

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

STATE OF TEXAS'S SEPTEMBER 2019 STATUS REPORT

STUART L. SOMACH, ESQ.*
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September 6, 2019

COMES NOW the State of Texas (Texas) and provides the following status report to the Special Master pursuant to paragraph 5 of the Case Management Plan (CMP), as amended.

Since the filing of Texas's August Status Report, Texas has continued its supplemental ESI collections by and through various custodians of records and custodial agencies pursuant to the parties' electronically stored information (ESI) search term and collection protocol, agreed-upon custodians of records lists, and related discussions. Texas's agencies conducted searches for potentially responsive ESI in accordance with the parties ESI Stipulation, Texas's ESI Search Term and Collection Protocol (Search Term Protocol), New Mexico's Request for Production of Documents, and Texas's obligations under Federal Rule of Civil Procedure (Rule) 26. Texas's counsel have received ESI from various agencies and, consistent with the Search Term Protocol exchanged with the parties, Texas is currently executing ESI searches, reviewing resulting files, and evaluating ESI for responsiveness and/or privilege. Texas anticipates full production on or before September 20, 2019.

Additionally, Texas has been actively engaged in completing depositions of current and former employees of New Mexico and has made significant progress. Texas intends to take approximately five (5) additional depositions of New Mexico non-expert witnesses prior to the close of discovery. These additional depositions were previously scheduled for the September 2019 timeframe. Texas has briefly continued these depositions (new dates to be determined), to permit New Mexico to first proceed with the depositions it desires to complete in advance of New Mexico's October 31, 2019 deadline to disclose its expert witnesses and produce its experts' reports. The Parties continue to confer regarding availability and scheduling of deposition witnesses. Texas and New Mexico have agreed upon the majority of deposition dates for Texas's expert witnesses, scheduled to commence on September 12, 2019.

The parties continue to participate in bi-weekly and/or weekly discovery teleconferences to address any issues that arise during the course of ongoing discovery, including their collective efforts to coordinate the scheduling of depositions, and to discuss their respective collections and disclosures of documents and ESI responsive to

requests for productions of documents and relevant to the subject matter of this original action.

The parties and *amici curiae* attended the April 2, 2019 in-person hearing before the Special Master in Denver, Colorado, regarding the various pending motions for judgment on the pleadings and motions addressing previously decided legal issues.

Further, on June 17, 2019, the United States Supreme Court (Court) referred to Special Master Melloy, the motion for leave to intervene filed by Pre-Federal Claimants, the Nathan Boyd Estate, et al. (Movants). In accordance with the Court's decision, the Special Master scheduled oral argument by order of June 17, 2019, and heard arguments from counsel for the Movants and the Parties on July 1, 2019.

On September 5, 2019, New Mexico filed and served a Motion to Exclude the United States' Expert Testimony of Ian M. Ferguson, and a Motion to Strike Texas's Expert Disclosures on Water Quality. Texas intends to oppose the dilatory and meritless motion to strike portions of its expert witness disclosures. To that end, on September 6, 2019, Texas and the United States submitted a joint letter to the Special Master requesting direction on the briefing schedule and hearing for the motions.

Dated: September 6, 2019

Respectfully submitted,

s/ Stuart L. Somach

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CERTIFICATE OF SERVICE

This is to certify that on this 6th day of September 2019, I caused a true and correct copy of **The State of Texas's September 2019 Status Report** to be served upon all parties and *amici curiae*, by and through the attorneys of record and/or designated representatives for each party and *amicus curiae* in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Dated: September 6, 2019

Respectfully submitted,


Yofanda De La Cruz

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(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
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