

**In the
Supreme Court of the United States**

—◆—
STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO
and STATE OF COLORADO,

Defendants.

—◆—
**STATE OF TEXAS'S ANSWER TO
COUNTERCLAIMS OF THE
STATE OF NEW MEXICO**
—◆—

STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
BRITTANY K. JOHNSON, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com

* *Counsel of Record*
July 20, 2018

**STATE OF TEXAS'S ANSWER TO THE
COUNTERCLAIMS OF THE
STATE OF NEW MEXICO**

The State of Texas (Texas) answers the State of New Mexico's (New Mexico) Counterclaims as follows:

1. The allegations contained in paragraph 1 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 1.

2. Texas admits the allegations contained in the first and third sentences of paragraph 2. Texas denies the allegations in the second sentence of paragraph 2.

3. The allegations contained in paragraph 3 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 3.

4. The allegations contained in paragraph 4 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 4.

5. Texas admits the allegations contained in the first sentence of paragraph 5. The remaining allegations of paragraph 5 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in the second and third sentences of paragraph 5.

6. The allegations contained in the first and fourth sentences of paragraph 6 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in the first and fourth sentences of paragraph 6. With respect to the allegations contained in the second and third sentences of paragraph 6, Texas alleges that the notices referred to therein are the best evidence of their content. To the extent an answer is required, Texas denies the allegations contained in the second and third sentences of paragraph 6.

7. The allegations contained in paragraph 7 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 7.

8. Texas admits the allegations contained in paragraph 8.

9. Texas admits the allegations contained in the first and second sentences of paragraph 9. With respect to the third sentence in paragraph 9, Texas alleges that the United States delivered water to Mexico pursuant to the 1906 Convention. Except as alleged, Texas denies the allegations in the third sentence of paragraph.

10. Texas alleges that Elephant Butte Reservoir is part of the Rio Grande Reclamation Project (Project) that is administered by the Bureau of Reclamation (Reclamation). Texas further alleges

that water is released from the reservoir for delivery to Mexico and Project beneficiaries in southern New Mexico and western Texas, and that these releases are pursuant to the 1938 Rio Grande Compact (Compact), which fully incorporated the Project. Except as alleged, Texas denies the allegations contained in paragraph 10.

11. Texas admits the allegations contained in paragraph 11.

12. Texas admits the allegations contained in paragraph 12.

13. Responding to the allegations contained in paragraph 13, Texas alleges that the Elephant Butte Irrigation District (EBID) operations and the El Paso County Water Improvement District No. 1 (EPCWID) operations are subject to the terms of the Compact. Except as alleged, Texas denies the allegations contained in paragraph 13.

14. Texas admits the allegations contained in the first and second sentences of paragraph 14. With respect to the allegations contained in the remainder of paragraph 14, Texas alleges that the 1938 Contract is the best evidence of its contents. Except as admitted or alleged, Texas denies the remaining allegations contained in paragraph 14.

15. Texas admits the allegations contained in paragraph 15.

16. Texas admits the allegations contained in paragraph 16.

17. Responding to the allegations contained in paragraph 17, Texas alleges that the Compact is the best evidence of its contents. Except as alleged, the allegations contained in paragraph 17 are conclusions of law to which no answer is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 17.

18. Texas alleges that the provisions of the Compact are the best evidence of their contents. Except as alleged, Texas denies the allegations contained in paragraph 18.

19. Texas admits the allegations contained in paragraph 19.

20. Responding to the allegations contained in paragraph 20, Texas alleges that Article IV of the Compact is the best evidence of its contents. Texas further alleges that in 1948, the Commission moved the location of the New Mexico delivery requirement from San Marcial to Elephant Butte Reservoir. Except as alleged, Texas denies the allegations contained in paragraph 20.

21. Responding to the allegations contained in paragraph 21, Texas alleges that Articles III, IV, and VI of the Compact are the best evidence of their contents. Except as alleged, Texas denies the allegations contained in paragraph 21.

22. Responding to the allegations contained in paragraph 22, Texas alleges that Article VI of the Compact is the best evidence of its contents. Except

as alleged, Texas denies the allegations contained in paragraph 22.

23. Responding to the allegations contained in paragraph 23, Texas alleges that Article VII of the Compact is the best evidence of its contents. Except as alleged, Texas denies the allegations contained in paragraph 23.

24. Texas admits the allegations contained in paragraph 24.

25. Texas admits the allegations contained in the first and second sentences of paragraph 25. The allegations contained in the third sentence of paragraph 25 are vague and ambiguous, and on that basis, Texas denies the allegations contained in the third sentence of paragraph 25.

26. The allegations contained in paragraph 26 are legal conclusions to which no answer is required. To the extent that an answer is required, Texas denies the allegations contained in paragraph 26.

27. Texas alleges that Reclamation releases water from Elephant Butte Reservoir for EBID, EPCWID, and Mexico. Except as alleged, the allegations contained in paragraph 27 are legal conclusions to which no answer is required. To the extent that an answer is required, Texas denies the allegations contained in paragraph 27.

28. Texas admits the allegations contained in paragraph 28.

29. Texas admits the allegations contained in paragraph 29.

30. Responding to the allegations contained in paragraph 30, Texas alleges that water is provided to lands in Hudspeth County, Texas, that are part of the Hudspeth County Conservation and Reclamation District. Except as alleged, Texas denies the allegations contained in paragraph 30.

31. Texas admits the allegations contained in paragraph 31.

32. Texas denies the allegations contained in the first and second sentences of paragraph 32. Responding to the allegations in the third sentence of paragraph 32, those allegations contain legal conclusions to which no answer is necessary. To the extent that an answer is required, Texas denies the allegations contained in the third sentence of paragraph 32.

33. Texas admits the first sentence of paragraph 33. Texas denies the allegations in the second sentence of paragraph 33. Texas admits the allegations in the third sentence of paragraph 33. Responding to the allegations contained in the fourth sentence of paragraph 33, Texas alleges that groundwater pumping in New Mexico, including but not limited to municipal pumping by the City of Las Cruces, has adversely affected surface water flows in the Project area. Except as admitted or alleged, Texas denies the allegations contained in the fourth sentence of paragraph 33.

34. Texas is without knowledge or information sufficient to form any belief as to the truth of the allegations of paragraph 34, and on that basis denies the allegations contained in paragraph 34.

35. Texas denies the allegations contained in paragraph 35.

36. Texas admits the allegations contained in the first sentence of paragraph 36. Texas denies the allegations contained in the second sentence of paragraph 36.

37. Texas denies the allegations contained in paragraph 37.

38. Texas admits the allegations contained in paragraph 38.

39. Texas denies the allegations contained in paragraph 39.

40. Texas denies the allegations contained in paragraph 40.

41. Texas denies the allegations contained in paragraph 41.

42. The allegations of paragraph 42 are legal conclusions to which no answer is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 42.

43. Texas alleges that the 2008 Operating Agreement was entered into between the United States, EBID, and EPCWID. Except as alleged, Texas denies the allegations contained in paragraph 43.

44. Texas denies the allegations contained in paragraph 44.

45. Responding to the allegations contained in paragraph 45, Texas alleges that the 2008 Operating Agreement is the best evidence of its contents. Except as alleged, Texas denies the allegations contained in paragraph 45.

46. Texas denies the allegations contained in paragraph 46.

47. Responding to the allegations contained in paragraph 47, Texas alleges that the 2008 Operating Agreement is the best evidence of its contents. Except as alleged, Texas denies the allegations contained in paragraph 47.

48. Texas denies the allegations contained in the first sentence of paragraph 48. The second sentence in paragraph 48 contains legal conclusions to which no response is necessary. To the extent that an answer is required, Texas denies the allegations contained in the second sentence of paragraph 48.

49. Texas denies the allegations contained in paragraph 49.

50. Texas denies the allegations contained in paragraph 50.

51. Texas denies the allegations contained in paragraph 51.

52. Texas alleges that well pumping in New Mexico has increased since 2008. Except as alleged, Texas denies the allegations contained in paragraph 52.

53. Texas is without knowledge or information sufficient to form any belief as to the truth of the allegations in the first sentence of paragraph 53, and on that basis, denies the allegations contained in the first sentence of paragraph 53. Responding to the second sentence in paragraph 53, Texas alleges that it initiated the present proceedings by invoking the Supreme Court's original jurisdiction. Responding to the last sentence of paragraph 53, Texas admits that the district court case is currently stayed. Except as alleged, Texas denies the allegations contained in paragraph 53.

54. Texas alleges that Article VI credits are computed annually and are intended to be approved by the Commission. Except as alleged, Texas denies the allegations contained in paragraph 54.

55. The allegations of paragraph 55 are legal conclusions to which no answer is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 55.

56. Texas is without knowledge or information sufficient to form any belief as to the truth of the allegations in paragraph 56 and, on that basis, denies the allegations contained in paragraph 56.

57. Texas denies the allegations contained in paragraph 57.

58. Responding to the allegations in the first and second sentences of paragraph 58, Texas alleges that the Compact is the best evidence of its contents. Responding to the third sentence of paragraph 58, Texas alleges that it is without knowledge or information sufficient to form any belief as to the truth of the allegations in the third sentence of paragraph 58. Except as alleged, Texas denies the allegations contained in paragraph 58.

59. Texas denies the allegations contained in paragraph 59.

60. Texas alleges that it approved the United States' release of water related to evaporation losses. Except as alleged, Texas denies the allegations contained in paragraph 60.

61. The allegations contained in paragraph 61 are legal conclusions to which no response is necessary. To the extent an answer is necessary, Texas denies the allegations contained in paragraph 61.

62. The allegations contained in paragraph 62 are legal conclusions to which no response is required. To the extent an answer is required, Texas denies the allegations contained in paragraph 62.

63. Answering paragraph 63, Texas incorporates its responses in all preceding paragraphs as if fully set forth herein.

64. Texas denies the allegations contained in paragraph 64.

65. Texas denies the allegations contained in paragraph 65.

66. Texas denies the allegations contained in paragraph 66.

67. Texas denies the allegations contained in paragraph 67.

68. Texas denies the allegations contained in paragraph 68.

69. Texas denies the allegations contained in paragraph 69.

70. Texas denies the allegations contained in paragraph 70.

71. Texas denies the allegations contained in paragraph 71.

72. The allegations contained in paragraph 72 are addressed solely to the United

States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 72.

73. The allegations contained in paragraph 73 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 73.

74. The allegations contained in paragraph 74 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 74.

75. The allegations contained in paragraph 75 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 75.

76. The allegations contained in paragraph 76 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 76.

77. The allegations contained in paragraph 77 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 77.

78. The allegations contained in paragraph 78 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 78.

79. The allegations contained in paragraph 79 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 79.

80. The allegations contained in paragraph 80 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 80.

81. The allegations contained in paragraph 81 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 81.

82. The allegations contained in paragraph 82 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 82.

83. The allegations contained in paragraph 83 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 83.

84. The allegations contained in paragraph 84 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 84.

85. The allegations contained in paragraph 85 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 85.

86. The allegations contained in paragraph 86 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 86.

87. The allegations contained in paragraph 87 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 87.

88. The allegations contained in paragraph 88 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 88.

89. The allegations contained in paragraph 89 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 89.

90. The allegations contained in paragraph 90 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 90.

91. Answering paragraph 91, Texas incorporates its responses in all preceding paragraphs as if fully set forth herein.

92. Texas denies the allegations contained in paragraph 92.

93. Texas denies the allegations contained in paragraph 93.

94. Texas denies the allegations contained in paragraph 94.

95. Texas denies the allegations contained in paragraph 95.

96. Texas denies the allegations contained in paragraph 96.

97. Texas denies the allegations contained in paragraph 97.

98. Texas denies the allegations contained in paragraph 98.

99. The allegations contained in paragraph 99 are addressed solely to the United States and do not require a response from Texas. To

the extent a response is required, Texas denies the allegations contained in paragraph 99.

100. The allegations contained in paragraph 100 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 100.

101. The allegations contained in paragraph 101 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 101.

102. The allegations contained in paragraph 102 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 102.

103. The allegations contained in paragraph 103 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 103.

104. The allegations contained in paragraph 104 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 104.

105. The allegations contained in paragraph 105 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 105.

106. The allegations contained in paragraph 106 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 106.

107. The allegations contained in paragraph 107 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 107.

108. Answering paragraph 108, Texas incorporates its responses to the preceding paragraphs by references as if fully set forth herein.

109. Texas denies the allegations contained in paragraph 109.

110. Responding to the allegations contained in paragraph 110, Texas alleges that the delivery of Project water to the City of El Paso, Texas, is a valid action pursuant to relevant federal law, including the Compact. Except as alleged, Texas denies the allegations contained in paragraph 110.

111. Texas denies the allegations contained in paragraph 111.

112. Texas denies the allegations contained in paragraph 112.

113. Texas denies the allegations contained in paragraph 113.

114. Texas denies the allegations contained in paragraph 114.

115. Texas denies the allegations contained in paragraph 115.

116. The allegations contained in paragraph 116 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 116.

117. The allegations contained in paragraph 117 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 117.

118. The allegations contained in paragraph 118 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 118.

119. The allegations contained in paragraph 119 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 119.

120. The allegations contained in paragraph 120 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 120.

121. The allegations contained in paragraph 121 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 121.

122. The allegations contained in paragraph 122 are addressed solely to the United States and do not require a response from Texas. To the extent a response is required, Texas denies the allegations contained in paragraph 122.

123. Answering paragraph 123, Texas incorporates its responses in all preceding paragraphs as if fully set forth herein.

124. The allegations contained in paragraph 124 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 124.

125. The allegations contained in paragraph 125 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 125.

126. The allegations contained in paragraph 126 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 126.

127. The allegations contained in paragraph 127 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 127.

128. The allegations contained in paragraph 128 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 128.

129. The allegations contained in paragraph 129 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 129.

130. The allegations contained in paragraph 130 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 130.

131. The allegations contained in paragraph 131 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 131.

132. The allegations contained in paragraph 132 are addressed solely to the United States and do not require a response from Texas. To the extent that a response is required, Texas denies the allegations contained in paragraph 132.

◆

AFFIRMATIVE DEFENSES

1. New Mexico's Counterclaims and each claim therein fails to state a claim upon which relief can be granted against Texas.

2. New Mexico's Counterclaims are barred from recovery, in whole or in part, by the equitable doctrine of unclean hands.

3. New Mexico's Counterclaims are barred from recovery, in whole or in part, by its failure to mitigate any of its alleged damages.

4. New Mexico's Counterclaims are in excess of the original jurisdiction exercised over Texas's suit under Article III, Section 2 of the United States Constitution, and section 1251(a) of Title 28 of the United States Code.

◆

**PRAYER FOR RELIEF ON THE STATE OF
NEW MEXICO'S COUNTERCLAIMS**

WHEREFORE, the State of Texas respectfully prays that the Court:

1. Dismiss the State of New Mexico's Counterclaims with prejudice;

2. Declare the rights of the State of Texas to the waters of the Rio Grande pursuant to and consistent with the 1938 Rio Grande Compact and the Rio Grande Project Act;

3. Issue its Decree commanding the State of New Mexico, its officers, citizens, and political subdivisions, to: (a) deliver the waters of the Rio Grande in accordance with the provisions of the 1938 Rio Grande Compact; and (b) cease and desist all actions which interfere with and impede the authority of the United States to operate the Rio Grande Project consistent with the 1938 Rio Grande Compact;

4. Award to the State of Texas all damages and other relief, including pre-judgment and post-judgment interest, for the injuries suffered by the State of Texas as a result of the State of New Mexico's past and continuing violations of the 1938 Rio Grande Compact and the Rio Grande Project Act; and

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

Respectfully Submitted,

STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
BRITTANY K. JOHNSON, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com

* *Counsel of Record*

July 20, 2018