Canal Extension by continuing the ACE Credit, and authorize allocation transfers between the Districts to facilitate New Mexico's compliance with the Consent Decree in a manner that is consistent with reclamation law and that compensates EBID.

The allocation transfer provisions coupled with the implemented contract are particularly critical for both EBID and New Mexico. They provide a mechanism under reclamation law for New Mexico to purchase water from EBID when it needs more water to satisfy its Consent Decree obligations beyond the depletion reduction obligation under the groundwater settlement.

Of course, the settlements do not give the United States everything that it would have sought if it had litigated this case. Its litigation position was that the Compact only allows a baseline level of pumping that existed when the Compact was signed in 1938. But the agreements are a fair and reasonable compromise, and compromise is inherent in any settlement.

The agreement, again, gives the Project additional

protections beyond mere continuation of the D2 condition through the UVDR3 and CAB3 metrics and the support for a senior priority for the Project water rights.

These safeguards, which I referred to in my opening as a D2-plus condition, did not exist during the D2 Period. And EBID and farmers are fairly compensated for the retirement of groundwater rights and additional purchases of Project water for negative allocation transfers through the implementing contract. In this way, groundwater pumping in New Mexico may continue but at a reduced level that is consistent with Project viability and the long-term health of the aquifer and that fairly pays EBID for use of Project rights in New Mexico.

And Project operations remain in control of Reclamation and the Districts, which was very important to the United States. This all promotes Reclamation's ability to effectively manage the Project, satisfy its treaty and contractual obligations, and support the continuation of irrigated agriculture in both New Mexico and Texas. This is a fair and reasonable compromise.

The agreements are also consistent with the Compact in other relevant federal law. As discussed, the United States only seeks to dismiss this claim, not approval of the agreements as a Consent Decree. But even were the United States seeking Court approval of its settlements, it could readily meet the applicable standard.

Under *Firefighters*, the relevant question for a consent decree is not the relief the Court would have granted after an adjudication on the merits. Instead, the Court asked whether federal law prohibits the parties from creating by agreement the obligations set forth in the consent decree. In other words, if the parties agree to take action that conflicts with or violates the law upon which the compact was based.

Here, nothing in the Compact or other federal law prohibits the United States from agreeing to dismiss its Compact claims in exchange for the commitments made by New Mexico. The Compact and other federal law do not prohibit New Mexico from agreeing to reduce depletions by 18,200 acre-feet, do not prohibit New Mexico from agreeing to further regulation if the CAB3 or UVDR3 conditions are triggered, do not prohibit New Mexico from agreeing to a senior priority for the Project water rights or any of the other obligations set forth in our settlements. In fact, the allocation transfer provisions of the operations agreement and the implementing contract are specifically made to conform those transfers to federal reclamation law. Because there are no legal prohibitions against the United States' settlements, the agreements are consistent with the Compact and other federal law.

So turning now to the Compacting States' Consent Decree. The United States previously objected to the Consent Decree that they proposed in 2022, as discussed in our exceptions

brief filed with the Supreme Court. But each of those concerns have now been addressed. To be clear, the United States is not a party to the Consent Decree. So it's still the case today, as it was in 2022, that the United States is not a consenting party to the decree. Nevertheless, we do not object to a decree, as the States have now addressed our three prior concerns through the changes that they have made to the Consent Decree.

First, the 2022 proposed decree purported to dispose of the United States' Compact claims without its consent. The current Consent Decree fixes this by leaving the United States free to pursue its Compact claims against New Mexico, as the United States has now done through separate settlement agreements. If the current Consent Decree did purport to dispose of our claims, then we would have objected, just like we did in 2022, but this issue has now been addressed.

Second, the 2022 proposed decree sought to impose obligations on the United States, including by purportedly allowing the States to direct allocation transfers among the Districts. The current Consent Decree addresses this, fixes this by carving out the United States from its terms, and not purporting to require the United States and federal agencies to take any action. Of course, the United States has separately agreed, through its settlements, to allocation transfers, but it has done that voluntarily and in conformance with

reclamation law and in a manner that provides fair compensation to EBID.

And third, unlike the 2022 proposed Consent Decree, the current Consent Decree does not force the United States to accept the States' definition of Compact compliance reflected in that decree. Though the States have agreed to what the Compact requires among themselves, their Consent Decree leaves the United States to pursue its own remedies and its own definition of Compact compliance. And, again, the United States has now done just that. It's the United States' settlements with New Mexico and the Districts and the Decree of Dismissal, not the Consent Decree, that resolved the United States' Compact claims.

The United States also agrees that the Consent Decree is consistent with the Compact and other federal law. Again, Courts undertake a limited inquiry when considering whether the Consent Decree is consistent with the law underlying the complaint. The Court does not adjudicate the case on the merits, decide what relief it would have granted, or resolve unsettled legal questions.

In cases of interstate disputes, the Court stated in *New Hampshire v. Maine* that a consent decree may be entered as long as it is not wholly contrary to the evidence. This is not a high bar.

The Compact has already divided water between the

States. The Consent Decree spells out what Texas will do, how Texas will enforce that division. Here, the States have adopted a permissible interpretation of the Compact. As with the United States' settlements, nothing in the Compact or other federal law prohibits the Compacting States from agreeing to the Consent Decree in a manner by which it will enforce its Compact claims. The United States has always recognized that Texas may separately settle its own claims without specifying the terms of settlement, so long as it doesn't resolve the federal claims or impose obligations on the United States.

That is what the Consent Decree does here. The Consent Decree reflects the States' agreement on how water should be divided between Texas and New Mexico, as sought by Texas's complaint, and it does so in a manner that the Compact does not expressly prohibit.

Nothing in the States' agreement affects or conflicts with the express commitments in the Compact, including New Mexico's delivery obligation into Elephant Butte Reservoir under Article IV of the Compact. Everyone agrees that remains a central Compact requirement. And nothing from -- nothing in the Consent Decree -- or nothing in the Compact prohibits the States from agreeing among themselves that they will determine Compact compliance based on a D2 condition measured at the Texas-New Mexico state line.

The difference between these agreements and those

proposed in 2022 is that they do not resolve the United States' Compact claims or impose obligations on the United States. Instead, leave the United States to pursue its own measure of Compact compliance, as it has now done through its separate settlements.

For all these reasons, the United States' agreements with New Mexico and the Districts are a fair and reasonable resolution of its Compact claims against New Mexico and are consistent with the Compact, and the United States does not object to the now-revised proposed Consent Decree.

THE COURT: Thank you very much, Mr. Snodgrass. In a very organized fashion you have responded to the issues that were at the heart of the concerns, of course, in the previous visit to the Supreme Court in this case, and certainly your presentation here has been responsive to my inquiry previously by order looking ahead to this event. So I thank you very much.

MR. SNODGRASS: Thank you, Your Honor.

THE COURT: Mr. Somach.

MR. SOMACH: Your Honor, Stuart Somach on behalf of the State of Texas.

You know, I could say nothing at this point in time simply because this isn't the usual kind of closing. Everybody is in agreement. Everybody got up before me. They said all of the things that I would otherwise have said, so I simply adopt

everything they've said. But I've been involved with this too long to just sit down now.

THE COURT: Neither am I surprised nor would I make such a request.

MR. SOMACH: I will, however, try not to repeat. And so I want to take a little different tack. I have noted over the last day or so and actually, quite frankly, over many months as we put this settlement together, and yesterday kind of highlighted the fact that there has been a lot of focus on the settlement agreements between the United States, New Mexico, and the Districts, and I think, actually, if you were to look, much less discussion of the Compact Decree.

THE COURT: That was my reaction as well.

MR. SOMACH: Yeah, and I -- and, of course, Texas isn't a party to the -- to those agreements. So I wanted to kind of characterize this. This goes a little bit to the question you left us with yesterday and your discussion earlier about dealing with these things below the line. But I did want to say that the two motions will really carve out two paths to the same end. And they do it in quite different ways and, interestingly enough, they don't conflict with one another. In fact, they complement one another.

You know, the Compact claims of Texas, which started and kicked this whole thing off, were against New Mexico. They had nothing to do with the United States. They had nothing to do

with Colorado. The claims were made in the context of an interstate compact that involved Colorado, but with respect to below Elephant Butte, New Mexico, and Texas.

In response to our petitions, as Mr. Wechsler has just said, New Mexico defended by saying, you know, if Texas has a problem, they should come into New Mexico state court, New Mexico state engineer adjudication, and make complaints, and we can adjudicate that within New Mexico pursuant to New Mexico state law.

That argument was rejected by the Supreme Court when it -- and, in fact, in the first special master's report, he dealt with those issues in some length, recommended that the motion be denied, and the motion was, in fact, denied. And that had the effect of elevating the lawsuit again to one dealing with interstate compacts and the laws dealing with the resolution of interstate compact disputes. So they are not state law type of disputes.

So as the case comes before us, the problem, I think, is to distinguish between what the Compact does and what the Consent Decree does, and the resolution of what is an interstate dispute involving parties primarily within the state of New Mexico.

The division between the watered states, whether by compact, equitable apportionment, or legislation, as it's done at the Colorado River, are quite different from normal water

rights disputes. And I recognize that the Court is from the East and not routinely involved in Western water right matters, but let me provide a little bit of water 101 from a Western perspective.

In general, water right is a right to use water. It's not a grant of the corpus of the water. It's merely a use right. It's a use of right is what it's called under the law, and it is based upon a grant by the state within which the water flows.

The state right to water is different than that. It's not a right of use. It actually is an ownership of the corpus of the water that is within the state. And what the State then does is grant a right to use that water to those within the state, its citizens, in order to allow them to put that water to a reasonable beneficial use, whether that be municipal use, irrigation use, or any other of the acceptable uses in the West.

What a State gets in an apportionment in an interstate compact dispute or in an equitable apportionment dispute or through legislation is a defined amount of water, and that water is what we call an apportionment. So States are apportioned a certain amount of water. And what the State then does with that water apportioned to it is to grant the right to use that water to those within the state.

And so in this case, the waters that Texas possesses

from the Rio Grande and that New Mexico possesses to the Rio Grande pursuant to compact is then granted out to other users, and in this case, those other users within New Mexico include EBID and the United States for the Reclamation Project. You've heard a lot about, in those side agreements, how that's going to be administered. You even saw that they're going to go in and amend the adjudication within New Mexico of those relative rights that New Mexico has granted to the United States, EBID, and others.

Well, within the state of Texas -- and the point I wanted to make about that is, Texas has nothing to do with that. It doesn't want anything to do with that, and it has nothing to do with that. That is totally something that occurs within New Mexico.

Within Texas, the rights to use water were granted and the complaint actually talks about -- talks about those. It indicates that those rights were adjudicated in 2006 and they were granted to EP No. 1, and they were granted to the United States for the use of the waters apportioned to Texas under the Compact. And that's paragraph 22 of the complaint.

And the grant of that water to United States and to EP No. 1 was based upon an assumption, and that assumption was that New Mexico wouldn't interfere with that, that New Mexico wouldn't impede or impair the amount of water apportioned to Texas, which, in turn, was granted to EP No. 1 and the United

States for use by groundwater depletions above the state line.

And, of course, the breach that we brought in terms of the Compact was not one that said -- was not a water rights complaint, it was, rather, an apportionment complaint saying that you've taken the water that was apportioned to us and, therefore, we're injured and the way the State is injured is the fact that -- is the point that those that it allocated water to, they've granted rights to, could no longer use that water because it wasn't there.

And you asked -- you started to ask the question of Mr. Skov yesterday about the difference of before and after. That was the subject of testimony in the first-phase trial, and I would point you to the testimony of John Balliew, who runs the El Paso utility that provides city water, and he talked about what the deprivation of water that otherwise was granted to Texas had in terms of the problems that that utility had in terms of operating.

And also, the testimony of Mr. Art Ivy, who was -- you were introduced to yesterday. He's the president of the EP1 board and a farmer. And he talked about the impact that deprivation of supply had on his ability to farm, and the mechanics and the things he had to do to address those problems.

The other problem that is created -- and this is the kind of interesting overlay -- is that depriving Texas of Rio

Grande water that's been apportioned to it by extension also deprives the United States of water intended for Project operations within Texas.

And so you have this overlay that if you can't operate the Project, which operates both in New Mexico and Texas, then the ability to deliver water into Texas, deliver the apportionment plus the water that has been granted for use within Texas, creates not only a breach of the Compact, but it also has a more fundamental water rights injury in terms of those that have been granted water by the State can no longer use that water.

The United States' claim, you know, is one that focuses on New Mexico water right administration and interference with the ability to deliver water that's been allocated. And I'm using a different term here. That water hasn't been apportioned to the United States. It has been allocated to the United States by the respective States for use within New Mexico and Texas from the apportionments of those States.

Now, the United States' claims of interference may, in fact, rise to Compact claims as was described in the 2018 Supreme Court decision if certain things happen. If, for example, the New Mexico treaty obligations impair, or if the United States' role with respect to Compact delivery, as described by the Supreme Court, is interfered with. But, nonetheless, those -- those claims that the United States has

to water are derivative of the grants or allocations that the States have given them pursuant to their apportionments.

You know, in further complicating the whole thing is the fact that the water we're talking about is physically the same water. The water that is subject to water rights administration in New Mexico and in Texas is the exact same water that's also subject to the interstate compact apportionments.

But analytically, I think we need to keep these distinctions in mind. Our view of the litigation is framed by the Compact. And the analysis of and the resolution of the Compact complaint is found not in these other agreements. It's found solely within the proposed Compact Decree. That we think, you know, that the Court ought to mention the side agreements because they are relevant. But they are not relevant to the resolution of the Texas complaint. They are almost irrelevant to the resolution of the Texas complaint. The only thing that is relevant to the Texas complaint is the Compact Decree, which we've said, and I'm not going to repeat, but other than saying that it's consistent with the Compact and it's fair and reasonable.

Those ancillary agreements -- and I said this at the outset -- attempt to do the same thing as what the Compact Decree does. And I think what you heard was that those settlement agreements -- and I think I wrote this down --

provide a tool --

(Ring tone playing.)

MR. SOMACH: Okay. Excuse me. I apologize.

THE COURT: Wasn't my type of music anyway.

MR. SOMACH: That the settlement agreements provide a tool for New Mexico to do certain things to bring it in line with what the United States would like.

It's interesting, though, that those settlement agreements don't have an end goal. I mean, we know what the goal is, but the goal is never stated as a concrete thing.

The Compact Decree takes a different path to get there, and what it does is it establishes the goal. It guarantees that Texas will get 43 percent of the water below Elephant Butte Reservoir, but it leaves to New Mexico how that's going to occur.

And the reason for that comes all the way back to what I said. The only way that's going to happen is through New Mexico water right administration. That's the only way it can happen. Texas has no ability, desire, or interest in intruding on New Mexico's administration of water within New Mexico. All Texas is interested in is, is a guarantee that the water will be delivered into Texas. That is a different way of getting at the same end.

We think that the settlement agreements complement that because they do provide the tools for New Mexico to do that.

And really it is rational and it is reasonable for the United States to be looking at those. Because the United States can and does operate within New Mexico, it has the means to monitor what New Mexico is doing in that regard.

That's very distinguishable from what Texas has. And I raise this only because it really is the difference between what we've put on the table as a resolution of a Compact-level dispute versus those settlement agreements, which really go, I will say either beyond or below the Compact and deal with the minutia of the administration of New Mexico's state law.

We hope that in our recommendation that that distinction is made so that there is no confusion and the Court doesn't get mired down in all of what's in the settlement agreement but rather focuses on what is in the Compact Decree.

If you have no questions or if you have questions, I'll be more than happy to answer them, but I have nothing further.

THE COURT: I had no questions. And I think everyone has touched on that fundamental point that you ended on, Mr. Somach, which is that the -- the special master's report concentrate or to be, perhaps, trite about it, keep an eye on the ball, and the ball is the Compact Decree, the compact agreements. And as important as those collateral agreements may be, they're not the focus.

MR. SOMACH: If you allow me -- before I sit down, I would like to thank you, thank Judge Boylan. If I were to

catalog all of the New Mexico lawyers that have worked on this case over the years, add all of the lawyers from the United States that have worked on this case, add all of the lawyers we've had working on this from Texas, there would not be enough room in this courtroom. And I wanted to compliment --

THE COURT: Can you imagine the impact on the economy had this happened --

(Laughter.)

MR. SOMACH: You know, again, I'm probably the only one that has been in the same seat this entire time. But I have to tell you that the level of competence both by the special masters, including yourself, Judge Boylan, has just, you know, just been -- I've been at this for about 50 years now, and I'm telling you that the quality of lawyering and judging has just been superior.

And I wanted to just take my time to thank you and thank Judge Boylan and to thank all of those here, but also who have retired or whatever happened over the period of time. Thank you for the time you've allowed me today.

THE COURT: Thank you very much, Mr. Somach. And indeed this is an occasion for all who have played a role, past or present, in this litigation, and even if it was not -- even if it was not in the process of settlement negotiations or those negotiations that led to the successful result that we are looking at at this time, certainly deserve credit for their

service. Because if this litigation in my growing familiarity with it over the last 15 months or so has taught me anything and -- I don't really think taught me rather than reminded me, because I don't think that my appreciation for the importance of water has ever been as complete as it is now. All of us, whether we are mere consumers within a household or whether we're farmers, or even whether we are trout fishermen, bad trout fishermen, which is where I fall, but that is kind of my experience back in Pennsylvania, limestone trout streams and, of course, bigger rivers, as you've seen just a few blocks away from here.

So that's been a lesson for me in the course of this litigation. I grew up just almost across the street from a farm that was a dairy farm, and that's largely what Pennsylvania agriculture is, not entirely, but it's more a dairy farming state. And that's awfully different from the farming that the parties in this case know about and represent and what I had the opportunity, and it was an opportunity, a great opportunity to see when I visited down in El Paso, Texas and New Mexico just a few months ago.

I want to add my thanks to the work of Judge Boylan. Not only has he been invaluable, as you all know and probably know better than I, to the result here, he is, to say the least, a very steady hand. Judge Boylan and I did not know each other prior to my entry into this case.

But I think I mentioned when we all first met in Denver back earlier or last year that we have a mutual friend, a former chief judge in the District of Minnesota. And that judge presided as the chief, I believe, when Judge Boylan was a magistrate judge, and he became very familiar back at that time and before, and I probably was getting to know Judge Magnuson back then, too. And I owe him -- and I don't recall, Art, whether I mentioned this to you, but it was Paul Magnuson, Judge Magnuson, who I'm very grateful for introducing me to rule of law work in various other countries, and it was a great experience for me to have an opportunity to work with judiciaries and legal systems in other countries, previously war-torn countries in the Balkans. So it's amazing how life provides connections and opportunities to meet people along the way, whether it's internationally or whether it's domestically.

I thank Judge Boylan for his stewardship here. Our relationship has been such that he's kept me advised, very generally, of the progress, but not in any way relative to the specifics that you were all talking about, so I have been at arm's length from all of that, but aware when there was progress or where occasionally there was a snag where -- when there was a need for scheduling something. I thank him.

I am very grateful for the condition in which this matter was left, which is to say the procedural stage in which your case reached me. Granted, it did come to me from the

Supreme Court after the Supreme Court 5 to 4, common numbers there, but not in a case like this I should think, which resulted in my being appointed as a special master, but it had been previously handled by Special Master Melloy.

Mike and I had been friends for many years, and that is just an indication that the size and the friendship among the federal judiciary. It is an institution of which I am deeply proud and proud of my colleagues, proud of the friendships that I've had with so many of them and both -- Mike Melloy is one of them, and I've kept him, a couple of times, apprised of what's happening in this case, because I can assure you he has remained interested in any progress that has been made all along the way.

What has been accomplished here, that which I've said you could all be proud of, is something that every judge likes to hear. It is the very, very rare judge who does not value and does not deeply appreciate hearing the word "settlement."

I had a mentor when I was a district judge in the Western District of Pennsylvania, Second World War veteran, one of those members of the Greatest Generation. He was an excellent practical judge. He was a state trial judge for a while, as I was, and he was a great mentor to me. He took the -- he took the position -- and I don't think it was as extreme a position as this, but he liked to put it this way: that every time a judge has to take the bench, he's failed. By

which he meant, if you can't settle a case, you haven't done your job correctly.

I was never a good settlement judge, so I'm not sure I agree with the degree to which he suggested settlement is the most important part of your job. But you all accomplished that and you deserve the credit for that, along with Art Boylan.

I was also struck by the inevitable use of the word "compromise" a number of times, and in particular, one of you, and I can't remember who it was who said it, "We didn't get everything we wanted."

And I was reminded of a book that I read many, many years ago, had to be a number of years ago because I was an undergraduate at the time in a government course, and that book, I still remember it. It was written by a British political scientist, but it was entitled, "In Defense of Politics."

Politics is obviously not what we're about here, but maybe this is a book that ought to be read by some folks down in Washington these days. He related an anecdote about Abraham Lincoln, who was himself a great advocate of settlement, and there are quotations from Lincoln, the lawyer, suggesting how important settlement is to resolution of dispute.

And the author of this book related that Lincoln was once asked by an elderly woman, a constituent, why he looked so sad and so wise. And his response was, "Because I learned I

can't have everything I want." And the author of the book suggested that as the essence of all that is political, the best in politics, and also was so important to life is the recognition you can't have everything you want.

And that recognition clearly animated what all of you did accomplish, what you've been doing which led us to this place. So you don't need to hear me go forth anymore on those factors that all played into this.

But I want to thank also the folks in this building, particularly our court operations administrator, Greg Cane, who stepped in at the last minute when last Monday I was informed that our veteran court reporter who has been on hand for many of these proceedings was suddenly not available having previously confirmed to me that she was. So we thank Greg for the arrangements he made, and Cher for her being here the last couple of days. I hope you learned something about water like I did. Thanks so much. She wasn't expecting she'd be spending a good part of her week here.

Thanks to everyone within the clerk's office and within Greg Cane's operation for seeing that the courtroom was attended to. It's not usually populated this well. It's never really populated as well at the tables either. Those arrangements were made by Greg's team, too.

So my team, most of which is sitting over there, and I, will reconvene and get to the work of preparing a report for

the Supreme Court, which I guess will be beginning a new term come next Monday, if I'm looking at the calendar correctly, assuming they can get into their building and everything has been taken care of in D.C.

But thank you all for your hard work. I hope that folks back home, too, recognize what you've accomplished. And we have people here from two of the amici and who will convey to others what has happened and who has been responsible for the success that's been achieved. I know there is also a lot of work yet to be done, given the other agreements that have been discussed, but it provides a path forward.

So thank you to all of you. Thank you for your professionalism. Thanks for everything that's been accomplished here. And -- you really have your hand up? I'm not a teacher. I'm just an unpaid special master, so excuse me.

MR. SANDERS: I was just going to ask --

THE COURT: Come to the microphone because what you say won't be --

MR. SANDERS: Okay.

THE COURT: -- won't be on the record.

MR. SANDERS: Maybe it shouldn't be on the record. I was just going to say -- D.L. Sanders for Elephant Butte Irrigation District.

THE COURT: He's not Deion. Let me --

MR. SANDERS: And despite the fact that I'm not Deion, I would say thank you for letting us all finish this. We appreciate that. And to Tom and his crew, you know, thank God that we got to get this done today. On behalf of my clients, they have litigation fatigue, and they're like -- I think that everybody in this room breathed a fresh air when you came in today and Tom finished it off with us.

But want I wanted to ask you, really, is if I could take a picture over here in the corner just of this room of suits to kind of commemorate this for all these folks who worked so hard? Pete and I are latter-day comers. We get all the credit for settling this case. But I would like to take that picture, if you don't mind.

THE COURT: Stills are fine once I've recessed the --

MR. SANDERS: Okay. But I don't want you to recess because they will all stand up.

THE COURT: Well, can't you lasso them in to remain?

MR. SANDERS: Maybe as a last effort, if you could order them to stay seated once you leave?

THE COURT: Well, as long as it doesn't require Supreme Court approval, I'm happy to politely request it, that you cooperate with the picture being taken, as long as I'm not in it.

I remember this guy, trust me.

With that said, thank you all very much. This matter,

at least so far as all of you in the courtroom, is concluded.

(Proceeding concluded at 10:30 a.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ *Cherilyn M. McCollum*

Cherilyn M. McCollum, CCR, RPR
Official Court Reporter

Date: 4th day of October, 2025

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