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

NEW MEXICO STATE UNIVERSITY, PUBLIC SERVICE COMPANY OF NEW MEXICO AND CAMINO REAL REGIONAL UTILITY AUTHORITY'S *AMICI CURIAE* COMMENTS IN SUPPORT OF PROPOSED SETTLMENT

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COMMENTS

I. Introduction

New Mexico State University ("NMSU"), Public Service Company of New Mexico ("PNM"), a public utility subsidiary of TXNM Energy, and the Camino Real Regional Utility Authority ("CRRUA") (together "*Amici*") respectfully submit this comment 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* ("Joint Motion to Enter Decree") and the *Joint Motion of the United States and New Mexico to Dismiss* ("Joint Motion to Dismiss") (together "Motions").

Amici support the settlement because it resolves the interstate dispute in a fair and equitable way; however, as discussed below, further work will be needed to reach agreement on intra-state issues in New Mexico before the State will have the tools to comply with its new obligations, in particular the

"Enforceable Hydrologic Conditions" negotiated by the United States to protect the Rio Grande Project.

The Motions are based on six settlement documents: two proposed decrees and four agreements. Together these documents form a settlement package that resolves this long-running Compact dispute.

The proposed Compact Decree creates the Effective El Paso Index (EEPI) to quantify New Mexico's annual delivery obligation to Texas by linking Caballo Reservoir releases to measured flow at the El Paso gage, and it defines how "Index Deliveries" are calculated. It also sets accounting and compliance rules, comparing obligation to delivery each year, tracking departures, and enforcing limits, through negative-departure caps and triggers, to ensure Compact compliance. Consistent with the Compact and Reclamation contracts, the proposed Compact Decree is based on a division of water 57 percent to New Mexico and 43 percent to Texas. See Joint Motion to Enter Decree, Exhibit 1.

The proposed Decree of Dismissal closes the case between the United States and New Mexico; the Groundwater Settlement Agreement commits New Mexico to reduce groundwater depletions to D2 Period levels (1951-1978), creates "Enforceable Hydrologic Conditions" to maintain efficiency in river deliveries and stabilize aquifer levels, requiring consultation with the United States and providing for judicial review; the Operations Settlement Agreement modifies Rio Grande Project operations by updating accounting methods, adjusting delivery points, recognizing EPCWID's ACE credit, and enabling

allocation transfers between districts, while also clarifying water right priorities and establishing a timeline to end related lawsuits; the Conversion Contract gives EBID authority to convert irrigation water for other uses, with revenues, accounting, and compliance mechanisms in place. See Joint Motion to Enter Decree, Attachments A-E.

This settlement package balances state, federal, and district interests by aligning Project operations with Compact compliance, advancing water sustainability and ensuring enforceability under both state and federal law. The settlement represents a fundamental compromise: the United States and Texas relinquish their claims of a 1938 condition; on the other hand, New Mexico commits to reduce depletions to a pre-1979 level (D2 Period).

Amici support this compromise. Grandfathering exercise of groundwater rights during the D2 Period, while requiring depletion reduction and offsets of additional depletions strikes an appropriate and fair balance.

Amici acknowledge the settlement achieves much; nevertheless, it does not resolve all issues and leaves some uncertainty. In particular, the settlement would impose a new obligation on the State of New Mexico to protect groundwater levels, even when surface water deliveries to Texas are being met. Imposition of an "Enforceable Hydrologic Condition" to prevent "Aquifer Storage Loss" places an uncertain and vague obligation and could cause curtailment of municipal and industrial and junior agricultural groundwater users, in the absence of an alternative administration agreement.

As discussed below, an essential missing ingredient is the full machinery needed to effectuate the settlement by implementing alternative administration and by settling adjudication issues within the Lower Rio Grande of New Mexico. *Amici's* support for the compromise among the Parties is based on the commitments of the United States, New Mexico and EBID to timely negotiate in good faith the development of the necessary administrative framework to effectuate the settlement.

II. Interests of *Amici Curiae*[1]

Amici actively participated in settlement negotiations of this matter and support entry of the proposed decrees. By adopting fair and reasonable terms and by incorporating the D2 Period's grandfathering of uses prior to 1979, the proposed Compact Decree resolves the interstate dispute while minimizing disruption to existing water users in both New Mexico and Texas. *Amici* respectfully request that the Special Master recommend granting of the Motions and entry of the two decrees

Since its founding in 1890, NMSU has served as the State of New Mexico's land grant university. It relies on both groundwater from its own wells and surface water supplied by EBID and the Rio Grande Project for irrigation of the University's agricultural lands, especially at its experimental and educational facilities. NMSU's main campus is located in Las Cruces and has continuously

[1]No person or entity other than *Amici Curiae* authored any portion of this comment or made a monetary contribution to the preparation or submission of this comment.

used groundwater for higher educational purposes for 135 years. NMSU has participated as an *amicus* in this case since 2017 and supports the settlement because it embodies historic use of water on which NMSU and other groundwater users have long relied.

PNM is the largest provider of electricity in New Mexico and owns and operates the Afton Power Plant located south of the City of Las Cruces, which produces 230 Megawatts of electricity, enough to power the demand of over 100,000 households. The plant uses groundwater for cooling and relies on seven groundwater rights purchased and permitted for that purpose with priority dates ranging from 1949 to 1972. After PNM gave public notice of transfer of these existing water rights to the plant, the United States did not protest the transfers; the State Engineer issued the permits and PNM constructed and opened the plant at a cost of 240 million dollars. Because these rights fall within the D2 Period, the settlement removes the greatest uncertainty posed by this litigation.

CRRUA is a regional water and wastewater utility created by joint powers agreement between Doña Ana County and the City of Sunland Park to provide service to the City and the Santa Teresa border area of New Mexico, consisting of approximately 22,000 residents. CRRUA relies on groundwater to provide municipal and industrial supply in accordance with permits issued by the New Mexico State Engineer. Because a large portion of CRRUA's permits require offsets of depletion effects on surface water caused by groundwater pumping, the settlement's provisions for use of Project water for other purposes will facilitate

change of use from senior surface rights to municipal and industrial uses and assist CRRUA and other permit holders to comply with permit conditions.

Amici are parties to the state adjudication, *New Mexico ex rel. State Engineer v. Elephant Butte Irrigation Dist.*, No. 96-CV-888 (3rd Judic. Dist, N.M.) ("New Mexico adjudication"). As discussed below, resolution of significant disputes pending in the New Mexico adjudication and creation of a new mechanism for administering water rights in times of shortage will be essential to assure successful implementation of the proposed settlement.

III. Administration and Adjudication within New Mexico

In addition to requiring depletion reduction and establishing Compact deliveries based upon the EEPI, the proposed settlement imposes two critical and continuing duties on the State of New Mexico to manage "Enforceable Hydrologic Conditions": 1) to protect Project efficiency when the ratio of storage release to delivery of surface water drops below a specified metric (UVDR3 > 0.79); and 2) to avoid "Aquifer Storage Loss" by achieving stable or gaining aquifer levels in times of higher releases from Caballo Reservoir (CAB3 > 400,000 acre-feet). New Mexico's obligation to take action is subject to a consultation process with the United States and agreed provisions for judicial review. See Groundwater Agreement, IV(A)(5) & (B)(4)(5) and VI(A), Attachment B to Joint Motion to Enter Decree.

Amici share the City of Las Cruces's concerns that the second Enforceable Hydrologic Condition, to prevent Aquifer Storage Loss, establishes an uncertain

and insufficiently defined obligation. What if dry conditions in the future simply make maintenance of aquifer levels unachievable? As described by the City, avoiding aquifer loss could fall harshly on a segment of water users, including municipal and industrial and junior agricultural users. See City of Las Cruces Comments.

The Parties recognize that New Mexico's success in carrying out its new duties will in large measure depend on an effective administration apparatus. Although the State's water law is premised on prior appropriation, strict priority administration in the State's Lower Rio Grande would be the equivalent of a blunt hammer, causing severe economic and community disruptions, provoking strife and prolonged litigation. To address this problem, the Groundwater Agreement calls for the State to develop a Groundwater Management Plan within two years of entry of the two decrees, which will include a "description of district specific rules, State Engineer orders, or alternative administration plans approved by the State Engineer for the Lower Rio Grande." Groundwater Agreement, V(6), Attachment B to Joint Motion to Enter Decree.

Amici cannot stress enough the critical importance of the administration apparatus that must be fashioned, in order to handle circumstances when New Mexico may need to take action. "Such a situation is most likely to occur if climatic conditions cause consistently low surface water supply for the Project, so that the average surface water supply to the Project is lower than that of the D2

Period." Memorandum in Support of Joint Motions at 33 (citing Ex. 8, Barroll Decl. ¶ 65).

As *Amici* have previously stated, a comprehensive settlement of all issues at the same time, the "whole enchilada" as Mr. Wallace described it, would have been most desirable. However, because of the difficulty of settling the interstate dispute and the United States' concerns of Project interference, the settlement package does not resolve the alternative administration and adjudication issues.

Nonetheless, *Amici* promised support for the package if two additional provisions were included. First, a clear recognition by the Parties that New Mexico's agreement to a 1903 priority for combined surface and groundwater diversions of 3.024 acre-feet/acre per year for EBID members does "not require the New Mexico State Engineer to administer water rights by strict priority or prevent New Mexico from agreeing to alternative administration." Project Operations Settlement Agreement, II.A.3, p. 13, Joint Motion to Enter Decree, Attachment C.

Second, a commitment to negotiate the two remaining agreements within a year:

> Other Adjudication and Administration Issues. The United States, New Mexico, and EBID agree to negotiate in good faith among themselves and the Other Amici in New Mexico ("Other New Mexico Amici") to seek to resolve, by no later than October 1, 2026: (1) the potential objections of the Other New Mexico Amici to the proposed amended subfile order in SSI 101; (2) other appealable issues raised by the United States' and New Mexico's notices of appeals in SSI 104; (3) a separate appeal filed by the City of Las Cruces in SSI 104; and (4) final decrees of subfile orders on the water rights of EBID, the City of Las Cruces, and New Mexico State University. 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 New Mexico Amici 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. at II.B, p. 13.[2] See Joint Motion to Dismiss at 22-23.

Amici accept these good faith commitments to timely negotiate these remaining essential agreements.

CONCLUSION

Amici ask the Special Master to recommend entry of the two decrees.

Respectfully submitted,

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[2] The "Other Amici" in New Mexico are the City of Las Cruces, New Mexico Pecan Growers, Albuquerque Bernalillo County Water Utility Authority, New Mexico State University, the Southern Rio Grande Diversified Crop Farmers Association, Public Service Company of New Mexico, and Camino Real Regional Utility Authority. See Project Operations Settlement Agreement, Recital P, p. 3, Joint Motion to Enter Decree, Attachment C.

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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 NOTICES OF ENTRY OF APPEARANCES FOR *AMICI CURIAE* NEW MEXICO STATE UNIVERSITY, PUBLIC SERVICE COMPANY OF NEW MEXICO AND CAMINO REAL REGIONAL UTILITY AUTHORITY 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,

JOHN W. UTTON