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October 4, 2018

VIA FEDERAL EXPRESS

Scott S. Harris, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
sharris@supremecourt.gov

Re: *Texas v. New Mexico*, No. 65 Orig.
Motion to Extend Time to File Motion for Review

Dear Mr. Harris:

Pursuant to Supreme Court Rule 30.4, the State of Texas respectfully moves for an extension of the time for filing a motion for review of the River Master's September 6, 2018 final determination in *Texas v. New Mexico*, No. 65 Orig.

A motion for review of that final determination is currently due, pursuant to paragraph III(D) of the amended decree entered by this Court, on October 9, 2018 (the first non-holiday, non-weekend day following Saturday, October 6, 2018, *see* Sup. Ct. R. 30.1). The State of Texas requests an extension of that deadline by 60 days, making a new deadline of December 10, 2018 (the first non-weekend day following Saturday, December 8, 2018, *see* Sup. Ct. R. 30.1).

1. In 1988, the Court entered an amended decree in this original action regarding the Pecos River Compact. *Texas v. New Mexico*, 485 U.S. 388 (1988). The amended decree directs an appointed River Master to make certain calculations of water shortfalls and overages pursuant to the Compact. *Id.* at 391.

2. Paragraph III(D) of the amended decree provides a mechanism to seek this Court's review of a final determination by the River Master:

A party seeking review of a Final Determination must file a motion with the Clerk of this Court within thirty (30) days of its adoption, which motion shall set forth the Final Determination on which review is sought and a concise statement of the basis of the claim that the Final Determination is clearly erroneous.

Id. at 393. No party has yet invoked this procedure for seeking this Court's review of a River Master final determination.

3. In 2014, the remnants of Tropical Storm Odile caused heavy rainfall in the Pecos River basin in New Mexico and Texas. New Mexico and Texas disagree about how evaporative losses resulting from that flooding event should be calculated and distributed between the States under the Compact. For Water Years 2014 and 2015, *see id.* at 389 (defining water years), the River Master did not apportion evaporative losses due to the flooding event. New Mexico did not object. In 2017, however, after retaining new counsel, New Mexico disputed apportionment of the evaporative losses that occurred in 2014 and 2015.

4. On June 28, 2018, the Court granted an unopposed two-month extension of the River Master's deadline to submit the Water Year 2017 final accounting. On September 6, 2018, the River Master filed his accounting for Water Year 2017, apportioning the 2014 and 2015 evaporative losses between Texas and New Mexico. The current deadline for filing a motion for review pursuant to paragraph III(D) of the amended decree is 30 days after that final determination, which calculates to October 9, 2018 (the first non-holiday, non-weekend day following Saturday, October 6, 2018, *see* Sup. Ct. R. 30.1).

5. Additional time is warranted to allow preparation of a motion for review, for two reasons. First, the press of business from numerous, complex matters with deadlines during the current window for filing a certiorari petition has required significant time and attention from the undersigned counsel for the State of Texas, including:

Presenting or providing backup for oral argument in:

- *Tex. Educ. Agency v. U.S. Dep't of Educ.*, No. 18-60500 (5th Cir.) (oral argument Oct. 3, 2018)
- *Tarrant Reg. Water Dist. v. Johnson*, No. 17-0095 (Tex.) (oral argument Oct. 30, 2018)
- *Whole Woman's Health v. Paxton*, No. 17-51060 (5th Cir.) (oral argument week of Nov. 5, 2018)

Preparation of briefing in:

- *Tarrant Reg. Water Dist. v. Johnson*, No. 17-0095 (Tex.): brief filed Sept. 14, 2018
- *United States v. California*, No. 18-16496 (9th Cir.): brief filed Sept. 25, 2018
- *Apple Inc. v. Pepper*, No. 17-204 (U.S.): brief filed Oct. 1, 2018
- *Whole Woman's Health Alliance v. Paxton*, (W.D. Tex.): reply brief due Oct. 5, 2018
- *Gamble v. United States*, No. 17-646 (U.S.): brief due Nov. 1, 2018

6. Second, a motion for review requires substantial care in its preparation and authorization—the motion must contain all of the State's argument—and the undersigned counsel for the State of Texas assumed office only recently and is in the process of familiarizing himself with this matter. (Relatedly, the State of Texas requests the Court to list the undersigned as counsel of record for the State.)

7. No meaningful prejudice would arise from the requested extension, as illustrated by the previous, unopposed two-month extension of the River Master's deadline to file his final determination.

For the foregoing reasons, the State of Texas respectfully requests a 60-day extension of the deadline for filing a motion for review of the River Master's final determination, creating a new deadline of December 10, 2018.

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Sincerely,



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