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,

UNITED STATES OF AMERICA,
Intervenor.

JOINT MOTION OF UNITED STATES AND STATE OF NEW MEXICO TO DISMISS

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The United States of America and the State of New Mexico jointly move to dismiss with prejudice the United States' claims in this action and the counterclaims pleaded by New Mexico and to enter the proposed decree of dismissal ("Decree of Dismissal") attached as Attachment A. The basis for this motion is set forth below. Counsel for the United States and New Mexico have conferred with counsel for the other parties—the State of Texas and the State of Colorado—who represented that Texas and Colorado do not oppose this motion. Texas does not object to, and Colorado takes no position on, the agreements attached to this motion.

I. INTRODUCTION

In 2013, Texas filed this action against New Mexico over the waters of the Rio Grande pursuant to the original jurisdiction of the U.S. Supreme Court for suits between States. Texas claims that New Mexico is breaching the Rio Grande Compact ("Compact"), approved in 1938 among Texas, New Mexico, and Colorado (the "Compacting States"), by allowing excessive groundwater pumping in New Mexico that depletes the flow of the Rio Grande and interferes with Texas's Compact apportionment. The United States, as intervenor, likewise asserts that excessive groundwater pumping in New Mexico intercepts and interferes with the delivery of water from the Bureau of Reclamation's ("Reclamation") Rio Grande Project ("Project"). New Mexico brought counterclaims asserting that the

2008 Operating Agreement deprived New Mexico of its equitable apportionment and unjustly enriched Texas.

Reclamation releases water from the Project to satisfy treaty obligations to Mexico and for irrigation uses by Project contractors—the Elephant Butte Irrigation District ("EBID") in New Mexico and the El Paso County Water Improvement District No. 1 ("EPCWID") in Texas (the "Districts"). The Districts are amici curiae in the case.

Phase I of the liability trial took place in the fall of 2021. Phase II of the liability trial was then continued, pending review of the Compacting States' November 14, 2022 motion to enter a proposed consent decree ("2022 Proposed Decree"), Doc. 719, to which the United States excepted. The Supreme Court in June 2024 sustained the United States' exception and denied the States' motion for entry of the 2022 Proposed Decree on the ground that it would have disposed of the United States' claims without its consent. *Texas v. New Mexico*, 602 U.S. 943, 965 (2024) ("*Texas II*").

On remand, following months of intensive negotiations, the parties have reached a series of settlements that would resolve all claims in the litigation. The United States and New Mexico have agreed to a groundwater settlement agreement ("Groundwater Settlement Agreement"), and the United States, New Mexico, and the Districts have agreed to a Project operations settlement agreement ("Operations

Settlement Agreement"), together with two accompanying contracts between and among the United States, New Mexico, and EBID that implement portions of that agreement. The Compacting States have separately agreed to modify their previously proposed consent decree, which revised decree ("Consent Decree") addresses the concerns that the United States raised about the previous proposal.

The Groundwater Settlement Agreement requires New Mexico (1) to acquire and retire groundwater rights to reduce depletions from increased groundwater pumping in New Mexico that has occurred since approximately 1980; and (2) to take action if groundwater pumping in New Mexico interferes with Project deliveries by causing either of two metrics of Project efficiency and aquifer storage to fall below agreed-upon levels. Groundwater Settlement Agreement, §§ III.A, IV. The Groundwater Settlement Agreement addresses the principal concerns that caused the United States to intervene in this action—excessive groundwater pumping in New Mexico and resulting interference with Project deliveries.

The Operations Settlement Agreement and accompanying contracts, among other things, resolve New Mexico's concerns by making specified changes to Project operations and by allowing on certain conditions the transfer between the Districts of Project allocations—the amount of Project water available for diversion by each of the Districts—to address over or under deliveries to the state-line of New Mexico's obligation under the States' Consent Decree. Operations

Settlement Agreement, Part I.C.4. These provisions ensure that allocation transfers to facilitate New Mexico's compliance with the Consent Decree or to address over deliveries are voluntary, conform with Reclamation law, and are consistent with the Districts' rights and obligations under their respective reclamation contracts. The Operations Settlement Agreement also sets forth agreed-upon modifications to Project allocation and accounting procedures. *Id*. at Parts 1.C–I.C.4.

The United States and New Mexico now jointly move for dismissal of the United States' claims and the counterclaims pleaded by New Mexico. Under Supreme Court Rule 46.1, parties are entitled to an order of dismissal when they file an agreement in writing with the Court that a case be dismissed, subject to the payment of costs and fees. That rule supports the Decree of Dismissal without any further showings by the United States and New Mexico. Nonetheless, for informational purposes and without seeking approval of the Groundwater Settlement Agreement or the Operations Settlement Agreement (collectively, "Agreements"), the United States and New Mexico attach to this motion the Agreements and accompanying contracts, *see* Attachments B-E,[1] and explain their

[1] Attachment B is the Groundwater Settlement Agreement, Attachment C is the Operations Settlement Agreement, Attachment D is the "Conversion Contract" between the United States and EBID, and Attachment E is the "Third-Party Implementing Contract" between EBID and New Mexico and approved by the United States.

basis to provide further background and address the questions raised in the Special Master's Order, dated July 25, 2025 ("July 25 Order"). Doc. 49, at 2-3.[2]

The Compacting States have separately moved for entry of their Consent Decree. The United States is not a party to that motion or the Consent Decree, but the Compacting States have now addressed in that decree the concerns raised by the United States in its exceptions to the 2022 Proposed Decree. The United States therefore does not oppose entry of the Consent Decree.

Upon granting of the present motion to dismiss and the Compacting States' separate motion to enter the Consent Decree,[3] the United States' claims and the counterclaims pleaded by New Mexico against the United States will be dismissed with prejudice, and the claims of Texas and New Mexico against one another will be resolved by the Consent Decree.

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[2] Document numbers for documents filed before August 28, 2024, are to the Eighth Circuit docket reflected on that Court's website, whereas document numbers for documents filed on or after August 28, 2024, are to the Third Circuit docket on PACER established after the appointment of Judge D. Brooks Smith as Special Master.

[3] Nothing in the declarations submitted in support of the Decree of Dismissal, the agreements between and among the United States, New Mexico, and the Districts, or the Compacting States' Consent Decree, nor any testimony elicited at the hearing commencing on September 30, 2025, shall be construed or allowed to vary or modify any of the terms of any of the agreements. In the event of any conflict between the declarations or testimony at the hearing and the agreements, the terms of the agreements shall control.

II. BACKGROUND

The Rio Grande begins in Colorado, flows through New Mexico into Texas, and then courses along the Texas-Mexico border. The Rio Grande provides water to users in the three States, as well as to the Republic of Mexico. In 1906, the United States agreed by treaty to deliver 60,000 acre-feet of water from the Rio Grande annually to Mexico upon completion of a new dam and reservoir, known as Elephant Butte Reservoir, located on the Rio Grande about 105 miles north of the Texas state line.

The Project is a federal Reclamation project operated by the United States in conformance with federal Reclamation law and in coordination and cooperation with the two Project beneficiaries—EBID and its water users in New Mexico and EPCWID and its water users in Texas. Elephant Butte Reservoir is the major storage reservoir for the Project. The Project has been decreed a right to store, release, and divert water from the Rio Grande in the ongoing New Mexico Lower Rio Grande general stream adjudication.[4]

In addition to its treaty obligation to Mexico, the United States delivers water from the Project to EBID and EPCWID pursuant to a series of agreements, known as the "Downstream Contracts." "First signed in 1906 and later

[4] The order and decree on the Project right is the subject of an ongoing appeal to the New Mexico Court of Appeals by the State of New Mexico, the City of Las Cruces, the United States, and pre-1906 interests.

renegotiated in the 1930s, the Downstream Contracts provided that, after allocating Mexico's share of Rio Grande water under the 1906 Treaty, the United States would deliver" water for the irrigation of approximately 88,000 irrigable acres in EBID and 67,000 irrigable acres in EPCWID. *Texas II*, 602 U.S. at 949.

The Compacting States entered into the Compact in 1938 for the purpose of effecting an equitable apportionment of the waters of the Rio Grande. Congress approved the Compact in 1939. Act of May 31, 1939, 53 Stat. 785. Pursuant to Article V of the Compact, and the unanimous Resolution of the Rio Grande Compact Commission adopted on February 24, 1948, New Mexico is obligated to deliver Rio Grande water into, and measured at, Elephant Butte Reservoir in amounts that are based on flows measured at the stream gaging station at Otowi Bridge near San Ildefonso.

The Compact is inextricably intertwined with the Project and the Downstream Contracts because "Reclamation's operation of the Project, and the United States' obligations to EBID and [EPCWID] under the Downstream Contracts, are the means by which the States chose to effectuate the apportionment of water in the Compact." *Texas II*, 602 U.S. at 960. During the years 1951-1978 (the "D2 Period"), Reclamation allotted water to Project lands on an acre-foot per acre basis. In 1979 and 1980, the Districts completed their repayment obligations under the Downstream Contracts to the United States for the Project's

construction. After repayment and the transfer of title to Project works within each District, the Districts took over responsibility for delivering water to Project lands. Thereafter, Reclamation allocated and delivered water to each District at the District's diversion headings, and each District diverted and delivered water to Project lands.

Reclamation developed the "D2 equation" to determine Project diversion allocations to the Districts. The D2 equation is a linear regression relationship to predict how much water would have been available for diversion at Project headings during the D2 Period based on a given release of water from Project storage. Reclamation operates the Project under an Operating Agreement executed by Reclamation, EBID, and EPCWID, on March 10, 2008 ("Operating Agreement"), and an Operations Manual that implements the Operating Agreement ("Operations Manual"), which includes use of the D2 equation. The Compacting States are not parties to the Operating Agreement or the Operations Manual.

New Mexico administers water in the Lower Rio Grande under state law. Pursuant to New Mexico law, groundwater rights have been established by water users in the Rincon and Mesilla aquifers in the Lower Rio Grande in New Mexico below Elephant Butte Reservoir and Caballo Reservoir ("Aquifer").

The Aquifer is hydrologically connected to the Rio Grande. In general, groundwater pumping in the Rincon and Mesilla basins depletes surface flows.

Since the D2 Period, groundwater pumping in the Lower Rio Grande in New Mexico has increased.

In 2011, New Mexico brought a lawsuit against the United States and the Districts challenging the Operating Agreement under various federal statutes including the Compact. *New Mexico v. United States, et al.*, No. 11-cv-00691-JB-ACT, 2013 WL 1657355 (D.N.M. March 29, 2013) ("Operating Agreement Case"). The Operating Agreement Case has been stayed since 2012.

Against this backdrop, in 2013, Texas filed this suit against New Mexico and Colorado, alleging that, in violation of the Compact, excessive groundwater pumping in New Mexico was depleting supplies of Rio Grande water apportioned to Texas. Texas sought declaratory and injunctive relief and damages against New Mexico but sought no relief against Colorado.

The United States intervened and filed a complaint asserting essentially the same claims as Texas. Like Texas, the United States alleged that groundwater pumping in New Mexico below Elephant Butte Reservoir intercepts and interferes with Project deliveries to the Districts and Mexico, thereby reducing "the amount of water stored in the Project that is available for delivery" in the future. U.S. Compl. ¶ 14. The United States sought declaratory and injunctive relief to compel New Mexico to prevent such interception and interference. U.S. Compl. at 5.

New Mexico pleaded counterclaims against Texas and the United States. New Mexico alleged that Project operations and accounting under the Operating Agreement deprived New Mexico of water apportioned to New Mexico in violation of the Compact. New Mexico sought declaratory relief, injunctive relief, and damages against Texas and declaratory and injunctive relief against the United States.

EBID and EPCWID appeared as amici curiae in this action. In addition, the City of Las Cruces, New Mexico Pecan Growers, Albuquerque Bernalillo County Water Utility Authority, New Mexico State University, the City of El Paso, Hudspeth County Conservation and Reclamation District No. 1, the Southern Rio Grande Diversified Crop Farmers Association, Public Service Company of New Mexico, and Camino Real Regional Utility Authority (collectively the "Other Amici") participated as amici curiae.

In 2018, the Court held that the United States may "pursue the Compact claims it has pleaded." *Texas v. New Mexico*, 583 U.S. 407, 415 (2018). After the first phase of trial in the fall of 2021, the Compacting States agreed in 2022 to a settlement of the case through the 2022 Proposed Decree, to which the United States excepted. The Supreme Court sustained the United States' exception and denied the States' motion to enter the 2022 Proposed Decree on the ground that it would have disposed of the United States' claims without its consent. *Texas II*,

602 U.S. at 965. In its decision, the Court rejected the contention that the United States' claims were "'*intrastate*'" claims that should be litigated in "another forum." *Id.* at 964 (citation omitted).

Following further negotiations, the United States and New Mexico have agreed to resolve the United States' claims against New Mexico and the counterclaims pleaded by New Mexico against the United States through a series of proposed agreements, and the Compacting States have reached a separate agreement resolving Texas's and New Mexico's claims against one another. These agreements are:

A. The Operations Settlement Agreement among the United States, New Mexico, and the Districts that would resolve outstanding disputes among these parties regarding Project operations and that would also include the following agreements:

   i. An agreement among the United States, New Mexico, and EBID to settle certain issues associated with the rights of the United States in the Project and the water rights of EBID members in the Lower Rio Grande Adjudication ("LRG Adjudication"), a general stream adjudication pending in state court in the Third Judicial District Court of New Mexico.

ii. An agreement among the United States, New Mexico, and the Districts to dismiss the following claims with prejudice in two related cases:

a. New Mexico's claims against EPCWID, EBID, and the United States and EBID's cross-claims against the United States in the Operating Agreement Case.

b. The United States' claims, EPCWID's cross-claim against the United States, and any other cross-claims or complaints in intervention brought by the United States, New Mexico, or the Districts in *United States v. Elephant Butte Irrigation District et al.*, No. 97-cv-00803 (D.N.M.) ("Quiet Title Case"), a case filed by the United States to quiet title to Project water rights.

B. Two contracts among the United States, New Mexico, and EBID under Reclamation law pursuant to the Miscellaneous Purposes Act, 41 Stat. 451, 43 U.S.C. § 521: (1) a contract between the United States and EBID, Contract No. 25-WC-40-102 (the "Conversion Contract"), which authorizes EBID to convert an agreed-upon amount of irrigation-only Project water to water that may be used for other purposes; and (2) a contract between EBID and New Mexico and

approved by the United States, Contract No. 25-WC-40-1029 (the "Third-Party Implementing Contract"), which specifies the terms and conditions upon which New Mexico may purchase from EBID water converted to other purposes under the Conversion Contract and use the converted water, including for potential Allocation Transfers from EBID to EPCWID, to assist New Mexico in meeting its delivery obligations under the Consent Decree.

C. The Groundwater Settlement Agreement between the United States and New Mexico on groundwater management to reduce groundwater depletions in New Mexico and protect against interference with Project deliveries.

D. The Consent Decree among the Compacting States, which provides a mechanism for measuring New Mexico's Compact compliance below Elephant Butte Reservoir, as agreed to by the Compacting States only.

The Operations Settlement Agreement and the Groundwater Settlement Agreement, the Conversion Contract, and the Third-Party Implementing Contract are attached for explanatory purposes only. The Groundwater Settlement Agreement and the Operations Settlement Agreement are further described in the next section.

III. SUMMARY OF THE AGREEMENTS

A. Groundwater Settlement Agreement

The Groundwater Settlement Agreement includes three principal commitments from New Mexico: (1) an agreement to reduce depletions from the consumptive use of water in the Lower Rio Grande by 18,200 acre-feet per year within ten years ("Depletion Reduction" obligation); (2) an agreement to take all reasonable action to maintain a metric of Project efficiency—referred to as the "UVDR3"—above 0.79, while considering Project viability in New Mexico; and (3) an agreement to take all reasonable action to achieve stable or gaining Aquifer levels when the 3-year average of releases from Caballo Reservoir ("CAB3"), the Project reservoir below Elephant Butte Reservoir, exceeds 400,000 acre-feet, while considering Project viability. Groundwater Settlement Agreement, §§ III.A, IV.A.1, IV.B.1.

The Depletion Reduction obligation seeks to eliminate the estimated increase in depletions that have occurred in New Mexico since the D2 Period. *See* Attachment F, Declaration of Dr. Ian Ferguson in Support of Joint Motion of United States and State of New Mexico to Dismiss ("Ferguson Decl.") ¶ 12.b. New Mexico agrees to satisfy the Depletion Reduction obligation in stages by retiring depletions from groundwater by 9,100 acre-feet within five years of entry of the Decree of Dismissal and the Consent Decree ("Effective Date"), and by

18,200 acre-feet within ten years of the Effective Date. Groundwater Settlement Agreement, § III.A. New Mexico can meet the Depletion Reduction obligation in three ways: (1) by acquiring water rights from agricultural land in the Lower Rio Grande that is irrigated solely by groundwater and permanently retiring use of those rights; (2) by acquiring water rights from agricultural land in the Lower Rio Grande that is irrigated with a combined surface water and groundwater right and permanently retiring from use the groundwater component of those rights; and (3) by acquiring non-irrigation groundwater rights and permanently retiring from use the consumptive use portion of those rights. *Id*. §§ III.B–C. The Groundwater Settlement Agreement sets forth the methodology for determining how Depletion Reduction is to be calculated for these three types of groundwater rights. *Id*. § III.C. Under this methodology and by way of example, if New Mexico were to meet its Depletion Reduction obligation solely by retiring groundwater on Combined-Right Lands, it would satisfy its obligation by permanently retiring groundwater on 9,240 acres. *Id*. § III.C.2.b.

The Upper Valley Diversion Ratio is a measure of Project delivery performance. Ferguson Decl. ¶ 13. It is calculated as the ratio of measured Project diversions in the Rincon and Mesilla Valleys and streamflow at the El Paso Gage, adjusted for pumping in the Texas Mesilla, to releases from Caballo Reservoir. *Id*. The UVDR3 is the Upper Valley Diversion Ratio calculated over a three-year

period, *i.e.*, the ratio of total Project diversions in the Rincon and Mesilla Valleys and streamflow at the El Paso Gage, adjusted for Texas Mesilla pumping, to total releases from Caballo Reservoir over a rolling 3-year period. *Id.*; *see also* Groundwater Settlement Agreement, § I.JJ. During the D2 Period, it is estimated that the UVDR3 never fell below 0.79. Ferguson Decl. ¶ 13.a. This means that, for every 1.0 acre-feet of water released from Caballo Reservoir, the moving average of deliveries to Project headings over any 3-year period never dropped below approximately 0.79 acre-feet of water.

The Groundwater Settlement Agreement obligates New Mexico to take all reasonable action to maintain UVDR3 above 0.79, while considering Project viability. Groundwater Settlement Agreement, § IV.A.1. Project viability in New Mexico is the ability to continue to operate the Project for Project purposes in New Mexico. *Id*. § I.FF. Considerations for Project viability include, but are not limited to, the Project's ability to deliver surface water to EBID; the amount of acreage in production in EBID; and the ability to use groundwater within EBID and to supplement Project deliveries in times of drought. *Id*. If UVDR3 falls below 0.79, the Groundwater Settlement Agreement includes a consultation process for the United States and New Mexico to seek to agree on action New Mexico may take to bring UVDR3 above 0.79. *Id*. § IV.A.5. In the event of dispute, the United States may seek judicial relief. *Id*. § VI.A.

CAB3 is the 3-year lagged moving average of annual releases from Caballo Reservoir—*i.e*., the rolling average of annual releases from the reservoir calculated over three consecutive years. *Id*. § I.E. A CAB3 of less than 400,000 acre-feet is indicative of multi-year extreme drought conditions. Ferguson Decl. ¶ 14.a. The Groundwater Settlement Agreement obligates New Mexico to take all reasonable action to achieve stable or gaining Aquifer levels when CAB3 exceeds 400,000 acre-feet, while considering Project viability. Groundwater Settlement Agreement, § IV.B.1. Monitoring wells and other information are to be used to determine whether the Aquifer is stable, gaining, or declining. *Id*. § I.T. As with the UVDR3, if Aquifer levels decline when CAB3 exceeds 400,000 acre-feet, the United States may initiate consultation with New Mexico to seek to agree on action New Mexico may take to address the decline, with the United States able to seek judicial relief in the event of dispute. *Id*. §§ IV.B.4-5, VI.A.

Consistent with these three commitments from New Mexico and other water management objectives, New Mexico agrees to adopt a Lower Rio Grande Water Management Plan ("LRG Plan") within two years of the Effective Date, which shall set forth New Mexico's plan to manage and administer water in the Lower Rio Grande. *Id*. § V.A. At a minimum, the LRG Plan shall include the following elements, but shall otherwise be within the sole discretion of New Mexico: (1) actions to satisfy and maintain the Depletion Reduction obligation; (2) actions

from the New Mexico State Engineer closing the Lower Rio Grande Basin; (3) actions to keep UVDR3 above 0.79; (4) actions to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet; (5) actions to limit depletions from domestic wells in the Lower Rio Grande, including actions to prevent or offset depletions from future domestic wells; and (6) a description of district specific rules, State Engineer orders, or alternative administration plans approved by the State Engineer for the Lower Rio Grande. *Id*. § V.C.

B. Operations Settlement Agreement

1. Operations Changes. The Operations Settlement Agreement provides that Reclamation and the Districts will make the following changes to Project operations:

a. El Paso Valley Accounting Charge Point. The El Paso Valley Accounting Charge Point is the location at which diversions of Project water to EPCWID for the El Paso Valley in Texas are charged against EPCWID's allocation of water in Project accounting. Operations Settlement Agreement, Part I.A.5. The Operations Settlement Agreement provides that the El Paso Valley Accounting Charge Point shall be moved to the American Canal Heading. *Id*. at Part I.C.1. The American Canal Heading shall replace the charge points previously used to account for diversions of Project water to EPCWID for the El Paso Valley in Texas. *Id*.

b. ACE Credit. The ACE Credit is an allocation credit provided to EPCWID in annual Project accounting for the reduction in conveyance losses resulting from the construction of the American Canal Extension. *Id*. at Part I.A.2. The Operations Settlement agreement provides that EPCWID shall continue to receive the ACE Credit in perpetuity. *Id*. at Part I.C.2. The ACE Credit shall be calculated after the end of the Release Season each calendar year and added to EPCWID's end-of-year Project allocation balance. *Id*.

c. Modified D2 Equation. The Modified D2 equation is a modified version of the D2 equation currently used under the Operating Agreement in determining annual Project allocations. *Id*. at Part I.A.8. The Modified D2 equation is a multi-linear regression equation used in determining annual Project allocations to EBID and EPCWID based on annual Project releases from Caballo Dam during the current and prior year. *Id*. The Operations Settlement Agreement provides that the Modified D2 equation shall be used in determining annual Project allocations to EBID and EPCWID. *Id*. at Part I.C.3. The Modified D2 equation replaces the simple linear D2 equation used under the current Operating Agreement to make such determinations. *Id*.

d. Allocation Transfers. Under the Consent Decree, the Compacting States have agreed to a mechanism for measuring New Mexico's Compact compliance below Elephant Butte Reservoir, as agreed to by the

Compacting States, based on an index of required flows at the Rio Grande Gage near the Texas-New Mexico state line ("Index Obligation"). The Operations Settlement Agreement incorporates the Index Obligation methodology into Project operations for purposes of tracking Annual and Accrued Departures and allowing Allocation Transfers. A "Positive Annual Departure" occurs when New Mexico exceeds its Index Obligation, and a "Negative Annual Departure" occurs when New Mexico fails to meet its Index Obligation. *Id*. at Part I.A.4. "Accrued Departure" is the sum of all Annual Departures calculated on a rolling basis, subject to certain agreed-upon limitations and adjustments, and may either be a "Positive Accrued Departure" (where net Annual Departures exceed the Index Obligation) or a "Negative Accrued Departure" (where net Annual Departures fall below the Index Obligation). *Id*. at Part I.A.1.

If the Positive Accrued Departure exceeds 50,000 acre-feet at the conclusion of any calendar year, the Operations Settlement Agreement provides that EPCWID shall transfer to EBID the amount of Project allocation necessary to reduce the Positive Accrued Departure below 16,000 acre-feet in the ensuing three calendar years ("EPCWID Allocation Transfer"), subject to agreed-upon procedures, conditions, and limitations. *Id*. at Part I.C.4.c(1).

If the Negative Accrued Departure exceeds 80,000 acre-feet at the conclusion of any calendar year, New Mexico has an obligation under the Consent

Decree to reduce the Negative Accrued Departures to less than 16,000 acre-feet within six calendar years. *Id*. at Part I.C.4.d. Subject to agreed-upon procedures, conditions, and limitations, the Operations Settlement Agreement provides that New Mexico may, in its sole discretion, order Allocation Transfers from EBID to EPCWID ("EBID Allocation Transfers") to satisfy this obligation or maintain the Negative Accrued Departure below 80,000 acre-feet. *Id*. EBID Allocation Transfers are subject to the provisions of the Conversion Contract and Third-Party Implementing Contract, executed under the Miscellaneous Purposes Act, 41 Stat. 451, 43 U.S.C. § 521. Operations Settlement Agreement, Part I.C.4.d(1)(a).

2. Agreements Regarding Other Litigation. The Operations Settlement Agreement also provides for the dismissal with prejudice of all claims of the United States, New Mexico, and the Districts in the Operating Agreement Case and the Quiet Title Case. *Id*. at Part III. It also includes the following agreements among the United States, New Mexico, and EBID pertaining to the LRG Adjudication and water administration issues:

a. Supplemental Groundwater Rights of EBID Members. The United States, New Mexico, and EBID agree to seek to amend—by no earlier than October 1, 2026, and no later than January 31, 2027—an August 22, 2011, Final Judgment entered in the LRG Adjudication concerning the EBID member surface water and groundwater rights to (1) recognize a priority date of 1903 for

administrable combined surface and groundwater diversions at the farm headgate of up to 3.024 acre-feet/acre per year for EBID members with administrable, combined surface water and supplemental groundwater rights and (2) otherwise amend the SSI 101 decree as necessary to implement the Groundwater Settlement Agreement. *Id*. at Part II.A.1 The Final Judgment in those proceedings does not presently state the priority date for those rights.

b. 1903 Priority for Project Water Right. The United States, New Mexico, and EBID agree to a 1903 priority date for the Project water right, as described in the Subfile Order and Final Judgment entered on April 8, 2025, by the Third Judicial District Court. *Id*. at Part II.A.2. The United States and New Mexico filed separate notices of appeal in SSI 104 on June 9, 2025, and May 7, 2025, respectively. *Id*. New Mexico agrees not to pursue its appeals related to the 1903 priority date for the Project water right. *Id*.

c. Other Adjudication and Administration Issues. The United States, New Mexico, and EBID agree to negotiate in good faith among themselves and Other Amici in New Mexico to seek to resolve, by no later than October 1, 2026, certain pending appeals in the LRG Adjudication filed by the United States, New Mexico, and certain of the Other Amici in New Mexico. *Id*. at Part II.B. In addition, by no later than October 1, 2026, the United States, New Mexico, and EBID agree to negotiate in good faith among themselves and with the Other Amici

in New Mexico on issues associated with the manner in which the New Mexico State Engineer will administer water rights determined in the LRG Adjudication, including a potential alternative administration plan that might replace strict priority administration. *Id*.

IV. LEGAL STANDARD

Supreme Court Rule 46.1 states:

> At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then due, the Clerk, without further reference to the Court, will enter an order of dismissal.

Under this rule, the Clerk will issue an order of dismissal upon the filing of an agreement to the dismissal signed by all parties, subject to the payment of costs and fees.

In the July 25 Order, the Special Master directed that the parties at the hearing on this motion and the Compacting States' separate motion to enter the Consent Decree should be prepared to:

> (1) present the proposed settlement to the Special Master, including a detailed overview of the settlement's provisions and practical effects;
>
> (2) explain why the proposed settlement constitutes a fair and reasonable resolution of the above-captioned matter; and
>
> (3) explain how the proposed settlement is consistent with the 1938 Compact and other forthcoming motions related to settlement.

Doc. 49, at 2-3 ¶ 3.

V. ARGUMENT

The United States and New Mexico have agreed to the Decree of Dismissal in writing, and the Compacting States do not object. Further, no fees are due to the Clerk, and each party will bear its own costs. Supreme Court Rule 46.1 therefore supports the requested Decree of Dismissal, and the Court need neither review nor approve the Agreements to enter that decree. The United States cannot be compelled to prosecute its claims and may dismiss its claims without any showings on the merits or relative to the Agreements.[5]

The United States and New Mexico nonetheless set forth below their respective positions on the basis for the Agreements to explain how they address their respective interests in this case and the issues raised in the July 25 Order. *See* Doc. 49. In sum, the United States and New Mexico agree that the Agreements and the Decree of Dismissal are a fair and reasonable resolution of the United States' Compact claims against New Mexico and the counterclaims pleaded by New Mexico, are consistent with the Compact, and support Project viability and the United States' and New Mexico's common objective of ensuring that groundwater in the Lower Rio Grande is used efficiently and effectively and conserved to the extent possible for future use.

[5] The Court has not ruled on whether the counterclaims pleaded by New Mexico against the United States should be accepted for filing, Docs. 93, 99, but these same principles would apply, if the Court had approved their filing.

A. Statement of the United States' Position

The United States and New Mexico have separate reasons for supporting the Agreements, and the United States does not join in New Mexico's statement of position set forth in Section V.B, below. However, the differences in their respective positions need not be resolved, as the United States and New Mexico both support the Agreements and entry of the Decree of Dismissal and both agree, albeit for different reasons, that the Consent Decree is consistent with the Compact.

1. The Groundwater Settlement Agreement resolves the United States' concerns with Project interference from groundwater pumping

The United States intervened in this action because of its concerns with excessive groundwater pumping in New Mexico and resulting interference with Project deliveries. It is undisputed that groundwater pumping below Elephant Butte increases seepage losses from the Rio Grande and reduces the amount of water that returns to the Rio Grande through the Project drains, thereby reducing the surface flows that are available to complete Project deliveries at downstream diversion points. *See Texas II*, 602 U.S. at 951 ("[G]roundwater pumping in southern New Mexico . . . draw[s] water away from the river and . . . intercept[s] the return flows that would otherwise replenish it. . . . [T]he more groundwater pumping between the Elephant Butte Reservoir and Texas, the more water

Reclamation has to release from the reservoir to comply with its delivery obligations.").

The Groundwater Settlement Agreement directly addresses this interference through New Mexico's commitments to: (1) reduce depletions by 18,200 acre-feet per year through groundwater retirement; (2) take all reasonable action to maintain UVDR3 above 0.79, while considering Project viability; and (3) take all reasonable action to achieve stable or gaining Aquifer levels when CAB3 exceeds 400,000 acre-feet, while considering Project viability. Groundwater Settlement Agreement, §§ III.A, IV.A.1, IV.B.1. Collectively, these commitments seek to reduce depletions to roughly those which occurred during the D2 Period and to achieve stable or gaining Aquifer levels, while allowing for continuing use of groundwater within EBID to supplement Project deliveries, including during multi-year drought conditions. Ferguson Decl. ¶¶ 14.b, 15. Although some temporary loss of Aquifer storage may occur during multi-year drought conditions when groundwater pumping within EBID may increase due to reduced surface water deliveries from the Project, the Groundwater Settlement Agreement seeks to achieve a stable or gaining Aquifer condition over the long-term. *Id*. In this way, the Groundwater Settlement Agreement provides benefits beyond the mere continuation of a D2 level of groundwater pumping. Without the additional protections provided by the Groundwater Settlement Agreement, there would be no enforceable mechanisms to

prevent UVDR3 from dropping below 0.79 or aquifer storage loss when CAB3 exceeds 400,000 acre-feet. These safeguards did not exist during the D2 Period.

By reducing depletions in the Lower Rio Grande in New Mexico and achieving stable or gaining Aquifer levels, the Groundwater Management Agreement directly addresses interference with Project deliveries from excessive groundwater pumping in New Mexico. The ultimate objectives in addressing this interference are to allow the Project to remain viable and the United States to continue to meet its treaty obligations to Mexico and its contractual obligations to the Districts. The Groundwater Settlement Agreement is reasonably designed to achieve these objectives by returning depletions to those approximating those of the D2 Period—before the occurrence of more recent increases in groundwater pumping and resulting Project interference—but with the additional protections for the Project of the UVDR3 and CAB3 metrics that continuation of the D2 Period alone would not provide. In this way, groundwater pumping in New Mexico may continue—which is of great importance to EBID—but in a manner that is consistent with Project viability in New Mexico.

Granted, the United States' litigating position was that the Compact only allows a baseline level of groundwater pumping that existed when the Compact was signed in 1938, when groundwater use for irrigation was "not substantial" and when "water use for . . . non-irrigation purposes served as a minor component of

overall Project area water use." Doc. 503, at 29. But the Groundwater Settlement Agreement is a reasonable compromise that allows for continued Project deliveries and continued groundwater pumping consistent with the approximate 28-year period of operations during the D2 Period—before increased groundwater pumping in New Mexico resulted in this litigation. And the Groundwater Settlement Agreement provides additional protections for the Project and its contractors beyond mere continuation of a D2 condition by requiring action if, with continued pumping at a D2 level, UVDR3 drops below 0.79 or aquifer storage loss occurs when CAB3 is above 400,000 acre-feet.

The Groundwater Settlement Agreement is also consistent with the Compact and other relevant federal law. Again, the Court need neither review nor approve the Agreements to enter the Decree of Dismissal. But even if the Court were to treat the present motion as analogous to one seeking entry of a consent decree (which it is not) and consider whether the Agreements are consistent with the Compact, the question is not whether the Agreements embody the relief that the Court would have granted after an *adjudication on merits* of the United States' underlying complaint. Rather, as discussed more fully below, the relevant question is a narrower one: whether federal law prohibits the parties from "*creat*[*ing*] *by agreement*" the "obligations" set forth in the consent decree. *Firefighters v. Cleveland*, 478 U.S. 501, 523 (1986) (emphasis added). In other words, have the

parties "agreed to take action that conflicts with or violates the [law] upon which the complaint was based[?]". *Id.* at 526. Here, nothing in the Compact or other federal law prohibits the United States from agreeing to resolve and dismiss its Compact claims in exchange for New Mexico's commitments to reduce depletions from groundwater pumping and address Project interference. That voluntary agreement between the United States and New Mexico is therefore consistent with the Compact and other relevant federal law and finally resolves the United States' Compact claims and the counterclaims pleaded by New Mexico against the United States.

2. The Operations Settlement Agreement improves Project operations and accounting procedures and provides for Allocation Transfers between the Districts in a manner that is consistent with Reclamation law and the Districts' rights and obligations under their respective reclamation contracts

The Operations Settlement Agreement addresses different issues—principally, four modifications to Project operations and accounting procedures. These modifications provide for: (1) moving the El Paso Valley Accounting Charge Point to the American Canal Heading to improve the measurement of and accounting for Project diversions to EPCWID for the El Paso Valley by moving the measurement to a highly accurate flume metering station and simplifying accounting by reducing four accounting points to one; (2) continuing the ACE Credit in Project accounting to ensure that EPCWID continues to benefit from its

investment in reduced conveyance losses that resulted from the construction of the American Canal Extension; (3) replacing the previous simple-linear D2 equation with the multi-linear Modified D2 equation, which more accurately represents the relationship between historical Project releases and diversions during the D2 Period; and (4) authorizing Allocation Transfers between the Districts to facilitate New Mexico's compliance with the Consent Decree and protect against over-deliveries and under-deliveries relative to the Index Obligation. Operations Settlement Agreement, Part I.C; *see also* Ferguson Decl. ¶ 16.a-b.

The United States supports all of these changes to Project allocation and accounting procedures as improving Project operations. The Allocation Transfers provisions of the Operations Settlement Agreement ensure that Allocation Transfers between the Districts are made voluntarily and in conformance with Reclamation law rather than at the unilateral directive of the Compacting States. The Allocation Transfers provisions also seek to ensure that the division of water between EBID and EPCWID is consistent with Project deliveries during the D2 Period. *See* Ferguson Decl. ¶¶ 16.a-b. In this way, these provisions protect Project deliveries to both EBID and EPCWID from interference from post-D2 groundwater pumping. *Id*. ¶ 16.b.

The United States also supports the provisions of the Operations Settlement Agreement agreeing to the dismissal of Operating Agreement Case and Quiet Title

Case, which resolves longstanding litigation related to this action, including New Mexico's longstanding challenges to Project operations and the 2008 Operating Agreement. The Operations Settlement Agreement also addresses longstanding disputes in the LRG Adjudication and water administration issues. Operations Settlement Agreement, Part III. New Mexico's recognition of a 1903 priority date for the United States' right to store, release, and divert Project water, as claimed by the United States and decreed by the Third Judicial District Court, would give the United States a senior priority, if confirmed through settlement or litigation of pending appeals of that decree. *Id*. at Part II.A.2. And the agreement of the United States, New Mexico, and EBID to jointly move to amend the August 22, 2011 Final Judgment concerning the EBID member surface water and groundwater rights would extend this same senior priority to EBID member lands with administrable combined surface and groundwater diversions at the farm headgate, up to 3.024 acre-feet/acre per year, if that motion is granted. *Id*. at Part II.A.1. The 1903 priority date would provide substantial protection to the Project water right and the combined surface and groundwater right of EBID member lands from curtailment, up to the specified limits, in the event negotiations concerning an alternate administration plan prove unsuccessful and the New Mexico State Engineer strictly administers water rights by priority date.

3. The Compacting States' Consent Decree

The parties to the Consent Decree[6] are Texas, New Mexico, and Colorado. The United States is not a party to the Consent Decree, and the Consent Decree is not a part of the United States' settlement of its claims against New Mexico. Rather, the United States is separately settling its Compact claims against New Mexico through the Agreements, as discussed above.

Although the United States is not a party to the Consent Decree, the United States does have a view on whether the Consent Decree is consistent with the Compact and other relevant federal law—which is an issue that the Special Master asked the parties in this case to address in the July 25 Order. *See* Doc. 49, at 2-3. In the United States' view, the Consent Decree is consistent with the Compact and other relevant federal law. Moreover, the Consent Decree does not present any of the problems that led the United States to object to the 2022 Proposed Decree.

a. The Consent Decree is consistent with the Compact and other relevant federal law

"Consent decrees have elements of both contracts and judicial decrees." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004); *see Texas II*, 602 U.S. at 953. On one hand, "the voluntary nature of a consent decree is its most

[6] Although the Compacting States' motion for entry of the Consent Decree and its supporting declarations refer to the Consent Decree as the "Compact Decree," the States recognize throughout their motion that it is a consent decree.

fundamental characteristic." *Firefighters*, 478 U.S. at 521-522. "Indeed, it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all." *Id.* at 522. And "it is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Id.* On the other hand, a consent decree "is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). A consent decree may therefore be entered only with a court's approval.

In deciding whether to grant such approval, a court should consider whether the consent decree is consistent with the law underlying the complaint. *See Firefighters*, 478 U.S. at 526. But in doing so, a court need not—and should not—"decide the merits of the case or resolve unsettled legal questions." *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1982); *see United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) (explaining that a consent decree "is not a decision on the merits or the achievement of the optimal outcome for all parties, but is the product of negotiation and compromise"); 18A Charles Alan Wright et al., *Federal Practice and Procedure* § 4443 (3d ed. 2025) ("However close the [judicial] examination [of a consent decree] may be, the fact remains that it does

not involve contest or decision on the merits."). After all, the whole point of a consent decree is to "*waive* the[] right to litigate the issues involved in the case and thus save . . . the time, expense, and inevitable risk of litigation." *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971) (emphasis added). That purpose would be defeated if, in approving a consent decree, a court had to adjudicate the merits of those same issues.

Thus, as discussed above, when a court considers whether a consent decree is consistent with the law underlying the complaint, the question is not whether the consent decree embodies the relief that the court would have granted after *an adjudication on the merits*. Instead, the question is whether federal law prohibits the parties from "*creat*[*ing*] *by agreement*" the "obligations" set forth in the consent decree. *Firefighters*, 478 U.S. at 523 (emphasis added).

In the United States' view, the answer to that question in this case is no. The United States' position has always been that Texas may settle its own claims against New Mexico. *See* U.S. Exception Br. 23, *Texas II*, *supra* (No. 141, Orig.) (Oct. 6, 2023) ("Of course, Texas may decide to 'settl[e] [its] own disputes and thereby withdraw[] from [this] litigation.'") (quoting *Firefighters*, 478 U.S. at 529); Tr. of Oral Arg. 35, *Texas II*, *supra* (No. 141, Orig.) (Mar. 20, 2024) (similar). The United States has previously noted, for example, that nothing precludes Texas from "agree[ing] to dismiss its own Compact claims in exchange

for New Mexico's promise to reduce groundwater pumping below a certain level"—whether below the level that existed in 1938, the level that existed during the D2 Period, or some other level. U.S. Exception Br. 23-24. And the United States has previously recognized that the States could agree among themselves to an "index methodology," so long as they did not foreclose the United States from pursuing its own Compact claims to enforce "New Mexico's obligation to prevent interference with Project deliveries." Doc. 754, at 51.

That is what the States have done here: they have agreed to an index methodology based on a D2 baseline, without foreclosing the United States from pursuing (and resolving through settlement) its own Compact claims. The United States has now done just that through the Agreements. The question is not whether the Consent Decree reflects the relief that the Court would have granted after an adjudication on the merits of Texas's Compact claims. Rather, the question is whether the States have "agree[d] to take action that conflicts with or violates" the Compact or other relevant federal law. *Firefighters*, 478 U.S. at 526. Because nothing in the Compact or other relevant federal law prohibits the States from "creat[ing] by agreement" the "obligations" set forth in the Consent Decree, *id.* at 523, the answer is no. Thus, in the United States' view, the Consent Decree is consistent with the Compact and other relevant federal law.

b. The Consent Decree does not present any of the problems that led the United States to object to the 2022 Proposed Decree

The United States excepted to the 2022 Proposed Decree. *See Texas II*, 602 U.S. at 948. As the United States explained at the time, the 2022 Proposed Decree suffered from three flaws. First, the 2022 Proposed Decree would have disposed of the United States' Compact claims without the United States' consent. U.S. Exception Br. 17-28; *see Texas II*, 602 U.S. at 948 (rejecting the 2022 Proposed Decree on this ground). Second, the 2022 Proposed Decree would have imposed obligations on the United States without the United States' consent. U.S. Exception Br. 28-43. And third, the 2022 Proposed Decree would have forced the United States to accept a definition of Compact compliance that was based on a Texas state-line delivery requirement, that turned the United States into an agent of the States, and that permitted Project interference beyond the 1938 baseline. *Id.* at 43-47. The Supreme Court sustained the first of the United States' exceptions. *Texas II*, 602 U.S. at 948.

The Consent Decree that the States now propose does not suffer from any of those flaws. First, the Consent Decree does not dispose of the United States' Compact claims; rather, the Consent Decree leaves the United States free to pursue (and to resolve through a separate settlement) the United States' own claims against New Mexico, as the United States has now done through the Agreements. Second, the Consent Decree does not impose any obligations on the United States,

which is not a party to the decree; only the States, as parties to the Consent Decree, have any obligations under it. And third, the Consent Decree does not force the United States to accept any definition of Compact compliance. Instead, the Consent Decree leaves the United States to pursue the United States' own definition of Compact compliance, which it is has now done through its separate settlements with New Mexico. Upon entry of the Decree of Dismissal, the United States' Compact claims will be dismissed with prejudice. That dismissal with prejudice will preclude the United States from pursuing those same Compact claims in the future and insisting upon a different definition of Compact compliance. It is the United States' settlements with New Mexico and entry of the Decree of Dismissal, not the Consent Decree, that resolve the United States' Compact claims.

The Consent Decree therefore does not present any of the problems that led the United States to object to the 2022 Proposed Decree. And as explained above, it is the United States' view that the Consent Decree is consistent with the Compact and other relevant federal law.

4. Conclusion

For the foregoing reasons, the United States supports the Agreements and the Decree of Dismissal as a fair and reasonable resolution of its claims against

New Mexico that is consistent with the Compact. The United States also does not oppose entry of the Consent Decree.

B. Statement of New Mexico's Position

New Mexico has fully briefed its position on the first ("overview of the settlement's provisions and practical effects") and third ("how the proposed settlement is consistent with the 1938 Compact and other federal law") points from the Special Master's July 25 Order, Doc. 49, at 2-3 ¶ 3, elsewhere. The Memorandum of Points and Authorities in Support of the Joint Motion of The State of Texas, State of New Mexico, and State of Colorado to Enter Compact Decree Supporting the Rio Grande Compact of even date with this filing ("States' Motion") and the supporting declarations from New Mexico's witnesses—Dr. Margaret Barroll, State Engineer Elizabeth Anderson, Interstate Stream Commission Director Hannah Riseley-White, Interstate Stream Commission Lower Rio Grande Bureau Chief Ryan Serrano, and Greg Sullivan—contain a complete description of the settlement, the Agreements, the Consent Decree, and New Mexico's position on the consistency between the Consent Decree and the Compact. New Mexico incorporates those documents in support of this Motion to enter the Decree of Dismissal and will not set forth its position again in this brief.

New Mexico and the United States have separate reasons for supporting the Agreements and New Mexico does not join in the United States' statement of

position set forth in Section V.A, above. As an example, the United States and New Mexico agree that the Consent Decree and the Compact are consistent with one another, but New Mexico does not agree with or adopt the United States' reasoning in support of that conclusion. *Compare* Section V.A.3, *supra, with* States' Motion at Section VI.B, pgs. 47-54.

That disagreement is immaterial. The United States agrees that the Consent Decree is consistent with the Compact, and it will not contest its adoption by the Court. The United States has further stipulated to the dismissal of its claims in this action with prejudice. Consequently, New Mexico's view is that the United States may not challenge the Consent Decree as being inconsistent with the Compact in any future action irrespective of whether New Mexico and the United States agree on *why* the Compact and Consent Decree are consistent.

The remaining issue from the Special Master's July 25 Order, Doc. 49, at 2-3 ¶ 3, is whether "the proposed settlement constitutes a fair and reasonable resolution" of the claims in this matter. New Mexico believes that the settlement as a whole—including the Consent Decree to resolve the claims between New Mexico and Texas and the other Agreements to resolve the claims between New Mexico and the United States—is a fair and reasonable deal to achieve a global resolution of this matter.

New Mexico is entering four agreements as part of this settlement (1) the Consent Decree, (2) the Operations Settlement Agreement, (3) the Groundwater Settlement Agreement, and (4) the Third-Party Implementing Agreement. Ex. 6 to States' Motion, Anderson Decl. ¶ 16. New Mexico views these agreements together as a single, comprehensive "Settlement Package," and New Mexico would not have agreed to any one of them without the other three. *Id.*

Each of the agreements in the Settlement Package complements the others. Essentially, the Consent Decree clarifies the amount of water that must reach the New Mexico-Texas state line—and by extension, the water New Mexico may use in the Lower Rio Grande—and the other Agreements both protect New Mexico's rights in the Lower Rio Grande and establish tools to aid the State in compliance with its obligations under the Compact. *Id.* ¶ 17. The Operations Settlement Agreement adjusts Project operations to address New Mexico's counterclaims, to align Project accounting with Compact accounting under the Consent Decree and harmonize Project operations with New Mexico's Compact obligations to Texas, and to establish tools—most significantly Allocation Transfers from EBID to EPCWID—that New Mexico may use in its discretion to satisfy its obligations under the Consent Decree. *Id.* The Groundwater Settlement Agreement establishes a clear depletion reduction requirement to conform New Mexico's water use to the D2 Period baseline and align it with the Consent Decree and

Operations Settlement Agreement. It also adopts enforceable hydrologic conditions (UVDR3 and Aquifer Storage Loss) that protect the Rincon and Mesilla aquifers for future use, facilitate compliance with the Consent Decree, and strike a fair balance between groundwater use and sustainability. *Id.*; Ex. 11 to States' Motion, Riseley-White Decl. ¶¶ 15-19. In carrying out its obligations under the Consent Decree and Groundwater Settlement Agreement, New Mexico retains discretion in its water administration in the Lower Rio Grande. Ex. 6 to States' Motion, Anderson Decl. ¶ 16. Finally, the Third-Party Implementing Contract, in conjunction with the Conversion Contract and Operations Settlement Agreement, authorizes and implements the Transfer procedure set forth in the Consent Decree and sets clear pricing if New Mexico needs EBID to forebear from the use of allocated water to address under deliveries to Texas. *Id.*

Taken together, each of the agreements in this Settlement Package provide significant benefits to New Mexico. As described in State Engineer Anderson's declaration, those benefits include (1) providing a mechanism for measuring the equitable apportionment below Elephant Butte Reservoir between New Mexico and Texas, (2) enabling New Mexico and Texas to receive their full Compact apportionments, (3) providing certainty and stability as between the Compacting States, (4) allowing continued groundwater pumping in New Mexico and Texas at the levels that existed during the D2 Period, so long as the UVDR3 and CAB3

metrics are satisfied, (5) providing that each State is responsible for actions and depletions caused by its own water users, (6) harmonizing Project operations and New Mexico's compliance with the requirements of the Compact or the Consent Decree, (7) making adjustments to Project operations and accounting that address New Mexico's longstanding concerns, and (8) maintaining New Mexico's discretion to conduct water administration as it deems necessary and appropriate to satisfy its obligations. *Id.* ¶ 18. New Mexico is willing to compromise its litigation position, settle its counterclaims, and dismiss its claims with prejudice because of the benefits flowing from this comprehensive and global settlement.

Nothing more than such an agreement to resolve the claims is necessary under Supreme Court Rule 46.1, and New Mexico respectfully requests that the Special Master recommend entry of the Decree of Dismissal to the Court.

VI. CONCLUSION

For the foregoing reasons, the United States and New Mexico respectfully request that the Court enter the Decree of Dismissal.

Respectfully submitted this 29th day of August, 2025.

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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

UNITED STATES OF AMERICA,

Intervenor.

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of August, 2025, I caused a true and correct copy of the **JOINT MOTION OF UNITED STATES AND STATE OF NEW MEXICO TO DISMISS** to be served on the parties and filed with the Special Master through the Third Circuit Case Management and Electronic Case Filing (CM/ECF) System.

Respectfully submitted,

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