

# Texas v. New Mexico water case advances in U.S. Supreme Court process

**FOR IMMEDIATE RELEASE**

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A dispute over water rights between the states of Texas and New Mexico will continue. The U.S. Supreme Court's Special Master assigned to the case, Texas v. New Mexico et al, issued a final report today recommending that the United States Supreme Court deny the Motion to Dismiss by New Mexico and the Motions to Intervene by El Paso County Water Improvement District No. 1 and Elephant Butte Irrigation District. The State of Texas brought litigation to the U.S. Supreme Court because New Mexico's ever increasing water use and groundwater pumping below Elephant Butte Reservoir deprives Texas of water apportioned to it under the 1938 Rio Grande Compact. Texas agrees with the Special Master's recommendations and appreciates the logical approach used in his report to derive his conclusions.

"The issuance of the report clears one more important hurdle for this very important case to move forward," said Rio Grande Compact Commissioner Pat Gordon. "I have said from the beginning of this case Texas was right in pursuing litigation especially after discussions with the New Mexico Attorney General have failed. This report defines the parties to the litigation and provides a strong foundation on which Texas has built its case. We are ready to move the case forward."

The Compact apportions the waters of the Rio Grande among the signatory states of Colorado, New Mexico, and Texas. The Compact apportions all of the water that New Mexico delivers into Elephant Butte Reservoir to Texas, subject to the United States' Treaty obligation to Mexico and the United States' project contract with EBID in New Mexico. Texas is deprived of water apportioned to it in the Compact because New Mexico has authorized and permitted wells that have been developed near the Rio Grande in New Mexico. The more than 3,000 wells pump tens of thousands of acre-feet of water that is hydrologically connected to the Rio Grande. In addition, New Mexico has permitted wells that

would facilitate water use, which in the future will likely significantly increase pumping of Compact water. The pumping has both a direct and indirect effect on Texas' ability to obtain the water the Compact apportioned to it.

The Special Masters' report rejects several of New Mexico's claims involving their delivery obligation to Elephant Butte Reservoir and state law governing water below the reservoir. In rejecting New Mexico's claim, that New Mexico water appropriation law should trump the Compact over the water New Mexico diverts from reaching Texas, the Special Master unequivocally finds that, "The equitable apportionment achieved by the 1938 Compact commits the water New Mexico delivers to Elephant Butte Reservoir to the Rio Grande Project; that water is not subject to appropriation or distribution under New Mexico state law."

On this point, the Special Master went on to declare that "...New Mexico, through its agents or subdivisions, may not divert or intercept water it is required to deliver pursuant to the 1938 Compact to Elephant Butte Reservoir . . . That water has been committed by compact to the Rio Grande Project for delivery to Texas, Mexico, and lower New Mexico, and that dedication takes priority over all other appropriations granted by New Mexico."

"We appreciate the Special Master's consideration in this critical matter and are confident that Texas' best interests are being taken with the utmost gravity," said Bech Bruun, Chairman of the Texas Water Development Board. "As we continue to move forward with necessary steps to protect the water that rightfully belongs to Texas per the longstanding Compact, we remain hopeful for a fair resolution."

"Texas looks forward to the Supreme Court's adoption of the Special Master's recommendations, the presentation of evidence to the Special Master and ultimately winning the lawsuit," says Texas Commission on Environmental Quality Chairman Bryan W. Shaw, Ph.D., P.E. "I have every confidence that Texas will prevail in this matter."

The timing of the case will become clearer once a case management plan is adopted by the Special Master.