

STEIN & BROCKMANN, P.A.
ATTORNEYS AT LAW

JAY F. STEIN*
JAMES C. BROCKMANN*
CRISTINA A. MULCAHY+

Of Counsel

KATHERINE W. HALL

* New Mexico Board Certified
Specialists in Water Law

+ Licensed in New Mexico and Texas

STREET ADDRESS
505 Don Gaspar Avenue
Santa Fe, New Mexico 87505

MAILING ADDRESS
Post Office Box 2067
Santa Fe, New Mexico 87504-2067
Telephone: 505-983-3880
Telecopier: 505-986-1028

November 5, 2018

Via Email: Michael_melloy@ca8.uscourts.gov

Honorable Michael J. Melloy
Special Master
United States Circuit Judge
111 Seventh Avenue, S.E., Box 22
Cedar Rapids, IA 52401

Re: *Texas v. New Mexico and Colorado*; No. 141 Original

Dear Special Master Melloy:

We are writing to address an issue that arose in the status conference on October 25, 2018. The issue was whether the apportionment of fees for the document vault was to include *amici*. As we understood it, the two proposals that had been discussed among the parties were: 1) each of the four states and *amici* would each be allocated a 20% share; or 2) the United States, Texas, and New Mexico would be allocated a 20% share each, Colorado would be limited to 5%, and *amici*'s share would be increased to 35%. The discussion then divided between certain *amici* taking the position that as non-parties they should not be required to participate in the fee splitting for the vault, with two *amici* (EBID and EP No.1) who linked the apportionment of fees for the discovery vault to an "enhanced role" in the case.

Initially, it had been the position of Albuquerque Bernalillo County Water Utility Authority and City of Las Cruces that as non-parties we should not be liable for a portion of the fees in vault. So as not to preclude an enhanced role or the same role as all other *amici*, our clients are willing to pay a proportional share, *i.e.*, 1/9 of 20% (or 1/8 if Kansas opts out).

Honorable Michael J. Melloy

November 5, 2018

Page 2

As should be apparent, we support the proposal in which each of the four parties are allocated 20% and the *amici* share is limited to 20%. If the Special Master does decide to reduce Colorado's allocation, we favor an allocation that doesn't shift all of Colorado's share to the *amici*.

Sincerely,



Jay F. Stein

Counsel for *Amicus Curiae* City of
Las Cruces

James C. Brockmann
Counsel for *Amicus Curiae*
Albuquerque Bernalillo County
Water Utility Authority

Cc: Counsel of Record (see attached)
John Stomp: JStomp@abcwua.org
Jorge Garcia: JAG@las-cruces.org

Honorable Michael J. Melloy
November 5, 2018
Page 3

SERVICE LIST

SPECIAL MASTER
(Service via Electronic Mail and US 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
Michael_melloy@ca8.uscourts.gov

PARTIES
(Service via Electronic Mail)

STATE OF NEW MEXICO

Marcus J. Rael, Jr.
David A. Roman
Special Assistant Attorneys General
Robles, Rael & Anaya, P.C.
500 Marquette Ave. NW, Ste. 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
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
hbaldaras@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
Colorado Department of Law
1300 Broadway
Denver, Co 80203
Tel. 720-508-6281
chad.wallace@coag.gov

Paralegal: Nan B. Edwards
nan.edwards@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

STATE OF TEXAS

Stuart L. Somach*
Andrew M. Hitchings
Robert B. Hoffman
Francis M. “Mac” Goldsberry II
Theresa C. Barfield
Brittany K. Johnson
Somach Simmons & Dunn, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Rhonda Stephenson - Secretary
Christina Garro – Paralegal

(916) 446-7979
(916) 803-4561 (cell)
ssomach@somachlaw.com
ahitchings@somachlaw.com
rhoffman@somachlaw.com
mgoldsberry@somachlaw.com
tbarfield@somachlaw.com
bjohnson@somachlaw.com

cgarro@somachlaw.com

Ken Paxton
Attorney General
Jeffrey C. Mateer
First Assistant Attorney General
Brantley Starr
Deputy First Asst. Attorney General
James E. Davis
Deputy Attorney General
Pricilla M. Hubenak
Chief, Environmental Protection Div.
Office of The Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

(512) 463-2012

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

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

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

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
(Service via Electronic Mail)

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)
PO Box 2168
Albuquerque, NM 87103-2168
Tel. (505) 848-1800
Direct (505) 848-1803
Fax (505) 848-9710
mobrien@modrall.com
sarah.stevenson@modrall.com

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
dmiller@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

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

Lizbeth Ellis
General Counsel
Clayton Bradley
Counsel
Hadley Hall Room 132
2850 Weddell Road
Las Cruces, NM 88003
Tel. (575) 646-2446
lellis@ad.nmsu.edu
bradleyc@ad.nmsu.edu

NEW MEXICO PECAN GROWERS

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

Paralegal: Patricia McCan
patricia@tessadavidson.com

Honorable Michael J. Melloy
November 5, 2018
Page 8

STATE OF KANSAS

Derek Schmidt

Attorney General of Kansas

Jeffrey A. Chanay

Chief Deputy Attorney General

Stephen R. McAllister*

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

steve.mcallister@trqlaw.com