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.

♦

OFFICE OF THE SPECIAL MASTER

♦

AMICUS CURIAE NEW MEXICO PECAN GROWER'S COMMENTS ON PROPOSED SETTLEMENT

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COMMENTS

I. Introduction

Per the Special Master's Order entered on July 25, 2025, *Amicus Curiae* New Mexico Pecan Growers ("NMPG") respectfully provides its comments on the proposed Joint Motion of the State of Texas, State of New Mexico, and State of Colorado to Enter Compact Decree Supporting the Rio Grande Compact ("Joint Motion to Enter Consent Decree") and the Joint Motion of the United States and New Mexico to Dismiss ("Joint Motion to Dismiss") ("Motions"). NMPG's comments also address matters contained in proposed settlement agreements and testimony offered at the hearing on the Motions held before the Special Master on September 30 and October 1, 2025.

NMPG is a non-profit trade organization formed in 2002 to promote and protect the interests of pecan farmers in New Mexico's southern Rio Grande valley. Its several hundred members collectively irrigate approximately 35,000 acres of pecan orchards within the Elephant Butte Irrigation District ("EBID") using surface water released from the storage reservoirs of the Rio Grande Project and groundwater from their privately-owned wells. Pecan orchards have existed along the Rio Grande valley since the 1800s and many of NMPG's members operate farms that have been in their families for generations. Implementation of the proposed

settlement will directly impact pecan growers and the ancillary businesses and economies that depend on New Mexico's pecan industry.

In its role as an *amicus curiae* in support of New Mexico, NMPG has actively assisted in the litigation of this matter since the case's inception. And, up until the current settlement framework adopted by the Parties earlier this year, NMPG was a regular and active participant in settlement negotiation meetings. Here, the Parties and irrigation district *amici* have expended considerable time and effort to arrive at resolution and NMPG is hopeful that their proposed settlement will promote certainty and stability in New Mexico's Lower Rio Grande Basin.

NMPG believes the proposed Consent Decree between the Compacting States is consistent with the Rio Grande Compact and is a fair settlement of the claims made by Texas and New Mexico in the original action. By incorporating and grandfathering groundwater uses in both states up to 1978, the Compact Decree resolves the interstate dispute while minimizing disruption to existing water users. NMPG supports the State's Joint Motion to Enter the Consent Decree.

NMPG also supports most of the compromises New Mexico made to settle the United States' claims under the Rio Grande Compact. However, as shown below, NMPG is concerned that the settlement proposal does not finally and fully resolve important disputes regarding Compact interpretation and leaves the door open to litigation with the United States in the future.

I. Finality

The proposed settlement involves the Supreme Court's entry of two decrees and four separate settlement agreements executed for the purpose of resolving the United States' Compact claims ("Settlement Package"). The Settlement Package is intended to resolve all claims made in this 12-year Compact dispute. The central compromises that were made are the United States' and Texas' relinquishment of their claims for a 1938 baseline hydrologic condition under the Compact, and New Mexico's commitments to reduce water depletions to levels occurring during 1951-1978 (the "D2 Period") and to meet certain hydrologic conditions to protect groundwater levels.

NMPG accepts that not all disputes raised in the litigation are resolved by the Settlement Package, and that the Parties have requested the Special Master to not weigh in on all disputed issues. *See, e.g.,* Hearing Trans. 9-30-25, 11:12-24. However, the Parties have not specified what issues they believe have not been resolved. NMPG believes the Special Master should give some consideration of those issues in its report to the Supreme Court.

For example, although the United States and New Mexico have settled their Compact claims through two settlement agreements—the Groundwater Settlement Agreement and the Project Operations Agreement—the express terms of those agreements do not bind the United States to any interpretation of what the Compact

requires for the apportionment of water between New Mexico and Texas. Thus, in NMPG's view, the Settlement Package does not prevent the United States from making novel arguments regarding Compact interpretation in the future–including challenges to the Consent Decree.[1] *See, e.g. Kansas v. Nebraska,* 574 U.S. 445 (2015) (accounting procedures in the states' stipulated settlement were intended to accurately measure water and ensure compliance with the Republican River Compact but were later found to deprive Nebraska of its apportionment under the compact).

Second, NMPG is concerned that because the United States is not bound by the Consent Decree, it has no obligation to ensure New Mexico receives its apportionment of the Rio Grande. This is an important issue to NMPG because the Groundwater Settlement Agreement makes New Mexico solely responsible for meeting two hydrologic conditions—the UVDR3 and Aquifer Storage Loss—even if deviations from those conditions are caused by others, including the United States. For example, New Mexico has no control over how the United States maintains siltation in the Rio Grande or the native vegetation growing in the river corridor within New Mexico. These two factors can influence how much surface water is consumed along the river and not available for diversion downstream to meet the

[1] Notably, the United States has not entered into any agreement with Texas or Colorado that would prevent the United States from asserting a novel interpretation of the Rio Grande Compact against them in the future.

UDVR3. They can also affect how much surface water reaches New Mexico's farmers to be used for irrigation in lieu of groundwater pumping, which affects New Mexico's ability to satisfy the Aquifer Storage Loss metric.

In short, nothing in the Settlement Package requires the United States to *not* interfere with New Mexico's apportionment of the river or to *not* frustrate its ability to meet the two hydrologic standards in the Groundwater Settlement Agreement. Accordingly, NMPG does not share the sentiment voiced by New Mexico's witnesses and counsel at the hearing—it does not "welcome" the United States' unprecedented intrusion into the management of New Mexico's groundwater resources. Further, NMPG has little confidence in the arbitrary benchmark chosen to determine whether Aquifer Storage Loss is occurring in New Mexico. It establishes an uncertain obligation with unknown consequences and will likely lead to disputes between New Mexico and the United States in the future.

II. United States' Position on the Consent Decree

NMPG acknowledges that the Parties propose a Settlement Package that does not bind the United States to the Consent Decree and NMPG cannot seek otherwise. Nonetheless, the United States has expressly indicated it does not object to the entry of the Consent Decree and, "[i]n the United States' view, the Consent Decree is consistent with the Compact and other relevant federal law." *See* Joint Motion to

Dismiss, at 32.[2] These representations, however, are not explicitly included in the terms of the settlement agreements or in the Decree of Dismissal. Thus, with the goal of minimizing the potential for future disputes regarding the United States' position on the Consent Decree, NMPG respectfully requests that the Special Master's report to the Supreme Court emphasizes what the United has expressly argued in support of the Settlement Package, *i.e.*, that "the Consent Decree is consistent with the Compact and other relevant federal law."

III. Administration and Adjudication within New Mexico

As stated in its previous filings, a primary goal for NMPG in this matter has been to obtain equitable treatment of its members' water rights and the "ground up" development and implementation of aquifer management in New Mexico.[3] Now, with the "top down" metrics contained in the Groundwater Settlement Agreement, NMPG's farmers face uncertainty as to the administration of their water rights under New Mexico's priority system. The Groundwater Settlement Agreement requires New Mexico to develop a plan for administration which will include a "description of district specific rules, State Engineer orders, or alternative administration plans

[2] Counsel for the United States also confirmed at hearing that the United States "agrees that the Consent Decree is consistent with the Compact and other federal law." Hearing Trans. 10-1-25, 36:14-15.

[3] *See, e.g.,* Joint Brief of *Amici Curiae* New Mexico Pecan Growers and Southern Rio Grande Diversified Crop Farmers Association in Support of New Mexico's Responses to Motions Filed by Texas and the United States to Strike New Mexico's Counterclaims Involving the 2008 Operating Agreement (February 28, 2019).

approved by the State Engineer." Joint Motion to Enter Decree, Attach. B, at V(6). However, litigation over the priority dates for major water rights, including the priority date for water delivered from the Project, is still unresolved in the Lower Rio Grande stream system adjudication. The Project Operations Agreement commits New Mexico, EBID and the United States to negotiate in good faith with other *amici,* including NMPG, to resolve that pending litigation and arrive at agreement for future water rights administration. *Id.*, Attach. C, II.A-B, at 13. NMPG acknowledges these commitments and is fully prepared to participate in good faith negotiations regarding these outstanding matters. Final resolution of intrastate litigation will be imperative for New Mexico to meet its obligations under the Settlement Package.

CONCLUSION

Amicus Curiae New Mexico Pecan Growers appreciates the opportunity to provide the Special Master its comments on the proposed Settlement Package and respectfully requests they be given due consideration when reporting to the Supreme Court and recommending entry of the Consent Decree and the Decree of Dismissal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 14th day of October, 2025, I caused a true and correct copy of the *Amicus Curiae* New Mexico Pecan Grower's Comments on Proposed Settlement 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.

/s/ Tessa T. Davidson
Tessa T. Davidson