No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

JOINT STATUS REPORT OF THE COMPACTING STATES FOR THE OCTOBER 23, 2024 STATUS CONFERENCE

Pursuant to the August 28, 2024, Order of the Special Master [Doc. 1][1], the State of Texas, the State of New Mexico, and the State of Colorado ("Compacting States") and the United States (collectively the "Parties") have met and conferred regarding the preparation of a Joint Status Report. The Compacting States and United States have not reached agreement on substantial material matters related to the continued litigation of this Original Action and consequently are unable to file a

[1] References to "Doc." are to documents filed in the Third Circuit Court of Appeals docket before Special Master Smith; references to "8th Cir. Dkt." are to documents filed in the Eighth Circuit Court of Appeals docket before Special Master Melloy.

Joint Status Report that would include all of the Parties. As contemplated by the August 28th Order, however, the Compacting States agree on the central litigation matters and, therefore, submit this Joint Status Report of the Compacting States ("States' JSR"). In order to apprise the Special Master of the "next steps," the Compacting States provide as follows:

I. INTRODUCTION

Texas first presented this case to the Supreme Court in January 2013, over a decade ago. Since then, the Parties have comprehensively litigated the case through discovery, witness disclosures, and expert analysis on all issues. Then, at the close of the first phase of trial, the Compacting States negotiated a resolution of the claims among them. The United States objected. The Court sustained the objection and afforded the United States the opportunity to proceed with trial on its claims.

That order should not be confused for license for the United States to redefine, broaden, or bolster its claims. The Parties are now in the middle of trial, and the United States may only present the case that it prepared through discovery and pretrial litigation to date. There is no reason for delay.

To complete the trial, the Compacting States recommend that the Special Master adopt certain procedures. The Compacting States are aligned on the remedy that they seek: a Proposed Index Decree that mirrors their proposed Consent Decree. The Compacting States also waive damages claims among them. Thus, the remedies

issue is more straightforward now than it was when Special Master Melloy bifurcated liability from remedies. Bifurcation is no longer warranted. The Compacting States also recognize that the advent of the Proposed Index Decree was after discovery, so some limited additional discovery procedures are warranted.

II. SCOPE OF THE CASE

This case concerns the division of Rio Grande water between New Mexico and Texas below Elephant Butte Reservoir. In the words of Special Master Melloy, "[t]his case is a dispute about where the waters of the Rio Grande have been going, where they should have been going, and where they should go in the future." April 14, 2020 Order at 1 [8th Cir. Dkt. 340]; *see also* March 31, 2020 Order at 1 [8th Cir. Dkt. 338] ("Inherent in these allegations is a fundamental disagreement as to Compact interpretation regarding the underlying equitable apportionment between the states."). The presence of the United States as an intervenor does not expand the scope of the case. *See, e.g.*, *Texas v. New Mexico*, 583 U.S. 407, 415 (2018) ("This case does not present the question whether the United States could initiate litigation to force a State to perform its obligations under the Compact or expand the scope of an existing controversy between States.").

In 1938, the States of Texas, New Mexico, and Colorado entered into the Rio Grande Compact ("Compact") to equitably apportion the waters of the Rio Grande among the Compacting States. But the Compact is ambiguous about how to measure

the division of water between New Mexico and Texas below Elephant Butte Reservoir. Instead, the Compact relies "on the Rio Grande Project for water delivery and is programmatic in its apportionment of water as between Texas and New Mexico." May 21, 2021 Order at 3 [8th Cir. Dkt. 503]. The Court will, through this proceeding, determine how the Compact measures the apportionment of water between New Mexico and Texas below Elephant Butte Reservoir.

III. BACKGROUND

A. Factual Background

1. The Geography and Hydrology of the Rio Grande Basin

The area at issue in this case is encompassed by the Rio Grande Project ("Project"). It is comprised of three valleys and aquifers along the Rio Grande as . depicted on Attachment 1 (map of the Rio Grande Basin). Groundwater has been pumped from each of these basins for decades. To model the effects of groundwater pumping on surface water, both New Mexico and Texas developed complex numeric models as part of this case. Despite having an opportunity to do so, the United States neither developed nor sponsored a separate groundwater model.

2. The Rio Grande Project

The Rio Grande Project was authorized pursuant to the Rio Grande Reclamation Project Act. Act of February 25, 1905, ch. 798, 33 Stat. 814. New Mexico and Texas formed the predecessor associations to Elephant Butte Irrigation

District ("EBID") and El Paso County Water Improvement District No. 1 ("EPCWID" or "EP No. 1") (collectively the "Districts") to repay Project costs. The contracts between Reclamation and the Districts required repayment and promised water in proportion to each state's irrigable acreage—88,000 acres in New Mexico (57% of the total) and 67,000 acres in Texas (43% of the total). The Project also delivers water to the Republic of Mexico pursuant to a 1906 Treaty. *See* 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, 34 Stat. 2953.

Prior to 1951, the Project enjoyed plentiful water supplies, and Reclamation allowed Project farmers to order water as needed to irrigate their crops. In 1951, Reclamation determined that 3.0241 acre-feet per acre constituted a full allocation of water to Project lands. From 1951 through 1979, Reclamation allocated Project deliveries on an equal per-acre basis to all Project lands and delivered allocated water directly to Project lands. Based on each District's share of authorized acreage, Reclamation allocated 88/155 (57%) of available Project water supply to lands within New Mexico and 67/155 (43%) of the available Project water supply to lands within Texas.

A significant drought marked the early 1950s. The limited availability of surface water led Reclamation to encourage irrigators to drill groundwater wells as a supplemental supply. *See, e.g.*, Ex. NM-0683, p. 8, ¶¶ 8-9; Ex. NM-0571; Ex.

NM-0176t, pp. 65, 106, 142; Ex. NM-0177, pp. 382, 468. By 1952, hundreds of wells were being used to supplement surface water supply in both States.

After the Districts paid off the debt obligations of the Project, Reclamation transferred ownership of many Project facilities to the Districts in 1979 and 1980 and developed a new methodology, known as the D1/D2 Method, to allocate Project water supply between Mexico and the Districts. This methodology is based on historical Project data for the period 1951 to 1978. Reclamation developed the D1 Curve to calculate the delivery to Mexico. Reclamation developed the D2 Curve to determine the total amount of Project Supply available to allocate to the lands in each State. The D1/D2 Method incorporates impacts from groundwater pumping during the period from 1951 to 1978. Reclamation continued making programmatic allocations to the Districts in the proportion of 57% of Project supply to New Mexico lands and 43% of Project supply to Texas lands using the D2 Curve through at least 2005.

In 2006, Reclamation adopted and implemented a new allocation method known as the D3 Method. Under the D3 Method, Mexico and EPCWID are first allocated Project water based on the D1 and D2 Curves, and then EBID is allocated whatever Project water is left over. Without consent from the Compacting States, Reclamation and the two Districts entered an operating agreement for the Project. This agreement, known as the 2008 Operating Agreement, formally adopted the D3

Method. The Compacting States have never agreed with the methodology contained in the 2008 Operating Agreement.

B. Procedural Background

1. Compacting States' Claims

In 2010, New Mexico objected to the adoption of D3 as inconsistent with the Compact. Reclamation ignored New Mexico's objections, so in 2011, New Mexico challenged the Operating Agreement in federal district court. In 2013, Texas filed the current original action, and the federal district court stayed the action concerning the 2008 Operating Agreement. At their core, both actions are about declaring and protecting the Compact apportionments to each State.

In its Complaint, Texas alleges that New Mexico has violated the Compact below Elephant Butte Reservoir "by allowing downstream New Mexico users to siphon off water below the Reservoir." *Texas v. New Mexico*, 583 U.S. at 411. Texas's central claim was that New Mexico prevented the Texas apportionment from being delivered "to the New Mexico—Texas state line." Tex. Compl. ¶ 4 [8th Cir. Dkt. 63]. Texas sought (1) a declaratory judgment determining its rights under the Compact; (2) injunctive relief commanding New Mexico to cease interference with the delivery of Texas's apportionment through the Project; and (3) an award of damages for injuries associated with the under-delivery of its apportionment from 1985 to the present. *See* Tex. Compl. [8th Cir. Dkt. 63].

New Mexico's remaining counterclaims against Texas present a "mirror image" of Texas's claims. *See* March 31, 2020 Order at 28 [8th Cir. Dkt. 338]. New Mexico alleged that Texas had violated the Compact by allowing diversions of surface water and hydrologically connected groundwater in excess of its apportionment. *See* State of New Mexico's Counterclaims, ¶¶ 63-71 [8th Cir. Dkt. 93]. New Mexico claimed that these excess diversions interfere with delivery of New Mexico's apportionment and reduce drain flows in Texas in a manner that reduced Project delivery efficiency, increased the amount of water that must be released from Project storage to satisfy irrigation demands, and thereby reduced the amount of water available for allocation to New Mexico water users. New Mexico sought (1) declaratory relief establishing its right to a Compact apportionment below Elephant Butte Reservoir; (2) injunctive relief commanding Texas to cease actions that interfere with the delivery of New Mexico's apportionment through the Project; and (3) an award of damages against Texas for its unjust enrichment and past and continuing violations of the Compact.

New Mexico also filed counterclaims against the United States. Special Master Melloy dismissed the claims for damages, but left open the possibility that New Mexico is entitled to declaratory relief against the United States. March 31, 2020, Order at 15 [8th Cir. Dkt. 338].

Both Texas and the United States named Colorado as a defendant, though neither asserted any claims against it. Based on the scope of the claims, Colorado has limited its participation in the litigation. Any changes to the scope of the United States' claims will require Colorado to reevaluate its role at trial.

As is more fully described below, New Mexico, Texas and Colorado now agree on a resolution to the disputes contained within their respective Complaints.

2. The United States' Claims

In its Complaint in Intervention, the United States alleged that "New Mexico has allowed the diversion of surface water and the pumping of groundwater that is hydrologically connected to the Rio Grande" in a manner that interferes with its responsibility under the Compact to deliver the Texas Apportionment. *See* U.S. Compl. in Intervention, ¶¶ 13-14 [8th Cir. Dkt. 65]. Unlike Texas, the United States did not plead a 1938 Baseline. *Compare* Texas Compl. ¶ 10 *with* U.S. Compl. ¶¶ 14-15. Instead it alleged only that "*[u]ncapped* use of water . . . *could* reduce Project efficiency to a point where 43% of the available water could not be delivered" to Texas. U.S. Compl. ¶ 15 (emphasis added). The United States sought (1) declaratory relief establishing that New Mexico has a duty to prohibit or prevent water users in New Mexico from interfering with or intercepting Texas's Compact apportionment and (2) injunctive relief commanding New Mexico comply with its duty. The United States did not seek damages.

IV. CURRENT LITIGATION

A. Issues Previously Decided

The Court and Special Master Melloy have made several important rulings in this litigation:

First, the Compact apportions to New Mexico and Texas an equitable share of the water downstream of Elephant Butte Reservoir. The "Compact relies on the Rio Grande Project for Water Delivery and is *programmatic* in its apportionment of water as between Texas and New Mexico," below Elephant Butte Reservoir. May 21, 2021 Order at 3 [8th Cir. Dkt. 503] (emphasis in the original). The United States makes Project releases to ensure that "New Mexico's downstream apportionment" and all of Texas's apportionment are delivered through the Project. *Id*. at 46.

Second, the United States acts as a sort of "agent" of the Compact and is "charged with assuring the Compact's equitable apportionment to Texas and part of New Mexico is in fact made." *Texas v. New Mexico*, 583 U.S. 413.

Third, the Compact apportionment depends on a protected "baseline level of Project operations." May 21, 2021 Order at 6 [8th Cir. Dkt. 503]. "[T]he states entered into the Compact against the backdrop of the existing Project and relied on its established operations to effectuate the Compact." *Id*. at 13. The Compact apportionment therefore depends on the continuance of certain aspects of Project operations. The protected "baseline" does not require "agricultural practices,

irrigation practices, and other forms of development to remain static." *Id*. at 5. Rather, the evidence "strongly suggested some downstream pumping could be tolerated without materially interfering with the Project." Third Report 76-77.

Fourth, the Compact apportionment requires delivery of Project supply according to the ratio of irrigable acres in New Mexico and Texas: 57% to New Mexico and 43% to Texas. *Id*.

Fifth, with respect to each State's own apportioned water, each State's "sovereign laws apply to define the relative rights between" citizens within that State. *Id*. at 48. Further, the States have a "Compact-level duty to avoid material interference with Reclamation's delivery of Compact water." *Id*. at 5. This duty includes a requirement to "avoid and prevent the capture of Rio Grande surface water, drain return flows, and hydrologically connected groundwater" if the effect of such capture is "inconsistent with Compact water deliveries" or "interferes with the long-term operation of the Project." *Id*.

Sixth, Special Master Melloy emphasized that the long history of groundwater use in the basin in New Mexico and Texas may be important in understanding the intent of the Compact and the protected baseline condition. *Id*. at 2, 25, 39, 41-42, 49. *See also* April 14, 2020 Order at 21 [8th Cir. Dkt. 340].

B. Remaining Issues to Be Decided at Trial

With respect to Compact interpretation, the Special Master has determined that "[t]he Compact is ambiguous as to the detailed scope of the apportionments," and the duties it imposes on New Mexico, Texas, and the United States. *Id*. at 47. On this basis, there are two principal Compact interpretation issues remaining for determination at trial.

First, the Court must determine the conditions that fix the "programmatic" apportionment of water below Elephant Butte Reservoir. The Special Master determined that the supply must be divided according to the 57:43 ratio, but the question remains to be answered: "division of what?" To answer this question, the Special Master determined that the Court must consider evidence to define a "baseline operating condition." *Id*. at 49. Those conditions define the "Project water supply" that must be split 57:43.

Second, the Court must determine the nature and contours of the duties of New Mexico, Texas, and the United States that arise under the Compact with respect to the distribution of water below Elephant Butte Reservoir. The Special Master has determined that "New Mexico owes Texas a duty to not interfere with the Project delivery of Texas's Compact apportionment." *Id*. 46-47. Texas has a reciprocal duty. The question for trial concerns the "details" of the "duty and what the states intended the Compact to protect." *Id*. at 24. Resolution of those questions will

"inform future administrative decisions" concerning the United States' operation of the Project, and the "United States has agreed it will be bound by any determination of the Supreme Court as to its obligations under the Compact and Project administration." March 31, 2020 Order at 15 [8th Cir. Dkt. 338].

Once the threshold issues of Compact interpretation are defined, the Court must apply its Compact interpretation to establish a method of accounting and operations to divide available water supply. Ultimately, the Court must adopt a decree that defines the rights and obligations of the Parties, provides guidance, and ensures that each State will receive its equitable apportionment going forward.

Texas, New Mexico and Colorado have reached agreement on each of these remaining issues, as set out in detail in the Proposed Index Decree.

C. Phase I of the Liability Trial

As described below, the Parties are currently in the middle of trial, with all pre-trial requirements, including discovery and expert disclosures, having been completed on all issues.

1. Discovery and Expert Disclosures

The Parties completed extensive discovery. Discovery commenced on September 1, 2018, *see* Case Management Plan [8th Cir. Dkt. 86], and ended on October 1, 2020, *see* Order and Amendment to Trial Management Schedule [8th Cir. Dkt. 402]. In total, the Parties conducted the depositions of eighty-one witnesses,

propounded six hundred and ninety-four separate written discovery requests, and exchanged several terabytes of data. Discovery was conducted on "all issues," with no limitations on the specific subjects. *See* Case Management Plan at ¶ 6.1 [8th Cir., Dkt. 86]; September 6, 2018, Case Management Plan at ¶ 6.1 [8th Cir. Dkt. 124]. Discovery was also conducted on all issues related to liability ***and*** remedies.

Similarly, the Parties disclosed numerous expert opinions on all subjects. Specifically, Texas disclosed 15 different experts in 16 separate reports (including supplemental disclosures); the United States disclosed 6 different experts in 10 separate reports (including supplemental disclosures); and New Mexico disclosed 18 different experts in 26 different reports (including supplemental disclosures). Although both were plaintiffs, Texas and the United States did **not** share or rely upon the same experts. Rather, they had different positions on a number of litigation issues and therefore disclosed separate experts. *See, e.g.* September 6, 2018 Case Management Plan at ¶ 8 [8th Cir. Dkt. 124]. As with discovery, expert disclosures were made on all issues, with no limitations on specific subjects. Experts were disclosed and deposed on issues related to liability and remedies.

On the remaining issues to be decided at trial, Texas disclosed experts supporting a 1938 condition and claiming that Texas had been deprived of water every year since 1985; New Mexico disclosed experts supporting a D2 condition and claiming that New Mexico had been deprived of water every year since 2006; the

United States disclosed experts supporting its 2008 Operating Agreement, which relies on a D2 condition. No Party disclosed an opinion that the 1906 Treaty had been violated or was in jeopardy. The Parties are bound by the pre-trial discovery and disclosure requirements.

2. Trial

At the conclusion of discovery, Special Master Melloy ordered a bifurcated trial as between liability and remedies. *See* Third Interim Report at 35; *see also* Trial Management Order at ¶ IX (April 9, 2021) [8th Cir. Dkt. 501]; June 4, 2021 Order at ¶ 3 [8th Cir. Dkt. 508]. The rationale for bifurcation of the trial was that it would be more efficient to present experts on damages after liability had been determined and it was known which years and the amount of water that were at issue.

In the fall of 2021, the Parties commenced the liability trial. Third Interim Report at 34. During this first part of trial, and partly due to COVID restrictions, the Special Master further split the liability trial to allow for remote testimony from percipient fact witnesses and expert witness historians ("Phase I"), with the intent to reserve the technical expert witnesses for a later planned in-person second phase of the liability part of trial ("Phase II").

Phase I of the liability trial began on October 4, 2021 with detailed opening statements from each party. *See* Tr., Vol. I, 16:20 – 76:13 [8th Cir. Dkt. 701]. Trial proceeded for nineteen days through November 10, 2021, with testimony from each

Parties' fact witnesses and the States' expert historians. The specific witnesses that have completed testimony are listed below.

During Phase I, the United States presented three fact witnesses; Texas presented seven fact witnesses; and New Mexico presented fifteen fact witnesses. Texas and New Mexico also presented expert testimony from their respective historians. The United States did not present an expert historian.[2]

The Special Master admitted 523 exhibits, not including demonstratives. Final trial transcripts were prepared for all days of trial. *See generally* [8th Cir. Dkt. 701]. Phase II was scheduled to commence in the first quarter of 2022.

D. The Proposed Consent Decree

Before resuming with the in-person second phase, the Parties mediated before the Honorable Arthur Boylan. The Compacting States ultimately settled their claims based on the principles embodied in the proposed Consent Decree, but they reached an impasse with the United States. Third Interim Report at 36. The Compacting States filed a motion seeking approval of the proposed that would "codify a methodology for determining each State's allocation of the Rio Grande's waters." *Texas v. New Mexico*, 144 S. Ct. 1756, 1761 (2024). The United States objected to

[2] The United States disclosed an expert historian, Nicolai Kryloff, but elected not to put him on the stand at trial. New Mexico offered a deposition designation from the United States' historian. *See* State of New Mexico's Notice of Deposition Designations (June 30, 2021).

the Compacting States' motion. In support of the proposed Consent Decree, the Compacting States presented 15 Declarations from 10 different Declarants. In opposition, the United States presented 6 Declarations from 6 different Declarants. The Special Master granted the motion and recommended entry of the proposed Consent Decree in his Third Interim Report of the Special Master. The United States filed an exception to the Third Interim Report.

E. The Court's 2024 Decision

On June 21, 2024, the Supreme Court issued its decision sustaining the United States' exception. The Court held that because the proposed Consent Decree would dispose of the United States' claims without its consent, the Compacting States' motion to enter the consent decree was denied. *Id*. at 1758. Relying on *Firefighters* v. *Cleveland*, 478 U.S. 501 (1986), the Court explained that "were the consent decree adopted, the United States would be precluded from claiming what it argues now—that New Mexico's present degree of groundwater pumping violates the Compact. Indeed, the consent decree would settle that question by deeming New Mexico compliant with the Compact, even as it allows pumping at the D2 levels." *Texas v. New Mexico*, 144 S. Ct. at 1770.

The Supreme Court explained that "the United States' argument that groundwater pumping at D2 levels violates the Compact may or may not ultimately prevail at trial. But we 'may not enter a 'consent' judgment without the actual

consent of the Government' when 'the Government seeks an item of relief to which evidence adduced at trial may show that it is entitled.'" *Id*. at 1770. Accordingly, because it found the proposed Consent Decree would have that effect, the Court stated that it "cannot approve it over the United States' objection." *Id*. at 1770.

Thus, the Court returned the case to the Special Master to continue the litigation and proceed with Phase II to provide the United States an opportunity to present the case that it had prepared.

V. AGREEMENT OF THE COMPACTING STATES

The Compacting States remain committed to the principles and relief outlined in the proposed Consent Decree. Special Master Melloy observed that "it is difficult to envision a resolution to this matter that might be superior to the Consent Decree." Third Interim Report at 15. The Compacting States agree. In particular, the Compacting States agree that the proposed Consent Decree embodies their shared understanding of what the Rio Grande Compact requires.

To memorialize this commitment, the Compacting States anticipate filing stipulations in the near future. Those stipulations will include a voluntary dismissal by both New Mexico and Texas of claims for damages against each other. Instead, the Compacting States will jointly advocate for entry of a Proposed Index Decree that closely tracks the proposed Consent Decree.

Based on the Court's 2024 decision, the Compacting States submit that the next step in these proceedings is to provide the United States the opportunity identified by the Court to present the case it has previously prepared and disclosed. This would entail the presentation of evidence by the United States during the Phase II trial sufficient to meet its burden on its proposed 1938 Condition claim, its 1906 Treaty claim (if it intends to pursue one), and whether either claim justifies a different remedy than the Proposed Index Decree.

VI. PROPOSED PROCEDURE FOR THE PHASE II TRIAL

The Compacting States propose proceeding with trial as expeditiously as possible. All pre-trial matters have been completed on all issues and there is no reason for further delay. While Phase II could pick up exactly where the Parties left off, because they are dismissing their respective claims for damages and are jointly advocating for a Proposed Index Decree, the Compacting States are proposing modest changes to the existing procedures to streamline the overall litigation.

A. Phase II Should Address Both Liability and Remedies

The Compacting States propose that the Special Master modify Phase II to include both liability and remedies to allow the Compacting States to present the Proposed Index Decree. The primary reason for bifurcating liability from remedies was to streamline the presentation of the experts on damages. The idea was that bifurcation would allow damages experts to limit their presentation to the years and

amounts of water for which liability had been established. But Texas and New Mexico are no longer seeking damages against each other and the United States has never claimed damages. In light of this, it is no longer necessary to separate liability and remedies for purposes of trial.

Moreover, throughout this litigation, New Mexico has conceded that it deprived Texas of water in 2003 and 2004 under a D2 baseline condition. Special Master Melloy confirmed this in his Order on Summary Judgment. May 21, 2021, Order at 44 [8th Cir. Dkt. 503]. Thus, liability for those years has already been established and all that remains is to identify the appropriate remedy. Following the agreement of the Compacting States, the primary form of relief sought by all Parties is declaratory and injunctive relief identifying the requirements of the Compact, and specifically what baseline condition the Compact requires. The liability trial contemplated by Judge Mellow was already tailored to address that issue so there is no reason for separate liability and remedies trials.

Proceeding in this manner will be significantly more efficient. Indeed, if the current separation between liability and remedies were maintained, it will be years before the Compacting States receive relief.

B. Phase II Should Allow for Very Limited Supplemental Disclosures and Discovery on the Proposed Index Decree

The second modification the Compacting States seek is a limited procedure for supplemental disclosures and discovery on the Proposed Index Decree. The

Parties have already conducted discovery for all purposes, and the Parties have already disclosed experts on remedies. It follows that no further discovery or disclosures are generally required for remedies.

Nonetheless, the Compacting States recognize that the Parties developed the details of the Proposed Index Decree after discovery closed. The Parties collectively waived the right to present live testimony at the February 6, 2023, hearing on the proposed Consent Decree, and the proceedings on the proposed Consent Decree allowed the Parties to present declaration testimony on the proposed Consent Decree. While those declarations are directly relevant to the Compacting States Proposed Index Decree, the United States never had the opportunity to conduct discovery on the Proposed Index Decree.

For that reason, the Compacting States recognize the need for very limited supplemental disclosures and related discovery on the narrow issue of the Proposed Index Decree. Accordingly, the Compacting States propose a very short discovery period consisting of limited supplemental expert disclosures to support or oppose the Proposed Index Decree. In other words, the Compacting States would submit disclosures to supplement the declarations that have already been submitted, and those disclosures would be strictly limited to explaining and supporting the terms of the Proposed Index Decree. The United States would then have an opportunity to submit supplemental disclosures opposing the Proposed Index Decree. The

supplemental disclosures would be accompanied by a short period of discovery strictly limited to the Proposed Index Decree and excluding issues for which discovery is already complete (e.g. the baseline condition).

C. Witnesses

The witnesses for Phase II were previously identified by the Parties. In light of the agreement among the Compacting States, the trial can likely be streamlined, and many of these witnesses are no longer necessary. However, under the Compacting States' proposal, this witness list would be augmented with the witnesses that presented Declarations on the proposed Consent Decree or are properly identified in the supplemental disclosures on the Proposed Index Decree.

D. Motions.

In order to further streamline the case, the Compacting States propose that the Special Master add an additional deadline for motions, including motions for summary judgment and motions in limine. Moreover, the Compacting States anticipate submitting a list of disputed and undisputed facts that will assist in the resolution of this case in an efficient manner.

E. Proposed Trial Schedule

The Compacting States propose the following schedule to allow for limited supplemental expert disclosures and discovery:

Disclosure/Deposition	Deadline
Supplemental Expert Disclosures Supporting the Proposed Index Decree	January 15, 2025)
Responsive Supplemental Expert Disclosures	February 18, 2025
Rebuttal Supplemental Expert Disclosures	March 17, 2025
Limited Discovery Period Closed	April 15, 2025
Motions	May 15, 2025

The Compacting States propose that the trial commence in July of 2025. They anticipate that Phase II will take approximately 15 to 20 full trial days.

VII. BASIN TOUR

In August of 2021, Special Master Melloy joined the Parties on a tour of the Lower Rio Grande Basin. *See* Ex. NM-DEMO-002. The ground rules and agenda for the Basin Tour were agreed upon by the Parties. *See e.g.*, Status Letter Concerning Basin Tour (June 18, 2021) [8th Cir. Dkt. 515]. The Compacting States believe that a Basin Tour provides invaluable information for the Special Master and jointly request that the Special Master participate in a second Basin Tour in the spring of 2025.

VIII. MEDIATION

Finally, the Compacting States agree that it will be beneficial to reengage in mediation with Judge Boylan subject to the conditions previously established by the Special Master. The Parties anticipate discussing the details of that mediation with Judge Boylan as he directs. The Compacting States agree, however, that mediation

should be in parallel with trial preparation and should not otherwise delay trial preparation or trial.

Respectfully submitted,

By: /s/ *Stuart L. Somach*

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CERTIFICATE OF SERVICE

This is to certify that on this October 4, 2024, I caused a true and correct copy of the foregoing **JOINT STATUS REPORT OF THE COMPACTING STATES FOR THE OCTOBER 23, 2024, STATUS CONFERENCE** to be served upon all parties and *amici curaie,* by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was made by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

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ATTACHMENT 1