

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 AMENDED OCTOBER 2019 STATUS REPORT

STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
SARAH A. KLAHN, ESQ.
BRITTANY K. JOHNSON, ESQ.
RICHARD S. DEITCHMAN, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com
**Counsel of Record*

October 4, 2019

COMES NOW the State of Texas (Texas) and provides the following status report to the Special Master pursuant to paragraph 5 of the September 6, 2018 Case Management Plan (CMP), as amended.

Since the filing of Texas's September 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 agreed-upon Search Term Protocol, Texas is currently executing ESI searches, reviewing resulting files, and evaluating ESI for responsiveness and/or privilege. Review is nearly completed for all received ESI from TCEQ and TWDB, and Texas now anticipates it can produce non-privileged documents on or around October 18, 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) to eight (8) additional depositions of New Mexico non-expert witnesses prior to the close of discovery, previously scheduled for the September 2019 timeframe. Texas agreed to 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 and supporting data, documents, and reference files.

New Mexico has taken the depositions of the following Texas retained expert witnesses: Colin Kikuchi of Montgomery & Associates; Lydia Dorrance of Geosyntec Consultants; Robert J. Brandes, P.E., Ph.D.; William R. Hutchison, Ph.D. P.E., P.G.; Joel Kimmelshue of Land IQ, and Scott Miltenberger of JRP Historical Consulting. Experts David Sunding of The Brattle Group and Staffan W. Schorr of Montgomery & Associates, are scheduled to be deposed on October 10 and 11, 2019 and October 15 and 16, 2019, respectively. Texas has produced supplemental documents representing the portions of the experts' respective case files that were not required to be produced in conjunction with the expert disclosures and reports as defined in Rule 26. Texas has uploaded these productions to the Veritext Vault in accordance with the parties' established agreements, and served all parties and *amici curiae*. In accordance with Appendix B of the CMP, as amended on January 31, 2019, the deadline by which New Mexico must serve its expert disclosures and reports is October 31, 2019. Immediately thereafter, Texas intends to notice and conduct depositions of New Mexico's expert witnesses.

Additionally, on July 31, 2019, New Mexico initiated a document/data request relative to the May 31, 2019 expert report prepared by Land IQ, previously circulated by Texas in accordance with Texas's Rule 26 disclosure obligations and the CMP case timeline. Texas advised New Mexico on August 12, 2019, that several of New Mexico's requests sought algorithms, and their associated assumptions and parameters for Land IQ's remotely sensed land use classification, and advised New Mexico that the algorithms are confidential and constitute trade secrets, exclusive to Land IQ. Texas also advised New Mexico on August 12, 2019 that the Land IQ results are independently verifiable without the utilization of Land IQ's algorithms. New Mexico did not seek any additional information regarding this issue until September 19-20, 2019, during the course of the expert deposition of Joel Kimmelshue of Land IQ. At that time, the parties discussed the potential of entering into a stipulated confidentiality agreement and

protective order. Thus, in the last two weeks, New Mexico, Texas, the U.S., and counsel for Land IQ, have agreed to the terms of a formal stipulated confidentiality agreement and protective order. Colorado indicated that it will approve the stipulation as it pertains to the confidentiality of the subject material. Texas and New Mexico anticipate circulating the document for the Special Master's review and approval during the week of October 7, 2019. Texas anticipates that New Mexico will complete the deposition of Joel Kimmelshue thereafter.

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 meet and confer requests, deposition scheduling, and the parties' respective collections and disclosures of documents and ESI pursuant to the Rule 26 as well as the parties' requests for productions of documents and the agreed-upon Search Term Protocol.

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 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 filed its opposition brief on September 23, 2019 and New Mexico filed their reply brief on September 30, 2019. Per the Special Master's September 9, 2019 Order, the Special Master, upon receipt and review of the responses and reply, will determine whether oral argument is necessary.

Dated: October 4, 2019

Respectfully submitted,

s/ Stuart L. Somach

STUART L. SOMACH, ESQ.*
ANDREW M. HITCHINGS, ESQ.
ROBERT B. HOFFMAN, ESQ.
FRANCIS M. GOLDSBERRY II, ESQ.
THERESA C. BARFIELD, ESQ.
SARAH A. KLAHN, ESQ.
BRITTANY K. JOHNSON, ESQ.
RICHARD S. DEITCHMAN, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com
**Counsel of Record*

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.

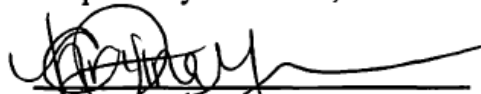
OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of October 2019, I caused a true and correct copy of **The State of Texas's Amended October 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: October 4, 2019

Respectfully submitted,


Christina Garro

SERVICE LIST

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

Honorable Michael J. Melloy

Special Master
United States Circuit Judge
111 Seventh Avenue, S.E. Box 22
Cedar Rapids, IA 52401-2101
Tel. 319-432-6080
TXvNM141@ca8.uscourts.gov
Judge Michael Melloy@ca8.uscourts.gov

Michael E. Gans, Clerk of the 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
Tel. 314-244-2400
TXNM141@ca8.uscourts.gov

SERVICE LIST FOR ALL PARTIES AND AMICI CURIAE



PARTIES
(Service via Electronic Mail)

STATE OF TEXAS

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 & Dunn, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814-2403
Tel. (916) 446-7979
ssomach@somachlaw.com

ahitchings@somachlaw.com
rhoffman@somachlaw.com
mgoldsberry@somachlaw.com
tbarfield@somachlaw.com
sklahn@somachlaw.com
bjohnson@somachlaw.com
rdeitchman@somachlaw.com

Secretary: Corene Rodder
crodder@somachlaw.com
Secretary: Crystal Rivera
crivara@somachlaw.com
Paralegal: Christina M. Garro
cgarro@somachlaw.com
Paralegal: Yolanda De La Cruz
ydelacruz@Somachlaw.com

Ken Paxton
Attorney General of Texas
Jeffrey C. Mateer
First Assistant Attorney General
Brantley Starr
Deputy First Assistant Attorney
General
James E. Davis
Deputy Attorney General
Priscilla M. Hubenak
Chief, Environmental Protection
Division
priscilla.hubenak@oag.texas.gov
Office of the Attorney General of
Texas
P.O. Box 12548
Austin, TX 78711-2548
Tel: (512) 463-2012
Fax: (512) 457-4644

STATE OF NEW MEXICO

Marcus J. Rael, Jr.
David A. Roman
Special Assistant Attorneys General
Robles, Rael & Anaya, P.C.
500 Marquette Ave. NW, Suite 700
Albuquerque, NM 87102
Tel. 505-242-2228
marcus@roblesrael.com
droman@roblesrael.com

Paralegal: Chelsea Sandoval
Chelsea@roblesrael.com

Bennett W. Raley
Lisa M. Thompson
Michael A. Kopp
Special Assistant Attorney
General
Trout Raley
1120 Lincoln Street, Suite 1600
Denver, Colorado 80302
Tel. 303-861-1963
braley@troutlaw.com
lthompson@troutlaw.com
mkopp@troutlaw.com

Hector H. Balderas
New Mexico Attorney General
Tania Maestas (ext. 4048)
Deputy Attorney General
Marcus J. Rael, Jr.*
Special Assistant Attorney General
408 Galisteo Street (87501)
P.O. Drawer 1508
Santa Fe, New Mexico 87501
Tel. 505-490-4060
hbalderas@nmag.gov
tmaestas@nmag.gov
marcus@roblesrael.com

Tania's asst.: Patricia Salazar
psalazar@nmag.gov
Tel. (505) 490-4863 (P. Salazar)

STATE OF COLORADO

Chad M. Wallace*
Senior Assistant Attorney General
Phillip J. Weiser
Attorney General of Colorado
Eric R. Olson
Solicitor General
Colorado Department of Law
1300 Broadway
Denver, CO 80203
Tel. 720-508-6281
chad.wallace@coag.gov
eric.olson@coag.gov

Cynthia H. Coffman
Attorney General of Colorado
Karen M. Kwon
First Assistant Attorney General
Colorado Department of Law
1300 Broadway
Denver, CO 80203
Tel. 720-508-6281
cynthia.coffman@coag.gov
karen.kwon@coag.gov

Paralegal: Nan B. Edwards
nan.edwards@coag.gov

UNITED STATES OF AMERICA

Noel Francisco*
Acting Solicitor General
Jeffrey H. Wood
Acting Assistant Attorney General
Ann O'Connell
Assistant to Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue
Room 5614 NW
Washington, DC 20530
Tel. (202) 514-2217
supremectbriefs@usdoj.gov

James J. Dubois*
R. Lee Leininger
Thomas K. Snodgrass
U.S. Department of Justice
Environment & Natural Resources Div.
999 18th Street
South Terrace, Ste. 370
Denver, CO 80202
lee.leininger@usdoj.gov
Tel. 303-844-1367
james.dubois@usdoj.gov
Tel. 303-844-1364
thomas.snodgrass@usdoj.gov
Tel. 303-844-7233
Paralegal: Seth C. Allison
Seth.allison@usdoj.gov
Tel. 303-844-7917

Stephen M. Macfarlane
U.S. Department of Justice
Environment & Natural Resources
Div.
501 I Street, Suite 9-700
Sacramento, CA 95814
Tel. (916) 930-2204
stephen.macfarlane@usdoj.gov

Judith E. Coleman
U.S. Department of Justice
Environment & Natural Resources Div.
P. O. Box 7611
Washington, DC 20044-7611
Tel. (202) 514-3553
judith.coleman@usdoj.gov

—◆—
AMICI CURIAE
(Service via Electronic Mail)

**ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY
AUTHORITY**

Jay F. Stein
James C. Brockmann*
Stein & Brockmann, P.A.
P.O. Box 2067
Santa Fe, NM 87504
Tel. (505) 983-3880
jfstein@newmexicowaterlaw.com
jcbrockmann@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com

Peter Auh
Albuquerque Bernalillo County
Water Utility Authority
P.O. Box 568
Albuquerque, NM 87103-0568
Tel. (505) 289-3092
pauh@abcwua.org

CITY OF EL PASO, TEXAS

Douglas G. Caroom*
Susan M. Maxwell
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
Tel. (512) 472-8021
dcaroom@bickerstaff.com
smaxwell@bickerstaff.com

EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

Maria O'Brien*
Sarah M. Stevenson
Modrall, Sperling, Roehl, Harris
& Sisk, PA
500 Fourth Street N.W.,
Suite 1000 (87102)
P.O. Box 2168
Albuquerque, NM 87103-2168

Main: (505) 848-1800
Direct: (505) 848-1803
Fax: (505) 848-9710
mobrien@modrall.com
sarah.stevenson@modrall.com

Shannon Gifford – Legal Assistant
shannon@modrall.com
Leanne Martony – Legal Assistant
leannem@modrall.com

James M. Speer, Jr.
c/o El Paso County Water
Improvement District No. 1.
13247 Alameda Ave
Clint, TX 79836-0749

**HUDSPETH COUNTY CONSERVATION
AND RECLAMATION DISTRICT NO. 1**

Andrew S. "Drew" Miller*
Kemp Smith LLP
919 Congress Avenue, Suite 1305
Austin, TX 78701
Tel. (512) 320-5466
drew.miller@kempsmith.com

ELEPHANT BUTTE IRRIGATION DISTRICT

Samantha R. Barncastle*
Barncastle Law Firm, LLC
1100 South Main, Suite 20 (88005)
P.O. Box 1556
Las Cruces, NM 88004
Tel. (575) 636-2377
Fax. (575) 636-2688
samantha@h2o-legal.com

Paralegal: Janet Correll
janet@h2o-legal.com

CITY OF LAS CRUCES, NM

Jay F. Stein*
James C. Brockmann
Stein & Brockmann, P.A.
P.O. Box 2067
Santa Fe, NM 87504
Tel. (505) 983-3880
Administrative Copy
jfstein@newmexicowaterlaw.com
jcbrockmann@newmexicowaterlaw.com
administrator@newmexicowaterlaw.com

Jennifer Vega-Brown
Marcia B Driggers
City of Las Cruces
City Attorney's Office
P.O. Box 2000
Las Cruces, NM 88004
Tel. (575) 541-2128
jvega-brown@las-cruces.org
marcyd@las-cruces.org

NEW MEXICO STATE UNIVERSITY

John W. Utton*
Utton & Kery, P.A.
P.O. Box 2386
Santa Fe, NM 87504
Tel. (505) 699-1445
john@uttonkery.com

General Counsel
Hadley Hall Room 132
2850 Weddell Road
Las Cruces, NM 88003
Tel. (575) 646-2446
gencounsel@nmsu.edu

NEW MEXICO PECAN GROWERS

Tessa Davidson*
Davidson Law Firm, LLC
4206 Corrales Road
P.O. Box 2240
Corrales, New Mexico 87048
Tel. (505) 792-3636
ttd@tessadavidson.com

Paralegal: Patricia McCan
patricia@tessadavidson.com

STATE OF KANSAS

Derek Schmidt
Attorney General of Kansas
Jeffrey A. Chanay
Chief Deputy Attorney General
Toby Crouse*
Solicitor General of Kansas
Bryan C. Clark
Assistant Solicitor General
Dwight R. Carswell
Assistant Solicitor General
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612
Tel. (785) 296-2215
toby.crouse@ag.ks.gov
bryan.clark@ag.ks.gov