

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

**THE COMPACTING STATES' JOINT RESPONSE TO THE
STATUS REPORT OF THE IRRIGATION DISTRICTS**

The States of Colorado, New Mexico, and Texas (“Compacting States”) jointly submit this response to the Joint Status Report of *Amici Curiae* El Paso County Water Improvement District No. 1 and Elephant Butte Irrigation District and Request for Opportunity to Make Oral Presentations at Status Conference, filed October 2, 2024 (Dkt. 6) (“Districts Report”).

1. Elephant Butte Irrigation District (“EBID”) and El Paso County Water Improvement District No. 1 (“EPCWID”) (together, the “Districts”) filed the Districts Report without leave from the Special Master and without consulting the

Parties. The Districts are creatures of New Mexico and Texas statutes whose boundaries lie wholly within their respective states. See NMSA 1978, § 73-10-16 (1978); Tex. Water Code Ann. § 55.161(a) (West 2002); Tex. Water Code § 12.081(a). In light of the content of the Districts' Report, the Compacting States offer the following brief comments on the proper role of the Districts in this Original Jurisdiction action.

2. The equitable apportionments of water under the Rio Grande Compact belong “to the States, who represent their citizens *parens patriae* in this proceeding.” *Nebraska v. Wyoming*, 325 U.S. 589, 616 (1945); see also *South Carolina v. North Carolina*, 558 U.S. 256, 274 (2010) (“[A] State’s sovereign interest in ensuring an equitable share of an interstate river’s water is precisely the type of interest that the State, as *parens patriae*, represents on behalf of its citizens.”). The Compacting States alone possess the “core state prerogative to control water within their own boundaries.” *Tarrant Reg’l Water Dist. v. Herrmann*, 569 U.S. 614, 632 (2013). Therefore, it has long been established that “each State must be deemed to represent all its citizens,” including the Districts. *Nebraska v. Wyoming*, 515 U.S. 1, 21 (1955).

3. As the Districts acknowledge, the Court has already considered and “denied their motions to intervene in October 2017” in accordance with these principles. Districts Report ¶ 8; see also *Texas v. New Mexico*, 138 S. Ct. 349 (2017);

First Interim Report of the Special Master at 251-59, 270-275 (Feb. 9, 2017) (reasoning that neither EBID nor EPCWID met the burden to demonstrate a compelling interest warranting intervention under the test in *South Carolina*, 558 U.S. at 274-75).

4. The basis for that decision remains as correct now as it was in 2017. New Mexico represents the interests of EBID with respect to New Mexico's Compact apportionment, and Texas represents the interests of EPCWID with respect to Texas's Compact apportionment. The Compacting States must balance the interests of all of their water users in this litigation, and the question of the division of each State's equitable apportionment among those individual users is answered by State law, not the Compact. *See, e.g. New Jersey v. New York*, 345 U.S. 369, 373 (1953) (explaining that any other rule would draw the Court "into an intramural dispute over the distribution of water within [a state]"). In the words of the United States, "EPCWID's [and EBID's] receipt and delivery of Project water within its service area has no effect on how water is allocated among the States under the Compact. Those contractual rights and obligations are considered only after the respective rights of the States under the Compact – the subject of this original action – are defined." U.S. Resp. to EPCWID Mot. to Intervene 10 (June 10, 2015).

5. To be sure, the outcome of this case is important to the Districts. But that is no less true for each of the water users in the Lower Rio Grande, including

each of the participating *amici* in both States. Indeed, while the Districts play an important role as “a carrier and distributor of the water,” *Nebraska v. Wyoming*, 325 U.S. at 614-16, they enjoy no independent right to use water. Rather, the use of the water is reserved “for the use of the land owners” such as the other *amici* in this case. *Ickes v. Fox*, 300 U.S. 82, 95 (1937). Although the Compacting States value the role the Districts play, they must weigh the interests of the Districts along with every other water user within their borders.

6. The Compacting States continue to welcome the Districts’ limited participation in this case as *amici curiae*, but the privileges of that status should be the same for all water users whom the Court and the prior Special Masters have allowed to participate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this October 16, 2024, I caused a true and correct copy of the foregoing **The Compacting States’ Joint Response to the Status Report of the Irrigation Districts** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was made by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,

/s/ Jeffrey J. Wechsler

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