

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

THE STATE OF TEXAS'S JANUARY 4, 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.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com
**Counsel of Record*

January 4, 2018

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 your honor is aware, the parties formalized the now approved and entered Stipulation for production of Electronically Stored Information and have been diligently working cooperatively to refine a list of search terms and custodians in order to collect and review all potentially discoverable information related to the claims and defenses in this case. Texas has been collecting and reviewing documents and intends to serve its first supplemental production of documents as soon as possible, with additional supplemental productions to follow on a rolling basis.

Texas has further commenced taking depositions, beginning with the Board of Directors of El Paso County Water Utilities District No. 1 (EP1), taken from November 15, 2018 through November 28, 2018 and the Board of Directors of Elephant Butte Irrigation District (EBID), taken on December 17 and 18, 2018. The Parties are currently coordinating regarding counsel and witness availability.

In addition to its ongoing Federal Rule of Civil Procedure 26 obligation to produce documents and disclose information, Texas and the State of New Mexico (New Mexico) have mutually exchanged Requests for Productions of Documents, responses to which are due in early February. Additionally, New Mexico submitted its responses to Texas's first set of interrogatories on January 2, 2019.

Additionally, in accordance with the Special Master's briefing schedule outlined in the November 21, 2018 Amendment to the Case Management Plan, and the Notice to Counsel dated December 19, 2018, on December 26, 2018 Texas filed the following two motions:

- Texas’s Motion to Strike or for Partial Judgment Regarding New Mexico’s Counterclaims and Affirmative Defenses, Federal Rules of Civil Procedure, Rule 12(c) and Rule 56
- The State of Texas’s Request for a Judicial Declaration to Confirm the Legal Issues Previously Decided and Motion in Limine to Exclude the Introduction of Evidence Thereon

Texas is reviewing the motions of the other parties in preparation for the January 23, 2019 response deadline.

The Parties intend to continue their efforts to coordinate production and organization of all non-privileged and discoverable documents, to improve efficiency and reduce expense through all phases of discovery.

Dated: January 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.
BRITTANY K. JOHNSON, ESQ.
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com

**Counsel of Record*

CERTIFICATE OF SERVICE

I certify that the State of Texas's January 4, 2019 Status Report has, on this day, been served to the Special Master by email and U.S. Mail and to all counsel of record and indicated parties by email.

Respectfully submitted this 4th day of January 2019,

s/Stuart L. Somach

STUART L. SOMACH
SOMACH SIMMONS & DUNN, PC
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: 916-446-7979
ssomach@somachlaw.com

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

PARTIES

(Service via E-Mail Only)

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
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

UNITED STATES OF AMERICA

Noel Francisco*
Acting Solicitor General
Jeffrey H. Wood
Acting Assistant Attorney General
Ann O'Connell
Assistant to Solicitor General
US 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
(Service via E-Mail Only)

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

Administrative Copy
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

**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

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 20000
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

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, 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