



500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814  
OFFICE: 916-446-7979 FAX: 916-446-8199  
SOMACHLAW.COM

March 13, 2020

**Via Electronic and U.S. Mail**

Special Master Michael J. Melloy  
United States Courthouse  
111 Seventh Avenue, S.E.  
P.O. Box 22  
Cedar Rapids, IA 52401  
Email: [TXvNM141@ca8.uscourts.gov](mailto:TXvNM141@ca8.uscourts.gov)

Re: *State of Texas v. State of New Mexico and State of Colorado*  
United States Supreme Court, Original Jurisdiction No. 141

Dear Special Master Melloy:

The State of Texas (Texas) respectfully submits this letter response to the State of New Mexico's (New Mexico) Request for Emergency Hearing, filed and served in this matter this morning (New Mexico Request).

1. Texas does not object to New Mexico's request for an emergency teleconference with the Special Master.
2. Texas recognizes that the travel advisories in place due to COVID-19 present logistical challenges to the timely completion of the deposition schedule in advance of the current May 2, 2020 discovery deadline. Consequently, Texas does not object to a reasonable extension of discovery, and proposes a two-month extension to the discovery deadline. Texas suggests an approximate one-month interim telephonic status conference (on or about April 30, 2020) for the parties to check in with the Special Master.
3. Texas requests that the March 27, 2020 deadline for New Mexico to circulate its written expert rebuttal reports remains intact, with no extension.
4. Texas requests that written discovery required by the Federal Rules of Civil Procedure, as well as the Case Management Plan and its addendums (CMP), continue without interruption or delay. This request specifically includes all document responses, exchanges, and/or duties to supplement productions.

5. Texas opposes any stay of the case.
  - a. The New Mexico Request proposes a six-month stay of the case to secure new trial counsel, and an additional three-month discovery period thereafter, for a total extension of nine months. This requested extension is unreasonable and unwarranted.
  - b. New Mexico is represented by two law firms (Robles, Rael & Anaya; Trout Raley), as well as the New Mexico Attorney General's Office. Marcus Rael, with Robles, Rael & Anaya, has been the designated lead counsel for this matter since well before the inception of all discovery. Lisa Thompson, with the firm of Trout Raley, has taken the lead in the majority of the expert depositions involving the scientific modeling efforts by both New Mexico and Texas. Texas should not be subjected to further delay of these proceedings under the guise of New Mexico seeking new counsel when New Mexico has consistently had the same primary attorneys working on the case since at least 2016, well before discovery commenced, separate and aside from the issue of Mr. Roman's departure. Adding another lawyer to the team does not justify a stay of the case to the detriment of Texas.
  - c. Texas should not be adversely prejudiced by New Mexico's failure to timely complete discovery. Discovery opened on September 1, 2018. Although New Mexico pursued some written discovery when discovery opened, it did not take any depositions until over a year later, when it took its first deposition of one of Texas's disclosed experts in mid-September 2019. In fact, New Mexico waited for over three months to start taking Texas's experts' depositions (after Texas's initial expert disclosure on May 31, 2019). In this same period, Texas noticed and took the depositions of 25 fact witnesses. New Mexico still has not noticed a single deposition of a fact/percipient witness for any party, or even met-and-conferred regarding a desire to do so. Now, seven weeks prior to the close of discovery, and after the parties engaged in protracted meet and confer efforts to finalize the deposition schedule, New Mexico claims that it has a number of unidentified expert and fact depositions that it still needs to schedule. New Mexico's dilatory conduct should not be rewarded by the imposition of a nine-month stay/continuance.

6. Texas opposes any rescheduling of the pre-trial conference and trial timeframes in the current case timeline. The two-month discovery extension proposed by Texas will address concerns about the current discovery schedule and the effects arising from the COVID-19 situation on the schedule. That schedule does not necessitate a continuance of the pre-trial conference and trial schedule.

Special Master Michael J. Melloy  
Re: *State of Texas v. State of New Mexico, et al.*  
March 13, 2020  
Page 3

7. In conjunction with a two-month discovery extension, Texas proposes an equivalent two-month extension to the deadlines for the briefing and hearing on dispositive motions. This extension recognizes that discovery must be complete prior to filing evidence-based dispositive motions. The extension does not necessitate any change to the pre-trial conference and trial timeframes currently contemplated by the CMP.

We appreciate your Honor's consideration of Texas's position in response to the New Mexico Request and will remain available for an emergency teleconference.

Very truly yours,

*s/ Stuart L. Somach*

Stuart L. Somach  
Counsel of Record  
State of Texas

TCB:cer  
cc: All counsel for parties and amici  
(see attached service list)

**SERVICE LIST FOR ALL PARTIES**

**In The Supreme Court of the United States, Original No. 141  
STATE OF TEXAS v. STATE OF NEW MEXICO and STATE OF COLORADO**

**PARTIES<sup>1</sup>**

STATE	ATTORNEY & ADDRESS	PHONE & EMAIL
<p><b>Texas</b></p>	<p>STUART L. SOMACH*            ANDREW M. HITCHINGS            ROBERT B. HOFFMAN            FRANCIS M. GOLDSBERRY II            THERESA C. BARFIELD            SARAH A. KLAHN            BRITTANY K. JOHNSON            RICHARD S. DEITCHMAN            SOMACH SIMMONS &amp; DUNN, PC            500 Capitol Mall, Suite 1000            Sacramento, CA 95814-2403</p> <p><b>KEN PAXTON</b>  <i>Attorney General</i>  <b>JEFFREY C. MATEER</b>  <i>First Assistant Attorney General</i>  <b>BRANTLEY STARR</b>  <i>Deputy First Asst. Attorney General</i>  <b>JAMES E. DAVIS</b>  <i>Deputy Attorney General</i>  <b>PRISCILLA M. HUBENAK*</b>  <i>Chief, Environmental Protection Div.</i>            OFFICE OF THE ATTORNEY GENERAL            OF TEXAS            P.O. Box 12548            Austin, TX 78711-2548</p>	<p>(916) 446-7979  <a href="mailto:ssomach@somachlaw.com">ssomach@somachlaw.com</a>  <a href="mailto:ahitchings@somachlaw.com">ahitchings@somachlaw.com</a>  <a href="mailto:rhoffman@somachlaw.com">rhoffman@somachlaw.com</a>  <a href="mailto:mgoldsberry@somachlaw.com">mgoldsberry@somachlaw.com</a>  <a href="mailto:tbarfield@somachlaw.com">tbarfield@somachlaw.com</a>  <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a>  <a href="mailto:bjohnson@somachlaw.com">bjohnson@somachlaw.com</a>  <a href="mailto:rdeitchman@somachlaw.com">rdeitchman@somachlaw.com</a></p> <p>Secretary: Corene Rodder  <a href="mailto:crodder@somachlaw.com">crodder@somachlaw.com</a>            Secretary: Rena Wade  <a href="mailto:rwade@somachlaw.com">rwade@somachlaw.com</a>            Paralegal: Christina M. Garro  <a href="mailto:cgarro@somachlaw.com">cgarro@somachlaw.com</a>            Paralegal: Yolanda De La Cruz  <a href="mailto:ydelacruz@somachlaw.com">ydelacruz@somachlaw.com</a></p> <p><a href="mailto:Priscilla.Hubenak@oag.texas.gov">Priscilla.Hubenak@oag.texas.gov</a></p>

---

<sup>1</sup> (\*) = *Counsel of Record*

<p><b>New Mexico</b></p>	<p><b>HECTOR BALDERAS</b> New Mexico Attorney General <b>TANIA MAESTAS</b> (ext. 4048) Deputy Attorney General <b>MARCUS J. RAEL, JR.*</b> Special Assistant Attorney General 408 Galisteo Street (87501) P.O. Drawer 1508 Santa Fe, NM 87501 <b>Patricia Salazar – Tania’s asst.</b></p> <p><b>MARCUS J. RAEL, JR.</b> <b>DAVID A. ROMAN</b> Special Assistant Attorney General ROBLES, RAEL, AND ANAYA 500 Marquette Ave. NW, Suite 700 Albuquerque, NM 87102 <b>Chelsea Sandoval (Paralegal)</b></p> <p><b>BENNET W. RALEY</b> <b>LISA M. THOMPSON</b> <b>MICHAEL A. KOPP</b> Special Assistant Attorneys General TROUT RALEY 1120 Lincoln St., Suite 1600 Denver, CO 80203</p>	<p>(505) 490-4060/490-4863-Salazar <a href="mailto:hbalderas@nmag.gov">hbalderas@nmag.gov</a> <a href="mailto:tmaestas@nmag.gov">tmaestas@nmag.gov</a></p> <p><a href="mailto:marcus@roblesrael.com">marcus@roblesrael.com</a></p> <p><a href="mailto:psalazar@nmag.gov">psalazar@nmag.gov</a></p> <p>(505) 242-2228 – Theresa/Clara <a href="mailto:marcus@roblesrael.com">marcus@roblesrael.com</a> <a href="mailto:droman@roblesrael.com">droman@roblesrael.com</a></p> <p><a href="mailto:Chelsea@roblesrael.com">Chelsea@roblesrael.com</a></p> <p>(303) 861-1963 <a href="mailto:braley@troutlaw.com">braley@troutlaw.com</a> <a href="mailto:lthompson@troutlaw.com">lthompson@troutlaw.com</a> <a href="mailto:mkopp@troutlaw.com">mkopp@troutlaw.com</a></p>
<p><b>Colorado</b></p>	<p><b>PHILIP J. WEISER</b> <i>Attorney General of Colorado</i> <b>ERIC R. OLSON</b> Solicitor General <b>KAREN M. KWON</b> <i>First Assistant Attorney General</i> <b>CHAD M. WALLACE*</b> <i>Senior Assistant Attorney General</i> Colorado Department of Law 1300 Broadway Denver, CO 80203 <b>Nan Edwards - Paralegal</b></p>	<p><a href="mailto:eric.olson@coag.gov">eric.olson@coag.gov</a> <a href="mailto:karen.kwon@coag.gov">karen.kwon@coag.gov</a> <a href="mailto:chad.wallace@coag.gov">chad.wallace@coag.gov</a> <a href="mailto:nan.edwards@coag.gov">nan.edwards@coag.gov</a></p> <p>720-508-6281 (Mr. Wallace direct)</p>

<p><b>United States</b></p>	<p><b>NOEL J. FRANCISCO *</b> Solicitor General <b>JEAN E. WILLIAMS</b> Deputy Assistant Attorney General <b>FREDERICK LIU</b> Assistant to the Solicitor General U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Ave, NW Washington, DC 20530-0001</p> <p><b>JAMES J. DUBOIS*</b> <b>R. LEE LEININGER</b> <b>THOMAS K. SNODGRASS</b> <b>DAVID W. GEHLERT</b> U.S. DEPT. OF JUSTICE Environment &amp; Natural Resources Div 999 18th Street South Terrace – Suite 370 Denver, CO 80202 <b>Seth C. Allison, Paralegal</b></p> <p><b>STEPHEN M. MACFARLANE</b> U.S. DEPARTMENT OF JUSTICE Environment &amp; Natural Resources Div 501 I Street, Suite 9-700 Sacramento, CA 95814</p> <p><b>JUDITH E. COLEMAN</b> <b>JOHN P. TUSTIN</b> U.S. DEPARTMENT OF JUSTICE Environment &amp; Natural Resources Div P. O. Box 7611 Washington, DC 20044-7611</p>	<p><a href="mailto:supremectbriefs@usdoj.gov">supremectbriefs@usdoj.gov</a> (202) 514-2217</p> <p><a href="mailto:james.dubois@usdoj.gov">james.dubois@usdoj.gov</a> (303) 844-1375 <a href="mailto:lee.leininger@usdoj.gov">lee.leininger@usdoj.gov</a> (303) 844-1364 <a href="mailto:thomas.snodgrass@usdoj.gov">thomas.snodgrass@usdoj.gov</a> (303)844-7233 <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a> (303) 844-1386 <a href="mailto:seth.allison@usdoj.gov">seth.allison@usdoj.gov</a> (303)844-7917</p> <p><a href="mailto:stephen.macfarlane@usdoj.gov">stephen.macfarlane@usdoj.gov</a> (916) 930-2204</p> <p><a href="mailto:judith.coleman@usdoj.gov">judith.coleman@usdoj.gov</a> (202) 514-3553 <a href="mailto:john.tustin@usdoj.gov">john.tustin@usdoj.gov</a> (202)305-3022</p>

## AMICI

AMICI	ATTORNEY AND ADDRESS	PHONE & EMAIL
<b>Albuquerque Bernalillo County Water Utility Authority</b>	<p><b>JAY F. STEIN</b>  <b>JAMES C. BROCKMANN*</b>                      STEIN &amp; BROCKMANN, P.A.                      P.O. Box 2067                      Santa Fe, NM 87504  <b>Administrative Copy</b></p> <p><b>PETER AUH</b>                      Albuquerque Bernalillo County Water                      Utility Authority                      P.O. Box 568                      Albuquerque, NM 87103-0568</p>	<p>(505) 983-3880  <a href="mailto:jfstein@newmexicowaterlaw.com">jfstein@newmexicowaterlaw.com</a>  <a href="mailto:icbrockmann@newmexicowaterlaw.com">icbrockmann@newmexicowaterlaw.com</a></p> <p><a href="mailto:administrator@newmexicowaterlaw.com">administrator@newmexicowaterlaw.com</a></p> <p>(505) 289-3092  <a href="mailto:pauh@abcwua.org">pauh@abcwua.org</a></p>
<b>City of El Paso</b>	<p><b>DOUGLAS G. CAROOM*</b>  <b>SUSAN M. MAXWELL</b>                      BICKERSTAFF HEATH DELGADO                      ACOSTA LLP                      3711 S. MoPac Expressway                      Building One, Suite 300                      Austin, TX 78746</p>	<p>(512) 472-8021  <a href="mailto:dcaroom@bickerstaff.com">dcaroom@bickerstaff.com</a>  <a href="mailto:smaxwell@bickerstaff.com">smaxwell@bickerstaff.com</a></p>
<b>City of Las Cruces</b>	<p><b>JAY F. STEIN*</b>  <b>JAMES C. BROCKMANN</b>                      STEIN &amp; BROCKMANN, P.A.                      P.O. Box 2067                      Santa Fe, NM 87504  <b>Administrative Copy</b></p> <p><b>JENNIFER VEGA-BROWN</b>  <b>MARCIA B. DRIGGERS</b>                      LAS CRUCES CITY ATTORNEY'S                      OFFICE                      P.O. Box 20000                      Las Cruces, NM 88004</p>	<p>(505) 983-3880  <a href="mailto:jfstein@newmexicowaterlaw.com">jfstein@newmexicowaterlaw.com</a>  <a href="mailto:icbrockmann@newmexicowaterlaw.com">icbrockmann@newmexicowaterlaw.com</a></p> <p><a href="mailto:administrator@newmexicowaterlaw.com">administrator@newmexicowaterlaw.com</a></p> <p>(575) 541-2128  <a href="mailto:jvega-brown@las-cruces.org">jvega-brown@las-cruces.org</a>  <a href="mailto:marcyd@las-cruces.org">marcyd@las-cruces.org</a></p>

<p><b>El Paso County Water Improvement District No. 1</b></p>	<p><b>MARIA O'BRIEN*</b> <b>SARAH STEVENSON</b> MODRALL, SPERLING, ROEHL, HARRIS &amp; SISK, P.A. 500 Fourth Street N.W., Suite 1000 Albuquerque, NM 87103-2168 <b>Shannon Gifford – Legal Assistant</b></p> <p><b>RENEA HICKS</b> LAW OFFICE OF MAX RENE HICKS P.O. Box 303187 Austin, TX 78703-0504</p>	<p>(505) 848-1803 (direct) <a href="mailto:mobrien@modrall.com">mobrien@modrall.com</a> <a href="mailto:sarah.stevenson@modrall.com">sarah.stevenson@modrall.com</a></p> <p><a href="mailto:shannong@modrall.com">shannong@modrall.com</a></p> <p>(512)480-8231 <a href="mailto:rhicks@renea-hicks.com">rhicks@renea-hicks.com</a></p>
<p><b>Elephant Butte Irrigation District</b></p>	<p><b>SAMANTHA R. BARNCASTLE*</b> BARNCASTLE LAW FIRM, LLC 1100 South Main, Suite 20 (88005) P.O. Box 1556 Las Cruces, NM 88004 <b>Janet Correll - Paralegal</b></p>	<p>(575)636-2377 Fax: (575) 636-2688 <a href="mailto:samantha@h2o-legal.com">samantha@h2o-legal.com</a></p> <p><a href="mailto:janet@h2o-legal.com">janet@h2o-legal.com</a></p>
<p><b>Hudspeth County Conservation and Reclamation District No. 1</b></p>	<p><b>ANDREW S. "DREW" MILLER*</b> KEMP SMITH LLP 919 Congress Ave., Suite 1305 Austin, TX 78701</p>	<p>(512) 320-5466 <a href="mailto:dmiller@kempsmith.com">dmiller@kempsmith.com</a></p>
<p><b>New Mexico Pecan Growers</b></p>	<p><b>TESSA T. DAVIDSON*</b> DAVIDSON LAW FIRM, LLC 4206 Corrales Rd. P.O. Box 2240 Corrales, NM 87048 <b>Jo Harden - Paralegal</b></p>	<p>(505) 792-3636 <a href="mailto:ttd@tessadavidson.com">ttd@tessadavidson.com</a></p> <p><a href="mailto:jo@tessadavidson.com">jo@tessadavidson.com</a></p>



<p><b>New Mexico State University</b></p>	<p><b>JOHN W. UTTON*</b>          UTTON &amp; KERY, P.A.          P.O. Box 2386          Santa Fe, NM 87504</p> <p>General Counsel          Hadley Hall Room 132          2850 Weddell Road          Las Cruces, NM 88003</p>	<p>(505) 699-1445  <a href="mailto:john@uttonkery.com">john@uttonkery.com</a></p> <p>(575) 646-2446  <a href="mailto:gencounsel@nmsu.edu">gencounsel@nmsu.edu</a></p>
<p><b>State of Kansas</b></p>	<p><b>DEREK SCHMIDT</b>          Attorney General of Kansas  <b>JEFFREY A. CHANAY</b>          Chief Deputy Attorney General  <b>TOBY CROUSE*</b>          Solicitor General of Kansas  <b>BRYAN C. CLARK</b>          Assistant Solicitor General  <b>DWIGHT R. CARSWELL</b>          Assistant Solicitor General          120 S.W. 10th Ave., 2nd Floor          Topeka, KS 66612</p>	<p>(785) 296-2215</p> <p><a href="mailto:toby.crouse@ag.ks.gov">toby.crouse@ag.ks.gov</a>  <a href="mailto:bryan.clark@ag.ks.gov">bryan.clark@ag.ks.gov</a></p>

## SPECIAL MASTER

<b>Special Master</b>	<p><b>Honorable Michael J. Melloy</b> <i>Special Master</i> United States Circuit Judge 111 Seventh Avenue, S.E., Box 22 Cedar Rapids, IA 52401</p> <p>Michael E. Gans, Clerk of Court United States Court of Appeals – Eighth Circuit Thomas F. Eagleton United States Courthouse 111 South 10th Street, Suite 24.329 St. Louis, MO 63102</p>	<p>(319) 432-6080 <a href="mailto:TXvNM141@ca8.uscourts.gov">TXvNM141@ca8.uscourts.gov</a></p> <p>(314)244-2400 <a href="mailto:TxvNM141@ca8.uscourts.gov">TxvNM141@ca8.uscourts.gov</a></p>