

April 13, 2018

Via Electronic Mail and U.S. Mail

Judge Michael J. Melloy
U.S. Court of Appeals for the Eighth Circuit
United States Courthouse
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Re: *State of Texas v. State of New Mexico and State of Colorado*
Supreme Court Docket No. 141 Original

Dear Special Master Melloy:

This letter responds to your request for a short statement articulating the State of Texas's views on the main issues to be resolved in this Original Action as well as providing a broad outline of discovery that Texas believes may be required to address those issues. Texas's response is qualified by the recognition that the case is not at issue and, therefore, we are unaware of issues that may be raised in responsive pleadings.

Issues to be Resolved

Initially, Texas believes that basic compact interpretation has occurred. Special Master Grimsal found, as a matter of law, based upon its plain text and structure, that the 1938 Compact, with respect to the Texas complaint, was unambiguous. In this context, he concluded, among other things, that:

- The Rio Grande Project was fully integrated into the 1938 Compact.
- New Mexico was required to relinquish control and dominion over the water it deposits into Elephant Butte Reservoir.
- New Mexico through its agents or subdivisions may not divert or intercept water it is required to deliver to Elephant Butte Reservoir pursuant to the 1938 Compact after the water is released from Elephant Butte Reservoir.

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- New Mexico must refrain from post-1938 depletion of water (i.e. depletions that are greater than what occurred in 1938, below Elephant Butte Reservoir).

New Mexico filed exception to the Special Master's Report that was based upon a challenge to these determinations. The Supreme Court overruled these exceptions in its March 5, 2018 decision.

Based upon the foregoing, the remaining issues to be litigated, as framed by the Texas complaint, include the following:

1. What was the 1938 condition that should be used as the basis upon which to judge New Mexico's actions and the effect of those actions?
2. Have New Mexico's actions depleted the quantity of water available below Elephant Butte Reservoir, and if so, (a) what was the cause of these depletions and (b) what was the extent (quantification) of these depletions?
3. The nature and extent of hydrologically connected groundwater and its relationship to the Rio Grande and the Rio Grande Reclamation Project and the relevant issues raised in the Texas complaint.
4. The historic and current operations of the Rio Grande Project.
5. The quantity of water that Texas was entitled to under the Rio Grande Compact and the quantity of water that Texas actually received under the Rio Grande Compact, with the difference being a quantification of Texas's injury.
6. The determination of the appropriate remedy, which would include:
 - Injunctive relief;
 - Past damages-water or dollars;
 - Prospective damages-water or dollars.

Discovery

Although this dispute is not yet at issue, Texas anticipates extensive discovery will be necessary to prove the allegations set forth in its Complaint. This discovery will include document productions among the parties and numerous third party entities. Depositions of percipient witnesses currently residing in widespread geographical locations will be necessary. Texas believes that each party will disclose experts from the disciplines of geology, hydrogeology, computer modeling, history, agronomy, chemical engineering and economics. Property inspections, including soil sampling, groundwater sampling and plant tissue sampling will likely be required.

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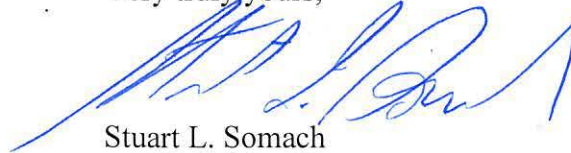
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Texas is prepared to further discuss the above either during the April 23, 2018 Status Conference or in a future conference as directed.

Very truly yours,



Stuart L. Somach
Counsel of Record
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SLS:rs

cc: All counsel (See Attached Service List)

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