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**REQUEST FOR ARBITRATION  
UNDER THE RULES GOVERNING THE ADDITIONAL FACILITY FOR THE  
ADMINISTRATION OF PROCEEDINGS BY THE INTERNATIONAL  
CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
AND  
THE NORTH AMERICAN FREE TRADE AGREEMENT**

between

**BAYVIEW IRRIGATION DISTRICT et al.,**

**Claimants,**

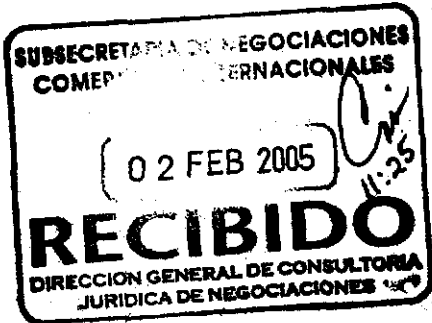
and

**THE UNITED MEXICAN STATES,**

**Respondent.**



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In accordance with the provisions of Article 1120(1)(b) of the North American Free Trade Agreement (NAFTA) and in compliance with the requirements of Schedule C of the Rules Governing the Additional Facility for the Administration of Proceedings (Additional Facility) by the Secretariat of the International Centre for Settlement of Investment Disputes (ICSID), Claimants, Bayview Irrigation District # 11; Brownsville Irrigation District; Cameron County Irrigation District #2; Cameron County Irrigation District #6; Delta Lake Irrigation District; Donna Irrigation District Hidalgo County #1; Engelman Irrigation District; Hidalgo County Irrigation District #1; Hidalgo County Irrigation District #2; Hidalgo County Irrigation District #5; Hidalgo County Irrigation District #6; Hidalgo County Irrigation District #16; Hidalgo & Cameron County Irrigation District #9; La Feria Irrigation District Cameron County #3; Santa Maria Irrigation District Cameron County #4; United Irrigation District; Valley Acres Irrigation

District; Arthur E. Beckwith; W.G. Bell Jr. Trust; Luther Bradford; Capote Farms, Ltd.; Estate of E.F. Davis, Jr.; Richard Drawe; Electric Gin Company of San Benito; Odus D. Emery, Jr.; Willard Fike; Fike Farms; Fuller Farms; N.H. Kitayama; Krenmueller Farms; Moore & Sons Farms Inc.; North Alamo Water Supply Corporation; Bernadette M. Oeser; Donald Phillipp; Francis Phillipp; Pine Tree Conservation Society; Timothy Reid and Estates of Jesse Reid and Norman Reid; Juan F. Ruiz; James D. Russell; Sam Sparks, L.P.; Gregory Schreiber; Rita Schreiber; Charles Shofner; Theimer Trust; and Julie G. Uhlhorn hereby submit their Request for Arbitration of their claim against the United Mexican States (Respondent). Claimants respectfully request that the Secretary-General of ICSID register this Request for Arbitration in the Arbitration (Additional Facility) Register in accordance with Article 4 of Schedule C of the Additional Facility Rules, and provide notice to the parties of such registration.

#### **Parties to the Dispute**

1. Claimant Bayview Irrigation District No. 11 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836.<sup>1</sup> This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Bayview Irrigation District No. 11, is the exclusive owner of the annual

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<sup>1</sup> All seventeen claimants that are water districts are irrigation districts, as defined by the Texas water code. The irrigation districts are agents of the individual water users, not of the state of Texas. In addition, the irrigation districts do not discharge any essentially governmental functions. See A. Broches, *The Convention on the Settlement of Investment Disputes, Some Observations on Jurisdiction*, 5 Colum. J. Transnat'l L. 263, 354-5 (1966). The irrigation districts oversee the allocation of water to the water users within their boundaries and collect maintenance and operation fees for the costs associated with the construction, maintenance, and delivery of the water.

right to the use of 17,478.025 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the Treaty between the United States of America and Mexico relating to the Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande ("the 1944 Treaty"). Bayview Irrigation District No. 11 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Bayview Irrigation District #11  
Route 3, Box 19  
Los Fresnos, TX 78566  
United States of America

2. Claimant Brownsville Irrigation District is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Brownsville Irrigation District, is the exclusive owner of the annual right to the use of 34,876 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Brownsville Irrigation District brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Brownsville Irrigation District  
6925 Coffeepoint Road  
Brownsville, TX 78521  
United States of America

3. Claimant Cameron County Irrigation District #2 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Cameron County Irrigation District #2, is the exclusive owner of the annual right to the use of 147,823.650 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Cameron County Irrigation District #2 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Cameron County Irrigation District #2  
P.O. Box 687  
San Benito, TX 78586  
United States of America

4. Claimant Cameron County Irrigation District #6 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Cameron County Irrigation District #6, is the exclusive owner of the annual right to the use of 52,141.925 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Cameron County Irrigation District #6 brings this action on its own behalf, and on behalf of

the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Cameron County Irrigation District #6  
P.O. Box 295  
Los Fresnos, TX 78566  
United States of America

5. Claimant Delta Lake Irrigation District is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration.

Claimant, Delta Lake Irrigation District, is the exclusive owner of the annual right to the use of 174,776.375 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Delta Lake Irrigation District brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Delta Lake Irrigation District  
Route 1, Box 225  
Edcouch, TX 78538  
United States of America

6. Claimant Donna Irrigation District Hidalgo County #1 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for

arbitration. Claimant, Donna Irrigation District Hidalgo County #1, is the exclusive owner of the annual right to the use of 94,063.600 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Donna Irrigation District Hidalgo County #1 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Donna Irrigation District Hidalgo County #1  
P.O. Box 775  
Donna, TX 78537  
United States of America

7. Claimant Engelman Irrigation District is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Engelman Irrigation District, is the exclusive owner of the annual right to the use of 18,994.350 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Engelman Irrigation District brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Engelman Irrigation District  
P.O. Box 307  
Elsa, TX 78543  
United States of America

8. Claimant Hidalgo County Irrigation District #1 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Hidalgo County Irrigation District #1, is the exclusive owner of the annual right to the use of 85,615 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Hidalgo County Irrigation District #1 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Hidalgo County Irrigation District #1  
P.O. Box 870  
Edinburg, TX 78540  
United States of America

9. Claimant Hidalgo County Irrigation District #2 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Hidalgo County Irrigation District #2, is the exclusive owner of the annual right to the use of 137,675 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Hidalgo County Irrigation District #2 brings this action on its own behalf, and on behalf of the water

users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Hidalgo County Irrigation District #2  
P.O. Box 6  
San Juan, TX 78589  
United States of America

10. Claimant Hidalgo County Irrigation District #5 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Hidalgo County Irrigation District #5, is the exclusive owner of the annual right to the use of 14,234.625 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Hidalgo County Irrigation District #5 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Hidalgo County Irrigation District #5  
P.O. Box 670  
Progreso, TX 78579  
United States of America

11. Claimant Hidalgo County Irrigation District #6 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration.



Claimant, Hidalgo County Irrigation District #6, is the exclusive owner of the annual right to the use of 34,913 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Hidalgo County Irrigation District #6 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Hidalgo County Irrigation District #6  
P.O. Box 786  
Mission, TX 78573  
United States of America

12. Claimant Hidalgo County Irrigation District #16 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration.

Claimant, Hidalgo County Irrigation District #16, is the exclusive owner of the annual right to the use of 30,748.850 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Hidalgo County Irrigation District #16 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Hidalgo County Irrigation District #16  
Attn: United Irrigation District  
P.O. Box 867  
Mission, TX 78573  
United States of America

13. Claimant Hidalgo & Cameron County Irrigation District #9 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Hidalgo & Cameron County Irrigation District #9, is the exclusive owner of the annual right to the use of 177,151.625 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Hidalgo & Cameron County Irrigation District #9 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Hidalgo & Cameron County Irrigation District #9  
P.O. Box 237  
Mercedes, TX 78570  
United States of America

14. Claimant La Feria Irrigation District Cameron County #3 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, La Feria Irrigation District Cameron County #3, is the exclusive owner of the annual right to the use of 75,625.925 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. La Feria Irrigation District Cameron County #3 brings this action on its

own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

La Feria Irrigation District Cameron County #3  
P.O. Box 158  
La Feria, TX 78559  
United States of America

15. Claimant Santa Maria Irrigation District Cameron County #4 is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Santa Maria Irrigation District Cameron County #4, is the exclusive owner of the annual right to the use of 10,182,500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Santa Maria Irrigation District Cameron County #4 brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Santa Maria Irrigation District Cameron County #4  
P.O. Box 158  
La Feria, TX 78559  
United States of America

16. Claimant United Irrigation District is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration.

Claimant, United Irrigation District, is the exclusive owner of the annual right to the use of 64,463.525 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. United Irrigation District brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

United Irrigation District  
P.O. Box 877  
Mission, TX 78573  
United States of America

17. Claimant Valley Acres Irrigation District is an irrigation district organized and existing under the laws of the State of Texas, specifically Title 4, Chapter 58 of the Texas Water Code, Tex. Water Code Ann. §§58.001-.836. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, Valley Acres Irrigation District, is the exclusive owner of the annual right to the use of 16,124.250 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. Valley Acres Irrigation District brings this action on its own behalf, and on behalf of the water users within the District who actually put this water to beneficial use in their farms and fields. This Claimant's address is:

Valley Acres Irrigation District  
P.O. Box 128  
Santa Rosa, TX 78593  
United States of America

18. Claimant Arthur E. Beckwith is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Arthur E. Beckwith, is the exclusive owner of the annual right to the use of 582.450 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Arthur E. Beckwith  
P.O. Box 616  
Progreso, TX 78579  
United States of America

19. Claimant W.G. Bell Jr. Trust, organized and existing under the laws of the State of Texas, is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, W.G. Bell Jr. Trust, is the exclusive owner of the annual right to the use of 2,091.375 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

W.G. Bell Jr. Trust  
P.O. Box 36  
La Villa, TX 78562  
United States of America

20. Claimant Luther Bradford is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Luther Bradford, is the exclusive owner of the annual right to the use of 215.913 acre-feet of the waters of the Rio Grande River and its

tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Luther Bradford  
P.O. Box 280  
San Benito, TX 78579  
United States of America

21. Claimant Capote Farms, Ltd., formerly Capote Farms, Inc., is a limited partnership organized and existing under Title 4, Chapter 153 of the Texas Business Organizations Code, Tx. Bus. Org. §§ 153.001-.555. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Capote Farms, Ltd., is the exclusive owner of the annual right to the use of 550 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Capote Farms, Ltd.  
Route 1, Box 116-A  
Pharr, TX 78577  
United States of America

22. Claimant, Estate of E.F. Davis, Jr., is the duly appointed successor in interest to E.F. Davis, Jr., a natural person who last resided in the State of Texas, United States of America. This Claimant was a national of the United States, and was not a national of Mexico. Claimant, Estate of E.F. Davis, Jr., is the exclusive owner of the annual right to the use of 250 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Estate of E.F. Davis, Jr.  
c/o James Davis, Executor

P.O. Box 703  
Combes, TX 78535  
United States of America

23. Claimant Richard Drawe is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Richard Drawe, is the exclusive owner of the annual right to the use of 112.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Richard Drawe  
P.O. Box 340  
Progreso, TX 78579  
United States of America

24. Claimant Electric Gin Company of San Benito is a corporation organized and existing under the laws of the State of Texas, specifically the Texas Business Corporation Act, Vernon's Ann. Texas St. arts. 1.01-13.08. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Electric Gin Company of San Benito, is the exclusive owner of the annual right to the use of 132.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Electric Gin Company of San Benito  
Attn: Robert Duncan  
P.O. Box 980  
San Benito, TX 78586  
United States of America

25. Claimant Odus D. Emery, Jr. is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Odus D. Emery, Jr., is the exclusive owner of the annual right to the use of 582.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Odus D. Emery Jr.  
1011 Lion Lake Dr. South  
Progreso Lakes, TX 78596  
United States of America

26. Claimant Willard Fike is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Willard Fike, is the exclusive owner of the annual right to the use of 100.150 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Willard Fike  
1601 N. Sharp Road  
Edinburg, TX 78541  
United States of America

27. Claimant Fike Farms is a general partnership organized and existing under Title 4, Chapter 152 of the Texas Business Organizations Code, Tx. Bus. Org. §§ 152.001-.913. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Fike Farms, is the exclusive owner of the annual right to the use of 97.725 acre-feet of the waters of the Rio Grande River and



its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Fike Farms  
1601 N. Sharp Rd.  
Edinburg, TX 78541  
United States of America

28. Claimant Fuller Farms is a general partnership organized and existing under Title 4, Chapter 152 of the Texas Business Organizations Code, Tx. Bus. Org. §§ 152.001-.913. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Fuller Farms, is the exclusive owner of the annual right to the use of 870.298 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Fuller Farms  
1420 Lion Lake Drive North  
Weslaco, TX 78596  
United States of America

29. Claimant N.H. Kitayama is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, N.H. Kitayama, is the exclusive owner of the annual right to the use of 428.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

N.H. Kitayama  
P.O. Box 36  
La Villa, TX 78562  
United States of America

30. Claimant Krenmueller Farms is a general partnership organized and existing under Title 4, Chapter 152 of the Texas Business Organizations Code, Tx. Bus. Org. §§ 152.001-.913. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Krenmueller Farms, is the exclusive owner of the annual right to the use of 3,352.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Krenmueller Farms  
Rural Route 2, Box 77  
San Juan, TX 78589  
United States of America

31. Claimant Moore & Sons Farms Inc. is a corporation organized and existing under the laws of the State of Texas, specifically the Texas Business Corporation Act, Vernon's Ann. Texas St. arts. 1.01-13.08. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Moore & Sons Farms Inc., is the exclusive owner of the annual right to the use of 1,243.975 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Moore & Sons Farms Inc.  
P.O. Box 487  
Progreso, TX 78579  
United States of America

32. Claimant North Alamo Water Supply Corporation is a non-profit corporation organized and existing under the laws of the State of Texas, specifically the Texas

Non-Profit Corporation Act, Vernon's Ann. Texas Civ. St. arts. 1396-1.01-11.01.

North Alamo Water Supply Corporation is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. Claimant, North Alamo Water Supply Corporation, is the exclusive owner of the annual right to the use of 3,750 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

North Alamo Water Supply Corporation  
420 S. Doolittle Road  
Edinburg, TX 78539  
United States of America

33. Claimant Bernadette M. Oeser is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Bernadette M. Oeser, is the exclusive owner of the annual right to the use of 52.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Bernadette M. Oeser  
Route 4, Box 164  
Mercedes, TX 78570  
United States of America

34. Claimant Donald Phillipp is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Donald Phillipp, is the exclusive owner of the annual right to the use of 255.750 acre-feet of the waters of the Rio Grande River and its

tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Donald Phillipp  
12895 F.M. 3067  
La Feria, TX 78559  
United States of America

35. Claimant Francis Phillipp is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Francis Phillipp, is the exclusive owner of the annual right to the use of 229.475 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Francis Phillipp  
12941 F.M. 3067  
La Feria, TX 78559  
United States of America

36. Claimant Pine Tree Conservation Society is a corporation organized and existing under the laws of the State of Maine. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Pine Tree Conservation Society, is the exclusive owner of the annual right to the use of 547.500 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Pine Tree Conservation Society  
4 East 66<sup>th</sup> Street, Suite 1E  
New York, NY 10021  
United States of America

37. Claimant Timothy Reid is a natural person residing in the State of Texas, United States of America. Claimants Estate of Jesse Reid and Estate of Norman Reid are the duly appointed successors in interest to Jesse Reid and Norman Reid, natural persons who last resided in the State of Texas, United States of America. These Claimants are or were nationals of the United States, and are not or were not nationals of Mexico. Claimants, Timothy Reid, Estate of Jesse Reid and Estate of Norman Reid, were at the time of the actions giving rise to this dispute the exclusive owners of the annual right to the use of 175 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. These Claimants' addresses are:

Estates of Jesse Reid and Norman Reid  
c/o Sally Reid, Executrix  
Route 2, Box 64  
Mercedes, TX 78570  
United States of America

Timothy Reid  
Route 2, Box 177  
Weslaco, TX 78596  
United States of America

38. Claimant Juan F. Ruiz is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Juan F. Ruiz, is the exclusive owner of the annual right to the use of 19.103 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Juan F. Ruiz  
30408 F.M. 510  
San Benito, TX 78586

United States of America

39. Claimant James D. Russell is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, James D. Russell, is the exclusive owner of the annual right to the use of 9,145.875 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

James D. Russell  
28481 State Highway 100  
San Benito, TX 78586  
United States of America

40. Claimant Sam R. Sparks, L.P. is a limited partnership organized and existing under Title 4, Chapter 153 of the Texas Business Organizations Code, Tx. Bus. Org. §§ 153.001-.555. This Claimant is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Sam R. Sparks, L.P., is the exclusive owner of the annual right to the use of 4,087.631 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Sam R. Sparks, L.P.  
Route 4, Box 164  
Mercedes, TX 78570  
United States of America

41. Claimant Gregory Schreiber is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Gregory Schreiber, is the exclusive owner of the

annual right to the use of 80 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Gregory Schreiber  
27175 N. Beddoes Road  
La Feria, TX 78559  
United States of America

42. Claimant Rita Schreiber is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Rita Schreiber, is the exclusive owner of the annual right to the use of 175.050 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Rita Schreiber  
27175 N. Beddoes Road  
La Feria, TX 78559  
United States of America

43. Claimant Charles Shofner is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Charles Shofner, is the exclusive owner of the annual right to the use of 2,005 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Charles Shofner  
804 Park View Circle  
Harlingen, TX 78550  
United States of America

44. Claimant Theimer Trust, organized and existing under the laws of the State of Texas, is a juridical person, is a national of the United States, and is not a national of Mexico, and has taken all necessary internal actions to authorize this request for arbitration. This Claimant, Theimer Trust, is the exclusive owner of the annual right to the use of 1,125 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Theimer Trust  
P.O. Box 86  
Progreso, TX 78579  
United States of America

45. Claimant Julie G. Uhlhorn is a natural person residing in the State of Texas, United States of America. This Claimant is a national of the United States, and is not a national of Mexico. Claimant, Julie G. Uhlhorn, is the exclusive owner of the annual right to the use of 375 acre-feet of the waters of the Rio Grande River and its tributaries, allocated to the United States under the 1944 Treaty. This Claimant's address is:

Julie G. Uhlhorn  
402 E. Woodland  
Harlingen, TX 78550  
United States of America

46. Respondent, United Mexican States, is a sovereign State and is a party to both NAFTA and the 1944 Treaty. For purposes of disputes arising under NAFTA, the Government of Mexico's address is as follows:

Lic. Gregorio Canales Ramírez  
Secretaría de Economía  
Dirección General de Inversión Extranjera  
Insurgentes Sur 1940 – 8° Piso  
Col. Florida  
C.P. 1030 México, D.F.



**The Relevant Provisions Embodying the Agreement of the Parties  
to Refer the Dispute to Arbitration**

47. The relevant provisions embodying the agreement of the parties to refer this dispute to arbitration are found in Article 1122 of NAFTA, an agreement between the United States of America and the United Mexican States which expressly authorizes arbitration of these claims under the Additional Facility Rules of ICSID. Claimants, by the filing of this Request under Article 1120 of NAFTA, and by compliance with the Additional Facility Rules of ICSID, hereby consent to this arbitration. As required by Article 1121(3) of NAFTA, Claimants' written consents to arbitration and required waivers are attached to this Request for Arbitration as Annex A. Respondent, by becoming a Party to NAFTA, particularly Article 1122, has already consented to this arbitration. Article 1122 of NAFTA states:

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.
2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:
  - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties.

NAFTA art. 1122.

48. This dispute falls under Article 1120(1)(b) of NAFTA, which states:

Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under: . . .

- (b) Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention . . . .

NAFTA art. 1120(1)(b).

49. Because the United States is, and Mexico is not, a party to the ICSID Convention, these claims properly lie under subsection (b) of Article 1120(1) of NAFTA.
50. These claims, which arose in October of 2002, are timely filed. More than six months, as required by NAFTA Article 1120(1), but less than three years, as required by NAFTA Article 1116(2), have elapsed since the events giving rise to these claims.

Those provisions of NAFTA read:

Except as provided in Annex 1120.1, and *provided that six months have elapsed* since the events giving rise to a claim, a disputing investor may submit the claim to arbitration . . . .

NAFTA art. 1120(1) (emphasis added).

An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

NAFTA art. 1116(2).

51. In compliance with Article 1119 of NAFTA, more than ninety days prior to filing this claim, Claimants sent to Respondent a notice of intent to submit a claim to arbitration. Claimants have also made a good faith attempt to resolve these claims through negotiation with Respondent prior to the filing of this Request for Arbitration, pursuant to Article 1118 of NAFTA. (See Annex B, attached Notice of Intent sent to Respondent on August 27, 2004.)
52. Pursuant to Article 3(1)(e) of Schedule C of the Arbitration (Additional Facility) Rules, the Claimants listed in this Notice of Arbitration who are juridical persons have taken all necessary internal actions to authorize this Notice of Arbitration. A

copy of each juridical Claimant's affidavit that such action has been taken is attached, together with its consent to arbitration, in Annex A.

53. Each Claimant is an Investor and owner of an integrated Investment. This Investment includes, but is not limited to, rights to water located in Mexico; facilities to store and distribute this water for irrigation and domestic consumption; irrigated fields and farms; farm buildings and machinery; and ongoing irrigated agricultural businesses. Claimants have invested millions of dollars in an integrated water delivery system, including pumps, aqueducts, canals, and other facilities for the storage and conveyance of their water to the land on which it is used. Claimants have paid substantial sums for the purchase of water rights, the delivery of water, and the administration of the water system through the Water Master.<sup>2</sup> Each Claimant's Investment is entirely predicated on this right to receive water located in Mexican tributaries. Such water rights have long been recognized as property rights. *See, e.g., Bigham Bros. v. Port Arthur Canal & Dock Co.*, 97 S.W. 686, 688 (Tex. 1906) ("The right of a riparian owner to take water from the stream is property."); *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 753 (1950) ("[The right to irrigate land is] a recognized and adjudicated private property right."). Claimants' water rights were acquired in the expectation of and used for the purpose of economic benefit or other business purposes, specifically agricultural production. Claimants' irrigation water makes possible the more than \$370 million per year irrigated agricultural production in the Lower Rio Grande Valley.

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<sup>2</sup> Water Masters are appointed by the Texas Commission on Environmental Quality. They monitor compliance with water rights, authorize water diversions, and regulate reservoirs.

54. Claimants' integrated investment meets the definition of "investment" contained in NAFTA. Article 1139(g) of NAFTA defines an investment as "real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes." NAFTA art. 1139(g).

55. Claimants' integrated investment meets the definition of "investment" contained in the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("ICSID Convention"). The ICSID Convention intentionally does not define the term "investment."<sup>3</sup> Claimants' Investment, as described in paragraph 53, however, meets any reasonable definition of "investment." In his treatise on ICSID, *The ICSID Convention: A Commentary*, Christoph Schreuer proposes a working definition of "investment":

- (1) Duration should be extended, or expected to be extended;
- (2) There should be actual or expected regularity of profit and return;
- (3) There should be assumption of risk, preferably by both parties to the transaction;
- (4) The commitment envisioned by the transaction should be substantial; and
- (5) The transaction should be significant for the host state's development.<sup>4</sup>

Claimants' Investment plainly satisfies all five factors Mr. Schreuer proposes. Their Investment is the result of decades of hard work and entrepreneurship, leading to the development of healthy and profitable farm businesses wholly dependent upon irrigation water (including their rights in water located in the Mexican tributaries to the Rio Grande); this Investment has produced regular profits, rewarding the

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<sup>3</sup> See Georges R. Delaume, *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States*, 1 Int. Law 64, 70 (1966) ("To give a comprehensive definition ... might have arbitrarily limited the scope of the Convention by making it impossible for the parties to refer to the Centre a dispute which would be considered by the parties as a genuine "investment" dispute though such dispute would not be one of those included in the definition in the Convention.").

<sup>4</sup> Christoph Schreuer, *The ICSID Convention: A Commentary* 140 (2001).

substantial risk and hard work of Claimants; the value of this Investment is substantial (collectively representing hundreds of millions of dollars); and the joint use of the waters of both the Rio Grande and the Colorado (both subjects of the 1944 Treaty) are significant for the development of both Mexico and the United States. Thus, Claimants' Investment meets the ICSID definition of investment.

56. Claimants' integrated investment meets the definition of "investment" contained in the Additional Facility Rules. Article 2(a) of the Additional Facility Rules reads:

The Secretariat of the Centre is hereby authorized to administer, subject to and in accordance with these Rules, proceedings between a State (or a constituent subdivision or agency of a State) and a national of another State, falling within the following categories:

- (a) conciliation and arbitration proceedings for the settlement of legal disputes arising directly out of an investment which are not within the jurisdiction of the Centre because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State;

Additional Facility Rules, art. 2(a). As stated in paragraph 53, each Claimant owns an Investment, and the dispute here arises directly out of that Investment. This dispute is not within the jurisdiction of ICSID because Mexico, the State party to the dispute, is not an Contracting State under ICSID. Thus, this dispute satisfies the jurisdiction of the Additional Facility.

57. In the alternative, this request also satisfies Articles 2(b) and 4(3)(b) of the Additional Facility Rules because the Investment does not rest on ordinary commercial transactions; indeed, there is no commercial relationship between Respondent and the Claimants. Rather, each of the violations of NAFTA submitted for arbitration arises from sovereign acts of Mexico. Article 2(b) of the Rules states, in relevant part:

The Secretariat of the Centre is hereby authorized to administer, subject to and in accordance with these Rules, proceedings between a State (or a constituent subdivision or agency of a State) and a national of another State, falling within the following categories:

- (b) conciliation and arbitration proceedings for the settlement of legal disputes which are not within the jurisdiction of the Centre because they do not arise directly out of an investment, provided that either the State party to the dispute or the State whose national is a party to the dispute is a Contracting State...

Additional Facility Rules, art. 2(b). Therefore, this dispute falls within the jurisdiction of the Additional Facility as described in Article 2(a) or Article 2(b) of the Additional Facility Rules.

#### **Appointment of Arbitrators**

58. Pursuant to Article 1123 of NAFTA, the Arbitral Tribunal is to comprise three arbitrators, one appointed by each party to the arbitration and a third, the presiding arbitrator, to be appointed by agreement of the disputing parties. Claimants intend to appoint an arbitrator pursuant to Article 6 of Schedule C of the Additional Facility Rules.

#### **Summary of the Dispute**

59. Claimants allege that Mexico has violated Chapter 11, Articles 1102, 1105, and 1110 of NAFTA. Article 1102, "National Treatment," provides that NAFTA parties shall treat investors of another party no less favorably than they treat their own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. NAFTA, art. 1102.<sup>5</sup> Article

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<sup>5</sup> Article 1102 states in pertinent part:

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

1105, "Minimum Standard of Treatment," provides that NAFTA parties shall accord to investments of investors of other NAFTA Parties treatment in accordance with international law, including fair and equitable treatment and full protection and security.<sup>6</sup> NAFTA, art. 1105. Article 1110, "Expropriation and Compensation," provides that NAFTA parties must not expropriate investments, either directly or indirectly, or through a measure tantamount to an expropriation, unless such expropriation is for a public purpose, is non-discriminatory, is in accordance with due process of law and the prescribed international minimum standards of treatment under Article 1105(1), and is accompanied by compensation at fair market value. NAFTA, art. 1110.<sup>7</sup> Chapter 11 applies to "measures adopted or maintained by a

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2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part . . . .

NAFTA, art. 1102.

<sup>6</sup> Article 1105 states in pertinent part:

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

NAFTA, art. 1105.

<sup>7</sup> Article 1110 states in pertinent part:

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law and Article 1105(1); and
- (d) on payment of compensation in accordance with paragraphs 2 through 6.

Party relating to investors of another Party.” NAFTA art. 1101(1). A “measure” is “any law, regulation, procedure, requirement or practice.” NAFTA art. 201.

60. This claim submitted for arbitration accrued in October 2002, when Mexico’s water debt (which is owned almost entirely by Claimants) became delinquent. This water debt arose under the 1944 Treaty, which allocated the waters of the Rio Grande River and its tributaries. Claimants’ right to receive this water, which is located in Mexico, is the foundation for their expenditure of millions of dollars in pumps, aqueducts, pipes, irrigated farmland, farm equipment and buildings, and their ongoing agricultural businesses. Claimants, the rightful owners of the majority of the water rights allocated to the United States under the 1944 Treaty, were deprived of this water by measures taken by Mexico in violation of Chapter 11 of NAFTA. As a result, Claimants have suffered damages in an amount between US\$320,124,350 and US\$667,687,930, as calculated by their economic experts.

#### **Factual Background**

61. From 1992 to 2002, Mexico has captured, seized, and diverted to the use of Mexican farmers, the foundation of the Investment (approximately 1,219,521 acre-feet of irrigation water) located in Mexico and owned by Claimants. By diverting Claimants’ water to Mexican farmers, Mexico dramatically increased its irrigated

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2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable. . . .

NAFTA, art. 1110.



agricultural production on the Mexican side of the Rio Grande River, while the crops of United States farmers in the Rio Grande Valley shriveled. Mexico thus treated the investments of United States investors less favorably than it treated its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in violation of Article 1102 of NAFTA. Mexico further withheld fair and equitable treatment from Claimants by flagrantly violating the 1944 Treaty and by unfairly filling the vacuum in the United States market for irrigated fruits and vegetables (which Claimants could not produce without their water) with Mexican crops grown with Claimants' own water. Mexico also nationalized or expropriated Claimants' Investment within Mexico, or took a measure tantamount to nationalization or expropriation of such an Investment, unfairly and without compensation and due process in violation of Article 1110 of NAFTA.

62. The Rio Grande River (also known as Rio Bravo) forms more than 1,200 miles of the border between the United States and Mexico, stretching from north of El Paso, Texas to the Gulf of Mexico. The principal sources of the waters of the lower Rio Grande are the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, all of which rise in Mexico. These six Rio Grande tributaries drain approximately 53,450 square miles of Mexico. The largest and farthest upstream of the tributaries is the Rio Conchos, which flows into the Rio Grande upstream of one of the two international reservoirs, jointly constructed with financing from both the United States and Mexico – the Amistad Reservoir and the Falcon Reservoir.

63. In 1944, the United States and Mexico entered into a treaty "to fix and delimit the rights of the two countries with respect to the waters . . . of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof . . ." Treaty Between the United States of America and Mexico Respecting Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Feb. 3, 1944, U.S.-Mexico, 59 Stat. 1219 (effective Nov. 8, 1945). The 1944 Treaty allocated to the United States "[o]ne-third of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers, provided that this third shall not be less, as an average amount in cycles of five consecutive years, than 350,000 acre-feet (431,721,000 cubic meters) annually . . ." *Id.* § II, art. 4(B)(c). Claimants are the legal successors in interest to most of these water rights allocated to the United States by Mexico.
64. Under the terms of the 1944 Treaty, the United States and Mexico jointly constructed two dams and reservoirs to capture the waters of the Rio Grande and make them available for agricultural irrigation and other purposes. These reservoirs are the Falcon Reservoir and the Amistad Reservoir. The Falcon Reservoir was completed in 1953; the Amistad Reservoir was completed in 1968.
65. Both reservoirs are jointly constructed by the United States and Mexico and are jointly maintained and used for the purpose of storing water for irrigation and municipal use in both countries. These facilities, as well as Claimants' water rights, water conveyance and distribution facilities, irrigation works, farms, equipment and

irrigated farming businesses all constitute an integrated Investment within the meaning of NAFTA and the ICSID Convention, as more fully described above.

66. In direct contravention to the 1944 Treaty and Chapter 11 of NAFTA, Mexico has constructed and operated on tributaries of the Rio Conchos Basin, seven dams and reservoirs, the purpose of which is to collect and divert for use by its own nationals, water rights belonging to Claimants:

- San Gabriel Reservoir was completed on the Florido River in 1981; it holds 0.210 million acre-feet and is used for irrigation.
- Pico de Aguila Reservoir was completed on the Florido River in 1993; it holds 0.045 million acre-feet of water and is used for irrigation.
- La Boquilla Reservoir was completed in 1916 on the Conchos River; it holds 2.340 million acre-feet of water and is used for irrigation and hydroelectricity.
- La Colina Reservoir was completed on the Conchos River in 1927, holds 0.195 acre-feet of water and is used for irrigation and hydroelectricity.
- Francisco I. Madero Reservoir was completed in 1949 on the San Pedro River; it holds 0.280 acre-feet of water and is used for irrigation and sediment control.
- Chihuahua Reservoir was completed on the Chuiscar River in 1960; it holds 0.021 million acre-feet of water and is used for municipal water, irrigation and flood control.
- Luis L. Leon Reservoir was completed on the Conchos River in 1968; it holds 0.290 million acre-feet of water and is used for irrigation and flood control.

67. Since 1992, Mexico has operated these seven dams and reservoirs to artificially manipulate the flows of the tributaries to the Rio Grande so as to divert the natural flows of those tributaries, in violation of both the terms of the 1944 Treaty and Chapter 11, Articles 1102, 1105, and 1110 of NAFTA. One-third of the natural flows of the tributaries (a minimum of 350,000 acre-feet per year) is allotted by the 1944 Treaty to the United States, and the right to use these flows is owned by Claimants. In the 1992-1997 cycle, Mexico delivered only 726,151 acre-feet of water when it should have delivered a total of 1,750,000 acre-feet of water.

Therefore, Mexico accumulated a deficit of 1,023,849 acre-feet. During that same time, approximately 4,350,000 acre-feet of excess water was stored in 12 Mexican reservoirs located in the 1944 Treaty tributary basins, after diversions and releases by Mexico to meet its own water demands. Another 5,900,000 acre-feet of excess water was stored in the reservoirs through October 1999, all of which could have been released downstream to the Rio Grande to meet the minimum United States allotment under the 1944 Treaty.

68. From 1992 to October 1999, Mexico kept all of the water that fell above the Luis Leon Reservoir, retaining approximately 5 million acre-feet of extra water that could have been used to erase the deficit. Satellite photos of Mexican reservoirs and irrigated cropland in Mexico show the availability of water that could have been released to the United States under the 1944 Treaty. In the Luis Leon Reservoir alone, excess flood inflows were available during all of 1993, half of 1994, and half the time from fall 1996 to spring 1999, water which could have been released to the United States during the time deficits were being incurred. By October 2002, an entire water debt of 1,476,181 acre-feet became due and payable.
69. Claimants are the legal owners of 1,219,521 acre-feet of the irrigation water wrongfully withheld and diverted from the Rio Grande by Mexico's manipulation of its dams and reservoirs as of October 2002. These water rights, as well as the dams, reservoirs and delivery facilities, irrigation works, farms, equipment, and irrigated farming businesses of which they are an essential element, form an integrated Investment, the expropriation and diversion of which has severely damaged the ability of Claimants and the farmers they represent to produce crops. For example,

irrigated acreage in Cameron, Hidalgo, and Willacy counties, the three counties where Claimants are located, has decreased by about 29 percent, or 103,210 acres, since 1992. The average loss in business activity in the region from 1998 to 2001 was estimated to be US\$367.6 million per year. The average irrigation use per year in the Texas portion of the Rio Grande Valley decreased by 563,826 acre-feet since 1992. Between 1992 and 2002, nearly US\$1 billion has been lost in decreased business activity and 30,000 jobs have been precluded.

70. Meanwhile, Mexico's imports to the United States through ports of entry in South Texas and Nogales, Arizona of fruits and vegetables have increased dramatically since 1990. Irrigated production of crops in Chihuahua tripled from 1980 to 1999. There has been a decrease in acreage of crops in Chihuahua needing less irrigation and an increase in production of crops like vegetables, fruits, melons, and nuts, which are more profitable but require more water. Total estimated water use for irrigation increased from 1.2 million acre-feet in 1980 to 2.3 million acre-feet in 1997 in Chihuahua.

#### **Violations of NAFTA**

71. Respondent's failure to deliver the water due to Claimants and continued retention of Claimants' water on Respondent's side of the United States-Mexican border violates Articles 1102, 1105, and 1110 of NAFTA.
72. Under Article 1102, "National Treatment," NAFTA parties shall treat investors of another party no less favorably than they treat their own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. By taking Claimants' water rights, which form the

foundation of Claimants' Investment, and providing the water for use by its own nationals, Respondent has accorded Claimants less favorable treatment than that granted to the Mexican investors in like circumstances, in clear violation of the obligations Respondent assumed under NAFTA.

73. Under Article 1105, each Party must grant the investments of investors from another Party treatment in accordance with international law, including fair and equitable treatment, as well as full protection and security. Respondent's intentional violation of the 1944 Treaty (to the substantial damage of Claimants) is a clear violation of international law, and Respondent's usurpation of Claimants' market for irrigated fruits, vegetables and nuts falls well below minimum standards of fairness and equity, denying to Claimants adequate protection of their Investment.
74. Under Article 1110, "Expropriation and Compensation," NAFTA parties must not expropriate investments, either directly or indirectly, or through a measure tantamount to an expropriation, unless such expropriation is for a public purpose, is non-discriminatory, is in accordance with due process of law and the prescribed international minimum standards of treatment under Article 1105(1), and is accompanied by compensation at fair market value.
75. Mexico took a measure tantamount to nationalization or expropriation of Claimants' Investment unfairly and without compensation and due process in violation of Article 1110 of NAFTA when it captured, seized, and diverted to the use of Mexican farmers the water located in Mexico and owned by Claimants.
76. Mexico has neither offered nor paid fair compensation for the water expropriated, nor for the economic damages resulting from its unequal treatment of United States

farmers, nor for its violation of international law and minimum standards of fairness and equity.

### **Relief and Remedies Sought**

77. Based on his study, *Alternative Approaches to Estimate the Impact of Irrigation Water Shortages on Rio Grande Valley Agriculture* (May 17, 2002), Dr. John R. C. Robinson estimates the economic values of Claimants' irrigation water in the lower Rio Grande Valley from 1992-2002 at US\$350 per acre-foot to US\$730 per acre-foot, or a total of US\$320,124,350 to US\$667,687,930 for the taking of Claimant's water, after accounting for a 25 percent loss through evaporation, diversion losses, and transportation losses (1,219,521 acre-feet of water less 25 percent equals 914,641 acre-feet of water). Claimants seek full compensation for the 914,641 acre-feet of water expropriated by Mexico, in the approximate amount of US\$320,124,350 to US\$667,687,930; or, in the alternative, full compensation for the economic damages caused by Mexico's less favorable and unfair treatment of Claimants and their Investment, in the approximate amount of US\$667,687,930; interest on such sums from October 2002 until the date of payment; and costs of attorneys, consultants, the arbitration panel, and such other losses and expenses as are legally allowable, together with such further and additional relief as the Arbitration Tribunal may deem appropriate.

### **Reservation of Rights**

78. Claimants expressly reserve all of their rights, including but not limited to those provided under NAFTA Chapter 11 and under the provisions of the Additional Facility Rules, to set forth their claims in greater detail, and to present evidence and

arguments in support thereof in subsequent filings and presentations to the Arbitral Tribunal that is selected in this manner.

**Conclusion**

79. For the reasons stated above, Claimants, by their undersigned counsel and representatives, respectfully request the Secretary General of ICSID to approve access to the Additional Facility and to register this Notice in the Arbitration (Additional Facility) Register pursuant to Article 4 of the ICSID Additional Facility Rules.

Respectfully submitted,

*Nancie Marzulla*

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Roger J. Marzulla  
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Washington, DC 20036  
(202) 822-6760  
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(202) 247-6006

Dated: January 19, 2005

Counsel for Claimants