FOR IMMEDIATE RELEASE: **Contact:** James Hallinan

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AG Balderas Files Counterclaims & Answers in Texas v. New Mexico Water Lawsuit; Balderas Now Executing His New Strategy After Last King Action Has Been Heard by the Supreme Court

Las Cruces, NM – This morning, Attorney General Hector Balderas announced he's filed counterclaims and answers to Texas and the U.S. government in the *Texas v. New Mexico* water lawsuit making it clear that New Mexico's traditionally underrepresented populations have been taken advantage of for decades by the parties. Balderas, raised in rural New Mexico, understands that this case is about protecting working New Mexicans and small businesses, like our farmers and ranchers, to ensure the water they own is not unjustly taken away. Balderas has assembled a team of experts to fight on behalf of New Mexicans using the latest science, best evidence and new joint strategy to protect New Mexico's working families, cultural way of life, and overall economy. Now that the last action initiated by the King administration has been adjudicated by the U.S. Supreme Court, Balderas is able to execute his new legal strategy.

"Our legal strategy will hold Texas and the federal government accountable for the significant amount of precious water being misappropriated that rightfully belongs to New Mexico's working families and small businesses, and for the federal government not using proper accounting and failing to ensure reasonable water delivery improvements," said Attorney General Balderas. "Using the best science, technology and evidence-based strategy, we will protect our traditionally underserved and culturally diverse population, and protect against those interests that threaten our citizens and businesses."

After five years of preliminary motions initiated by former Attorney General Gary King, this is New Mexico's first chance to assert defenses, utilize the best science, and demand a better planning process to ensure there is adequate water resources for all citizens. The pleadings emphasize the fact that Texas is not entitled to relief, because it has not suffered damages. Additionally, Texas has failed to take steps to mitigate the harm and injury alleged in its Complaint. The pleadings further detail Texas' failure to properly regulate or manage surface or groundwater located within Texas, failure to prevent groundwater development in Texas, and failure to properly plan for known and expected drought or water shortages.

"I remain open to resolving this case amicably and look forward to working towards securing a more sustainable water future for all parties involved, but New Mexicans will not pay an unjust price," Balderas added.

Please see attached for a copy of the pleadings that were filed last night.

# # #

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.

_____♦_____

Before Special Master Michael J. Melloy

_____♦_____

STATE OF NEW MEXICO'S ANSWER TO THE STATE OF TEXAS'S COMPLAINT

_____♦_____

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May 22, 2018

ANSWER

COMES NOW the State of New Mexico by and through counsel and submits this Answer to the State of Texas's Complaint.

1. Paragraph 1 of the Complaint states a legal conclusion to which no response is required.
2. New Mexico admits the allegations in Paragraph 2 of the Complaint.
3. In response to the allegations in Paragraph 3 of the Complaint, New Mexico states that the Rio Grande Compact ("Compact") speaks for itself. New Mexico affirmatively states that the preamble to the Compact states the purposes of the Compact, and denies any allegations in the first sentence of Paragraph 3 that are explicitly or implicitly inconsistent with that preamble. New Mexico admits the allegations in the second sentence of Paragraph 3, and admits that the original Compact is reprinted in the Appendix to the Complaint. New Mexico further states that the Compact was modified by a 1948 resolution of the Rio Grande Compact Commission ("Commission"), which is not included in the Appendix. *See* App. 11.
4. In response to Paragraph 4 of the Complaint, New Mexico states that the Compact speaks for itself, and denies any allegations in Paragraph 4 that are inconsistent with the express terms of the Compact. In response to the first sentence of Paragraph 4, New Mexico admits that the Compact incorporates the Rio Grande Reclamation Project ("Project"). New Mexico denies that the Compact requires delivery of solely "Rio Grande water," but otherwise admits the allegations in the second sentence of Paragraph 4 of the Complaint with the clarifications that not all of the water delivered by New Mexico into Elephant Butte Reservoir is Project water and that the amount of water that the Compact requires New Mexico to deliver into Elephant Butte Reservoir

varies each year and is set by the indices contained in Article IV of the Compact, subject to the credit and debit provisions of Article VI of the Compact. New Mexico denies the remaining allegations in Paragraph 4 of the Complaint.

5. With respect to the allegation in Paragraph 5 of the Complaint, this allegation purports to set forth general details about the Complaint to which no response is necessary. To the extent a response is necessary, New Mexico admits that Colorado is a signatory to the Compact, but is without knowledge or information sufficient to form a belief as to the reason that Colorado is named as a Defendant.

6. In response to the first sentence of Paragraph 6 of the Complaint, New Mexico admits that an Irrigation Congress was held in El Paso, Texas in 1904, and admits that resolving a dispute between interests in Mexico, New Mexico, and Texas was one issue that was addressed by the Irrigation Congress. New Mexico denies the remaining allegations in the first sentence of Paragraph 6. In response to the second sentence of Paragraph 6, New Mexico affirmatively states that the Complaint mistakenly refers to the actions of the Bureau of Reclamation in 1902. New Mexico assumes the Complaint intended to refer to the United States Reclamation Service, the predecessor agency to the Bureau of Reclamation ("Reclamation"). Further, New Mexico affirmatively states that the 1904 Irrigation Congress resulted in a resolution endorsing the construction of Elephant Butte dam and reservoir to "add to the agricultural resources of the United States and Mexico." New Mexico further affirmatively states that New Mexico was a territory, not a State, in 1904. In response to the fourth sentence of Paragraph 6, New Mexico admits that the Rio Grande Reclamation Project Act was passed by Congress on February 25, 1905, ch. 798, 33 Stat. 814, and further admits that the Project was

contemplated by the Rio Grande Reclamation Project Act, but denies that the Project was authorized by the Act as the Act required a finding of feasibility by the Secretary of the Interior and authorization by the Secretary of the Interior, and such finding and authorization did not occur until after passage of the Rio Grande Reclamation Project Act. Unless specifically admitted, the remaining allegations in Paragraph 6 of the Complaint are denied.

7. In response to the first sentence of Paragraph 7, New Mexico admits that the United States filed notices in 1906 and 1908. Those notices speak for themselves, and New Mexico denies the characterization of those notices in the first sentence of Paragraph 7. New Mexico admits the allegations in the second sentence of Paragraph 7.

8. New Mexico admits that Project water deliveries are required to be made based upon the irrigable acreage of Project lands. New Mexico denies that the Project continues to make deliveries on this basis. In response to the second sentence of Paragraph 8, New Mexico admits that approximately 57% of Project lands are located in New Mexico and 43% of Project lands are located in Texas. In response to the third sentence of Paragraph 8, New Mexico admits that Elephant Butte Irrigation District ("EBID") is a political subdivision of the State of New Mexico and has contracts with Reclamation for Project water. New Mexico denies that EBID is the "Rio Grande Project beneficiary of water from the Rio Grande Project for delivery and use in southern New Mexico" because individual water users are the Project beneficiaries in New Mexico. In response to the fourth sentence of Paragraph 8, New Mexico admits that El Paso County Water Improvement District No. 1 ("EPCWID") is a political subdivision of the State of Texas and has contracts with Reclamation for Project water. New Mexico denies

that EPCWID is the "Rio Grande Project beneficiary of water from the Rio Grande Project for delivery and use in Texas" because individual water users are the Project beneficiaries in Texas. New Mexico is without knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 8 and therefore denies the same. Unless specifically admitted, the remaining allegations in Paragraph 8 of the Complaint are denied.

9. New Mexico admits the allegations in Paragraph 9 of the Complaint with the clarification that the 60,000 acre-foot delivery to Mexico is subject to adjustment in case of extraordinary drought or serious accident to the irrigation system in the United States.

10. New Mexico admits the allegations in the first two sentences of Paragraph 10. In response to the third sentence of Paragraph 10, New Mexico states that the Compact speaks for itself, and denies any allegations that are inconsistent with the express terms of the Compact. In particular, New Mexico affirmatively states that the preamble to the Compact states the purposes of the Compact. New Mexico denies any allegations in the third sentence of Paragraph 10 that are explicitly or implicitly inconsistent with that preamble. New Mexico denies the allegations in the fourth sentence of Paragraph 10 of the Complaint.

11. New Mexico is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 11 of the Complaint. In response to the second sentence of Paragraph 11, New Mexico admits that Project operations have the potential to affect Compact allocations and admits that the United States has affirmative obligations regarding operating the Project that, because of the

Project incorporation, are Compact obligations. Unless specifically admitted, the remaining allegations in Paragraph 11 of the Complaint are denied.

12. In response to Paragraph 12, New Mexico states that the Compact speaks for itself, and denies any allegations that are inconsistent with the express terms of the Compact. In particular, New Mexico affirmatively states that the preamble to the Compact states the purposes of the Compact. New Mexico denies any allegations in Paragraph 12 that are explicitly or implicitly inconsistent with that preamble. New Mexico admits the allegations in the second sentence of Paragraph 12 of the Complaint.

13. As to the allegations in the first sentence of Paragraph 13 of the Complaint, New Mexico admits that New Mexico was originally obligated under Article IV to deliver water at San Marcial. In response to the allegations in the second sentence, New Mexico admits that in 1948, the Commission changed New Mexico's delivery obligation from San Marcial to Elephant Butte Reservoir. Beyond this, New Mexico affirmatively states that the Commission's 1948 Resolution also adopted a new delivery schedule for New Mexico in Article IV of the Compact. New Mexico admits the allegations in the third sentence of Paragraph 13 except New Mexico denies that the Compact states or otherwise requires that New Mexico deliver water to the Project, and denies that all deliveries to Elephant Butte Reservoir are deliveries to the Rio Grande Project. In response to the allegations in the fourth sentence of Paragraph 13, New Mexico states that Article IV of the Compact speaks for itself, and denies any allegations that are inconsistent with the express terms of Article IV. New Mexico admits the allegations in the fifth sentence of Paragraph 13.

14. New Mexico denies the allegations in Paragraph 14. To the extent Texas seeks to

summarize or explain the meaning of various Compact provisions, those provisions speak for themselves.

15. New Mexico denies the allegations in Paragraph 15 of the Complaint. To the extent Texas seeks to summarize or explain the meaning of various Compact provisions, those provisions speak for themselves.

16. New Mexico denies the allegations in Paragraph 16 of the Complaint. To the extent Texas seeks to summarize or explain the meaning of various Compact provisions, those provisions speak for themselves.

17. New Mexico denies the allegations in Paragraph 17 of the Complaint. To the extent Texas seeks to summarize or explain the meaning of various Compact provisions, those provisions speak for themselves.

18. In response to the allegations in the second sentence of Paragraph 18 of the Complaint, New Mexico affirmatively states that there is no state-line delivery requirement for New Mexico in the Compact. In response to the fifth sentence of Paragraph 18, New Mexico admits the Compact places an affirmative duty on Texas to formally or officially "request that New Mexico take action to cease . . . diversions or extractions" that intercept or adversely affect the delivery of water intended for use within the Project area in Texas, but denies that Texas did so. New Mexico denies the remaining allegations in Paragraph 18 of the Complaint.

19. New Mexico denies the allegations in Paragraph 19 of the Complaint. New Mexico further affirmatively states that Texas has failed to control groundwater pumping in Texas.

20. New Mexico admits neither it nor Texas is a party to the Operating Agreement for the

Rio Grande Project (March 10, 2008) among the United States, EBID, and EPCWID regarding Project operations ("2008 Operating Agreement"), and affirmatively states that the 2008 Operating Agreement is inconsistent with the Compact. New Mexico admits Texas is not a party to *State of New Mexico v. U.S. Bureau of Reclamation, et al.*, No. 11-CIV-691 (D.N.M., filed Aug. 8, 2011). New Mexico denies the remaining allegations in Paragraph 20 of the Complaint.

21. New Mexico denies the allegations in Paragraph 21 of the Complaint.

22. New Mexico admits that Texas issued a Certificate of Adjudication in 2007 relating to the waters of the Rio Grande. New Mexico denies the remaining allegations in Paragraph 22 of the Complaint.

23. New Mexico admits the Commission did not agree on the accounting for the years 2011 to the present. New Mexico denies the remaining allegations in Paragraph 23 of the Complaint. New Mexico affirmatively states that the disagreement over Compact accounting concerns the unauthorized release of Compact Credit Water and does not concern any allegations Texas raises in its Complaint.

24. New Mexico denies the allegations in Paragraph 24 of the Complaint.

25. New Mexico denies the allegations in Paragraph 25 of the Complaint.

26. New Mexico denies the allegations in Paragraph 26 of the Complaint.

27. New Mexico denies the allegations in Paragraph 27 of the Complaint.

28. New Mexico denies the allegations in Paragraph 28 of the Complaint.

29. New Mexico denies any allegations contained within the Prayer for Relief of the Complaint.

AFFIRMATIVE DEFENSES

30. New Mexico incorporates each and every admission, denial, and allegation made by New Mexico in Paragraphs 1 through 29 as set forth herein. New Mexico asserts separately and/or alternatively, the following affirmative defenses. In doing so, New Mexico does not assume any burden of pleading or proof that would otherwise rest on Plaintiff Texas. New Mexico reserves the right to add defenses, or to supplement, amend, or withdraw any of these affirmative or other defenses.

FIRST AFFIRMATIVE DEFENSE (NO DAMAGES)

31. Texas is not entitled to relief because it has not suffered damages. In many years, even years of less than a full Project allocation, Project beneficiaries in Texas have not used a significant portion of the Project water allotted to them. Nor have Texas Project beneficiaries ever been denied any Project water which they ordered. Texas's claims are barred, in whole or in part, because Texas has not been damaged by New Mexico's conduct.

SECOND AFFIRMATIVE DEFENSE (FAILURE TO PROVIDE NOTICE)

32. Texas's claims are barred, in whole or in part, because Texas failed to notify New Mexico of its alleged injuries. The Compact incorporates principles of Reclamation law and prior appropriation law, which impose a duty on a downstream water user to notify upstream water users if the downstream user is not receiving all water to which it is entitled. Absent notice, New Mexico has no way to know whether Texas has received all water the Compact allocates to it, or the extent of any shortfall.

33. For all or almost all years prior to 2013, when Texas filed its Complaint in this matter, Texas failed to notify New Mexico that Texas believed it was not receiving all Project

water allocated to EPCWID in that year or the amount of the alleged shortfall, nor did Texas request that New Mexico allow additional water to flow downstream to Texas to remedy this alleged injury. Texas's failure to notify New Mexico of its alleged injury deprived New Mexico of the opportunity to remedy the alleged injury.

34. Texas's claims are barred, in whole or in part, for any year in which Texas failed to notify New Mexico of an alleged injury or the extent of its injury.

THIRD AFFIRMATIVE DEFENSE (UNCLEAN HANDS)

35. Texas's claims are barred by the doctrine of unclean hands. Texas's inequitable conduct includes, but is not limited to, (i) allowing water users in Texas to develop groundwater resources within the Project area in Texas, lowering groundwater levels, reducing Project efficiency, and reducing return flows, requiring additional releases from Project Storage to meet irrigation demand in EPCWID; (ii) failing to correctly account for historic Project return flows; (iii) transferring Project water uses from irrigation to other purposes, including municipal use, in violation of federal requirements and without approval of the Compacting States; and (iv) otherwise interfering with the Compact's apportionment. Texas's own inequitable conduct in relation to the matter in controversy has injured New Mexico and inflicted injury on Texas for which it now seeks to hold New Mexico liable. Texas's own conduct makes it inequitable for Texas to obtain the equitable relief it seeks from New Mexico.

FOURTH AFFIRMATIVE DEFENSE (ACCEPTANCE/WAIVER/ESTOPPEL)

36. Texas's claims are barred in whole or in part by the related doctrines of acceptance, acquiescence, waiver, and estoppel. For each year following adoption of the Compact through 2010, Texas accepted and acquiesced to Project and Compact accounting, as

well as to Project allocations that implicitly included the effects of groundwater pumping in both Texas and New Mexico.

37. Beginning with the year 2011, Texas refused to approve Compact accounting due to a dispute with New Mexico and Colorado over the proper method of accounting for evaporation of Credit Water from Project storage and associated Project operations. At no time did Texas refuse to approve Compact accounting on the grounds that it reflected the effect of alleged improper water uses in the New Mexico portion of the Project.

38. Texas's actions are inconsistent with the allegations in the Complaint, and Texas has waived any claims it may have had prior to 2011.

FIFTH AFFIRMATIVE DEFENSE (LACHES)

39. Immediately following adoption of the Compact in 1939, the signatory States adopted Rules and Regulations for Administration of the Rio Grande Compact (December 19, 1939) confirming the right of each signatory State to "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."

40. Consistent with these rules, groundwater was developed in both Texas and New Mexico, but only New Mexico adopted meaningful limits and regulations for groundwater. Texas has been aware of the potential effects of groundwater pumping on surface water for decades, but declined to protest groundwater applications in New Mexico or curtail its own groundwater pumping. Texas also did not raise groundwater pumping below Elephant Butte in either of the two previous original actions it filed to enforce the Compact. The second of these cases, *Texas and New Mexico v. Colorado*,

No. 29, Original, was dismissed with prejudice following an actual spill of water from Project Storage in 1985. Texas offers no explanation for its significant delay in raising these issues, and Texas's lack of diligence will prejudice New Mexico.

41. During the intervening decades, relying on: (1) the Texas-approved Rules and Regulations of the Compact Commission (1939); (2) the approval and encouragement of the United States; and (3) Texas's own development of groundwater resources, water users within the New Mexico Project area constructed irrigation wells as a supplement to Project surface water deliveries. Municipal expansion in the Project area in both New Mexico and Texas also occurred, and was supplied in part with groundwater diversions. If Texas's unreasonably delayed claims are allowed to proceed, a ruling in favor of Texas would be extremely unfair, inequitable and detrimental to the economy and communities of southern New Mexico.

42. Because Texas unreasonably delayed asserting its claims, and because New Mexico will be harmed for its reliance on Texas's delay, Texas's claims are barred, in whole or in part, by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE (FAILURE TO MITIGATE DAMAGES)

43. Texas's claims should be denied, in whole or in part, because Texas has failed to take steps to mitigate the harm and injury it alleges in its Complaint. This failure to mitigate includes, but is not limited to, Texas's failure to properly regulate or manage surface or groundwater resources within the Project area in Texas, failure to prevent groundwater development in Texas, and failure to properly account for Project water.

SEVENTH AFFIRMATIVE DEFENSE (FAILURE TO EXHAUST REMEDIES)

44. The Compact confers authority on the Commission to take actions that could have

assessed and mitigated the harm Texas complains of, including, but not limited to, Article II authority to establish additional gaging stations, Article XII authority to adopt rules and regulations to administer the Compact, and Article XIII authority to make recommendations to the Compacting States and Congress for revisions to the Compact.

45. Despite the foregoing, Texas failed to complain about its alleged injury to the Commission or request the Commission exercise any of its powers, including but not limited to establishing gaging stations in the Project area to monitor Compact compliance, adopting or modifying applicable rules and regulations, or recommending amendments to the Compact to address the allocation, accounting, and reporting of water in the Project.

46. Texas's claims are barred, in whole or in part, because Texas failed to exhaust its administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE (SET-OFF)

47. Since the 1950s, Texas has allowed or authorized extensive groundwater development within the Project area in Texas and has called for Project water that was not used on Project lands in Texas but was delivered, either directly or in the form of Project return flows, to non-Project beneficiaries in Texas. Texas's actions require additional releases from Project storage, reducing Project Storage reserves that would otherwise be available for allocation to both States and harming New Mexico. Since adoption of the 2008 Operating Agreement, Texas has also received more water than it was apportioned by the Compact as a result of changes to Project operations. Any damages to Texas should be offset, in whole or in part, by damages Texas has inflicted on New Mexico and by the amount of additional Project water Texas unjustly received as a

result of the 2008 Operating Agreement.

48. Since the Compact was executed, Texas has also been harmed, in part, by hydrologically connected groundwater pumping and unauthorized surface diversions occurring near the Project area in Mexico. New Mexico's liability for damages Texas has suffered, if any, should be reduced by the amount of such damages attributable to water uses in Mexico in excess of those allowed under the 1906 Convention.

49. Additionally, to the extent Texas is allowed to raise claims against New Mexico based on allegations that New Mexico failed to deliver sufficient Project water to Texas, Texas should reduce its claimed injury to account for any additional factors outside New Mexico's control.

NINTH AFFIRMATIVE DEFENSE (SPILL)

50. Article VI of the Compact provides, in relevant part, "[i]n 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." Article VI reflects the intention of the drafters to eliminate liability for prior Compact under-deliveries whenever the Project is unable to store all available water. The most recent spill of water from the Project occurred in 1995. As of the beginning of 1996, all accrued debits and credits of New Mexico and Colorado were eliminated (set to zero) by the Commission. Therefore, Texas is barred from asserting injury or seeking damages based on allegations insufficient water was available in Project Storage for all years up to and including 1995.

PRAYER FOR RELIEF ON TEXAS'S COMPLAINT

New Mexico denies that Texas is entitled to relief, and prays that judgment be entered:

A. Dismissing Texas's Complaint with prejudice;

B. Rejecting all of Texas's requests for relief; and

C. Granting such further relief to New Mexico as this Court may deem just and proper.

Respectfully submitted,

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STATE OF TEXAS,

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Before Special Master Michael J. Melloy

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STATE OF NEW MEXICO'S ANSWER TO THE UNITED STATES' COMPLAINT IN INTERVENTION

_____♦_____

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May 22, 2018

ANSWER

COMES NOW the State of New Mexico by and through counsel and submits this Answer to the United States' Complaint in Intervention ("U.S. Complaint").

1. Paragraph 1 of the U.S. Complaint states a legal conclusion to which no response is required. To the extent a response is required, New Mexico denies that jurisdiction is proper for the United States under 28 U.S.C. § 1251(a).
2. New Mexico admits the allegations in Paragraph 2 of the U.S. Complaint.
3. With regard to the first sentence in Paragraph 3 of the U.S. Complaint, New Mexico admits that the Rio Grande Reclamation Project Act was passed by Congress on February 25, 1905, ch. 798, 33 Stat. 814, and further admits that the Rio Grande Project was contemplated by the Rio Grande Reclamation Project Act, but denies that the Project was authorized by the Act as the Act required a finding of feasibility by the Secretary of the Interior and authorization by the Secretary of the Interior, and such finding and authorization did not occur until after passage of the Rio Grande Reclamation Project Act. New Mexico admits the remaining allegations in Paragraph 3 of the U.S. Complaint.
4. New Mexico admits the allegations in Paragraph 4 of the U.S. Complaint. New Mexico affirmatively states that the United States is not a party to the Compact.
5. New Mexico admits the portions of the Compact's preamble quoted in Paragraph 5 of the U.S. Complaint are accurate. Beyond this, New Mexico asserts that the Compact's preamble, along with the rest of the Compact's terms, speaks for itself. New Mexico denies any allegations that are inconsistent with the express terms of the Compact.

6. New Mexico denies the United States' characterization of Article IV of the Compact because that provision speaks for itself. New Mexico admits that New Mexico's delivery obligation was changed in 1948 from San Marcial to Elephant Butte Reservoir. New Mexico affirmatively states that the Rio Grande Compact Commission's ("Commission") 1948 Resolution also adopted a new annual delivery schedule for New Mexico in Article IV of the Compact.
7. New Mexico denies the United States' characterization of Articles I(k) and I(l) of the Compact because those provisions speaks for themselves.
8. New Mexico admits the United States delivers water to Project beneficiaries in New Mexico and Texas pursuant to several contracts with EBID and EPCWID, that these contracts generally established the respective acreage included in each district as 88,000 acres for EBID and 67,000 acres for EPCWID, and that the ratio between Project acreage in New Mexico and Texas is generally 57% and 43%, respectively, but asserts that beyond this, the contracts speak for themselves. New Mexico affirmatively states the contracts reflected the division of irrigable land at the time they were signed. New Mexico affirmatively states that the number of irrigated acres within the Project area has generally decreased over time, and that the Project no longer delivers water to 155,000 irrigated acres in the Project area or delivers an equal amount of water to each irrigable acre.
9. New Mexico denies the United States' characterization of 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. 2953 ("1906 Convention") because that document speaks for itself.

10. New Mexico denies the United States' characterization of Article II of the 1906 Convention because that provision speaks for itself.

11. New Mexico admits the allegations in the first and second sentence of Paragraph 11. In response to the third sentence of Paragraph 11, New Mexico admits that some portion of delivered water returns via drains as return flows to the Project, which is operated as a unit. New Mexico denies that all water that seeps into the ground becomes Project return flows. New Mexico admits the allegations in the fourth sentence of Paragraph 11 of the U.S. Complaint. New Mexico admits that return flows have historically comprised a part of the Project's deliveries in both New Mexico and Texas, throughout the Project lands. Unless specifically admitted, the remaining allegations of Paragraph 11 are denied.

12. Paragraph 12 of the U.S. Complaint states legal conclusions to which no response is required. To the extent a response is required, New Mexico denies the allegations in Paragraph 12 of the U.S. Complaint. New Mexico affirmatively states that the right to use groundwater arises under State rather than Federal law.

13. New Mexico denies the allegations in Paragraph 13 of the U.S. Complaint.

14. New Mexico admits that extraction of hydrologically connected groundwater below Elephant Butte Reservoir in Texas, Mexico, and New Mexico has the potential to affect Project operations and deliveries. Unless specifically admitted, the remaining allegations in Paragraph 14 of the U.S. Complaint are denied.

15. New Mexico admits that use of water below Elephant Butte Reservoir in Texas, New Mexico, or Mexico has the potential to reduce Project efficiencies. Unless specifically admitted, the remaining allegations in Paragraph 15 of the U.S. Complaint are denied.

16. New Mexico admits the allegations in Paragraph 16 of the U.S. Complaint to the extent that "this action" refers to the Original Action filed by Texas. New Mexico affirmatively states that the scope of the allegations in the U.S. Complaint must be limited to the allegations brought by Texas, as stated in the Supreme Court's opinion found at 138 S. Ct. 954 (2018).

17. New Mexico denies any allegations contained within the Prayer for Relief of the U.S. Complaint. Furthermore, even if the United States were to prove the allegations raised herein, New Mexico denies that the allegations raised herein would entitle the United States to the relief that it seeks.

AFFIRMATIVE DEFENSES

18. New Mexico incorporates each and every admission, denial, and allegation made by New Mexico in Paragraphs 1 through 17 as set forth herein. New Mexico asserts separately and/or alternatively the following affirmative defenses. In doing so, New Mexico does not assume any burden of pleading or proof that would otherwise rest on Plaintiff United States. New Mexico reserves the right to add defenses, or to supplement, amend, or withdraw any of these affirmative or other defenses.

FIRST AFFIRMATIVE DEFENSE (RIPENESS)

19. The United States alleges New Mexico's allowance of surface and groundwater diversions within the Project area in New Mexico in excess of contractual amounts "could," if "uncapped," reduce Project efficiency to the point that the United States cannot make its contractual deliveries to Project beneficiaries in Texas and its treaty deliveries to Mexico.

20. The United States has not alleged that water uses in southern New Mexico, whether authorized or not, have interfered with its ability to make deliveries to Texas or to Mexico in any specific instances, nor has the United States alleged facts tending to show that such interference is likely or imminent. Nor has the United States exercised its authority to provide notice to New Mexico water administration officials, notified the Commission, or placed an administrative call on the river setting forth the alleged reduction in Project deliveries in time, amount or location, to protect its contractual obligations.

21. Because the United States' claims are speculative, they are barred, in whole or in part, by the doctrine of ripeness.

SECOND AFFIRMATIVE DEFENSE (FAILURE TO PROVIDE NOTICE)

22. The United States acquired its water rights for the Project under New Mexico law, as required by Section 8 of the Reclamation Act, 43 U.S.C. § 343. Pursuant to Section 8, the water right for the Project is administered under New Mexico law.

23. In New Mexico, the mechanism by which an appropriator protects its rights from impairment by others is a priority call. *See Worley v. U.S. Borax & Chemical Co.*, 428 P.2d 651, 654-55 (N.M. 1967). A priority call consists of notice to offending appropriators that insufficient water is available to permit full enjoyment of the senior appropriator's right. In New Mexico, priority calls are administered by the Office of the State Engineer.

24. Although the United States acquired the Project's water right pursuant to New Mexico law and is required by Section 8 to comply with New Mexico law in the distribution of water from the Project, the United States has never sought to place a priority call to

protect the Project right from alleged interference, either by placing a call with the State Engineer or by sending notice directly to individuals it believed to be diverting water entitled to the Project.

25. The United States also has failed to inform the Commission of its allegations that New Mexico's actions were interfering with the Project's delivery of water.

26. Because the United States failed to place a priority call, failed to inform the Commission, or otherwise failed to take action to protect the Project right from interference, the United States' claims are barred, in whole or in part, because the United States failed to provide notice of any claimed harm or injury.

THIRD AFFIRMATIVE DEFENSE (FAILURE TO MITIGATE)

27. Further, Project supply and Project efficiency have been impacted by pumping of groundwater hydrologically connected to the Rio Grande occurring in Texas and Mexico. The United States has an obligation to protect New Mexico from the effects of such pumping in Texas and Mexico, and has failed to do so.

28. The United States also has failed to properly maintain the Project, including failing to eliminate growth of phreatophytic vegetation in and along the bed of the Rio Grande and allowing the buildup of sediment in the bed of the Rio Grande in the Project area. Deficient maintenance of Project infrastructure and the river channel have increased delivery losses by increasing evapotranspiration of water and increasing seepage losses from the riverbed.

29. To the extent the United States seeks to blame New Mexico for all reductions in Project supply and efficiency, its claimed are barred, in whole or in part, because it has failed

to mitigate the reductions caused by pumping in Texas and Mexico and by the United States' own failure to properly maintain the Project.

FOURTH AFFIRMATIVE DEFENSE (FAILURE TO EXHAUST)

30. Because the United States failed to inform the Commission of its allegations that New Mexico's actions were interfering with the Project's delivery of water, protest any application to use groundwater or drill a new groundwater well in the Project area (even those on federal lands), place a priority call, or otherwise take action using existing administrative tools available pursuant to New Mexico law and the Compact to protect the Project right from interference, the United States' claims are barred, in whole or in part, by its failure to exhaust its administrative remedies.

FIFTH AFFIRMATIVE DEFENSE (UNCLEAN HANDS)

31. The Compact incorporates the Project and relies on Project operations to deliver water apportioned by the Compact to southern New Mexico and west Texas. Pursuant to contracts in force at the time the Compact was ratified, the United States is obligated to allocate equal amounts of Project water to each irrigable acre of land included within the Project. For most of the Project's history, including at the time the Compact was ratified, the United States owned and operated all Project infrastructure and delivered Project water to the farm headgates for each farmer.

32. In derogation of its duties to deliver equal water to each Project acre, the United States has taken actions or allowed the implementation of practices that have caused or materially contributed to the very injury for which it now seeks to hold New Mexico liable.

33. Operational changes to the Project, including but not limited to adoption of the 2008 Operating Agreement for the Project, have interfered with the Compact apportionment by materially altering the historical equal allocation of Project water, forcing Project beneficiaries in New Mexico to rely far more heavily on groundwater extraction to meet their needs.

34. The United States has allowed or ignored widespread, high-volume groundwater extraction occurring in the Project area in Texas, and has ignored or failed to protest similar high-volume pumping in Mexico of ground water hydrologically connected to the Rio Grande and unauthorized surface diversions, in derogation of Article IV of the 1906 Convention, which provides in relevant part that "Mexico waives any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the present Mexico Canal and Fort Quitman, Texas." Groundwater pumping and unauthorized surface diversions in the Project area in Texas and Mexico cause or materially contribute to the United States' alleged injury regarding delivery of water to Texas and Mexico.

35. Further, improper accounting for Project return flows and deliveries, storage or release of Project water in excess of amounts needed to annually serve or deliver water to Project lands, and unauthorized release of Project water for purposes other than to deliver water to Project lands or Mexico have caused or materially contributed to the United States' alleged injury, for which it now seeks to hold New Mexico liable.

36. Finally, the United States has entered into agreements to transfer water from irrigation to municipal use, which were not authorized by the Compact signatories and which materially alter the allocation of Project water.

37. Because the United States is itself contributorily responsible for the injury it now asserts, the United States' equitable relief claims are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE (ACCEPTANCE, WAIVER, ESTOPPEL)

38. In the 1950s, the number of high-capacity wells within the Project area in both New Mexico and Texas increased significantly, as did high-capacity wells in Mexico near the Project area. Project beneficiaries in both states used these wells to supplement surface water deliveries from the Project to meet crop demands, and municipalities in and near the Project area, including but not limited to the cities of El Paso, Texas and Juarez, Mexico, also installed a number of high-capacity wells for municipal and industrial supply. Rather than protesting this practice, the United States, via the Bureau of Reclamation and its officers, encouraged Project beneficiaries to drill wells, particularly during drought years with low surface water supplies.

39. In the case of *Mestas v. Elephant Butte Irrigation District*, No. 78-CV-138 (D.N.M.) ("*Mestas*"), the United States explained the position on groundwater extraction in the Project area that it held for decades: "the government simply has no property interest in any groundwater" in the Project area. United States' Memorandum in Support of Cross-Motion for Partial Summary Judgment at 4, *Mestas* (D.N.M. Nov. 22, 1978).

40. In *Mestas*, the United States also detailed the many efforts it took to facilitate groundwater development within the Project. For example, the United States

represented that it had "granted permission for the location of several hundred irrigation wells or [sic] Project lands over the past twenty-five years." *Id*. Further, the Bureau of Reclamation authorized the "use of the distribution system of the project for the sale of ground water as between member-users," Federal Defendants' Response to Plaintiffs' Request for Admissions of Fact at 2, *Mestas* (D.N.M. Jan 4, 1979), and gave Project beneficiaries permission "to take additional amounts of surface water delivered from the Reservoir, and offset such amounts by water pumped from [EBID] wells," Federal Defendants' Requested Findings of Fact and Conclusions of Law at 2, *Mestas* (D.N.M. Mar. 1, 1979). Reclamation's position on groundwater pumping at this time was that ground water pumping does not "constitute[] delivery of project water," that the United States recognized "the right, subject to applicable state law, of private pumpers to utilize ground water within" the Project area, and that ground water pumping "does not affect the treaty with Mexico . . . nor does it affect the annual allocation of project water." Brief in Support of Plaintiffs' Motion for Partial Summary Judgment at 3, *Mestas* (D.N.M. Nov. 1, 1978); United States' Memorandum in Support of Cross-Motion for Partial Summary Judgment at 1, *Mestas* (D.N.M. Nov. 22, 1978) ("The federal defendants herein agree with the statement of facts included in the plaintiffs' Brief in Support of their Motion for Partial Summary Judgment, at least insofar as those facts concern actions of federal officials.").

41. Acting in reliance on the United States' repeated representations in multiple contexts and its longstanding acquiescence to this practice, farmers and communities in southern New Mexico and Texas constructed numerous wells and relied on the ability to extract

groundwater both as a supplement to surface water supplies and as a primary source of water to meet crop irrigation demands and other needs.

42. The United States has not filed any protests to applications to use groundwater or drill new wells within the Project area in New Mexico even though procedures to do so are available.

43. The United States has never taken advantage of its opportunities to initiate a priority call or otherwise enforce its rights under New Mexico law.

44. The United States has expressly incorporated groundwater pumping into its Project accounting.

45. If the United States is granted the relief it seeks, the economy and communities of southern New Mexico will be devastated.

46. Because for decades the United States authorized, encouraged, fostered, and failed to protest the very groundwater development it now seeks to enjoin, and because New Mexico and its citizens relied to their detriment on the United States' representations, the United States' claims are barred, in whole or in part, by the doctrines of acceptance, waiver, and estoppel.

SEVENTH AFFIRMATIVE DEFENSE (LACHES)

47. Because for decades the United States was aware of groundwater development in the Project area in New Mexico and Texas but never complained or sought to prohibit these extractions, and in fact actively encouraged such development, and expressly accounted for Project deliveries with groundwater pumping incorporated, the United States' claims are barred, in whole or in part, by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE (FAILURE TO STATE A CLAIM)

48. Under New Mexico law, groundwater in the Lower Rio Grande Underground Water basin is public water of the State of New Mexico over which the state has plenary control and which is administered by State law. As recognized by the court adjudicating the United States' Project right, and previously admitted by the United States, groundwater is not part of Project supply. Instead, the Project right is a surface water right only. The United States has no right to groundwater below Elephant Butte Reservoir.

49. The United States has no authority to require individual groundwater users below Elephant Butte to obtain a federal contract to pump groundwater, nor does New Mexico have an obligation to require individual groundwater users below Elephant Butte to obtain a federal contract to pump groundwater.

50. To the extent the United States is alleging that New Mexico has an obligation to prevent individuals from pumping groundwater below Elephant Butte without a federal contract, it fails to state a claim on which relief can be granted because New Mexico has no such obligation under law and because the United States has no right to groundwater below Elephant Butte as part of Project supply.

PRAYER FOR RELIEF ON THE U.S. COMPLAINT

New Mexico denies the United States is entitled to relief and prays that judgment be entered:

A. Dismissing the United States' Complaint in Intervention with prejudice;

B. Rejecting all of the United States' requests for relief; and

C. Granting such further relief to New Mexico as this Court may deem just and proper.

Respectfully submitted,

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May 22, 2018

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.

_____♦_____

Before Special Master Michael J. Melloy

_____♦_____

STATE OF NEW MEXICO'S COUNTERCLAIMS

_____♦_____

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May 22, 2018

Pursuant to Case Management Order No. 16, and consistent with Supreme Court Rule 17 and Federal Rules of Civil Procedure 8 and 13, the State of New Mexico ("New Mexico") asserts the following counterclaims against the State of Texas ("Texas") and the United States of America ("United States"):

JURISDICTION AND VENUE

1. Jurisdiction and venue are proper before this Court pursuant to Article III, Section 2, Clause 2 of the Constitution of the United States in connection with 28 U.S.C. § 1251(a).

GENERAL ALLEGATIONS

A. The Rio Grande Project

2. The Rio Grande is an interstate and international stream that rises in the mountains of Colorado and flows south into and through New Mexico. When the Rio Grande reaches Texas, it does not form the border between Texas and New Mexico, but instead crosses into Texas and then crosses back into New Mexico before it reaches the boundary between Texas and Mexico. It then forms the international boundary between the United States and Mexico until it empties into the Gulf of Mexico.

3. In 1902, Congress passed the Reclamation Act, which authorized the United States Reclamation Service ("Reclamation Service"), precursor to the Bureau of Reclamation ("Reclamation"), to undertake water development and reclamation projects in western states, including New Mexico. Act of June 17, 1902, ch. 1093, 32 Stat. 388.

4. The Reclamation Act specifically incorporates the congressional policy of deference to the water laws of the states and territories. *See, e.g.*, 43 U.S.C. § 383; *Ickes v. Fox*, 300 U.S. 82, 95 (1937).

5. Pursuant to the Reclamation Act, in 1905, Congress passed the Rio Grande Reclamation Project Act ("Project Act"). Act of February 25, 1905, ch. 798, 33 Stat. 814. The Project Act contemplated the ability of the Reclamation Service to construct the Rio Grande Project ("Project") pending a finding of feasibility and authorization by the Secretary of the Interior. The Project Act also extended the provisions of the Reclamation Act to that portion of Texas capable of being irrigated by the Project.

6. To achieve the purposes of the Project, it was necessary for the Reclamation Service to obtain a New Mexico water right. Accordingly, on January 23, 1906, the Reclamation Service filed a Notice to appropriate water with the New Mexico Territorial Engineer. That filing declares the intent of the United States to appropriate: "[a] volume of water equivalent to 730,000 acre-feet per year requiring a maximum diversion or storage of 2,000,000 miner's inches said water to be diverted or stored from the Rio Grande River (sic) at a point described as follows: Storage dam about 9 miles west of Engle New Mexico. . . ." The 1906 Notice was supplemented by a second Notice in 1908. The effect of the 1906 and 1908 Notices was determined in the adjudication court in *State of New Mexico ex rel., Office of the New Mexico State Engineer v. Elephant Butte Irrigation District, et al.*, No. CV-96-888, Stream System Issue SS-97-104.

7. Consistent with the language of the 1906 and 1908 Notices, in adjudicating the interest of the United States in the Project, the adjudication court determined the United States had appropriated only surface water of the Rio Grande and did not appropriate ground water, such that the United States' right for the Project is a surface water right only, and the Project is not entitled to groundwater.

8. Elephant Butte Reservoir, the largest storage facility in the Project, was completed and in operation by 1916.

9. Elephant Butte Reservoir is located near Truth or Consequences, New Mexico, over 100 miles north of the Texas-New Mexico border. The Project delivers water to both southern New Mexico and west Texas. It also serves as a mechanism for delivering water to Mexico pursuant to the Convention between the United States and Mexico for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, May 21, 1906, U.S.-Mex., 34 Stat. 2953 ("1906 Convention").

10. Elephant Butte Reservoir is managed by Reclamation, which releases water for delivery to Mexico and to Project beneficiaries in southern New Mexico and west Texas.

11. On June 27, 1906, the United States executed a contract with the Elephant Butte Water Users' Association of New Mexico ("EBWUA") and the El Paso Valley Water Users' Association ("EPVWUA") in Texas, which represented water users in the proposed Project area in their respective States, to repay the costs of the proposed Project.

12. In the late 1910s, Elephant Butte Irrigation District ("EBID"), in New Mexico, and El Paso County Water Improvement District No. 1 ("EPCWID"), in Texas, were organized to manage water resources in their respective geographic regions and to assume the assets and obligations of EBWUA and EPVWUA. EBID and EPCWID entered into separate contracts with the United States governing repayment of costs to construct the Project.

13. EBID operates the Project's water delivery infrastructure in New Mexico and has contractual obligations to deliver water to Project beneficiaries in New Mexico once it is released from Project storage. EPCWID is similarly responsible for operating the

Project's delivery infrastructure in Texas and delivering water to Project beneficiaries in Texas.

14. In February of 1938, EBID and EPCWID entered into an agreement regarding the distribution of Project water (the "1938 Contract"). The 1938 Contract was approved by the United States in April 1938. The 1938 Contract recognized that the Project was authorized to irrigate approximately 155,000 acres of land consisting of 88,000 acres in New Mexico and 67,000 acres in Texas (collectively, the "Project Area"), plus each district could irrigate up to an additional 3% above this amount. The 1938 Contract further specified that, in the event of a water shortage, the available supply would be distributed in the proportion of 88/155 (approximately 57%) to the lands of EBID and 67/155 (approximately 43%) to the lands of EPCWID. The 1938 Contract thereby recognized that Project water was divided between the irrigation districts such that lands in New Mexico were entitled to approximately 57% of Project water and lands in Texas were entitled to approximately 43% of Project water.

B. The Rio Grande Compact

15. In March of 1938, the States of Colorado, New Mexico, and Texas signed the Rio Grande Compact ("Compact"). The Compact was approved by Congress on May 31, 1939. 53 Stat. 785.

16. The Compact apportions the waters of the Rio Grande from its headwaters in Colorado to Fort Quitman, Texas among the States of Colorado, New Mexico, and Texas.

17. The States intended the Project to be the vehicle by which Texas and New Mexico would receive their equitable apportionment of water for the lower Rio Grande. For that reason, the Project, the 1938 Contract, and other Project contracts in effect when the Compact

was signed are incorporated into the Compact. *See Texas v. New Mexico*, 138 S.Ct. 954, 959 (2018). In particular, the 57/43 ratio, and the requirement that the Project deliver an equal amount of water to each irrigated acre in the Project Area, were incorporated into the Compact.

18. Article I of the Compact defines operable terms. The following relevant terms are defined in Article I:

    a. Article I(h) of the Compact defines Annual Credits as "the amounts by which actual deliveries in any calendar year exceed scheduled deliveries."

    b. Article I(k) of the Compact defines Project Storage as "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."

    c. Article I(l) of the Compact defines Usable Water as "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."

    d. Article I(m) of the Compact defines Credit Water as "that amount of water in project storage which is equal to the accrued credit of Colorado, or New Mexico, or both." Credit Water is water stored in Elephant Butte Reservoir pursuant to the Compact and administered by the Rio Grande Compact Commission ("Commission").

19. Article III of the Compact establishes schedules of deliveries for Colorado at the Colorado-New Mexico state line based on flows at specified upstream gages.

20. Article IV of the Compact initially established a schedule of deliveries for New Mexico at San Marcial, just upstream of Elephant Butte Reservoir, based on flows at specified upstream gages. In 1948, in accordance with the terms of Article V of the Compact, the Commission established a new annual schedule of deliveries for New Mexico at Elephant Butte Reservoir.

21. Article VI of the Compact establishes a system of debits and credits to provide flexibility to Colorado and New Mexico in meeting the delivery schedules established in Articles III and IV, respectively.

22. As relevant to credits, Article VI of the Compact further provides: "To the extent that accrued credits are impounded . . . such credits . . . shall be reduced annually to compensate for evaporation losses in the proportion that such credits . . . bore to the total amount of water in such reservoirs during the year."

23. Article VII of the Compact provides in pertinent part that "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" and "that Colorado or 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."

24. New Mexico has reservoir storage capacity upstream of Elephant Butte Reservoir that was constructed after 1929 that is subject to the Article VII storage limitation.

C. Historic Project Operations

25. Project storage is held in two reservoirs in New Mexico: Elephant Butte Reservoir is the main storage feature for the Project. Caballo Reservoir is located just 25 miles south and

is operated in conjunction with Elephant Butte Reservoir. By releasing Usable Water from storage at these reservoirs and reuse of Project return flows, the Project supplies irrigation water to authorized lands in New Mexico and Texas and to Mexico pursuant to the 1906 Convention.

26. Three pools of stored water are contained within Project Storage: 1) Usable Water, 2) Credit Water, and 3) San Juan-Chama water. *See* Compact Article I and Pub. L. No. 97-140.

27. Reclamation allocates and releases Usable Water to EBID, EPCWID, and Mexico.

28. EBID diverts Project water from the Rio Grande at Percha and Leasburg dams to serve New Mexico Project beneficiaries. EBID also diverts Project water from the Rio Grande at Mesilla Dam in New Mexico to serve New Mexico Project beneficiaries and to deliver water to EPCWID to serve EPCWID lands in the Texas part of the Mesilla Basin.

29. EPCWID currently diverts Project water from the Rio Grande at American Dam in Texas and delivers Project water to the City of El Paso for municipal use and to EPCWID farmers in the El Paso Valley via the Franklin and Riverside canals. EPCWID historically diverted part of its water below American Dam for use on Project lands.

30. Water that is surplus to and not needed for EPCWID Project lands is used on approximately 18,000 acres in Hudspeth County, Texas that are part of Hudspeth County Conservation and Reclamation District ("HCCRD"). HCCRD's members are not Project beneficiaries, and HCCRD and its members have contracts to use Project water only when it is in excess of the requirements of Project lands. The water delivered to lands in Hudspeth County is not included in the annual Rio Grande Project allocation or in Compact accounting, and neither EPCWID nor HCCRD has the right to call for releases

of Project water—or, in the case of EPCWID, deliver Project water—solely to supply lands in Hudspeth County.

31. Project deliveries to Mexico take place at International Dam.

32. Project return flows generated from distribution and use of Project water are water that returns to the bed of the river or that is measured in Project canals and drains within the dominion and control of the Project. These return flows are part of Project supply available for reuse on Project lands. Project supply does not include groundwater in the Project Area.

33. Farmers in both EBID and EPCWID pump groundwater to supplement surface water supplies. In addition, significant amounts of municipal pumping occur in the Project area, particularly in Texas and Mexico. Between 1938 and 1980, groundwater pumping increased in New Mexico, Texas, and Mexico. This pumping, to varying degrees, had the potential to affect surface water flows in the Project Area.

34. In 1980, the New Mexico State Engineer took action to close the Lower Rio Grande basin by prohibiting new groundwater permits in New Mexico that did not include offsets to replace their additional depletions to the river.

35. Unlike New Mexico, neither Texas nor Mexico has acted to prohibit or restrict groundwater extraction with the potential to affect surface water flows in the Project Area. Groundwater pumping has continued and increased in Texas and Mexico in the Project area since the Compact was signed.

36. New Mexico requires metering of all groundwater wells in the Project area in New Mexico. In contrast, Texas does not require wells to be metered in the Texas portion of the Project area.

37. Until approximately 1980, Reclamation allocated and delivered water directly to Project beneficiaries at their farm headgates. As required by the Compact, allocation to Project beneficiaries was made on the basis of an equal allotment of water per authorized acre, regardless of which State or district the acre was in.

38. In approximately 1980, EBID and EPCWID met their repayment obligations, and the United States transferred the responsibility for operation and maintenance of most Project facilities, other than the storage reservoirs and the diversion structures on the Rio Grande, to the districts.

39. After the transfer of operational responsibility to the districts, Reclamation delivered Project water directly to each district, leaving to the districts the obligation to ensure appropriate and equal deliveries to the lands within their districts.

40. Because Reclamation no longer assumed responsibility to deliver Project water directly to each beneficiary, Reclamation developed a set of formulas, known as the "D1/D2 curves," based on Project releases and deliveries from 1951 to 1978 to predict how much water would be delivered to each acre of Project land based on the amount of water released from Project storage. The D1 curve represents the relationship between Project releases and individual farm deliveries to the districts and Mexico during the 1951-1978 period. The D2 curve predicts the amount of water that will be available at major canal headings based on releases from Project storage. Because the D1/D2 curves determine average relationships based on variable data, they over-predict deliveries for some years during the 1951-1978 period and under-predict deliveries in others. An allocation methodology was also developed at this time based on the D1/D2 Curves, which first subtracted Mexico's share and then attempted to allocate 57% of the remaining Project

water to EBID for diversion at canal headings, and 43% to EPCWID for diversion at canal headings.

41. The D1/D2 Curves are designed, in part, to reflect the hydrologic effects of groundwater diversions in Texas, Mexico, and New Mexico from 1951 to 1978.

D. The 2008 Operating Agreement

42. Because the Compact incorporates the Project, the United States is not authorized to make operational changes to the Project that materially alter the Compact allocation.

43. In 2008, the United States and the two irrigation districts entered into a new water delivery arrangement known as the 2008 Operating Agreement. The 2008 Operating Agreement had the effect of causing delivery to Texas of more than its share of Project water as allocated by the Compact. None of the Compact States of Colorado, New Mexico or Texas were parties to the 2008 Operating Agreement.

44. The 2008 Operating Agreement changed the water allocation methodology for Project water, materially altering the Project's allocation of water.

45. Under the 2008 Operating Agreement, Mexico and EPCWID are generally allocated water according to the D1/D2 methodology, but EBID is not. Instead, under the 2008 Operating Agreement, EBID's allocation is calculated based on a new Project diversion ratio ("New Diversion Ratio"). This New Diversion Ratio predicts Project deliveries based on a set of estimates and forecasts, and then charges EBID for any estimated deficiency in Project deliveries as compared to the deliveries predicted by the D1/D2 Curves, regardless of the cause of the delivery inefficiency. As a result of the implementation of the New Diversion Ratio, EBID's allocation of Project water has

materially decreased since adoption of the 2008 Operating Agreement, depriving New Mexico of water it is apportioned by the Compact.

46. Since the 2008 Operating Agreement was adopted, the United States also has failed to allocate water in storage on an annual basis to both districts.

47. Under historical Project operations, if a full allocation was not needed or a district failed to call for release of its full annual allocation, any unused portion of the allocation remaining in Project Storage after the irrigation season was accounted for as Usable Water and allocated on an equal basis to Project lands in both districts in the following year. Unlike historical Project operations, the 2008 Operating Agreement allows for long-term storage by the districts, also known as carryover accounting. Using carryover accounting, a district that does not use its full allocation in a given year can leave it in Project storage indefinitely. That water is not allocated on an equal basis to each Project acre, but instead is available solely to Project lands in a single district.

48. With carryover accounting, the amount of Usable Water that is available for 57/43 allocation to Project lands in both districts is reduced. The result is that New Mexico has received considerably less water than it would have received under historical Project operations and that it is entitled to under the Compact.

49. Under the 2008 Operating Agreement, New Mexico is disproportionately charged with evaporative losses from Project Storage, including evaporative losses associated with carryover water reserved for Texas water users. As a result, the 2008 Operating Agreement further injures New Mexico.

50. The 2008 Operating Agreement also debits EBID for all carriage and groundwater depletions in the system, regardless of whether those losses are attributable to

groundwater pumping in New Mexico, Texas, or Mexico. In other words, by incorporating the New Diversion Ratio into the allocation procedures, the 2008 Operating Agreement requires EBID to pay for system inefficiencies caused by pumping in Texas and Mexico.

51. The changes to the Project operations by the 2008 Operating Agreement result in significant differences in amounts of Project water delivered to each authorized acre, and result in New Mexico receiving less water than it is entitled to under the Compact.

52. The 2008 Operating Agreement has also resulted in increased irrigation well pumping in New Mexico because the amount of Project Water delivered to New Mexico Project beneficiaries since implementation of the 2008 Operating Agreement is far less than the amount they would have received under historical Project operations.

53. Because of the over-allocation to Texas under the 2008 Operating Agreement, New Mexico brought suit in 2011 against Reclamation and the two irrigation districts in federal district court in New Mexico. While the district court suit was pending, Texas initiated the present proceeding by invoking this Court's original jurisdiction. The district court case is currently stayed.

E. Credit Water

54. Article VI credits (*i.e.*, Credit Water) are computed annually and approved by the Commission at its annual meeting.

55. The ability of New Mexico to offer a "relinquishment", as provided by the Compact, is a valuable Compact right that is critical to maintaining upstream operations for multiple users.

56. Having Accrued Credit when Usable Water is less than 400,000 acre-feet and Compact Article VII storage restrictions are in effect provides New Mexico the opportunity to aid its Rio Grande water users, both upstream and downstream of Elephant Butte Reservoir, during drought.

57. During the Commission's 67th Annual Meeting (March 23, 2006), the Commission expressly directed the United States that Credit Water was to be held constant during the calendar year and that the United States could not unilaterally allocate or release the States' credits, including reductions for evaporation losses:

> 1. the Engineer Advisers requested that the Commission direct that credit water be held constant during the year, and 2. that the Commission direct the Engineer Advisers to meet if the total combined accrued credit water exceeds 150,000 acre-feet and Usable Water is less than a full allocation or if the combined accrued credit water exceeds 50 percent of Project Storage and make a recommendation to the Commission regarding optimum use of water in Project Storage, and 3. that the Commission direct Reclamation to allocate or release credit water only as directed by the Commission. The recommendations were approved by the Commission.

58. The Compact does not authorize or give Reclamation discretion to reduce or release Credit Water, absent explicit State authorization to do so. Each State has sole authority over disposition of its Credit Water. Contrary to this, the United States unilaterally and without authorization did reduce and release New Mexico's Credit Water in June 2011.

59. The total amount of Credit Water in Elephant Butte Reservoir at the beginning of 2011, as authorized by the Commission at its 72nd Annual Meeting in March 2011, was 167,400 acre-feet. The Commission determined that New Mexico's Credit Water amount was 164,700 acre-feet and Colorado's was 2,700 acre-feet. Colorado subsequently offered to relinquish and Texas accepted 1,100 acre feet of Credit Water, resulting in a total credit in Elephant Butte Reservoir of 166,300 acre-feet.

60. In June 2011, the United States, acting *ultra vires*, reduced the Credit Water in Project Storage from 166,300 acre-feet to 100,000 acre-feet and, over New Mexico's objections, released a portion of New Mexico's Commission approved Credit Water. This reduction was made without New Mexico's or the Commission's approval. This accounting change altered the Commission's approved Credit Water numbers and reduced New Mexico's allocation of Credit Water.

61. Pursuant to the Compact and the Commission's 2006 Credit Water directive, the United States is without the authority to reduce or release New Mexico's Credit Water for any reason.

62. The United States' actions reducing and releasing New Mexico's Credit Water were in direct contradiction to the terms of the Compact and the Commission's 2006 Credit Water directive.

FIRST CLAIM FOR RELIEF

(Compact Violation by Texas Caused by Unauthorized Depletions)

63. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

64. Since 1938, Texas has allowed the construction and use of hydrologically connected groundwater wells for irrigation, municipal, and other uses, has allowed the unauthorized use of surface water, and has allowed Project return flows to be unaccounted for, all in violation of the Compact.

65. The excess diversion of Rio Grande surface water and hydrologically connected groundwater within Texas adversely affects New Mexico in two ways. First, surface and groundwater diversions in Texas interfere with the Project's ability to deliver water to

New Mexico's Project beneficiaries near the Texas-New Mexico border by directly intercepting water meant for delivery to Project beneficiaries in New Mexico. This either immediately harms these beneficiaries or induces them to call for additional water to be released from Project Storage, reducing the amount of Usable Water in Project Storage available for future allocation. Second, unauthorized surface and groundwater diversions in Texas interfere with the Project's ability to deliver water to Texas Project beneficiaries, causing Texas Project beneficiaries to call for releases of additional Project water, and thereby reducing the amount of Usable Water in Project storage available for allocation to New Mexico Project beneficiaries.

66. Unauthorized depletions in Texas have increased over time, creating deficits in the shallow alluvial aquifer that have reduced Project efficiency, impacted Project releases, lowered the water table to the extent that return flows seldom appear in Project drains and are otherwise unavailable for use on EPCWID lands, and reduced the amount of Usable Water in Project Storage.

67. By undertaking and allowing the unauthorized diversions, Texas has depleted and is threatening to further deplete the waters of the Rio Grande allocated to New Mexico under the Compact.

68. By depleting the waters allocated to New Mexico, Texas has injured New Mexico and its water users.

69. Unless relief is granted by this Court, water use in Texas in excess of its equitable share of the waters of the Rio Grande will continue and increase, resulting in substantial and irreparable injury to New Mexico and its water users.

70. New Mexico has no effective remedy to enforce its rights under the Compact against Texas, except by invoking the Court's original jurisdiction in this proceeding.

71. New Mexico has no adequate remedy at law to enforce its rights to the waters of the Rio Grande.

SECOND CLAIM FOR RELIEF

(Interference with Compact Apportionment Against the United States)

72. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

73. The Compact places obligations on the United States related to its operation and management of the Project. For example, the Compact requires the United States to allocate Project water on an equal basis to each Project acre, regardless of state or district boundaries.

74. Similarly, the United States may not alter Project operations or accounting in a manner that materially changes the Compact's apportionment.

75. Despite this, the United States has implemented changes to Project operations that have materially altered the apportionment of water between New Mexico and Texas. These include, but are not limited to, the 2008 Operating Agreement. In part, the 2008 Operating Agreement allows for long-term, carryover storage for EBID and EPCWID, in contradiction to historical operations and the Compact. By withholding water in Project storage from annual allocation on a pro-rata basis, the United States has reduced the amount of water available to New Mexico beyond what would have been available under historic annual accounting practices. Furthermore, by allocating some water in Project storage wholly to beneficiaries in one State, the United States no longer allocates

Project water on an equitable pro-rata basis, but instead allocates more water to one State, to the detriment of the other.

76. The 2008 Operating Agreement also applies the New Diversion Ratio, which debits New Mexico for all Project inefficiencies, regardless of whether those losses are attributable to groundwater pumping in New Mexico, Texas, or Mexico, or to other causes outside New Mexico's control. By applying the New Diversion Ratio in the Operating Agreement, the United States has improperly reduced the amount of water apportioned to New Mexico by the Compact.

77. The 2008 Operating Agreement has reduced allocations of Project water to New Mexico compared to allocations under historic Project operations. In contrast, allocations to Texas under the 2008 Operating Agreement have exceeded those which would have been allocated under historical Project operations.

78. By adopting major operational changes that materially alter the historical operation of the Project and result in significant changes in the apportionment of Project water between New Mexico and Texas, the United States has unilaterally changed the bargain on which the Compact was based and has unilaterally reduced the amount of New Mexico's apportionment.

79. The States are not parties to the 2008 Operating Agreement.

80. By adopting and implementing the 2008 Operating Agreement and making other changes to Project operations, the United States has interfered with and violated the Compact.

81. The acts and conduct of the United States, its officers, and agencies in adopting and implementing the 2008 Operating Agreement, and making other changes to Project

operations that have altered and reduced New Mexico's apportionment, have caused grave and irreparable injury to New Mexico and its citizens.

82. Grave and irreparable injury will be suffered in the future by New Mexico and its citizens unless relief is afforded by this Court to prevent the United States, its officers, and agencies from operating the Project pursuant to the terms of the 2008 Operating Agreement or in any manner inconsistent with the equal allotment of Project water to each Project acre required by the Compact.

83. New Mexico has sustained damages arising from the United States' breach of the Compact.

THIRD CLAIM FOR RELIEF

(Improper Release of Compact Credit Water Against the United States)

84. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

85. Pursuant to Article VII of the Compact, New Mexico has sole authority over any decision to relinquish Credit Water attributed to the State of New Mexico, with such relinquishments creating important concomitant storage rights under the Compact. New Mexico "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."

86. Pursuant to Article VI of the Compact, Accrued Credit in Project storage "shall be reduced annually to compensate for evaporation losses in the proportion that such credits . . . bore to the total amount of water in such reservoirs during the year."

87. In 2011, the United States, acting through Reclamation, caused the amount of New Mexico's Credit Water in Project Storage to be reduced by approximately 64,000 acre-feet without New Mexico's authorization or consent and subsequently, over New Mexico's objection, released New Mexico Commission approved Credit Water to EPCWID.

88. The United States did not and does not have the authority, without New Mexico's express prior authorization, to reduce or release New Mexico's Compact Credit Water for any purpose except in accordance with the Compact and the Commission's 2006 Credit Water directive.

89. New Mexico has been harmed by the United States' illegal reduction and release of New Mexico's Compact Credit Water. The United States' actions deprive New Mexico of its right under the Compact to relinquish its Credit Water in exchange for the ability to store water in upstream reservoirs.

90. The United States' unilateral actions to reduce and/or release New Mexico's Credit Water violated New Mexico's rights under the Compact and was not authorized by New Mexico as required in the Compact.

FOURTH CLAIM FOR RELIEF

(Compact Violation and Unjust Enrichment Against Texas)

91. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

92. The State of Texas is entitled to no more water under the Compact than is necessary to deliver an amount of water to each acre of Project lands in Texas equal to the amount of water delivered to each acre of Project lands in New Mexico.

93. At least since the adoption of the 2008 Operating Agreement and various other operational changes, as well as through the use of inequitable accounting methods by the United States, the State of Texas has been receiving more water under the Compact than it would receive under historical Project operations where Project water is allotted on an equal basis to each acre of Project lands in both States.

94. Relying on the United States' operation of the Project in violation of the Compact, Texas has violated the Compact by receiving and claiming the right to receive more water than is necessary to deliver an equal amount of water to each acre of Project lands in Texas and New Mexico.

95. In 2011, Texas received excess water as a result of the unauthorized reduction of New Mexico's Compact Credit Water by the United States.

96. Texas will continue its violations of the Compact unless this Court acts to prevent the same.

97. New Mexico has been damaged by the violations of the Compact by Texas.

98. Texas has been unjustly enriched by receiving, and claiming the right to receive, more water than it is entitled to under the Compact.

FIFTH CLAIM FOR RELIEF

(Violation of the Water Supply Act by the United States)

99. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

100. The United States has an obligation to operate the Project in accordance with, *inter alia*, the Reclamation Act of June 17, 1902, ch. 1093, 32 Stat. 388 as amended and supplemented ("Reclamation Act"), 43 U.S.C. §§ 371 *et seq*., including those portions of

the Reclamation Act called the Water Supply Act of 1958, 43 U.S.C. §390b, the Rio Grande Project Act, ch. 798, 33 Stat. 814, Act of February 25, 1905, section 8 of the Reclamation Act, 43 U.S.C. § 383, and the Compact, 53 Stat. 785, NMSA 1978 § 72-15-23.

101. The Water Supply Act, in 43 U.S.C. § 390b(e), prohibits the Bureau of Reclamation from making major operational changes to federal reclamation projects, including the Project, without the approval of Congress.

102. The United States has made major operational changes to the Project without Congressional approval by, among other things, executing contracts allowing significant amounts of Project water to be used for municipal and industrial purposes in the City of El Paso and elsewhere in Texas; by approving major operational changes to the Project in the 2008 Operating Agreement, including but not limited to allowing for carryover storage and materially altering the historical allocation of water between New Mexico and Texas; and by adopting or declining to adopt accounting methods that have materially altered Project operations and allocations.

103. Contrary to the Water Supply Act, the United States did not obtain the approval of Congress prior to taking any of these actions.

104. New Mexico and its citizens have suffered and will continue to suffer harm because of the United States' failure to follow the Water Supply Act.

SIXTH CLAIM FOR RELIEF

(Improper Compact and Project Accounting Against the United States)

105. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

106. The United States has a duty to conduct annual Project accounting in a manner that is consistent with the Compact.

107. The United States has breached this duty through improper accounting, including but not limited to: failing to account for depletions to Project surface flow caused by groundwater pumping and unauthorized surface diversions in Texas and groundwater pumping and surface diversions in Mexico in excess of the 60,000 acre-feet annually Mexico is allowed under the 1906 Convention, and by adopting accounting practices that artificially inflate the amount of Project water allocated to Texas, including but not limited to: carryover accounting; monthly evaporation accounting for Credit Water; improperly allocating credits to Texas in Project accounting; failing to allocate water saved by efficiency improvements equally to all Project lands; not accounting for all usable Project water in Texas; allowing EPCWID to call for additional water from Project storage when Project return flows are already available to supply EPCWID lands; not accounting for or obtaining Commission approval for municipal transfers; and various other improper and irregular means, all to the detriment of New Mexico.

SEVENTH CLAIM FOR RELIEF

(Violation of the Miscellaneous Purposes Act and the Compact Against Texas and the United States)

108. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

109. The Miscellaneous Purposes Act ("MPA") allows for the sale of surplus waters under conditions set forth in 43 U.S.C. § 521. Because the Compact incorporates the Project, the United States cannot take any actions or make any changes to Project operations that

materially alter the Compact's apportionment. This includes making unilateral determinations that Project water is available for non-irrigation or non-Project uses; that provision of Project water for these uses is not detrimental to the Project, the rights of Project beneficiaries, or the Compact's apportionment; or proceeding to sell or distribute Project waters pursuant to contracts executed under the MPA or any other authority without the express prior authorization of the Compacting States.

110. Contrary to the Compact, the United States and Texas have allowed Project water released from Elephant Butte Reservoir to be diverted from the Rio Grande and used in Texas for purposes other than Project irrigation, including but not limited to municipal and industrial uses in the City of El Paso.

111. The United States, with the participation of Texas and its political subdivisions, has entered into Miscellaneous Purposes Act contracts in violation of the Miscellaneous Purposes Act and Compact. Specifically, the United States, with the participation of Texas and its political subdivisions, has entered into agreements allowing Project water to be used for non-Project purposes without the approval of New Mexico, despite available alternative water supplies and even though the delivery of such Project water is detrimental to the Project, New Mexico, and EBID.

112. The United States' and Texas' actions have reduced New Mexico's water supplies and deprived New Mexico of the equities and protections it bargained for when it entered into the Compact.

113. The acts and conduct of the United States and Texas in failing to comply with the Miscellaneous Purposes Act and Compact have caused grave and irreparable injury to

New Mexico and its citizens who are entitled to receive and use the water apportioned to them pursuant to the Compact.

114. Grave and irreparable injury will be suffered in the future by New Mexico and its citizens unless relief is afforded by this Court to prevent the United States and Texas from continuing to disregard the Miscellaneous Purposes Act in violation of the Compact.

115. New Mexico has sustained damages arising from the actions of the United States and Texas.

EIGHTH CLAIM FOR RELIEF

(Improper Project Maintenance Against the United States)

116. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

117. The United States has transferred operation and maintenance responsibility for most Project works to the districts, but it retains the responsibility to operate and maintain the Project's storage reservoirs, diversion structures, and the main channel of the Rio Grande.

118. In derogation of these responsibilities, the United States has allowed the growth of water-consuming vegetation around Project reservoirs and along the channel of the Rio Grande. This vegetation consumes large quantities of Project water each year and can reduce water transport efficiency.

119. The United States has also allowed the channel of the Rio Grande, which is used to deliver water to the districts, to fill with silt and other debris. The siltation of the river channel has the effect of slowing the flow of water through the channel, increasing evaporation and seepage losses from the river, and reducing the efficiency of other Project works, including but not limited to Project drains.

120. The acts and conduct of the United States in failing to comply with its responsibilities to properly maintain the Project have caused grave and irreparable injury to New Mexico and its citizens by causing or increasing the loss of water from the Project and creating inefficiencies in the Project's delivery of water which are then charged to New Mexico pursuant to the 2008 Operating Agreement.

121. Grave and irreparable injury will be suffered in the future by New Mexico and its citizens unless relief is afforded by this Court to prevent the United States from continuing to disregard its responsibility to properly maintain the Project.

122. New Mexico has sustained damages arising from the actions of the United States.

NINTH CLAIM FOR RELIEF

(Failure to Enforce the 1906 Convention and Compact Violation Against the United States)

123. New Mexico incorporates the allegations in all preceding paragraphs as if fully set forth herein.

124. Article XIV of the Compact states, "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."

125. Article IV of the 1906 Convention provides in relevant part that Mexico "waives any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the present Mexico Canal and Fort Quitman, Texas."

126. Despite Mexico's agreement in the 1906 Convention to waive any and all claims to the waters of the Rio Grande in the Project area beyond the 60,000 acre-feet annually it receives under the 1906 Convention, pumping of groundwater hydrologically connected

to the Rio Grande and unauthorized surface diversions from the Rio Grande have greatly increased in Mexico above Fort Quitman, Texas, since 1906, creating deficits in the shallow alluvial aquifer that have reduced Project efficiency, impacted Project releases, reduced return flows, and decreased the amount of water in Project Storage available for future use.

127. Despite the negative effect on Project deliveries attributable to water diversions in Mexico in excess of the 60,000 acre-feet annually guaranteed to Mexico by the 1906 Convention, the United States has failed to enforce the 1906 Convention. Nor has the United States taken actions to ensure Compact water allocations from the Project are not diminished by the loss of water to Mexico, in violation of the Compact.

128. The acts and conduct of the United States in failing to enforce the 1906 Convention or comply with the Compact have caused grave and irreparable injury to New Mexico and its citizens.

129. Grave and irreparable injury will be suffered in the future by New Mexico and its citizens unless relief is afforded by this Court to prevent the United States from continuing to disregard its responsibility to enforce the 1906 Convention and to comply with the Compact.

130. New Mexico has no effective remedy to enforce its rights under the Treaty or Compact, except by invoking the Court's original jurisdiction in this proceeding.

131. New Mexico has no adequate remedy at law to enforce its rights to the waters of the Rio Grande.

132. New Mexico has sustained damages arising from the actions of the United States.

WHEREFORE, the State of New Mexico respectfully prays that the Court:

A. Declare the rights of the State of New Mexico to the waters of the Rio Grande pursuant to and consistent with the Compact;

B. Issue its Decree commanding the State of Texas, its officers, citizens and political subdivisions to cease and desist all actions which violate the Compact;

C. Issue its Decree commanding the United States, its officers, and agencies to cease and desist all actions which violate the Compact;

D. 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;

E. Find and declare that the 2008 Operating Agreement violates the Compact and the Water Supply Act and is void as a matter of law, and enjoin the United States, its officers, and its agencies from implementing the 2008 Operating Agreement;

F. Declare that MPA contracts the United States has executed with the City of El Paso and others violate the Compact and the MPA and enjoin the United States, its officers, and its agencies from releasing and delivering Project water for non-irrigation purposes until the United States complies with the MPA and the Compact;

G. Declare that the United States, its officers, and its agencies are not authorized to reduce or release New Mexico's Compact Credit Water from Project Storage for any purpose without the express authorization of New Mexico or the Commission and enjoin the United States, its officers, and its agencies from reducing or releasing Compact Credit Water except as directed by New Mexico or the Commission;

H. Declare that the United States, its officers, and its agencies have violated the Compact by failing to properly account for Project operations and order the United States, its officers, and its agencies to properly account for Project operations, including in Texas and Mexico;

I. Declare that the United States, its officers, and its agencies have violated the Compact by failing to maintain the Project and order the United States, its officers, and its agencies to properly maintain Project infrastructure under the United States' control;

J. Declare that the United States, its officers, and its agencies have violated the Compact by failing to enforce the 1906 Convention and order the United States, its officers, and its agencies to prevent Project water allocations from being diminished by the loss of water to Mexico;

K. 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 United States' past and continuing violations of the Compact;

L. Grant all such other costs and relief, in law or in equity, that the Court deems just and proper.

Respectfully submitted,

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