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June 16, 2014

Via Federal Express

Cynthia Rapp
Deputy Clerk of the Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Texas v. New Mexico & Colorado*, No. 141, Original; *On the Motion to Dismiss filed by the State of New Mexico*

Dear Ms. Rapp:

On this date, we have filed and served the Brief of *Amicus Curiae* City of El Paso, Texas, in Opposition to New Mexico's Motion to Dismiss Texas' Complaint and the United States' Complaint in Intervention in the above captioned original action. In connection with that Brief of *Amicus Curiae*, and pursuant to Rule 32.3, El Paso hereby requests that it be permitted to lodge certain non-record material with the Clerk of the Court for the Court's consideration of New Mexico's Motion to Dismiss.

The materials that El Paso offers for lodging are several public documents which El Paso has either cited to or quoted from in its Brief, in connection with El Paso's opposition to the Motion to Dismiss. As explained in El Paso's Brief, New Mexico's motion for dismissal under a Rule 12(b)(6) analysis is predicated on New Mexico's legal position that Texas and the United States have not pleaded claims for which legal relief is available to them under the Rio Grande Compact (Compact). Various public documents, however, clearly indicate that New Mexico public officials have taken the opposite position in recent years regarding New Mexico's potential vulnerability to an original action such as that now brought by Texas. Other public documents from New Mexico court proceedings and administrative actions provide additional background regarding New Mexico's approach to protecting the Lower Rio Grande Basin from overdepletion of groundwater affecting the drain water and irrigation return flows of the Rio Grande Project.

El Paso respectfully submits that these documents, provided in their entirety, provide useful and appropriate information for the Court's consideration of New Mexico's Motion to Dismiss. As detailed further below, these materials offered by El Paso for lodging can be grouped into two categories of public documents: 1) pleadings and orders filed in or related to the Lower Rio Grande Adjudication now pending in New Mexico state court (LRG Adjudication); and 2) various other memoranda, orders, and public presentation materials that are public documents of the New Mexico Office of the State Engineer.

Pleadings and orders from the LRG Adjudication:

1. *State of New Mexico v. Elephant Butte Irrigation Dist.*, No. CV-96-888, Subfile No. LRN-28-011-0078-A (Aug. 31, 2005) (agreed Suborder File regarding adjudication of claims by the City of Las Cruces).
2. Offer of Judgment, in *State of New Mexico v. Elephant Butte Irrigation Dist.*, No. CV-96-888, SS-97-104 (Mar. 9, 2007) (State's offer of judgment to New Mexico State University, regarding its claims).
3. Order of Aug. 16, 2012, *State of New Mexico v. Elephant Butte Irrigation Dist.*, No. CV-96-888, SS-97-104 (order of the presiding judge regarding the United States' motion for summary judgment and the State of New Mexico's motion to dismiss the United States' claims for recognition of groundwater rights).
4. Order of Feb. 17, 2014, *State of New Mexico v. Elephant Butte Irrigation Dist.*, No. CV-96-888, SS-97-104 (order of the presiding judge ruling on, *inter alia*, motions for summary judgment on the priority date of Project water rights).
5. Defendant EBID's Response to Joint Motion to Stay Proceedings and Brief in Support, filed in *State of New Mexico v. EBID*, No. CV-96-888, SS-97-104 (May 15, 2014).

Other agency documents of the New Mexico Office of the State Engineer:

1. New Mexico Office of the State Engineer, Order Declaring the Rio Grande Underground Water Basin (Nov. 29, 1956).
2. New Mexico Office of the State Engineer, Memorandum, Subject: Declaration of the Rio Grande Underground Water Basin (Nov. 29, 1956).
3. New Mexico Office of the State Engineer, Special Order No. 126-A, In the Matter of State Engineer Special Order No. 126 Declaring the Lower Rio Grande Underground Water Basin in Doña Ana County (effective Oct. 22, 1980).
4. New Mexico Office of the State Engineer, Memorandum, Subject: Lower Rio Grande (Sept. 10, 1980).
5. Office of the State Engineer, Memorandum (from E. Fuchs, Lower Rio Grande Basin Supervisor, to John R. D'Antonio, State Engineer), Emergency Application for Permit for Supplemental Wells (May 15, 2003).

6. John D'Antonio, PE, New Mexico State Engineer, *Tools for a New Era in Water Management* (PowerPoint presentation before the Lower Rio Grande Water Users Association, Aug. 19, 2005).
7. Peggy Barroll, Hydrologist, New Mexico Office of the State Engineer, *Tools for a New Era in Water Management* (PowerPoint presentation before the Lower Rio Grande Water Users Association, Aug. 19, 2005).

If the Court requests that some or all of these materials be lodged with the Clerk in relation to this original action and New Mexico's Motion to Dismiss, *amicus* City of El Paso can submit these in paper or electronic format, or in whatever other manner of presentation the Court may prefer.

As required by Rule 32.3, a copy of this letter has been served on all parties in the above referenced case, by delivery to their counsel of record along with the required service copies of El Paso's Brief of *Amici Curiae* and also by electronic transmission this date as required by Rule 29.3.

Thank you for your assistance.

Sincerely,



Douglas G. Caroom *by permission for*
Counsel of Record for *Amicus Curiae*
City of El Paso

cc: Sarah A. Bond (via e-mail)
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