

No. 141, Original

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IN THE  
**Supreme Court of the United States**

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TEXAS,

*Plaintiff,*

*v.*

NEW MEXICO AND COLORADO,

*Defendants,*

UNITED STATES OF AMERICA,

*Intervenor.*

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**ON THE COMPACTING STATES' JOINT MOTION TO ENTER  
CONSENT DECREE AND THE JOINT MOTION OF UNITED STATES  
AND STATE OF NEW MEXICO TO DISMISS**

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**FOURTH INTERIM REPORT OF THE  
SPECIAL MASTER**

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Hon. D. Brooks Smith  
*United States Circuit Judge  
Special Master*  
1798 Plank Road, Suite 203  
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February 6, 2026

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## I. Recommendation and Summary

On July 3, 2023, then-Special Master Michael J. Melloy issued the Third Interim Report (“*TIR*”) in this original jurisdiction matter, which began: “Texas, New Mexico, and Colorado . . . have filed a joint motion to enter a consent decree compromising and settling ‘all claims among them arising from the 1938 Rio Grande Compact.’” *TIR*, Sp. M. Dkt. 776, at 1. The Report recommended that the Court enter the proposed decree (“Proposed 2022 Consent Decree”) over the objections of the United States. But the Court did not acquiesce in that recommendation. In a decision issued on June 21, 2024, it denied the motion, holding that the Proposed 2022 Consent Decree would impermissibly “dispose of the United States’ [] claims without its consent.” *Texas v. New Mexico*, 602 U.S. 943, 965 (2024). The undersigned was soon thereafter appointed as a successor to the Special Master.<sup>1</sup> I ordered Texas, New Mexico, and Colorado (“Compacting States”) and the United States to return to mediation, Sp. M. Dkt. 825, and, after extensive negotiations, the parties reached a new compromise. On August 29, 2025, the Compacting States filed a joint motion seeking entry of a refashioned decree (“Compact Decree”), to which the United States does not object. For the following reasons, I recommend that the Court grant the motion. New Mexico and the United States have separately moved for entry of a decree of dismissal, to which Texas and Colorado do not object. I also recommend entry of that decree of dismissal. *See* discussion in footnote 8, *infra*.

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1. In an order dated July 17, 2024, the Supreme Court thanked Special Master Melloy for his service and discharged him. Sp. M. Dkt. 805 at 1–2.

Much like the river whose water the parties have quarreled over for decades, this original action has proceeded in a meandering fashion. First articulated by Texas in its 2013 Complaint, the dispute, in some sense, began about 8,000 years ago, in ancient Mesopotamia, when the Sumerians invented the concept of irrigation and incited a run on Earth’s navigable waterways. *See* Alexander R. Thomas, Gregory M. Fulkerson, *City and Country: The Historical Evolution of Urban-Rural Systems* 137 (Rowman & Littlefield 2021). Several millennia later, upstream diversions in the city-state of Umma led to “one of the oldest known wars in human history,” Jason Daley, *Recently Deciphered 4,500-Year-Old Pillar Shows First Known Record of a Border Dispute*, SMITHSONIAN MAGAZINE (Dec. 7, 2018), <https://www.smithsonianmag.com/smart-news/pillar-first-evidence-neighbors-behaving-badly-180970969/>, with downstream rival, Lagash, ASSOCIATED REG’L CHRONOLOGIES FOR THE ANCIENT NEAR EAST AND THE EASTERN MEDITERRANEAN, *ARCANE III: HISTORY & PHILOLOGY* 76 (Walther Sallaberger & Ingo Schrakamp eds., 2015), [https://www.assyriologie.uni-muenchen.de/personen/professoren/sallaberger/publ\\_sallaberger/wasa\\_schrakamp\\_2015\\_arcane1.pdf](https://www.assyriologie.uni-muenchen.de/personen/professoren/sallaberger/publ_sallaberger/wasa_schrakamp_2015_arcane1.pdf).

Putting aside both the metaphoric and the ancient, I must focus on the twentieth century. By 1938, the instruments of irrigation had grown more sophisticated and the conflicts more formalized. But the fundamental problem of how to apportion the waters of an interstate river remained unsolved and just as daunting. Seeking to resolve that problem (or at least one incarnation of it), and in lieu of the violence that plagued the early dynastic Near East, the Compacting States entered into the Rio Grande

Compact (“Compact”) in 1938, and Congress approved it the following year. *See Rio Grande Compact*, Act of May 31, 1939, 53 Stat 785.

The 1938 Compact regulates the “use of the waters of the Rio Grande above Fort Quitman, Texas” as between the Compacting States. Compact, at 1 (Preamble). It requires Colorado to deliver a specific amount of water to the New Mexico border, Compact Art. III, and requires New Mexico to deliver a specific amount of water to the Elephant Butte Reservoir (“Reservoir”), Compact Art. IV, located in New Mexico, about 105 miles north of the border with Texas, *TIR*, Sp. M. Dkt. 776, at 2–3. The Reservoir is part of the Rio Grande Reclamation Project (“Project”), which operates under the auspices of the United States Bureau of Reclamation (“Reclamation”), Sp. M. Dkt. 856, Ex. 5 ¶17,<sup>2</sup> first established “to oversee the concerted federal effort to alleviate the economic depression, drought, and population concerns in western states and territories . . . by allowing the government to undertake irrigation projects”, First Interim Report (“*FIR*”), Sp. M. Dkt. 54, at 89. Even prior to the Compact, Reclamation supplied water to irrigation districts—the Elephant Butte Irrigation District (“EBID”) in New Mexico and the El Paso County Water Improvement District No. 1 (“EP1”) in Texas (collectively “Districts”)—below the Reservoir, pursuant to separately executed contracts (“Downstream Contracts”). Sp. M. Dkt. 856, Ex. 5 ¶ 20. Rather than disturb this preexisting arrangement, the Compact incorporated it, relying on the Project to release

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2. Until 1923, the Bureau of Reclamation was known as the United States Reclamation Service. *Reclamation History: 120 Years of Managing Water in the West*, U.S. Bureau of Reclamation (Sept. 11, 2023), <https://www.usbr.gov/history/>.

the water ultimately used between the Reservoir and Fort Quitman. Compact Art. I(l).

It's what transpired on that stretch of land that precipitated the controversies leading to this case. While other practices have occasionally generated animosity among the Compacting States, *see* Sp. M. Dkt. 856, Ex. 5 ¶¶46–47 (detailing disputes over surface water depletions), nothing has proven so controversial as groundwater pumping. And nowhere has groundwater pumping had a greater impact than the Lower Rio Grande. According to Texas, groundwater pumping in southern New Mexico deprives Texas of its rightful Compact apportionment. New Mexico counters that it is groundwater pumping in Texas that threatens to upend a nearly-90-year *détente*. What has made this dispute so intractable is the Compact's failure to establish precise apportionments below the Reservoir.

“[C]ondemned by some as [] unduly complicated, poorly written, and of uncertain intent,” Raymond A. Hill, *Development of the Rio Grande Compact of 1938*, 14 NAT. RESOURCES J. 163, 197 (1974), the Compact's perceived shortcomings are more comprehensible when viewed as incidental to a compromise amongst antagonistic stakeholders, each in jealous pursuit of a “usable water supply” that “is no more than sufficient to satisfy” their collective needs, Letter from Comm. Of Eng'g Advisors to Rio Grande Compact Comm'n (Mar. 9, 1938), at 1, *in* Rio Grande Compact Commission Records, Dolph Briscoe Center for American History, The University of Texas at Austin. And beyond the challenge of harmonizing three stubbornly divergent bargaining positions, practical limitations also factored into what, in retrospect, appear

significant oversights. The Compact’s drafters had only a remedial understanding of the hydrological effects of groundwater pumping, *TIR*, Sp. M. Dkt. 776, at 4, and no means of accurately measuring river flows at the Texas border in light of the web of “irrigation canals, ditches and laterals” that crossed its “irregular contour”, *FIR*, Sp. M. Dkt. 54, at 181. All of this is to say that the current litigation arises from ambiguities that reflect the predicaments of a certain era—predicaments that time and technology have resolved.

Hence the Compact Decree. After extensive mediation and careful consideration of the issues before them, the Compacting States have coalesced around that supplemental document, which provides answers to two key questions the Compact, itself, left open: (1) what amount of water are New Mexico and Texas entitled to below the Reservoir?, and (2) what baseline operating condition are the Compacting States required to protect to ensure long-term Project viability? Crucially, unlike the Proposed 2022 Consent Decree, the Compact Decree answers these questions in a manner that is both consistent with the Compact and that fairly and adequately resolves the Compacting States’ claims. With that in mind, I recommend that the Court grant the Compacting States’ joint motion, enter the Compact Decree, enter New Mexico and the United States’ proposed decree of dismissal, and bring an end to this long-pending litigation.

## **II. Background**

Former Special Master Melloy’s summary judgment order of May 21, 2021, contains a comprehensive recital of the background of the Project, the Compact, and the

general history of the Lower Rio Grande. Summary Judgment Order (“*SJO*”), Sp. M. Dkt. 503. Together with Judge Melloy’s Third Interim Report and former Special Master A. Gregory Grimsal’s First Interim Report, the Court should have all that is needed for a full understanding of the long-festering controversy over the waters of the Lower Rio Grande and the protracted litigation that has brought us to this juncture. *FIR*, Sp. M. Dkt. 54; *TIR*, Sp. M. Dkt. 776. Rather than diminish the aforementioned oeuvre through summary, I will instead focus here only on the facts necessary to resolve the pending Joint Motion to Enter the Compact Decree. Sp. M. Dkt. 856.

**a. The Project, the Compact, and the Source of the Dispute**

The Rio Grande rises in the San Juan Mountains in southwestern Colorado, courses through New Mexico, and crosses into Texas near the City of El Paso. From there, it snakes its way southward, forming the sinuous border between the United States and Mexico, finally reaching its mouth in Brownsville, Texas. Along the way, the river bisects drought-prone lands “devoted almost entirely to agriculture,” which are dependent on it for irrigation. *See NATIONAL RESOURCES COMMITTEE, REGIONAL PLANNING: PART VI—THE RIO GRANDE JOINT INVESTIGATION IN THE UPPER RIO GRANDE BASIN IN COLORADO, NEW MEXICO, AND TEXAS, 1936-1937, at 7 (1938).*

Given the absence of some collective agreement or universal adoption of the Lockean proviso, this configuration portends a tragedy of the commons. By the late 19th Century, that tragedy became manifest

downstream. While upstream users reaped the benefits of excessive diversions, Mexican citizens in and around Juarez suffered serious shortages. *See id.* at 8. Frustrated with this new reality, they agitated for a solution, prompting the Mexican Treaty of 1906, under which the United States agreed to deliver up to 60,000 acre-feet of water annually upon completion of the Elephant Butte Reservoir.<sup>3</sup> *SJO*, Sp. M. Dkt. 503, at 25–26.

To effectuate delivery, the U.S. turned to the then-recently established Reclamation Service, the entity empowered to operate the nascent Rio Grande Project, which included the planned Reservoir, and which Congress originally envisioned as a means of efficiently distributing water to irrigable farmlands in southern New Mexico and Texas. *FIR*, Sp. M. Dkt. 54, at 99–100. In search of funds, Reclamation contracted with “water user associations” in New Mexico and Texas—predecessors of EBID and EP1—that agreed to gradually repay the construction costs of essential Project infrastructure in exchange “for rights to the use of water available by means of said proposed irrigation works.”<sup>4</sup> *SJO*, Sp. M. Dkt. 503, at

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3. Today, while the Reservoir is the Project’s primary storage facility, the Project also includes a power production facility in New Mexico, the Caballo Dam and Reservoir (“Caballo Dam”), three primary diversion dams in New Mexico, two primary diversion dams in Texas, and hundreds of miles of canals, lateral ditches, and drains. *SJO*, Sp. M. Dkt. 503, at 26 n.11.

4. These “water user associations” eventually became irrigation districts, EBID and EP1, creatures of New Mexico and Texas state law, respectively. In 1937, the Districts renegotiated the original contracts and entered the Downstream Contracts. These new contracts essentially “eliminate[d] payments for construction, maintenance, and operation of the Project’s power

26; *FIR*, Sp. M. Dkt. 54, at 107. About a decade later, in 1915, Reclamation made its first delivery to Mexico. *SJO*, Sp. M. Dkt. 503, at 26. And by 1919, construction of the Reservoir and other storage and diversion infrastructure was substantially complete. *Id.* At that point, engineers deemed the Project capable of both fulfilling the United States' obligation under the 1906 Treaty and serving the water user associations in New Mexico and Texas. *Id.* at 27. From at least 1921 onward, this latter task involved irrigating approximately 155,000 acres, with roughly 57% located in New Mexico and 43% in Texas. *Id.* The Downstream Contracts eventually formalized this division, apportioning costs and usage rights according to the same 57%-43% split in times of shortage. *Id.* at 28.

Yet neither the Treaty nor the Downstream Contracts resolved ongoing tensions between and among Colorado, New Mexico, and Texas. So, in 1938, after nearly a decade of negotiation, those States executed the Rio Grande Compact to apportion the waters of the Rio Grande Basin above Fort Quitman, Texas. *Id.* at 32–33. Pursuant to the U.S. Constitution's Compact Clause, this Compact—once approved by Congress and signed by President Franklin Roosevelt—carried the weight of federal law. *See Texas*, 602 U.S. at 949–50.

Among its 17 articles, the Compact imposes two delivery obligations. First, Colorado must deliver water to the New Mexico state line, with the precise obligation indexed to certain hydrologic conditions. Compact Art.

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production infrastructure in exchange for relinquishment of any claims to that infrastructure or the benefits it generated.” *SJO*, Sp. M. Dkt. 503, at 28.

III. Second, New Mexico must deliver water to the Reservoir—again, with the precise obligation indexed to hydrologic conditions. Compact Art. IV.

Below the Reservoir, the Compact relies on the Project to facilitate delivery.<sup>5</sup> *SJO*, Sp. M. Dkt. 503, at 3. And it requires the Compacting States to protect a “baseline operating condition” to ensure continued Project viability. *Id.* at 5. But neither *the amount of water the Project must deliver*, nor *the baseline operating condition* is fully defined. *Id.* at 6–7. “[T]he Compacting States . . . intended the 57%/43% downstream division of water as a ‘rough protected baseline[.]’” *TIR*, Sp. M. Dkt. 776, at 76. Yet they did not ratify a denominator, so the crucial question remains: 57% and 43% “of what?” *SJO*, Sp. M. Dkt. 503, at 6–7. The Compact is similarly silent as to what Project “operating” condition the parties are obliged to protect. It evinces no intent to freeze agricultural and irrigation practices in amber, nor does it contemplate static population levels or preemptively reject alternative modes of development. *SJO*, Sp. M. Dkt. 503, at 5; *TIR*, Sp. M. Dkt. 776, at 76–77. At the same time, even as early as 1938, the Compacting States recognized that, at certain levels, the practice of groundwater pumping would

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5. Initially, Reclamation delivered water directly to farm headgates in EBID and EP1 and controlled essentially all Project infrastructure. *SJO*, Sp. M. Dkt. 503, at 29; *TIR*, Sp. M. Dkt. 776, at 19. Around 1980, however, upon satisfaction of their repayment obligations under the Downstream Contracts, Reclamation transferred ownership and control of some Project infrastructure to EBID and EP1. *TIR*, Sp. M. Dkt. 776, at 19. As a result, Reclamation now delivers water only to the Districts, which are, in turn, responsible for facilitating deliveries to their respective members. *Id.*

“adversely affect[] Rio Grande surface water flows” and thereby jeopardize the Project’s viability. *SJO*, Sp. M. Dkt. 503, at 4. Under the Compact, then, while not categorically verboten, groundwater pumping must be subject to some unspecified limitations.

Though peculiar in hindsight, these nebulously drawn provisions may well reflect the abundance of supply that prevailed during the era in which they arose. From 1938 to 1950, surface water flowed in ample quantities, diminishing pumping’s import. *TIR*, Sp. M. Dkt. 776, at 18. But the advent of a mid-century drought soon made scarcity the norm. *SJO*, Sp. M. Dkt. 503, at 42. To compensate for dwindling surface water, “entities in southern New Mexico below the . . . Reservoir began pumping groundwater at increasing levels.” *Texas*, 602 U.S. at 950. Because groundwater pumping draws “water away from the river and . . . intercept[s] the return flows that would otherwise replenish it,” *id.* at 951, an increase in pumping in New Mexico corresponded to a decrease in Rio Grande water that reached its intended destination downstream.

In practice, this meant Reclamation needed to release more water to satisfy EP1 orders and its delivery obligations to Mexico. *Id.* at 951. To estimate how much water would be available for diversion for a given release from Caballo, Reclamation developed the “D2 Equation *Id.*; *TIR*, Sp. M. Dkt. 776, at 19. The D2 Equation is a mathematical regression developed from the historic annual Caballo releases and surface water deliveries from the D2 Period of 1951 to 1978. The D2 Equation can be used to calculate the total deliveries that should result from a given Caballo release under D2 hydrologic

conditions. *Id.* at 19–20. This prediction is then updated throughout the irrigation season as new data on present conditions is received. *Id.*

Since 1980, Reclamation has used the D2 Equation to calculate the quantity of water EBID and EP1 may order from Reclamation and, in turn, the amount that water users in New Mexico and Texas may order from EBID and EP1. *Id.* at 19–20.

If there was opposition to this method of operation during a late-century period of relative water abundance, it went unvoiced. Those times witnessed “spills” that triggered a kind of jubilee, eliminating “all accrued debits” between the Compacting States. *Id.* at 20–21; Compact. Art. VI. Unfortunately, good times don’t “roll” forever. The twenty-first century saw a return to an extended period of drought conditions. *TIR*, Sp. M. Dkt. 776, at 21. Reservoir releases decreased, and in at least two years (2003 and 2004), water users in Texas did not receive the water to which they were entitled. *Id.* In an attempt to resolve this issue, Reclamation, EBID, and EP1 entered the “2008 Operating Agreement.” *Id.* Under the Agreement, EP1 retained the right to order water pursuant to the D2 Equation, but EBID “was restricted to ordering only a portion of the D2 amount.” *Id.* This “formalized the already decades-old practice of using the D2 [Equation] as the basis for determining the allocation of water to the respective [D]istricts.” *Id.* at 23 It did not, however, as the ensuing years would demonstrate, satisfy either New Mexico or Texas. *Id.*

**b. Procedural History**

A harbinger of the instant proceeding was New Mexico's suit filed in 2011 against the United States, EBID, and EP1 in federal District Court in New Mexico. *Id.* at 22. It alleged that the 2008 Operating Agreement violated the Compact because it "treated evaporative losses in a manner inconsistent with the Compact and taxed New Mexicans for all Project inefficiencies and indirect water capture." *Id.* According to New Mexico, this ignored the fact that "the United States and Texas were responsible for some such inefficiencies." *Id.*

In 2013, with New Mexico's lawsuit pending, Texas brought this original jurisdiction action, alleging that excessive groundwater pumping in New Mexico deprived Texas of its Compact apportionment of the Rio Grande.<sup>6</sup> *Id.* at 24. As relief, Texas sought: (1) a declaration of its rights "to the waters of the Rio Grande pursuant to and consistent with the Rio Grande Compact and the Rio Grande Project Act"; (2) a decree commanding New Mexico to (a) deliver the waters of the Rio Grande to Texas in accordance with the provisions of the Compact and Rio Grande Project Act and (b) cease and desist actions which interfere with Project operations; and (3) an award of damages. Sp. M. Dkt. 63, at 14–15.

The Court allowed the United States to intervene, but denied intervention to EBID, EP1, and other water users in the basin. New Mexico moved to dismiss the Texas Complaint and the United States Complaint in

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6. New Mexico's lawsuit was later stayed pending this original action. *TIR*, Sp. M. Dkt. 776, at 100.

Intervention. *TIR*, Sp. M. Dkt. 776, at 24–25. Then-Special Master Grimsal recommended that the Court deny New Mexico’s motion to dismiss Texas’ Complaint but that it grant the motion with respect to the United States’ Compact claims. *FIR*, Sp. M. Dkt. 54, at 3–4. The Court ultimately accepted the recommendation except as to the United States, which it permitted to assert its distinctly federal interests via “a complaint with allegations that parallel[ed] Texas’s.” *Texas v. New Mexico*, 583 U.S. 407, 411, 413–15 (2018).

New Mexico subsequently filed an answer and counterclaims against the United States and Texas. *TIR*, Sp. M. Dkt. 776, at 28. Special Master Melloy dismissed all counterclaims seeking injunctive relief or damages as to the United States but reserved ruling on the permissibility of declaratory relief. *Id.* at 29. He also dismissed several of New Mexico’s counterclaims against Texas. *Id.* What remained of New Mexico’s claims largely “mirrored” Texas’ claims. *Id.* at 28.

The parties proceeded to discovery and, upon completion, filed cross-motions for summary judgment. *Id.* at 31. In ruling on these motions, Special Master Melloy reached several conclusions that helped shape the scope of the proposed Compact Decree. First, he determined that “New Mexico owed a Compact-level duty to Texas to apply its laws in a manner so as to protect the delivery of Texas’s Compact apportionment.” *Id.* at 33. He also concluded that “[t]he Compact apportioned water between downstream New Mexico and Texas pursuant to a rough baseline of 57% for New Mexico and 43% for Texas subject to the reservation of Treaty water for Mexico.” *Id.* at 34. And he added that “several

aspects of the Compact and negotiating history showed a presumption that an as-yet-undetermined baseline operation condition *akin to* a 1938 condition would need to be protected to ensure Mexico received its Treaty water and Texas received its apportionment.” *Id.* But, as the prior conclusion demonstrates, Special Master Melloy left open for trial several key questions, namely, what precise baseline operating condition the Compact obliged the Compacting States to protect and what amount of water the Compacting States intended to subject to the 57%-43% split. *Id.* These ambiguities also factor heavily into the analysis of the proposed Compact Decree.

Following the order on summary judgment, the parties proceeded to the first phase of trial. This initial phase on liability ended in November 2021, with a second liability phase scheduled to commence in March of the following year. *Id.* at 35. But that second phase never happened. Instead, the parties engaged in settlement negotiations under the stewardship of a gifted mediator, retired United States Magistrate Judge Arthur Boylan. *Id.* Nearly a year later, the Compacting States filed a joint motion seeking entry of the Proposed 2022 Consent Decree which would resolve their claims. Sp. M. Dkt. 719–20. The United States, however, objected. It argued “that [entry of] the consent decree would impermissibly dispose of its Compact claims without its consent.” *Texas*, 602 U.S. at 953. In the Third Interim Report, Special Master Melloy considered the United States’ objection but ultimately recommended that the Court enter the Proposed 2022 Consent Decree. *TIR*, Sp. M. Dkt. 776. The United States filed an exception, and the Court set the case for argument. *Texas*, 602 U.S. at 953.

On June 21, 2024, a divided Court sustained the United States' exception and denied the motion to enter the Proposed 2022 Consent Decree. *Id.* at 965. Writing for the majority, Justice Jackson explained that the Court could not adopt a decree that would dispose of the United States' claims without its consent. *Id.* at 961–63. That necessitated denial of the pending motion but, importantly, did not reveal anything about the merits of the United States' arguments themselves, which the Court noted “may or may not ultimately prevail at trial.” *Id.* at 963.

With settlement scuttled, the Court remanded the case for further proceedings. So began my tenure as Special Master. In an Order dated July 17, 2024, the Court thanked Judge Melloy for his work, discharged him from further service, and appointed the undersigned as his successor. Sp. M. Dkt. 805, at 1–2. In that capacity, I held a status conference at the Alfred A. Arraj Courthouse in Denver, Colorado, where I ordered the parties to resume mediation before Judge Boylan. Sp. M. Dkt. 825; 826. Several months later, I held another status conference at the Joseph F. Weis Jr. Courthouse in Pittsburgh, Pennsylvania, setting out my expectations for the upcoming June trial. Sp. M. Dkt. 838. Fortunately, mediation obviated the need to proceed to trial. On May 15, 2025, the parties announced that they had reached an agreement in principle and intended to file two motions that would resolve all issues in the case.<sup>7</sup> Sp. M. Dkt. 849. Those motions arrived on

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7. At this same time, the parties invited me to participate in a tour of the Lower Rio Grande Basin to familiarize myself with the features of the Basin relevant to the settlement. The tour occurred on June 17 and 18 and provided me the opportunity to view the Rio Grande's surface waters, as well as infrastructure such as the Elephant Butte, Caballo, American, and International

August 29, 2025. The first, filed jointly by the United States and New Mexico, seeks dismissal of the United States' claims and New Mexico's counterclaims.<sup>8</sup> Sp. M. Dkt. 854. Neither Texas nor Colorado objected to that motion. The second, filed jointly by the Compacting States, seeks entry of the Compact Decree, which compromises and settles all other claims in this proceeding. Sp. M. Dkt. 856, at 3. The United States raised no objections to that motion. The parties, as well as representatives of EBID and EP1, presented arguments in support of these motions at a hearing that occurred over the course of two days on September 30 and October 1, 2025. Other amici subsequently submitted their comments in writing.

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Dams, and the El Paso Gage. *See* Sp. M. Dkt. 851. I also spoke with farmers who rely on the Rio Grande to irrigate their crops. *See id.* I am grateful to the parties, the amici, and all of counsel for their cooperative efforts in organizing and carrying out what was a highly informative and comprehensive real-time view of both the waters of the Lower Rio Grande and the Project.

8. This motion is premised on entry into a suite of agreements negotiated between the United States, New Mexico, EBID, and EP1, which are contingent upon entry of the Compact Decree. These agreements are important to their signatories, and they complement the Compact Decree. But they are not, themselves, *part of* the Compact Decree, nor do they constitute a separate consent decree requiring Court approval. The United States' and New Mexico's joint motion, therefore, seeks not entry of any agreements but dismissal under Supreme Court Rule 46.1, which provides: "[W]henver 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." As all these elements have been satisfied, *see* Sp. M. Dkt. 854, at 24, I recommend that the Clerk enter the requested order of dismissal if the Court enters the Compact Decree.

**c. The Compact Decree**

The Compact Decree retains many features of the Proposed 2022 Consent Decree but rectifies the flaws that doomed that initial settlement. Broadly speaking, it clarifies Texas’ Compact apportionment through use of the Effective El Paso Index (“Index”), which provides a means of tracking the movement of water below the Reservoir. This index-based approach (the same approach adopted in Articles III and IV of the Compact) pegs Texas’ apportionment to quantifiable hydrologic conditions as measured at gaging stations along the river. Sp. M. Dkt. 856, at 23–24.

The Index reduces to two basic parts: the Effective El Paso Index Obligation (“Index Obligation”) and the Effective El Paso Index Delivery (“Index Delivery”). *Id.*, Ex. 4 ¶¶ 17–18. The former represents the annual amount of water Texas should receive pursuant to the Compact, while the latter reflects the actual amount of water delivered. *Id.* The Index Obligation is based on a 2-year regression analysis comparing historical releases from Caballo Dam with net stream flows at the El Paso Gage during the D2 Period. *Id.*, Ex. 4 ¶¶ 77–80; Ex. 8 ¶ 24(b). In other words, the Index Obligation equals the amount of water Texas should receive under D2 conditions. *Id.*, Ex. 4 ¶ 81. The Index Delivery measures compliance with the Obligation based on the amount of water that actually passes through the El Paso Gage, accounting for Mexico’s Treaty water, excess flows, and Texas depletions above the gage, in a region known as the Texas Mesilla. *Id.*, Ex. 8 ¶ 24(a).

Ideally, the Index Delivery will equal the Index Obligation; in practice, though, a precise match is highly unlikely. *Id.*, Ex. 4 ¶¶ 92–93. Consequently, the Compact Decree contemplates annual Index Departures. A Positive Index Departure occurs when New Mexico over-delivers water to Texas, and a Negative Index Departure indicates an under-delivery.<sup>9</sup> *Id.*, Ex. 4 ¶ 94. Under the terms of the Compact Decree, New Mexico may accrue Negative Index Departures so long as those departures do not, in total, exceed specified limits.<sup>10</sup> *Id.*, Ex. 8 ¶¶ 29–32. If those limits are breached, New Mexico must initiate certain “water management actions,” *Id.*, Ex. 1 § II.D.1., but it retains a measure of discretion over how to best address any accrued Negative Departures, *Id.* at 26.

One means for doing so is a water transfer (“Transfer(s)”) between EBID and EP1. *Id.* Transfers also featured in the Proposed 2022 Consent Decree, but unlike that document, the Compact Decree does not purport to accomplish Transfers by fiat, nor does it contemplate commandeering Project operations or infrastructure. *Id.* at 26 n.12; *see TIR*, Sp. M. Dkt. 776, at 71–72 (describing the United States’ objection to the Proposed 2022 Consent Decree’s provision permitting New Mexico to order water transfers from EBID to EP1 without either District’s

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9. Index Departures occur only when annual releases from Caballo Dam exceed 200,000 acre-feet. Sp. M. Dkt. 856, at 27. If annual releases fall below 200,000 acre-feet, the Index Departure is deemed to be zero. *Id.*, Ex. 1 § II.E.1.a. Similarly, if annual releases exceed 790,000 acre-feet, the Index Obligation is calculated as if the release were 790,000 acre-feet. *Id.*, Ex. 1 § II.E.1.b.

10. Article VI of the Compact affords Colorado and New Mexico this same grace with respect to their delivery obligations upstream of the Reservoir. Sp. M. Dkt. 856, at 25.

consent). Instead, Transfers under the Compact Decree operate pursuant to separate agreements, executed among New Mexico, the United States, EBID, and EP1. Sp. M. Dkt. 856, at 26 n.12. These agreements ensure that the United States and the Districts consent to any Transfer and that they are compensated accordingly. *Id.* This enables New Mexico to remedy severe, recurring Negative Departures with accelerated deliveries to Texas, ensuring “real time” support when water is most needed. *Id.*, at 43.

Among other modifications, the Compact Decree also removes all of the Proposed 2022 Consent Decree’s ancillary references to Project operations and the United States. *Id.*, at 28. As a result, it neither imposes obligations on the United States, nor does it compel the United States to adopt any definition of Compact compliance. *Cf.* U.S. Exception Brief, Sp. M. Dkt. 787, at 16 (excepting to the Third Interim Report on the grounds that its recommendation to enter the Proposed 2022 Consent Decree would impose obligations on the United States, a nonconsenting intervenor). This, among other reasons, explains why no party or Amicus objects to entry of the Compact Decree.

### **III. Discussion**

#### **a. Applicable Standards**

Though consent decrees assimilate aspects of both contracts and judicial decrees, the entry of such decrees is unambiguously a “judicial act.” *Pope v. United States*, 323 U.S. 1, 12 (1944). A consent decree is “entered as a judgment,” and the entering Court maintains jurisdiction

for the purpose of adjudicating controversies arising from noncompliance or contempt. *Loc. No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 518 (1986) (“*Firefighters*”). But the aegis of judicial authority imposes corresponding obligations on those who seek to invoke it. Unlike a contract between two private entities—where only consideration, capacity, and imagination circumscribe the possibilities—a consent decree, if it is to acquire the status of “judgment,” must: (1) “spring from and serve to resolve a dispute within the court’s subject matter jurisdiction,” *id.* at 525, (2) “further the objectives of the law upon which the complaint was based,” *id.*, and (3) represent a fair and reasonable compromise, *id.* at 512.

An additional wrinkle arises when a consent decree implicates an interstate compact. Because an interstate compact bears Congress’ blessing, it is “not just an agreement, but a federal law.” *Kansas v. Nebraska*, 574 U.S. 445, 454 (2015). “One consequence of this [] is that, unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms.” *Texas v. New Mexico*, 462 U.S. 554, 564 (1983).

Applying these standards to the facts before me, I recommend that the Court grant the Compacting States’ Joint Motion and enter the Compact Decree because the Compact Decree: (1) fully resolves the Compacting States’ dispute, which falls within the Court’s subject matter jurisdiction; (2) is consistent with and furthers the objectives of the Compact and other federal law; and (3) is a fair and reasonable compromise.

**b. The Compact Decree Fully Resolves the Compacting States' Dispute, Which Falls Within the Court's Subject Matter Jurisdiction**

"[A] consent decree must spring from and serve to resolve a dispute within the court's subject-matter jurisdiction." *Firefighters*, 478 U.S. at 525. This requirement distills into two sub-requirements: (1) the proposed decree must resolve an underlying dispute, and (2) the Court must possess appropriate subject matter jurisdiction to enter the decree.

**i. The Compact Decree Resolves the Compacting States' Dispute**

Prior to entry, a court must verify that the consent decree before it actually resolves a live dispute, lest it become a mere "recorder of contracts." *Id.* (citation omitted). The Compact Decree easily satisfies this requirement.

The basic dispute giving rise to this action represents "a fundamental disagreement as to Compact interpretation." Sp. M. Dkt. 338, at 1. "Texas alleges that various actions of New Mexico violate the 1938 Compact, thereby depriving Texas of its equitable apportionment of water." *FIR*, Sp. M. Dkt. 54, at 187. New Mexico, on the other hand, claims that "excess water consumption in Texas interferes with Project water deliveries [in New Mexico.]" Sp. M. Dkt. 338, at 11. This exchange of reciprocal accusations arises from gaps in the original Compact. And, as I've discussed, the Compact defines neither Texas' apportionment nor the baseline operating conditions the Compacting States must protect. The Compact Decree introduces procedures

and provisions that fill those gaps and, which, ipso facto, resolve the Compacting States' interstate dispute. That becomes evident upon a holistic review of the pleadings.

**1. The Compact Decree Resolves Texas' Claims**

Texas' Complaint asks the Court to:

[1] Declare the rights of the State of Texas to the waters of the Rio Grande pursuant to and consistent with the Rio Grande Compact and the Rio Grande Project Act; [2] Issue its Decree commanding the State of New Mexico, its officers, citizens, and political subdivisions, to: (a) deliver the waters of the Rio Grande in accordance with the provisions of the Rio Grande Compact and the Rio Grande Project Act; and (b) cease and desist all actions which interfere with and impede the authority of the United States to operate the Rio Grande Project; [3] Award to the State of Texas all damages and other relief, including pre- and post-judgment interest, for the injury suffered by the State of Texas as a result of the State of New Mexico's past and continuing violations of the Rio Grande Compact and the Rio Grande Project Act; and [4] Grant all such other costs and relief, in law or in equity, that the Court deems just and proper.

Complaint at 15–16. This prayer reduces to three requests: (1) a declaration of Texas' Compact apportionment; (2) an injunction against interference with Project operations

to ensure that the apportionment is delivered; and (3) all damages and other relief for the injury suffered because of New Mexico's past and continuing violations of the Compact. *See* Sp. M. Dkt. 338, at 9–10. The Compact Decree adequately addresses all three.

First, the Compact Decree establishes a measurement methodology (the Index) that ensures that Texas receives 43% of annual deliveries calculated using a D2 baseline condition, after accounting for deliveries to Mexico and usage in the Texas portion of the Mesilla Basin. Sp. M. Dkt. 856, Ex. 1 § II.B.2.e. This is the equivalent of a declaration of Texas' Compact apportionment.

Second, the Compact Decree requires New Mexico to take remedial action if accrued Negative Departures breach certain thresholds. *Id.*, Ex. 1 § II.D.1. During the first five years of operation, the Compact Decree sets the accrued Negative Departure limit at 150,000 acre-feet. *Id.*, Ex. 1 § II.C.4.a. The limit reduces to 120,000 acre-feet thereafter. *Id.* Additionally, to minimize the risk of reaching these upper bounds, the parties negotiated a prophylactic provision that is triggered when accrued Negative Departures exceed 80,000 acre-feet. *Id.*, Ex. 1 § II.D. If that intermediate threshold is breached, New Mexico must impose additional water administration to reduce accrued Negative Departures to 16,000 acre-feet within six years. *Id.*, Ex. 1 § II.D.2.a. Operating together, these provisions are tantamount to an injunction prohibiting New Mexico from interfering with Project operations in a manner that jeopardizes delivery of Texas' Compact apportionment.

Finally, should New Mexico breach the previously discussed accrued Negative Departure limits, the Compact Decree requires it to compensate Texas with accelerated, additional deliveries of water. *Id.*, Ex. 1 § II.C.4.b.(ii). As Texas Rio Grande Compact Commissioner Bobby Skov puts it: “While this is not money damages, Texas prefers New Mexico to guarantee delivery of water and in ‘real time’ when it likely will be needed most.” *Id.*, Ex. 2 ¶11. This provision of the Compact Decree thus addresses Texas’ request for damages and other relief.<sup>11</sup>

As the foregoing illustrates, the Compact Decree provides, by some means, a form of relief for each of Texas’ prayers. It is, therefore, “a full and complete resolution of the issues raised by Texas in its Complaint.” *Id.*, Ex. 2 ¶21.

## **2. The Compact Decree Resolves New Mexico’s Claims**

Of New Mexico’s nine counterclaims, only two survived Special Master Melloy’s order granting, in part, and denying, in part, Texas’ and the United States’ Motions to Dismiss. *See* Sp. M. Dkt. 338, at 42. These

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11. On October 4, 2024, Texas and New Mexico announced their intention to voluntarily dismiss their “claims for damages against each other.” Sp. M. Dkt. 813, at 18. On November 3, 2025, they effectuated their intent, submitting a stipulation waiving “any and all claims to damages that may have resulted from the allegations in this case, including for any damages that occurred in 2003 and 2004.” Sp. M. Dkt. 871, ¶17. Thus, the Court should enter the Compact Decree even if it deems real-time delivery of water an inadequate substitute for damages because Texas no longer seeks damages resulting from the alleged misconduct in this case. The same applies to New Mexico. *See infra* at 27–28.

counterclaims allege: (1) “Unauthorized depletions in Texas” have “depleted and [threaten] to further deplete the waters of the Rio Grande allocated to New Mexico under the Compact”, and (2) “Texas has been unjustly enriched by receiving, and claiming the right to receive, more water than it is entitled to under the Compact.” Sp. M. Dkt. 93, at ¶¶66–67, 98. As relief, New Mexico asks the Court to: (1) “Declare the rights of the State of New Mexico to the waters of the Rio Grande pursuant to and consistent with the Compact;” (2) “Issue its Decree commanding the State of Texas, its officers, citizens, and political subdivisions to cease and desist all actions which violate the Compact;” and (3) “Award to the State of New Mexico all damages and other relief, including pre- and post-judgment interest, for the injury suffered by the State of New Mexico as a result of the State of Texas’s unjust enrichment and its past and continuing violations of the Compact[.]” Sp. M. Dkt. 93, at 28. Just as it does for Texas, the Compact Decree fully resolves New Mexico’s claims, which are “[t]o a large extent . . . a mirror image of Texas’s own.” Sp. M. Dkt. 338, at 11.

First, because (after accounting for obligations to Mexico) any apportionment of water below the Reservoir is split between New Mexico and Texas, the Compact Decree’s definition of Texas’ apportionment necessarily establishes New Mexico’s own apportionment. Under the Index methodology, Texas is entitled to 43% of Project deliveries calculated using a D2 baseline, meaning New Mexico is assured the other 57%. Sp. M. Dkt. 856, Ex. 9 ¶30. This 57% is, in effect, a declaration of New Mexico’s rights below the Reservoir.

Second, the Compact Decree calculates Texas' apportionment according to measurements taken at the El Paso Gage (USGS 08364000). *Id.*, Ex. 1 § II.B.1. "This gage is located in an ideal geographic, geologic, and hydrogeologic location to provide for a full accounting of all water delivered to Texas or used by Texas above the gage[.]" *Id.*, Ex. 4 ¶128. That "full accounting" guarantees that Texas will bear the cost of Project inefficiencies arising from its own adverse actions (*e.g.*, reduced return flows due to groundwater pumping in the El Paso Valley). *Id.* at 44–45. This, in turn, allays New Mexico's fear that it might suffer the consequences of Project shortfalls that actually stem from misappropriations in Texas. Put another way, the gage operates as a kind of geological polygraph that prevents Texas from wrongfully pinning the blame for depletions on New Mexico and thereby unjustly enriching itself. This is functionally a decree "commanding the State of Texas, its officers, citizens, and political subdivisions to cease and desist all actions which violate the Compact."

Finally, as with accrued Negative Departures, the Compact Decree contemplates Transfers to address any accrued Positive Departures that may arise. *Id.*, Ex. 1 § II.B.3.c. Specifically, if accrued Positive Departures exceed 50,000 acre-feet, the Compact Decree states that "the Texas District will provide Allocation Transfers to the New Mexico District, equal in total to the amount" of the accrued Positive Departure "over the subsequent three calendar years." *Id.*, Ex. 1, App. 1 § 5.6.2. Again, while Transfers are not money damages, they constitute "other relief" and expeditiously account for any over-deliveries that may occur.

Like Texas, “New Mexico is satisfied that compliance with the [Compact Decree] will ensure that [it] receives its Compact equitable apportionment of Rio Grande water below the Reservoir.” *Id.* at 44. The Compact Decree, therefore, resolves New Mexico’s pending counterclaims. *See id.*, Ex. 6 ¶24 (stating that the Compact Decree “resolv[es] a long-standing conflict between New Mexico and Texas regarding the Rio Grande”).

## ii. The Court Has Subject Matter Jurisdiction

Courts “will ordinarily give effect” to a consent decree “if it comes within the general scope of the case made by the pleadings.” *Pac. R.R. Co. v. Ketchum*, 101 U.S. 289, 297 (1880). The Compact Decree clears this low bar.

The Supreme Court has original jurisdiction over interstate disputes. *See* 28 U.S.C. § 1251(a). In “compact cases” like this one, the Court serves “as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force.” *Texas*, 583 U.S. at 412 (quoting *Kansas*, 574 U.S. at 453). As a result, it maintains the authority to “regulate and mould the process it uses in such manner as in its judgment will best promote the purposes of justice.” *Id.* (quoting *Kansas*, 574 U.S. at 454).

Consistent with this authority, the Court has recognized its power to resolve interstate disputes through consent or stipulation. *See New Hampshire v. Maine*, 426 U.S. 363, 369 (1976) (affirming the Court’s ability to accept “settlements between the states”). Of course, the Court will not enter a consent decree that transforms it into an arbitral body, as its original jurisdiction extends only “to

adjudications of controversies between States according to principles of law” and the “application of [those] principles of law or equity to facts, distilled by hearing or by stipulations.” *Vermont v. New York*, 417 U.S. 270, 277 (1974). But the Compact Decree will not effect any such transformation. To the contrary, it invokes only the Court’s ordinary judicial powers, asking it to maintain jurisdiction for the sole purpose of adjudicating any future controversies concerning compliance or contempt. Sp. M. Dkt. 856, Ex. 1 § V (“The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the Decree, or any supplementary decree, that may at any time be deemed proper in relation to this Decree or an action by the Compacting States for the enforcement of the Decree.”). The Court has previously performed this function without issue.

For example, in *Kansas v. Nebraska*, the Court entered a consent decree that required it to “retain[] jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as it may from time to time deem necessary or desirable to give proper force and effect to the Decree.” 575 U.S. 134, 135 (2015). Similarly, in *New Jersey v. New York*, the Court entered a consent decree that called upon it to “retain[] jurisdiction of the suit for the purpose of any order or direction or modification of [the] decree, or any supplemental decree that it may deem at any time to be proper.” 347 U.S. 995, 1005 (1954). This Compact Decree asks nothing more. As such, the Court has subject matter jurisdiction over the dispute, and the first prong of the *Firefighters’* test is satisfied.

**c. The Compact Decree Is Consistent with and  
Furtheres the Objectives of the Compact and  
Other Federal Law**

Any “conflict with an interstate compact” will defeat a proposed consent decree. *Vermont*, 417 U.S. at 278. Recall that once it wins congressional approval, an interstate compact becomes federal law. *See Kansas*, 574 U.S. at 455. And just as two private individuals could not abolish, for example, the Family and Medical Leave Act by their agreement, the parties to an interstate compact cannot, by stipulation, alter its terms. *See id.* at 472. That said, a consent decree “normally embodies a compromise,” *Firefighters*, 478 U.S. at 522 (citation omitted), and as such, may “provide[] broader relief than the court could have awarded after a trial,” *id.* at 525. In other words, a consent decree need not augur or comport with what the Court could have or would have ordered upon a full presentation of the case. Instead, the Court should accept the decree so long as it does not “conflict[] with or violate[] the statute upon which the complaint was based,” *id.* at 526, and is not “wholly contrary to relevant evidence,” even if that evidence might lead the Court to a different conclusion, *New Hampshire*, 426 U.S. at 369. The aim is consistency with the law, not complete fidelity to a counterfactual that might have obtained had the case gone to trial.

In assessing consistency, the Court considers whether the proposed decree will “further the objectives of the law upon which the complaint was based.” *Firefighters*, 478 U.S. at 525. An answer in the affirmative counsels in favor of entry. *See System Federation No. 91 v. Wright*, 364 U.S. 642, 651 (1961) (holding that courts are free to enter decrees that further the statute which the decree

is intended to enforce). The objective of the Rio Grande Compact “is to equitably apportion the waters of the Rio Grande above Fort Quitman, Texas among the Compacting States.” *TIR*, Sp. M. Dkt. 776, at 66. The twofold objective of the “inextricably intertwined” Rio Grande Project is to satisfy the United States’ obligations under the 1906 Treaty with Mexico and irrigate farmlands in New Mexico and Texas. *SJO*, Sp. M. Dkt. 503, at 27. The Compact Decree is consistent with, and furthers the objectives of, both for three primary reasons: (1) the Compact Decree extends the methodology used to measure apportionment above the Reservoir to the area below the Reservoir; (2) in accordance with the Downstream Contracts, the Compact Decree achieves a 57%/43% division of water below the Reservoir; and (3) the Compact Decree establishes a baseline operating condition, which is consistent with historical practices and also protects continued Project viability.

**i. The Compact Decree Employs the Same Methodology as Articles III and IV of the Compact**

Article III of the Compact indexes Colorado’s state-line delivery obligations to inflows and outflows measured at certain gages. *See* Compact, Art. III. Article IV applies the same methodology to New Mexico’s obligation to deliver water to the Reservoir. *See* Compact, Art. IV. The Compact does not, however, detail any such inflow-outflow regime below the Reservoir, nor does it specify either “what the [C]ompacting [S]tates intended to divide 57%/43% between southern New Mexico and Texas,” *SJO*, Sp. M. Dkt. 503, at 6–7, or “the full details of the Project’s baseline operating conditions,” *id.* at 24. To state

it another way, the Compact is silent as to what amount of water must reach the New Mexico-Texas border. And while omissions are sometimes deliberate expressions of policy choices, the historical record indicates that *this* omission was the consequence of two practical limitations. First, “measurements of the waters passing the Texas state line would be very difficult and expensive, if not impossible.” *FIR*, Sp. M. Dkt. 54, at 181. Second, “[f]ederal control of the dam and Project works spanning across New Mexico and Texas, anticipated to continue into the future, defeated any effort to establish obligations for the upstream states for a specific quantity of water to Texas in 1938.” Sp. M. Dkt. 856, Ex. 5 ¶44. The absence of a tangible, index-based delivery requirement at the Texas state line, then, reflects neither an intention to deny Texas the certainty afforded the other Compacting States nor an understanding that Texas lacks a claim to any particular apportionment of the Rio Grande, but rather an inability to feasibly calculate that apportionment in 1938. Without altering New Mexico’s delivery obligations under Article IV or commandeering Project operations, the Compact Decree fills in this conspicuous blank.

Advances in technology have rendered elementary what the original Compact drafters dubbed “practically impossible.” Letter from Frank B. Clayton to C.S. Clark 7, Trial Ex. JT-0458 (identifying the difficulty of measuring the water delivered to the New Mexico-Texas state line because of the border’s geography and irregular contours). A proliferation of gaging stations and the power of modern computer modeling now permit accurate measurement of water usage between the Reservoir and El Paso Gage. Sp. M. Dkt. 856, Ex. 4 ¶¶28–72. The ability to measure New Mexico’s water usage below the Reservoir, coupled with

the use of a regression equation similar to the D2 Equation to approximate the quantity of water Texas should receive under D2 conditions with each Caballo Release, allows the Compact Decree to set definite water delivery obligations at the Texas border—the “Index Obligation.” *Id.*, Ex. 8 ¶24(b). And it does so in a manner consistent with both the plain text of the Compact and past practice. *Id.*, Ex. 7 ¶¶11–17. This offers Texas the same certainty afforded by the gages identified in Articles III and IV, a certainty the Compact’s drafters might have supplied had they not confronted “insuperable” obstacles. *FIR*, Sp. M. Dkt. 54, at 180.

And as for “obstacles,” the Compact’s reliance on the Project to deliver water below the Reservoir no longer imposes one. The Compact Decree’s index-based approach introduces a means of measuring the water the Project releases and calculating whether it is apportioned 57%/43%. New Mexico’s delivery obligation to Texas is based on data from the same D2 Period that the Project has used as the baseline for Project allocations to calibrate releases for over 35 years. Sp. M. Dkt. 856, Ex. 4 ¶24. And the Project has separately and voluntarily agreed to Project operations that will facilitate deliveries under the Compact Decree.<sup>12</sup> As a result, the Compact Decree

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12. The United States, New Mexico, EBID, and EP1 have separately entered into what they term the “Project Operations Settlement Agreement” (“OSA”). Importantly, the OSA is not part of the Compact Decree. It is a voluntary, separately executed agreement that the Court need not scrutinize. The OSA amends the 2008 Project Operating Agreement to require use of the “Modified D2 Equation” based on a two-year regression. Sp. M. Dkt. 856, Ex. 8 ¶44. While the 2008 Project Operating Agreement already calculated diversion allocations according to a D2

will not interfere with normal Project operations, nor will it pressgang the Project into the service of the Compacting States, a concern that partially animated the United States' opposition to the Proposed 2022 Consent Decree. *Compare* Sp. M. Dkt. 754, at 36–37 (arguing that the Proposed 2022 Consent Decree would, without its consent, require the United States to “alter Project operations”), *and* Sp. M. Dkt. 788, at 13 (noting that the Proposed 2022 Consent Decree “commands the United States and Irrigation Districts adjust operations to comply based upon directives issued by the Rio Grande Compact Commission”), *with* Sp. M. Dkt. 854, at 36 (“The [Compact] Decree does not impose any obligations on the United States[.]”). That explains, in part, why the United States now does not oppose the Compact Decree. Sp. M. Dkt. 854, at 32-37.

**ii. The Compact Decree’s Index Achieves a 57%/43% Apportionment of Project Supply in Accordance with the Downstream Contracts**

“The Compact and the inextricably intertwined Project and Downstream Contracts provide for [a] 57%/43% split” of water delivered below the Reservoir. *SJO*, Sp. M. Dkt. 503, at 51. The Compact drafters understood this. *FIR*, Sp. M. Dkt. 54, at 181 (Compact Commissioner Clayton explaining that the Downstream Contracts “provide that the lands within the Project have equal water rights, and the water is allocated according to

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Equation, that equation was not based on a two-year regression. *Id.*, Ex. 8 ¶44. Thus, by voluntarily adopting the “Modified D2 Equation,” the Project ensures harmony between the Index and normal operations. *Id.*

the areas involved in the two States[,] . . . approximately 88,000 acres for [EBID], and 67,000 for [EP1]”). And even before the Compact or Downstream Contracts took effect, the Project operated according to this same 57%/43% division. *SJO*, Sp. M. Dkt. 503, at 27. The Compact Decree assures continued adherence to that enduring practice.

The Index Obligation is calculated according to data from the D2 Period. Sp. M. Dkt. 856, Ex. 8 ¶26. During that Period, the Project achieved, on average, a 57%/43% split between New Mexico and Texas, respectively. *Id.*, Ex. 9. ¶30. Thus, by indexing apportionment to data from the D2 Period, the Compact Decree clarifies New Mexico and Texas’ rights below the Reservoir while ensuring fidelity to the 57%/43% division that the Compact requires. *Id.*, Ex. 9 ¶35.

**iii. The Compact Decree Establishes a Baseline Operating Condition Consistent with Historical Practice**

“The Compact protects the Project, its water supply, and a baseline operating condition.” *SJO*, Sp. M. Dkt. 503, at 49. “In broad strokes, this [baseline operating] condition can be viewed as akin to a ‘1938 condition[.]’” *Id.* at 6. But that does not imply “that all post-1938 [groundwater] pumping [is] inconsistent with the Compact.” *TIR*, Sp. M. Dkt. 776, at 76. To the contrary, the Compact does not “address expressly the full details of the Project’s baseline operating conditions as understood by the states in 1938.” *SJO*, Sp. M. Dkt. 503, at 24.

Throughout this litigation, the parties have embraced varying interpretations of the Compact and what amount

of groundwater pumping it will tolerate. In its Complaint, Texas advocated for a return to “the conditions that existed in 1938.” Complaint at 10. New Mexico argued that the Compact imposed no restrictions on its behavior below the Reservoir. *FIR*, Sp. M. Dkt. 54, at 189. And the United States Complaint in Intervention alleged that “New Mexico was violating the Compact by pumping more groundwater than the Compact contemplates.” *Texas*, 602 U.S. at 958. After 12 years of robust debate, the Compacting States have finally reached consensus: the baseline refers to the condition that existed during the D2 Period, when deliveries averaged a 57%/43% split. Sp. M. Dkt. 856, at 52–53. This is a reasonable interpretation that is not “wholly contrary to relevant evidence.” *New Hampshire*, 426 U.S. at 369; see *Texas*, 602 at 963 (“The United States’ argument that groundwater pumping at D2 levels violates the Compact *may or may not* ultimately prevail at trial.” (emphasis added)).

The Compact Decree allows “continued groundwater pumping in New Mexico and Texas at the levels that existed during the D2 Period (1951-1978), subject to safeguards to protect against aquifer storage loss and interference with Project deliveries[.]”<sup>13</sup> Sp. M. Dkt. 856, Ex. 6 ¶18. Phrased differently, the Compact Decree clarifies that the Compact obligates the Compacting States to protect a baseline operating condition akin to the D2 Period. As the United States sees it, “nothing in the Compact or other federal law prohibits the States

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13. The effects of groundwater pumping during the D2 Period are baked into “the foundation data from which the [Index] was developed,” which means the Compacting States can achieve compliance with the Compact Decree only if they limit groundwater pumping to D2 levels. Sp. M. Dkt. 856, Ex. 8 ¶28.

from ‘creating by agreement’ [this] ‘obligation[.]’ Sp. M. Dkt. 854, at 35 (citation modified) (quoting *Firefighters*, 478 U.S. at 523). I agree for four primary reasons.

First, the historical record confirms that the Compact drafters “did not express an intent for agricultural practices, irrigation practices, and other forms of development to remain static.” *SJO*, Sp. M. Dkt. 503, at 5. Even prior to 1938, “[s]ome groundwater well development for irrigation had occurred[.]” *Id.* at 29. The Compact did not denounce this practice, nor did it subject it to any express limitations. Actually, “the parties’ history experts and underlying scientific studies . . . strongly suggested some downstream pumping could be tolerated without materially interfering with the Project[.]” *TIR*, Sp. M. Dkt. 776, at 77. So far from being inconsistent with the Compact’s strictures, groundwater pumping is—when performed at reasonable levels—part of the Compact’s grand scheme.

Second, groundwater pumping at D2 levels is wholly compatible with full delivery to EBID and EP1 during years when Reclamation makes a “normal release.” According to the Compact, 790,000 acre-feet constitutes “a normal annual release from the Reservoir.” *SJO*, Sp. M. Dkt. 503, at 12; Compact Arts. VII, VIII. Reclamation, meanwhile, has determined that 3.024 acre-feet per acre per year is “a full supply for Project purposes.” Sp. M. Dkt. 856, Ex. 6 ¶28.a. Under any fair reading, then, the Compact’s baseline operating condition must permit delivery of at least 3.024 acre-feet per acre to all irrigable lands in EBID and EP1 during years when releases from the Reservoir (and subsequently Caballo Dam) meet or exceed 790,000 acre-feet. Otherwise, the release would fail

to achieve one of the Compact's primary purposes and, given that, could scarcely qualify as "normal."

Using "a linked surface water-groundwater model of the Lower Rio Grande area" between the Reservoir and Fort Quitman, the parties have simulated how deliveries based on the Index (which incorporates D2 conditions) would fare "during a 78-year projection period containing a varied mix of dry, average, and wet years." *Id.*, Ex. 9 ¶¶ 23, 25. The simulations confirmed that "a D2 baseline is consistent with the Compact because it allows a full supply to be delivered with a normal release of . . . 790,000 acre-feet[.]" Sp. M. Dkt. 863, at 17; Sp. M. Dkt. 856, Ex. 9 ¶¶27–35. This is strong evidence that groundwater pumping at D2 levels falls within the baseline operating conditions the Compact contemplates.

Third, groundwater pumping at D2 levels has supported Project viability. The Compact imposes a duty to protect more than just water and baseline operating conditions; it requires the Compacting States to protect the Project itself. *SJO*, Sp. M. Dkt. 503, at 49 ("The Compact protects the Project[.]"). Recall that one of the Project's objectives is the irrigation of lands in EBID and EP1. In times of water abundance, Reclamation can meet this objective with relative ease. But in times of drought, farmers in New Mexico and Texas must "pump[] groundwater to make up for inadequate surface water supplies, thus maintaining the viability of the Project[.]" Sp. M. Dkt. 856, Ex. 8 ¶16. In other words, groundwater pumping at D2 levels is "necessary to support the project during drought," *id.*, Ex. 8 ¶26(b), so a baseline operating condition that restricts groundwater pumping below D2 levels could threaten the Project and, consequently, the

Compact. The inverse is equally true. By permitting groundwater pumping at D2 levels, the Compact Decree supports Project viability, which is vital to the Compact’s continued operation.

Finally, the Rio Grande Compact Commission (“Commission”)—the body responsible for tracking each State’s compliance with the Compact—and all parties to the case agree that the Compact Decree’s use of the D2 baseline is consistent with the Compact. And having been given the opportunity to provide input, none of the amicus curiae argue otherwise.

On August 22, 2025, the Commission held a special meeting to consider the Compact Decree. *Id.*, Ex. 2 ¶13. At the meeting, it unanimously passed a resolution determining, *inter alia*, that “the Compact Decree and its appendices [are] consistent with the Compact and fair to all Compacting [S]tates[.]” *Id.*, Ex. 2, Ex. A, at 2. While the resolution is not “conclusive in any court . . . called upon to interpret or enforce [the] Compact,” Compact Art. XII, it does represent a strong endorsement from representatives of each of the Compacting States.

Similarly, although the parties cannot declare the Compact Decree consistent by fiat, their universal support for it is probative of its consistency because an inconsistent decree would presumably undermine some aspect of the Compact and therefore engender opposition from at least one of the litigants. That is exactly what occasioned the Court’s most recent opinion in this matter. *See Texas*, 602 U.S. at 965 (sustaining the United States’ exception and denying the Compacting States motion to enter the Proposed 2022 Consent Decree). Now, however, the United

States has joined the Compacting States in agreeing that the Compact Decree is consistent with the Compact. *See* Sp. M. Dkt. 856, at 48 (proclaiming New Mexico and Texas’ belief that “the Compact Decree is consistent with and furthers the objectives of the Compact”); Sp. M. Dkt. 855, at 5 (Colorado concurring that the Compact Decree is consistent with the Compact); Sp. M. Dkt. 854, at 35 (“[I]n the United States’ view, the [Compact] Decree is consistent with the Compact and other relevant federal law.”).

Also significant is the absence of opposition from any amicus curiae, some of whom filed briefs in support of the United States’ exceptions to the Third Interim Report recommending entry of the Proposed 2022 Consent Decree. *See* Sp. M. Dkt. 862, at 152 (EP1); Sp. M. Dkt. 862, at 163 (EBID); Sp. M. Dkt. 860 (New Mexico State University, Public Service Company of New Mexico, and Camino Real Regional Utility Authority); Sp. M. Dkt. 864 (Albuquerque Bernalillo County Water Utility Authority)<sup>14</sup>; Sp. M. Dkt. 865 (Las Cruces)<sup>15</sup>; Sp. M. Dkt. 866 (New Mexico

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14. The Albuquerque Bernalillo County Water Utility Authority “supports the consent decree implementing the [Compact Decree] among the three Compacting States.” Sp. M. Dkt. 864, at 3. The Water Authority does not, however, support the Groundwater Settlement Agreement (“GSA”) between New Mexico and the United States. *Id.* at 4. The GSA is part of a separate settlement package that no one has asked the Court to enter as a consent decree. Amicus’s opposition to the GSA, thus, has no bearing on whether the Compact Decree is consistent with the Compact.

15. The City of Las Cruces argues that “adoption of the Groundwater Settlement Agreement and Project Operations Settlement Agreement” should be deferred pending the outcome of certain negotiations. Sp. M. Dkt. 865, at 12. These agreements are part of a separate settlement package involving New Mexico,

Pecan Growers)<sup>16</sup>; Sp. M. Dkt. 867 (Southern Rio Grande Diversified Crop Growers Association).<sup>17</sup> Of particular note, EBID “had strong objections to the 2022 proposed Consent Decree,” but its “concerns . . . have been resolved.” Sp. M. Dkt. 862, at 163. When combined with the historical record and evidence that groundwater pumping at D2 levels has not only been compatible with full deliveries but has supported Project viability, these wide-ranging and unqualified endorsements of the Compact Decree compel the conclusion that it is consistent with, and furthers the objectives of, the Compact and other federal laws.

**d. The Compact Decree Is a Fair and Reasonable Settlement**

As Special Master, I am mindful that the Court should enter a consent decree only if it constitutes a “fair, reasonable, and adequate resolution of the claims [before it.]” *Firefighters*, 478 U.S. at 512. As the history of this very case confirms, a consent decree is not a fair, reasonable, or adequate resolution if it disposes of a third party’s

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the United States, EBID, and EP1. They are not part of any consent decree before the Court, so the timing of their adoption is of no consequence to the analysis of the Compact Decree, itself.

16. To minimize the potential for future disputes, the New Mexico Pecan Growers requested that I emphasize that the United States “has expressly argued in support of the Settlement Package” and stated that “the [Compact] Decree is consistent with the Compact and other relevant federal law.” Sp. M. Dkt. 866, at 6.

17. Like the New Mexico Pecan Growers, the Southern Rio Grande Diversified Crop Growers Association also asked that I “emphasize[] the United States’ acknowledgement and position that ‘the Consent Decree is consistent with the Compact and other relevant federal law[.]’” Sp. M. Dkt. 867, at 4.

claims or imposes duties on a third party without that third party's consent. *See Texas*, 602 at 965 (sustaining the United States' exception on the grounds that entering the proposed consent decree would dispose of the United States' claims without its consent); *see also Firefighters*, 478 U.S. at 529 (holding that "parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party's agreement"). Unlike the Proposed 2022 Consent Decree, the Compact Decree does not run afoul of these basic precepts, and therefore, adequately resolves the disputes which gave rise to this nearly-13-year-old original action.

At the threshold, I note that although the Court and the Special Masters who have overseen this action appreciate their participation and value their input, none of the amicus curiae—including EBID and EP1—are third parties for purposes of this case.<sup>18</sup> The amici in this case are, instead, represented by their respective States. *See Texas v. New Mexico*, 138 S.Ct. 349 (2017) (mem.); *FIR*, Sp. M. Dkt. 54, at 259-64, 275-77 (citing *South Carolina v. North Carolina*, 558 U.S. 256, 274 (2010) ("[A] State's sovereign interest in ensuring an equitable share of an interstate river's water is precisely the type of interest that the State, as *parens patriae*, represents on behalf of its citizens.")). This is not to diminish them in any way or deny their unique interests; it is only to explain that

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18. The exceptions are the 23 States that have filed amicus briefs. *See South Carolina v. North Carolina*, 558 U.S. 256, 274 (2010) (recognizing that States are properly parties for purposes of interstate water disputes). But while they are third parties, none argues that they have any claims at issue in this case or that the Compact Decree imposes obligations on them.

any obligations the Compact Decree imposes on them are *not* obligations imposed without a third party's consent.

That leaves Colorado, New Mexico, Texas, and the United States as the parties whose interests bear on questions of fairness, reasonableness, and adequacy. As before, the Compacting States are resolute in their support of the Compact Decree. And the prior holdout, the United States, does not oppose it. It sees in the proposed Compact Decree none of the “flaws” that plagued the Proposed 2022 Consent Decree. Sp. M. Dkt. 854, at 36–37 (enumerating the concerns that led the United States to object to entry of the Proposed 2022 Consent Decree). Perhaps most importantly, unlike the Proposed 2022 Consent Decree, the Compact Decree left “the United States free to pursue (and to resolve through a separate settlement) the United States’ own claims against New Mexico[.]” *Id.* And that is precisely what has occurred. Predicated upon agreements struck in separate negotiations, the United States and New Mexico have jointly stipulated to dismissal of their claims against one another. *Id.* at 1. The United States’ ability to resolve its claims in this manner is definitive proof that the Compact Decree did not dispose of those claims over its objection. *See id.* at 37 (“It is the United States’ settlement with New Mexico and the entry of the Decree of Dismissal, not the Consent Decree, that resolves the United States’ Compact claims.”). Further, “the removal of provisions regarding the States’ option to implement balance transfers from one irrigation district to another under certain conditions, the removal of former Article III entitled ‘Project Operations to Enable Compact Compliance,’ and the removal of various other ancillary references to Project operations and the United States,” Sp. M. Dkt. 856, at 28, ensure that the Compact

Decree “does not impose any obligations on the United States” without its consent, Sp. M. Dkt. 854, at 36. With the Compact Decree now free of the issues that marred the initial settlement attempt, and with the full support of the Compacting States and the lack of objection from the United States, I conclude that it is substantively and procedurally fair, reasonable, and adequate.

Having concluded that the proffered Compact Decree is “fair, reasonable, and adequate,” nothing more is required of the undersigned than to formally recommend that the Court approve and enter it. Before doing so, however, I beg the Court’s indulgence as I note the exceptional contributions of the two previous Special Masters who served the Court in this matter and whose work played a vital role in my own efforts to bring this long-pending case to what the parties and so many others regard as a just resolution.

Special Master A. Gregory Grimsal’s First Interim Report contains a discussion of Lower Rio Grande history leading up to, and including, the Compact and its eventual approval. It is a *tour de force* which I read in its entirety.<sup>19</sup>

United States Circuit Judge Michael J. Melloy succeeded Mr. Grimsal as Special Master in 2018. Senior Judge Melloy’s summary judgment order, filed in May of 2021, also provided history and background and ruled upon cross-motions for summary judgment, thereby

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19. I also read, as background research, *Conflict on the Rio Grande*, a history of events which preceded the 1938 Compact and the controversies that followed its 1938 adoption. See Douglas R. Littlefield, *CONFLICT ON THE RIO GRANDE: WATER AND THE LAW, 1879-1939* (2008).

substantially narrowing the issues that were left for trial. And Special Master Melloy did not simply commence trial—he heard testimony over the course of 19 days. The undersigned read most of the transcripts of that testimony following my appointment as Special Master. I am grateful to Judge Melloy for the stewardship he demonstrated throughout the time he served as Special Master and for developing a record that greatly assisted me during my own comparatively brief service.

Based on the foregoing, I recommend that the Court enter the Compact Decree, Sp. M. Dkt. 856, and that the Clerk grant the Joint Motion of the United States and New Mexico, Sp. M. Dkt. 854. Upon entry of the Compact Decree and approval of the Joint Motion, all claims will be resolved, and this matter will reach its conclusion.

Respectfully submitted,

Hon. D. Brooks Smith  
*United States Circuit Judge*  
*Special Master*  
1798 Plank Road, Suite 203  
Duncansville, PA 16635  
(814) 693-0570

February 6, 2026

## **APPENDIX**

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**APPENDIX A — FOURTH INTERIM  
REPORT ADDENDUM — CONSENT DECREE  
SUPPORTING THE RIO GRANDE COMPACT AND  
APPENDICES 1 AND 2**

CONSENT DECREE SUPPORTING THE RIO GRANDE COMPACT  
(WITH APPENDICES 1 AND 2)

No. 141, Original

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In the  
SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS,

*Plaintiff,*

v.

STATE OF NEW MEXICO AND  
STATE OF COLORADO,

*Defendants.*

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CONSENT DECREE SUPPORTING THE RIO  
GRANDE COMPACT

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*Appendix A*

**DECREE**

Based upon the Recommendation of the Special Master, with the agreement of the Compacting States of Texas, New Mexico, and Colorado, the Court decrees as follows:

The Texas-New Mexico Compact dispute among the Compacting States of Texas, New Mexico, and Colorado regarding Compact apportionment is resolved pursuant to the Decree terms described herein.

**I. DEFINITIONS**

When used in this Decree and the attachments and appendices hereto, the following definitions apply. The terms defined below shall be construed as consistent with the terms defined in the Rio Grande Compact.

**“Accrued Index Departure”** means the sum of all Annual Index Departures as defined in more detail in Appendix 1. This may result in an Accrued Negative Departure or an Accrued Positive Departure.

**“Annual Index Departure”** means the difference between the Index Delivery and the Index Obligation in any calendar year as described in Appendix 1. This may result in an Annual Negative Departure (under-delivery) or an Annual Positive Departure (over-delivery).

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**“Bureau of Reclamation” or “Reclamation”** means the Bureau of Reclamation within the United States Department of the Interior.

**“Caballo Release”** means the official flow record as measured at the Rio Grande Below Caballo Dam stream gage (USGS 08362500) used in calculating the Index Obligation.

**“Compact”** means the Rio Grande Compact, approved by Congress in the Act of May 31, 1939, ch. 155, 53 Stat. 785.

**“Convention of 1906”** means the Convention Between the United States and Mexico Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, May 21, 1906, U.S.-Mex., 34 Stat. 2954.

**“D2 Period”** means the period January 1, 1951, through December 31, 1978.

**“Depletion of Index Supply”** means the annual volumetric reduction of Project Supply in New Mexico and Texas, in acre-feet, resulting directly or indirectly from surface water use and groundwater use.

**“Effective El Paso Index” or “EEPI” or “Index”** means the index-based methodology for assessing compliance with this Decree described in Appendix 1.

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**“El Paso Gage”** means the Rio Grande at El Paso, Texas stream gage (USGS 08364000).

**“Excess Flow”** means Rio Grande streamflow at the El Paso Gage, excluding the delivery to Mexico, that is excluded from the Index Delivery as defined in Appendix 1.

**“Index Accounting”** means the determination of the Annual Index Obligation, annual Index Delivery, and annual and Accrued Index Departures as described in Appendix 1.

**“Index Delivery”** means the sum of:

- (i) the annual streamflow at the El Paso Gage, after subtracting delivery to Mexico and Excess Flow; and
- (ii) the estimated Depletion of Index Supply caused by groundwater and surface water use in the Texas Mesilla, as determined by the methodology in Appendix 1.

**“Index Departure”** or **“Departure”** means the difference between the Index Delivery and the Index Obligation; when the Index Delivery is greater than the Index Obligation it is a “Positive Departure,” when the Index Delivery is less than the Index Obligation it is a “Negative Departure.”

*Appendix A*

**“Index Obligation”** means the volume of water calculated to be delivered to Texas as quantified using the EEPI, and subject to Index Departures and other provisions in this Decree.

**“Mesilla Basin”** means the part of the Rio Grande Basin that contains the Mesilla Valley. The Mesilla Basin is located in both New Mexico and Texas, as depicted in Appendix 2.

**“Project Carryover Water”** means the quantity of water allocated each water year by Reclamation for delivery to the irrigation districts in New Mexico and Texas that remains at the end of each calendar year.

**“Index Supply”** means the water supply for the Rio Grande Project as defined and administered by applicable State law. Index Supply generally consists of:

Usable Water, as defined in Article I(l) of the Compact, which excludes Rio Grande credit water and imported waters such as San Juan Chama Project water;

Usable Water released from Caballo Reservoir in accordance with irrigation demands, including deliveries to Mexico; and

Inflows and Project return flows that reach the bed of the Rio Grande or Project

*Appendix A*

conveyances, but excluding flows from imported water.

**“Rincon Basin”** means the part of the Rio Grande Basin that contains the Rincon Valley in New Mexico, as depicted in Appendix 2.

**“Rio Grande Project”** or **“Project”** means the federal reclamation project, authorized in the Reclamation Act of June 17, 1902, 32 Stat. 390 and the Rio Grande Project Act of February 25, 1905, 33 Stat. 814, operated by the United States through the Bureau of Reclamation and irrigation districts located in New Mexico and Texas.

**“Texas Mesilla”** means the land in the State of Texas that overlies the Mesilla Basin, as depicted in Appendix 2.

**“Transfers”** means the transfer of Project allocation between the Rio Grande Project irrigation district in New Mexico and the Rio Grande Project irrigation district in Texas in accordance with this Decree.

## II. INJUNCTION

### A. General Provisions:

1. The Rio Grande Compact effects an equitable apportionment of the waters of the Rio Grande

*Appendix A*

above Fort Quitman, Texas, among the States of Colorado, New Mexico, and Texas. The Compacting States must comply with the Compact.

2. Pursuant to Article IV of the Compact and the unanimous Resolution of the Rio Grande Compact Commission adopted February 14-16, 1948, New Mexico is obligated to deliver Rio Grande water as measured at Elephant Butte Reservoir in amounts that are based on flows measured at the stream gaging station located at Otowi Bridge near San Ildefonso.
3. Elephant Butte Reservoir is the major storage reservoir for the Rio Grande Project.
4. The division of Rio Grande water between New Mexico and Texas below Elephant Butte Reservoir is based upon the percentage of the total authorized irrigable acreage of the Rio Grande Project situated in each State at the time of the Compact, approximately 57% in New Mexico and 43% in Texas.
5. This Decree specifies procedures to ensure the proper apportionment of Rio Grande water between Texas and New Mexico below Elephant Butte Reservoir.
6. Compliance with this Decree represents compliance with the Compact with respect to

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the division of Rio Grande water below Elephant Butte Reservoir.

**B. Division of Water Below Elephant Butte Reservoir:**

1. The procedures for calculating the water to be delivered to Texas at the El Paso Gage are contained in the Effective El Paso Index documented in **Appendix 1**.
2. The Effective El Paso Index:
  - a. New Mexico shall manage and administer water in a manner that is consistent with this Decree, including satisfying the Effective El Paso Index requirements.
  - b. The Index is the calculation of Rio Grande water that Texas is entitled to receive. New Mexico is entitled to use the balance of the Rio Grande water released from Caballo Dam so long as its use complies with the other provisions of this Decree.
  - c. The Index was developed to ensure Texas and New Mexico receive the amounts of water each is entitled to under the Compact below Elephant Butte Reservoir based upon Project operations during the D2 Period.
  - d. The methodology for calculating and determining the Index Delivery and Index Obligation is documented in **Appendix 1**.

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- e. The Index Obligation is calculated annually and is based on a regression analysis of Caballo Releases and volumes of water reaching the El Paso Gage during the D2 Period, plus the historical D2 Period average agricultural and domestic, commercial, municipal, and industrial (DCMI) depletions to the Rio Grande caused by surface and ground water use in the Texas Mesilla, upstream of the El Paso Gage, subtracting out deliveries to Mexico. The Index Obligation is described in detail in **Appendix 1**.
- f. The Index Delivery should equal the Index Obligation. However, river operations, hydrologic conditions, annual variations in the amount and location of water uses (including groundwater pumping) above the El Paso Gage, the distance between the release of Project water below Caballo Dam and the El Paso Gage and other factors may affect the Index Delivery. As a consequence, this Decree provides for departures from the Index Obligation, and “triggers” for water management responses.
- g. The Rio Grande Below Caballo Dam and El Paso gages are used for providing the official daily flow record for use in calculating the Index Delivery. The gages will continually meet the Rules and Regulations for administration of the Rio Grande Compact

*Appendix A*

regarding gaging stations. Colorado shall not be responsible for the costs of the gages and measurements needed for Index Accounting.

3. Index Departures:
  - a. As set forth in this Decree, an Annual Negative Departure:
    - (i) will be used to reduce an Accrued Positive Departure at the beginning of the year by the amount of the Annual Negative Departure; or
    - (ii) will be added to the Accrued Negative Departures at the beginning of the year.
  - b. As set forth in this Decree, an Annual Positive Departure:
    - (i) will be used to reduce an Accrued Negative Departure at the beginning of the year by the amount of the Annual Positive Departure; or
    - (ii) will be added to the Accrued Positive Departures at the beginning of the year.
  - c. Transfers relating to Accrued Negative or Accrued Positive Departures from one irrigation district to the other will immediately reduce New Mexico's Accrued

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Negative Departures or Texas's Accrued Positive Departures by the same amount of the Transfer. Specifically, if such a Transfer occurs from the current-year allocation for the New Mexico irrigation district to the current-year allocation for the Texas irrigation district, then simultaneous with the Transfer, the Accrued Negative Departures will be reduced by an amount equal to the transfer. Likewise, if such a Transfer occurs from the current-year allocation for the Texas irrigation district to the current-year allocation for the New Mexico irrigation district, then simultaneous with the Transfer, the Accrued Positive Index Departure will be reduced by an amount equal to the Transfer.

**C. Index Departure Limits:**

1. New Mexico is in compliance with this Decree if New Mexico is within the Accrued Negative Departure limits. Exceedance of Accrued Negative Departure limits means New Mexico is in violation of this Decree.
2. Cap on Annual Positive Departure. The maximum Annual Positive Departure is 67,500 acre-feet; an Annual Positive Departure in excess of 67,500 acre-feet shall be treated as the equivalent of 67,500 acre-feet for the purposes of calculating Accrued Index Departures.

*Appendix A*

3. Caps on Annual Negative Departure.
  - a. For the first full five (5) calendar years following entry of this Decree, in calculating the Accrued Index Departures, Annual Negative Departures in excess of 112,500 acre-feet shall be treated as the equivalent of 112,500 acre-feet.
  - b. Beginning the sixth full calendar year after entry of this Decree, and thereafter, in calculating the Accrued Index Departures, Annual Negative Departures in excess of 90,000 acre-feet shall be treated as the equivalent of 90,000 acre-feet.
4. Negative Departures:
  - a. Limits:
    - (i) For the first full five (5) calendar years following entry of this Decree, New Mexico may accrue Negative Departures up to, but not in excess of 150,000 acre-feet.
    - (ii) Beginning the sixth full calendar year after entry of this Decree, and thereafter, New Mexico may accrue Negative Departures up to, but not in excess of 120,000 acre-feet.

*Appendix A*

- b. Additional Index adjustments for exceedances of the Accrued Negative Departure limit:
  - (i) In addition to the other provisions of this Decree, if New Mexico exceeds the Accrued Negative Departure limit of 150,000/120,000 acre-feet in three (3) consecutive years, New Mexico shall provide 12,000 acre-feet of water in excess of its Index Obligation for each year that it exceeds the Accrued Negative Departure limit. New Mexico shall have three (3) years to provide the full 36,000 acre-feet.
  - (ii) If New Mexico exceeds the Accrued Negative Departure limit of 150,000/120,000 acre-feet in four (4) or more consecutive years, New Mexico shall provide 15,000 acre-feet of water in excess of its Index Obligation for each additional year over the three (3) years addressed in the above paragraph that it exceeds the Accrued Negative Departures limit. The 15,000 acre-feet in excess of Index Obligation amounts shall be provided during the year immediately following the violation of the Accrued Negative Departure limit.
- c. In any year in which the three-year rolling average of the end of year Project Carryover

*Appendix A*

Water for the irrigation district in Texas is greater than 180,000 acre-feet, all Accrued Negative Departures shall be extinguished.

**D. Trigger for Water Management Actions:**

1. To avoid excessive Accrued Index Departures and to ensure that the equitable apportionment is achieved, certain volumes of accrued Negative Departures (Trigger) require the following water management actions.
2. Negative Departure Trigger. If Accrued Negative Departures are greater than 80,000 acre-feet at the end of any calendar year, the following provisions shall apply:
  - a. New Mexico shall take water management actions to reduce the Accrued Negative Departures to less than 16,000 acre-feet within six (6) calendar years following the exceedance of the Negative Departure Trigger. New Mexico shall have discretion to determine what water management actions are necessary and appropriate.

**E. Additional Index Provisions:**

1. Scope of the Index Obligation. In addition to the above specific terms and conditions related to the Index:

*Appendix A*

- a. The EEPI shall not apply in those years in which annual Caballo Releases are less than 200,000 acre-feet. In those years, the Annual Index Departure shall be set at zero (0) acre-feet.
  - b. When annual Caballo Releases are 790,000 acre-feet or greater, the Index Obligation shall be calculated using a 790,000 acre-foot release for the year.
2. If there is an Accrued Index Departure at the end of the fifth year following entry of this Decree, or if the Trigger is reached pursuant to paragraph II.D.2 in the first five (5) years, then the Accrued Index Departures (either Positive or Negative) shall be reduced by the amount of the Index Departure up to, but not to exceed, 20,000 acre-feet or until the Index Accounting reflects zero (0) Index Departures.
  3. Aridity adjustment. The Index will be adjusted annually for estimated change, since the D2 Period, in open water evaporation and riparian evapotranspiration between the Rio Grande Below Caballo Dam and the El Paso gages. *See* Appendix 1.
  4. In any year in which an actual or hypothetical spill occurs, as determined by the Rio Grande Compact Commission, all Accrued Index Departures, both Positive and Negative Departures, shall be extinguished.

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**F. Index Accounting:**

1. The Compacting States shall cooperate in providing necessary data to support calculation of the Index Obligation and the Index Accounting as described in the attached Appendix 1.
  - a. The data required for calculating the initial Index Accounting for the prior year shall be reported to the Engineer Advisors for the Compacting States following the Compact accounting schedules in the “Schedule for Review and Approval of Rio Grande Compact Accounting Records for the Previous Year.”
  - b. The initial Index Accounting for the prior year shall be annually prepared using the methodologies contained in Appendix 1 and provided in the “Schedule for Review and Approval of Rio Grande Compact Accounting Records for the Previous Year.”
  - c. The Engineer Advisors shall review the initial Index Accounting, and include the final Index Accounting for the prior year in their annual report to the Rio Grande Compact Commission.
  - d. The Rio Grande Compact Commission shall review the Engineer Advisors’ report and act as provided for in Article XII of the Compact.

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**III. CONSTRUCTION OF THE DECREE**

- A. Nothing in this Decree as a whole, nor any part hereof, modifies or otherwise requires modification of the Compact. This Decree clarifies but does not alter the Compact rights and obligations of the signatory States.
- B. Nothing in this Decree shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian Tribes, or as impairing the rights of the Indian Tribes.
- C. The following appendices are attached:

**“Appendix 1”** is the Index Appendix; and

**“Appendix 2”** is a map showing the Mesilla Basin, the Rincon Basin, and the Texas Mesilla area.

To the extent any conflict exists between the language of this Decree and the appendices, or any ambiguity is created by the language of the appendices, the language in this Decree controls. The Compact and Decree govern the legal rights and obligations of the Compacting States. The technical appendices provide procedures and methodologies for ensuring proper implementation of this Decree.

- D. This Decree creates no third-party beneficiaries, express or implied.

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**IV. MODIFICATION OF APPENDICES  
TO THE DECREE**

Appendices may be modified only by unanimous agreement of the Compacting States or subsequent order of this Court.

**V. RETENTION OF JURISDICTION**

Any of the Compacting States may file a motion with the Court for amendment of the Decree or for further relief. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the Decree, or any supplementary decree, that may at any time be deemed proper in relation to this Decree or an action by the Compacting States for the enforcement of the Decree.

APPROVED AS TO FORM:

/s/ Stuart L. Somach      Dated: August 29, 2025  
STUART L. SOMACH  
*Counsel for the State of Texas*

/s/ Jeffrey J. Wechsler      Dated: August 29, 2025  
JEFFREY J. WECHSLER  
*Counsel for the State of New Mexico*

/s/ Chad M. Wallace      Dated: August 29, 2025  
CHAD M. WALLACE  
*Counsel for the State of Colorado*

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**APPENDIX 1**

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**Appendix 1**

**Effective El Paso Index**

**Consent Decree Supporting the Rio Grande Compact**

**Section 1: Introduction**

The Effective El Paso Index (EEPI) is an index-based methodology used to assess compliance with the Consent Decree Supporting the Rio Grande Compact (Consent Decree or Decree). The EEPI was developed for the purpose of quantifying and assessing the division of Rio Grande water below Elephant Butte Reservoir. This document provides a summary of the EEPI methodology and describes the procedures for calculating the elements included within the EEPI. Defined terms in the Consent Decree have the same meaning in this Appendix.

To the extent this Appendix presents any inconsistencies with the Consent Decree, the Consent Decree controls.

The EEPI includes provisions for calculating the annual calendar year volume of water obligated to Texas (***Index Obligation***), the annual volume of water delivered to Texas (***Index Delivery***), and the difference between the delivery and obligation, both on an annual and accrued basis (***Annual Index Departure*** and ***Accrued Index Departure***).

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The EEPI methodology consists of the following:

- ***Index Obligation*** described in Section 2.
- ***Index Delivery*** described in Section 3.
- ***Annual Index Departure*** described in Section 4.
- ***Accrued Index Departure*** described in Section 5.
- ***Data for EEPI Calculations*** described in Section 6.
- ***Consent Decree Accounting Provisions*** described in Section 7.
- ***Review and Revision*** described in Section 8.

The Effective El Paso Index Supply (***Index Supply***) represents the Texas apportionment of the Rio Grande below Caballo Dam (see Section 2.1). It is comprised of the Rio Grande flows delivered at the ***El Paso Gage*** plus the depletions to the Rio Grande resulting from agricultural and domestic, commercial, municipal and industrial (***DCMI***) water uses in the ***Texas Mesilla***<sup>1</sup> upstream of the ***El Paso Gage***<sup>2</sup>, adjusted for ***Excess Flows***<sup>3</sup> and ***Delivery to Mexico at the Acequia Madre***<sup>4</sup> as follows:

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1. ***Texas Mesilla*** means the land in the State of Texas that overlies the Mesilla Basin.

2. ***El Paso Gage*** means the Rio Grande at El Paso, Texas stream gage (USGS 08364000).

3. ***Excess Flow*** defined in Section 3.6.

4. ***Acequia Madre*** is the canal through which deliveries of

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$$\begin{aligned}
 \textit{Index Supply} = & + \textit{Streamflow at the El Paso Gage} \\
 & + \textit{Texas Mesilla Agricultural Depletions} \\
 & + \textit{Texas Mesilla DCMI Depletions} \\
 & - \textit{Delivery to Mexico at the Acequia} \\
 & \quad \textit{Madre} \\
 & - \textit{Excess Flow}
 \end{aligned}$$

**Section 2: Index Obligation****2.1 Definition of the Index Obligation**

The ***Index Obligation*** is the annual target volume of water calculated for delivery to Texas, subject to adjustment for changes in open water evaporation and riparian evapotranspiration (***Aridity Adjustment***) and other provisions.

The ***Index Obligation*** is based on a two-year regression analysis relating annual ***Caballo Release***<sup>5</sup> in the current and previous years to the annual ***Index Supply*** during the 1951-1978 period (***D2 Period***).

**2.2 Calculation of the Index Obligation**


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Rio Grande water are made to Mexico under the provisions of the Convention of 1906 between the United States and Mexico. The “Convention of 1906” means the Convention Between the United States and Mexico Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, May 21, 1906, U.S.-Mex, 34 Stat. 2954.

5. ***Caballo Release*** means the official flow record as measured at the Rio Grande Below Caballo Dam stream gage (USGS 08362500).

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The following equation (*Equation 1*) will be used to compute the ***Index Obligation***, in units of acre-feet, following the end of each calendar year:

***Equation 1***

$$\begin{aligned}
 \text{Index Obligation [y]} = & 0.485886 \cdot \text{Minimum } (Q_{\text{Caballo}} \\
 & \text{[y]; 790,000 acre-feet)} \\
 & + 0.113382 \cdot \text{Minimum } (Q_{\text{Caballo}} \\
 & \text{[y-1]; 790,000 acre-feet)} \\
 & - 90,149 \\
 & + 26,860 \text{ (Average Texas Mesilla} \\
 & \text{Agricultural Depletions,} \\
 & \text{in acre-feet)} \\
 & + 12,224 \text{ (Average Texas Mesilla} \\
 & \text{DCMI Depletions, in acre-feet)}
 \end{aligned}$$

Where,

- 0.485886, 0.113382, and 90,149 are regression coefficients.
- $Q_{\text{Caballo}}$  is the annual ***Caballo Release*** for a given calendar year in acre-feet.
- *[y]* indicates the year (e.g.,  $Q_{\text{Caballo}}$  *[1970]* is the annual ***Caballo Release*** for 1970).

The annual calculation of the ***Index Obligation*** is subject to the following conditions:

- In extreme wet years, or when  $Q_{\text{Caballo}}$  is greater than 790,000 acre-feet per year, the ***Index Obligation*** will be determined using *Equation 1*, but the value for  $Q_{\text{Caballo}}$  will be set to 790,000 acre-feet.

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Data for  $Q_{Caballo}$  will be obtained from the Rio Grande Below Caballo Dam stream gage, which is operated and maintained by the United States Bureau of Reclamation (Reclamation).

Furthermore, the ***Index Obligation*** will be adjusted to account for any estimated change, since the D2 Period, in open water evaporation and riparian evapotranspiration between the Rio Grande Below Caballo Dam stream gage and the ***El Paso Gage*** using the following equation (*Equation 2*):

***Equation 2***

$$A [y] = 47,137 \cdot (1.0 - (ET_o [y] / ET_o [D2])) \cdot (67/155)$$

Where,

- 47,137 is the average open water evaporation and riparian evapotranspiration during the ***D2 Period***, in acre-feet.
- $A [y]$  is the calculated ***Aridity Adjustment*** to the ***Index Obligation*** for each calendar year in acre-feet.
- $ET_o [y]$  is the five-year running average of annual calendar year reference evapotranspiration ( $ET_o$ ) for the five-year period ending in year  $[y]$  in inches per year, computed using the original Blaney-Criddle method and climate data (see Section 6) from the Leyendecker II PSRC weather station, located at the New Mexico State University Leyendecker Plant Science Research Center. If climate data from Leyendecker II PSRC weather station is unavailable, the best

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available data should be used.

- $ET_o [D2]$  is the average annual calendar year reference evapotranspiration ( $ET_o$ ) over the ***D2 Period*** in inches per year, computed using the original Blaney-Criddle method, equal to 53.0 inches per year.
- **67/155** is the adjustment factor that represents the Texas portion of the ***Aridity Adjustment***.
- $[y]$  indicates the year (e.g.,  $ET_o [1970]$  refers to annual reference evapotranspiration in 1970).

The calculated annual open water evaporation and riparian evapotranspiration adjustment value ( $A[y]$ ), whether negative or positive, will be added to the ***Index Obligation***. A one-inch difference in the  $ET_o [y]$  as compared to the  $ET_o [D2]$  represents an adjustment of about 384 acre-feet per year.

### Section 3: Index Delivery

#### 3.1 Definition and Calculation of the Index Delivery

The ***Index Delivery*** is the sum of:

- The annual streamflow at the ***El Paso Gage***, after subtracting ***Delivery to Mexico at the Acequia Madre*** and ***Excess Flow***; and
- The estimated depletion of ***Index Supply*** caused by groundwater and surface water use in the ***Texas Mesilla***.

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The following equation (*Equation 3*) will be used to compute the ***Index Delivery***, in units of acre-feet, following the end of each calendar year:

***Equation 3***

$$\begin{aligned}
 \text{Index Delivery [y]} = & \text{Streamflow at the El Paso Gage [y]} \\
 & + \text{Texas Mesilla Agricultural Depletions [y]} \\
 & + \text{Texas Mesilla DCMI Depletions [y]} \\
 & - \text{Delivery to Mexico at the Acequia Madre [y]} \\
 & - \text{Excess Flow [y]}
 \end{aligned}$$

Where,

- ***Streamflow at the El Paso Gage*** as described in Section 3.2.
- ***Texas Mesilla Agricultural Depletions*** as described in Section 3.3.
- ***Texas Mesilla DCMI Depletions*** as described in Section 3.4.
- ***Delivery to Mexico at the Acequia Madre*** as described in Section 3.5.
- ***Excess Flow*** as described in Section 3.6.

### 3.2 Streamflow at the El Paso Gage

The annual calendar year streamflow at the ***El Paso Gage*** component of *Equation 3* will be based on the official daily flow record for the ***El Paso Gage***, in units of acre-feet.

The ***El Paso Gage*** is operated and maintained by the U.S. Section of the International Boundary and Water

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Commission (US-IBWC) and the official record of daily flow is maintained by US-IBWC.

### 3.3 Texas Mesilla Agricultural Depletions

The *Texas Mesilla Agricultural Depletions* component of the *Index Delivery* represents the annual calendar year volume of Rio Grande water depleted (consumed) by irrigation use of groundwater and surface water in the *Texas Mesilla*, as shown in the inset of Appendix 2, or in Texas east of the boundary of the Texas Mesilla supplied by groundwater from hydrologically connected aquifers, in units of acre-feet.

The following equation (*Equation 4*) will be used to compute *Texas Mesilla Agricultural Depletions*:

**Equation 4**  
***Texas Mesilla Agricultural Depletions [y] = Acres [y] · CIR[y]***

Where,

- ***Acres*** is the total irrigated area in the *Texas Mesilla* in a given year, including acreage irrigated for crop production as well as non-crop irrigated acreage (e.g., lawns, parks, golf courses, etc.), in units of acres.
- ***CIR*** is the average consumptive use of irrigation water per acre for the *Texas Mesilla*, equal to 2.8 acre-feet per acre per year (subject to periodic review under the Technical Review terms in

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Section 8).

- *[y]* indicates the year (e.g., *Acre*s *[1970]* refers to the total irrigated acreage in the *Texas Mesilla* for 1970).

The annual irrigated acreage in the *Texas Mesilla* will be determined based on the sum of the acreage inside and outside of the Texas District boundary.

- Texas will provide the annual irrigated acreage in the *Texas Mesilla* for use in calculating the *Index Delivery*, including documentation of the data and methods used to determine irrigated acreages.

### 3.4 Texas Mesilla DCMI Depletions

The *Texas Mesilla DCMI Depletions* component of the *Index Delivery* represents depletions to the Rio Grande above the *El Paso Gage* caused by groundwater pumping in the *Texas Mesilla* as shown in the inset of Appendix 2, or in Texas east of the boundary of the Texas Mesilla from hydrologically connected aquifers, for DCMI uses in a calendar year. There are no surface water diversions for DCMI use in the *Texas Mesilla*. If surface water diversions are constructed in the future, then the *Texas Mesilla DCMI Depletions* calculation will be reviewed pursuant to Section 8.

*Texas Mesilla DCMI Depletions* include:

- Depletions caused by groundwater pumping from the City of El Paso's Canutillo Well Field (*TX Mesilla DCMI CWF*).

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- Depletions caused by groundwater pumping from all other DCMI wells in the ***Texas Mesilla***, including municipalities, self-supplied domestics, mutual domestics, schools, commercial businesses, industrial facilities, and any other non-agricultural uses (***TX Mesilla DCMI Other***).

The sum of the following two equations (*Equation 5* and *Equation 6*) will be used to compute total ***Texas Mesilla DCMI Depletions***<sup>6</sup>, as presented in *Equation 7*, in units of acre-feet:

***Equation 5***

$$\mathbf{TX\ Mesilla\ DCMI\ CWF\ [y] = (P_{CWF} [y] \cdot f_d)}$$

Where,

- $P_{CWF} [y]$  is the total (gross) volume of water pumped from all wells in the Canutillo Well Field during a given calendar year, in acre-feet.
- $f_d$  is a depletion factor that represents the fraction of total (gross) pumping that depletes the Rio Grande and Project conveyances, equal to 0.95.
- $[y]$  indicates the year (e.g.,  $P_{CWF} [1970]$  refers to the volume of groundwater pumped in 1970).

***Equation 6***

$$\mathbf{TX\ Mesilla\ DCMI\ Other\ [y] = (P_{Other} [y] \cdot f_d) - (P_{Other}}$$

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6. Canutillo return flows associated with El Paso's wastewater treatment plants are not included in this calculation, as the wastewater discharge returns to the Rio Grande below the ***El Paso Gage***.

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$$[y] \cdot f_r)$$

Where,

- $P_{Other} [y]$  is the total (gross) volume of water pumped from all DCMI wells in the **Texas Mesilla**, excluding wells in the Canutillo Well Field, in a given calendar year, in acre-feet.
- $f_d$  is a depletion factor that represents the fraction of total (gross) pumping that depletes the Rio Grande and Project conveyances, equal to 0.95.
- $f_r$  is a return flow factor that represents the fraction of total (gross) pumping for by DCMI wells in the **Texas Mesilla**, excluding wells in the Canutillo Well Field, which returns to the Rio Grande above the **El Paso Gage** in the **Texas Mesilla**, equal to 0.33.
- $[y]$  indicates the year (e.g.,  $P_{Other} [1970]$  refers to the volume of groundwater pumping in 1970).

**Equation 7**

$$\begin{aligned} \text{Texas Mesilla DCMI Depletions } [y] &= \text{TX Mesilla} \\ &\text{DCMI CWF } [y] \\ &+ \text{TX Mesilla DCMI Other } [y] \end{aligned}$$

Data required to calculate the **Texas Mesilla DCMI Depletions** portion of the **Index Delivery** will be obtained as follows:

- Pumping from the Canutillo Well Field is metered

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and will be obtained by Texas from El Paso Water (the municipal water utility for the City of El Paso).

- Pumping from other DCMI wells in the ***Texas Mesilla*** (*i.e.*, DCMI wells outside of Canutillo Well Field) is either not metered or, if metered, records are generally not available. Pumping from these wells is currently estimated at 2,611 acre-feet per calendar year based on an average of 2007-2016 records and estimates. Texas will provide the estimated annual pumping each calendar year and document the methods used to develop the estimate.

### 3.5 Delivery to Mexico at the Acequia Madre

The ***Delivery to Mexico at the Acequia Madre*** component of the ***Index Delivery*** represents the annual calendar year volume of Rio Grande water delivered by the United States to Mexico pursuant to the Convention of 1906. Deliveries to Mexico are included within the flows measured at the ***El Paso Gage*** and are therefore subtracted from the ***Index Delivery*** calculation in *Equation 3*.

The ***Delivery to Mexico at the Acequia Madre*** will be based on the official daily flow record of deliveries to Mexico as determined by US-IBWC, in units of acre-feet.

### 3.6 Excess Flow

The ***Excess Flow*** component of the ***Index Delivery*** represents a portion of the annual volume of streamflow during the calendar year, in acre-feet, at the ***El Paso***

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*Gage*, which, like the *Delivery to Mexico at the Acequia Madre*, is subtracted from the *Index Delivery* calculation in *Equation 3*. It represents water that cannot be put to beneficial use in Texas.

*Excess Flow* is determined based on three criteria:

- *Operational Capacity Criteria* as further described in Section 3.6.1
- *Excess Release Criteria* as further described in Section 3.6.2
- *Extraordinary Circumstances Criteria* as further described in Section 3.6.3

Any Rio Grande water that is put to beneficial use in Texas upstream of Ft. Quitman, Texas, is not considered *Excess Flow*.

Compact spills, whether actual or hypothetical, are determined by the Rio Grande Compact Commission (RGCC) and are not controlled by the determination of *Excess Flow*.

### 3.6.1 Operational Capacity Criteria

The *Operational Capacity Criteria for Excess Flow* quantifies streamflow at the *El Paso Gage*, excluding *Delivery to Mexico at the Acequia Madre*, that cannot be diverted and used in Texas due to the operational capacity of the American Canal and the Texas District distribution system in the El Paso Valley, which is

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currently approximately 1,000 cubic feet per second (cfs).

The annual volume, in acre-feet, of **Excess Flow** based on this criterion is computed using *Equation 8* and *Equation 9*.

**Equation 8**

$$\mathbf{Excess\ Flow\ [y]} = \mathbf{SUM[Q_{Excess}\ [d] \cdot (60 \cdot 60 \cdot 24 / 43560)]}$$

Where,

- **Excess Flow [y]** is the annual volume of excess flow in acre-feet for a given calendar year [y].
- **Q<sub>Excess</sub> [d]** is the **Excess Flow** in cubic feet per second (cfs) on a given day [d], as determined by *Equation 9*.

**Equation 9**

$$\mathbf{IF: \quad Q_{RGEP}\ [d] - Q_{MX}\ [d] = \quad > 1,000\ cfs}$$

$$\mathbf{THEN: \quad Q_{Excess}\ [d] = \quad (Q_{RGEP}\ [d] - Q_{MX}\ [d]) - 1,000}$$

$$\mathbf{OTHERWISE: \quad Q_{Excess}\ [d] = 0.0}$$

Where,

- **QRGEP [d]** is the daily average flow rate of streamflow at the **El Paso Gage** in cubic feet per second on a given day [d].
- **QMX [d]** is the daily average flow rate of **Delivery to Mexico at the Acequia Madre** in cubic feet per second on a given day [d].

**3.6.2 Excess Release Criteria**

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The ***Excess Release Criteria for Excess Flow*** quantifies streamflow at the ***El Paso Gage***, excluding ***Delivery to Mexico at the Acequia Madre***, resulting from an excess release from Caballo Dam, and which is not put to beneficial use in Texas. These criteria may apply to flows less than the ***Operational Capacity Criteria*** of 1,000 cfs. Excess releases from Caballo Dam consist of water released for flood control purposes, as necessary to accommodate operations and maintenance activities, or for purposes other than to meet water orders by the irrigation district in New Mexico, the irrigation district in Texas, and Mexico.

In the event of an excess release from Caballo Dam, available data and information will be used to determine the timing, duration, and volume of *Excess Flow* resulting from any excess release<sup>7</sup>. Available data and information may include but are not limited to: discussion with staff from Reclamation, the New Mexico District, the Texas District, and US-IBWC; incident reports; emergency declarations; Project water orders; and metered or estimated flows in the US-IBWC, the Texas District, or Hudspeth County Conservation & Reclamation District distribution systems. Available data and information may differ between occurrences of excess releases.

The ***Excess Release Criteria for Excess Flow*** will be determined by the RGCC upon recommendation of the

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7. In the case that these criteria result in an adjustment to the ***Index Delivery*** in any given calendar year, the ***Caballo Release*** from that year must be adjusted accordingly.

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Engineer Advisers of Colorado, New Mexico and Texas.

### 3.6.3 Extraordinary Circumstances Criteria

The *Extraordinary Circumstances Criteria* for *Excess Flow* will be determined by the RGCC upon recommendation of the Engineer Advisers of Colorado, New Mexico and Texas. Extraordinary circumstances may occur, for example, if Rio Grande water quality above the American Dam were hazardous. Available data, information, and methods will be used to determine the occurrence of extraordinary circumstances and to quantify the timing, duration, and quantity of *Excess Flow* resulting from such circumstances. Available data and information may differ between occurrences of extraordinary circumstances.

## Section 4: Annual Index Departure

### 4.1 Definition and Calculation of the Annual Index Departure

The *Annual Index Departure* is calculated annually, on a calendar year basis, by subtracting the *Index Obligation* from the *Index Delivery*. The calculation may result in an:

- *Annual Negative Departure* (under-delivery), when *Index Delivery* < *Index Obligation*
- *Annual Positive Departure* (over-delivery), when *Index Delivery* > *Index Obligation*

The *Annual Index Departure* is subject to the provisions

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described in Sections 4.2 through 4.4.

**4.2 Cap on Annual Positive Departures**

An ***Annual Positive Departure*** in excess of 67,500 acre-feet shall be treated as the equivalent of 67,500 acre-feet for the purposes of calculating the ***Accrued Index Departure***<sup>8</sup>.

**4.3 Cap on Annual Negative Departures**

An ***Annual Negative Departure*** in excess of 112,500 acre-feet during the first full five calendar years following entry of the Consent Decree shall be treated as the equivalent of 112,500 acre-feet for the purposes of calculating the ***Accrued Index Departure***.

An ***Annual Negative Departure*** in excess of 90,000 acre-feet beginning the sixth full calendar year after entry of the Consent Decree shall be treated as the equivalent of 90,000 acre-feet for the purposes of calculating ***Accrued Index Departure***.

**4.4 Suspension of Annual Index Departures**

In any year in which the ***Caballo Release*** is less than 200,000 acre-feet, the ***Annual Index Departure*** will be set to zero acre-feet for the purposes of calculating the ***Accrued Index Departure***.

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8. Defined in Section 5

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In any year in which the Rio Grande Compact Commission determines that there is an actual or hypothetical spill under the Compact the ***Annual Index Departure*** will be set to zero acre-feet and all ***Accrued Index Departures*** will be extinguished as described below in Section 5.2.

**Section 5: Accrued Index Departure****5.1 Definition and Calculation of the Accrued Index Departure**

The ***Accrued Index Departure*** is calculated annually, on a calendar year basis, as a running sum the ***Annual Index Departures***. The calculation may result in an:

- ***Accrued Negative Departure*** (representing an accrued net under-delivery by New Mexico through time).
- ***Accrued Positive Index Departure*** (representing an accrued net over-delivery by New Mexico through time).

An ***Annual Negative Departure*** will be:

- Used to reduce an ***Accrued Positive Departure*** at the beginning of the calendar year by the amount of the ***Annual Negative Departure***; or
- Added to the ***Accrued Negative Departure*** at the beginning of the calendar year by the amount of the ***Annual Negative Departure***.

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An ***Annual Positive Departure*** will be:

- Used to reduce an ***Accrued Negative Departure*** at the beginning of the calendar year by the amount of the ***Annual Positive Departure***; or
- Added to the ***Accrued Positive Departure*** at the beginning of the calendar year by the amount of the ***Annual Positive Departure***.

The calculation of the ***Accrued Index Departure*** is subject to the provisions described in Sections 4 and 5.

## **5.2 Extinguishment of Accrued Index Departures**

In any year in which the RGCC determines that there is an actual or hypothetical spill under the Compact, the ***Accrued Index Departure*** at the beginning of that year, whether positive (accrued over-delivery) or negative (accrued under-delivery), will be extinguished. Additionally, as described in Section 4.4, the ***Annual Index Departure*** will also be set to zero for that year. Therefore, the ***Accrued Index Departure*** at the end of the year in which the spill occurs will be equal to zero acre-feet.

## **5.3 Cancellation of Accrued Negative Departures for Texas District Carryover**

The Texas District's ***Project Carryover Water*** for a given year is the part of the Texas District's total allocation that remains unused at the end of the calendar year.

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In any calendar year in which the average of the Texas District's ***Project Carryover Water*** for the current year and the two prior years (three-year lagged moving average), is greater than 180,000 acre-feet, and the ***Accrued Index Departure*** at the end of the current year is negative, the ***Accrued Negative Departure*** at the end of the current year will be extinguished. Therefore, the ***Accrued Index Departure*** for the following year will be equal to zero plus the ***Annual Index Departure*** that will be calculated during that following year.

In determining the three-year rolling average of the Texas District's ***Project Carryover Water***, the current year's ***Allocation Transfer*** amount (see Section 5.6) will be subtracted in the calculation of the three-year rolling average ***Project Carryover Water*** balance if the average of the Texas District's ***Project Carryover Water*** for the two prior years exceeds 180,000 acre-feet. This provision is intended to prevent the current year's ***Allocation Transfer*** from causing an exceedance of the 180,000 acre-feet threshold.

#### **5.4 Accrued Negative Departure Limits**

##### **5.4.1 Accrued Negative Departure Limits**

During the first full five calendar years following entry of the Consent Decree, New Mexico may have ***Accrued Negative Departures*** up to, but not in excess of 150,000 acre-feet.

Beginning the sixth full calendar year following entry

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of the Consent Decree, New Mexico may have ***Accrued Negative Departures*** up to, but not in excess of 120,000 acre-feet.

These limitations are known as the ***Accrued Negative Departure Limits***.

#### **5.4.2 Index Adjustments for Exceedances of the Accrued Negative Departure Limit**

If New Mexico exceeds the ***Accrued Negative Departure Limit*** of 150,000/120,000 acre-feet in three consecutive years, New Mexico will provide 12,000 acre-feet of water in excess of its ***Index Obligation*** for each year that it exceeds the ***Accrued Negative Departure Limit***. New Mexico will have three years to provide the full 36,000 acre-feet, excluding years in which the ***Caballo Release*** is less than 200,000 acre-feet.

If New Mexico exceeds the ***Accrued Negative Departure Limit*** of 150,000/120,000 acre-feet in four or more consecutive years, New Mexico will provide 15,000 acre-feet of water in excess of its ***Index Obligation*** for each additional year over the four years that it exceeds the ***Accrued Negative Departure Limit***. The 15,000 acre-feet in excess of New Mexico's ***Index Obligation*** will be provided during the year immediately following the violation of the ***Accrued Negative Departure Limit***, excluding years in which the ***Caballo Release*** is less than 200,000 acre-feet.

The additional amounts required under these exceedance

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provisions are known as ***Index Adjustments***. ***Index Adjustments*** shall be accounted for separately from ***Accrued Negative Departures***. Provided New Mexico meets its ***Index Obligation***, New Mexico shall classify ***Annual Positive Departures*** as either ***Index Adjustments*** or reduction in ***Accrued Negative Departures***.

#### **5.4.3 Impact of the Texas District's Project Carryover Water on Index Departure Limits**

If the ***Accrued Negative Departure*** exceeds the ***Accrued Negative Departure Limit*** of 150,000/120,000 acre-feet, the impact, if any, of the Texas District's ***Project Carryover Water*** on the ***Accrued Negative Departure*** will be considered.

Consideration of that impact will include the evaluation of the difference between the ***Index Obligation*** and the ***Index Delivery*** that would have occurred if the current balance in the Texas District's ***Project Carryover Water*** account had been released the previous year.

When determining whether New Mexico is in violation of the ***Accrued Negative Departure Limit***, or whether the additional ***Index Adjustments*** for exceedances of the ***Accrued Negative Departure Limit*** (see Section 5.4.2) apply, the impact of the Texas District's ***Project Carryover Water*** will be added to the current ***Accrued Negative Departure***, thus reducing the apparent ***Accrued Negative Departure*** for that year. This apparent ***Accrued Negative Departure*** will then be used to determine only whether New Mexico is in violation of the ***Accrued***

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***Negative Departure Limit*** for that year and whether ***Index Adjustments*** should apply. The current value of the ***Accrued Negative Departure*** will remain unchanged.

### **5.5 End of 5th Year Adjustment to Accrued Index Departures**

If there is an ***Accrued Index Departure*** at the end of the fifth year following the entry of the Consent Decree, or if a ***Negative Trigger*** is reached pursuant to Paragraph II.D.2 of the Consent Decree in the first five years, the ***Accrued Index Departure*** (positive or negative), will be reduced by the amount of the ***Accrued Index Departure*** up to, but not to exceed, 20,000 acre-feet or until the accounting for the ***Accrued Index Departure*** reflects zero acre-feet.

### **5.6 Allocation Transfers**

#### **5.6.1 Definition of Allocation Transfers**

***Allocation Transfers*** are used to move current-year allocation from one District (either Texas or New Mexico) to the current-year allocation of another District (either Texas or New Mexico). ***Allocation Transfers*** from one District to the other will immediately reduce New Mexico's ***Accrued Negative Departure*** or Texas's ***Accrued Positive Departure*** by the same amount as the ***Allocation Transfer***.

More specifically:

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- If an ***Allocation Transfer*** occurs from the current-year allocation for the New Mexico District to the current-year allocation for the Texas District, then, simultaneously with the transfer, the ***Accrued Negative Departure*** will be reduced by an amount equal to the transfer.
- If an ***Allocation Transfer*** occurs from the current-year allocation for the Texas District to the current-year allocation for the New Mexico District, then, simultaneously with the transfer, the ***Accrued Positive Departure*** will be reduced by an amount equal to the transfer.

**5.6.2 Accrued Positive Departure Trigger**

If there is an ***Accrued Positive Departure*** that exceeds 50,000 acre-feet for one year (also known as the ***Accrued Positive Departure Trigger***), the Texas District will provide ***Allocation Transfers*** to the New Mexico District, equal in total to the amount of the ***Accrued Positive Departure*** that is greater than 16,000 acre-feet, and will do so over the subsequent three calendar years.

**5.6.3 Accrued Negative Departure Trigger**

If there is an ***Accrued Negative Departure*** that exceeds 80,000 acre-feet at the end of any calendar year (also known as the ***Accrued Negative Departure Trigger***), New Mexico will take water management actions to reduce the ***Accrued Negative Departures*** to less than 16,000 acre-feet within six calendar years following the exceedance of the ***Accrued Negative Departure Trigger***.

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These management actions are solely within New Mexico's discretion and may include *Allocation Transfers*.

**Section 6: Data for EEPI Calculations**

The data required for the annual EEPI calculations shall be reported to the Engineer Advisers for the Compacting States following the Compact accounting schedules in the "Schedule for Review and Approval of Rio Grande Compact Accounting Records for the Previous Year". More specifically, the following data will be required annually, on a calendar year, for EEPI calculations:

- Daily official stream flow data from the Rio Grande at El Paso, Texas, (USGS 08364000).
  - Data source: US-IBWC
- Daily official flow data from the Rio Grande Below Caballo Dam, New Mexico stream gage, (USGS 08365000).
  - Data source: Reclamation.
- Official daily flow records of Delivery to Mexico at the Acequia Madre.
  - Data source: US-IBWC.
- Pumping records for the Canutillo Well Field, Texas.
  - Data source: Texas.
- Pumping estimates for any other DCMI use in Texas Mesilla
  - Data source: Texas

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- Irrigated acreage estimates within the Texas Mesilla.
  - Data source: Texas.
- Temperature data from the Leyendecker II PSRC weather station.
  - Data source: New Mexico.
- Annual ***Project Carryover Water*** for New Mexico District and Texas District
  - Data source: Reclamation.

**Section 7: Consent Decree Accounting Provisions**

The following list includes the accounting-related provisions in the Consent Decree:

- ***Index Obligation***, pg. 6, Paragraph II(B)(ii)(e)
- ***Index Delivery***, pg. 7, Paragraph II(B)(ii)(f)
- Streamflow gages, pg. 7, Paragraph II(B)(ii)(g)
- ***Annual Negative Departure***, pg. 7, Paragraph II(B)(iii)(a)
- ***Annual Positive Departure***, pg. 8, Paragraph II(B)(iii)(b)
- ***Accrued Index Departures***, pg. 7, Paragraph II(B)(iii)(a) and pg. 8, Paragraph II(B)(iii)(b)
- ***Allocation Transfers***, pg. 8, Paragraph II(B)(iii)(c)
- Cap on ***Annual Positive Departures***, pg. 9, Paragraph II(C)(2)
- Cap on ***Annual Negative Departures*** (first 5

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- years), pg. 9, Paragraph II(C)(3)(a)(ii)
- Cap on ***Annual Negative Departures*** (starting year 6), pg. 10, Paragraph II(C)(3)(a)(iv)
  - Exceedances of ***Accrued Negative Departure Limits*** (3 consecutive years), pg. 10, Paragraph II(C)(3)(b)(i)
  - Exceedances of ***Accrued Negative Departure Limits*** (4 or more consecutive years), pg. 10, Paragraph II(C)(3)(b)(ii)
  - ***Index Adjustments***, pg. 10, Paragraph II(C)(3)(b)(i) and Paragraph II(C)(3)(b)(ii)
  - ***Project Carryover Water***, pg. 11, Paragraph II(C)(3)(c)
  - ***Caballo Release*** less than 200,000 acre-feet, pg. 12, Paragraph II(E)(1)(a)
  - ***Caballo Release*** greater than 790,000 acre-feet, pg. 12, Paragraph II(E)(1)(b)
  - End of 5th Year Adjustment to ***Accrued Index Departure***, pg. 12, Paragraph II(E)(2)
  - ***Aridity Adjustment***, pg. 12, Paragraph II(E)(3)
  - Actual or hypothetical spill under the Compact, pg. 12, Paragraph II(E)(4)
  - Index Accounting, pg. 13, Paragraph II(F)(2)

**Section 8: Review and Revision**

The following procedure will be used to review and revise, if needed, the data sources and methods used to

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determine inputs to the calculation of the **EEPI**:

- ***Request for Review***  
If any Compacting State identifies a significant error, bias, discrepancy, or other issue with the data sources and/or method used to determine any input to the **EEPI**, that Compact State may request that the RGCC initiate a review of the data sources and/or method in question. In making a request for review, the Compacting State making the request must provide documentation and technical evidence substantiating the suspected error, bias, discrepancy, or other issues.
- ***Evaluation of Request for Review***  
The RGCC will evaluate the request for review and supporting documentation and evidence.
- ***Initiation of Review***  
If the RGCC determines that a review is warranted, the RGCC will convene a Technical Committee to conduct the review. The RGCC will instruct the Technical Committee as to the scope of the review.
- ***Technical Review***  
The Technical Committee will carry out the review as directed by the RGCC and will report their findings to the RGCC. If the Technical Committee recommends that the data sources and/or methods in question should be revised, the Technical Committee will

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recommend appropriate revisions. If warranted, the Technical Committee may recommend that previously approved ***Annual*** and ***Accrued Index Departures*** be corrected retroactively; if correction is recommended, the Technical Committee will identify a specified period over which the correction is recommended. If the Technical Committee fails to achieve consensus regarding recommended revisions or corrections, the opinion of committee members from each Party will be reported to the RGCC.

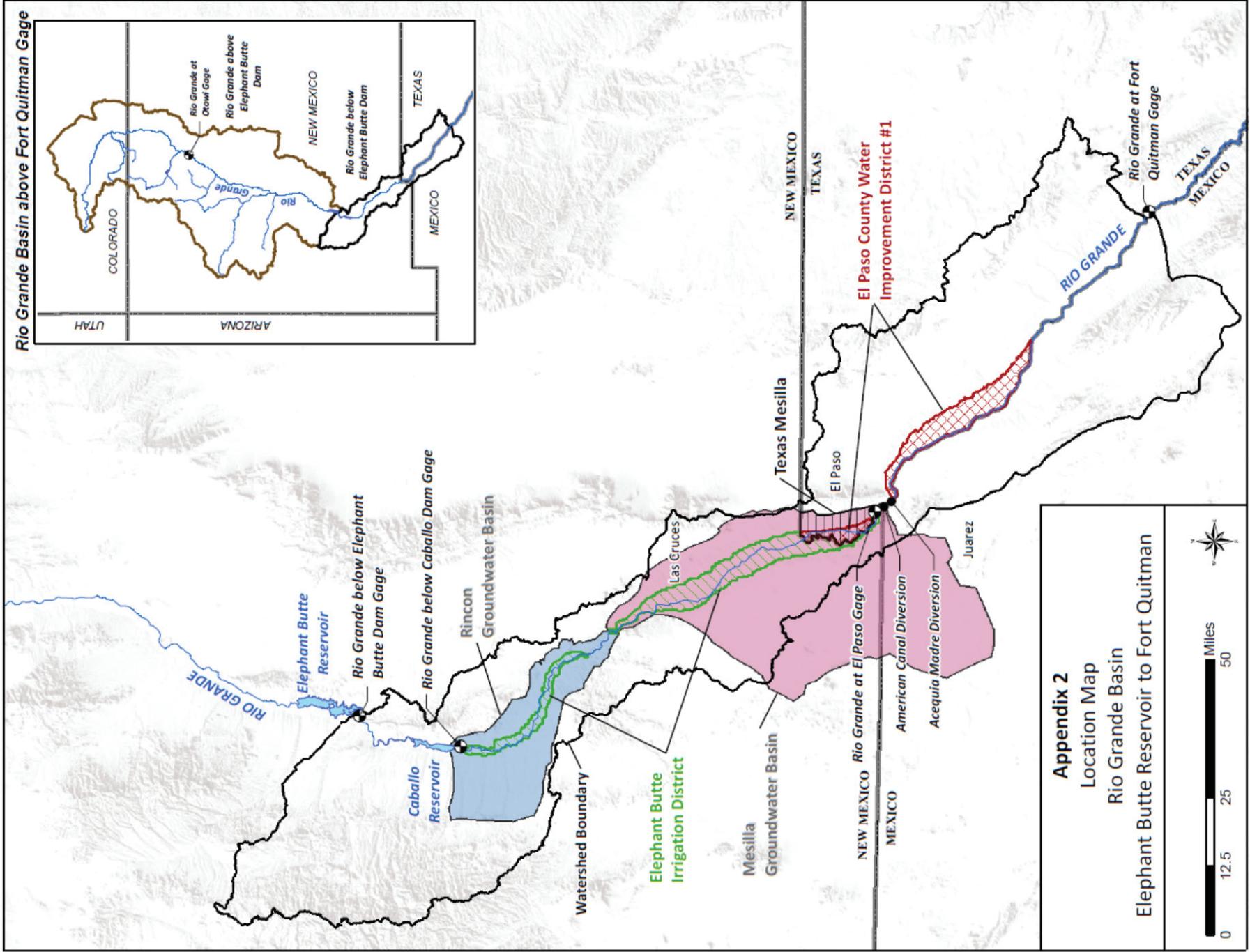
- ***Implementation of Revisions***

The RGCC will determine whether to accept and implement any revisions or corrections recommended by the Technical Committee.

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**APPENDIX 2**



Appendix 2. Inset of the Texas Portion of Mesilla Groundwater Basin (Texas Mesilla)



**APPENDIX B — FOURTH INTERIM REPORT  
ADDENDUM - RIO GRANDE COMPACT**

**RIO GRANDE COMPACT**

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes, and to that end, through their respective Governors, have named as their respective Commissioners:

For the State of Colorado M.C. Hinderlider  
For the State of New Mexico Thomas M. McClure  
For the State of Texas Frank B. Clayton

who, after negotiations participated in by S.O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following articles, to-wit:

**ARTICLE I**

(a) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

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(b) The “Commission” means the agency created by this Compact for the administration thereof.

(c) The term “Rio Grande Basin” means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado.

(d) The “Closed Basin” means that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term “tributary” means any stream which naturally contributes to the flow of the Rio Grande.

(f) “Transmountain Diversion” is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, exclusive of the Closed Basin.

(g) “Annual Debits” are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) “Annual Credits” are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) “Accrued Debits” are the amounts by which the sum of all annual debits exceeds sum of all annual credits over any common period of time.

(j) “Accrued Credits” are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

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(k) “Project Storage” is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande Project, but not more than a total of 2,638,860 acre feet.

(l) “Usable Water” is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) “Credit Water” is that amount of water in project storage which is equal to the accrued credit of Colorado, or New Mexico, or both.

(n) “Unfilled Capacity” is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) “Actual Release” is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) “Actual Spill” is all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) “Hypothetical Spill” is the time in any year at which usable water would have spilled from project storage

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if 790,000 acre feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this Compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

**ARTICLE II**

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic water stage recorder at each of the following points, to-wit:

- (a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley;
- (b) On the Conejos River near Mogote;
- (c) On the Los Pinos River near Ortiz;
- (d) On the San Antonio River at Ortiz;
- (e) On the Conejos River at its mouths near Los Sauces;
- (f) On the Rio Grande near Lobatos;
- (g) On the Rio Chama below El Vado Reservoir;

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- (h) On the Rio Grande at Otowi Bridge near San Ildefonso;
- (i) On the Rio Grande near San Acacia;
- (j) On the Rio Grande at San Marcial;
- (k) On the Rio Grande below Elephant Butte Reservoir;
- (l) On the Rio Grande below Caballo Reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the Compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained and operated by the Commission directly or in cooperation with an appropriate Federal or State agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times. (Note: See Resolution of Commission printed elsewhere in this report.)

**ARTICLE III**

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line, measured at or near Lobatos, in each calendar year, shall be ten thousand acre feet less than the sum of those quantities set

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forth in the two following tabulations of relationship, which correspond to the quantities at the upper index stations:

<b>DISCHARGE OF CONEJOS RIVER</b>			
Quantities in thousands of acre feet			
Conejos Index Supply (1)		Conejos River at Mouths (2)	
100		0	
150		20	
200		45	
250		75	
300		109	
350		147	
400		188	
450		232	
500		278	
550		326	
600		376	
650		426	
700		476	

Intermediate quantities shall be computed by proportional parts.

(1) Conejos Index Supply is the natural flow of Conejos River at the U.S.G.S. gaging station near Mogote during the calendar year, plus the natural flow of Los

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Pinos River at the U.S.G.S. gaging station near Ortiz and the natural flow of San Antonio River at the U.S.G.S. gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos River at Mouths is the combined discharge of branches of this river at the U.S.G.S. gaging stations near Los Sauces during the calendar year.

<b>DISCHARGE OF RIO GRANDE EXCLUSIVE OF CONEJOS RIVER</b>			
Quantities in thousands of acre feet			
Rio Grande at Del Norte (3)		Rio Grande at Lobatos less Conejos at Mouths (4)	
200		60	
250		65	
300		75	
350		86	
400		98	
450		112	
500		127	
550		144	
600		162	
650		182	
700		204	
750		229	
800		257	

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850		292	
900		335	
950		380	
1,000		430	
1,100		540	
1,200		640	
1,300		740	
1,400		840	

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U.S.G.S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at Mouths is the total flow of the Rio Grande at the U.S.G.S. gaging station near Lobatos, less the discharge of Conejos River at its Mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) any new or increased depletion of the runoff above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

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In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the Closed Basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five percent of the total positive ions in that water when the total dissolved solids in such water of exceeds three hundred fifty parts per million.

**ARTICLE IV**

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

<b>DISCHARGE OF RIO GRANDE AT OTOWI BRIDGE AND AT SAN MARCIAL EXCLUSIVE OF JULY, AUGUST AND SEPTEMBER</b>			
Quantities in thousands of acre feet			
Otowi Index Supply (5)		San Marcial Index Supply (6)	
100		0	
200		65	
300		141	
400		219	
500		300	

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600		383	
700		469	
800		557	
900		648	
1,000		742	
1,100		839	
1,200		939	
1,300		1,042	
1,400		1,148	
1,500		1,257	
1,600		1,370	
1,700		1,489	
1,800		1,608	
1,900		1,730	
2,000		1,856	
2,100		1,985	
2,200		2,117	
2,300		2,253	

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August and September, corrected for the operation of reservoirs constructed after

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1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte Reservoir to the end that the records at these three stations may be correlated. (Note: See Resolution of Commission printed elsewhere in this report.)

**ARTICLE V**

If at any time it should be the unanimous finding and determination of the Commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the

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stream gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in substantially the same results so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made. (Note: See Resolution of Commission printed elsewhere in this report.)

**ARTICLE VI**

Commencing with the year following the effective date of this Compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed 100,000 acre feet, except as either or both may be caused by holdover storage of water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed 200,000 acre feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio

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Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of 150,000 acre-feet and all gains in the quantity of water in storage in such year.

The Commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of 150,000 acre feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado, or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

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In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado, or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

**ARTICLE VII**

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than 400,000 acre feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this Compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of 790,000 acre feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado, or

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New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the state, or states, so relinquishing shall be entitled to store water in the amount of the water so relinquished.

**ARTICLE VIII**

During the month of January of any year the Commissioner for Texas may demand of Colorado and New Mexico, and the Commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to 600,000 acre feet by March first and to maintain this quantity in storage until April thirtieth, to the end that a normal release of 790,000 acre feet may be made from project storage in that year.

**ARTICLE IX**

Colorado agrees with New Mexico that in event the United States or the State of New Mexico decides to construct the necessary works for diverting the waters of the San Juan River, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan River, or the tributaries thereof, into the Rio Grande in

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New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan River, or its tributaries, are protected.

**ARTICLE X**

In the event water from another drainage basin shall be imported into the Rio Grande Basin by the United States or Colorado or New Mexico, or any of them jointly, the State having the right to the use of such water shall be given proper credit therefore in the application of the schedules.

**ARTICLE XI**

New Mexico and Texas agree that upon the effective date of this Compact all controversies between said States relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory state to the Supreme Court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory state to the injury of another. Nothing herein shall be construed as an admission by any signatory state that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

**ARTICLE XII**

To administer the provisions of this Compact there shall be constituted a Commission composed of one representative from each state, to be known as the Rio

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Grande Compact Commission. The State Engineer of Colorado shall be ex-officio the Rio Grande Compact Commissioner for Colorado. The State Engineer of New Mexico shall be ex-officio the Rio Grande Compact Commissioner for New Mexico. The Rio Grande Compact Commissioner for Texas shall be appointed by the Governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such Commission, and such representative of the United States, if so designated by the President, shall act as Chairman of the Commission without vote.

The salaries and personal expenses of the Rio Grande Compact Commissioners for the three States shall be paid by their respective States, and all other expenses incident to the administration of this Compact, not borne by the United States, shall be borne equally by the three States.

In addition to the powers and duties hereinbefore specifically conferred upon such Commission, and the members thereof, the jurisdiction of such Commission shall extend only to the collection, correlation and presentation of factual data and the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, to the making of recommendations to the respective States upon matters connected with the administration of this Compact. In connection therewith, the Commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective States. Annual reports compiled for each calendar year shall be made by the Commission and transmitted to the

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Governors of the signatory States on or before March first following the year covered by the report. The Commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any court or tribunal which may be called upon to interpret or enforce this Compact.

**ARTICLE XIII**

At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners, and until any changes in this Compact are ratified by the legislatures of the respective states and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective.

**ARTICLE XIV**

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

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**ARTICLE XV**

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this Compact and none of the signatory states admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

**ARTICLE XVI**

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian Tribes, or as impairing the rights of the Indian Tribes.

**ARTICLE XVII**

This Compact shall become effective when ratified by the legislatures of each of the signatory states and consented to by the Congress of the United States. Notice of ratification shall be given by the Governor of each state to the Governors of the other states and to the President of the United States, and the President of the United States is requested to give notice to the Governors of each of the signatory states of the consent of the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be

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deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, in the State of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Sgd.) M. C. HINDERLIDER

(Sgd.) THOMAS M. McCLURE

(Sgd.) FRANK B. CLAYTON

APPROVED:

(Sgd.) S. O. HARPER

RATIFIED BY:

Colorado, February 21, 1939

New Mexico, March 1, 1939

Texas, March 1, 1939

Passed Congress as Public Act No. 96, 76<sup>th</sup> Congress,  
Approved by the President May 31, 1939

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**RESOLUTION ADOPTED BY RIO GRANDE  
COMPACT COMMISSION AT THE ANNUAL  
MEETING HELD AT EL PASO, TEXAS,  
FEBRUARY 22-24, 1948, CHANGING GAGING  
STATIONS AND MEASUREMENTS OF  
DELIVERIES BY NEW MEXICO**

RESOLUTION

Whereas, at the Annual Meeting of the Rio Grande Compact Commission in the year 1945, the question was raised as to whether or not a schedule for delivery of water by New Mexico during the entire year could be worked out, and

Whereas, at said meeting the question was referred to the Engineering Advisers for their study, recommendations and report, and

Whereas, said Engineering Advisers have met, studied the problems and under date of February 24, 1947, did submit their Report, which said Report contains the findings of said Engineering Advisers and their recommendations, and

Whereas, the Compact Commission has examined said Report and finds that the matters and things therein found and recommended are proper and within the terms of the Rio Grande Compact, and

Whereas, the Commission has considered said Engineering Advisers. Report and all available evidence, information and material and is fully advised:

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Now, Therefore, Be it Resolved:

The Commission finds as follows:

(a) That because of change of physical conditions, reliable records of the amount of water passing San Marcial are no longer obtainable at the stream gaging station at San Marcial and that the same should be abandoned for Compact purposes.

(b) That the need for concurrent records at San Marcial and San Acacia no longer exists and that the gaging station at San Acacia should be abandoned for Compact purposes.

(c) That it is desirable and necessary that the obligations of New Mexico under the Compact to deliver water in the months of July, August, September, should be scheduled.

(d) That the change in gaging stations and substitution of the new measurements as hereinafter set forth will result in substantially the same results so far as the rights and obligations to deliver water are concerned, and would have existed if such substitution of stations and measurements had not been so made.

Be it Further Resolved:

That the following measurements and schedule thereof shall be substituted for the measurements and schedule thereof as now set forth in Article IV of the Compact:

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“The obligation of New Mexico to deliver water in the Rio Grande into Elephant Butte Reservoir during each calendar year shall be measured by that quantity set forth in the following tabulation of relationship which corresponds to the quantity at the upper index station:

<b>DISCHARGE OF RIO GRANDE AT OTOWI BRIDGE AND ELEPHANT BUTTE EFFECTIVE SUPPLY</b>			
Quantities in thousands of acre-feet			
<b>Otowi Index Supply (5)</b>		<b>Elephant Butte Effective Index Supply (6)</b>	
100		57	
200		114	
300		171	
400		228	
500		286	
600		345	
700		406	
800		471	
900		542	
1,000		621	
1,000		707	
1,200		800	
1,300		897	
1,400		996	
1,500		1,095	

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1,600		1,195	
1,700		1,295	
1,800		1,395	
1,900		1,495	
2,000		1,595	
2,100		1,695	
2,200		1,795	
2,300		1,895	
2,400		1,995	
2,500		2,095	
2,600		2,195	
2,700		2,295	
2,800		2,395	
2,900		2,495	
3,000		2,595	

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) Elephant Butte Effective Index Supply is the recorded flow of the Rio Grande at the gaging station

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below Elephant Butte Dam during the calendar year plus the net gain in storage in Elephant Butte Reservoir during the same year or minus the net loss in storage in said reservoir, as the case may be.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico of the natural runoff at Otowi Bridge; and (c) any transmountain diversions into the Rio Grande between Lobatos and Elephant Butte Reservoir..

Be it Further Resolved:

That the gaging stations at San Acacia and San Marcial be, and the same are hereby abandoned for Compact purposes.

Be it Further Resolved:

That this Resolution has been passed unanimously and shall be effective January 1, 1949, if within 120 days from this date the Commissioner for each State shall have received from the Attorney General of the State represented by him, an opinion approving this Resolution, and shall have so advised the Chairman of the Commission, otherwise, to be of no force and effect.

(Note: The following paragraph appears in the Minutes of the Annual Meeting of the Commission held at Denver, Colorado, February 14-16, 1949.

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“The Chairman announced that he had received, pursuant to the Resolution adopted by the Commission at the Ninth Annual Meeting on February 24, 1948, opinions from the Attorneys General of Colorado, New Mexico and Texas that the substitution of stations and measurements of deliveries by New Mexico set forth in said resolution was within the powers of the Commission”).

**RULES AND REGULATIONS FOR  
ADMINISTRATION OF THE  
RIO GRANDE COMPACT**

A Compact, known as the Rio Grande Compact, between the States of Colorado, New Mexico and Texas, having become effective on May 31, 1939 by consent of the Congress of the United States, which equitably apportions the waters of the Rio Grande above Fort Quitman and permits each State to develop its water resources at will, subject only to its obligations to deliver water in accordance with the schedules set forth in the Compact, the following Rules and Regulations have been adopted for its administration by the Rio Grande Compact Commission; to be and remain in force and effect only so long as the same may be satisfactory to each and all members of the Commission, and provided always that on the objection of any member of the Commission, in writing, to the remaining two members of the Commission after a period of sixty days from the date of such objection, the sentence, paragraph or any portion or all of these rules to which any such objection shall be made, shall stand abrogated and shall thereafter have no further force and effect; it being the intent and purpose of the Commission

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to permit these rules to obtain and be effective only so long as the same may be satisfactory to each and all of the Commissioners.

GAGING STATIONS /1

Responsibility for the equipping, maintenance and operation of the stream gaging stations and reservoir gaging stations required by the provisions of Article II of the Compact shall be divided among the signatory States as follows:

(a) Gaging stations on streams and reservoirs in the Rio Grande Basin above the Colorado-New Mexico boundary shall be equipped, maintained, and operated by Colorado in cooperation with the U.S. Geological Survey.

(b) Gaging stations on streams and reservoirs in the Rio Grande Basin below Lobatos and above Caballo Reservoir shall be equipped, maintained and operated by New Mexico in cooperation with the U.S. Geological Survey to the extent that such stations are not maintained and operated by some other Federal agency.

(c) Gaging stations on Elephant Butte Reservoir and on Caballo Reservoir, and the stream gaging stations on the Rio Grande below those reservoirs shall be equipped, maintained and operated by or on behalf of Texas through the agency of the U.S. Bureau of Reclamation.

The equipment, method and frequency of measurements at each gaging station shall be sufficient to obtain records

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at least equal in accuracy to those classified as “good” by the U.S. Geological Survey. Water-stage recorders on the reservoirs specifically named Article II of the Compact shall have sufficient range below maximum reservoir level to record major fluctuations in storage. Staff gages may be used to determine fluctuations below the range of the water-stage recorders on these and other large reservoirs, and staff gages may be used upon approval of the Commission in lieu of water-stage recorders on small reservoirs, provided that the frequency of observation is sufficient in each case to establish any material changes in water levels in such reservoirs.

/1 Amended at Eleventh Annual Meeting, February 23, 1950.

## RESERVOIR CAPACITIES /1

Colorado shall file with the Commission a table of areas and capacities for each reservoir in the Rio Grande Basin above Lobatos constructed after 1937; New Mexico shall file with the Commission a table of areas and capacities for each reservoir in the Rio Grande Basin between Lobatos and San Marcial constructed after 1929; and Texas shall file with the Commission tables of areas and capacities for Elephant Butte Reservoir and for all other reservoirs actually available for the storage of water between Elephant Butte and the first diversion to lands under the Rio Grande Project.

Whenever it shall appear that any table of areas and capacities is in error by more than five per cent, the

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Commission shall use its best efforts to have a resurvey made and a corrected table of areas and capacities to be substituted as soon as practicable. To the end that the Elephant Butte effective supply may be computed accurately, the Commission shall use its best efforts to have the rate of accumulation and the place of deposition of silt in Elephant Butte Reservoir checked at least every three years.

## ACTUAL SPILL /2, /3

(a) Water released from Elephant Butte in excess of Project requirements, which is currently passed through Caballo Reservoir, prior to the time of spill, shall be deemed to have been Usable Water released in anticipation of spill, or Credit Water if such release shall have been authorized.

(b) Excess releases from Elephant Butte Reservoir, as defined in (a) above, shall be added to the quantity of water in storage in that reservoir, and Actual Spill shall be deemed to have commenced when this sum equals the total capacity of that reservoir to the level of the uncontrolled spillway less capacity reserved for flood control purposes, i.e., 2,040,000 acre-feet in the months of October through March, inclusive, and 2,015,000 acre-feet in the months of April through September, inclusive, as determined from the 1988 area-capacity table or successor area-capacity tables and flood control storage reservation of 50,000 acre-feet from April through September and 25,000 acre-feet from October through March.

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(c) All water actually spilled at Elephant Butte Reservoir, or released therefrom, in excess of Project requirements, which is currently passed through Caballo Reservoir, after the time of spill, shall be considered as Actual Spill, provided that the total quantity of water then in storage in Elephant Butte Reservoir exceeds the physical capacity of that reservoir at the level of the sill of the spillway gates, i.e., -1,830,000 acre-ft in 1942.

(d) Water released from Caballo Reservoir in excess of Project requirements and in excess of water currently released from Elephant Butte Reservoir, shall be deemed Usable Water released, excepting only flood water entering Caballo Reservoir from tributaries below Elephant Butte Reservoir.

DEPARTURES FROM NORMAL RELEASES /4

For the purpose of computing the time of Hypothetical Spill required by Article VI , for the purpose of the adjustment set forth in Article VII, no allowance shall be made for the difference between Actual and Hypothetical Evaporation, and any underrelease of usable water from Project Storage in excess of 150,000 acre-ft in any year shall be taken as equal to that amount.

/1 Amended at Eleventh Annual Meeting, February 23, 1950.

/2 Adopted at Fourth Annual Meeting, February 24, 1943.

/3 Amended September 9, 1998.

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/4 Adopted June 2, 1959; made effective January 1, 1952.

EVAPORATION LOSSES /5, /6, /7

The Commission shall encourage the equipping, maintenance and operation, in cooperation with the U.S. Weather Bureau or other appropriate agency, of evaporation stations at Elephant Butte Reservoir and at or near each major reservoir in the Rio Grande Basin within Colorado constructed after 1937 and in New Mexico constructed after 1929. The net loss by evaporation from a reservoir surface shall be taken as the difference between the actual evaporation loss and the evapo-transpiration losses which would have occurred naturally, prior to the construction of such reservoir. Changes in evapo-transpiration losses along stream channels below reservoirs may be disregarded.

Net losses by evaporation, as defined above, shall be used in correcting Index Supplies for the operation of reservoirs upstream from Index Gaging Stations as required by the provisions of Article III and Article IV of the Compact.

In the application of the provisions of the last unnumbered paragraph of Article VI of the Compact:

(a) Evaporation losses for which accrued credits shall be reduced shall be taken as the difference between the gross evaporation from the water surface of Elephant Butte Reservoir and rainfall on the same surface.

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(b) Evaporation losses for which accrued debits shall be reduced shall be taken as the net loss by evaporation as defined in the first paragraph.

## ADJUSTMENT OF RECORDS

The Commission shall keep a record of the location, and description of each gaging station and evaporation station, and, in the event of change in location of any stream gaging station for any reason, it shall ascertain the increment in flow or decrease in flow between such locations for all stages. Wherever practicable, concurrent records shall be obtained for one year before abandonment of the previous station.

## NEW OR INCREASED DEPLETIONS

In the event any works are constructed which alter or may be expected to alter the flow at any of the Index Gaging Stations mentioned in the Compact, or which may otherwise necessitate adjustments in the application of the schedules set forth in the Compact, it shall be the duty of the Commissioner specifically concerned to file with the Commission all available information pertaining thereto, and appropriate adjustments shall be made in accordance with the terms of the Compact; provided, however, that any such adjustments shall in no way increase the burden imposed upon Colorado or New Mexico under the schedules of deliveries established by the Compact.

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TRANSMOUNTAIN DIVERSIONS

In the event any works are constructed for the delivery of waters into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, such waters shall be measured at the point of delivery into the Rio Grande Basin and proper allowances shall be made for losses in transit from such points to the Index Gaging Station on the stream with which the imported waters are commingled.

/5 Amended at Tenth Annual Meeting, February 15, 1949.

/6 Amended at Twelfth Annual Meeting, February 24, 1951.

/7 Amended June 2, 1959.

QUALITY OF WATER

In the event that delivery of water is made from the Closed Basin into the Rio Grande, sufficient samples of such water shall be analyzed to ascertain whether the quality thereof is within the limits established by the Compact.

SECRETARY /8

The Commission, subject to the approval of the Director, U.S. Geological Survey, to a cooperative agreement for such purposes, shall employ the U.S. Geological Survey

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on a yearly basis, to render such engineering and clerical aid as may reasonably be necessary for administration of the Compact. Said agreement shall provide that the Geological Survey shall:

(1) Collect and correlate all factual data and other records having a material bearing on the administration of the Compact and keep each Commissioner adviser thereof.

(2) Inspect all gaging stations required for administration of the Compact and make recommendations to the Commission as to any changes or improvements in methods of measurement or facilities for measurement which may be needed to insure that reliable records be obtained.

(3) Report to each Commissioner by letter on or before the fifteenth day of each month, except January, a summary of all hydrographic data then available for the current year - on forms prescribed by the Commission - pertaining to:

- (a) Deliveries by Colorado
- (b) Deliveries by New Mexico
- (c) Operation of Project Storage

(4) Make such investigations as may be requested by the Commission in aid of its administration of the Compact.

(5) Act as Secretary to the Commission and submit to the Commission at its regular meeting in February a

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report on its activities and a summary of all data needed for determination of debits and credits and other matters pertaining to administration of the Compact.

## COSTS /1

In February of each year, the Commission shall adopt a budget for the ensuing fiscal year beginning July first.

Such budget shall set forth the total cost of maintenance and operating of gaging stations, of evaporation stations, the cost of engineering and clerical aid, and all other necessary expenses excepting the salaries and personal expenses of the Rio Grande Compact Commissioners.

Contributions made directly by the United States and the cost of services rendered by the United States without cost shall be deducted from the total budget amount; the remainder shall then be allocated equally to Colorado, New Mexico and Texas.

/8 The substitution of this section for the section titled "Reports to Commissioners" was adopted at Ninth Annual Meeting, February 22, 1948.

/1 Amended at Eleventh Annual Meeting, February 23, 1950.

Expenditures made directly by any State for purposes set forth in the budget shall be credited to that State; contributions in cash or in services by any State under a cooperative agreement with any federal agency shall

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be credited to such State, but the amount of the federal contribution shall not so be credited; in event any State, through contractual relationships, causes work to be done in the interest of the Commission, such State shall be credited with the cost thereof, unless such cost is borne by the United States.

Costs incurred by the Commission under any cooperative agreement between the Commission and any U.S. Government Agency, not borne by the United States, shall be apportioned equally to each State, and each Commissioner shall arrange for the prompt payment of one-third thereof by his State.

The Commissioner of each State shall report at the annual meeting each year the amount of money expended during the year by the State which he represents, as well as the portion thereof contributed by all cooperating federal agencies, and the Commission shall arrange for such proper reimbursement in cash or credits between States as may be necessary to equalize the contributions made by each State in the equipment, maintenance and operation of all gaging stations authorized by the Commission and established under the terms of the Compact.

It shall be the duty of each Commissioner to endeavor to secure from the Legislature of his State an appropriation of sufficient funds with which to meet the obligations of his State, as provided by the Compact.

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MEETING OF COMMISSION /1, /9

The Commission shall meet in Santa Fe, New Mexico, on the third Thursday of February of each year for the consideration and adoption of the annual report for the calendar year preceding, and for the transaction of any other business consistent with its authority; provided that the Commission may agree to meet elsewhere. Other meetings as may be deemed necessary shall be held at any time and place set by mutual agreement, for the consideration of data collected and for the transaction of any business consistent with its authority.

No action of the Commission shall be effective until approved by the Commissioner from each of the three signatory States.

(Signed) M. C. HINDERLIDER  
M.. C. Hinderlider  
Commissioner for Colorado

(Signed) THOMAS M. McCLURE  
Thomas M. McClure  
Commissioner for New Mexico

(Signed) JULIAN P. HARRISON  
Julian P. Harrison  
Commissioner for Texas

Adopted December 19, 1939.

/1 Amended at Eleventh Annual Meeting, February 23, 1950.

/9 Amended at Thirteenth Annual Meeting, February 25, 1952.

**AFFIDAVIT OF SERVICE**

SUPREME COURT OF THE UNITED STATES

No. 141, Original

-----X

TEXAS,

*Plaintiff,*

*v.*

NEW MEXICO AND COLORADO,

*Defendants,*

UNITED STATES OF AMERICA,

*Intervenor.*

-----X

STATE OF NEW YORK            )

COUNTY OF NEW YORK        )

I, Ann Tosel, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by the Special Master.

That on the 6<sup>th</sup> day of February, 2026, I served the within *Fourth Interim Report of the Special Master* in the above-captioned matter upon:

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by sending three copies of same, addressed to each individual respectively, through Priority Mail. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within *Fourth Interim Report of the Special Master* through the Overnight Next Day Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

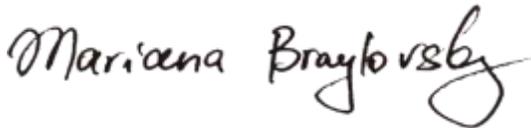
Executed on this 6<sup>th</sup> day of February, 2026.



---

Ann Tosel

Sworn to and subscribed before me  
this 6<sup>th</sup> day of February, 2026.



**MARIANA BRAYLOVSKIY**  
Notary Public State of New York  
No. 01BR6004935  
Qualified in Richmond County  
Commission Expires March 30, 2026