

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 DECEMBER 2019 STATUS REPORT

STUART L. SOMACH, ESQ.*
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December 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 September 6, 2018 Case Management Plan (CMP), as amended.

Since the filing of Texas's November Status Report, Texas has continued its supplemental electronically stored information (ESI) collections by and through various custodians of records and custodial agencies pursuant to the parties' ESI Search Term and Collection Protocol (Search Term 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, Search Term, 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 has executed ESI searches, reviewed resulting files, and evaluated ESI for responsiveness and/or privilege. Texas completed its initial ESI production (over 48,000 records) on October 18, 2019, and completed export and upload of the production on November 21, 2019.

Texas has now completed its review and production of all ESI and is in the process of uploading its first supplemental ESI production. Upon completion of the upload to the Veritext Vault, Texas will serve notice upon all counsel for parties and amici that said production is available for download, in accordance with the CMP and ESI Stipulation.

New Mexico disclosed expert witnesses and produced expert reports on October 31, 2019. Texas initiated depositions of New Mexico's disclosed experts and has thus far deposed experts Brian Thoreson of Davids Engineering, Inc., and Richard Allen of Evapotranspiration Plus. Texas has also noticed the depositions of Daniel

Morrissey of McDonald Morrissey Associates, Inc., and Dana Hoag, scheduled for December 9, 2019 and December 18, 2019, respectively. Further, Texas is working diligently with its experts to prepare rebuttal reports, where appropriate, in accordance with the December 30, 2019 deadline by which Texas and the United States must disclose rebuttal reports.

Regarding motions, the United States filed a motion for judgment on the pleadings against New Mexico's counterclaims 2, 3, 5, 6, 7, 8, and 9 on December 21, 2018. On December 26, 2018, Texas filed (1) a request for a judicial declaration to confirm the legal issues previously decided and motion in limine to exclude the introduction of evidence thereon, and (2) a motion to strike or for partial judgment regarding New Mexico's counterclaims and affirmative defenses, under Federal Rules of Civil Procedure 12(c) and 56. On December 26, 2018, New Mexico filed a motion for partial judgment on matters previously decided and briefed in support. The Special Master held an in-person oral argument on these motions on April 2, 2019, in Denver.

Additionally, on June 17, 2019, the United States Supreme Court referred to the Special Master the Motion to Intervene filed by the Pre-Federal Claimants. Texas, and others, filed oppositions to the Pre-Federal Claimants' Motion to Intervene. The Special Master heard oral argument on the Pre-Federal Claimants' Motion to Intervene on July 1, 2019. On December 2, 2019, the Special Master issued a Second Interim Report recommending that the Court deny this Motion to Intervene.

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Further, on September 5, 2019, New Mexico filed and served a Motion to Strike Texas's Expert Disclosures on Water Quality. Texas filed its opposition brief on September 23, 2019, and New Mexico filed its reply brief on September 30, 2019. The Special Master denied New Mexico's Motion.

Dated: December 6, 2019

Respectfully submitted,

s/ Stuart L. Somach

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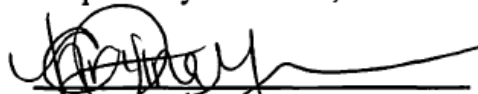
OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of December 2019, I caused a true and correct copy of **The State of Texas's December 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: December 6, 2019

Respectfully submitted,


Christina Garro

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

Honorable Michael J. Melloy

Special Master
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